

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Thomas E. Towe, Vice Chair, on April 16, 1991, at 12:05 p.m.

ROLL CALL

Members Present:

Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Steve Doherty (D)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: Richard Manning, Chairman (D)

Staff Present: Tom Gomez (Legislative Council).

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

Announcements/Discussion: NONE.

HEARING ON SENATE BILL 473

Presentation and Opening Statement by Sponsor:

Senator Paul Svrcek told the Committee Senate Bill 473 addresses a current problem with community service in Montana. He explained a Judge can sentence an individual to perform community service but because of problems with workers' compensation the program has been shutdown. The Department of Institutions, the division of workers' compensation, the local governments, and non-profit organizations have worked through the session to reach a compromise (Senate Bill 473). Senator Svrcek presented the Committee with a technical amendment.

Proponents' Testimony:

Dan Russell, Administrator of the Division of Corrections told the Committee the state fund had no administrative method of

extending workers' compensation coverage for community service placements. He explained community service is a sentencing option intended to provide meaningful service to communities while inflicting a punishment upon offenders. It can be used in lieu of a sentence of incarceration, and is very often a condition of a deferred or suspended sentence. He told the Committee there has been an increase in interest in the use of community service as a sentencing option. During the past year through a grant the department began a formal community service program, which is a pilot project, in Missoula. The project will be evaluated annually. He explained there are similar programs operational in Billings and Great Falls. The success rates are economical and the courts are in strong support. He told the Committee Senate Bill 473 will allow community service placements to become available with less difficulty. When a person is placed in a community service setting it is generally with a non-profit agency or organization, or with federal, state, or local government entities. He explained an obvious liability exists should the offender become injured while performing the community service obligation. Senate Bill 473 limits the coverage to medical expenses and an impairment award. It is based upon minimum wage. He stated there is no funding request; and no future requests are foreseen. He explained currently there are grant funds to utilize for payment of premium costs; and in the future, client fees would pay for premiums. He told the Committee Senate Bill 473 was a joint effort by the State Compensation Insurance Fund and the Corrections Division.

Diane Moriny, Coordinator of the Community Service Program in Missoula through the Department of Institutions spoke in support of Senate Bill 473. She presented the Committee with a letter (Exhibit #1). She told the Committee without the workers' compensation coverage the program is at risk. She explained the city of Missoula has concerns about using the program, as well as Missoula County without having the coverage.

Bruce Moerer, representing the Montana School Board Association told the Committee clearly its the non-profit association or corporation which does the placing that is the employer under the definition. He explained the association would object if the local government agency or the school district was named the employer. He asked to clarify this point for the record.

Gordon Morris of the Association of Counties and a member of the trustees of the Association of Workers' Compensation Program spoke in support of Senate Bill 473.

Terry Minow of the Montana Federation of State Employees told the Committee MFSE represents the probation and parole officers. She explained generally the probation and parole officers feel community service is a proper and effective means of rehabilitation and support legislation intended to make community service a viable option.

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Aklestad asked Senator Svrcek if there would be additional premiums paid. Senator Svrcek deferred the question to Dan Russell. Mr. Russell explained there would be premiums paid. At the present time there is money in the grant for payment. When the grant is no longer in existence the clients will pay approximately \$25 per placement. A portion of the \$25 will pay premiums.

Senator Aklestad asked Mr. Russell if these employers would be in the category of \$116 minimum premium. Mr. Russell deferred the question to Jim Murphy of the state fund. Mr. Murphy explained the \$116 minimum premium is attached to an employer which has not paid \$116 in premiums over a years time. The employers identified in Senate Bill 473 would be subject if their premium does not exceed \$116.

Senator Towe asked Mr. Murphy what the premium would be on a minimum wage for a weeks period. Mr. Murphy explained a separate class code would be initiated by evaluating the types of employment the community service participants perform. The past experience in those types of employment would be evaluated. A composite rate would be applied to new class code which would evaluated each year.

Senator Towe asked Mr. Murphy what process is being used with Alternatives, Inc. in Billings. Mr. Murphy explained Alternatives, Inc. are using two class codes (clerical and custodial). He explained Alternatives, Inc. would be shifted to this program.

Senator Aklestad asked Mr. Murphy if the employer would be subject to the minimum \$116 premium. Mr. Murphy told the Committee that was correct.

Senator Blaylock asked Mr. Murphy if the employer is the one who refers the individual to community service. Mr. Murphy explained the organization which places the individual in community service is the employer.

Senator Blaylock asked Mr. Murphy if the court would be considered the employer, or if the court would refer the individual to a non-profit organization which becomes the employer. Mr. Murphy stated the court would refer and the non-profit organization would be the employer.

Senator Towe told the Committee it is being operated in this manner in Billings and is working well.

Senator Nathe asked Mr. Murphy if there is a "blanket policy" which is taken out to cover the individuals. Mr. Murphy explained each of the non-profit organizations have separate policy as the employer. Each time a judge or hearings officer orders community service, based on the hours ordered, those individuals would be reported to the state fund and a premium would be paid based on minimum wage by the employer, i.e., non-profit organization.

Senator Keating asked Mr. Russell what prompted the legislation. Mr. Russell explained community service is being used more as an option to incarceration.

Senator Keating asked Mr. Russell if there has been a claim which prompted it. Mr. Russell there was not.

Senator Nathe asked if the court were considered an employer. He cited an example in which an individual was sentenced by the Justice of the Peace to paint the County Courthouse. He asked in this instance who the employer would be, the county or the court.

Senator Towe explained in that particular situation there was not a community service organization in the community. Senate Bill 473 contemplates a non-profit established for this purpose.

Senator Nathe asked if the example he cited would be covered under workers' compensation. Mr. Russell explained in those areas where no program exists a regional probation/parole supervisors will work with local corporations to establish this as a service to the court.

Senator Aklestad stated Senate Bill 473 is a definition. There is no mandate for the groups to carry workers' compensation. Senator Towe explained there is no mandate. Mr. Murphy explained if the group is made an employer under workers' compensation and the community service participant is designated an employee, Section 401 requires employers to cover employees. He stated community service programs are mandated to cover the participants as employees.

Closing by Sponsor:

Senator Svrcek closed on Senate Bill 473.

EXECUTIVE ACTION ON SENATE BILL 473

Amendments, Discussion, and Votes:

Senator Devlin moved to amend Senate Bill 473 (SB047301.ATG). Motion CARRIED UNANIMOUSLY.

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Senator Blaylock moved Senate Bill 473 DO PASS as amended. He told the Committee, after hearing Senator Nathe's example, there are many counties throughout Montana which do not have these types of non-profit organizations. He stated the court is the employer and an appropriation to the courts will be needed.

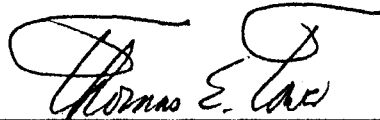
Senator Towe stated the issue does need to be addressed. He told the Committee through his involvement with Alpha House there was no insurance coverage as inexpensive as workers' compensation.

Recommendation and Vote:

Blaylock motion to DO PASS as amended CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment At: 12:35 p.m.



SENATOR THOMAS E. TOWE, Vice Chairman



LINDA CASEY, Secretary

TET/llc

LA041691.SM1

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 4/16/91

LEGISLATIVE SESSION

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P		
SENATOR MANNING			E
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		
Senator Doherty	P		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

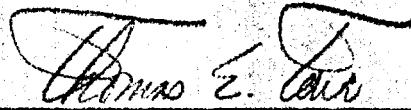
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MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 473 (first reading copy -- white), respectfully report that Senate Bill No. 473 be amended and as so amended do pass:

1. Page 4, line 4.
Following: "order"
Insert: ", "

Signed:



Thomas E. Towe, Vice Chairman

11-16-91
Ad. Coord.

SB 4-16
Sec. of Senate

April 16, 1991

Honorable Committee Members:

It has come to our attention that under current worker's compensation regulations the Missoula Community Service Program is unable to obtain worker's compensation for court-ordered volunteers (offenders) who are placed by that program. Under current worker's compensation regulations volunteers of community service programs have been determined to be neither volunteers for a community service program nor employees of such a program. Therefore, these individuals do not qualify for worker's compensation coverage. Without this coverage many non-profit and governmental agencies refuse to utilize offenders as volunteers. Consequently, unless community service programs are allowed to obtain worker's compensation benefits on behalf of court-ordered participants, community service may not be an option when alternative methods of sentencing are considered and implemented.

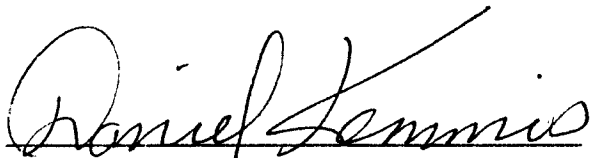
Community service as a sentencing alternative is a cost-effective move at a time of diminishing resources for corrections programs. In fact, during the current legislative session several bills were introduced that stipulate community service as a sentencing option in an attempt to reduce ever-growing jail and prison populations. However, these pieces of legislation are virtually useless without additional legislation that allows for worker's compensation coverage for these individuals if they are not able to perform community service because of lack of coverage.

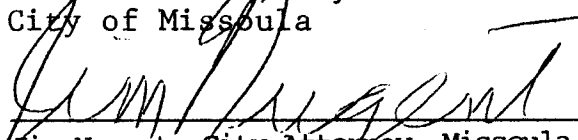
Senate Bill 473 amends the current worker's compensation's definition of "employer" to include the organization placing a person who performs community service, and the definition of "employee" to include a person performing community service and would provide for worker's compensation benefits to community service workers.


We strongly urge you to pass this legislation which places court-ordered community service volunteers under the worker's compensation law. Failure to do so places a burden on local jurisdictions and state institutions who have been forced to consider and adopt alternative means of sentencing in an attempt to reduce both jail and prison populations.


Thank you for your consideration.

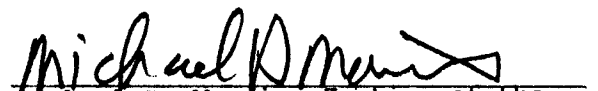
SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 4/16/91
BILL NO. SB473

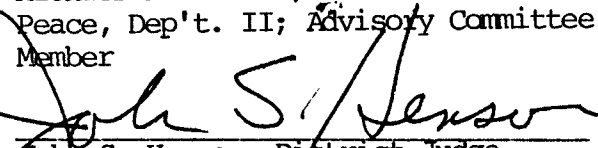

Daniel Kemmis, Mayor
City of Missoula

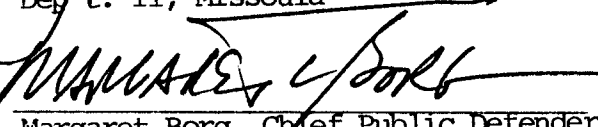

Jim Nugent, City Attorney, Missoula

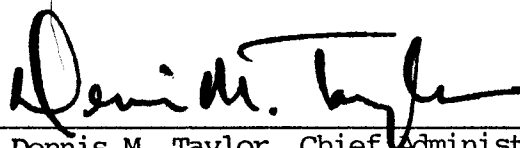

Joy S. Earls, Personnel/EEO Officer,
Missoula; Advisory Committee Member

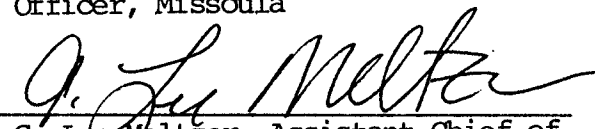

Donald J. Loudon, Municipal Judge,
Missoula

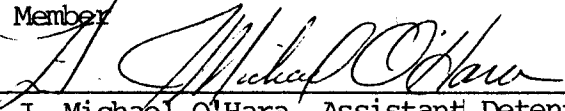

Michael D. Morris, Justice of the
Peace, Dep't. II; Advisory Committee
Member

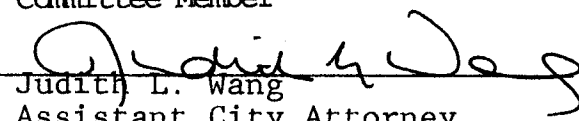

John S. Henson, District Judge,
Dep't. II, Missoula


Margaret Borg, Chief Public Defender,
Missoula, Advisory Committee Member


Dennis M. Taylor, Chief Administrative
Officer, Missoula


G. Lee Meltzer, Assistant Chief of
Police, Missoula; Advisory Committee
Member


J. Michael O'Hara, Assistant Detention
Center Administrator, Missoula; Advisory
Committee Member


Judith L. Wang
Assistant City Attorney
Advisory Committee Member

4/16/91

Senate Labor

SB 473

VISITORS' REGISTER

(Please leave prepared statement with Secretary)

WITNESS STATEMENT

NAME: Niane M. Marin DATE: 4/16/91

ADDRESS: 616 W. Central, Missoula

PHONE: 728-7300 (H), 721-4305 (W)

MISSOULA COMMUNITY SERVICE PROGRAM
REPRESENTING WHOM? Department of Institutions

APPEARING ON WHICH PROPOSAL: SB 473

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.