

SENATE BILL NO. 63

INTRODUCED BY MAZUREK

BY REQUEST OF THE ATTORNEY GENERAL

IN THE SENATE

January 5, 1981	Introduced and referred to Committee on Judiciary.
January 20, 1981	Committee recommend bill do pass. Report adopted.
January 21, 1981	Bill printed and placed on members' desks.
January 22, 1981	Motion pass consideration.
January 23, 1981	Second reading, do pass.
January 24, 1981	Considered correctly engrossed.
January 26, 1981	Third reading, passed. Transmitted to House.

IN THE HOUSE

January 27, 1981	Introduced and referred to Committee on Judiciary.
March 4, 1981	Committee recommend bill be concurred in. Report adopted.
March 5, 1981	Second reading, concurred in.
March 7, 1981	Third reading, concurred in. Yeas, 93; Nays, 2.

IN THE SENATE

March 7, 1981	Returned from House. Concurred in. Sent to enrolling. Reported correctly enrolled.
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SENATE BILL NO. 63

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BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONFORM THE STATUTES REGARDING AMENDMENT OF CHARGES IN CRIMINAL CASES TO CASE LAW; AMENDING SECTIONS 46-11-403 AND 46-17-101, MCA."

Section 1. Section 46-11-403, MCA, is amended to read:

"46-11-403. Amending the charge information. (1) (a) A charge An information may be amended once in matters of substance at any time not less than 5 days before trial without with leave of court.

(b) When the prosecution seeks leave to amend an information as to a matter of substance, the prosecuting attorney shall file:

(i) a motion for leave to amend stating the nature of the proposed amendment;

(ii) a copy of the proposed amended information; and

(iii) an affidavit in compliance with 46-11-201(1), stating facts sufficient to show the existence of probable cause to support the charge as amended;

(c) If the motion is timely and the amended information is supported by probable cause, the court shall grant leave to amend.

(d) The defendant shall be arraigned on the amended

information without unreasonable delay.

(e) The defendant shall have a reasonable period of time to prepare for trial on the amended information.

(2) The court may permit any charge an information to be amended as to form at any time before verdict or finding if no additional or different offense is charged and if the substantial rights of the defendant are not prejudiced.

(3) No charge shall may be dismissed because of a formal defect which does not tend to prejudice a substantial right of the defendant."

Section 2. Section 46-17-101, MCA, is amended to read:

"46-17-101. Initiation of proceedings -- amending the complaint. (1) In justices' and city courts, all criminal prosecutions must be commenced by complaint under oath.

(2) The complaint may be amended at any time before verdict or finding with leave of court."

-End-

Approved by Committee
on Judiciary

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5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CONFORM THE STATUTES
6 REGARDING AMENDMENT OF CHARGES IN CRIMINAL CASES TO CASE
7 LAW; AMENDING SECTIONS 46-11-403 AND 46-17-101, MCA."
8 Section 1. Section 46-11-403, MCA, is amended to read:
9 "46-11-403. Amending the charge information. (1) (a) *
10 charge An information may be amended once in matters of
11 substance at any time not less than 5 days before trial
12 without with leave of court.
13 (b) When the prosecution seeks leave to amend an
14 information as to a matter of substance, the prosecuting
15 attorney shall file:
16 (i) a motion for leave to amend stating the nature of
17 the proposed amendment;
18 (ii) a copy of the proposed amended information; and
19 (iii) an affidavit in compliance with 46-11-201(1),
20 stating facts sufficient to show the existence of probable
21 cause to support the charge as amended;
22 (c) If the motion is timely and the amended
23 information is supported by probable cause, the court shall
24 grant leave to amend.
25 (d) The defendant shall be arraigned on the amended

1 information without unreasonable delay.
2 (e) The defendant shall have a reasonable period of
3 time to prepare for trial on the amended information.
4 (2) The court may permit ~~any-charge~~ an information to
5 be amended as to form at any time before verdict or finding
6 if no additional or different offense is charged and if the
7 substantial rights of the defendant are not prejudiced.
8 (3) No charge ~~shall~~ may be dismissed because of a
9 formal defect which does not tend to prejudice a substantial
10 right of the defendant."
11 Section 2. Section 46-17-101, MCA, is amended to read:
12 "46-17-101. Initiation of proceedings ~~-- amending the~~
13 complaint. (1) In justices' and city courts, all criminal
14 prosecutions must be commenced by complaint under oath.
15 (2) The complaint may be amended at any time before
16 verdict or finding with leave of court."

-End-

-2- SECOND READING
 SB 63

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 2 INTRODUCED BY MAZUREK
 3 BY REQUEST OF THE ATTORNEY GENERAL

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 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO CONFORM THE STATUTES
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 7 LAW; AMENDING SECTIONS 46-11-403 AND 46-17-101, MCA."

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 9 "46-11-403. Amending the charge information. (1) (a) *
 10 charge an information may be amended once in matters of
 11 substance at any time not less than 5 days before trial
 12 without ~~with~~ leave of court.

13 ~~(b) When the prosecution seeks leave to amend an~~
 14 ~~information as to a matter of substance, the prosecuting~~
 15 ~~attorney shall file:~~

16 ~~(i) a motion for leave to amend stating the nature of~~
 17 ~~the proposed amendment;~~

18 ~~(ii) a copy of the proposed amended information; and~~

19 ~~(iii) an affidavit in compliance with 46-11-201(1),~~
 20 ~~stating facts sufficient to show the existence of probable~~
 21 ~~cause to support the charge as amended;~~

22 ~~(c) If the motion is timely and the amended~~
 23 ~~information is supported by probable cause, the court shall~~
 24 ~~grant leave to amend.~~

25 ~~(d) The defendant shall be arraigned on the amended~~

1 ~~information without unreasonable delay.~~
 2 ~~(e) The defendant shall have a reasonable period of~~
 3 ~~time to prepare for trial on the amended information.~~

4 (2) The court may permit ~~any charge an information~~ to
 5 be amended as to form at any time before verdict or finding
 6 if no additional or different offense is charged and if the
 7 substantial rights of the defendant are not prejudiced.

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 9 formal defect which does not tend to prejudice a substantial
 10 right of the defendant."

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12 "46-17-101. Initiation of proceedings ~~= amending the~~
 13 ~~complaint.~~ (1) In justices' and city courts, all criminal
 14 prosecutions must be commenced by complaint under oath.

15 ~~(2) The complaint may be amended at any time before~~
 16 ~~verdict or finding with leave of court."~~

-End-

-2- THIRD READING
 SB 63

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BY REQUEST OF THE ATTORNEY GENERAL

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONFORM THE STATUTES REGARDING AMENDMENT OF CHARGES IN CRIMINAL CASES TO CASE LAW; AMENDING SECTIONS 46-11-403 AND 46-17-101, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 46-11-403, MCA, is amended to read:

"46-11-403. Amending the charge information. (1) (a) A charge An information may be amended once in matters of substance at any time not less than 5 days before trial ~~without~~ with leave of court.

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(i) a motion for leave to amend stating the nature of the proposed amendment;

(ii) a copy of the proposed amended information; and

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-End-

REFERENCE BILL