

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 5, 1997,
at 9:05 A.M., in the Senate Judiciary Chambers (Room 325) of
the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 98, posted
HB 222, posted
HB 234, posted
Executive Action: HB 98, HB 195, HB 234

VICE CHAIRMAN LORENTS GROSFIELD ASSUMED THE CHAIR AT THIS POINT.

HEARING ON HB 98

Sponsor: REP. BOB CLARK, HB 8, Ryegate

Proponents: Mike Mahoney, Warden, Montana State Prison
Beth Baker, Department of Justice

Opponents: Scott Crichton, Executive Director, Montana ACLU
Sharon Hoff, Montana Catholic Conference

Opening Statement by Sponsor: REP. BOB CLARK, HB 8, Ryegate. HB 98 has an exception and appeal to the Governor for clemency, but it stops last minute appeals to the Governor for executive clemency. There are seven inmates on death row now who are appealing hanging as cruel and unusual. They can also appeal lethal injection, yet they must make a decision as to the type of death they want.

These appeals cost the taxpayers many dollars and take much time. In Rupp v. Blodgett in Washington, the man weighed 400 pounds and hanging would have decapitated him. I will reserve the right to close.

Proponents' Testimony: Mike Mahoney, Warden, Montana State Prison read from prepared testimony (EXHIBIT #1), and asked the Committee to support HB 98.

Beth Baker, Department of Justice. The first execution in 50 years was held in Montana last year. It was very difficult. We believe that with the elimination of one more avenue of appeal, that this impact will be lessened. We believe the lethal injection is a getter way of executing a court death sentence, and it is better for prison security, as alluded to by Warden Mahoney.

{Tape: 1; Side: A; Approx. Time Count: #9.0; Comments: 9:14 a.m.}

Opponents' Testimony: Scott Crichton, Executive Director, Montana ACLU and for Edmund F. Sheehy, Jr. (EXHIBIT #2). I am asking the Committee to look at the two addendums to Mr. Sheehy's testimony. Russia's president is now calling for elimination of the death penalty. The ACLU opposes the death penalty across the board. Mr. Crichton read from Mr. Sheehy's testimony, and said Mr. Sheehy considered it important that the courts have held that hanging may not be cruel and unusual. I also have a study on the death penalty and related issues (EXHIBIT #3).

Sharon Hoff, Montana Catholic Conference (EXHIBIT #4) read from prepared text. I ask the Committee to consider an amendment to also eliminate lethal injection and the death penalty.

Questions From Committee Members and Responses: SEN. SHARON ESTRADA. Is there a Fiscal Note? Warden Mahoney. The physical plant is better set up for lethal injection than for hanging.

SEN. ESTRADA. Are there any other states using hanging? Warden Mahoney. I believe there are, but I don't have the numbers. Most don't as it runs more risks. It is difficult for staff and for the 12 required witnesses, more so than for lethal injection.

SEN. SUE BARTLETT. Would people currently on death row be affected by this bill? Beth Baker. Yes. It will apply each time a death warrant is issued.

SEN. BARTLETT. Was there any discussion of changing the applicability section? **Beth Baker.** We did discuss it during drafting, but decided not to change the election process. It's a procedural and not a subjective change in the law. With regard to **SEN. ESTRADA's** questions, to the best of our knowledge, Delaware uses hanging for convictions up to a certain date. Washington did, but changed their law.

SEN. BARTLETT. Please walk through the sequence of time for the appeal process of Duncan McKenzie, and tell me how that would be different now. **Warden Mahoney.** Right now, a capital case is automatically brought under appeal to the Supreme Court. **David Ohler, Counsel, Department of Corrections.** Duncan McKenzie applied for executive clemency shortly before his execution date, so the Board had to hold a hearing. The Board makes a recommendation to the Governor who has to review it and make a decision. Since the application was filed so close to the date of execution it was difficult to properly address this process. This bill changes that to give more time for this process.

SEN. BARTLETT. Which death warrant counts in relation to the proposed ten-day period. **David Ohler.** The last one will count.

SEN. STEVE DOHERTY. In passing this bill will we increase or decrease the amount of time and money spent on these cases? **Beth Baker.** Of the eight cases on death row, I don't think more than three of them have chosen hanging. It may be a wash as to whether we will have more or fewer appeals in the near term, but we believe it will help over the long term.

SEN. DOHERTY. Will those eight individuals have new opportunities to appeal in this bill? **Pam Collins, Assistant Attorney General, Department of Justice.** Every issue that can be raised will eventually be raised, and this bill is no exception. I believe Mr. Sheehy's statement is incorrect that there is no appeal for method of execution. In Montana we presently use the default method if the inmate stands mute. The sentence has not been changed, only the method of execution.

SEN. DOHERTY. Are we buying more trouble by making this apply to those on death row now? **Pam Collins.** I don't believe it is more prudent to make the bill prospective because what occurred previously is not set in stone, and it could be different the next time. For example, Terry Langford chose hanging previously, but no execution date is set now, so he'll have a new choice of method when this date is set.

SEN. DOHERTY. What if this costs a lot and is not worth the return? I read that we don't keep track of costs of imposition of sentences. Why don't we do this, so we know costs for the future? **Attorney General Mazurek.** The issue of costs came out of the House hearing. In more than 20 years and through five attorneys general, we don't have this information, but we could

estimate it. There is no question that it is expensive. As long as this is public policy, we will continue to do this.

SEN. DOHERTY. It would be helpful to know this information, as a matter of public policy. **Attorney General Mazurek.** We could do a better estimate today. Most are paid for out of the District Court Defense Fund. I would be happy to get this information for you.

SEN. RIC HOLDEN. You and Beth Baker mentioned that inmates change their choice of execution method when each death warrant is issued. Is there any way to make them stay consistent in this choice? **Attorney General Mazurek.** We want to eliminate the argument of cruel and unusual for future appeals.

{Tape: 1; Side: B; Approx. Time Count: #00; Comments: 9:48 a.m.}

SEN. REINY JABS. Does cruel and unusual punishment have to be decided each time? **Beth Baker.** Yes. I'm glad you asked, as it is ruled by contemporary community standards, and this is one issue we hope to prevent with this bill. In the Langford case the Court did reject the argument of cruel and unusual, as he'd already chosen his method of execution, but the Ninth Circuit Court has made this unclear and I don't know what the Supreme Court has done. Our cases are heard in the Ninth Circuit Court.

SEN. ESTRADA. What is the difference in cost between hanging and lethal injection? **Warden Mahoney.** My one case of lethal injection cost \$37,000, and hanging would be more expensive. I would estimate it to be about \$5000 more.

SEN. BRUCE CRIPPEN PRESENT AT 9:52 A.M., SEN. GROSFIELD REMAINING AS CHAIR.

SEN. ESTRADA. Are we dealing with the cost or the humane issue? **Warden Mahoney.** I believe both are agenda issues of the Department. The more appeals that are allowed, I fully expect these inmates to explore every option available to them. Keeping someone on death row for 40-50 years on appeals is very burdensome to the taxpayers.

Closing by Sponsor: REP. CLARK. The cost is about \$40 per day to keep an inmate on death row. The average age of the older prisoners is about 60, and it costs about \$20,000 per year. So it could cost about \$1.2 million per prisoner if he or she lived to age 60.

Fewer appeals would cost less. Duncan McKenzie had 21 years of appeals and it appears it gave his attorneys a career. If we can eliminate two appeals at 1.5 years each, we could save Montana considerable money.

The average stay on death row is 12-15 years nationwide. The intent of HB 98 is to speed the process up. If it's not being

used, the death penalty is not a deterrent. If it's being enforced, these words mean something to criminals.

There are three things Montanans don't want: 1) a sales tax; 2) a speed limit; and 3) 21 years of inmate appeals.

HEARING ON HB 222

Sponsor: REP. SHIELL ANDERSON, HD 25, Livingston

Proponents: Attorney General Joe Mazurek
Beth Baker, Department of Justice
David Ohler, Counsel, Department of Corrections

Opponents: William F. Hooks, Appellate Defender, Department
of Administration
David Ness, Chair, Criminal Defense Section of the
Montana State Bar
Sharon Hoff, Montana Catholic Conference
Scott Crichton, Executive Director, Montana ACLU
Betty Waddell, Montana Association of Churches
Edmund F. Sheehy, Jr., ACLU
Tim Kuntz, Legislative Intern, Montana Trial
Lawyers Association (MTLA)

Opening Statement by Sponsor: REP. SHIELL ANDERSON, HD 25, Livingston. HB 222 implements the Anti-Terrorism and Death Penalty Act of 1996, in hope of bringing some finality to these cases following sufficient due process. I will reserve the right to close.

Proponents' Testimony: Attorney General Joe Mazurek. This is identical to HB 127, but doesn't contain the appropriation necessary to carry it out, so we are dealing with this in HB 2. After six years of effort by the National Association of Attorneys General, this was introduced by the Montana delegation and passed Congress, but was immediately challenged in court. We believe, however, that it will be upheld.

I believe Montana made case law with Duncan McKenzie. His case was seven times in the Supreme Court and there were appeals. His story was told in this body over a period of ten years in the Senate. Former Senator Ethel Harding's daughter, Lana, was the girl who was killed by Duncan McKenzie.

By opting into the federal legislation, Montana would have the advantage of a more expedited federal review, and assurance that attorneys would meet minimum competency standards, as well as that fees would be paid as necessary. Fees are already paid in Montana from the District Court Reimbursement Fund. The bill revises Montana's post-conviction process, as well.

If there is a re-sentencing order, the court must impose it within 90 days. The Court had waited one year in one case, and

that's too long. The bill requires the defendant to raise all the issues reasonably possible at the initial petition. In the Dawson case in Billings, a family was poisoned in a motel, but the Court decision was not made for 23 months afterward. We have state, circuit, and federal appeals processes to go through, so we need to expedite the processes and reduce delay.

Beth Baker, Department of Justice. The state must do three things to comply with the Federal Act (Section 6): 1) require appointment of counsel in the post-conviction process; 2) provide for reasonable costs, as federal courts look seriously at this; and 3) the state must provide for adoption of competency standards either by statute or rule. (EXHIBIT #5) is a necessary amendment to address a sentence, as a post-conviction case is a civil proceeding.

{Tape: 1; Side: B; Approx. Time Count: #27.6; Comments: 10:15 a.m.}

The second aspect of the bill is addressed on page 3 of our fact sheet (EXHIBIT #6), Reducing Delay in State Courts. There are parallel proceedings going on in state and federal courts. In the House it was argued that this is too restrictive. In other states where juries play a role in the death sentence, the sentencing hearing happens right away. That is done today in North Carolina, so it is not unusual or unconstitutional.

The law now says five years from the date of convictions, however, the bill changes this to one year from the date the conviction becomes final. In the Fiscal Note, between 1995-96 we had a 65 percent increase in the number of appeals, but our staff has not increased since 1989. So, we have asked for one attorney the first fiscal year and a second attorney, if necessary, the second fiscal year. Because of the increase in the criminal population, this is not unreasonable. I will be available for questions.

{Tape: 1; Side: B; Approx. Time Count: #34.8; Comments: 10:21 a.m.}

David Ohler, Counsel, Department of Corrections. The victims continually have difficulty with the appeals, and it is important for them to have finality. We also need to hold offenders accountable. Then we can hopefully reach them and rehabilitate them.

Opponents' Testimony: William F. Hooks, Appellate Defender, Department of Administration. I represent indigent defendants. The American Bar Association has recommended a moratorium on the death penalty (EXHIBIT #7).

Post-conviction comes after an unsuccessful appeal and provides a much broader opportunity to appeal an illegal or invalid sentence.

{Tape: 1; Side: B; Approx. Time Count: #38.7; Comments: None.}

Federal habeas reform has altered the balance dramatically concerning validity of a federal claim in state court. Now it is very limited. There are great restrictions to appealing a decision of the Ninth Circuit Court of Appeals. I believe extreme delays won't happen now with the federal habeas reform.

The opt-in provision to speed up executions would affect three or four inmates on death row in Montana now. I believe this bill runs counter to federal habeas reform.

The Feds can't grant relief where the state court denies, unless it is reasonably determined that the state court was wrong.

{Tape: 2; Side: A; Approx. Time Count: #00; Comments: 10:25 a.m.}

Concerning the 90-day period, there is no requirement for a prosecutor to give notice in Montana that they will seek the death sentence. So, it is important to give the accused and his attorneys sufficient time to prepare for a possible death sentence.

I believe this bill will create a burden to the district court. The one-year statute of limitations is better, but it is still defective, as they have no right to counsel in death penalty cases, but are most often indigent. SB 216 tightens the restriction on pleading these cases.

{Tape: 2; Side: A; Approx. Time Count: #5.3; Comments: None.}

There are validity of sentence issues such as misconduct of prosecutors, who failed to turn over evidence, or trial attorneys who drop the ball. This makes it hard to act within the one-year period. We have one year to file habeas, but it takes time to file state post-conviction, and that time is deducted from that one-year period. So a new attorney would have to come in and accumulate and review all prior information. It is important to note that death penalty inmates don't enjoy five years now.

In Section 5 there is no need to severely restrict this. Section 6 would allow the state court not to have to give a reason, and federal courts won't have anything to review. In a study by the U.S. Department of Justice of cases exonerated by DNA, it shows how important the opportunity for a full and fair hearing is in state courts. This bill just guts that.

Davis Ness, Chair, Criminal Defense Section of the Montana State Bar. I have been co-counsel in one death-sentence case. The American Bar identified three problems: 1) problems at the trial level; 2) post-convictions and habeas procedures; and 3) racial discrimination in the death penalty. Money should be defined at the outset as well as competent counsel.

American Bar Association standards generally required two counsel at the trial, and review levels. These problems are accentuated by this bill.

{Tape: 2; Side: A; Approx. Time Count: #13.9; Comments: 10:40 a.m.}

Especially in death penalty cases, the amount of delay in cases is directly in the Attorney General's Office. If the U.S. Supreme Court announces a new rule of law with a retroactive effect, the criminal can't get out of the one-year statute of limitations in making appeals.

It is important to look at the optive provision of the Federal Habeas Act which elevated state courts essentially to the level of federal courts, to have expedited process - if states had a fair forum, forms of payment, and competent counsel.

Parts of this bill would eviscerate the Federal Habeas Act, and the ability to obtain a fair hearing in court.

Sharon Hoff, Montana Catholic Conference reiterated her statements on the death penalty made during the hearing just prior to HB 222. The Catholic Church is compassionate toward victims as well as perpetrators, but there are ways to protect society without going to this extreme. Texas has one of the highest crime and execution rates in the U.S. I would encourage the Committee not to speed the process up, but to make certain justice is done, and that all involved are regarded and cared for.

{Tape: 2; Side: A; Approx. Time Count: #21.9; Comments: 10:47 a.m.}

Scott Crichton, Executive Director, Montana ACLU (EXHIBIT #8). Most defendants are indigent and have court-appointed counsel. U.S. law requires these people to be represented by attorneys with experience in capital cases. The Montana bill doesn't do this, as few attorneys have this experience. I am asking the Committee to see fit to pay for what they're passing, if you decide to pass this bill.

Betty Waddell, Montana Association of Churches. There is an average of 37 wrongful convictions every decade. All 3000 inmates on death row in the U.S. are indigent, but we also need to reassure victims and their families that justice is being served. I would encourage the Committee to oppose this bill.

Edmund F. Sheehy, Jr., ACLU. I am appearing as an attorney for nearly every death penalty case at the trial level. In dealing with the question of when sentence should be imposed, there is nothing in the Federal Act about a specific period of time such as 90 days, so this would create a problem.

In most cases, defendants will not tell their attorneys whether or not they're guilty. So, we can't be simultaneously getting ready for a sentencing hearing, as that defendant would ask for another lawyer or else ask why his attorney wasn't getting ready to represent him properly. The rules on mitigation in Subsection (2) allow almost everything in, and we must do this to avert problems down the road, but this is nearly impossible to do within 90 days. Evaluations for a client take time, and then we must make a decision on whether or not to disclose that information.

{Tape: 2; Side: A; Approx. Time Count: #30.8; Comments: 10:55 a.m.}

In one of my cases, the trial ended in July, but the judge made his decision three months later. I believe judges need this reasonable amount of time, as these are difficult decisions. We certainly don't need to increase the burden on them and on the attorneys who handle these cases. We can't plead the death penalty and competently represent a client at the same time. I am asking that you eliminate the 90-day period from the bill.

Tim Kuntz, Legislative Intern, Montana Trial Lawyers Association (MTLA). This bill makes it more likely to convict an innocent person, and it affects how fast we will put inmates to death.

Questions From Committee Members and Responses: VICE CHAIRMAN GROSFIELD. As a practical matter, I believe we are talking about 150 days. How much time is enough? **Edmund Sheehy.** What existing laws says "a reasonable time". Trial judges do a very good job of supervising these cases, and I don't believe we've had any case, except for the Lester Kills-On-Top case. **Attorney General Mazurek.** It is true that the Department of Justice is concerned about this case. I believe some cases handled by Mr. Sheehy have been within 90 days, and that this is not unreasonable.

VICE CHAIRMAN GROSFIELD. Would you comment on only allowing one 90-day period? **Attorney General Mazurek.** If a judge dies or is disqualified, then we could begin the time clock again.

SEN. BARTLETT. Why should the Legislature substitute its judgment for the judge who is hearing these arguments? **Attorney General Mazurek.** There is a public policy interest in bringing these matters to a conclusion within a reasonable period of time. These cases take too much time in the courts.

{Tape: 2; Side: A; Approx. Time Count: #41.2; Comments: None.}

SEN. BARTLETT. In the Federal Anti-Terrorism and Effective Death Penalty Act of 1996 is there a deadline for Montana to opt in? **Attorney General Mazurek.** Not to my knowledge, but there are certain benefits available if we do. I believe it is important

to do this now. Pam Collins can answer specific post-conviction questions.

{Tape: 2; Side: B; Approx. Time Count: #00; Comments: None.}

SEN. ESTRADA. Are there seven or eight on death row now? **Warden Mahoney.** There are seven.

SEN. ESTRADA. Is it correct that the majority are people of color? **Warden Mahoney.** That is not disproportionate in Montana.

SEN. ESTRADA. I want a list of nationalities and numbers on indigent inmates. **Warden Mahoney.** I will get this information. **Attorney General Mazurek** provided this information to the Committee (EXHIBIT #8).

SEN. STEVE DOHERTY. How do these bills (**SEN. VAN VALKENBURG's** and this one) mesh? **Beth Baker.** **SEN. VAN VALKENBURG's** bill came out of two recent Montana Supreme Court decisions, so we introduced this bill and then had him introduce the other bill later.

SEN. DOHERTY. What other provisions in the bill are not required by federal legislation? **Beth Baker.** Subsections (2) and (3) in Section 6 and Subsection (1) in Section 7 are not required. These deal with appointment of counsel, compensation, and competency standards.

SEN. BARTLETT. Page 4, line 28, concerns violation. If subsection (3) is not the basis for claim of relief, what remedy or recourse is there? **Beth Baker.** The language is in there for post-convictions claims, but if violated, other remedies are available, so it would not affect the ability to file a petition.

VICE CHAIRMAN GROSFIELD. These defenses could get fairly expensive, and if they use up initial monies, how would they claim indigence for future actions? **Beth Baker.** That has happened, and I believe the law would accommodate this.

VICE CHAIRMAN GROSFIELD. But the way the bill is structured, it doesn't look like that. **Beth Baker.** There is no constitutional right to an attorney in post-conviction proceedings, so the Court would have to review this.

SEN. MIKE HALLIGAN. Is 46-8-201 the State District Court Criminal Reimbursement Fund? **Beth Baker.** It states attorneys must be paid reasonable compensation via 3-5-901, MCA, the District Court Reimbursement Fund, and so counsel is compensated the same way as in criminal cases.

SEN. HALLIGAN. It is possible that we may need to coordinate this, if the way this is being done is changed. **Beth Baker.** It is my understanding that the District Court Reimbursement Fund is adequate right now to compensate.

SEN. DOHERTY asked for comment regarding whether three of the four cases mentioned on death row, were the result of what happened while they were in state custody.

SEN. CRIPPEN. How many are career capital cases? **Edmund Sheehy.** About a dozen.

SEN. CRIPPEN. In how many cases have you had to remain involved after you lost the case? **Edmund Sheehy.** Generally, after direct appeal, I haven't been involved.

SEN. CRIPPEN. If you weren't involved, why are you worried about the 90-day period? **Edmund Sheehy.** That 90-day period applies to trial via jury verdict.

SEN. CRIPPEN. How many cases resulted in convictions? **Edmund Sheehy.** Four cases are on death row. It hasn't come into play as it hasn't been issued at this point, but I believe it probably would increase.

{Tape: 2; Side: B; Approx. Time Count: #17.5; Comments: None.}

SEN. CRIPPEN. I like the bill, even though I am more of a "defense" man. What do you say to Mr. Sheehy's argument about the 90-day period? **Beth Baker.** Mr. Sheehy admitted it has only come up in one case that he's aware of, and what Mr. Hooks said is a smoke screen, as they are before an impaneled jury who must be apprised of the possible verdicts. So, I don't believe we will see more problems. I believe this bill codifies practice and is more reasonable.

Closing by Sponsor: **REP. ANDERSON.** We're talking about people who kill, and then aren't friend and neighbor types. They've been found guilty and also guilty of an aggravating offense. Two of three people think we should punish killers.

I don't believe any amount of delay would satisfy the opponents. This bill tries to give finality to the process. The National District Attorneys Association (all 50 states) criticized the American Bar Association's call for a moratorium, and said this is not the appropriate way to deal with this issue.

DNA testing and exculpatory evidence is addressed by a House amendment. This bill passed 87-12 in the House and its purpose is pretty clear - to be fair and expeditious. I hope the Committee will choose to pass it.

{Tape: 2; Side: B; Approx. Time Count: #27.3; Comments: 11:38 a.m.}

HEARING ON HB 234

Sponsor: REP. ROD BITNEY, HD 77, Kalispell

Proponents: David Ohler, Counsel, Department of Corrections

Opponents: None

Opening Statement by Sponsor: REP. ROD BITNEY, HD 77, Kalispell read from prepared testimony. HB 234 would amend Article II, Section 28 of the Montana Constitution to provide crime victims' restitution. The Constitution doesn't mention victims, and we need to treat criminals as criminals and victims as victims. Victims need to have the same rights as criminals.

The bill empowers victims via: 1) compensating victims; 2) promoting public safety; and 3) punishing criminals. The Montana Board of Crime Control reported \$19 million in losses to crimes, with only \$3.5 million recovered, but they believe the amount of loss is actually much more. Seventy-five percent of crimes are committed by repeat offenders at a cost about \$250 billion per year nationally. Over \$80 billion is spent on public safety.

The result of this bill would be increased quality of life. I ask the Committee to support this legislation.

{Tape: 2; Side: B; Approx. Time Count: #31.8; Comments: 11:40 a.m.}

Proponents' Testimony: David Ohler, Counsel, Department of Corrections. The Department believes the needs of victims are important and encourages the Committee to support this bill.

Opponents' Testimony: None

Questions From Committee Members and Responses: SEN. DOHERTY. In proposing a constitutional change, will it increase the amount of dollars by even \$1, the ability of the Board of Crime Control to compensate victims better? REP. BITNEY. I believe so.

SEN. DOHERTY. We currently have a crime victims restitution fund, so how will one additional dollar be added to crime victim restitution. REP. BITNEY. I can't answer, but I believe it is important to set this trend.

SEN. DOHERTY. It seems the language change you are requesting would make it part of a laundry list and de-emphasize punishment. Why is this a good idea? REP. BITNEY. It was not my intention to de-emphasize this.

SEN. DOHERTY. If we left Article II, Section 28 the same and added "prevention and public safety", would this meet your goal? REP. BITNEY. We want to emphasize punishment and restitution.

SEN. DOHERTY. The simpler way is to add "public safety and restitution" to current statute, rather than change the Constitution. **REP. BITNEY.** I can't answer that.

SEN. CRIPPEN. What was the vote on this bill? **REP. BITNEY.** The vote was 97-1 in the House on third reading, and it was unanimous in the House Judiciary Committee.

Closing by Sponsor: **REP. BITNEY** asked the Committee to support the bill, and said he would need someone to carry it.

{Tape: 3; Side: A; Approx. Time Count: #00; Comments: 11:50 a.m.}

EXECUTIVE ACTION ON HB 98

Motion: **SEN. ESTRADA** MOVED HB 98 BE CONCURRED IN.

Discussion: **SEN. DOHERTY.** I question making it apply to cases on death row, as to whether it will reduce appeals. Why not make it prospective? I didn't get a good answer from the Attorney General, but I don't believe it will accomplish their goal concerning death row.

SEN. BARTLETT. Beth Baker said they did discuss this at length, but that each time a new execution date is set, the inmate gets a new choice of method. I don't believe this will help the Department of Corrections in having to carry out a hanging in current death row cases.

SEN. CRIPPEN. The alternative is more appeals.

Vote: **SEN. ESTRADA'S** MOTION THAT HB 98 BE CONCURRED IN CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT **SEN.S BARTLETT** AND **DOHERTY** WHO VOTED NO.

EXECUTIVE ACTION ON HB 195

Amendments: sb019501.avl - EXHIBIT 9

VICE CHAIRMAN GROSFIELD. I asked Valencia Lane to draft an amendment - sb019501.avl. The House feels these amendments won't jeopardize the bill.

Discussion: **Ms. Phippen, Clerks of Court.** We oppose the amendment. To charge different agencies separately for the same function goes against my grain, but I don't know if it's truly a problem. The Child Support Enforcement Division is very opposed to amendment 9 regarding filing of liens in district court. We believe the title companies, etc, would have major concerns.

VICE CHAIRMAN GROSFIELD. I will not offer the amendments.

Motion/Vote: **VICE CHAIRMAN GROSFIELD** MOVED HB 195 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY.

{Tape: 3; Side: A; Approx. Time Count: #10.5; Comments: 12 Noon}

EXECUTIVE ACTION ON HB 234

Discussion: SEN. DOHERTY. I spoke with REP. BITNEY and the way the House did this was not very clear. So I am proposing to amend the bill, leaving the heading as it is, and amending in the old language, plus adding "public safety and restitution". The difference would be not taking away the laws for punishment of a crime as the primary thing. The language I'm proposing is cleaner and simpler, and uses existing language. REP. BITNEY has no problem with my proposal.

SEN. HALLIGAN. If we put "public safety" in the bill, can a criminal sue if we don't have enough prison space? Valencia Lane. They do sue now. This might get us into the morass we had with full access to the Courts or tort claims regarding equal protection, because of a constitutionally recognized right. I haven't, however, had the time to give this serious thought.

Motion: SEN. DOHERTY MOVED TO ADOPT THE AMENDMENTS HE PROPOSED IN DISCUSSION.

Discussion: The amendment addresses only Subsection (1) of the Constitution. Are there any changes to Subsection (2)? SEN. DOHERTY. No, the current language is fine.

SEN. BARTLETT. SEN. ESTRADA and I have had this experience on the Sentencing Commission. As current standards, the two principles are "prevention" and "reformation", and these had to be given equal weight, as they're both in the Constitution. So, the Committee needs to bear that possibility in mind, if we add SEN. DOHERTY's language.

VICE CHAIRMAN GROSFIELD. If you read Section 1 of the Montana Constitution, it says "prevention and reformation". I like SEN. DOHERTY's amendment, but I don't like the bill as it is. I am concerned that it could provide lucrative material for various lawyers to work with, as well as new careers.

Vote: SEN. DOHERTY'S MOTION TO AMEND HB 234 CARRIED UNANIMOUSLY.

Motion: SEN. ESTRADA MOVED HB 234 BE CONCURRED IN AS AMENDED.

Discussion: SEN. HALLIGAN. Why can't we just table this bill? Valencia Lane. The first committee to hear it can table it, but once it is possible to get 100 votes in the other House it can be sent to that House.

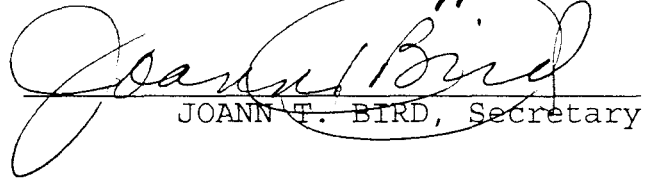
Vote: SEN. ESTRADA'S MOTION THAT HB 234 BE CONCURRED IN AS AMENDED CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS BISHOP, BARTLETT, AND JABS WHO VOTED NO.

ADJOURNMENT

Adjournment: 12:12 p.m.

A large, stylized handwritten signature in black ink, likely belonging to Sen. Bruce D. Crippen, positioned above his printed name.

SEN. BRUCE D. CRIPPEN, Chairman

A large, stylized handwritten signature in black ink, likely belonging to Joann T. Bird, positioned above his printed name.

JOANN T. BIRD, Secretary

BDC/JTB