

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Dave Brown, on March 3, 1989, at 8:00 a.m.

ROLL CALL

Members Present: All members were present with the following exception:

Members Excused: Rep. Fritz Daily

Members Absent: None.

Staff Present: Julie Emge, Secretary
John MacMaster, Legislative Council

Announcements/Discussion: None.

HEARING ON SENATE BILL 391

Presentation and Opening Statement by Sponsor:

Senator Al Bishop, Senate District 46 stated that SB 391 was recommended on behalf of the Criminal Justice and Corrections Advisory Council, appointed by Governor Schwinden to try to solve the overcrowding population of Montanas prison. This bill is very simple. Instead of having 3 members of the Board of Pardons appointed by the incoming governor, this bill will provide for staggered terms.

Testifying Proponents and Who They Represent:

Henry Burgess, Parole Board

Proponent Testimony:

Hank Burgess, a member of the Parole Board for 18 years voiced his strong support of SB 391. With the present statute, it could happen that when a new governor is elected into office he could, in effect, wipe out 3/4 of the working parole board. Presently, there is only one carry-over, who is appointed after 2 years into the governors term. This bill allows for two members to be appointed with the incoming governor, an additional member to be appointed one year later and the fourth member to be appointed two years later. Additionally, this allows for continuity, overlapping and for new members to get adjusted.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Stickney question Mr. Burgess as to the renewal of terms and how long a term runs for. Mr. Burgess stated that the terms are for four years each and are, in fact, renewable.

Closing by Sponsor: Rep. Bishop closed.

DISPOSITION OF SENATE BILL 391

Motion: A motion to BE CONCURED IN was made by Rep. Eudaily, motion seconded by Rep. Stickney.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken and CARRIED unanimously that SB 391 BE CONCURED IN.

HEARING ON SENATE BILL 120

Presentation and Opening Statement by Sponsor:

Senator Ethel Harding, Senate District 25 stated that SB 120 is a bill to allow the Department of Revenue access to birth information for child support actions. Presently, the Montana Law prohibits the Dept. of Health from divulging any information from birth records that would imply an out of wedlock birth. Sen. Harding commented that in recent years the Dept. of Revenue has to have the mother obtain copies of birth records from the Dept. of Health and then supply these copies to the Dept. of Revenue. This procedure has often resulted in lengthy delays in initiating child support action and has sometimes caused extreme inefficiency due to the limited cooperation of some of the mothers. Sen. Harding stated that in order to initiate child support actions, the Dept. of Revenue needs access to paternity affidavits in instances of out of wedlock births.

Testifying Proponents and Who They Represent:

None.

Proponent Testimony:

None.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Eudaily questioned Sen. Harding as to why the effective date had been stricken in the original bill? Sen. Harding responded that the Senate Judiciary Committee objected to the effective immediate date unless it is absolutely necessary.

Closing by Sponsor: Senator Harding closed.

DISPOSITION OF SENATE BILL 120

Motion: A motion was made by Rep. Mercer to BE CONCURED IN, motion seconded by Rep. Gould.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken on the motion that SB 120 BE CONCURED IN and CARRIED unanimously.

HEARING ON SENATE BILL 84

Presentation and Opening Statement by Sponsor:

Senator Vaughn, Senate District 1 stated that SB 84 is an act requiring a registration of sexual offenders by the Dept. of Institutions and local enforcement agencies. It provides that registration cannot be waived in imposing sentences requiring mandatory treatment for sexual offenders imprisoned in the State Prison and restricting employment of persons required to register.

Testifying Proponents and Who They Represent:

Steve Waldron, Executive Director Montana Mental Health Centers
Susan Sachsenmaier, Mental Health Forensic Consultant
Carolyn Clemens, Lewis and Clark Deputy County Attorney

Proponent Testimony:

Steve Waldron stated that the therapists who provide treatment to the sex offenders in the mental health center system support this bill as do the mental health centers. They see this bill as a step toward assuring protection for society as well as assuring that these offenders will be treated and

will have constraints put on them.

Susan Sachsenmaier presented before the Committee a written testimony voicing her support of SB 84 (EXHIBIT 1).

Carolyn Clemens commented that to her understanding about 20% of the population in the Montana State Prison is there because of sex offenses. Additionally, approximately 25% of the new admissions on a yearly basis are sex offenders in the Montana State Prison. As has been previously testified, the research in this area shows that most people that are apprehended for sex offenses have been there before. This is not the first time they have committed a sex offense. Mrs. Clemens stated that she is particularly supporting the requirement of treatment within the prison. She feels that it is important to require these people to go through the educational phase of treatment as it is not pleasant for sex offenders to go through and it is not something they would do on their own. Indications have been that unless people are subjected to treatment and forced to go through this program they will continue to offend time and time again. Mrs. Clemens continued that the more we can do to educate sex offenders the better the chance we have of saving the victims in the future.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: Rep. Eudaily expressed to Senator Vaughn that he is uncomfortable with Section 9 of the bill on the employment restrictions. What about dentists, doctors, nurses, counselors, business people, preschoolers, and university people employed who also deal with young people? Senator Vaughn stated that the reason Section 9 is shown the way it is is because of a separate bill that was drafted in regard to education employment. That particular bill strictly limited it to education and did not include other people or expand further. Sen. Vaughn commented that she would have no quarrel with amending Section 9 to include other people. Rep. Eudaily then suggested to Sen. Vaughn to eliminate Section 9 and leave the remainder of the bill the way it is. Sen. Vaughn stated that she would have some concerns if Section 9 was eliminated and would prefer to have it amended in some way to include those people that work with people and/or children or anyone who has been convicted of sexual offense to not be able to work with children during that time.

Rep. Eudaily continued by asking Sen. Vaughn what her definition of children is. Sen. Vaughn stated that when they were introducing the bill it was involving children under the age of 18 years.

Rep. Boharski also questioned Section 9 stating that it does not appear to fit in the rest of the bill. He inquired of Ms. Sachsenmaier if she saw any rationale for a ten year limit? Why not make it life? Ms. Sachsenmaier stated that it really ought to be life. As long as a person has the physical energy to get up and move around that person is susceptible to committing a sexual offense. In follow up programs with sexual offenders, the parole stipulations typically have identified the precursors to that persons crime and forbid the person from going anywhere near that type of situation. This means that a child molester is not allowed to go near play grounds or schools or anyplace where children frequent unless that person is supervised. Ms. Sachsenmaier stated that Section 9, as she understands it, is incorporating what knowledgeable parole officers consistently incorporate in after care plans.

Rep. Hannah questioned Ms. Sachsenmaier's testimony where she stated that 100% of sexual offenders were abused as children and asked if she had documentation of that information. Ms. Sachsenmaier stated that she could research those statistics and submit the information for the Committee's review.

Closing by Sponsor: Rep. Vaughn closed stating that this is something that we can't afford not to do and hopefully by requiring them to go through the educational phase, we might be able to get more of them helped. Rep. Vaughn submitted to the Committee a community letter in support of SB 84 (EXHIBIT 2), and made it known to the Committee that Rep. Dorothy Cody wished to testify on behalf of the bill but was unable to attend.

DISPOSITION OF SENATE BILL 84

Motion: A motion was made by Rep. Darko to BE CONCURED IN, motion seconded by Rep. Brooke.

Discussion: Rep. Eudaily expressed his concerns in regard to section 9. He stated that if it is so inclusive that it covers everybody then it is unfair to put it in a very restricted way as it now stands.

In response to Rep. Eudaily, Rep. Darko commented that when professional people loose their license they must appear before their board. She suggested to Rep. Eudaily that they could insert into Section 9 that a hearing before the Board of Public Education be entitled before their certificate was suspended. This way they would go through a hearing process

before it was automatically revoked.

Rep. Mercer stated that the whole concept is beyond the scope of the title of how this bill was originally introduced. It doesn't seem that it was intended at all to restrict employment directly. Rep. Mercer suggested that perhaps a better way to approach this would be to make this information available to anyone who is going to be hiring and let them make their own decision.

Amendments, Discussion, and Votes: Rep. Eudaily moved to amend section 9 out of the bill, motion seconded by Rep. Hannah. A vote was taken on the amendment and CARRIED with Rep. Darko voting No.

Rep. Gould moved to amend page 4, lines 2-6, strike "liability for non-compliance with", insert the convicted sexual offenders duty to register under. Motion seconded by Rep. Knapp and CARRIED unanimously.

Rep. Hannah motioned to amend page 2, line 1, 45-5-507, following incest statute, insert (unless the act occurred between two consenting persons 16 years of age or older). Motion seconded by Rep. Mercer and CARRIED unanimously.

Recommendation and Vote: No further action was taken on SB 84.

HEARING ON SENATE BILL 12

Presentation and Opening Statement by Sponsor:

Senator Mike Halligan, Senate District 29 in Missoula stated that the purpose of SB 12 is simply to allow the same medical legal panel to be used in a malpractice claim when a doctor or health care professional or the facility is sued.

Testifying Proponents and Who They Represent:

Sheila Stearns, University of Montana

Proponent Testimony:

Sheila Stearns, voicing support of SB 12 stated that she was speaking on behalf of Dr. Robert Curry, Director of the University of Montana Health Service. The University clearly supports this bill and believes it simply extends to all college and university health operations the same intervening layer of protection from frivolous malpractice suits that is already extended to the rest of the medical community.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: None.

Closing by Sponsor: Sen. Halligan commented that the fees that will be required to pay as every doctor and health care facility and currently paying are already anticipated by the students and by the health care facilities. There are fees that are levied to operate the panel and they have already been considered by Dr. Curry at the infirmary.

DISPOSITION OF SENATE BILL 12

Motion: A motion was made by Rep. Eudaily to BE CONCURED IN, motion seconded by Rep. Gould.

Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken and CARRIED unanimously that SB 12 BE CONCURED IN.

HEARING ON SENATE BILL 135

Presentation and Opening Statement by Sponsor:

Senator Mike Halligan stated that when a person files bankruptcy they must go to a federal court. The intent of the exemption committee and lien law is to balance the federal changes other states around us, as far as the exemptions go, and make it a \$3,000.00 plan for implements, professional books and tools. Sen. Halligan stated that the purpose of SB 135 is to make clear what the committee intended to do and add the word "aggregate".

Testifying Proponents and Who They Represent:

Bob Pyfer, Vice President, Montana Credit Unions League

Proponent Testimony:

Bob Pyfer stated to the committee that he was involved in the interim committee and voiced his support of SB 135.

Testifying Opponents and Who They Represent:

None.

Opponent Testimony:

None.

Questions From Committee Members: None.

Closing by Sponsor: Sen. Halligan closed.

DISPOSITION OF SENATE BILL 135

Motion: A motion by Rep. Gould was made that SB 135 BE CONCURED
IN, motion seconded by Rep. Eudaily.

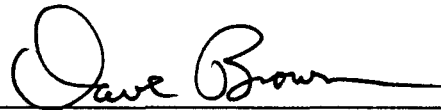
Discussion: None.

Amendments, Discussion, and Votes: None.

Recommendation and Vote: A vote was taken and CARRIED
unanimously that SB 135 BE CONCURED IN.

ADJOURNMENT

Adjournment At: 9:35 a.m.



REP. DAVE BROWN, Chairman

DB/je

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DAILY ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date MARCH 3, 1989

NAME	PRESENT	ABSENT	EXCUSED
REP. KELLY ADDY, VICE-CHAIRMAN			X
REP. OLE AAFEDT	X		
REP. WILLIAM BOHARSKI	X		
REP. VIVIAN BROOKE	X		
REP. FRITZ DAILY			X
REP. PAULA DARKO	X		
REP. RALPH EUDAILY	X		
REP. BUDD GOULD	X		
REP. TOM HANNAH	X		
REP. ROGER KNAPP	X		
REP. MARY McDONOUGH	X		
REP. JOHN MERCER	X		
REP. LINDA NELSON	X		
REP. JIM RICE	X		
REP. JESSICA STICKNEY	X		
REP. BILL STRIZICH	X		
REP. DIANA WYATT	X		
REP. DAVE BROWN, CHAIRMAN	X		

STANDING COMMITTEE REPORT

March 3, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 391 (REFERENCE copy -- blue) be concurred in .

Signed: 
Dave Brown, Chairman

[REP. THOFT WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 3, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 120 (REFERENCE copy -- blue) be concurred in .

Signed: [Signature]
Dave Brown, Chairman

[REP. BOHARSKI WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 3, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 12 (REFERENCE copy -- blue) be concurred in .

Signed: _____
Dave Brown, Chairman

[REP. BROOKE WILL CARRY THIS BILL ON THE HOUSE FLOOR]

STANDING COMMITTEE REPORT

March 3, 1989

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
SENATE BILL 135 (REFERENCE copy -- blue) be concurred in .

Signed: 
Dave Brown, Chairman

[REP. MERCER WILL CARRY THIS BILL ON THE HOUSE FLOOR]

EXHIBIT 1

DATE 3-3-89

~~HB~~ SB 84

DATE: March 3, 1989

TO: Members of the Legislature

RE: Senate Bill 84

FROM: Susan J. Sachsenmaier, doctoral candidate in Clinical Psychology, Forensic consultant in mental health

I work as a psychologist on the Forensic units at Montana State Hospital. The greatest part of my workload is the evaluation of persons committed for an examination pursuant to criminal charges. Approximately 40% of those I and my colleagues evaluate are charged with a sexual crime or crimes, ranging from non-forceful child molestation to rape, murder and mutilation. I also provide expert witness testimony throughout the state relevant to the disposition of criminal charges of those defendants whom I have evaluated.

Although the number of consistencies from one sex offender to another is debated by experts in the field, there are a few traits attributable to sex offenders upon which consensus in the field has been reached. One trait which can be assumed to apply in general to any sex offender is that the person is psychologically globally disordered; that is, the person is not "mostly healthy with just a little problem in sexual behavior." The sexual offender needs treatment and education consisting minimally of training in socialization skills, training in appropriate sex role expectations, treatment for past sexual victimization and/or other trauma, training in empathy for others, anger control skills, relaxation skills and self-esteem building. Of course there is no guarantee that anyone completing treatment of this type will not reoffend. Recidivism in this population is higher than in any other segment of the criminal population, which is why I say that the treatment and education which Senate Bill 84 requires is minimal.

Research by foremost experts in the field of evaluation and treatment of sex offenders now spans about a 40 year period. A review of research reporting treatment results shows that for over 60% of dangerous sex offenders, a total treatment effort including those components outlined in the above paragraph and adding postrelease supportive care (contact with legal and mental health systems), has a profound effect on their lives and successful adoption of a healthier sexual lifestyle. I must emphasize the importance of longterm treatment: a sex offender is never considered "cured"; rather, successful treatment and follow-up by community officials results in the sex offender developing and maintaining control of his or her dangerous behavior, much as an alcoholic must learn to control his or her behavior, but is never considered "cured" of the disease.

EXHIBIT 1

DATE 3-3-89

~~HR~~ SB 84

About 20-25% of sex offenders respond to a total treatment and follow-up effort with a modest effect--their dangerousness is reduced, but overall they retain a maladaptive lifestyle. Treatment for the remaining 15% appears to have no effect at all on the reduction of dangerous sexual behavior.

A second trait which experts in the field agree applies in general to any sex offender is that he or she lacks strong internal controls and has a much higher chance of functioning within the law if society demonstrates its concern by establishing strong external controls. I believe registration of convicted sex offenders with local law enforcement agencies offers some degree of external control to those who have demonstrated their own lack of internal control. I believe notification of officials within 14 days of change of address is too loose, however, and recommend that it be tightened to a period of 7 days.

Research has shown that legal sanctions do serve as deterrents to sexual offense recidivism. Although it is true that society may never be successful at totally eliminating criminal behavior, we as responsible citizens must nevertheless continue to strive to protect innocent victims from malevolent perpetrators. I have many times interviewed sex offenders who had initially been given a deferred prosecution for their sex crimes with the stipulation that they obtain treatment and remain in contact with legal officials. Often, these people do well up until the final month or two of the deferment period, and then do something which revokes the deferment and again involves law enforcement officials. Many sex offenders know that they have serious problems controlling their own sexual urges and knowingly or unknowingly seek to remain under the supervision of the legal system.

Research conducted on the etiology of sexually assaultive behavior has shown that 100% of sexual offenders have been sexually offended against. This is not to say that everyone who is sexually abused becomes a sex offender, but the experience of sexual victimization, especially for males, greatly increases the probability that the abused person will become an abuser. By far, the vast majority of sexually victimized girls and boys never report the abuse due to familial and societal sanctions. Later in life, when many of these same people become sex offenders, they are unlikely to be arrested. Research shows that for every sex offense that comes to the attention of legal authorities, that person has probably committed up to 100 unknown-of sexual crimes. In the rare instance that a person is arrested, it is currently extremely unlikely that that person will receive treatment or spend a significant amount of time incarcerated. Thus, the sex offenses continue and the cycle goes on and on and on.

When sex offenders are paroled from correctional institutions or given deferred prosecutions, a sound legal contract is typically prepared which explicitly forbids the sex offender to go near any place or any people which have been identified as precursors to that person's dangerous sexual behavior. For example, a child molester is not allowed to go near schools or playgrounds or to take a job which puts him in contact with children. A rapist is not allowed to drive alone after dark and must document every mile he puts on his vehicle. Any type of sex offender is prohibited from using alcoholic beverages and illegal street drugs, as these substances significantly decrease self-control and distort judgement.

The estimated \$100,000 per year price tag on this bill seems minimal when compared to the potential savings which will result from the state making fewer arrests, prosecuting fewer sex offenders, and compensating and treating fewer victims due to the fact that most criminals, especially sex offenders, tend to act out less when they are under scrutiny by the law. It appears obvious to me that the people arguing against this bill lack insight into the exorbitant social costs imposed by violence, especially sexual violence. Research has shown that 85% to 95% of hospitalized psychiatric patients are victims of violence, a vast percentage of this being sexual. It seems that society cannot keep its head in the sand much longer regarding the rampant incidence of sexual and physical abuse which is directly related to both crime rate and psychiatric disorder. Also, if this bill prevented just one sex crime per year, it would be worth it. Who among us can ethically and morally put a price on human life?

Senate Bill 84 is a good bill. It appropriately addresses many of the issues relevant to the beginning control of sexual crimes against innocent others. The government's financial resources are much better spent in the prevention of sexual victimization than in supporting the enormous costs of treatment of the victim and the victim's family, & trying, convicting and incarcerating the criminal.

Over and over again, it has been demonstrated that when society begins to take responsibility for destructive behavior by enacting laws against it, individuals perceive that they are being given a clear message and also begin to take responsibility for their behavior. The laws against domestic abuse are one example. As legislators duly elected by the people of Montana, I believe you have the responsibility to give a clear message to sex offenders that society will no longer silently stand by; rather, we will do everything in our power to stop sexual crimes.

VOTE FOR SENATE BILL 84.

EXHIBIT 2
DATE 3-3-89
~~HB~~ SB 84

P.O. Box 599
Troy, MT 59935
January 15, 1989

Senator Eleanor Vaughn
Capitol Station #130
Helena, MT 59620

Dear Senator Vaughn.

We would like to express our very strong support of Senate Bill #84. Young Ryan Van Luchen was brutally murdered by a man who had been previously convicted of sexually assaulting 2 young boys in the same area Ryan's body was found in. We feel that if the provisions in this bill had been law, perhaps this terrible tragedy would have been avoided.

We also support any other legislation that would assist in the protection of our children (and punishment of those who harm them) such as the other bill now proposed that would allow for the death penalty in cases where death resulted during a sexual assault.

Thank you so much for your hard work in presenting this legislation. We greatly appreciate it, and appreciate your efforts in keeping us informed of what is happening in our State Legislature.

Jane L. Bain
JANE L. BAIN

Doris M. Davis
DORIS M. DAVIS

Velva Shaver
VELVA SHAVER

Earl F. Bain
EARL F. BAIN

Linda J. Meyer

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. SENATE BILL 391 DATE MARCH 3, 1989

SPONSOR SEN. BISHOP

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Henry Burgass	Board of Pardons	<input checked="" type="checkbox"/>	<input type="checkbox"/>

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SENATE BILL 84

DATE MARCH 3, 1989

SPONSOR SEN. VAUGHN

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Susan J. Sachsenmaier	self	X	
Carolyn Clum	L&O Co. Atty	X	
Steve Walker	Ment Health Ctr	X	

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

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY COMMITTEE

BILL NO. SENATE BILL 12

DATE March 3, 1989

SPONSOR SEN. HALLIGAN

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Sheila STEARNS	Univ of MT	✓	
<i>Jean Anderson</i>	<i>pt. Med Assn.</i>	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

VISITORS' REGISTER

JUDICIARY

COMMITTEE

BILL NO. SENATE BILL 135

DATE March 3, 1989

SPONSOR SEN. HALLIGAN

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
Bob Pyfer	MT Credit Unions League	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.