

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **VICE CHAIRMAN LORENTS GROSFIELD**, on March 14, 1997, at 9:00 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: HJR 19, HJR 28, HB 577, posted
March 4, 1997
Executive Action: HJR 19, HJR 28, HB 44, HB 268,
HB 577

HEARING ON HJR 19

Sponsor: REP. JOHN MERCER, HD 74, Polson

Proponents: Captain James Casaeu, Gallatin County Detention
Center, and for Montana Sheriffs and Peace
Officers and Montana Association of Counties
Captain Mike O'Hara, Missoula County Jail
Administrator
Winnie Ore, Department of Corrections
Riley Johnson, Wackenhut Corrections

Opponents: None

Opening Statement by Sponsor: REP. JOHN MERCER, HD 74, Polson.

This is a simple matter concerning proposed spending of \$100 million on corrections, and issues pertaining to jail standards. Efforts have been made in the past to impose uniform jail standards, so we decided to make this an interim study for the next two years.

Proponents' Testimony: Captain James Casaeu, Gallatin County Detention Center, and for Montana Sheriffs and Peace Officers and Montana Association of Counties. In 1978 there was a \$2600 grant from the Board of Crime Control to look at jail standards, one year after the first national standards were set, but we returned the \$2600. In 1980 we received a \$35,000 national grant and published the results of our study. The suggestions were resisted at the county level.

In 1986 the Jail Recodification Task Force was formed, and a jail standards commission was also established, but with no funding it failed in 1989. In 1991 there was a Joint Commission to look at Montana jail standards, and they looked at Idaho standards. In 1993 we published revised jail standards for Montana which were adopted by resolution in the House and the Senate. Approximately 14 counties have adopted these voluntary, solution-oriented standards to date. These are based upon the theory of peer inspection. Standards can mostly be addressed by written policy rather than always building new jails.

In 1996 we pulled all standards information together, and those being used by regulated facilities. Without standards it's like a basketball game without rules. We are pleased the Speaker has taken the lead in this.

Captain Mike O'Hara, Missoula County Jail Administrator. I am also a board member of the Montana Sheriffs and Peace Officers Association. Montana has licensing standards for juveniles which are inadequate. We want to level the playing field for new regulated prisons, and possibly for private prisons.

Winnie Ore, Department of Corrections. I am responsible for the administrative rules, which we are in the process of revising, so we would like uniformity.

Riley Johnson, Wackenhut Corrections. Currently we are the largest correctional facilities builder in the world. We support this resolution and the study, and urge your support.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: REP. MERCER. I want to thank the committee and the proponents for their testimony. In Lake County our jails

are not up to standard, and we were sued. If we don't address this, the threat of suits will continue. I have asked **SEN. HALLIGAN** to carry this legislation.

HEARING ON HJR 28

Sponsor: REP. AUBYN CURTISS, HD 81, Fortine

Proponents: Gary Marbut, Montana Shooting Sports Association,
Missoula, Western Montana Fish and Game
Association and Gun Owners of America
John Conner, Department of Justice

Opponents: None

Opening Statement by Sponsor: REP. AUBYN CURTISS, HD 81, Fortine. This resolution comes out of the states' rights issue generating concern across the nation. The Western State Sheriffs Association (WSSA) has been working to address multi-jurisdictional, multi-government, multi-legislative issues. I hope it will serve as a message to federal agents to cooperate more fully with county sheriffs (**EXHIBIT #1**).

Proponents' Testimony: Gary Marbut, Montana Shooting Sports Association, Missoula, Western Montana Fish and Game Association and Gun Owners of America. After similar legislation failed last session, HB 415 was introduced this session, and was tabled in the House Judiciary Committee, but they did pass out this resolution.

I manufacture shooting range equipment for law enforcement, the military and federal agencies. In reference to the Waco, Texas and Ruby Ridge, Idaho incidents, the ACLU and 150 other national organizations wrote to President Clinton stating their concerns with federal officer and police abuse of citizens. I believe that if federal officials had listened to local officials, the problems in these locations could have been eliminated.

{Tape: 1; Side: A; Approx. Time Count: #19.3; Comments: None}

We believe in states' rights, and that a county sheriff is number one in authority here. After testimony on HB 415 I got a copy and saw there were no requirements concerning federal officers at all. I am asking that you undo the amendment put in this resolution by the House on page 2, lines 9-10. We believe someone should be asked to gather this information, or at least to collect it. We believe this would be good information on which to base public policy. It's non-binding, and shouldn't be too offensive to anyone.

John Conner, Department of Justice. I want to address the amendment. It arose from testimony from the Board of Crime Control. The problem with gathering this information, is that we have no authority to direct sheriffs to get it or give it to us,

so we believe the amendment more clearly reflects what current law allows us to do.

There are communication problems with law enforcement because we respond through different authority structures. Other than the amendment, we support the resolution.

Opponents' Testimony: None

Questions From Committee Members and Responses: SEN. STEVE DOHERTY. On page 2, Subsection (3) and (4) concerning the operations log, have we provided funding, and will we punish them if they don't do this? REP. CURTISS. If law enforcement thought there would be a fiscal responsibility, they'd have been here.

SEN. REINY JABS. I am concerned about the 24-hour advance notice on page 2, lines 3 and 24. John Conner. Because this is a request via resolution, it is less onerous to us. We'd like to see the feds notify us of planned operations whenever it won't jeopardize the situation. The way to cure such problems is with better on-going communications.

Closing by Sponsor: REP. CURTISS read from highlighted areas in a letter to President Clinton from various organizations (EXHIBIT #2). Page 2, line 15 of the bill provides a list of agencies. I urge you to favorably consider this bill.

HEARING ON HB 577

Sponsor: REP. BRAD MOLNAR, HB 22, LAUREL

Proponents: REP. VICKIE COCCHIARELLA
REP. LIZ SMITH

Opponents: None

Opening Statement by Sponsor: REP. BRAD MOLNAR, HB 22, LAUREL. Kids have come up to us while we were giving talks in Montana schools expressing their concerns with the bill passed last session in House Judiciary Committee. I was warned by staff attorney John MacMaster then that the language (page 1, lines 16-17 of HB 577) was not good.

REPRESENTATIVES COCCHIARELLA, SIMPKINS, AND SMITH have also been involved with this bill. With the language on page 1, lines 16-17 stricken, it still leaves the possession statute intact.

Faxed messages were sent to SEN. CRIPPEN by teens who couldn't be here today because of the weather. I hope he will see that these become part of the record.

Proponents' Testimony: REP. VICKIE COCCHIARELLA. Minors in the Missoula area are being charged with minor in possession (MIP) when they have not been drinking, but are in the vicinity of

where alcohol is being consumed by minors when police arrive on the scene. We don't think it's fair to treat good kids like this. We believe the law should apply fairly and evenly to all in the State. I encourage your support of the bill. My son, Mike, is here, and is shy about testifying, but he doesn't believe it's fair either (**EXHIBIT #3**).

REP. LIZ SMITH. Thirty to forty kids were arrested and hauled into court in Deer Lodge. Some hadn't consumed alcohol, but were present, so they were charged. One parent had to drive her 17-year-old son 17 miles each way to and from his after-school job at an agri-feed business after his license was revoked even though he hadn't consumed any alcohol.

There could be a way to track this via breathalyzer test, and that is more realistic, but is being done inconsistently throughout the state right now.

{Tape: 1; Side: B; Approx. Time Count: #00; Comments: 9:50 a.m.}

Some Deer Lodge students wanted to be present, but could not because of tournaments and other things. The police believe more marijuana is being used by teens because of this law.

Opponents' Testimony: None

Questions From Committee Members and Responses: None

Closing by Sponsor: **REP. MOLNAR.** I've tried to protect the rights of the accused and see that the guilty get what they have coming. I find the need to be honest and fair. This wasn't fair, so let's change it.

EXECUTIVE ACTION ON HB 577

Motion/Vote: **SEN. SHARON ESTRADA MOVED HB 577 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON HJR 28

Motion: **SEN. ESTRADA MOVED HJR 28 BE CONCURRED IN.**

Substitute Motion/Vote: **SEN. MIKE HALLIGAN MOVED TO AMEND THE BILL BY STRIKING SUBSECTION (4), ON PAGE 2, LINES 12-14. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN. HOLDEN.**

Discussion: **SEN. JABS.** I still have a problem with the 24-hour notice on page 2, line 3. **VICE CHAIRMAN GROSFIELD.** The key is 'requested' and not 'required'.

SEN. BRUCE CRIPPEN WAS PRESENT AT THIS POINT AND RESUMED THE CHAIR. I see this is a continuation of what **REP. CURTISS** presented last time. Sheriff O'Reilly was not thrilled with this

resolution, as they must deal with this after the Legislature is gone. They're still getting apologies from the Unabomber case.

SEN. DOHERTY. I understand we're doing a lot less this time, but if we look at the Jordan situation, the feds listened to the Garfield County Attorney and Sheriff, and we avoided bloodshed because they all worked together. Given the incredible amount of cooperation in the past two years, I wondered why this is here. They seemed to have worked out the error in arresting the Unabomber.

SEN. RIC HOLDEN. The fact that Sheriff O'Reilly had to receive an apology shows we still need to address this communication problem. **VICE CHAIRMAN LORENTS GROSFIELD.** John Conner acknowledged there are still communication problems.

Motion/Vote: SEN. HALLIGAN MOVED TO STRIKE "AT LEAST 24 HOURS" ON PAGE 2, LINE 3. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS GROSFIELD, ESTRADA, AND HOLDEN WHO VOTED NO.

Motion/Vote: SEN. ESTRADA MOVED HJR 28 DO PASS AS AMENDED. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS DOHERTY, BISHOP, AND CRIPPEN WHO VOTED NO.

EXECUTIVE ACTION ON HJR 19

Motion: SEN. ESTRADA MOVED HJR 19 BE CONCURRED IN.

Discussion: VICE CHAIRMAN GROSFIELD. Can you explain the language on page 2, line 19. SEN. HALLIGAN. There are a number of corrections groups.

Vote: SEN. ESTRADA'S MOTION THAT HJR 19 BE CONCURRED IN CARRIED UNANIMOUSLY.

{Tape: 1; Side: B; Approx. Time Count: #26.8; Comments: 10:15 a.m.}

EXECUTIVE ACTION ON HB 68

Amendments: Department of Corrections - EXHIBIT 4

Discussion: Valencia Lane. The Committee has already taken prior executive action and has adopted amendments sb06803.av1. In addition, David Ohler, Department of Corrections counsel, has provided amendments. On page 1, line 7, he asked to disregard this language. There is an amendment to page 1, line 23, and another amendment I wrote in this morning (EXHIBIT #4). It amends 2-9-108, MCA, and creates Subsection (a) and (b), divided by "or". I rewrote it to make it more clear, and inserted the same phrase being stricken on page 1, lines 23-24. These are not substantive changes and make the bill easier to read.

Do you want to eliminate gross negligence? This is a policy decision of the Committee. **CHAIRMAN CRIPPEN**. I won't accept a motion on the amendments as they are not in their proper form. Current law has that limitation in it, and I want to make it clear that liability would still apply, but I would go along with the wishes of the Committee.

SEN. DOHERTY. We need a redraft showing what we've done to the bill so far, as my bill is a mess now. The overriding question is what kind of immunity we're giving them or whether to give them any immunity at all.

VICE CHAIRMAN GROSFIELD. If it is okay with the Committee I would move the handwritten amendments with the understanding that **Valencia Lane** would redraft a gray bill for tomorrow so we can read what we've done. **CHAIRMAN CRIPPEN**. Then we would come back with a gray bill and a clean, unchanged copy of the bill for comparison

Motion/Vote: **VICE CHAIRMAN GROSFIELD** MOVED TO ADOPT THE HANDWRITTEN AMENDMENTS AND HAVE **VALENCIA LANE** DRAFT A GRAY BILL FOR REVIEW TOMORROW. THE MOTION CARRIED UNANIMOUSLY.

No further action was taken on HB 68 this date.

EXECUTIVE ACTION ON HB 268

Amendments: hb026803.av1 - EXHIBIT 5

Valencia Lane. Amendments hb026803.av1 give coordination instructions and remove "recommended by the department of corrections and included in the sentence" (EXHIBIT 5).

Motion: **SEN. ESTRADA** MOVED THE AMENDMENTS BE ADOPTED.

Discussion: **VICE CHAIRMAN GROSFIELD**. What is the point of putting both Title 45 and 46 in the bill? What is it going to be used under? **Valencia Lane**. The problem is pride of authorship in the individual bills. **REP. KOTTEL** believes it should be in Title 46, as part of rehabilitation. **SEN. JENKINS** put it in Title 45 as part of the correction of punishment. **John MacMaster** believes it belongs in Title 45, as the way they want it is not good public policy.

SEN. ESTRADA. **SEN. JENKINS** was in here earlier, and wants the bill passed as it is.

VICE CHAIRMAN GROSFIELD. What's the status of SB 31? **CHAIRMAN CRIPPEN**. It is either on or has passed second reading in the House.

SEN. HALLIGAN. We ought to honor the wishes of both individuals, but the Committee needs to take charge. I believe **REP. KOTTEL's** bill is much better, and that this belongs in Title 46. **CHAIRMAN**

CRIPPEN. We can pass both bills out, and make both of them happy, and deal with this later on.

SEN. DOHERTY. What if we don't put a coordination amendment on, and they both pass. Then the Governor gets to be the tie-breaker. Neither one has really given us much direction. Is the House considering a coordination amendment to **SEN. JENKINS'** bill? I'd like to carry this on the floor.

SEN. BARTLETT. The parole and probation officers do pre-sentencing investigations upon which judges make decisions. so, I believe we need to give the Department of Corrections direction to look at this issue. **CHAIRMAN CRIPPEN.** Won't they be involved in pre-sentencing investigations anyway? **SEN. BARTLETT.** Yes, but there is no incentive for them to look at chemical treatment of sex offenders.

Vote: **SEN. ESTRADA'S MOTION TO ADOPT THE AMENDMENTS CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS BARTLETT, BISHOP, DOHERTY, AND HALLIGAN WHO VOTED NO.**

Motion/Vote: **SEN. ESTRADA MOVED THAT HB 268 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN. BARTLETT WHO VOTED NO.**

EXECUTIVE ACTION ON HB 44

Amendments: hb004404.avl (EXHIBIT #6)

Discussion: **Valencia Lane.** In prior executive action, the Committee amended the bill to \$1.60 and gave victims priority for payment of restitution.

Motion/Vote: **VICE CHAIRMAN GROSFIELD MOVED TO RECONSIDER THE COMMITTEE'S ACTION ON SEN. BARTLETT'S AMENDMENTS 1, 3 AND 4. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN. DOHERTY WHO VOTED NO.**

Motion: **VICE CHAIRMAN GROSFIELD MOVED TO ADOPT 1, 2 AND 4 OF hb004404.avl, CHANGING "MAY" TO "MUST". THE MOTION CARRIED UNANIMOUSLY.**

CHAIRMAN CRIPPEN. Have you given any thought to striking the New Section 2 concerning financials?

Motion: **SEN. BARTLETT MOVED TO STRIKE NEW SECTION 2 IN ITS ENTIRETY, AND TO MAKE NECESSARY CHANGES IN THE TITLE AND IN SECTION 3.**

SEN. BARTLETT. I have a problem when third parties are involved, although third parties are not always involved, and I am concerned a bit about the liability of the State on page 2, line 5, Subsection (B). **SEN. HOLDEN.** We're dealing with rapists, drug dealers, and criminals and we should have the right to

monitor these people. **SEN. ESTRADA.** I agree with **SEN. HOLDEN**, and I also oppose the motion.

CHAIRMAN CRIPPEN. I believe we have some Fifth Amendment problems here and I sense this will create real legal problems down the line. **David Ohler, Department of Corrections.** Suppose an inmate has \$5000 in his inmate account. He can ask to have this transferred to a bank account. We agree with the amendment.

VICE CHAIRMAN GROSFIELD. Are there other ways to go after these accounts? **David Ohler.** If we had enough evidence for probable cause, we might be able to get a search warrant, but we mostly don't have enough evidence. Section 2 is actually a portion of Missouri law.

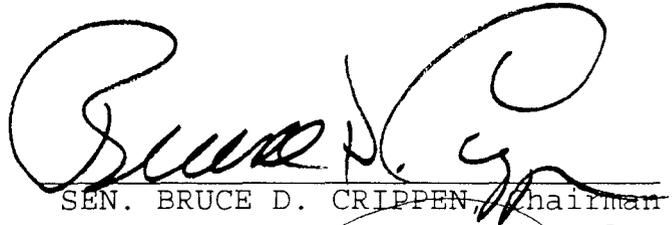
Vote: **SEN. BARTLETT'S MOTION TO ADOPT THE AMENDMENTS FAILED 6-4 WITH ONLY SENATORS HALLIGAN, BARTLETT, DOHERTY, AND CRIPPEN VOTING AYE.**

Motion/Vote: **SEN. ESTRADA MOVED HB 44 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS BARTLETT, CRIPPEN, AND DOHERTY WHO VOTED NO.**

{Tape: 2; Side: A; Approx. Time Count: #29.3; Comments: None}

ADJOURNMENT

Adjournment: 10:55 a.m.


SEN. BRUCE D. CRIPPEN, Chairman


JOANN T. BIRD, Secretary

BDC/JTB