

MINUTES OF THE JUDICIARY COMMITTEE
February 7, 1983

The meeting was called to order by Chairman Dave Brown at 8:03 a.m. in room 224A of the capitol building, Helena, Montana. All members were present with the exception of REPRESENTATIVE FARRIS, who was excused. Brenda Desmond, Staff Attorney for the Legislative Council, was also present.

HOUSE BILL 555

REPRESENTATIVE QUILICI, District 84, Butte, stated that this bill was requested by the Montana Crime Control and is known as the Montana Criminal Justice Assistance Act. He explained that the bill intends to establish a fund for improvements for local and state law enforcement agencies and also provides that a surcharge be imposed on persons convicted of criminal offenses.

JOHN SCULLY, representing the Montana Police Protective Association and the Montana Sheriffs and Peace Officers' Association, testified that year in and year out, one of the things that the criminal justice system is capable of doing is assessing fines; and he felt that the use and purpose for which these fines could be used are tremendous.

MARK RACICOT, Prosecution Coordinator for the Attorney General, informed the committee that the county attorneys had asked them to place their names on record in support of this bill.

BILL WARE, representing the Montana Chiefs of Police Association, wished to go on record in support of this bill.

CHUCK O'REILLY, Sheriff of Lewis and Clark County, testified that back in the old days, there was very little coordination, a lot of dissension and unrest; and it did not take long to realize, that with the loss of federal funds, it could go back to those days. He affirmed that he stood solidly behind this bill.

There were no further proponents.

MARCEL TURCOTT, representing the Montana Magistrates Association, stated that they ran into this problem about four years ago when they brought a bill before this body to try and get some education for the lower court judges; and he commented that their basic concern is that if this bill passes, it might undo some of the things that were done four years ago.

CHUCK O'REILLY commented that he was not aware that the Board of Crime Control had not spoken and he offered some amendments that he and they had worked out. He recommended that the bill be amended on page 4, lines 3 through 7, by striking that language and inserting, "(3) fund programs and projects which reflect priorities established by local criminal justice assistance agencies to improve the administration and efficiency of the Montana justice system."

There were no further opponents.

A letter from JANET L. JENSEN-STEVENSON, Justice of the Peace, Missoula County, was entered in as opposing this bill. See EXHIBIT A.

REPRESENTATIVE QUILICI closed and stated that he had no objection to the amendment.

REPRESENTATIVE CURTISS wondered about the training programs and the grants. REPRESENTATIVE QUILICI said that he had hoped the Board of Crime Control would be here; that there was a lot of federal money, various grants and many programs; he stated that some of the programs were such things as juvenile assistance programs, training of officers, helping the academy, etc.

SHERIFF O'REILLY explained that this will allow the Board of Crime Control to continue to operate in the fashion they have been in juvenile corrections, pilot programs such as the city-county records systems, computer record systems, management training programs and other innovative-type programs.

REPRESENTATIVE SEIFERT questioned how they arrived at 10 per cent as the figure the local government might retain. REPRESENTATIVE QUILICI answered that this was the way the committee that wrote this bill thought it should be.

REPRESENTATIVE EUDAILY questioned on page 3, if they needed one-half of the funds to administrate the act. REPRESENTATIVE QUILICI replied that he wondered about that himself. REPRESENTATIVE EUDAILY said that the fiscal note says \$1.2 million and it says they only need one FTE. REPRESENTATIVE QUILICI said that he did not have an answer to that and he thought the committee should find an answer.

REPRESENTATIVE EUDAILY also questioned in Section 6 on reversion, if this was usual to hold these monies over the biennium. REPRESENTATIVE QUILICI replied that it reverts and REPRESENTATIVE EUDAILY said I do not think that is what it says. He stated that it reverts to the criminal justice fund again.

SHERIFF O'REILLY explained that on the first question on the one-half to be deposited in the general fund, that that is one-half of the 10 per cent. He said that this was somewhat confusing to him also. He explained that the way the Board of Crime Control works now is when they receive federal funds, it is generally a three-year appropriation, though it could be five years. He said what they will do is seed a project, and if that project gets off and running and appears to be beneficial, then they will save some of those moneys back for the following year, and if it appears to be fruitful, they will fund the program until the local government can pick it up.

REPRESENTATIVE EUDAILY questioned if they are talking about one-half of the 10 per cent that is retained, they are still talking about \$60,000.00. He wondered if that didn't seem pretty high.

REPRESENTATIVE SEIFERT commented that he had three people call him last night asking him to oppose this bill, but he really didn't know why and he wondered why he should oppose this bill. SHERIFF O'REILLY answered that he had some calls also and it was strictly on subsection (3) and that is why they settled on the other wording.

REPRESENTATIVE CURTISS questioned if there would not be any training programs if this were not passed. REPRESENTATIVE QUILICI replied that there would be some training programs.

MR. TURCOTT explained what happened four years ago; they put in for some money for schooling and as long as it went into the supreme court budget, they did not have any control over it; rather than ask for money, they asked this body to tell the supreme court that they had to give us this schooling. He stated that most of the funding comes from the county; the supreme court administers only part of it.

REPRESENTATIVE QUILICI commented that no matter what kind of funds are allocated to the supreme court, if the supreme court

wants to on their own volition, they can do what they want with these funds--there is nothing the legislature can do about it.

REPRESENTATIVE BERGENE asked MR. TURCOTTE if the amendment helped any of his feelings about the bill. MR. TURCOTTE responded that he did not feel that the amendment did much.

REPRESENTATIVE CURTISS wondered if they would elaborate on the innovative programs. REPRESENTATIVE QUILICI replied that the innovative program that he is familiar with is the one called Crime Stoppers and from his understanding Crime Stoppers is working very, very well.

HOUSE BILL 537

REPRESENTATIVE TOM JONES, District 17, stated that this bill provides that there may be no deferral of imposition of a sentence or suspension of a sentence for certain major crimes against disabled persons 60 years of age or older. He said that this bill merely puts a little teeth in the law so that purse snatchers, etc. will have to spend a little time in the pokey.

DOUG OLSON, representing the Montana Seniors' Advocacy Assistance Program, offered a prepared statement. See EXHIBIT B, C, D AND E. He suggested some amendments for the bill. See page 2 of EXHIBIT C.

There were no opponents.

REPRESENTATIVE HANNAH wondered how he could support this thing because if he broke into a home and robbed someone, the way this bill is written, if that person is 59 years of age, he would still get a deferred sentence, but if that person is 60 years old, he would not. He also wondered if they thought about how they could identify, particularly from the standpoint of breaking into a home.

MR. OLSON said that he did not think that the bill can function solely as a deterrent, but it does provide assurances to senior citizens that if they are victimized, there is a greater potential that the perpetrator be given a stiffer sentence.

REPRESENTATIVE ADDY questioned how large a problem this is in Montana and he commented that he could not imagine a judge not taking the age of the victim into consideration for sentencing purposes. MR. OLSON replied that there was an instance in the Eureka or Libby area, wherein there was a burglary and a senior citizen was shot and the perpetrator received a deferred sentence. He further stated that nationally there have been studies

that have shown that more and more crimes of a serious nature are being perpetrated against senior citizens and in rural states.

REPRESENTATIVE VELEBER wondered why they settled on age 60 as opposed to age 65 or something else. REPRESENTATIVE JONES answered that that was the age in the California law and it is also the age under the federal Older Americans Act that determines eligibility for programs for the elderly.

There were no further questions and the hearing on this bill was closed.

HOUSE BILL 546

REPRESENTATIVE WALDRON stated that this bill provides that inmates at the Montana State Prison or the Women's Correction Facility could be given early consideration for parole whenever the design capacity of the building has been exceeded for more than 30 days. He further stated that the bill presently is not workable and needs some amendments. He offered amendments to this bill. See EXHIBIT F.

HANK BURGESS, Chairman of the Board of Pardons, spoke in favor of this piece of legislation. He testified that over the past few years, he has been acutely aware of the danger to the inmates and also the staff because of overcrowding.

CURT CHISHOLM, Deputy Director of the Department of Institutions, stated that this legislation provides a safety valve, that it will be two to two-and-a-half years before they have additional cells to provide for the expanding prison population and he supported this bill as amended.

CATHY CAMPBELL, representing the Montana Association of Churches, offered a statement in support of this bill. See EXHIBIT G.

There were no opponents.

REPRESENTATIVE WALDRON said that the number of inmates in the prison is continuing to increase and will continue to increase until the new prison is built. He stated that they feel that when a population of 714 is reached, it is critical, that there are going to be very serious problems and that they need some kind of mechanism to relieve the pressure in the prison.

REPRESENTATIVE EUDAILY said that he was having some problems with maximum - that if you stack them up higher, the maximum could be a great deal more and he wanted to know which do they want - design or maximum. REPRESENTATIVE WALDRON replied that they should utilize the language "design capacity" and the bill will not allow it to exceed that number and design capacity is 545, and they have 215 more than that right now. REPRESENTATIVE EUDAILY wondered if they would want to delete the first part of the amendment that refers to maximum capacity. REPRESENTATIVE WALDRON answered yes.

REPRESENTATIVE DAILY asked how much has the prison population increased in the last two years. MR. CHISHOLM replied that it has been approximately 200 inmates and as of last Friday, they were talking about 760 inmates.

REPRESENTATIVE DAILY asked if he expects that kind of increase in the next couple years. MR. CHISHOLM answered that he was not sure. He said a lot of it depends on what happens during this legislature and it is hard to get a handle on it until they see the end result.

REPRESENTATIVE DAILY wondered if this bill passes, then what you are really saying is that 200 people who should be in prison will be out of prison. MR. CHISHOLM replied that it does not guarantee that we are going to release anybody - it does give them the ability to consider them for parole sooner.

REPRESENTATIVE DAILY asked what is the average length of stay in the prison and MR. CHISHOLM answered around twenty-three months.

REPRESENTATIVE DAILY asked what the capacity of the women's prison is. MR. CHISHOLM stated that hypothetically they could put 40 to 45 but that would be dangerously high. He said in the last biennium, they were budgeted for 20 inmates and now are budgeted for 30, and the physical plant itself would probably allow them to put 35 in there, but anything beyond that would be in a dangerous limit.

REPRESENTATIVE DAILY asked how many were in there now and MR. CHISHOLM answered around 27 or 28.

REPRESENTATIVE SEIFERT wanted to know how they felt that turning the prisoners loose was the solution. REPRESENTATIVE WALDRON said that he does not think that this bill requires that you

turn anybody loose; but he did not feel that it makes much difference if you release an inmate now or four months later and if they have not learned their lesson, they are not going to learn it in the next four months.

REPRESENTATIVE ADDY wondered if there is a certain point at which the prison can refuse to accept additional prisoners. MR. CHISHOLM replied that he did not think so - that they simply have to take them - at least the system has to take them.

REPRESENTATIVE DAILY asked what is the percentage ratio of prisoners who have applied for parole that are paroled. MR. BURGESS replied about 70 per cent over the last few years. REPRESENTATIVE DAILY questioned if the prison population did increase by 200 over the next two years, you probably would parole 140 of those prisoners. MR. BURGESS replied that it is possible, but there would probably be somewhat of a decline in interviewing those more recent entrants into the prison, as they do look at the amount of time served.

REPRESENTATIVE DAILY wondered if the prison did reach a level of 200 more inmates, could they put in some kind of modular housing to accomodate these prisoners. MR. CHISHOLM replied that they do have some contingency plans; they are considering developing modular housing, putting inmates in day rooms and they are at the point right now where some prisoners are sleeping in some day rooms.

REPRESENTATIVE DAILY wondered if it would be the philosophy of the department to release prisoners rather than have some contingency plans. MR. CHISHOLM replied that he did not think this was their philosophy, that this bill was just intended as a safety valve for this upcoming biennium. He felt that what they have to choose now is not only contingency plans, but they have to be very concerned about the dangers, the riots, stabbings, etc., not only to the inmates themselves but to the employees that manage them.

REPRESENTATIVE HANNAH wondered if they have the maximum design capacity for 540 and they have 800 inmates in prison, are they establishing in this bill almost a mandate to let some of these people out. MR. CHISHOLM answered that as long as the state is moving to solve these problems, this should not be a problem.

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REPRESENTATIVE KEYSER asked if the way the bill was presented originally, without any amendments, this would mean that if at any time the prison goes over a maximum capacity by 125, then the state of Montana would have to go in and provide a new facility. REPRESENTATIVE WALDRON answered that no, he knew that there would have to be amendments and he just put it in to get it in the hopper.

REPRESENTATIVE KEYSER asked REPRESENTATIVE WALDRON questions concerning the building of a new prison.

There were no further questions and the hearing on this bill closed.

HOUSE BILL 524

REPRESENTATIVE DARKO, District 22, introduced this bill at the request of the Human Rights Commission and she stated that this bill repeals the section that relates to criminal penalties for a violation of the Human Rights Act. She passed out a copy of 49-2-601 - Criminal Penalties. See EXHIBIT H.

RAYMOND BROWN, Administrator of the Montana Human Rights Commission, offered testimony in support of this bill. See EXHIBIT I.

There were no opponents and no questions and the hearing on this bill closed.

HOUSE BILL 516

REPRESENTATIVE ADDY explained this bill, which is an act to provide for county attorney reports to the attorney general on cases involving declined prosecutions or case dismissal because of the exclusionary rule. He stated that he requested this bill after he began research on the exclusionary rule, when he found that some questions kept coming up, such as how often does the exclusionary rule come up, in what kinds of crime does it come up and what kinds of ways are we using to educate our prosecutors and county attorneys on the exclusionary rule. He felt this bill was one sure step that can be taken.

KARLA GRAY, representing the Montana Trial Lawyers' Association, stated that this is the first time she has risen in support of a bill that even contains the name of exclusionary rule, but she felt that this bill would show them what kind of a problem there is with the exclusionary rule; and they would support any concept of adding to the knowledge of the Fourth Amendment or the exclusionary rule.

WES KRAWCZYK, representing the American Civil Liberties Union of Montana, made a statement in support of this bill.

MARC RACICOT, Prosecution Coordinator for the Attorney General, stated that he did not know which side of the issue they wanted to come down on, because they are not afraid of information, but they are fearful about the impact on local officers. He felt that the fiscal note was wrong and wondered what it would take for staff and personnel to assimilate this information and get it out to the people. He thought it would be closer to \$25,000.00. He also was afraid that they would not end up with very accurate reports.

There were no further opponents.

REPRESENTATIVE ADDY closed by saying that when you begin to speak of expense, you have to keep in mind the bill that REPRESENTATIVE HANNAH introduced that would require a penalty when the exclusionary rule has been violated by an officer. He felt that you have to look at the expense of preparing reports, on one hand, along with the education and training of law enforcement officers, versus the costs to municipalities if a successful suit is obtained, on the other hand, if a bill such as REPRESENTATIVE HANNAH's or any such bill is passed. He stated that he realized there is going to be some expense and that the fiscal note may understate it to some extent, but he felt that you have to balance the expense. He stated that another bill that is going to be heard is a reasonable good faith exception to the exclusionary rule; if a law enforcement officer were acting in reasonable good faith, the exclusionary rule will not be a bar to admission of the evidence.

REPRESENTATIVE KEYSER asked KARLA GRAY that if they reversed this and the defense attorneys had to go in and work up all the arguments, what kind of cost factor did she feel this would put on the defense people rather than the prosecutors. MS. GRAY answered that frankly, she did not think the criminal defense lawyers would be in a position to report all the cases where prosecution was declined. REPRESENTATIVE KEYSER questioned would it be large or minimum. MS. GRAY replied that she did not think an outline of a case is that time consuming; she said there would be expense involved; and in any event, she did not feel that it was part of the criminal defense bar's function to educate law enforcement people - the state or whom-ever is responsible.

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There were no further questions and the hearing on this bill was closed.

The committee took a break at 9:37 a.m. and reconvened at 9:51 a.m.

HOUSE BILL 629

REPRESENTATIVE DAVE BROWN said that this was a committee bill and that it redefined the term "general election" for the purpose of submitting ballot issues to the voters and he stated that the committee had gone through this before.

There were no proponents and no opponents.

There were no questions and the hearing on the bill was closed.

A JOINT RESOLUTION

REPRESENTATIVE BERGENE distributed copies of this resolution. See EXHIBIT J. She stated that this had intended to be a HOUSE JOINT RESOLUTION but things just did not fall into place so she decided rather than ask for a suspension of the rules, she would bring it before the committee to see if they would approve it as a committee bill. She explained the resolution which is to promote the further development of community-based corrections and pre-release centers in the state of Montana.

REPRESENTATIVE HANNAH wondered if she would object placing language in there about "the Department of Institutions agrees to aggressively promote the further development of non-profit community-based corrections and pre-release centers". REPRESENTATIVE BERGENE replied that she knew how important this is to him and she feels that it has become important to the community as well. She expanded by saying that if we don't allow private, non-profit corporations to have a pre-release center in our communities, does that mean that the state will then say that it is their prerogative to do that in communities and that there is a basic fear.

REPRESENTATIVE JENSEN commented that he felt that private, non-profit was necessary, but that he would hate to exclude someone who has profit as a motive. REPRESENTATIVE BERGENE replied that she had not really thought about a profit organization. REPRESENTATIVE HANNAH noted the last "Whereas" and said that if profits were to be included in this, that it can't be done through the resolution, because that would not be a correct statement in assessment of what the legislature did in the special session.

There was further discussion concerning the language of the resolution and it was agreed that it be taken up in executive session tomorrow.

EXECUTIVE SESSION

HOUSE BILL 629

REPRESENTATIVE SEIFERT moved that this bill DO PASS. The motion was seconded by REPRESENTATIVE EUDAILY. The motion carried unanimously.

HOUSE BILL 238

REPRESENTATIVE ADDY moved that the bill DO PASS. The motion was seconded by REPRESENTATIVE DARKO.

REPRESENTATIVE ADDY passed out copies of a proposed amendment. See EXHIBIT K. He explained that in the subcommittee, REPRESENTATIVE DARKO, REPRESENTATIVE EUDAILY and he looked at the three people involved - the owner, the materialman and the contractor and tried to decide which one should bear the biggest portion of the risk. He explained that they ruled out the owner; they initially ruled out the contractor because they felt, if he can't handle the contract, how is he going to handle any further burden in a responsible manner. He said it came back to the materialman; they took it back to REPRESENTATIVE VINCENT and he indicated that this was not what he wanted to do at all; he wanted it on the contractor and for them to put a penalty clause on it so that when he does give the notice even though he hasn't paid his materialmen and no lien has been filed, he can still be disciplined. He further stated that this is a remedy available to the owner and to society before the problem arises wherein the contractor gets his money and beats it out of town.

REPRESENTATIVE ADDY moved that the amendments be adopted. REPRESENTATIVE JENSEN seconded.

REPRESENTATIVE HANNAH questioned what is the definition of owner. REPRESENTATIVE ADDY replied that it is the same definition as is now in the present mechanics' lien statute - it can be someone who is leasing, it can be someone who is buying on a contract for deed, but someone who is renting is where they draw the line.

REPRESENTATIVE HANNAH gave an example stating that the registered owner sold the property on contract, the new buyer comes in and tries to improve the house, the contractor obtains the materials and skips town; the lien goes on the person who sold the property in the first place and he wondered if this bill addressed that problem.

REPRESENTATIVE ADDY answered that the materialman or the contractor has to file this lien within 90 days, which cuts down Representative Hannah's problem, although there is a 90 day window in there. He also said that the improvements or additions would enhance value of the property and the repossessing owner would be the one who would have derived the benefits.

There were further questions between REPRESENTATIVE HANNAH and REPRESENTATIVE ADDY.

REPRESENTATIVE RAMIREZ said that he has serious problems with what we are doing here. He stated that they are changing the purpose of this bill so substantially that he thought we would have a problem with meeting the constitutional requirement. He exclaimed that he thought we should kill this bill and have a committee bill so the contractors can come in and have an opportunity to be heard on this.

REPRESENTATIVE DAILY said he concurred in this statement and stated that now we are going to turn around and punish the contractor - it is completely contradictory to what the bill was originally going to do.

REPRESENTATIVE ADDY commented that he would have to agree to a great extent to that.

REPRESENTATIVE SEIFERT indicated that he did not think that we need the bill to start with - that this lien thing has gotten tough enough as it is.

REPRESENTATIVE EUDAILY said that he thought the problem comes in when you are dealing with a third-person contract; and the bill is a complete switch-around.

REPRESENTATIVE BERGENE felt that the people who are going to have a contractor are simply uninformed and she wondered if there is some way to educate them.

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REPRESENTATIVE VELEBER stated that they are expanding the original bill beyond the scope of its original limits, but he felt that there is a problem that needs to be dealt with from the consumer's point of view.

REPRESENTATIVE ADDY moved to withdraw the amendment and moved to TABLE the bill.

REPRESENTATIVE JENSEN wondered why not just withdraw the amendment and he felt that this bill in its original form is not such a bad bill. He wondered why the materialman doesn't have to be responsible. He stated that it seems there is a responsibility for the materialman to do business with the contractor and they have the responsibility to collect all their debts without a lien against the third and innocent party.

REPRESENTATIVE EUDAILY said that he thought the problem was that the homeowner will very conscientiously pay the contractor; the homeowner assumes that that contractor is going to pay the materialman, but he is not protected when he doesn't.

REPRESENTATIVE SPAETH agreed and stated that it is the lien of the materialman's that is causing the hardship and he is not sure that he agrees with the amendment. He stated that if the materialman wants to keep his lien option open and wants to consider bringing a lien, he should maybe give notice, not at the stage that he gives it now in the lien provisions, but ahead of time. He stated that this is just not that well known.

REPRESENTATIVE HANNAH said that the reason it is not well known now is it is the only area of the law that he knew of that allows an attachment on a third party. He felt that this was a good bill; the responsibility for collecting the money goes to the materialman, he is the guy who contracts and makes the deal with the contractor.

There was some further discussion.

REPRESENTATIVE ADDY moved to withdraw his amendments and TABLE the bill. The motion carried with REPRESENTATIVE HANNAH, REPRESENTATIVE RAMIREZ and REPRESENTATIVE JENSEN voting no.

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REPRESENTATIVE RAMIREZ wondered why they were tabling it and not just killing it.

REPRESENTATIVE DAVE BROWN answered that then they could consider a committee bill.

REPRESENTATIVE ADDY moved that the proposed amendments to HB238 be placed in a committee bill. REPRESENTATIVE BERGENE seconded it.

REPRESENTATIVE DAILY spoke against the committee bill, stating that they are completely turning things around and this puts a burden against a good, decent contractor. He further said that a contractor could spend half his time explaining the lien law to people.

REPRESENTATIVE HANNAH wondered if there was any sentiment at all to making the responsibility of this whole issue between the contractor and the materialman. He felt that maybe that was the way they should address a committee bill.

REPRESENTATIVE KEYSER stated that he fully agreed - every bit of testimony we had and the court opinions are basically because the contractor has not done something and he feels that you have to bring in the contractor, because he is a representative of the owner.

REPRESENTATIVE EUDAILY commented that the only way to approach this is to repeal the present law and that way you are making the materialman more responsible to see that the contractor who buys from him is a responsible person.

REPRESENTATIVE DAILY stated that they have to realize what they are doing when a lien is filed. He said that about 95 per cent of the time, the homeowner does not file the lien - the contractor files the lien. He stated that that is not the testimony that was presented but that is why a lien is filed. He continued that there is a difference with this bill - there is a third party who did not get paid so he files the lien.

REPRESENTATIVE RAMIREZ said that he agreed and that we are trying to take one problem that is already in the law and trying to patch it up. He stated that the lien laws deal with many, many problems - that there is a three-way relationship here and once in awhile the homeowner gets burned,

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sometimes the materialman gets burned and sometimes the contractor gets burned. He further explained that the lien laws have been in existence for a long time and, although they are not perfect, there is a reason for them; and they make a lot more sense when you look at them all then when you take one small aspect of them and examine it in a narrow context. He contended that he was concerned that if you don't take the whole package and look at it, it will have an adverse impact on other things that we are not even thinking of. He felt that they better know what other ramifications there are.

REPRESENTATIVE SEIFERT said that in most cases any finance company before they release that final moneymakes sure that they have a lien release signed and in their file. He further said that there is very little major construction that is done on a cash basis; he felt giving people a notice you may be putting a lien on their homes puts them on the defensive right away.

REPRESENTATIVE KEYSER said that he assumed that most contractors go in with a contractual agreement and he wondered if there was a notification put on that agreement, even if in a form, how would this interfere with the lien laws if you just notify in a contractual agreement that these are the lien laws.

REPRESENTATIVE DAVE BROWN suggested that they take this off the agenda and get on to other things.

REPRESENTATIVE HANNAH made a substitute motion that a committee bill be drafted to be presented to the committee placing the responsibility in the relationship between the materialman and the contractor. There was no second.

REPRESENTATIVE HANNAH moved that a subcommittee be appointed to address the lien relationship between the contractor, the materialman and the homeowner in such a way as to make each party responsible for a transaction. REPRESENTATIVE KEYSER seconded the motion. The motion failed 9 to 8. See Roll Call Vote.

REPRESENTATIVE DAVE BROWN suggested they take this off the agenda and work on it again some other time.

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HOUSE BILL 524

REPRESENTATIVE DARKO moved that this bill DO PASS. REPRESENTATIVE BERGENE seconded. The motion carried unanimously.

HOUSE BILL 379

REPRESENTATIVE JENSEN moved that this bill DO NOT PASS. REPRESENTATIVE SEIFERT seconded the motion. The motion carried with REPRESENTATIVE DAILY voting no.

The meeting adjourned at 11:00 a.m.



DAVE BROWN, Chairman



Alice Omang, Secretary

STANDING COMMITTEE REPORT

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MR. **SPEAKER**

JUDICIARY

We, your committee on

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having had under consideration Bill No.

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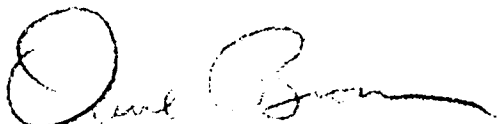
A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE THE TERM "GENERAL ELECTION" FOR THE PURPOSE OF SUBMISSION TO THE PEOPLE OF LAWS OR CONSTITUTIONAL AMENDMENTS BY THE LEGISLATURE; AMENDING SECTIONS 13-1-101 AND 13-1-104, MCA."

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Respectfully report as follows: That

DO PASS



DAVE BROWN

Chairman.

ROLL CALL VOTE ----- JUDICIARY COMMITTEE

	Date: 238 No: Hannah Motion	Date: No:	Date: No:	Date: No:	Date: No:	Date: No:
BROWN, Dave	no					
ADDY, Kelly	--					
BERGENE, Toni	no					
BROWN, Jan	yes					
CURTISS, Aubyn	yes					
DAILY, Fritz	no					
DARKO, Paula	no					
EUDAILY, Ralph	no					
FARRIS, Carol	--					
HANNAH, Tom	yes					
IVERSON, Dennis	yes					
JENSEN, James	yes					
KENNERLY, Roland	yes					
KEYSER, Kerry	yes					
RAMIREZ, Jack	no					
SCHYE, Ted	no					
SEIFERT, Carl	no					
SPAETH, Gary	yes	9 - nays 8 - yeses				
VELEBER, Dennis	no					

STATEMENT OF INTENT
_____ Bill No. _____ (LC 2026)

The intent of the Montana Criminal Justice Assistance Act is to establish a fund from which improvements for local criminal and juvenile justice agencies and programs may be funded. This Act does not derive any of its funding from sources presently collected, but is a new source of funding in the form of a surcharge imposed upon those who are in part burdening the criminal justice system. It is the intent of this Act to levy this surcharge against those who forfeit bails or bonds and those who are convicted of misdemeanors and felonies in all courts within Montana.

This Act responds to a request by local citizens and criminal justice practitioners at the June 1981 Criminal Justice Conference cosponsored by the Governor and Attorney General. It was the general consensus of those participating that with the decline in justice system support from the Federal Government and a steadily increasing burden on local tax dollars, that significant improvements in the local criminal justice systems would have to be supported by a new source of revenue.

It is contemplated that rules, as promulgated by the Montana Board of Crime Control, should address the following:

- (1) eligibility determination to ensure that funds are expended for benefit of the local criminal justice system;
- (2) assurance that these funds do not supplant local funds;
- (3) provision of proper accountability, record-keeping, reporting, evaluation, and auditing to ensure program integrity;
- (4) assurance of local criminal justice participation in the establishment of priorities and standards for programs and projects;
- (5) receipt, processing, and awarding of grants; and
- (6) notification to all entitlements of program availability.

STANDING COMMITTEE REPORT

February 7, 1983

MR. **SPEAKER:**

JUDICIARY

We, your committee on

HOUSE

629

having had under consideration Bill No.

First reading copy (**white**)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO DEFINE THE TERM "GENERAL ELECTION" FOR THE PURPOSE OF SUBMISSION TO THE PEOPLE OF LAWS OR CONSTITUTIONAL AMENDMENTS BY THE LEGISLATURE; AMENDING SECTIONS 13-1-101 AND 13-1-104, MCA."

HOUSE

629

Respectfully report as follows: That Bill No.

DO-PASS~

STANDING COMMITTEE REPORT

February 7, 19 83

SPEAKER:
MR.

We, your committee on JUDICIARY

having had under consideration HOUSE Bill No. 524

First reading copy (white)
color

A BILL FOR AN ACT ENTITLED: "AN ACT TO REPEAL SECTION 49-2-601,
MCA, RELATING TO CRIMINAL PENALTIES FOR A VIOLATION OF THE
HUMAN RIGHTS ACT."

HOUSE 524
Respectfully report as follows: That Bill No.

~~DO PASS~~

STANDING COMMITTEE REPORT

.....February 7..... 19 81.....

SPEAKER:

MR.

JUDICIARY

We, your committee on

having had under consideration **HOUSE** Bill No. **379**

First reading copy (**white**)
color

**A BILL FOR AN ACT ENTITLED: "AN ACT TO REQUIRE THE ATTORNEY
GENERAL TO PREPARE INSTRUCTIONS ON HOW TO PROBATE A WILL OR
SETTLE AN ESTATE, TO PREPARE FORMS NECESSARY TO PROBATE A WILL
AND ADMINISTER AN ESTATE, AND TO DISTRIBUTE THE INSTRUCTIONS
AND FORMS TO THE PUBLIC."**

Respectfully report as follows: That **HOUSE** Bill No. **379**

DO NOT PASS

~~DO NOT PASS~~
DO PASS

	Date: 2/7 No: HB 238 Hannah's Motion	Date: No:	Date: No:	Date: No:	Date: No:	Date: No:
BROWN, Dave	no					
ADDY, Kelly	—					
BERGENE, Toni	no					
BROWN, Jan	yes					
CURTISS, Aubyn	yes					
DAILY, Fritz	no					
DARKO, Paula	no					
EUDAILY, Ralph	no					
FARRIS, Carol	—					
HANNAH, Tom	yes					
IVERSON, Dennis	yes					
JENSEN, James	yes					
KENNERLY, Roland	yes					
KEYSER, Kerry	yes					
RAMIREZ, Jack	no					
SCHYE, Ted	no					
SEIFERT, Carl	no					
SPAETH, Gary	yes					
VELEBER, Dennis	no					

9-no
10-yes

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL HB 555

DATE February 7, 1983

SPONSOR Quilici

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

MISSOULA COUNTY

JANET L. JENSEN-STEVENSON
DEPARTMENT NO. 1
JUSTICE OF THE PEACE
MISSOULA COUNTY COURTHOUSE
MISSOULA, MONTANA 59802

Exhibit A
HB 555
2/7/83

February 4, 1983

FEB 04 1983

To: Board of County Commissioners
House Judiciary Committee

From: Janet L. Jensen-Stevens, Justice of the Peace, Missoula County

Re: House Bill No. 555

The Courts of Montana, whether they are courts of limited or general jurisdiction, are not set up for the purpose of generating revenue. The Court is an organ of the government, belonging specifically to the Judicial Department, whose sole function is the application of the laws to controversies brought before it and the public administration of justice.

It's hard enough these days to collect restitution and fines without adding a surcharge to the process. One of two circumstances will result if the surcharge is added: (1) a Judge will probably reduce a fine by the amount of the surcharge, thereby reducing revenue to other agencies/programs; or (2) waive payment of the surcharge, thereby not generating any revenue for the Board of Crime Control but still costing the County and State the time and expense of administration.

If the Board of Crime Control needs more money to operate efficiently and effectively, then let them lobby for an increase in their budget like all other agencies have to do.

For these reasons it would be my recommendation that the House Judiciary Committee quash HB 555.

Janet L. Jensen-Stevens
Janet L. Jensen-Stevens
Justice of the Peace

WITNESS STATEMENT

Name Bill Gould Committee On Judiciary
Address 41 Box 81A, Encke, MI. Date 2-7-83
Representing Mant. Bd. of Crime Control Support ✓
Bill No. HB 555 Oppose _____
Amend _____

AFTER TESTIFYING, PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

1.

2.

3.

4.

Itemize the main argument or points of your testimony. This will assist the committee secretary with her minutes.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL HOUSE BILL 537

DATE February 7, 1983

SPONSOR JONES

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Exhibit B
HB 537
2/7/83

CRIMES AGAINST SENIORS

HOUSE BILL 537

House Bill 537 provides that there may be no deferral or suspension of a sentence (except as provided in 46-18-222, MCA) if a crime mentioned below is committed against a person who is 60 years of age or older or a person who is disabled and if there is serious bodily harm.

A. Crimes for which there may be no deferral or suspension:

- 1) deliberate homicide
- 2) mitigated, deliberate homicide
- 3) aggravated assault
- 4) kidnapping
- 5) aggravated kidnapping
- 6) robbery
- 7) rape
- 8) sale of drugs
- 9) possession of drugs
- 10) criminal sale of drugs

B. Exceptions (46-18-222, MCA):

- 1) under 18 years at time of offense
- 2) mental impairment
- 3) unusual duress
- 4) an accomplice
- 5) no bodily injury inflicted unless a weapon was involved

MONTANA SENIORS' ADVOCACY ASSISTANCE

P.O. Box 232 • Capitol Station • Helena, Montana 59620
(406) 449-4676 (Helena) • 1-800-332-2272 (Toll-free)

DOUGLAS B. OLSON, Attorney
Elderly Legal Services Developer

LENORE F. TALIAFERRO
Montana State Nursing Home Ombudsman

Exhibit C
HB 537
2/7/83

February 7, 1983

House Judiciary Committee
Montana House of Representatives
48th Legislative Session
State Capitol
Helena, Montana 59620

re: House Bill 537

Dear Representatives:

Montana Seniors' Advocacy Assistance (MSAA) provides advocacy on behalf of Montana's senior citizens in the areas of legal services, legal rights, and quality care for the elderly who are institutionalized. These services are provided in Montana pursuant to a grant received pursuant to Title IV-C of the federal Older Americans Act.

National studies have shown that the elderly as an age group often fear leaving their homes or are likely to feel as if they are captives of their homes due to the risk of being victims of crimes if they leave or open the door. Many often believe that even if they are victims they are better off not reporting the crime for the perpetrator will just get a slap on the wrist and be on the streets again. You may think that this is only true in large cities and not in a rural state such as Montana. It sad to say is true here in Montana as well.

As legislators you can take some action to help reduce this fear and injustice by taking favorable action on House Bill 537, sponsored by Rep. Tom Jones. The bill would give greater assurance that those who commit serious crimes against the elderly, the blind or disabled will not be out on the streets or loose in our towns in short order. Sentences could not be suspended or deferred in these cases. This legislative proposal is not unique for it is now the law in California, and should be the law here in Montana.

There was great support for this type of law at the Legacy Legislature held in Helena this past September for Montana's senior citizens. Those individuals who prey on citizens of our state who are less able to resist their crimes should be dealt with harshly.

Letter to House Judiciary Committee
re: House Bill 537
Page 2 of 3 pages
February 7, 1983

Montana Seniors' Advocacy Assistance strongly supports enactment of House Bill 537 but would suggest that the bill be amended to include aggravated assault as one of the crimes that if committed against a senior citizen or a blind or disabled person, would result in no deferred or suspended sentence. Specifically, HB 537 should be amended as follows:

1. Page 3, line 25
Following: "45-5-103,"
Insert: "45-5-202,"
2. Page 4, line 8
Following: "(b)"
Insert: "(i)"
3. Page 4, line 9
Following: "person."
Strike: the period
Insert: "; (ii) caused reasonable apprehension of serious bodily injury in the aged or disabled person by use of a weapon; or, (iii) caused bodily injury to the aged or disabled person with a weapon."

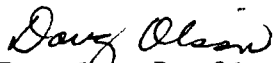
By way of point of information, Montana law defines "serious bodily injury" and "weapon" in 45-2-101(59) and (71) as follows:

"Serious bodily injury" means bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of the function or process of any bodily member or organ. It includes serious mental illness or impairment.

"Weapon" means any instrument, article, or substance which, regardless of its primary function, is readily capable of being used to produce death or serious bodily injury.

Thank you for an opportunity to express the views of MSAA. If this committee believes that this bill needs additional amendments after hearing testimony, I would be willing to help the committee in any way possible.

Sincerely,


Douglas B. Olson
Attorney

Montana Seniors' Advocacy Assistance

Exhibit D
HB537
4/7/83

Part 2

Assault

45-5-201. Assault. (1) A person commits the offense of assault if he:

- (a) purposely or knowingly causes bodily injury to another;
- (b) negligently causes bodily injury to another with a weapon;
- (c) purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or

(d) purposely or knowingly causes reasonable apprehension of bodily injury in another. The purpose to cause reasonable apprehension or the knowledge that reasonable apprehension would be caused shall be presumed in any case in which a person knowingly points a firearm at or in the direction of another, whether or not the offender believes the firearm to be loaded.

(2) Except as provided in subsection (3), a person convicted of assault shall be fined not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both.

(3) If the victim is less than 14 years old and the offender is 18 or more years old, the offender, upon conviction under subsection (1)(a), shall be fined not to exceed \$50,000 or be imprisoned in the state prison for a term not to exceed 5 years, or both.

History: En. 94-5-201 by Sec. 1, Ch. 513, L. 1973; R.C.M. 1947, 94-5-201; amd. Sec. 1, Ch. 261, L. 1979; amd. Sec. 7, Ch. 198, L. 1981.

GENERAL PRINCIPLES OF LIABILITY

45-2-101

(5) "Bodily injury" means physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

45-5-202. Aggravated assault. (1) A person commits the offense of aggravated assault if he purposely or knowingly causes:

- (a) serious bodily injury to another;
- (b) bodily injury to another with a weapon;
- (c) reasonable apprehension of serious bodily injury in another by use of a weapon; or

(d) bodily injury to a peace officer or a person who is responsible for the care or custody of a prisoner.

(2) A person convicted of aggravated assault shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined not more than \$50,000, except as provided in 46-18-222.

History: En. 94-5-202 by Sec. 1, Ch. 513, L. 1973; amd. Sec. 6, Ch. 584, L. 1977; R.C.M. 1947, 94-5-202; amd. Sec. 7, Ch. 198, L. 1981; amd. Sec. 1, Ch. 289, L. 1981.

Exhibit E
HB537
2/7/83

HB 537

§ 1203.09

California PENAL CODE

§ 1203.09 Crimes against persons 60 years of age or older, blind persons, paraplegics or quadriplegics; denial of probation and suspension of sentence

(a) Notwithstanding any other provision of law, probation shall not be granted to, nor shall the execution or imposition of sentence be suspended for, any person who commits or attempts to commit one or more of the crimes listed in subdivision (b) against a person who is 60 years of age or older; or against a person who is blind, a paraplegic, or a quadriplegic, and such disability is known or reasonably should be known to the person committing the crime; and who during the course of the offense inflicts great bodily injury upon such person.

(b) Subdivision (a) applies to the following crimes:

(i) Murder.

(ii) Assault with intent to commit murder, in violation of Section 217.

(iii) Robbery, in violation of Section 211.

(iv) Kidnapping, in violation of Section 207.

(v) Kidnapping for ransom, extortion, or robbery, in violation of Section 209.

(vi) Burglary of the first degree, as defined in Section 460.

(vii) Rape by force or violence, in violation of subdivision (2) of Section 261.

(viii) * * * Assault with intent to commit rape, sodomy, or robbery, in violation of Section 220.

(c) The existence of any fact which would make a person ineligible for probation under subdivision (a) shall be alleged in the information or indictment, and either admitted by the defendant in open court, or found to be true by the jury trying the issue of guilt or by the court where guilt is established by plea of guilty or nolo contendere or by trial by the court sitting without a jury.

(d) As used in this section "great bodily injury" means "great bodily injury" as defined in Section 12022.7.

(e) This section shall apply in all cases, including those cases where the infliction of great bodily injury is an element of the offense.

(Added by Stats.1977, c. 1150, p. 3692, § 1. Amended by Stats.1980, c. 587, p. —, § 7.)

1980 Amendment. Designated former subd. (b)(ix) as subd. (b)(viii) and deleted former subd. (b)(viii), which read: "Rape by threat of great and immediate bodily harm, in violation of subdivision (3) of Section 261".

Library References

Criminal Law §982.4(1).
C.J.S. Criminal Law §§ 1571, 1618.

Index to Notes

In general 2
Validity 1

1. Validity

This section, which prohibits granting probation to anyone committing or attempting to commit certain enumerated crimes against person who is 60 years of age or older, or against person who is blind, a paraplegic, or a quadriplegic, did not violate equal protection clause by requiring some offenders to know that their victims were blind, paraplegic or quadriplegic and not requiring others to know

that their victims were elderly, since fact that two groups of offenders described in this section were not similarly situated with respect to legitimate purpose of law meant that they did not have to receive like treatment. *People v. Peace* (1980) 166 Cal.Rptr. 202, 107 C.A.3d 996.

2. In general

This section which prohibits grant of probation to one who inflicts great bodily injury while committing a robbery against person 60 years of age or older applies only to those defendants who personally inflict the great bodily injury and not to those who only aid and abet a robbery or other crime in which great bodily injury is inflicted on an elderly person. *People v. Brown* (1980) 167 Cal.Rptr. 557, 110 C.A.3d 24.

In prosecution for robbery, arising out of incident in which defendant allegedly inflicted great bodily injury upon 67-year-old female victim upon snatching her purse, trial court did not err in failing to state its reasons for imposing compulsory one-year enhancement of sentence because defendant had suffered prior conviction. *People v. Peace* (1980) 166 Cal.Rptr. 202, 107 C.A.3d 996.

Underline indicates changes or additions by amendment

E

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL HB 546

DATE February 7, 1983

SPONSOR WALDRON

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Exhibit F
HB 546
2/7/83

Amendments requested before the House Committee on the Judiciary:

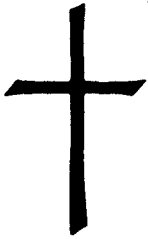
That HB 546, introduced bill, be amended as follows:

1. Page 2, line 16
After the word "its"
Strike: "design"
Insert: "maximum"
After the words "capacity of"
Strike: "545"
Insert "760"
2. Page 2, line 22
After the words "eligible for parole",
Strike: "180"
Insert: "120"
3. Page 2, after line 23
Insert new subsection: "[4] Regardless of length of sentence, if the conditions of parole eligibility are met within the initial 12 months of incarceration at Montana State Prison, the provisions of subsection [3] do not apply."
4. Page 2, after line 25
Insert new section: "Section 3. Automatic repealer. The provisions created in subsection [3] and [4] of 46-23-201 MCA and of this act shall automatically be repealed on July 1, 1985."

Exhibit G
HB 546
2/7/83

Montana Association of Churches

MONTANA RELIGIOUS LEGISLATIVE COALITION • P.O. Box 1708 • Helena, MT 59601



February 7, 1983

WORKING TOGETHER:

American Baptist Churches
of the Northwest

American Lutheran Church
Rocky Mountain District

Christian Church
(Disciples of Christ)
in Montana

Episcopal Church
Diocese of Montana

Lutheran Church
in America
Pacific Northwest Synod

Roman Catholic Diocese
of Great Falls

Roman Catholic Diocese
of Helena

United Church
of Christ
Montana Conference

United Presbyterian Church
Glacier Presbytery

United Methodist Church
Yellowstone Conference

United Presbyterian Church
Yellowstone Presbytery

MR. CHAIRMAN AND MEMBERS OF THE HOUSE JUDICIARY COMMITTEE:

I am Cathy Campbell of Helena, representing the Montana Association of Churches. I am speaking in support of HB 546.

The Montana Association of Churches supports individualized correctional programs which consider confinement as the least desired alternative, consistent with public safety and the offenders' needs.

We agree with the Montana Justice Project Corrections Report (1976) that no offender should be subjected to more custody and security than he or she needs. We agree that "the majority of offenders do not pose a substantial threat to society, and can be effectively dealt with in the community through diversified programs entailing supervision." (p. xv of Corrections Report).

We fear a mood which leads to "warehousing prisoners" at Montana State Prison.

HB 546 seems to address some of our concerns about the criminal justice system. I therefore ask your support of this bill.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL HOUSE BILL 524

DATE February 7, 1983

SPONSOR DARKO

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

or which a complaint was filed has not engaged in the discriminatory practice alleged in the complaint, it shall issue and cause to be served on the complainant an order dismissing the complaint.

History: En. 64-309 by Sec. 6, Ch. 283, L. 1974; amd. Sec. 7, Ch. 524, L. 1975; R.C.M. 1947, 64-309(3); amd. Sec. 11, Ch. 177, L. 1979.

49-2-508. Injunction to enforce commission order. If the commission's order is not obeyed, the commission staff shall petition the district court in the county where the discriminatory practice occurred or in which the respondent resides or transacts business to enforce the commission's order by injunction.

History: En. 64-310 by Sec. 7, Ch. 283, L. 1974; amd. Sec. 8, Ch. 524, L. 1975; R.C.M. 1947, 64-310.

Part 6

Penalties

49-2-601. Criminal penalty. A person, educational institution, or financial institution, either public or private, or a governmental entity or agency who or which willfully engages in an unlawful discriminatory practice prohibited by this chapter or willfully resists, prevents, impedes, or interferes with the commission, the department, or any of its authorized representatives in the performance of a duty under this chapter or who or which willfully violates an order of the commission or willfully violates this chapter in any other manner is guilty of a misdemeanor and is punishable by a fine of not more than \$500 or by imprisonment for not more than 6 months, or both.

History: En. 64-312 by Sec. 9, Ch. 283, L. 1974; amd. Sec. 10, Ch. 524, L. 1975; R.C.M. 1947, 64-312(3); amd. Sec. 12, Ch. 177, L. 1979.

CHAPTER 3

GOVERNMENTAL CODE OF FAIR PRACTICES

Part 1 — General Provisions

Section

- 49-3-101. Definitions.
- 49-3-102. What local governmental units affected.
- 49-3-103. Permitted distinctions.
- 49-3-104. Quotas not required.

Part 2 — Duties of Governmental Agencies and Officials

- 49-3-201. Employment of state and local government personnel.
- 49-3-202. Employment referrals and placement services.
- 49-3-203. Educational, counseling, and training programs.
- 49-3-204. Licensing.
- 49-3-205. Governmental services.
- 49-3-206. Distribution of governmental funds.
- 49-3-207. Nondiscrimination provision in all public contracts.
- 49-3-208. Public accommodations laws.

- 49-3-301. Cooperation with co
- 49-3-302. Annual reports to go
- 49-3-303. Remedies for indivi

49-3-101. Definitions
apply:

- (1) "State and local"
 - (a) all branches, dep
 - cies, university units, c
 - ment; and
 - (b) counties, cities, e
 - ernment and all instrum
- (2) "Qualifications"

competent performance
History: (1) En. 64-316 by S
Sec. 4, Ch. 487, L. 1975; amd.
64-316, 64-319(part); amd. Sec.

49-3-102. What l
mental units affected b
state, including school
History: En. 64-327 by Sec

49-3-103. Permit
hibit any public or priv
(1) from enforcing
handicap when based
necessary to the norma
ferentiation is based o
(2) from observing
fide employee benefit
which is not a subterf
no such employee ben
or
(3) from dischargi
cause.

History: En. 64-328 by S

49-3-104. Quota
strued as requiring th
of any sex, age, religio
ter.

History: En. 64-330 by S

Brown testimony

This bill redefines the "general election" held in even numbered years to include elections to vote on ballot issues that are required to be submitted to the voters, unless the law authorizing the ballot issue provides for the election to be held at an earlier date.

The reason for the bill is that in 1979 the definition of "general election" was changed. Prior to 1979 "general election" meant the statewide election held in even-numbered years. Since 1979, there is a "general election" for statewide & federal elections in even numbered years and a "general election" for local elections & political subdivisions in odd numbered years.

Art XIV Sec 8 requires that constitutional amendments be submitted to the people "at the next general election." Art III Sec 6 requires that referenda be referred to the people at the "general election." ~~the bill would~~ If this bill is enacted, both constitutional amendments & referenda will be submitted to the people in even-numbered years.

POSITION STATEMENT OF THE HUMAN RIGHTS COMMISSION IN SUPPORT OF ITS PROPOSED BILL TO ELIMINATE CRIMINAL PENALTIES FOR THE VIOLATION OF THE HUMAN RIGHTS ACT.

The Montana Human Rights Act was enacted in 1974 and contained Section 49-2-601, MCA, which established criminal penalties for willfully engaging in unlawful discriminatory practices, willfully resisting, preventing, impeding, or interfering with the Commission in the performance of its duties, and willfully violating an order of the Commission. The Commission is not aware of any instance where this provision has been used as the basis for a criminal prosecution since its enactment. In several instances, the Commission has had difficulty in obtaining voluntary cooperation from respondents in its investigations because of the fear of self-incrimination. The Commission believes that the enforcement of the Human Rights Act is properly a matter for civil, not criminal, jurisdiction and therefore recommends the repeal of Section 49-2-601, MCA.

VISITOR'S REGISTER

HOUSE JUDICIARY COMMITTEE

BILL House bill 516

DATE February 7, 1983

SPONSOR ADDY

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

WHEN TESTIFYING PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA TO AGGRESSIVELY PROMOTE THE DEVELOPMENT OF COMMUNITY BASED CORRECTIONS.

WHEREAS, the Constitution of the State of Montana states that laws for the punishment of crime shall be founded on the principle of prevention and reformation; and,

WHEREAS, a correctional program should be the least restrictive measure consistent with the offender's needs and public safety; and,

WHEREAS, the public is protected by a correctional system characterized by concern, diversified programs for individuals and reintegration concepts as well as punitive measures; and,

WHEREAS, community corrections is desirable in its economy and its humanity and the State supervises 2,434 probationers and parolees in the community now; and,

WHEREAS, Montana State Prison is currently the sole residential sentencing alternative available to the courts for male inmates; and,

WHEREAS, the Legislature recognizes its responsibility to provide opportunities for the rehabilitation, reformation, and training of inmates in order to reduce recidivism and produce productive members of society;

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Department of Institutions is urged to aggressively promote the further development of community-based corrections and pre-release centers.

BE IT FURTHER RESOLVED, that local governments are urged to cooperate and facilitate the development of community-based corrections, and that any pre-release center be zoned as if it were a residential facility and not an institution.

BE IT FURTHER RESOLVED, that concerned Montanans interested in community corrections, further recognize their responsibility to crime as a social issue which immediately impacts the community as a whole from both the local and state perspective.

PROPOSED AMENDMENTS TO HOUSE BILL 238 (introduced copy) - 1/26/83

- (1) Title, lines 4 through 9
Following: "ENTITLED"
Strike: Remainder of title in its entirety
Insert: "AN ACT TO REQUIRED CONTRACTORS TO PROVIDE NOTICE
OF LABOR AND MATERIAL LIEN LAWS TO A CONTRACTING
OWNER: AND PROVIDING A PENALTY."

- (2) Page 1, lines 2 through 24
Following: line 11
Strike: All of lines 12 through 24
Insert: "Section 1. Notice of potential lien liability.
(1) A contractor who enters into a contract
with a contracting owner to improve the owner's
land or any structure thereon, shall give a
written notice of potential lien liability to
the contracting owner on or before the date
of entering into the contract or the date of
commencing work, whichever is earlier. The
notice may be incorporated in the contract,
or personally served on the owner separately;
in either case, it shall be in at least 8-point
bold type, if printed, or all capital letters,
if typewritten.

It shall contain, at a minimum, a statement that
a subcontractor and supplier of material with
whom the owner has not directly contracted is
entitled to a lien if sums due that subcontractor
and supplies are not paid.

(2) A contractor convicted of failing to give
the notice required by this section shall be
fined not to exceed \$500 or be imprisoned
in the county jail for a term not to exceed
six months, or both."

HB238 4.

PROPOSED AMENDMENTS TO HOUSE BILL 238 (introduced copy) - 1/26/83

- (1) Title, lines 4 through 9
Following: "ENTITLED"
Strike: Remainder of title in its entirety
Insert: "AN ACT TO REQUIRE CERTAIN MERCHANTS TO PROVIDE
NOTICE OF MATERIALMEN'S LIENS OR WAIVER OF THOSE
LIENS TO OWNERS OF PRIVATE DWELLINGS AND REDUCTION
OF THE LIEN AMOUNT UPON FAILURE TO COMPLY."
- (2) Pages 1 through 2
Strike: rest of bill in its entirety following enacting
clause
Insert: "Section 1. Merchant must provide materialmen's
waiver or a notice. Failure to comply. (1) When
a merchant sells to an owner of a private dwelling
any materials, machinery or fixtures to which a
materialman's lien as provided in Title 70, Section
3, part 5 may attach, the merchant shall provide
the owner with a waiver by the appropriate
materialman, or with written notice in layman's
terms that the materialman may file a lien with
regard to the material, machinery or fixtures.

(2) For the purpose of this section: (a) "mer-
chant" means the person, or his employee or agent,
who sells the material, machinery or fixtures
directly to an owner; and (b) "owner of a private
dwelling" means the person who has legal title to
or who is acquiring legal title to a building in
which he resides and all facilities, fixtures,
and accessories appurtenant thereto."

(3) If a merchant fails to comply with this
section and a materialmen's lien under Title 71,
Chapter 3, part 5, properly attaches to the
owner's private dwelling, then that lien must be
decreased in the amount that payment for the
material, machinery, or fixtures was made to the
merchant.

*Blake disagree
Penalty on contract
not materialman*