

MINUTES

**MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on April 1, 2003 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

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

Committee Business Summary:

Hearing & Date Posted:

Executive Action: HB 404, HB 358, HB 451, HB 579,
HB 14, HB 546, HB 141, HB 247

EXECUTIVE ACTION ON HB 404

Motion/Vote: SEN. DAN MCGEE moved that HB 404 BE RECONSIDERED.
Motion carried unanimously.

Motion: SEN. MCGEE moved that HB 404 BE CONCURRED IN.

Discussion:

CHAIRMAN DUANE GRIMES asked Jim Kembel, Montana Chiefs of Police, to explain the amendments.

Mr. Kembel stated the first amendment was in the title and would remove the word "private" preceding the word "employers". This would apply to both government and private employers. On line 25 of page 1, the language would allow the law enforcement agency to find out if there were any hidden things they needed to know about a prospective officer. In regard to the 4th amendment, there was one case in which an officer was hired and the background checks were completed. For some reason, what didn't show up was a temper problem and he ended up shooting his fellow officer. These are things that may resurface with more cooperation from a past employer.

Substitute Motion/Vote: SEN. MCGEE moved that HB 404 BE AMENDED, HB040401.ace, EXHIBIT(jus69a01). The motion carried unanimously.

Motion: SEN. MCGEE moved that HB404 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. JERRY O'NEIL raised a concern about the word "shall" on page 1, line 12. He suggested the language state "may". If someone asked him a question about a former employee, there may not be a definite reason why he was let go. He would not want to be forced to explain this issue.

CHAIRMAN GRIMES didn't believe there were penalties for refusal to provide information. There seemed to be a lot of incentives for former employers to provide information.

SEN. MCGEE noted that this bill would provide a new section of code that would state that because a law enforcement agency wants to have information regarding an employee that they are considering, they are now making mandates upon former employers.

Substitute Motion: SEN. MCGEE moved that HB 404 BE AMENDED.

Discussion:

SEN. MCGEE explained on page 1, line 12, he would change the word "shall" to "may".

SEN. MIKE WHEAT believed there was a higher level involved when hiring law enforcement people. Subsection (2) talks about a signed and notarized consent. This can be obtained from the employee. The employee can be told his former employers will be contacted and they need the consent signed. A letter can then go off to the former employers with a signed and notarized consent by the applicant. This matter could be accomplished without this bill.

CHAIRMAN GRIMES did not see a problem with changing the language from mandatory to permissive.

Vote: The motion carried unanimously.

Motion: SEN. GARY PERRY moved that HB 404 BE CONCURRED IN AS AMENDED.

Discussion:

CHAIRMAN GRIMES remarked the best method that can be used to determine future behavior is by looking at past performance. It is imperative that law enforcement have the necessary tools to make sure this is accomplished. Many of the bills in Committee this session will require a great deal of discretion on the arresting officer. It is important that these people have solid character, knowledge, and judgment.

SEN. WHEAT remarked the best defense for a former employer, as well as a new employer, is a signed and notarized consent by the person who is seeking employment.

Substitute Motion: SEN. BRENT CROMLEY moved that HB 404 BE AMENDED.

Discussion:

SEN. CROMLEY explained his amendment would strike Instruction No. 4 on the amendment which had passed. He would reinsert the language placed in the bill by the House. The amendment would be on page 1, lines 29 and 30. He questioned why the applicant would need to go to the district court to petition for access to

information. This should be provided by the law enforcement agency.

{Tape: 1; Side: B}

Vote: The motion carried with MCGEE voting no.

Motion: SEN. GARY PERRY moved that HB 404 BE CONCURRED IN AS AMENDED.

Discussion:

SEN. PERRY questioned how the code was being changed by the bill.

CHAIRMAN GRIMES clarified the difference is the immunity provided on page 2 for the employer who chooses to provide the information.

Vote: The motion carried on roll call vote with CURTISS, MANGAN, PEASE, and WHEAT voting no.

EXECUTIVE ACTION ON HB 358

Motion: SEN. MCGEE moved that HB 358 BE CONCURRED IN.

Substitute Motion: SEN. MCGEE moved that HB 358 BE AMENDED, HB035804.ajm, EXHIBIT(jus69a02).

Discussion:

SEN. MCGEE explained the amendment would change the reference to county court and inserted language that stated justice courts would be established as a court of record.

Vote: Motion carried unanimously.

Substitute Motion: SEN. PERRY moved that HB 358 BE AMENDED, HB035803.ajm, EXHIBIT(jus69a03).

Discussion:

SEN. PERRY noted an error in the amendment. He would delete the words "to be known as a county court". This would allow any county to be allowed to establish a court of record.

Motion/Vote: SEN. MCGEE moved that HB 358 BE CONCURRED IN AS AMENDED. Motion carried unanimously.

EXECUTIVE ACTION ON HB 451

Motion: SEN. MCGEE moved that HB 451 BE CONCURRED IN.

Substitute Motion: SEN. MCGEE moved that HB 451 BE AMENDED, HB045103.apm, EXHIBIT(jus69a04).

Discussion:

SEN. MCGEE explained on page 1, line 17, it would read, "A person convicted in any state or U.S. federal court may be confined . . ." It also strikes "AT LEAST 20 DAYS" on line 22.

CHAIRMAN GRIMES noted since this deals with a different set of prisoners, the House wanted to make sure they were not being released in Shelby or Cutbank.

SEN. MCGEE explained they would still need to be returned to the original jurisdiction. This removes the 90-day amendment.

SEN. CURTISS raised a concern with Instruction No. 4 of the amendments. She believed the 90 day amendment made by the House was a good amendment. Her concern is the families of the people would become a burden on the counties after the convicted person was on parole.

CHAIRMAN GRIMES explained Instruction No. 4 could be segregated and the Committee would be voting on Instructions Nos. 1,2,3, and 5.

SEN. CROMLEY raised a concern with Instruction No. 5, which struck the termination date. This will state that Montana can have a prison that will accept any state and federal prisoners.

SEN. MCGEE maintained it was important to pass Instruction No. 4 of the amendment. The contract between a private prison and the Department of Corrections needs to be approved by the Legislature. There is an enormous amount of oversight on this issue. In 1997, the reason out-of-state prisoners were not allowed was because the town of Shelby was concerned about the kinds of prisoners they would be receiving. He further noted this will not open the door for anyone to build a prison in the state.

SEN. CROMLEY did not believe the Legislature could refuse the permission to build a facility to one company when it allows other companies to build exactly the same facility.

SEN. WHEAT noted the 90-day provision is in a section of the bill that requires the agreement to be entered into by the Department and the correctional facility. They are in a better position to decide when the inmate should leave. He supported having the 90-day provision deleted.

SEN. CURTISS withdrew her request for segregation of the amendments.

Vote: Motion carried with CROMLEY voting no.

Motion: SEN. O'NEIL moved that **HB 451 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. WHEAT raised a concern that the Legislature stay informed about the correctional facilities in the state. This bill will change the policy with regard to the kinds of inmates that can be incarcerated at correctional facilities.

{Tape: 2; Side: A}

REP. EDITH CLARK remarked the Department of Corrections prepares a report on the private facilities at least every two years.

Substitute Motion: SEN. CROMLEY moved that **HB 451 BE AMENDED.**

Discussion:

SEN. CROMLEY would reinsert line 27 involving the termination date. Without this section Montana would be opened up to private prisons. This will allow time for the Legislature to make a policy decision.

REP. CLARK saw no problem in reinserting the date. She disagreed that the bill would allow further private prisons in the state.

SEN. CROMLEY remarked that if the state has an auto dealership that needs to comply with certain regulations, we could not stop another auto dealership from setting up a business in the state as long as they are willing to abide by the same regulations.

Vote: Motion on the amendment failed with CROMLEY and WHEAT voting aye.

Vote: Motion on the bill carried with CROMLEY voting no.

EXECUTIVE ACTION ON HB 579

Motion: SEN. CURTISS moved that HB 579 BE RECONSIDERED.

Discussion:

SEN. CROMLEY noted there was general support for the bill. SEN. O'NEIL raised an issue as to whether the notice should be provided earlier than at the time of the hearing. His understanding is the restriction in the Brady Bill talks about a conviction of a misdemeanor domestic abuse state statute. The notice at the time of the hearing should be satisfactory.

REP. JIM SHOCKLEY, HD 61, VICTOR, explained there was the criminal aspect and the temporary restraining order (TRO) aspect. As he understood the federal law, if a person is convicted of domestic abuse, it is a felony to possess a weapon after the conviction. In an injunction situation the federal law states that during the period of the restraining order injunction, if the court states the person restrained cannot keep weapons, it is then a federal crime to violate that provision of the order during the term of the order. He further noted SEN. MANGAN's concern if the person restrained were given notice that he may be impacting his right to carry weapons, this may be adverse to the interests of the person being protected. If the person is notified that he is restrained and he is not to disobey that order, he should follow through and attending the hearing on this matter. He is not sympathetic with people who do not obey a court order. If the person has been given notice of a hearing and doesn't attend to learn his rights, this would be an irresponsible choice.

SEN. CROMLEY added the Brady Bill also requires that the person be represented by counsel or knowingly and intelligently waive their right to counsel. The bill as is will do an adequate job of notifying the restrained person.

SEN. O'NEIL maintained it was his understanding if a person had ever had a injunction against him based upon domestic violence, under the Brady Bill he would no longer be allowed to purchase a firearm. The TRO did not count because no hearing was involved. A temporary injunction would include a hearing. He believed the notice that the person may lose his or her right to keep and bear arms ought to be given in the notice of the hearing instead of at the hearing.

REP. SHOCKLEY claimed it was his understanding that only during the period of the injunction, if a person violated the provision that states they may not keep a gun, would this become a

violation of the law. Being convicted of a crime involving domestic violence is a separate situation. People may not attend these hearings but they ought to. One can only go so far in protecting the rights of others. They need to cooperate. Even if they did not attend the hearing but obeyed the order, when the order expired they should be able to keep a firearm.

Vote: Motion carried unanimously.

Motion: SEN. CROMLEY moved that HB 579 BE CONCURRED IN.

Discussion:

SEN. MANGAN raised a concern with the language on page 4. He will continue to vote no on the bill because he believes there are issues that may cause harm or intimidation to the victim.

CHAIRMAN GRIMES was comfortable with the bill because he did not believe it would cause any delay in action.

SEN. CROMLEY noted this was a good bill. Many people would not realize that being convicted of misdemeanor domestic abuse could have serious consequences including lifetime restriction on the right to possess a firearm. There are many safeguards in place. It is an additional safety measure and is a reason why a person might obey the injunction.

Vote: Motion carried with MANGAN voting no.

EXECUTIVE ACTION ON HB 701

Motion: SEN. PERRY moved that HB 701 BE CONCURRED IN.

Substitute Motion: SEN. PERRY moved that HB 701 BE AMENDED, HB070103.av1, EXHIBIT(jus69a05).

Discussion:

Ms. Lane explained this would still allow justices, judges, and the clerk of the supreme court to appoint personal staff but it would limit personal staff that each could appoint to three persons. Most of the stricken language would be "including law clerks and other assistants as designated by the judge". A new (b) would be inserted. This language is taken out of existing code for executive branch agencies.

CHAIRMAN GRIMES suggested limiting this to one appointed per judge. He would strike the clerk of the supreme court from the bill entirely because this is not an area of law that was

referred to by the proponents. Confidentiality is not that necessary in this circumstance.

SEN. O'NEIL was against limiting this to one person. A judge should have the privilege of having a secretary who has not campaigned for his opponent and who will keep things confidential. The law clerk should also be someone the judge trusts, especially since law clerks are used as special masters. Both of those positions should include persons who have the judge's utmost respect.

CHAIRMAN GRIMES wanted to make sure this was not a political patronage job but that this would include confidentiality only.

SEN. WHEAT maintained at the Supreme Court level each of the justices have two law clerks. In the district courts, it is important to have a personal secretary and a law clerk at least. He did not see a problem with this being extended to three people. In most circumstances, the people aligned with the judge who is leaving will probably want to leave. These elected officials need some discretion. This is done in the Executive Branch and the Legislative Branch.

Vote: Motion carried unanimously.

Motion: SEN. PERRY moved that **HB 701 BE CONCURRED IN AS AMENDED.**

{Tape: 2; Side: B}

Discussion:

CHAIRMAN GRIMES believed the bill had everything to do with salaries set for those positions. He understands the inequity problems but there are other ways to solve that problem.

SEN. O'NEIL remarked lines 28 and 29 on page one stated that personal staff of justices, judges, and the clerk of the supreme court are subject to the pay matrix adopted by the supreme court under this section. This took care of the fiscal note. This does not give them the discretion to raise the pay it only allows them the discretion to hire who they believe will do good work for them. If the judges were successfully practicing law in Montana they probably have a law clerk or a secretary who helps them get their job done. A lot of the success of business people can be attributed to their staff. If he ran for the position of judge and had a secretary who made him look good, he would sure like to take that person with him. This bill would allow that and is a necessary bill.

SEN. PERRY understood what the judges were hoping to accomplish. When he asked the sponsor if a judge could terminate employment for reasons including a "whim" that would violate human rights laws which apply to private businesses, his answer was a simple "yes".

SEN. WHEAT claimed this could be characterized as a "whim" but what it means is an elected judge will be able to appoint a staff and when these people are hired they know that they serve at the pleasure of the judge. He does not know of any case where a judge terminated someone at a whim. This statute allows the judges to select their own law clerks and their own personal secretaries. If things break down once they are hired, the judge is granted the discretion to address the situation.

SEN. CROMLEY remarked at the federal level the term "serving at the pleasure of" is used quite regularly. The persons serving in cabinet positions serve at the pleasure of the President. This is a sensitive position. This bill addresses the fact that the judge's law clerk serves in a sensitive position. If there is a termination, this typically occurs at the time the new judge comes in. If a person were discharged on a "whim" that would be actionable.

CHAIRMAN GRIMES suggested the time frame for this provision be limited to when judges were first taking over their positions.

Ms. Lane suggested in the adopted amendments Instruction No. 7, a sentence could be added to state the personal staff must be appointed at the time of taking office.

Substitute Motion: **CHAIRMAN GRIMES** moved that **HB 701 BE AMENDED.**

Discussion:

CHAIRMAN GRIMES explained his amendment would be the language set out by **Ms. Lane.**

SEN. O'NEIL pointed out this bill would not allow the judge to discriminate against someone based upon constitutional prohibitions. At a jury trial, a lawyer is allowed to have a peremptory challenge of three to six people. This concept is more broad than the provision being discussed. The U.S. Supreme Court has ruled the concept does not allow lawyers to discriminate.

SEN. CROMLEY opposed the amendment. There may be situations that arise later on which the judge would need to address. When a President appoints someone, situations may change and there may

be a time for a new person to be in that position. Either the person serves at the pleasure of the judge or he or she doesn't.

Vote: Motion failed with GRIMES and MCGEE voting aye.

Ms. Lane explained the amendment prepared for this bill was modeled on existing law found in 2-18-104. This applies to executive branch agencies. Personal staff is defined in 2-18-101 to mean those positions occupied by employees appointed by the elected officials enumerated in Article VII, Section 1, of the Montana Constitution or by the Public Service Commission as a whole. Section 104 has exemptions for the personal staff limit. It states subject to the limitations in (2) and (3) members of a personal staff are exempt from parts 1-3 and 10. That would be the classification and pay plan. Part 2 states the personal staff exempted by (1) may not exceed ten unless otherwise approved by the Department according to criteria developed by the department. Under no circumstances may the total exemptions of each elected official exceed 15. Part 3 states the number of members of the personal staff of the Public Service Commission who are exempted by (1) may not exceed ten.

Vote: Motion on the bill carried with GRIMES, CROMLEY, and CURTISS voting no.

EXECUTIVE ACTION ON HB 14

Motion/Vote: SEN. PERRY moved that **HB 14 BE RECONSIDERED. Motion carried.**

Motion: SEN. PERRY moved that **HB 14 BE CONCURRED IN.**

Discussion:

SEN. CROMLEY agreed with the concept that there should only be one jury trial. This should be addressed by the justice courts becoming courts of record. He was reluctant to amend the Constitution. The language which would be added to the Constitution would be fairly complicated. He further believed the voters would not vote to limit themselves to one jury trial.

CHAIRMAN GRIMES asked **REP. JIM SHOCKLEY** to address the language that would be added to the Constitution.

REP. SHOCKLEY agreed the language was somewhat cumbersome but he did not want to see the bill fail due to the grammar used. He pointed out the reason the language needed to be in the Constitution was found on line 29, page 1. The Supreme Court has

held a jury trial cannot be provided for in only one forum due to the current language in the Constitution.

SEN. CROMLEY was concerned if this was sent out for an election, people would be considering whether or not they wanted to have two jury trials on their speeding tickets. It will be voted down. It will then be very difficult for the Legislature to do anything to deny the two jury trial situation.

SEN. O'NEIL suggested line 18, page 1, be changed to "one speedy public trial".

REP. SHOCKLEY remarked if it was that simple, he was certain the drafter would have drafted the bill in that manner. The language also needed to be in line 29.

SEN. WHEAT maintained the best way to handle this situation was to make justice courts known as courts of record. This provides for one trial. The appeal is to the district court with a record that has been recorded so the district court can make a decision based on what happened at the trial.

Vote: Motion failed and the vote was reversed to INDEFINITELY POSTPONE HB 14.

{Tape: 3; Side: A}

EXECUTIVE ACTION ON HB 546

Motion: SEN. PERRY moved that **HB 546 BE CONCURRED IN.**

Discussion:

SEN. MCGEE noted on page 2, line 14, the incarceration period could no go up to ten years instead of two years. The point of the bill was the Department of Corrections (DOC) would then be collecting for child support. This would allow that oversight by the DOC to continue for a longer period of time.

SEN. CROMLEY added the House amended the language to state there could not be more than the present prison term of more than two years. Anything beyond that would need to be suspended. It was brought out at the hearing that only one person has ever been sent to prison. They would like to have a means of control over the person for a longer period of time to enforce the child support requirement.

SEN. O'NEIL noted since only one person has ever been sent to prison, the law as currently drafted, seems to be working okay.

The fact that the person can be sentenced to prison is a very large hammer.

Vote: Motion failed and the vote was reversed to INDEFINITELY POSTPONE HB 546.

EXECUTIVE ACTION ON HB 615

Motion: SEN. CROMLEY moved that HB 615 BE CONCURRED IN.

Substitute Motion: SEN. PERRY moved that HB 615 BE INDEFINITELY POSTPONED.

Discussion:

SEN. O'NEIL claimed the bill would hinder content oriented speech. It was unconstitutional and he supported the motion.

SEN. CROMLEY reported he had reviewed the underlying Hill v. Colorado and believed the language contained in the bill would be constitutional.

Vote: Motion carried with PEASE, MANGAN, and CROMLEY voting no.

EXECUTIVE ACTION ON HB 733

Motion: SEN. MANGAN moved that HB 733 BE CONCURRED IN.

Substitute Motion: SEN. WHEAT moved that HB 733 BE AMENDED, HB073301.avl, EXHIBIT(jus69a06).

Discussion:

SEN. WHEAT noted this would give the judge discretion to impose a sentence of less than four years if the judge made a finding that there was good cause to do so.

Vote: Motion carried unanimously.

Motion: SEN. CROMLEY moved that HB 733 BE CONCURRED IN AS AMENDED.

Substitute Motion: SEN. CURTISS moved that HB 733 BE AMENDED, HB073303.ajm, EXHIBIT(jus69a07).

Discussion:

SEN. CURTISS remarked the amendment would include the use of the internet to facilitate a sexual assault.

SEN. MANGAN supported the purpose of the amendment. During the hearing he asked the sponsor if the purpose of the amendment was to address the situation of the victim being less than 16 years old. He asked if this could be added to the amendment. He requested that it pertain to that age range.

SEN. CROMLEY was strongly opposed to the amendment. It sends a bad message that Montana believes the internet is an evil thing that will take over the world. The internet has nothing to do with this crime.

SEN. WHEAT did not believe the amendment was necessary. Under the present statute, the sentencing judge will be able to hear the facts about how this occurred. Under current statute, the judge can sentence the offender up to 100 years and fine them not more than \$50,000. The amendment establishes that if the internet is used, the floor for this is 20 years. Some discretion needs to be left for the judge.

SEN. MANGAN claimed the persons who decide to use the internet to lure children for these purposes are taking advantage of a positive thing. Montana needs to send the message that if someone wants to stalk our children using the internet, they will suffer the consequences.

SEN. CURTISS remarked this is a growing problem on the internet. Kids are fascinated by this kind of challenge. This is a very important amendment.

SEN. CROMLEY preferred a bill that made 20 years the minimum sentence for all the crimes rather than having the reference to the internet in the Montana statutes.

SEN. MCGEE was in favor of the amendment. This is the way the times have gone. You do not see 12 year olds placing their ads in the personal columns of newspapers to say white female, 12 years old looking for longtime partner. We do have pedophiles who know they can sweet talk in a certain way, via the internet, using a typed message to make contact, set up a relationship, and/or set up a meeting. They cannot do so by any other venue. The young person does not know who he or she is talking to on the computer. They do not know this person may put them in harm's way. The 20 year penalty was problematic to him but the fact that the internet was used is a critical issue that needs to be in statute. If people are going to use the internet to

purposefully and knowingly pursue young children, there ought to be an enhancement to the crime.

Substitute Motion: SEN. O'NEIL moved that **HB 733 BE AMENDED.**

Discussion:

SEN. O'NEIL explained his amendment. Under (b) he would add the language, "If the defendant, with the intent to commit a sexual assault, used the internet to facilitate the commission of the offense, the offender shall be punished by imprisonment in the state prison . . ."

SEN. MANGAN claimed this would take the teeth out of the bill.

{Tape: 3; Side: B}

It would be necessary to prove that the offender planned on committing the sexual assault the minute he started discussions with the person.

Vote: Motion failed with O'NEIL voting aye.

Substitute Motion: SEN. CROMLEY moved that **HB 733 BE AMENDED.**

Discussion:

SEN. CROMLEY explained in the amendment, HB073303.ajm, following the word internet, he would insert the language, "a telephone, newspaper ads, U.S. mail, or personal solicitation were".

SEN. WHEAT disagreed with the amendment because it would be micro-managing the prosecution of this crime.

SEN. CROMLEY withdrew his amendment.

Vote: Motion failed on roll call vote with CURTISS, MANGAN and MCGEE voting aye.

Motion: SEN. CROMLEY moved that **HB 733 BE CONCURRED IN AS AMENDED.**

Vote: Motion carried with O'NEIL voting no.

EXECUTIVE ACTION ON HB 141

Motion/Vote: SEN. MANGAN moved that **HB 141 BE RECONSIDERED.**
Motion carried unanimously.

Discussion:

CHAIRMAN GRIMES explained there had been a coordination problem between this bill and HB 105. He added that all potentially conflicting sections of HB 105 have now been removed from the bill.

Ms. Lane remarked no amendments had been adopted for the bill. At the hearing, **REP. LANGE** requested an amendment that would be on line 20, page 1. This amendment would state that a person convicted of an offense of fleeing from or eluding a police officer during which the person causes serious bodily injury to or death of another person or causes property damage in excess of \$1,000 shall be imprisoned for a term not to exceed two years or a fine not to exceed \$2,000 or both.

SEN. WHEAT believed that the bill had been amended by removing the \$1,000 requirement.

CHAIRMAN GRIMES requested a motion to strip all amendments from the bill.

Motion: **SEN. MCGEE** moved that **HB 141 BE CONCURRED IN.**

Substitute Motion/Vote: **SEN. CROMLEY** moved that all Senate amendments previously adopted on **HB 141 BE DELETED.** **The motion carried unanimously.**

Discussion:

SEN. WHEAT remarked currently a person convicted of or pleading guilty or nolo contendere to an offense under (1) shall be imprisoned for a term not to exceed one year or fined an amount not to exceed \$2,000 or both. At the hearing, **REP. LANGE** wanted to insert (b) which would make it a felony for persons who were fleeing and caused serious bodily injury or death to someone. The amendment also involved property damage in excess of \$1,000. His recollection was the language regarding property damage in excess of \$1,000 was deleted. The amendment to make this a felony was adopted. The amount of the fine was not to exceed \$10,000. The term of imprisonment was also not to exceed ten years.

Substitute Motion/Vote: **SEN. CROMLEY** moved that **HB 141 BE AMENDED, HB014103.av1, EXHIBIT(jus69a08).** **The motion carried unanimously.**

Motion/Vote: SEN. MCGEE moved that HB 141 BE CONCURRED IN AS AMENDED. The motion carried unanimously.

EXECUTIVE ACTION ON HB 247

Motion/Vote: SEN. MANGAN moved that HB 247 BE RECONSIDERED. Motion carried with MCGEE voting no.

Motion: SEN. MANGAN moved that HB 247 BE CONCURRED IN AS AMENDED.

Discussion:

CHAIRMAN GRIMES noted the Committee's previous discussions on the bill revolved around the term "vagrancy".

SEN. WHEAT did not see a need to define vagrancy since it is defined in case law. This bill would clean up the statutes and remove a crime that no longer exists. He further noted REP. HARRIS had provided a definition of vagrancy for the Committee which stated, "The status or condition of being idle or wandering from place to place." He noted one amendment had been placed on the bill earlier which changed the term "loitering" to "remaining".

SEN. MCGEE claimed San Francisco had taken action in this regard due to their terrible problem with street people. He does not want this bill to limit local governments from being able to make sure they have clean, safe, and healthful environments.

{Tape: 4; Side: A}

Substitute Motion: SEN. CURTISS moved that HB 247 BE INDEFINITELY POSTPONED.

Discussion:

SEN. MANGAN pointed out it is not against the law to be homeless or to walk aimlessly. If it gets out of hand, there are laws to cover the situation such as disorderly conduct. Keeping a law in statute that would not allow for someone to walk aimlessly in our cities does not make sense. Senate Bill 247 states we respect the right of someone who wants to live that way be allowed to do so unless they become disorderly.

SEN. CROMLEY agreed. In sections 3 and 4, the bill amends state statute which currently refers to vagrancy as a crime.

Vote: Motion failed on roll call vote with CURTISS, PERRY, MCGEE, and GRIMES voting aye.

Vote: Motion to DO CONCUR AS AMENDED carried with CURTISS and MCGEE voting no.

ADJOURNMENT

Adjournment: 11:30 A.M.

SEN. DUANE GRIMES, Chairman

JUDY KEINTZ, Secretary

DG/JK

EXHIBIT (jus69aad)