

MONTANA STATE SENATE  
JUDICIARY COMMITTEE  
MINUTES OF THE MEETING

April 19, 1985

The sixty-fifth meeting of the Senate Judiciary Committee was called to order at 10:35 a.m. on April 19, 1985, by Chairman Joe Mazurek, in Room 325 of the Capitol Building.

ROLL CALL: All committee members were present, with the exception of Senators Daniels and Towe who were excused.

CONSIDERATION OF HJR 45: Representative Mary Ellen Connelly, sponsor of HJR 45, testified the reason for this resolution is early in the session she had a bill for a DUI task force and was trying to find some way to fund it. She found that the DUI fines were a mess. She felt we should have a study. The researcher suggested it should probably include forfeitures, and it should determine the methods of distribution of the money.

PROPOSERS: None.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HJR 45 was closed.

ACTION ON HJR 45: Senator Crippen moved HJR 45 be recommended BE CON-CURRED IN. The motion carried unanimously.

CONSIDERATION OF HJR 55: Representative Gary Spaeth, sponsor of this resolution, stated this is the resolution he promised the committee which deals with an interim study of the limits of governmental liability. He carried a bill this session that tightened up a potential loophole in the liability limits. The question that arose when he carried that bill grew out of the Karla White case two years ago. Limits of \$300,000 per injury and \$1 million per accident were established. In carrying his bill through this session, he made the commitment to the committee that if we were going to change those limits, we should do it in a calculated manner, because it affects local governments. On the other hand, you may have a person who suffered a catastrophic injury, and \$300,000 will

not cover the costs that person will sustain. Representative Spaeth felt the legislature should look at this issue without the auction-time manner in which we have been raising the limits. He believes it is a terribly important resolution, as there is a lot of money and a lot of pain and suffering involved here.

PROPOSERS: Karl Englund, representing the Montana Trial Lawyers Association, testified that in addition to what Representative Spaeth has said, he would add that SB 184, which has already been passed, reimposed a sunset provision on liability limits for the next session. This resolution would dovetail nicely with that. In light of increased medical care costs and actions against the state of Montana, this is an appropriate study. It has been ten years since the limits were imposed. This study resolution would give us an opportunity to not only raise the limits, but also provide a means for state and local governments to insure against these claims. This legislation would also force us to look at risk pooling.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HJR 55 was closed.

ACTION ON HJR 55: Senator Crippen moved HJR 55 be recommended BE CON-CURRED IN. The motion carried unanimously.

CONSIDERATION OF HJR 56: Representative Dennis Rehberg, sponsor of HJR 56, testified he hopes this resolution does not turn out to be an interim study. The reason for the resolution before the committee is the congressional delegation thought they needed a little extra help to get at least one Republican on the Ninth Circuit Court of Appeals. Representative Rehberg felt there are well-qualified Republicans who should sit on this court. He gave a little history about the court. Since it was created in 1956, there have only been two judges who have lived and worked out of Montana. Now you can live, reside, and work out of the state from which you are appointed. William Henry Hunt served on the court from 1911-28 and was appointed by President Taft, and Walter Linden Pope, who was appointed by President Truman. James R. Browning was appointed by President Kennedy and has served from 1961 to the present but does not reside in Montana. The nation is divided into 12 judicial districts. Montana is in the Ninth Circuit. The Ninth Circuit has the highest population and the largest geographical area. Every other state has at least one sitting judge except Montana. The Ninth

Circuit does not have a good reputation as far as the cases it hears and overturns. The United States Supreme Court reviewed 27 of the cases the Ninth Circuit ruled on last year and overturned 26 of them. Of the 23 sitting on the court now, 15 were appointed by President Carter, 4 were appointed by President Reagan, and the rest go back to Presidents Eisenhower and Kennedy and even further. Of the five new positions which have been opened on the court, two have been filled. This resolution asks that they appoint a Montanan to fill one of the remaining seats.

PROPOSERS: None.

OPPOSERS: None.

QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HJR 56 was closed.

ACTION ON HJR 56: Senator Blaylock moved HJR 56 be recommended BE CONCURRED IN. The motion carried unanimously.

CONSIDERATION OF HJR 44: Representative Cal Winslow, sponsor of HJR 44, testified this resolution calls for an interim study to look at the juvenile detention facilities in Montana, of which we have none. It was brought about by a court case recently in Oregon. The ruling was juveniles can no longer be placed in facilities that adults are in. Therefore, we can now only hold them in county jails. There are 52 counties in Montana, and their jails do not even meet standards. The resolution calls for looking at this situation and seeing which state agency would be best able to handle this. If the state does not have some plan in the near future to deal with juveniles, some of our federal money may be at risk. We have provided funding in Helena, but that is a temporary solution.

PROPOSERS: Steve Nelson, Montana Board of Crime Control, presented written testimony to the committee (Exhibit 1). He testified the nature and scope of the problem are changing, as well as the litigation and process. We are in a bit of a quandry right now, and we are at a point where we should be making some decisions. SB 268 will limit the number of juveniles held in jail. With this resolution, they would like to look at the entire problem and decide how we are going to deal with it. These issues need to be solved by the legislature, and the interim study will help the legislature do this next session.

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OPPONENTS: None.

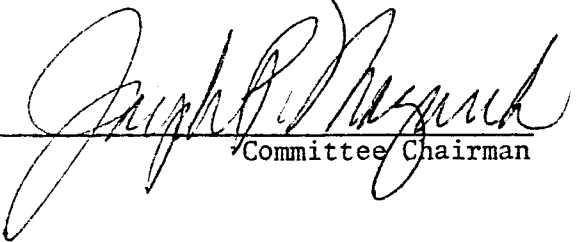
QUESTIONS FROM THE COMMITTEE: None.

CLOSING STATEMENT: None.

Hearing on HJR 44 was closed.

ACTION ON HJR 44: Senator Shaw moved HJR 44 be recommended BE CONCURRED IN. The motion carried unanimously.

There being no further business to come before the committee, the meeting was adjourned at 10:58 a.m.

  
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Committee Chairman

ROLL CALL

SENATE JUDICIARY

COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date 04/1985

NAME	PRESENT	ABSENT	EXCUSED --
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe			X
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels			X
Chairman Senator Joe Mazurek	X		

HJR-44 by Winslow

## STUDY OF JUVENILE DETENTION FACILITIES

## PROBLEM - JUVENILES CAN NO LONGER BE HELD IN ADULT JAILS

1. The Federal Juvenile Justice and Delinquency Prevention Act of 1984 mandates removal of all juveniles from adult jails.
2. An Oregon federal court case (D.B. vs. Tewksbury) condemned the practice of using adult jails for juveniles. The court found that the following conditions among others, imposed in preadjudication detention of juveniles are in violation of the due process clause: (a) failure to provide any form of work, exercise, education, recreation or recreational materials; (b) failure to provide adequate staff supervision to protect children from harming themselves and/or other children; and (c) failure to train staff to be able to meet the psychological needs of confined children.
3. National jail standards developed by the National Sheriff's Association, the American Corrections Association and the American Bar Association/Institute for Judicial Administrations call for the removal of juveniles from adult jails and the development of objective criteria for the use of secure detentions.
4. The United State Supreme Court Decision (Shall vs. Martin) in 1984 authorized the use of "Preventive Detention", but cautioned that the decision to detain a youth must be based on clearly stated, objective criteria.

## THE STATUS QUO IN MONTANA

1. County jails are the only secure facilities available to detain youth awaiting court action (preadjudicatory detention). Most of these facilities do not meet nationally accepted standards for adults, and are not prepared to meet the special needs of young people (see number 2 above).
2. Montana and Wyoming are the only states in the nation with no juvenile detention facilities. The cost of construction of a 10 bed facility would exceed \$1,000,000 and cost over \$120,000 to operate per year.
3. Montana does not have a sizable enough youth population to justify local government indebtedness for construction of detention facilities. The daily population of all youth in Montana jails regardless of length of time spent is less than 5. The recommended minimum size of a detention facility is 20.

4. Of the entire youth population in Montana jails only 15% are in jail more than 5 days. This 15% constitutes approximately 100 youths who spend in total approximately 1000 days in jail; This amount equals 80% of the total time spent in jail by all youths.
5. The number of youth detained in Montana has been declining for the past 5 years. A 56% decline occurred from 1977 to 1983, and the projected data for 1984 indicates another 50% reduction. This dramatic change makes it nearly impossible to determine the number of secure beds needed to meet the needs of Youth Courts.

#### YOUTH JUSTICE COUNCIL - BOARD OF CRIME CONTROL

During 1984 the Juvenile Detention Task Force of the Youth Justice Council met to determine solutions to the detention problem. An initial project was a survey of the Youth Courts to determine what detention criteria would be acceptable. The results of this survey were presented to the Montana Probation Officers Association and the Task Force adopted a model set of criteria which could be implemented by Youth Courts.

The Task Force, Youth Justice Council and Board of Crime Control endorsed 3 major recommendations for this legislative session.

1. Require Youth Courts to develop Detention Criteria (SB 268) Sent to the Governor.
2. Providing financial assistance to Youth Courts implementing the Council's criteria (HB 589). Tabled - House Appropriations.
3. Permit the detention of youth at state correctional facilities, (HB 667). Passed both houses.

#### Issues to be resolved:

1. Define "detention facility"
2. The role of state government
3. Determine who administer Juvenile Detention.  
    -Judicial Branch? Executive Branch?
4. Lisencing
5. What ancillary services must be available to remove youth from jails.

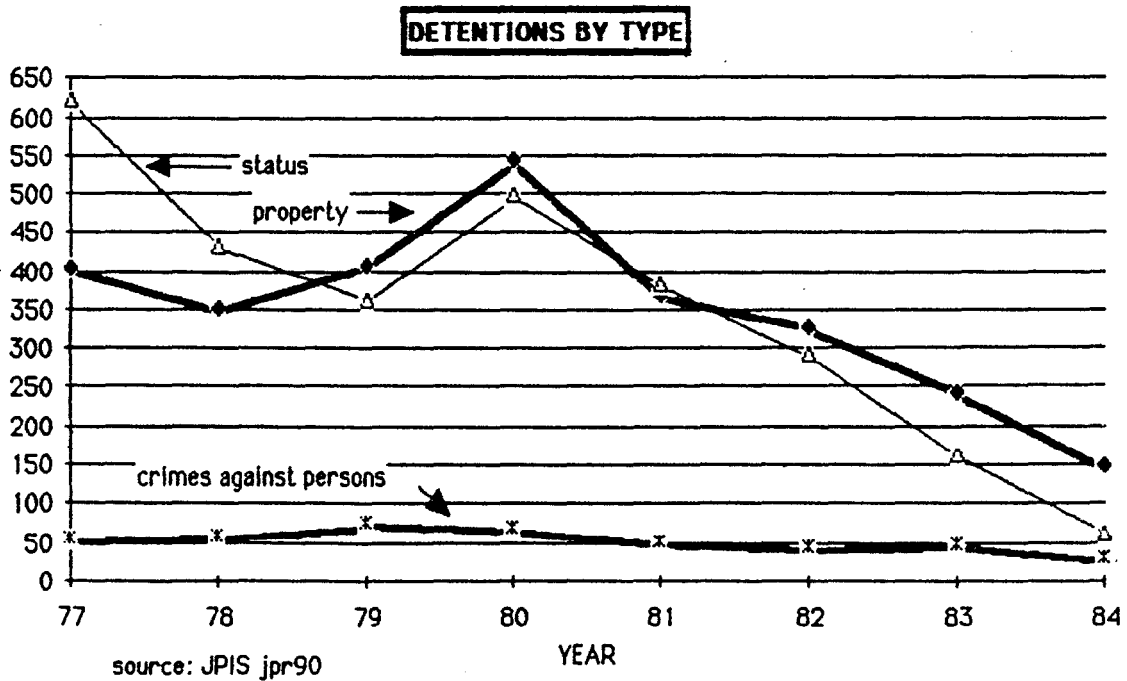
SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 04/19/85

BILL NO. HJR 44

# MULTIYEAR TREND REPORT IN JUVENILE DETENTIONS



SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

DATE 04/9/85

BILL NO. HJR 44

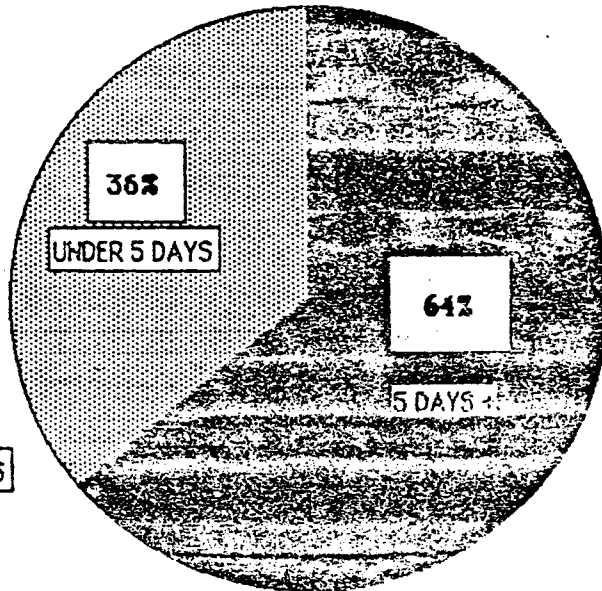
MONTANA BOARD OF CRIME CONTROL



# JPIS STATISTICS ON DETENTIONS--1984

## LONG TERM DETENTIONS IN 1984

263 YOUTH AMASSED  
THIS PERCENTAGE  
OF ALL TIME IN  
DETENTION IN 1984



70 YOUTH AMASSED THIS  
PERCENTAGE OF ALL  
TIME SPENT IN DETENTION  
IN 1984

AVERAGE STAY = 39 HRS

AVERAGE STAY= 261 HRS

source: jpis jpr77b

SENATE JUDICIARY COMMITTEE

EXHIBIT NO. 1

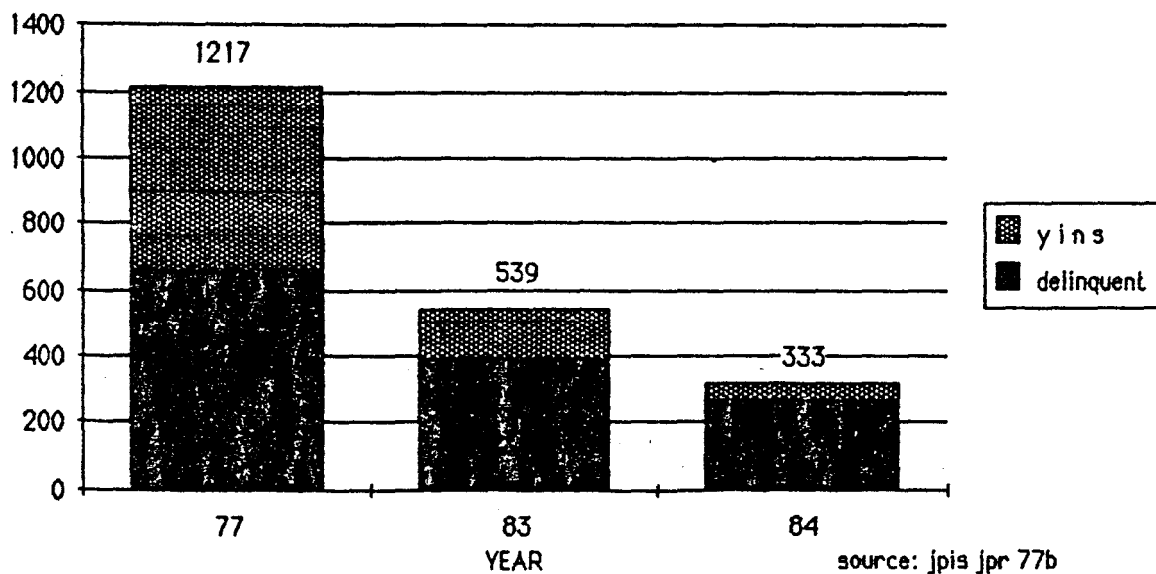
DATE 04/19/85

BILL NO. HJR 44

MONTANA BOARD OF CRIME CONTROL

# JPIS STATISTICS ON DETENTIONS--1984

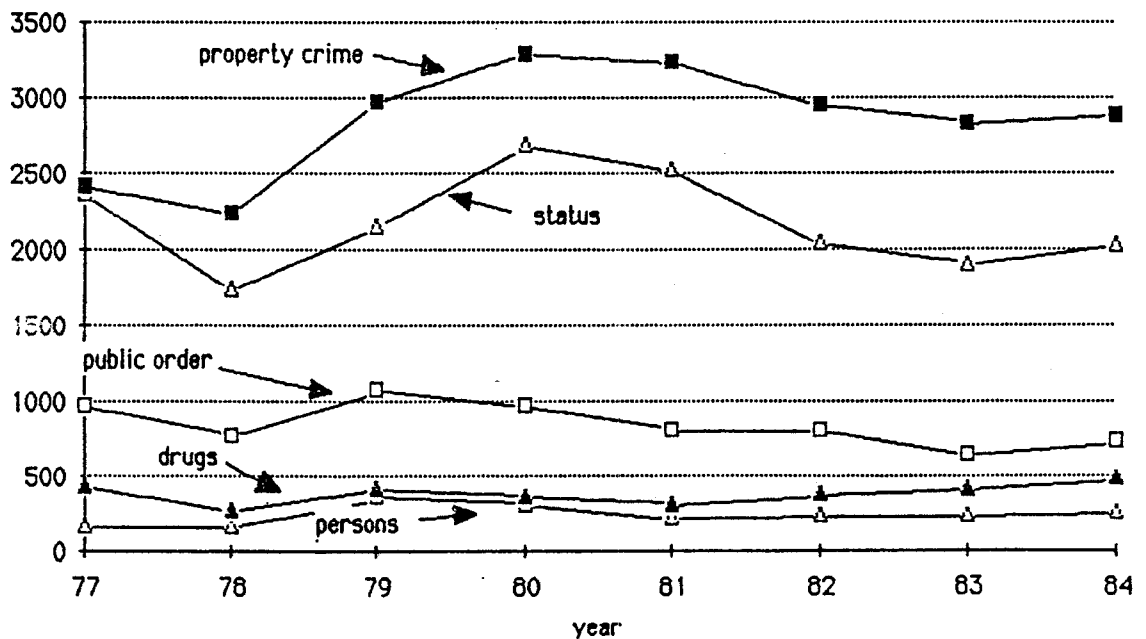
**TOTAL DETENTIONS BY YEAR**



SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 1  
DATE 04/19/85  
BILL NO. HJR 44

# MULTIYEAR TREND REPORT IN REFERRALS

## REFERRALS BY TYPE

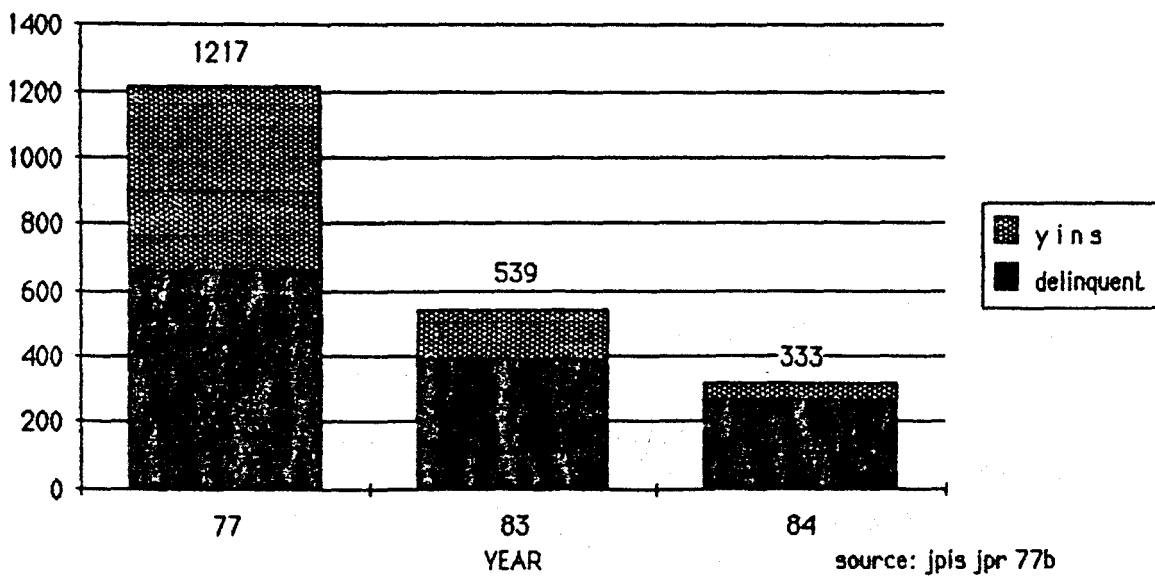


SENATE JUDICIARY COMMITTEE  
 EXHIBIT NO. 1  
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 BILL NO. HJR 44

MONTANA BOARD OF CRIME CONTROL

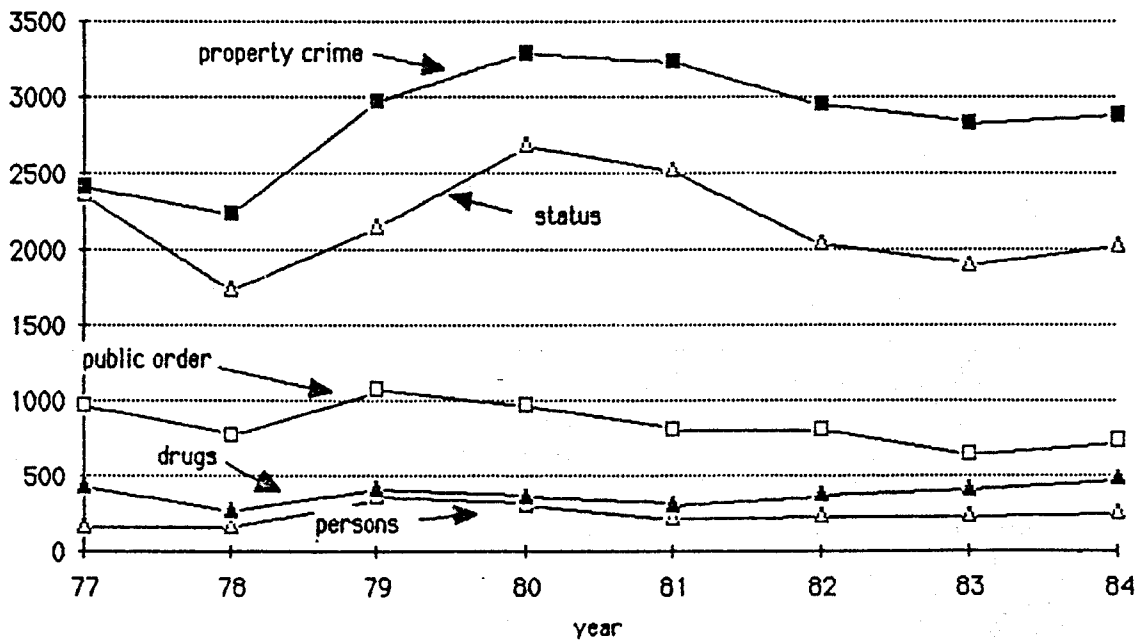
# JPIS STATISTICS ON DETENTIONS--1984

**TOTAL DETENTIONS BY YEAR**



# MULTIYEAR TREND REPORT IN REFERRALS

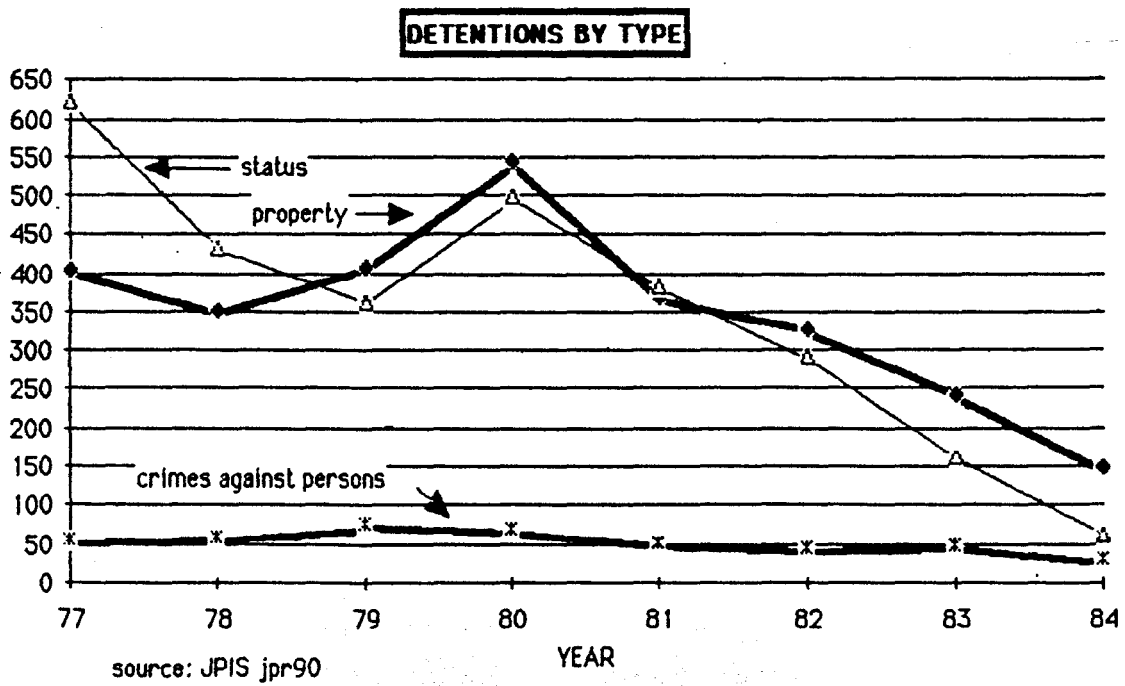
## REFERRALS BY TYPE



SENATE JUDICIARY COMMITTEE  
 EXHIBIT NO. 1  
 DATE 04/1985  
 BILL NO. HJR 44

MONTANA BOARD OF CRIME CONTROL

# MULTIYEAR TREND REPORT IN JUVENILE DETENTIONS



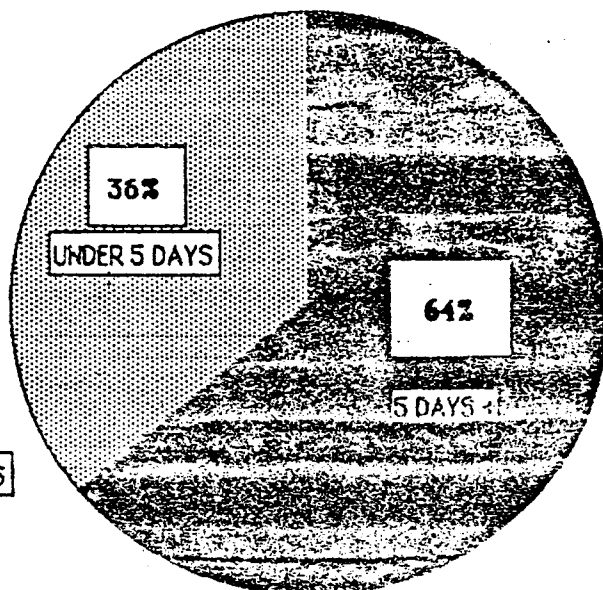
MONTANA BOARD OF CRIME CONTROL

SENATE JUDICIARY COMMITTEE  
 EXHIBIT NO. 1  
 DATE 04/9/85  
 BILL NO. HJR 44

# JPIS STATISTICS ON DETENTIONS--1984

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source: jpis jpr77b

SENATE JUDICIARY COMMITTEE  
EXHIBIT NO. 1  
DATE 04/19/85  
BILL NO. HJR 44

MONTANA BOARD OF CRIME CONTROL

# STANDING COMMITTEE REPORT

April 19

19 85

MR. PRESIDENT

JUDICIARY

We, your committee on

HOUSE JOINT RESOLUTION

having had under consideration

No. 44

third

reading copy (

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(Senator Pinsonneault)

INTERIM STUDY OF JUVENILE DETENTION FACILITIES IN MONTANA

HOUSE JOINT RESOLUTION

Respectfully report as follows: That

No. 44

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek

Chairman.



# STANDING COMMITTEE REPORT

April 19

19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE JOINT RESOLUTION No. 45

third reading copy ( blue )  
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(Senator Brown)

**INTERIM STUDY OF FINES, FORFEITURES, COSTS, AND FEES AND THEIR DISPOSITION.**

Respectfully report as follows: That HOUSE JOINT RESOLUTION No. 45

BE CONCURRED IN

~~HOUSE~~

~~HOUSE~~

Senator Joe Mazurek

Chairman.

# STANDING COMMITTEE REPORT

April 19

19 35

MR. PRESIDENT

## JUDICIARY

We, your committee on

## HOUSE JOINT RESOLUTION

55

having had under consideration

No.

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(Senator Mazurek)

## INTERIM STUDY OF GOVERNMENTAL LIABILITY LIMITS

## HOUSE JOINT RESOLUTION

55

Respectfully report as follows: That

No.

BE CONCURRED IN

~~XXXXXX~~

~~XXXXXXXXXX~~

Senator Joe Mazurek

Chairman.

# STANDING COMMITTEE REPORT

April 12 19 35

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE JOINT RESOLUTION No. 56

third reading copy ( blue )  
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(Senator Blaylock)

## RESOLUTION URGING APPOINTMENT OF WELL-QUALIFIED MONTANAN TO NINTH CIRCUIT

Respectfully report as follows: That HOUSE JOINT RESOLUTION No. 56

BE CONCURRED IN

~~DOXXXX~~

~~DOXXXXXX~~

  
Senator Joe Mazurek

Chairman.