

MINUTES

MONTANA SENATE 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 4, 2001
at 10:12 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Duane Grimes, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)

Members Excused: Sen. Steve Doherty (D)
Sen. Gerald Pease (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Anne Felstet, Committee Secretary
Cecile Tropila, Committee Secretary

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

ORGANIZATIONAL MEETING

CHAIRMAN GROSFIELD: We have a couple of small bills to hear tomorrow. Also, tomorrow the attorney general will be introducing himself and his staff to us. We have twenty-five bills already assigned to this committee so we will be hearing bills everyday from tomorrow on.

The purpose of this meeting is to get acquainted. We have a couple of new members and I will wait a couple of minutes to see if Senator Pease gets here and then have the two new committee members introduce themselves to the rest of us.

Last session this committee adopted rules and I think what you have in front of you are the rules from last session.

EXHIBIT (jus02a01) I would ask you to look at those a little and see if they meet with your approval and see if we are leaving anything out or if there is something there you don't like. I believe these rules served us well last time. Number one on that list is talking about cell phones and that sort of thing. I will give you a couple of minutes to read those over.

SEN. HALLIGAN: Commented that the rules are fine and they worked well the last time. I do not think the legislators should come to testify on bills. Legislators have an opportunity in committee and on the floor to propose and do things to advocate or oppose bills. They will already have their vote on the record and the house joint rules should say that legislators can have acknowledgment of testimony or they could submit testimony or they could show their support in some way. But, they shouldn't take the time up on the committee and testify.

If there are people who would like to testify other than legislators, because we want to make sure that everyone who is here or may have traveled here gets a chance to talk other than legislators. It would be okay to come in after the three or four people who have raised their hand wanted to testify.

SEN. GRIMES: Stated that regarding rule number seven, should we have the media go to you for permission, Chairman Grosfield? With regard to video tape, where it is done and how its done.

CHAIRMAN GROSFIELD: Commented it could say; "subject to discretion of the chair".

Motion/Vote: **SEN. GRIMES** moved that **Number 7 of the RULES & REGULATIONS BE AMENDED.**

CHAIRMAN GROSFIELD: As the session gets going legislators, all of us, are busy as can be and a lot of times you will have a legislator come in and say can I begin first because I have to get back to committee. It may not work to say legislators testify last because they are busy and we are all busy.

SEN. GRIMES: In some cases it depends on the bill. For example, last year on the genetics bill I was very glad that Mary Anne Guggenheim was there pertaining to Family Law. There would be some cases where we could use the expertise of other members of the house or senate.

SEN. HALLIGAN: Answered the key is special expertise.

CHAIRMAN GROSFIELD: Are there any other comments on the rules? I think it gives a sense a seriousness of the committee if we post our rules outside the main doors.

Motion/Vote: **CHAIRMAN GROSFIELD** moved that **OTHER: "Senate Judiciary Committee Rules of Procedure" BE ADOPTED. Motion carried 9-0.**

CHAIRMAN GROSFIELD: Explained the code books are on the desks and we need to have book cases placed in here behind our desks for the MCA codes to be put on them.

Another thing to remind all of you is in regard to these microphones, the acoustics in this room are terrible, and with these microphones you have to be close to them in order to hear. The main reason for this is that these meetings are all tape recorded and the tapes are hooked directly into the system so anything that is not said into the microphone doesn't end up on the tape. Be sure to click on your microphone when you use it and click off when you are done otherwise we can end up with some feedback and the microphones won't work as well when a whole bunch of them are turned on.

We have Valencia Lane back with us. Valencia has been with the judiciary committee for fifteen years approximately.

We also have two new secretaries this year and they will introduce themselves. Anne Felstet and Cecile Tropila.

Also a reminder for the committee is that the Pages are here to serve.

Susan Fox is on staff with the legislative services division and probably knows more about Montana corrections than anybody and she has been working with some interim committees and has a presentation to make to us.

SUSAN FOX, Legislative Services Division: I am a research analyst with the Legislative Services Division and I have assisted as a co-staff with Law, Justice, and Indian Affairs Interim Committee and I worked specifically with the sentencing study that was assigned to that committee. We didn't get as far into the sentencing study as we wanted because it is a monumental task, but we did develop a work product that the Law, Justice, and Indian Affairs Interim Committee adopted for your use so that is what is in your red folder you have before you.

EXHIBIT (jus02a02) This

has never been done before - it is kind of an experiment and at the end of the session perhaps we can send some information back to the Law, Justice, and Indian Affairs Interim Committee about how this might be more useful. It is intended to be a document that is revised as the laws are changed and so that we will have a new volume or folder for you every session.

Within the sentencing study one of the tasks was to look at the 1995 Montana Sentencing Commission's crime seriousness ranking. That was one of the first things that the subcommittee did and they adopted the ranking and you will see that it is a basis for this tool. The ranking was based on the nature and degree of the harm caused or likely to be caused by a criminal offense, the culpability of the offender, and the rights of the victim. So the committee took that crime seriousness ranking and slightly modified it to fit the purposes of this committee. The Sentencing Commission had been using it as a way to analyze statutes for a guideline system and that was not the intent of the sentencing study that the Law, Justice, and Indian Affairs Interim Committee did. We slightly modified it and collapsed all the property crimes into the first highest offense level.

If you look in your document the first white page is an introduction that tells you basically what is in the document. You'll see on the left that you have an laminated sheet and this is organized, on the left column it says CSR, which is the "crime seriousness ranking" and we then have the criminal offense, the minimum and maximum sentence, whether there is a life or death sentence that can be imposed, and then if there is a cross reference to another crime seriousness ranking.

The purpose of this tool is to help you in your analysis of the different legislation you will be looking at that involves the criminal statutes. Right now this form that you have is only those crimes Title 45, which is the crime section of the codes. What you will find out is that there are many other sections of laws that also contain crimes and penalties.

If someone is wanting to increase or decrease a penalty, you can find out whether there are similar penalties being imposed for similar crimes. This is just an easy sheet to look at. The second sheet explains the levels to use as a reference guide I put a description of characteristics that offer you the qualities of a crime.

Also because the Law, Justice, and Interim Committee didn't have time to really analyze this document, it was all we could do to get it here for you, you may look and see some aberrations in the offenses. There is legislation coming by request of the Law, Justice, and Indian Affairs Interim Committee for an additional

sentencing study accomplished by a committee outside of the legislature that will work on this and look at these anomalies and find out whether they need to be amended or changed.

Proceeding through this document there is a white cover sheet on the appendix that will tell you what is behind it and everything is color coded. For example, you can see the statute number that corresponds with the MCA codes you have here, so you could look up the actual statute if you need to. There is a short title of the offense - it will give you the short version, the chapter in which it may have been enacted, and then a level that would give you an idea of where it may be placed or where or where it may have a corresponding crime that is similar.

The blue sheet is the Title 45 felony drug offenses. The original sentencing commission had never placed those in a crime seriousness ranking because they had intended a separate guideline system for drug offenses. That is how the federal government does it as well. So they were never put in the crime seriousness ranking. This would also be another set of offenses that eventually could be incorporated into the first tool.

I don't know how many of you serve on other committees, but if you do - if you are in fish and game, if you are in public health or other areas like that you may get penalties that come throughout the code. This is a listing of statutes that all have criminal penalties and felony penalties attached. Now this is just felonies. In the search for misdemeanor offenses, I forget how many we found, hundreds and hundreds of misdemeanor offenses sprinkled throughout the codes in virtually every title.

There are some crimes that do not become a felony or the punishment is not for more than a year until you have committed the crime numerous times. That is what this gray sheet will show you, that the misdemeanors that may rise to a level of a felony upon second or subsequent offense. Partner assault is third offense, stalking second offense or if you violated temporary restraining order, cruelty to animals on the second offense can be a felony. The fourth D.U.I is a felony, water quality violations can be a second one, so you can see there is a whole range of offenses and they don't necessarily have to become felonies, but what it means is the statute gives you that authority - gives the judge the authority to sentence a person to over a year in jail and that is how an offense becomes a felony.

This is tool that when you get these various bills, you want to look at, and if you don't find it on this sheet you may go to the colored sheets in the appendix, and find that offense and you can see where, based on the minimum sentence, the maximum sentence, whether a life or death sentence can be imposed, if it fits in

that range of crimes. You will notice though that there are aberrations in all the levels and that is something we are hoping in the future people will analyze and bring back suggestions for change.

If you would like to know more about the sentencing study or the Law, Justice, and Indian Affairs Interim Committee there is a final report called Jurisdiction and Beth Furbysh in the legislative library can get you a copy of that. It does have the same document inside of it .

SEN. HALLIGAN: Commented that this sheet is easy to use and lists the general sentence from the jail term situation, there are sentences also for other statutes, after the criminal statutes that require or allow a judge the flexibility to order the payment of cost for jury service for jail or all sorts of other things - restitution to victims, community service, there is a wide range of flexibility and those aren't listed here and we are focusing on the sentencing to make sure it is correct.

SUSAN FOX: Answered yes that is a good point and that is why we have the MCA list on there so if you are interested in any other fines or fees this is a good tool to use. We do hope that this is a good tool for you, as I said this is an experiment, this is the first time we have prepared this for you. We are more than happy to take any suggestions that you would have to improving the document and making it more user friendly and I would appreciate any comments at the end of the session if you have any.

CHAIRMAN GROSFIELD: The secretaries will prepare folders to place on our desks and we will be able to leave all the information, paperwork, bills and exhibits on our desks and that should be found within the folder. Thank you committee members.

ADJOURNMENT

Adjournment: 10:48 A.M.

SEN. LORENTS GROSFIELD, Chairman

CECILE TROPILA, Secretary

LG/CT

EXHIBIT (jus02aad)