

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON EDUCATION

Call to Order: By Senator Chet Blaylock on January 23, 1991, at 1:00 P.M.

ROLL CALL

Members Present:

Chet Blaylock, Chairman (D)
Harry Fritz, Vice Chairman (D)
Robert Brown (R)
Bill Farrell (R)
H.W. Hammond (R)
Dennis Nathe (R)
Dick Pinsoneault (D)
Mignon Waterman (D)
Bill Yellowtail (D)

Members Excused: None

Staff Present: Eddy McClure (Legislative Council).

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

Announcements/Discussion: Senator Blaylock reminded all those who wished to testify to fill out the witness statement.

HEARING ON SENATE BILL 84

Presentation and Opening Statement by Sponsor:

Senator Judy Jacobson, Senate District 36, stated she wished to approach this with the attitude of whether or not corporal punishment is needed in the schools any longer. Physical abuse is banned in prisons, psychiatric hospitals and military schools, and many parents feel a method of "time out" is more effective than physical means. She stated that there are very few places where inflicting pain is an acceptable disciplinary method. According to Sen. Jacobson, schools in Montana stand out as an example, an exception she would hope the committee would choose to eliminate. Virtually every state permits teachers to use force to protect themselves or restrain a violent child whose behavior is a threat to the teacher, to other children or to themselves. This bill permits it. She stated she does not believe corporal punishment is effective. Years of

research by the National Parent Teacher Association has led them to conclude that instead of curbing violence, corporal punishment teaches children to use violence to solve problems. At best, such discipline depresses such behavior temporarily; however, in the long term it may increase it. Corporal punishment lets students "off the hook" by not requiring them to take responsibility for their actions. It does not teach students how to judge between right and wrong behavior, and has a negative effect on students' ability to learn or concentrate by humiliating them and providing no motive to learn. A clearly laid out disciplinary plan at the beginning of an academic year which students can understand and respect and agree to abide by would be a far more positive approach. If pre-school children can understand "time out" and its rules and consequences, surely school age children can understand school rules and their consequences. Ms. Jacobson believes that the most effective discipline in all areas of human interaction is rooted in fairness, in justice and concern for individual rights.

Proponents' Testimony:

ELLEN BOURGEAU, Legislative Coordinator for the Montana Congress of Parents and Teachers, stated she welcomed the opportunity to address this Committee on behalf of the PTA which is the largest child's advocacy organization in the state, and whose parent organization is the largest child's advocacy group in the nation. She read and presented copies of her testimony to Committee members (Exhibit #1). Ms. Bourgeau urged passage of SB 84.

KAY MCKENNA, representing the County School Superintendents, stated that group is in support of SB 84. As a teacher and an administrator for several years, she knows of no instance where slapping or hitting a child had an effect on inappropriate behavior of children. She advised she has some concerns regarding the bill, one of which regards the definition of corporal punishment (page 2). She feels the definition should be more specific regarding such things as hitting, spanking, paddling. It is her belief many teachers heartily disagree with any kind of corporal punishment, but she is speaking of hitting and spanking situations. Her other concern comes on page 3, which addresses the situation where teachers are in charge because the school may not have an administrator. She wished the wording to be modified to "the teacher shall notify the trustees and the County Superintendent" and the same wording to be included in line 15. She concluded by stating the County Superintendents would support any bill that would oppose corporal punishment.

PHIL CAMPBELL, representing the Montana Education Association, advised that this group supports SB 84. They believe it is good public policy for the state to have a law which dictates that physical pain not be intentionally inflicted on students. As an organization they are concerned about how

teachers and other employees are affected by this bill, but he believes there are other ways of disciplining students. He added that he believes the bill is drafted in such a way that it addresses the concern expressed by Ms. McKenna. The bill states that the use of physical restraint may not be construed as corporal punishment, and he feels the language of the bill will take care of that concern. The bill has been carefully reviewed because of the impact it will have on their teacher members across the state, and he believes the bill will meet the test that allows reasonable physical restraint to happen while at the same time a law will be in effect to prohibit intentional infliction of pain. He noted that the fines are also changed. He believes the bill was drafted to allow the kind of discipline that is necessary, and he urged support of SB 84.

JUDITH CARLSON, representing the Montana Chapter of National Association of Social Workers, stated that their chapter strongly endorses SB 84, and urged it to be passed into law. She stated that 90% of corporal punishment is inflicted by only 5% of educators. Social workers are involved in the investigation of abuse and neglect of their children by parents; other social workers are involved in the treatment of children who have been victims of abuse. They see that corporal punishment can inflict harm on the child, both physical and mental. She reiterated their support of SB 84. (Exhibit #2)

JIM SMITH, Montana Residential Child Care Association, stated he wished to express that group's strong support of this bill. He advised that their understanding of the distinction between corporal punishment and physical restraint is identical to the description by Mr. Campbell, and it is the distinction that professionals in Residential Child Care facilities must maintain and use in their treatment and care of children who are placed in that type care.

ALAN NICHOLSON stated he is a parent and member of the State Board of Public Education but is not testifying on behalf of the Board as the Board does not take a position. He stated he is in favor of the bill, and against corporal punishment. He believes that in some cases it might work, but the cost of its working is too much to pay as it teaches children to comply to arbitrary authority and to perceive the veil of threat as an appropriate measure to change behavior. He stated he hopes the committee does not kill the bill again.

DEBRA KEHR, vice-chairman of the Helena School Board, advised that she is representing that Board. She informed that in later testimony the committee would learn that the Montana School Boards Association opposes this bill. However, she indicated that opposition is far from unanimous among the membership. The Helena School Board feels that if it is necessary to strike a child to maintain control in a school, then the school is already out of control.

PAULETTE KOHMAN, Executive Director, Montana Council for Maternal and Child Health, advised that their Council is made up of health professionals. She advised that they are in support of SB 84 and wished to resist the corporal punishment of children in school. She pointed out that all nations have outlawed corporal punishment but three - South Africa, the Australian outback, and the United States. In regard to the drafting of the bill, she suggested that on line 19, page 3, the words "corporal punishment or" be inserted before "more physical restraint". She provided additional testimony in written form which she presented to the committee (Exhibit #3).

GAIL GRAY, representing the Office of Public Instruction, stated she wished to voice support of SB 84. She advised that corporal punishment of children interferes with the process of learning and the optimal development of socially responsible adults. She feels it is important for those concerned with the emotional and physical health of children and youth to support the adoption of alternative methods for control and responsible behavior development in children and adolescents. Corporal punishment is counter productive; interferes with the learning environment, and teaches children that hitting is an acceptable way to solve problems. The Superintendent of the Office of Public Instruction urges support of SB 84. She indicated they would work with educators across the state in the development of alternatives to corporal punishment.

JUDY GARRITY, representing Montana Children's Alliance, stated that their group is in strong support of abolishing corporal punishment in the schools and has included this issue in the 1991 Children's Agenda. The Agenda has in turn been supported by 47 other organizations, so there is wide support for this bill. She stated that in recent years information is available that substantiates that corporal punishment is not only ineffective but is counter productive. She informed that corporal punishment occurs more frequently in the primary and intermediate levels. Boys are also hit more frequently than girls, which socializes them to be more physically aggressive than females. Poor white children and minority children are four to five times more frequently hit than middle and upper class white children, which underscores the message that those who are in power positions have the right to physically abuse those who are not. There is evidence that corporal punishment breeds resentment and vindictiveness and is the cause of school vandalism. She stated we need to raise children to be healthy, caring and thinking individuals so they can take their places as productive and law abiding citizens tomorrow. She concluded by urging the abolishment of corporal punishment in Montana.

BRUCE MOORE, representing the Montana School Boards Association, stated he wished to stress they do not have a position opposed to this bill, nor do they have a formal resolution coming from their organization supporting this bill. He stated they were glad of the clarification on the use of

restraint. He stated it is also important to recognize that teachers and trustees in the state of Montana are doing a good job of educating youngsters in the state of Montana. The Association would not want this bill construed as being an answer to a serious problem, since they do not believe a serious problem exists.

CYNTHIA BUEHL stated she is representing herself as a concerned citizen, and she is also a member of the Montana Association of School Psychologists, an organization which has taken a stand against corporal punishment in the schools. She stated when she spoke before this Committee two years ago, much of her testimony was directed towards presenting evidence about the problems and solutions concerning corporal punishment. She stated there is evidence that various forms of corporal punishment are harmful to children, ultimately do not work, and have no place in our schools. However, the use of corporal punishment has continued in our schools, which shocks some Montanans while others are all too familiar with the practice. Much of the corporal punishment used in the schools is more the legally permitted penalty administered by the principal in front of a witness. While this is preferable to corporal punishment administered in anger, it still poses problems. Among these problems is corporal punishment is not a blind justice. Research very clearly shows that it notes racial, social and gender differences. There is a disproportionate number of minority boys who receive corporal punishment. Children in crises are especially vulnerable to the negative effects of corporal punishment. Institutional abuse by compounding the abuse they are experiencing in their environment is enough to push some children over the edge into hopelessness and helplessness, perhaps becoming suicidal or rebellious. These same high risk children because they often misbehave in school, are the most likely to receive that corporal punishment. A further problem is that by allowing any form of corporal punishment in our schools, we give a message that it is an acceptable practice. Some individuals interpret this as a green light for their own use of corporal punishment. She gave examples of such use, including "blood runs" wherein the members of the losing team are required to run a certain number of laps up and down the gym, which is relatively easy for some but torturous for others. She stated that educators, as experts in child development, have a role in setting an example. They have an obligation to encourage the most effective advancements in child management. However, educators are as human as any segment and some need the impetus of a law such as proposed by this bill to abolish corporal punishment. She stressed that many good alternatives are available. In classrooms where there is an atmosphere of mutual respect, the effectiveness of teachers and students is at a maximum, thus reducing the need for corporal punishment. She concluded by stating that corporal punishment is harmful and has no place in our schools. She urged support of the bill.

ANN GILKEY, representing the Department of Family Services, advised that the Department strongly supports SB and the prohibition of corporal punishment of any pupil by a person employed by a school district. She read and furnished written testimony to the committee (Exhibit #4).

SCOTT CRICHTON, Director of the American Civil Liberties of Montana, stated they support SB 84. He furnished written testimony setting forth three basic reasons why they support this bill. Copies of the testimony were furnished to the committee members (Exhibit #5).

TERESA REARDON, representing the Montana Federation of Teachers, stated they feel it is an important bill which will protect both the teacher and the student. She urged support of SB 84.

EILEEN MORGAN, School Psychologist working in Helena, stated she is appearing on behalf of the Montana Association of School Psychologists. She related examples of how violence that is modeled can have impact on more students than just the one who has been disciplined physically. In many cases students who lost interest in going to school were found to have a fear of going to school because of witnessing physical discipline. She stated there is little research to say that physical discipline has positive effects. She encouraged the committee to support SB 84.

Opponents' Testimony:

ROBERT AUMAUGHER, Superintendent, Evergreen School District, Kalispell, stated that he believed everyone in attendance at this hearing was an advocate of kids. He stated that he believed those who speak in opposition to the bill care about students, and have dedicated their lives to helping youngsters. To provide quality education today quality teachers are needed, and this is a concern of his. He sees very little resemblance of education today as compared to 1966. He sees declining student effort, declining discipline, and a lack of parenting skills throughout his school district. It is his belief that things are getting worse in the area of student conduct and attitude. Few events concern an educator more than being prosecuted for action on their part. According to Mr. Aumaugher, SB 84 is not just a "spanking" bill. He stated in Evergreen School District, they do not spank children, nor do they hit children and do not plan to do so in the future. Anyone in their school district who does will face possible termination. He stated he wished to echo the same concerns as noted earlier. He stated approximately 85% of parents would support a teacher's action of intervening, but he is concerned about the small minority of parents who have axes to grind. He related a personal incident wherein he took a student by the arm and made him go to the end of the line since he was poking another child in the lunch line. He said he is gravely

concerned about what can be defined as infliction of pain. He reiterated that spanking or striking children is not an issue, but protection of teachers for doing what they deem to be necessary at times is of concern. He stated he hopes this committee would consider these points very carefully before adopting the legislation as written. He furnished copies to the committee of a letter from the Evergreen Education Association (Exhibit #6).

BERNARD ROSLING, Superintendent, Somers Public Schools, advised that he was recently standing in a hallway disciplining a child. A child in the sixth grade came at him, and a counselor coming down the hall stopped the child from hitting him. The question his staff has regarding SB 84 is determination of the term "reasonable and necessary". His staff of 25 teachers are very concerned about the wording. He submitted written testimony setting forth their position and concerns (Exhibit #7).

BOB SMITH, Elementary Principal at Columbia Falls, stated that he is not opposed to the abolishment of corporal punishment. He stated in his experience as a principal he is convinced they can operate well without it. However, he is concerned about the wording of the bill and what it does to the staff members who work day after day with children who are harder than usual to handle. He related an incident where a child decided he would not spend any time talking to the principal in his office, and Mr. Smith stopped him and sat him back down. His parents were upset with the principal for doing that. He believes SB 84 would leave situations like that wide open for legal ramifications. He stated he believes there are already laws to prevent slamming children against walls or similar physical action. He added he would like a little more time spent at the School Board level across Montana discussing this bill.

Questions From the Committee:

Senator Pinsoneault asked where the word "willful" came from. Mr. Campbell stated it came from a model draft of state law. He stated he questioned the wording at one time and wondered why it was not "intentional".

Senator Pinsoneault stated that the criminal code uses "purposely" and "knowingly", and those are defined in the criminal statutes. He stated he would not support this bill as it is written, but with some modifications he possibly could. He added he would be happy to work on the wording.

Senator Brown noted that the proponents suggested that corporal punishments does not solve problems but leads to psychological problems. He asked if the "blood run" would be in violation of the bill as it reads today. Ms. Morgan stated the point she was making in her testimony where she referred to the "blood run" was that as the law stands corporal punishment is legal in our schools, which gives some people a sense that it is

okay to inflict corporal punishment.

Senator Brown stated he believes they need some specific examples to show the need for this legislation. He wondered if anyone at the hearing had examples that could be illustrated. Sen. Jacobson stated that most of the examples that were used two years ago were clearly against the law as it presently stands on the books. What is being suggested is that there are better methods for disciplining children that work more effectively in the long run. She stated if it is not used at Pine Hills, why would it be needed in the schools. She stated that we should go forward with more positive methods which research has shown are more effective in the long run.

Senator Brown stated that what they have heard today is vague philosophy - nothing concrete that would make him think that a reasonable person ought to change the statute. He believes that it should be shown that when the statute was complied with, it resulted in all the psychological problems that are being claimed. Sen. Jacobson responded that there has been research done by the National PTA which indicates this is not a constructive form of punishment for children. Senator Brown further stated that the example of a teacher pushing a child against a wall is obviously in violation of the current law. Sen. Jacobson agreed. Senator Brown added that the testimony today gave examples that anyone with good judgement in the education field would never dream of doing. He did not believe enough evidence was presented to indicate the law should be changed, and stated that was apart from the things the administrators from his part of the state had brought up about the vagueness of the language and the possible jeopardy it might place teachers and principals in if some clarifying amendments are not included.

Sen. Jacobson further stated that she believes what was demonstrated here today is that there clearly are a majority of groups dealing in this field who want this legislation. She said what she has heard from those in Sen. Brown's area is that they have a particular concern, not with banning corporal punishment, but with making certain that the kinds of restraint that are needed in schools to maintain discipline are clearly laid out in this bill. This bill was drafted two years ago with a broad cross section of people drafting this legislation. She stated that perhaps Senator Pinsoneault has better language to define corporal punishment. She said all the groups that testified indicated there is a need to go in another direction. She believes the need has been established and the issue has to be looked at.

Sen. Brown further commented that the testimony today came from professional people, experts in the field of child psychology, but he does not feel the voice of the people has been heard on this particular legislation. He stated that he believed the testimony today was a minority viewpoint, even though it was

well represented at the hearing.

Sen. Jacobson disagreed, adding that PTAs across the state and other groups support the bill. She said they have tried to have a broad section of people working on the bill who represent the people of Montana. She said she has no problem with the language of the bill being tightened, but she felt the state of Montana should go forward and start using more effective methods of discipline in the schools.

Senator Hammond stated that he guessed 90% of the people who gave testimony lived in Helena. He asked for a show of hands of people who lived in Helena, and commented that it is kind of a town meeting as far as the proponents are concerned. He advised that perhaps this should be taken care of in the local school boards.

Senator Pinsoneault stated this bill is intimidating to a teacher. He asked why there is a punitive section in the bill. Mr. Campbell stated that a lot of people are purporting to represent teachers. He stated his group (MEA) has 8,500 members. Their policy making body of their organization meets once a year, with 1 representative for every 25 members. They pass the policy to go on record. He stated he had a hand in drafting the bill, and indicated there is already a punitive measure in the law now. The only change in that section changes the amount of the fine. He gave an example of a teacher restraining a student from leaving the classroom because of a disturbance. It is his feeling that had this bill been enacted at that time, and where it clearly states that the use of physical restraint is not corporal punishment, it would have helped that particular teacher. With the new law, if there is a challenge, then it would be a criminal assault charge and the parents would have to decide to make that charge. He added that in an organization of that size, there would never be 100% agreement on all issues; however, the majority of their group supports this legislation.

Senator Blaylock asked Mr. Aumaugher to refer to page 2, section (4)(iii) and questioned whether that language would protect him or any teacher in a situation similar to what Mr. Aumaugher described in his testimony. Mr. Aumaugher replied in the negative, stating that what he did had nothing to do with protecting the pupil from physical injury. He gave another example of a parent accusing a teacher of clawing a child down the face. The mother wanted the teacher fired, and was not at all satisfied with the action of a letter of reprimand. With this legislation, he feels sure that parent would have gone to court. Senator Blaylock referred back to the original incident in question and inferred that the one child was being protected from the other child through the teacher's action. Senator Blaylock also asked if the incident was reported in the Daily Inter Lake, and also asked Mr. Rosling if the incident he related was reported in the Inter Lake. Both replied that they had stated "if" it appeared, rather than it "did" appear.

Senator Hammond asked if they were concerned at all about punishment that creates mental anguish. He stated in his experience he saw teachers who used all sorts of disciplinary processes which created a great deal of mental anguish, yet no one seems too concerned about this. He stated that if you take away the possibility of there being any kind of corporal punishment, mental anguish would be increased. Ms. Buehl stated she did not think that was necessarily true. She agreed that this bill would not eliminate verbal abuse that could cause difficulties for students. Implementing this bill would give a strong message from the state to encourage other methods of discipline in the school, and to include more training for teachers, and to put more pressure on local school boards and administrators to ensure that is not happening within their schools.

Senator Hammond suggested that people who are successful in handling children from the personality standpoint can do much more than those trained to handle them. She replied that some people have personal characteristics that can make them be more positive, but some people can be trained. Teaching is an art, but it also consists of learned skills. By training, some teachers can become a more effective disciplinarian.

Ann Gilkey stated she wished to address that question. She stated she has many years in the field of residential child care, and in the course of her experience she has trained people to work with the children. Although a certain amount of talent is helpful, it is not the only requisite. A non-talented person can acquire skills. With the adoption of this law, pressure would be put on to provide the training for people to acquire the skills.

Closing by Sponsor:

Senator Jacobson stated she wished to stress there are very few places where inflicting pain is an acceptable disciplinary method. According to Senator Jacobson, schools in Montana stand out as an exception. She hopes to eliminate that exception.

EXECUTIVE ACTION ON SENATE BILL 84

Discussion:

Senator Blaylock stated that in view of the fact that a number of questions arose regarding SB 84, some of which are technical, he would like to get some suggested changes between the different parties. These changes could then be adopted or rejected, and then action be taken on the bill. He suggested using Eddy McClure, Legal Counsel; Senator Pinsoneault, and Phil Campbell, MEA, and sponsor Senator Jacobson to work on it. They agreed to so.

EXECUTIVE ACTION ON SENATE BILL 17Discussion:

Senator Blaylock stated the biggest question on this bill is what to do with putting back into the Foundation Program, or HB 28 which drops out, the matter of percentages of the individual income tax and corporation license tax. Senator Brown indicated at the last committee meeting that he had an amendment to offer. Eddy McClure explained the amendment drawn up by OFI, the figure 41.3% will be changed to 33.2%, and change 28.5% and re-insert 25%. Senator Waterman asked if on page 1 (c) it should read "33.2% to the credit of. . .". She stated the date of year should be out so that in two years it would not be necessary to go through this again. Sen. Brown stated he was not sure that should be done. He stated this gets them to the level of funding this time, and more money may be put into it. He did not see how 41.3% could be put in now, if they are going to put the General Fund \$16 million in the hole. Ms. Waterman asked for clarification on whether or not this had to be revisited every two years. Sen. Brown stated the percentage is not only important, it is symbolic. It shows a commitment of a predictable source of income into public education. He does not think they should go beyond the current level until as a matter of policy they decide they can afford to do that. Ms. Waterman said that what she is talking about is going back to the predictable level. Historically 8% has been in there and it has not sunset every two years. She is suggesting remove the date, yet in two years they can discuss what the percent would be. However, she urged getting the sunset date out at the moment.

Senator Hammond stated that prior to this time they were operating on an entirely different situation where they didn't come anywhere near covering it, and now with the 95 mills coming from the state, it is a whole different ball game.

Senator Waterman stated that there has always been a percent of the income tax that has gone to the Foundation Program. The question now is whether or not they intend for that to sunset every two years. She does not believe that historically the earmarking has sunset; the percentage has changed and the percent of schedule that it funded has changed. However, that money has always been there and earmarked for education. She reiterated that they may argue about the percent, but she believed the date should be removed.

Senator Brown stated he did not have a problem with that as long as the percent did not exceed the 0/0% level.

Senator Blaylock stated that he wanted to get an agreement on a percent that will be dedicated from the individual income tax of the state of Montana and the Corporation License Tax that will be back into the Foundation Program and will not have to be revisited every two years. He said the percentages could be

revisited every two years, but not the fact that it is in there and dedicated to education.

Senator Waterman stated that if they can agree on the motion, they can wait on voting on it and argue the percentage before they vote. She asked for the motion to be clarified.

Senator Brown stated he believes everyone on the committee knows what he is trying to do - he does not want to dedicate more of the income tax to public schools than can be afforded. Senator Waterman asked if it is the intention of the motion to continue the biennial sunset. Senator Brown stated he liked the idea of the ongoing commitment, but if it goes back in at 40% he does not believe that is to the public's interest. If the percent is kept down so that when the Foundation Program gets an increase, that decision will be made after it is funded at its existing level.

Senator Hammond asked how they know what percent it is going to take. He stated that in the future it will have to be revisited. Senator Brown stated that with the normal affect of inflation, the likelihood exists that this would not get them in trouble. Economic history of recent years indicates it would probably not get them in trouble. Senator Waterman added that she would like to think that 33.2% would over fund the Foundation Program.

Curt Nichols, Office of the Governor, advised that the funding of schools from earmarked revenue from the General Fund is a one-way street. Funds are earmarked for public schools, and then funds are appropriated to make up the difference. If more funds are allocated than needed, it can end up as a balance in the school accounts and a deficit on the General Fund side. If the schools are under allocated, there is a requirement in law that whatever is set in schedules funds the schools automatically and the General Fund flows to the school.

Senator Waterman asked what the Governor's position is on earmarking and percent of increase for the Foundation program. Mr. Nichols advised that the Governor does not have a strong feeling on a certain percentage that should be earmarked. He doesn't want to interfere with the budget. His position on the schedule increase is 0/0%.

Madalyn Quinlan, OPI, reminded the committee that 33.2% and 25% of the corporate income tax are the figures being considered. The estimates are still saying that a \$45 million dollar General Fund appropriation will still be needed to become 0/0. Using the executive revenue estimates, about a half million dollars will still be needed. Senator Blaylock suggested that under either scenario, they are still short. She affirmed that under either revenue estimate, they are still short.

Senator Brown stated it was his opinion that it is folly to

dedicate more of the income tax that would get them above 0/0.

Senator Waterman stated that her concern is that they will not revisit this issue. There will be an assumption that will go with this that they are funding the Foundation Program this biennium at 0/0. She believes that is not a good idea; for some property taxpayers it will be an additional burden. She stated she will argue for more than 0/0, and the concern that she has as this goes out of this committee, is that they will have lost their forum and they will never see a schedule increase in this committee nor will they ever revisit the issue of how much income tax goes in. She emphasized she wished to see more than 0/0 go into this, and asked for input from those more familiar with the process.

Senator Brown stated he was not sure if he understood how this part of the process works either, but he believed this committee gets the schedule bill, and the Finance Committee gets the money bill. Ms. Waterman asked how we get the schedule if its at 0/0.

Senator Nathe said there has always been a conflict between Education Committees and House and Senate Appropriations Committees. He stated the money has to be plugged in somehow, but the schedule is set up in the Education Committee.

Senator Waterman stated she does not know of any bills that are in the schedule. She does not believe there is a bill in to increase schedules, to set schedules to 0/0. She was informed that there is a bill draft in at the request of the Office of Public Instruction, sponsored by Rep. O'Keefe, to set the schedules at 4.5 increase the first year, and 4.8% increase the second year. The bill has not yet been introduced, but it will fall under an appropriation bill and will come through the Education Committee as a schedule increase because it contains the issue of whether the Foundation schedules should be increased.

Senator Brown asked if there doesn't have to be some legislative act that establishes the schedules in the Foundation Program. He was advised that the current statute says these are the schedules for fiscal 1991 and beyond, so it would take legislative action to change those.

Senator Waterman said her concern is that as they set this, people are going to feel that they have set the schedules at 0/0% and it will erode any support that there might be for a schedule increase bill. She said she would feel better if she were hearing others on the committee saying they believe there should be a schedule increase. She stated 0/0% is not acceptable to her, and that is the concern she has about setting it 33.2% and 25% because it will be interpreted as setting it at 0/0. For that reason she stated she will vote against this. She suggested holding the bill in committee for the time being.

Senator Yellowtail asked if it was not clear that Senator Brown's intention is to revisit the issue, but for the time being these levels are being established. Senator Brown advised he does not disagree with Senator Waterman, but he does not believe it is prudent to put a high percentage in there which will take them above the 0/0% level at this stage of the game in the legislative session. He is concerned that it would become a political time bomb. He feels that if the Foundation Program is given a significant increase by dedicating more income tax to it now, other interests will be crowded out.

Senator Yellowtail said he felt that was a reasonably responsible approach at this date, if he could feel assured that they would revisit the matter of schedules at some time in the future. He, too, hoped they would increase the schedules. He wished they could write some coordination into this amendment that would give them more assurance that they would do that. He questioned if there is some vehicle that might do that.

Eddye McClure advised that what he is asking is to put a coordination instruction saying that these rates are temporary pending on what happens to the rates and LC 923, which is a Foundation increase. It does not set any rates.

Senator Brown asked if they would find themselves in trouble if LC 923 does not go through. If a bill pertaining to the schedules comes through the legislative process, it ought to continue to come to this committee to give the members an opportunity to determine whether or not they can increase the schedules. He wondered if there is any assurance that would happen. Senator Blaylock advised there is no assurance.

Senator Blaylock indicated there was concern on his part regarding the amendment suggested by Senator Brown, and he also feels Senator Waterman has a good point in wondering whether the bill in the House will make its way to this committee. The Chairman suggested they hold off on action on SB 17.

ADJOURNMENT

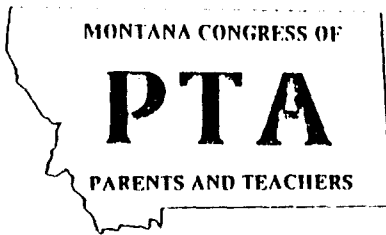
Adjournment At: 3:00 P. M.



CHET BLAYLOCK, Chairman

BETSY CLARK, Secretary

CB/bc/dq



TESTIMONY S. B. 84

Senate Education Committee

SENATE AGRICULTURE

EXHIBIT NO. #1

DATE 1/23/91

BILL NO. SB 84

Chairman Blaylock and members of the Senate Education Committee

I am Ellen Bourgeau, legislative coordinator for the Montana Congress of Parents and Teachers. I welcome the opportunity to address this committee on behalf of the Montana PTA which is the largest child advocacy organization in the state and whose parent organization is the largest child advocacy organization in the nation. The welfare and safety of children and youth is at the heart of all we do and say. It is one of our objects to secure adequate laws for the care and protection of children and youth in our state and nation.

Today I am here on behalf of the 10,000 members I represent to urge you to pass this bill. It was only after careful consideration of the matter that the delegates at the 1988 Montana PTA convention passed the resolution that supports banning corporal punishment from schools. This resolution is now the official position of the Montana PTA and gives us the authority to support action from our legislature to abolish corporal punishment from Montana schools.

Our children live in a very violent society and it is thought that allowing corporal punishment, which is viewed as an assault on a child, does not contribute to settling conflicts and disagreements through peaceful means. It is particularly important in the field of education that we find role models for appropriate behavior and for the proper way to resolve conflicts to be taught. Corporal punishment is just not a practice used in effective discipline to bring about long term positive behavior, but rather only contains the immediate bad behavior. The point of discipline is not to punish the child, but to show him what he has done wrong and offer him ways to solve the problem. Discipline should leave the child's dignity intact.

To be for abolishing corporal punishment is not to be against discipline in the classroom but rather for effective discipline that guides the student to self-discipline.

Irin A. Hyman, professor of school psychology and director of the National Center for the Study of Corporal Punishment and Alternatives in School says, "It is time for reasoned consideration about the sanctioned use of unnecessary violence against American school children." So let us reason together:

"* Fifty years of research has shown that corporal punishment is not effective. Rather than helping children control or change behavior, corporal punishment hurts children.

* It promotes aggression in the recipient.

* It teaches that force and violence are ways to solve problems.

* Since public schools are the only remaining government institution where the use of physical pain is allowed, it degrades the education profession and casts a pall of incredulity about the role of the school in teaching the process of democracy.

* When used excessively, it lowers classroom achievement and results in long term post-traumatic stress problems.

* It causes humiliation, anxiety and fear which impedes learning (Hyman)

SENATE EDUCATION

EXHIBIT NO. #1

DATE 1-23-91

BILL NO. 84

We care about all children. We care that the children most often hit at ^{school} are the ones abused at home. We care that boys, handicapped, and minorities- our most vulnerable victims- are hit more than others. We care that children are the only citizens in the U.S. upon whom corporal punishment may be administered.

Some here may feel that this is an issue best served at the community level. While all school districts are permitted to change their policies, and some have, these may be reversed very easily. It is felt therefore, that what is needed is a state law to prohibit corporal punishment.

The Montana PTA would never support- nor ask for your support- a proposal that would put teachers in jeopardy or lead to undisciplined classrooms. Alternative methods of discipline are available. There is no need to continue to allow our youngest and most helpless citizens to be the only recipients of legal corporal punishment.

Please vote to support Senate Bill 84.

Thank you for your time and attention to this matter.

Ellen Bourgeau
1111 Eaton
Missoula, MT 59801

CORPORAL PUNISHMENT

- Whereas, The first object of the PTA is to promote the welfare of children and youth in home, school, community and place of worship; and
- Whereas, The third object of the PTA is to secure adequate laws for the care and protection of children and youth; and
- Whereas, Corporal punishment has been abolished in many developed countries of the world and in several areas of the United States; and
- Whereas, Even the U.S. Supreme Court has supported the legality and constitutionality of "reasonable force" while eliminating corporal punishment from many institutions other than schools; and
- Whereas, Many school districts in Montana do not have policies prohibiting corporal punishment nor viable alternatives in place; and
- Whereas, Many alternatives to corporal punishment as a disciplinary measure are available, and for the most part have a more beneficial effect; therefore be it
- RESOLVED That the Montana Congress of Parents and Teachers make available to units and councils information on corporal punishment laws, procedures, and alternatives; therefore be it further
- RESOLVED That the Montana Congress of Parents and Teachers establish a position opposing corporal punishment in accordance with the Health and Welfare Policies of the National PTA; and be it further
- RESOLVED That the Montana PTA through its local units and councils work with school districts to develop disciplinary procedures which will result in positive behavior of students and utilize positive alternative techniques.

SENATE EDUCATION
EXHIBIT NO. # / A
DATE 1-23-91
BILL NO. 84

TESTIMONY ON S.B. 84

an Act to Prohibit Corporal Punishment

Senate Education Committee - 1/23/91

Mr. Chairman, members of the Committee, my name is Judith H. Carlson representing the Montana Chapter, National Association of Social Workers. The Montana Chapter strongly endorses this bill and urges you to pass it into law. Discipline, yes. Order, yes. Beatings and physical punishments, no. It is clear that better alternatives exist. 90% of corporal punishment is inflicted by only 5% of educators. The other educators have found better ways.

Social workers are involved in the investigation of neglect and abuse by parents of their children. Other social workers are involved in treatment of children who have been the victims of abuse. We see that corporal punishment can inflict bodily harm - bruises, broken bones. Even death. When teachers inflict physical punishment on children, it teaches children that it is o.k. to hit someone who is smaller and weaker. That is not what we want to teach our children. All our experience as social workers shows us that there is no benefit in the use of corporal punishment, but there is much long term harm.

There may be some arguments here today which sound reasonable on the face of it. One has to bring back to mind the central issue: do we want to beat our children into submission?

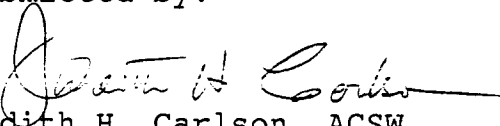
SENATE EDUCATION

EXHIBIT NO. 2

DATE 1-23-91

corporal punishment but yes to SB 8~~8~~. We appreciate your consideration of our concerns and opinions.

Submitted by:


Judith H. Carlson, ACSW



Montana Council for Maternal and Child Health

The Voice of the Next Generation
in Montana's State Capitol

2030 11th Ave., Suite 10

Helena, MT 59601

(406) 443-1674

TESTIMONY FOR THE SENATE COMMITTEE ON EDUCATION AND CULTURAL RESOURCES Wednesday, January 23, 1991

Re: SB 84, to Prohibit Corporal Punishment of Students

The Montana Council for Maternal and Child Health, a non-profit public policy research, education, and advocacy organization, supports the provisions of SB 84, to prohibit the corporal punishment of students. The Council recognizes that corporal punishment not only creates a climate of fear and teaches students that force is an acceptable method of controlling the behavior of others, but creates actual physical harm endangering the health and in some cases the lives of children.

The American Academy of Pediatrics, which has long opposed the use of corporal punishment in schools, will publish a research and policy analysis of corporal punishment in the February 2, 1991 edition of Pediatrics. This study concludes that corporal punishment is not administered with equanimity: it is inflicted more on male, minority, rural, and small-school students than on female, white, urban and large-school students. Internationally, the article reports that the United States is one of only three nations in the developed world still allowing corporal punishment; we share this distinction with the Australian outback and South Africa.

According to the as-yet unpublished Pediatrics study, 1 million students are corporally punished in the United States each year, and 1-2%, or 10 to 20 thousand each year, require medical evaluation or treatment. Some actually die from their injuries. Many of them exhibit regression, rather than improvement in school behavior in the long run. And all of them, and their observant and impressionable peers, are exposed to the use of force as a problem-solving tactic in everyday life.

Montana cannot afford to let even one student be seriously injured at the hands of a teacher. We struggle daily with the results of child abuse in the home. We spend millions of dollars to protect children from relatives and strangers who seek to harm them. It is time to protect them in our schools. The banning of corporal punishment will encourage the use of tested and effective alternatives, so that Montana's next generation will be a healthier one.

The Council respectfully suggests the bill be amended to add the words "corporal punishment, or" following the word "uses" on page 3, line 19, to include the newly defined term in the misdemeanor.

Paulette Kohman, Executive Director

SENATE EDUCATION

EXHIBIT NO. 3

DATE 1-23-91

BILL NO. 84

DEPARTMENT OF FAMILY SERVICES



STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

TESTIMONY IN SUPPORT OF SB 84 AN ACT PROHIBITING CORPORAL PUNISHMENT OF A PUPIL

Submitted by Ann Gilkey
Chief Legal Counsel for the Department of Family Services

The Department of Family Services strongly supports SB 84 and the prohibition of corporal punishment of any pupil by a person employed by a school district. DFS prohibits the use of corporal punishment of students at both Pine Hills School and Mountain View School. Licensed foster parents are also prohibited from using corporal punishment on any foster child. It is the agency's philosophy that there are better, more effective and humane alternatives for discipline than use of physical force. Figures of authority in a school setting should not be granted legal sanction for the use of corporal punishment against Montana's youth. The Department of Family Services urges your support of SB 84.

SENATE EDUCATION

EXHIBIT NO. 4

DATE 1-23-91

BILL NO. 84

January 23, 1991

Mr. Chairman, Members of the Committee:

For the record, my name is Scott Crichton, Executive Director of the American Civil Liberties Union of Montana. Our organization has more than 800 dues paying members- many of which are families with children.

We support Senate Bill 84 prohibiting corporal punishment in Montana schools for three reasons.

First, current law reinforces what we need to view as a questionable principle- that the solution to problems, that the resolution of conflict, is best met with violence. Young people who have been victimized by corporal punishment learn an early lesson about state sanctioned violence.

Second, in my two and a half years with the ACLU, we have received numerous complaints from parents with concerns about their kids being victimized by corporal punishment. There seems to be a disturbing pattern that the willful infliction of pain on students is administered in a discriminatory fashion. Minorities and low income people are often the ones who are the targets of corporal punishment. In my opinion, they have the least ability to be able to respond legally or to be able to affect political remedies.

Third, corporal punishment in most cases seems to be hastily applied. This legislation would provide incentives for school district employees to think twice before resorting to violence.

SB 84 deserves support not only because it prohibits inflicting corporal punishment on students, but also because it makes clear situations in which school district employees may use physical restraint when reasonable and necessary.

We urge your thoughtful consideration on this bill. Respectfully submitted,

Scott Crichton
Executive Director

SENATE EDUCATION
EXHIBIT NO. #5
DATE 1-23-91
BILL NO. 84

Date: January 20, 1991
To: Senate Education Committee
From: Evergreen Education Association
Subject: Senate Bill #824

We are writing to inform you of our dissatisfaction with Senate Bill 84.

The amendments are ambiguous. Who makes the judgement of what a "disturbance" is? We feel we would be under threat of lawsuits for merely escorting a child out of the room by holding his/her arm! Often a teacher will use this technique to bring a child back on task. This action might mean "willful infliction of pain" to someone.

Regarding amendment #7, who decides when physical restraint used is reasonable or necessary? Will we spend unnecessary time, effort, and dollars defending this language?

No one teacher wants to see a child spanked or beaten. However, we feel teachers need the latitude to physically restrain non-compliant students when necessary and not have this mis-construed as abuse.

Sincerely,

Jo Mahoney
Evergreen Education Association
Evergreen School District #50
Jo Mahoney, President

SENATE EDUCATION

EXHIBIT NO. #6

DATE 1-23

BILL NO. 84



Somers Public School

SCHOOL DISTRICT NO. 29
PHONE 857-3301
P.O. BOX 159
SOMERS, MONTANA
59932

JANUARY 23, 1991

TO: LEGISLATIVE EDUCATION COMMITTEE
FM: BERNARD ROSLING, SUPERINTENDENT
RE: CORPORAL PUNISHMENT-SENATE BILL 84

AS SUPERINTENDENT OF A KINDERGARTEN THROUGH EIGHTH GRADE SCHOOL IN SOMERS, MONTANA, I AM HERE TO EXPRESS OUR DEEP CONCERN ABOUT THE FUTURE IMPLICATIONS FOR EDUCATION IN MONTANA IF THIS BILL IS ADOPTED IN ITS PRESENT FORM. WE (THE STAFF AND MYSELF) CONCENTRATE OUR CONCERN WITH THE TERMS USED IN SECTION 1 ITEM 7. THE WORDS *REASONABLE OR NECESSARY* IN THE BILL'S PRESENT FORM WILL BE LEFT TO MANY AND VARIED INTERPRETATIONS. WHO WILL DECIDE THE DEGREE OF REASONABLENESS OR NECESSARINESS WHEN USING RESTRAINT? THE MEDIA AND THE COURTS IS THE ANSWER.

WHEN THE MEDIA AND THE COURTS START CONTROLLING THE DEGREE TO WHICH RESTRAINT CAN BE APPLIED, CONTROL OF THE PUBLIC SCHOOLS WILL BE LOST. APPLIED CORPORAL PUNISHMENT SUCH AS SPANKINGS, HITTING AND ABUSE CAN AND SHOULD BE CONTROLLED BY THE COURTS, BUT NOT THE DEGREE TO WHICH RESTRAINT CAN BE APPLIED TO ELIMINATE A PROBLEM THROUGH DISCIPLINE.

WE ARE NOT AGAINST THE ELIMINATION OF APPLIED CORPORAL PUNISHMENT, BUT WE ARE AGAINST THE POSSIBILITY OF BEING QUESTIONED THROUGH THE MEDIA WHICH WOULD AUTOMATICALLY APPLY A LABEL TO THE PERSON AND THROUGH THE COURTS WHICH WILL OCCUPY A GREAT DEAL OF MONETARY RESOURCES AS WELL AS TIME AND PERSONAL RESOURCES. IT IS IMPORTANT TO NOTE THAT MISUSE OF CORPORAL PUNISHMENT IS NOT BE QUESTIONED ONLY THE WORDING ON TYPE OF RESTRAINT.

PLEASE CONSIDER CAREFULLY ANY ADOPTION OF A BILL THAT IS VAGUE AND LEFT OPEN TO MANY DIFFERENT INTERPRETATIONS THAT WILL ULTIMATELY DAMAGE THE EDUCATIONAL SYSTEM OF THE STATE OF MONTANA.

THANK YOU !

SENATE EDUCATION
EXHIBIT NO. #7
DATE 1-23-91
BILL NO. SB 84

DATE

1-23-91

COMMITTEE ON

Education

Please sign:

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
ELLEN BOURGEOIS Ellen Bourgeois	Montana PTA	84	✓	
Bob Ammaugh	Evergreen School Dist.	84		✓
Bob Smith	Col Falls Elementary	84		✓
Denard Raley	Samuel School Dist.	84		✓
Ray McKenna	MACSS	84	✓	
Eric Floun	Yavre Schools	84	✓	
John Art	E. Adair Sch.	84	—	
Randy Kuntz				
Paulette Korman	MT Council for Maternal/Child Hlth	84	✓	
CYNTHIA BUEHL	Montana Assn. School Psych	84	✓	
Phil Campbell	MEA	84	✓	
Joni Smith	MRCOA	84	✓	
Judy Garrity	Montana Children's Alliance	84	✓	
Kathy Seacat	E. H. PTA	84	✓	
Sharon Reardon	MFT	84	✓	
D. Eliza Beth Boeth	MT Children's Alliance	84	✓	
JUDITH CARLSON	MT CAP - Social Workers	84	✓	
Alan Nicholson	Parat-Malibu BPE	84	✓	
Ann Colkey	DFS	84	X	
Debra Kehr	Vice Chair Helena Schools	84	✓	
Laila Sog	OTD	84	✓	
Eileen Moran	MT Assoc. of School Principals	84	✓	
Scott Crichton	ACLU MT	84	✓	
Carol J Farris	mother	84	✓	
Bruce W. Moore	SSBA	84		
Wendy Sands	MT Women's Lobby	84	✓	
Shontz	mental Hlth Assoc / MT	84	✓	