MINUTES

MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on February 11, 1993, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Karyl Winslow (R)
Rep. Diana Wyatt (D)

Members Excused: Rep. Angela Russell

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

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

Committee Business Summary:

Hearing: SB 15, HB 502, HB 466, HB 429, HB 483, HB 468
Executive Action: HB 468, HB 429, HB 483

HEARING ON SB 15

Opening Statement by Sponsor:

SEN. CHET BLAYLOCK, Senate District 43, Laurel, said that there has been an ongoing dispute between school boards and teachers.

SB 15 would give teachers a chance to honestly discuss disputes and disagreements with school boards through arbitration.

Proponents' Testimony:

Phil Campbell, Montana Education Association (MEA), stated this bill requires school districts with collective bargaining to have grievance procedures built into their bargaining contract. **Mr. Campbell** said that all first class districts have arbitration. This bill would build into the teachers' contract a resolution procedure called an arbitration contract to resolve breach of contract. Arbitration would save money, would be a matter of local control, and would keep problems out of the legal system.

Opponents' Testimony:

Don Waldron, Montana Rural Education Association, presented written testimony. **EXHIBIT 1**

Bruce Moerer, Montana School Boards Association (MSBA), stated that the MSBA believes this bill is in direct conflict with public policy which requires that conflicts which go through collective bargaining agreements be negotiated at the collective bargaining table. **Mr. Moerer** pointed out that bargaining representation is expensive. Numerous situations involving teacher relations have been appealed to the county superintendent level while the bargaining agreement simultaneously forced school district to defend themselves on exactly the same issue in two separate forums, escalating the costs tremendously. The union can use collective arbitration because it's free as opposed to a bargaining agreement; however, the employee would then file an appeal with the county superintendent, and the school would be facing the same issue in two different forums.

Questions From Committee Members and Responses:

REP. TIM WHALEN questioned **Mr. Moerer** why he believes that the actual process to resolve dispute should be part of the collective bargaining process as opposed to just terms and conditions of employment. **Mr. Moerer** replied that, traditionally, bargaining arbitration has always been negotiated at the table. He disagrees that this is the way the situation is now. Right now, collective bargaining agreements are available; unless the agreement says otherwise, a person must deal with the county superintendent, the state superintendent and have the report reviewed by the Supreme Court.

REP. JIM RICE expressed his concern that there are a lot of school districts and school board members who don't particularly agree; over the years, they have handled this issue at the table. Now the state has stepped into the middle of this and could ruin

years of negotiation and work. He asked **SEN. BLAYLOCK** what persuasive rationale would be used to convince the committee that this bill should pass. **SEN. BLAYLOCK** said that, in many cases, a teacher has not bargained with anyone by using the grievance procedure which is the final bargaining arbitration. So, when a dispute arises over the agreement before the school board and the teacher union, the only appeal they have now is to appeal to the person with whom they are disagreeing. **SEN. BLAYLOCK** affirmed disputes have to be settled at the table, but there are disputes that cannot be settled in the normal manner, and a better resolution is needed. Arbitration is a cheaper method to settle disputes, and it keeps them out of the courts.

REP. HOWARD TOOLE asked **Mr. Moerer** if teachers can use the Uniform Arbitration Act of 1991 to settle their disputes. **Mr. Moerer** declared that, to the best of his knowledge, teachers are not covered by the Uniform Arbitration Act. Teachers choose to preserve the neutrality, and he's never heard of the unions changing the teacher statutes that also provide for guidance from the county superintendents.

REP. ELLEN BERGMAN asked **SEN. BLAYLOCK** who is responsible for paying for an arbitrator, to which he responded that the teachers pay half and the school board pays half.

REP. LIZ SMITH asked **Mr. Campbell** if it would be safe to say that 90 percent of Montana school district have a bargaining agreement at this time. **Mr. Campbell** said first class district have arbitration now, but that may not equal 90 percent. **REP. SMITH** stated that if there is a bargaining agreement in those districts, then there is opportunity for incorporating binding arbitration in that agreement. **Mr. Campbell** said the larger districts have arbitration because they can go to the bargaining table with more equity because they are larger and better organized. The reality is that small districts in this state do not have the funds to bargain, and they do not have employees to go on strike to get what they want. They don't have a weapon in resolving school contracts.

REP. SMITH asked what the average cost is to go through the process of arbitration. **Mr. Campbell** said the average cost of arbitration is anywhere from $2,000 - $6,000, and that's generally split by the parties being the teacher(s) and the school district(s). The main point here is it is far more costly to use attorneys and the court system than arbitration would be.

REP. RICE said he does not think teachers should have to appeal to somebody with whom they have a dispute. He also doesn't think teachers should have to go to the bargaining table and give something away to get away from a biased decision. He asked **Mr. Campbell** why that possibility is in the law now. **Mr. Campbell** said the way the law is structured, if the teacher disagrees with the school board decision, the teacher would appeal to the county superintendent of schools who is a neutral party. When a

grievance procedure is put in a contract, it normally starts out with some guidelines, then it first goes to the principal, then to the superintendent, and last to the school board. When it goes to the school board, it's determined by contract. If a contract has bargaining arbitration, the teacher can go to either the county superintendent or an arbitrator. In some cases the union has agreed with contract language, "The school board has the final decision."

Closing by Sponsor:

SEN. BLAYLOCK closed by stating that SB 15 is a matter of fairness. He has been a teacher in class A, B, and C school districts. Teachers worked hard to get the first teachers negotiation act through, and the Montana School Board Association did not want to negotiate at all. **SEN. BLAYLOCK** believes this is a further step along the road of bringing these two groups together to get this issue resolved.

HEARING ON HB 502

Opening Statement by Sponsor:

REP. JOE BARNETT, House District 76, Belgrade, offered amendments and spoke to HB 502. He sponsored this bill at the request of the bail bond industry. The bond team provides a service to the state of Montana and to the local communities and gives an opportunity for those who are facing trial an opportunity to go back into the community. **REP. BARNETT** said he is concerned for the people providing the bonds because they get tied up in the appeal process, and it puts a burden upon them. **EXHIBIT 2**

Proponents' Testimony:

Jack Young, representing Valley Bail Bonds, Belgrade and other Montana Bail Bond persons, presented written testimony. **EXHIBIT 3**

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. RANDY VOGEL asked **REP. BARNETT** to briefly summarize the problems that created this bill. **REP. BARNETT** believes there were two problems. One is that after a defendant is brought to trial and is convicted, he/she many times is released waiting for final conviction. That is the time at which the person is most apt to jump bail, and it puts bail bond people in jeopardy. The other problem is that the defendant has skipped out of court, and

the bond people do not know this, and they want to shorten that time between trial and sentencing so that they can get right on the person while they still have the time to contact him.

CHAIRMAN FAGG said he interprets page 2, line 14 that if someone jumped bail, shows up in court, is satisfactorily excused, that the bond will be not forfeited. He asked **REP. BARNETT** the purpose behind page 2, lines 11-14. **REP. BARNETT** said that at this particular point, the person has jumped bail. The bail could be forfeited to the court, but within 90 days if they're able to trace that person down and return them and back to court, then the defendant appears as intended.

REP. JODY BIRD referred to page 1, lines 16-17, "defendant appeals, the court may order that bail be provided during the appeal," and asked **REP. BARNETT** his reasoning behind this sentence. **REP. BARNETT** spoke to **Mr. MacMaster** about this particular area. It means that once a person has been brought to trial and is convicted, the bond should be returned (this is line 14 previous). But if the defendant appeals that sentencing, the court may order that a bail be provided during the time of appeal. The way it currently stands, if that bond does go all the way through to the final conviction during that paying process, the bond money is tied up.

REP. BIRD asked what happens when a defendant loses the appeal. **REP. BARNETT** said on the first conviction, the bond is released. If there is an appeal, then a new bond would have to be provided, or the person would have to be incarcerated until the fine is paid.

CHAIRMAN FAGG expressed his concern about what this is going to do to the courts. He believes the court system has a fairly significant problem right now, holding people and making sure they meet their bond requirements. He asked **REP. BARNETT** if he would consider taking out lines 11-14 on page 2 and going with the rest of the bill. **REP. BARNETT** said if that language is taken out, they would revert back to the 30 days. It does, however, put more burden on the bond server to trace the person who skipped out of paying the bond.

Closing by Sponsor: No closing.

HEARING ON HB 466

Opening Statement by Sponsor:

REP. NORM MILLS, House District 90, Billings, spoke to this bill which limits the responsibility of a broker owner of a real estate firm. He defined broker/owner and broker/associate as they are considered in the bill.

Proponents' Testimony:

Tom Hopgood, Montana Association of Realtors, explained realtors or real estate agents come in two types: they are either sales persons, or they are brokers. A sales person is a person who has received some education, has taken a test, and is licensed by the Board of Realty Regulations. By rule, a sales person must work under and be supervised by a broker. In order to become a broker, a sales person must have further education, further testing, and some experience requirements. Once a person is a broker, he is, again, either of two things: a broker/owner or a broker/associate. A broker/owner owns his own business. A broker/associate is a person who works with another broker but does not own his own business. A broker/associate is not required to work under a broker/owner but can go out on his own and become a broker/owner simply by opening up his own business.

There have been situations in the courts in Montana where lawsuits have been allowed to go forward even though there's no duty on the part of the broker/owner to supervise and be responsible for the broker/associate. This is a situation where the liability is imputed from the associate to the owner. This bill ensures that the broker/owner will not be held liable for the acts of the broker/associate. It will ensure that he will not be liable for an act that he has not supervised, and it will also ensure that he or she cannot be disciplined by the Board of Realty Regulation for an act of the broker/associate.

This bill does not affect liability. It does not regulate discipline imposed on the broker/owner; if the broker/owner is negligent or otherwise culpable, he/she can still be liable or guilty of any wrong doings. The other thing the bill does not affect is the liability of a broker for the sales person.

Charles Hamway, Broker/Owner, Billings, related that, as an expert witness in court, he has seen more cases where the broker/associate is supposed to have the expertise of a broker/owner because she/he has received a broker's license. When the general public hears the word broker (without associate), this person has indicated he has more expertise than the broker/associate.

In litigation, if a broker/associate is found to have given wrong information to a customer, he/she is not penalized, but the broker/owner is. There has been an increase in irresponsibility in the broker/associate; therefore, the responsibility of the broker/associate license needs to be increased.

Tom Emerling, Real Estate Agent, Billings Board of Realtors, spoke in support of this bill because people who are selling everyday are broker/associates, not broker/owners.

Opponents' Testimony:

Marcia Allen, Licensed Real Estate Broker, and Member, Board of Realty Regulation (MRR), stated the MRR believes this bill's major aim is protecting the employee broker, not the public. This bill is contradictory to the current rules and regulations. **Ms. Allen** stated that people in the realtor business are always told that one of the broker/owner's responsibilities includes supervision of both broker/associates and sales/associates. Severing supervision responsibilities currently required by the Board is not in the best interest of the public, and the MRR feels this bill totally eliminates the broker/owner's incentive to properly supervise these people.

Russell Hill, Executive Director, Montana Trial Lawyers Association (MTLA), said the MTLA objects to what it believes is an immunity bill. **Mr. Hill** focused on section 1, lines 13-15, and said it changes current law to make the broker/owner responsible only for his own conduct. There also seems to be a disagreement between what **Mr. Hopgood** and **Mr. Emerling** testified to about whether, in fact, the broker/owner has a duty to supervise a broker/associate. If a broker/owner doesn't have a legal duty to supervise his broker associate, there is still the situation in which the broker/owner doesn't have immunity and supervises broker/associates. The fact that a broker/owner doesn't have a duty to act doesn't then allow the owner to act with no standards. **Mr. Hill** suggested that, if that's the case in this bill, language should be added to line 15 that says, "or the broker/owner does supervise the broker/associate or does exercise control over the broker/associate."

Questions From Committee Members and Responses:

REP. JODY BIRD asked **Mr. Hopgood** what the real difference is between broker/owners and broker/associates and whether they do basically the same thing. **Mr. Hopgood** explained to the committee that people who want to become brokers, whether they are an owner or an associate, have a broker status license. They have gone to school to achieve the same level.

REP. VOGEL addressed **Mr. Hill's** language, and asked **Mr. Hopgood's** opinion. **Mr. Hopgood** said he would agree with **Mr. Hill's** assessment of the state law that if a broker does undertake to perform a duty, then that broker has the legal duty to comply to the laws to perform that duty with reasonable care. Therefore, if the broker/owner assumes the duty of supervision of a broker/associate, even the owner has the duty to supervise that associate with a reasonable amount of care. Therefore, the amendment would be acceptable.

REP. VOGEL asked **Ms. Allen** and **Mr. Hill** whether they would still oppose the bill if the language quoted by **Mr. Hill** is added. **Mr. Hill** said he would support the bill if that language were

included. **Ms. Allen** said the Board of Realty Regulators would still oppose the bill. The MRR is concerned that this is simply a move to limit the liability to the broker/owner. The MRR also believes that the owner has always had the chance and responsibility to supervise the broker/associate or the sales/associate, and the amendment does not take care of that.

REP. WHALEN said he is confused as to whether there's a present duty, under the law, specifically stated in statute for a broker/owner to supervise a broker/associate; **Mr. Hopgood** said no, but **Ms. Allen** indicated the board says they do. **Ms. Allen** said under statute 37-51-102, it says, "The broker/associate, meaning the broker, who associates with the broker/owner, does not hold interest in the firm. A sales person, including an individual who is salary, commission, or compensated, is associated either directly or indirectly, or regularly with a real estate broker to negotiate with real estate." There may be a problem with the way the law is written, but the board has always taken the stand that the salesman means the sales person, sales/associate or broker/associate.

CHAIRMAN FAGG asked **Mr. Hopgood** to convince the committee that this is a good bill. **Mr. Hopgood** said there are a couple questions about liability. Other professions, i.e., medicine, law, architecture, don't carry liability insurance. Some doctors don't own community property; they have hidden their assets so they can't be sued, and there is nothing in the law that prohibits a person from doing that. The same holds true in the real estate business. There is nothing that prevents realtors from transferring and hiding their assets so that they can't be sued. **Mr. Hopgood** said if a person doesn't have a duty to supervise, which a broker/owner does, then he shouldn't be sued.

Closing by Sponsor:

REP. NORM MILLS pointed out that broker/owners and broker/associates have the same license to perform the same function and serve the public. If a broker/associate violates that license, broker/owners should be responsible for associate's mistakes.

HEARING ON HB 429

Opening Statement by Sponsor:

REP. BILL STRIZICH, House District 41, Great Falls, said there is currently no statute specifying the offense of cultivating and manufacturing dangerous drugs. This bill sends a message to those involved in the cultivation of marijuana for commercial purposes and the synthesis of other narcotics and dangerous drugs that it will be a serious felony in this state.

Proponents' Testimony:

Bryan Lockerby, Acting Sergeant, Great Falls Police Department and President, Montana Police Force Protection Association (MPFPA), said the increasing trend in drugs is the production of amphetamines. These are very dangerous substances because they are being produced in private homes. There is huge marijuana production in private homes and farms in the state, and there's no specific statute that addresses producing synthetic drugs and cultivating marijuana in the state. This bill proposes to make the first offense of the laboratory-type environment a mandatory sentence of five years. After the first conviction, the mandatory sentence is 20 years. If a person is convicted a third time, the mandatory sentence is 40 years. The MPFPA arrived at a guideline for conviction; if a person is caught growing one ounce over the one pound or growing over 30 plants, a minimum mandatory sentence of two years of prison kicks in.

Joe Roberts, Montana County Attorney Association, stated there are two purposes to this bill: The first is to add cultivation to the definition of the sale of dangerous drugs in the statute; and the second purpose is to create the substitute criminal offense of production of drugs which will broaden the meaning of cultivation.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. BIRD asked **Mr. Lockerby** to clarify a contradiction in the bill convicting someone who grows 15 or 30 plants. **Mr. Lockerby** said, currently, if law enforcement arrests someone growing 15 plants, they physically take the plants to the police department to dry and check for chemical content of the plants. Currently, a person with 15 plants, or a person with 500 plants, depending on the stage of the growth of the plant, could pay a $100 fine to City Court and walk away. If 15, 30 or 1,000 plants are being grown, that person will be convicted of a felony.

Closing by Sponsor:

REP. STRIZICH said that, although this bill addresses cultivation of marijuana, it more importantly addresses the manufacture of other kinds of dangerous drugs. People move to Montana to manufacture drugs because it is a large, rural state. He is asking law enforcement to become more aggressive about this and ensure that people who plan on cultivating and manufacturing drugs know they will face serious charges.

HEARING ON HB 483

Opening Statement by Sponsor:

REP. HOWARD TOOLE, House District 60, Missoula, said this is a mandatory drug testing bill arising out of the fact that, under current law, the only DUI test available is the blood alcohol test. It is given on a machine called the intoxilizer or similar machines and measures the percentage of alcohol in a person's blood.

This bill provides a breath test to be administered first; if the person has a result of .10 or higher on that test, that is the only test that will be administered. If a person tests .10 or lower and is presumed to be under the influence of alcohol, the blood test will be performed after the breath test. In this situation, if the alcohol test comes back less than .10, but the officers who have made the arrests believe that there's a basis to test for drugs, they are allowed to do that.

Proponents' Testimony:

Peter Funk, Department of Justice, declared that, as long as the influence of drugs remains a crime in Montana, there should be some way for law enforcement to obtain evidence of that crime. The Department of Justice proposed amendments. **EXHIBIT 4**

Craig Hoppe, Montana Magistrates Association, stated that the MMA supports the bill and the amendments proposed by the Department of Justice.

Bill Fleiner, Board Member, Montana Sheriffs and Peace Officers Association, said the MSPOA asked **REP. TOOLE** to carry this bill on behalf of the Association.

Dr. G. Lee Meltzer and Dr. Phil Lively, Forensic Science, Department of Justice, answered questions for committee members regarding blood alcohol testing.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. BROOKE asked **Dr. Phil Lively, Forensics Science, Department of Justice**, how much blood tests cost. **Dr. Lively** explained that, to determine the cost of the test, a screening of the blood must be done to find any presence of the drug. There's a screening process and a preliminary process. **REP. BROOKE** asked if this will be an increased cost to the crime lab function. **Dr. Lively** said that, answering only with regard to the laboratories, they would be using very similar techniques to what they

currently use. Cost increase would depend on the law enforcement that does occur.

REP. BROWN asked **Mr. Fleiner** what other tests might be given. **Mr. Fleiner** said that a peace officer should be able to determine in the initial investigation stage whether the driver is driving under the influence of alcohol, illegal substances, prescribed medication, or an illness which the driver, at that time, had no control over. If the driver isn't able to give the information, an attorney, physician or family member will be contacted to verify that the officer's information is correct.

REP. BROWN noted that the Senate had language in the 1991 session that, essentially, said, "A drug test may be performed under this section only if the arresting officer has reasonable grounds to believe the person to have been driving (in actual, physical control of the vehicle) under the influence of drugs or a combination of alcohol and drugs or if a test with the presence of alcohol as the results of the arresting officer, possessing reasonable grounds to believe the person had been driving." **REP. BROWN** asked **Mr. Fleiner** if this was reasonable to add to the bill, as it adds more discriminatory ability. **Dr. Lively** emphasized that the person stopped must be very quick to point out to the officer what drugs that person may be on, and the officer should be able to follow that up. But if the officer takes that information on face value, and lets that person go on driving, then there could be serious consequences.

Closing by Sponsor: None.

HEARING ON HB 468

Opening Statement by Sponsor:

REP. JIM RICE, House District 43, Helena, said that the Montana prison system is very crowded and that corrections systems nationwide are recognizing that prison space is limited, extremely expensive, and it must prove whether inmates should even be incarcerated. Alternatives to state prison incarceration are now being proposed and developed, such as pre-release centers, halfway houses, and rehabilitation centers with intense supervision. The present sentencing statute makes it difficult to use these alternatives, if the judge is going to order confinement. This bill will encourage judges to sentence to the Department of Corrections and let the Department analyze whether any alternatives to the state prison may be incorporated.

If a judge has a good reason to send a person to a state prison, he must state good reason in court. Judges may not be as well-versed and available as the Department of Corrections is to supervise these programs.

Proponents' Testimony:

Jim Pomroy, Deputy Administrator, Department of Corrections, Department of Corrections and Human Services, stated that this bill would require the judge to sentence persons to the correctional agency rather than a rehabilitation institution. The Department of Corrections met with the District Court judges and the County Attorney's Association to present this notion. All parties agreed that correctional rehabilitation is the best alternative to unnecessary incarceration.

It is the Department of Corrections' intent to place people who do not constitute a danger to the community back into community programs for correctional rehabilitation. At the present time, 15 percent of admission to the Montana State Prison are for revoked suspended sentences or are parole violators; 40 percent of the remaining inmates are first-time offenders; and 50 percent of the population are non-violent. This is a key piece of legislation and, without this legislation, the state will be unable to manage the population of prisons now and in the future.

Harley Warner, Executive Director, Montana Association of Churches, stated he believes in rehabilitation programs and supports this bill.

Opponents' Testimony: None.

Questions From Committee Members and Responses:

REP. BROWN asked **Mr. Pomroy** how he can downsize a prison without changing statutes; it can't be done with money alone. **Mr. Pomroy** said there are a number of bills that will aid the Department of Corrections' efforts to downsize the current population in Montana State Prison.

REP. BROWN referred to page 3, line 14, and asked **REP. RICE** to explain what "good cause" means. **REP. RICE** conveyed that good cause is not defined in this bill, but there is a statutory section in the present code that speaks to this issue under Title 46. That section states that if a judge feels it is in the best interest of public safety, he could require a non-violent offender to be in prison. If the judge thinks that the non-violent offender has an attitude that may lead him to commit another crime, that's enough for the judge to send this offender into the state prison. Those criteria already in the law provide a sufficient basis for good cause.

REP. TASH asked if this legislation was modeled after the surrounding states. **Mr. Pomroy** said approximately 37 states have similar statutes. There's a national movement towards this type of correctional practice and a move away from the traditional mode of institutions.

Closing by Sponsor: None.

EXECUTIVE ACTION ON HB 468

Motion: REP. WYATT MOVED HB 468 DO PASS.

Discussion:

REP. BROWN said he will vote no on HB 468 because the bill is not limited to non-violent felony offenders; it includes anybody sentenced.

REP. VOGEL said he has come to realize over the past six months the tremendous burden on institutions and the attempts to alleviate some of the costs and problems. He thinks judges are responsible enough to keep those defenders where they belong, but this bill does give them some discretion. **REP. VOGEL** believes this bill would relieve some current and future problems.

REP. BIRD discussed a letter **(EXHIBIT 5)** from **Correctional Sergeant Ron Paull, President, Federation of Montana State Prison Employees** stating that, as a result of this legislation, the prison wants to "hold high security inmates in the building with sheet rock, which are not concrete, walls that were designed for low or medium security inmates." **REP. BIRD** said she wondered if that would cause a liability suit.

REP. RICE said that **Mr. Paull** is accusing **James (Mickey) Gamble, Administrator, State Corrections Division**, of bringing Wyoming's experimental concept of "community corrections" to Montana. This is not something new; Montana has been working on programs such as this for years. It is recognized that the prison system has to move in this direction. Prisoners' problems must be addressed rather than using jail as the only alternative. **REP. RICE** said he believes the state needs the flexibility to get the offenders into the appropriate alternative.

Vote: HB 468 DO PASS. Motion carried 16-1. **REP. RUSSELL** was excused from voting and **REP. BROWN** voted no.

EXECUTIVE ACTION ON HB 429

Motion/Vote: REP. WYATT MOVED HB 429 DO PASS. Motion carried 15-2. **REP. RUSSELL** was excused from voting, and **REPS. BROWN** and **BROOKE** voted no.

EXECUTIVE ACTION ON HB 483

Motion: REP. TOOLE MOVED HB 483 DO PASS.

Motion/Vote: REP. TOOLE moved to adopt the amendments. **EXHIBIT**

4 The motion carried 13-4 with **REPS. BROWN, SAYLES, WHALEN** and **WYATT** voting no. **REP. RUSSELL** was excused from voting.

Discussion:

REP. WHALEN expressed concern about the bill as amended. He said that the amendments will add the word "drug" to the implied consent statute. He would like an amendment added that would indicate that a person must take a blood test.

MOTION: REP. BROWN moved that, on page 5, line 7, after "admissible," a period be inserted after admissible, and "A possible test result may not in itself prove that the person was under the influence of that drug at the time he was in control of the motor vehicle." be added.

The Committee adjourned for lunch and to meet on the floor. Executive Action was continued to February 13, 1993.

ADJOURNMENT

Adjournment: 12:00 p.m.

Russell Fagg

REP. RUSSELL FAGG, Chairman

Beth Miksche

BETH MIKSCHE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL DATE 2-11-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell			✓
Rep. Tim Sayles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow	✓		
Rep. Diana Wyatt	✓		

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HOUSE STANDING COMMITTEE REPORT

February 12, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 468 (first reading copy -- white) do pass .

Signed: _____

Russ Fagg, Chair

Committee Vote:

HOUSE STANDING COMMITTEE REPORT

February 12, 1993

Mr. Speaker: We, the committee on Judiciary report that House Bill 429 (first reading copy -- white) do pass .

Signed: _____

Russ Fagg, Chair

Committee Vote:

HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 2-11-93 **BILL NO.** HB 429 **NUMBER** 17

MOTION: TO DO pass (NO amendments)

15-2

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke		✓
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	Excused	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	15	2

HOUSE OF REPRESENTATIVES

Judiciary **COMMITTEE**

ROLL CALL VOTE

DATE 2-11-93 **BILL NO.** HB 2168 **NUMBER** 17

MOTION: TO DO PASS (NO amendments)

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird	✓	
Rep. Ellen Bergman	✓	
Rep. Vivian Brooke	✓	
Rep. Bob Clark	✓	
Rep. Duane Grimes	✓	
Rep. Scott McCulloch	✓	
Rep. Jim Rice	✓	
Rep. Angela Russell	Excused	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	16	1

EXHIBIT 2
DATE 2-11-93
SB 15

ARTICLE 9 - GRIEVANCE PROCEDURE

A. Definition: **A "grievance" is defined as an alleged violation of any of the express provisions of this Agreement.** Either an individual or the Organization may file a grievance. "Working days" is defined as Monday through Friday, excluding only school holidays and recesses during the school year.

B. Rights to Representation: An Organization representative is entitled to be present at any formal step of this grievance procedure. The Board is entitled to be represented by anyone designated by the Board.

C. Informal Process: Nothing contained herein shall prevent an employee from discussing a potential grievance with his/her supervisor and having the matter remedied in an informal procedure provided that the remedy is consistent with the terms of this Agreement.

D. Formal Procedure:

Step One: In order to be valid, a grievance must be presented within 15 working days of the event which gave rise to the grievance. If a member of the bargaining unit is unable to work out the problem with their immediate supervisor, the employee will reduce the grievance to writing. The written grievance shall be presented to the employee's immediate supervisor for his/her consideration. After the grievance is presented, the immediate supervisor shall have five working days to respond in writing to the grievant.

Step Two: If within five working days of the receipt of the immediate supervisor's response at step one, the grievant is not satisfied with the response, the grievant may petition the Superintendent in writing advising that the grievant is moving the grievance to step two. The Superintendent shall have five working days after the date of such notice to set up a meeting with the grievant to discuss the matter. The Superintendent shall have five working days from the date of such meeting to respond in writing to the grievant.

Step Three: If the grievant is not satisfied with the response of the Superintendent at step two, he/she shall have five working days from receipt of such written response to notify the Board in writing of a desire to move the grievance to step three. After such written notification is received by the Board, the Board shall establish a time within 30 days to hear the grievance. The response by the Board will be provided the grievant within ten days from the date of the hearing.

E. Arbitration: If within 10 working days after the receipt of the Board's decision at step three, the grievance response by the Board is not acceptable to the Organization, the matter may be referred by the Organization to final and binding arbitration in the following manner:

1. **Within ten working days of receipt of the Board's response at step three, the Organization will notify the Board of its intent to submit the grievance to arbitration.**

2. If such notice is given, the parties will submit a request to the Montana Board of Personnel Appeals for **a list of seven qualified arbitrators**, all of who will be members of the American Arbitration Association and/or the Federal Mediation and Conciliation Service.

3. By mutual agreement, a hearing may be avoided and the parties shall brief the matter to the arbitrator at his/her location. A briefing schedule shall be established in such cases by mutual agreement, or by the arbitrator if the parties cannot agree. When a hearing is held, the arbitrator selected will issue a written decision within 30 days from the close of the hearing. The arbitrator may issue an immediate decision, with his or her written decision to follow.

4. **The parties shall equally pay the expenses and charges of the arbitrator. The parties shall each pay their own costs for presenting their respective cases. The parties may be represented during the arbitration process by representatives of their choice.**

5. **The arbitrator shall have no authority to modify, add to, or subtract from the terms of this Agreement.** This arbitration provision is for grievance arbitration and there shall be no interest arbitration. If any question of arbitrability arises, such question shall be ruled upon by the arbitrator selected to hear the grievance.

F. **Form: All grievances must be submitted, answered and appealed on the Grievance Report Form, attached as Appendix D.**

G. **Time Limitations & Waiver: Grievances must be filed and advanced in accordance with the time limitations contained herein. If the time limitations are not complied with by the Grievant, the right to pursue the grievance further is immediately waived. If time limits are not complied with by the District, the grievance will be deemed automatically elevated to the next step. Time limitations may be waived or extended only by mutual written agreement by the parties.**

H. **Election of Remedies & Waiver: If any suit, complaint, or action is filed before any court, agency or any other tribunal, the same issue of which would constitute a grievance under the terms of this Agreement, the right to file a grievance or to pursue it further if such grievance is already pending in the grievance procedure, shall be immediately waived.**

I. **No Strike Clause: The Board and the Organization agree that all differences between them over this Agreement shall be resolved by the orderly procedures provided herein and, therefore, during the term of this Agreement the Board will not lock out employees and the Association will not engage in a strike, slow down, or other concerted action designed to reduce work normally performed by employees.**

EXHIBIT. #2
DATE 2-11-93
HB 502

Amendments to House Bill No. 502
First Reading Copy

Requested by Rep. Barnett
For the Committee on the Judiciary

Prepared by John MacMaster
February 10, 1993

1. Page 1, line 14.
Following: "must be"
Insert: "released and"

2. Page 2, line 6.
Following: "address"
Insert: "within 10 working days or the bond becomes void and must be released and returned to the surety within 5 working days"

EXHIBIT
DATE 2-11-93
HB 502

TESTIMONY
HB 502 Bail Bond Amendments
Introduced by Rep Joe Barnett
Hearing February 11, 1993

SPEAKER: Jack Young
Representing Valley Bail Bonds, Belgrade
and other Montana Bail Bond persons

WE SUPPORT HB 502 BAIL BOND AMENDMENTS FOR THE FOLLOWING REASONS:

(1) PROPOSE: THE BOND BE EXONERATED AT TIME OF CONVICTION. By this time a Bond has been in force six months to a year. Once the defendant has made all appearances until conviction or plea of guilt, the Bond has performed its function and should be exonerated. If the defendant appeals, a new Bond may be written for the appeal process as it is a whole new undertaking. Under the present statutes, Judges may hold bonds through appeal, pre-sentence investigation which can take two years or more creating a great financial burden for the person holding the Bond.

(2) PROPOSE: A CHANGE FROM 30 DAYS TO 90 DAYS FOR RECOVERY OF DEFENDANT: This would give the bond agent additional time to recover the defendant. Many defendants under Bond move around frequently. The more time the bond agent has to recover the defendant, the better the chances of returning defendant to custody; thus, justice is better served. Failure to return the defendant within specified time costs the Bond agent. The State of Idaho recently extended recovery time to ninety days.

(3) PROPOSE: TEN WORKING DAY NOTIFICATION OF FORFEITURE OF BOND: This prompts courts to notify bonding agent immediately when a defendant fails to make a court appearance. Courts in the past have waited two months to send notice of non-appearance. This gives a "bail jumper" a costly head start on the bonding agent's attempt to apprehend.

BOND AGENTS ARE AN ESSENTIAL SPOKE IN THE WHEEL OF JUSTICE. THEY KEEP JAIL POPULATIONS DOWN TO A MANAGABLE LEVEL. THEY SAVE MONTANA TAXPAYERS CONSIDERABLE SUMS OF MONEY BY RETURNING DEFENDANTS TO THEIR FAMILIES AND JOBS RATHER THAN THE COST OF INCARCERATION AND MANY TIMES RESULTING MEDICAL COSTS TO BE BORNE BY THE TAXPAYERS. BOND AGENTS ALSO SAVE THE STATE TIME AND MONEY, LAW ENFORCEMENT INVESTIGATION TIME AND EXTRADITION COSTS BECAUSE OF THEIR PROVEN ABILITY TO LOCATE AND APPREHEND "BAIL JUMPERS".

EXHIBIT #4
DATE 2-11-93
SB HB 483

Amendments to House Bill No. 483
First Reading Copy
Prepared by the Department of Justice
February 10, 1993

1. Page 1, line 21.
Following: "alcohol"
Insert: "or drugs"

2. Page 5, line 5.
Following: "alcohol"
Insert: "or drugs"

3. Page 6, line 21.
Following: "alcohol"
Insert: "or drugs"

EXHIBIT # 5
DATE 2-11-93
EX. AC HB 468

February 9, 1993

Dear Montana Legislator:

On behalf of the Federation of Montana State Prison Employees Local #4700, MFSE, MFT, AFT, AFL-CIO, and foremost as a concerned taxpayer of the State of Montana, I urge you to consider a dangerous situation that could affect all Montanans.

Mr. James Gamble, new administrator of the state corrections division, brought with him from Wyoming the experimental concept of "community corrections." This concept stands to change not only corrections, but law enforcement and the judicial system as well.

On Jan. 28, 1993, new Corrections and Human Services Director Rick Day introduced a plan to downsize the department's services. Within this plan is a proposed population cap of 850 inmates at Montana State Prison and the proposed closure of the Swan River correctional camp. That means 320 inmates would have to be released at once, under Gamble's plan. That means an immediate influx into Montana communities of 320 inmates, many of whom aren't fit to re-enter our communities, who will flood the ailing job market or enroll in our failing welfare system. With the cap on prison population, we will be forced to release one inmate for every inmate who checks in. It is a vicious circle, indeed.

The corrections division already suffers from a high rate of multiple offenders returning to prison. Do we have the time and resources to assign law enforcement officers the duties of babysitting inmates who have already proven they can't make it in society? I think not. The department's radical reduction plan would make a mockery of judges, county attorneys and law enforcement authorities because there would be no deterrent to criminal actions. Under the department's plan, peace officers would arrest, county attorney's would prosecute, judges would sentence the guilty - only to have the convict released within months or even days, depending on the sentence.

Montana State Prison was designed for maximum, high, medium and low custody inmates. The community corrections concept, along with the prison population cap, virtually eliminates low security and many medium security inmates. As a result, the prison would have to house high security inmates in buildings with sheet rock (not concrete) walls that were designed for low or medium

security inmates. At present, the prison industries, ranch and dairy programs operate with the labor of low and medium security inmates. What happens when these so-called low-risk inmates are exported into the communities? Should the prison then use high-risk inmates in the programs? It can't be done without high risk to the safety and security of the prison and surrounding communities.

In closing, I would ask you to consider:

a.) What happens if we have only high-security inmates in the prison, and many of the lower-security inmates who were released are sent back to prison? Do we start releasing high-risk inmates (cap at 850, 1 in, 1 out)?

b.) Does the state have enough support from communities to make this proposal work?

c.) Will the state use inmate profiles when considering inmates for release, or are we just dealing with numbers?

d.) Where is the safety net for parole and probation?

e.) Where is the safety net for the public?

f.) Who will be accountable for violent crimes committed by inmates exported into the communities?

g.) Targeted case managers already spend months finding placement for inmates in existing programs. What happens when the caseload goes up? Do we warehouse inmates in overcrowded county jails at a higher cost per day?

Thanks for your consideration.

Sincerely,

Ron Paull

Correctional Sgt. Ron Paull, President
Federation of Montana State Prison Employees, Local #4700
MFSE, MFT, AFT, AFL-CIO

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 15

DATE Feb. 11, 1993 SPONSOR(S) Blaylock

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
John Maree	M.F.T	X	
Phil Campbell	MEA	X	
Don Waldron	MEA		✓
Bruce W. Moerer	MSBA		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. HB502

DATE Feb. 11, 1993 SPONSOR(S) Barnett

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
JACK YOUNG 504 IDAHO ST BELGRADE	VALLEY BAIL BONDS	✓	
SCOTT RESTVEDT 356 TOPAZ - BELGRADE	VALLEY BAIL BONDS	✓	
Gene D. Senne 201 West Broadway, Msla	AAA Anderson Bail Bonds	✓	
[illegible] 216 [illegible] 3E Gt. Falls	E-Z Bail Bonding	✓	
William [illegible] 216 [illegible] 3E GT Falls	E-Z Bail Bonding	—	
EARL ROWE 204 N. TRAVOIS, MISSOULA	THE BONDSMAN	✓	✓
CRAIG L. HOPPE 701 PYRITE, HELENA	MONTANA MAGISTRATES ASSN		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 466

DATE Feb. 11, 1993 SPONSOR(S) Mills

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Grace Burr / Helena	Board of Realty Reg		X
MARCIA ALLEN / HELENA	BOARD OF REALTY REG		X
[illegible]	Billings Board of Realtors	X	
Tom Emerling	Billings Board of Realtors	X	
Russell B Hill	MTLA		X
Tom Hopgood	Mt. Assoc. Realtors	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO. HB 429

DATE Feb. 11, 1993 SPONSOR(S) Strizich

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Joe Roberts	Mt. City Attys Assoc.	✓	
TOM ADAMO	MT. DEPT. OF JUSTICE	✓	
Bryan Lockerby	Mont. Police Protect. Assoc.	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

Judiciary COMMITTEE BILL NO HB 483

DATE Feb. 11, 1993 SPONSOR(S) D. Toole

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Peter Funk	Dept. of Justice	X	
Bill Ware, Chief	Mt. Asso of Chiefs of Police	✓	
G. Lee Meltzer	Dept. of Justice (For Sci)	✓	
Phil Lively	Dept of Justice (For Sci)	✓	
Craig L. Hoppe	Mt Magistrates Assn	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. HB 468

DATE Feb. 11, 1993 SPONSOR(S) J. Rice

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Mick Gamble	DCHS	✓	
Alyn Downey	"	✓	
HARLEY WARNER	ASSOC. OF CHURCHES	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.