

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on February 18, 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. Jim Rice (R)
Rep. Angela Russell (D)
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. Scott McCulloch (D)

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: HB 638
Executive Action: HJR 22, HB 507, HB 518, HJR 21
HB 620, HB 602, HB 487, HB 610
HB 633

HEARING ON HB 638

Opening Statement by Sponsor:

REP. DUANE GRIMES, House District 75, Clancy, presented HB 638 on behalf of the Department of Family Services (DFS). DFS has done an extensive two-year study on incarcerated youth; they have found that too many youths are sent to correctional institutions for incorrect reasons, i.e., mental illness.

Proponents' Testimony:

Al Davis, Administrator, Juvenile Corrections Division, DFS, presented written testimony. EXHIBIT 1

John McCrea, speaking for Kristin Bakula, Executive Director, Montana Advocacy Program, Inc., presented written testimony. EXHIBIT 2

Opponents' Testimony:

Jim Smith, Montana Probation Officers Association (MPOA), stated he believes there is some budget management and budget control behind this bill as well as reform of the youth care system. He said, currently, the system does have number of checks and balances existing primarily between the District Courts, youth court system and DFS. The authority and the jurisdiction is shared between those entities, and he believes there has been a lot of legislation this session that has tipped that balance in favor of DFS. MPOA is concerned, because it appears that controlling and managing its budgets is at least as high on DFS' list as the welfare of children. Another concern of MPOA is it feels the judges should continue to have the right to place youth in a correctional facility for an interminable length of time. The trend that probation officers have observed over the last couple of years is shorter and shorter stays at correctional facilities, such as Pine Hills, in particular. It takes from six months to one year to get a youth sent to Pine Hills and he is out almost immediately, and the reason for that is budget control.

Questions From Committee Members and Responses:

CHAIRMAN FAGG addressed Mr. Davis' testimony and said apparently, DFS knew that HB 638 is a contentious bill and is disappointed that DFS hadn't worked with the Probation Division. Mr. Davis said the bill was circulated in December 1992 and that DFS had not heard a reaction from the Probation Division since then. It was Mr. Davis' understanding, as of February 17, 1993, that HB 638 was not going to be introduced.

REP. WINSLOW asked REP. GRIMES if there will be a fiscal impact and where the fiscal note is. REP. GRIMES said there will be no fiscal impact and no fiscal note to this bill.

REP. VOGEL said the first obligation is to help our children. Some of these young adults have been in and out of these institutions several times already and still need help. Finally, the judge decides that these same youths should stay institutionalized because it's the only place these kids belong. REP. VOGEL interprets this bill as DFS turning these children back into the street. Mr. Davis said DFS is seeking alternative methods for the children who don't belong in these facilities but they are just not being released to society without help.

Closing by Sponsor: None

EXECUTIVE ACTION ON HJR 22

Motion/Vote: REP. BROWN MOVED HJR 22 DO PASS. Motion carried unanimously. HJR 22 has been put on consent calendar.

EXECUTIVE ACTION ON HB 507

Motion: REP. SAYLES MOVED HB 507 DO PASS.

Discussion:

REP. BROWN said he doesn't understand why existing law doesn't handle this problem in terms of aggravated assault. He also referred to page 2, lines 3, when a person is "purposely and knowingly making physical contact of an insulting or provoking nature of a sports official," and REP. BROWN assumed physical contact means touching and/or hitting, insults from the crowd. REP. SAYLES affirmed that was the entire intent of the bill. There is more activity being vented towards officials in this manner. Officials requested this bill for more protection. He feels this is not frivolous legislation.

REP. VOGEL reviewed the assault statute of HJR 22 and observed it is verbatim of the assault statute. He proposed the following changes. In the bill where it says "assault on sports official" strike "sports official" and insert "person" and it would be the same statute with exclusion of section 2, page 2 where the fine is \$1,000 instead \$500, and the jail term is 12 months instead of six months in the resolution. He asked REP. SAYLES if that was true. REP. SAYLES said section 2 is the assault statute with exemptions and is the old assault statute with 6 months to 12 months, from \$500 to \$1,000. The section 1 assault statute is a statement of what needs to be clarified in the resolution. If HJR 22 says, "kill the official" the offender is not going to jail, and that's what section 1 sets out to do. That is the

reason REP. SAYLES moved an amendment for line 13, after officiating.

Motion/Vote: REP. SAYLES moved an amendment on page 1, line 13, following officiating, to insert: "that is alleged to have affected the outcome of the contest." Motion carried unanimously.

REP. WINSLOW said she believes there is a general attitude among committee members that it's not interested in protecting classes of people. She would guess that when referees take their MOA test and become officials, they know what they are getting into, and she said there are certain things that go along with that. One of those is being screamed at or assaulted in some way by the audience. REP. WINSLOW argued that current laws are adequate to protect officials, and she said this particular bill has gotten into the issue of personal responsibility. She doesn't think they need any more protection than they already have.

Vote: HB 507 DO PASS. Motion carried 10-8 with REPS. BROWN, BROOKE, MCCULLOCH, RICE, RUSSELL, TOOLE, WINSLOW and WYATT voting no.

EXECUTIVE ACTION ON HB 518

Motion: REP. WHALEN MOVED HB 518 DO PASS.

Motion: REP. WHALEN moved the amendments.

Discussion:

REP. WHALEN explained the amendments. The title of the bill provides that this is to apply to health care information, and the bill has been drafted only to apply to in-hospital medical staff committees. The amendments make the bill apply to all health care providers and changes the penalty to the one currently in the law for dissemination of health care.

REP. BROWN proposed the amendments be separated and voted on as follows: amendments 1, 2, 3 and 6, and amendments 4 and 5. REP. BROWN stated he does not support amendments 4 and 5, as they are a potential fine of \$10,000 or one year in jail instead of a minor misdemeanor, which he thinks it ought to be for this type of offense. This bill intimidates people into keeping their mouth shut.

CHAIRMAN FAGG agreed the amendments will be segregated but will be discussed together. That was agreeable to REP. WHALEN, and he stated the only reason he did that was to conform the penalty for the bill to the one that is currently in statute.

Motion/Vote: CHAIRMAN FAGG moved amendments 1, 2, 3, and 6. Motion carried unanimously.

Motion/Vote: CHAIRMAN FAGG moved amendments 4 and 5. Amendments failed.

Motion/Vote: REP. WHALEN MOVED HB 518 DO PASS AS AMENDED.
Motion carried 17-1 with REP. BROOKE voting no.

EXECUTIVE ACTION ON HJR 21

Motion: REP. WHALEN MOVED HJR 21 DO PASS.

Discussion:

REP. WHALEN clarified that HJR 21 sends a message revoking the American Bar Association (ABA) recommendations on nominees to the federal bench. REP. WHALEN said that, if this practice is discontinued, the ABA could do something similar to what Montana does: to appoint a committee to nominate candidates.

CHAIRMAN FAGG said he objects to REP. WHALEN'S idea because the ABA represents all attorneys in the United States. The ABA is fairly objective in its analysis when assisting presidents and Congress in the search for candidates for the federal bench.

REP. WHALEN feels the public should feel confident about the people who are nominated to the federal bench. The ABA's position on political and social issues, REP. WHALEN believes, creates a lot of perception that these people aren't being voted solely on their qualifications.

REP. RICE agrees with REP. WHALEN that there are provisions and issues that he doesn't agree with, but he doesn't think HJR 21 is the right approach.

Motion/Vote: REP. RICE MOVED A SUBSTITUTE MOTION TO TABLE HJR 21. Motion failed 7-10 with REP. WINSLOW not voting and REPS. VOGEL, BERGMAN, CLARK, GRIMES, RUSSELL, SAYLES, SMITH, TASH, TOOLE AND WHALEN voting no.

The Chairman announced that, without objection from the committee, the vote would be reversed from TO BE TABLED vote of 7-10 to a DO PASS vote of 10-7.

EXECUTIVE ACTION ON HB 620

Motion/Vote: REP. WHALEN MOVED HB 620 BE TABLED. Motion carried 17-1 with REP. WYATT voting no.

EXECUTIVE ACTION ON HB 602

Motion: REP. VOGEL MOVED HB 602 DO PASS.

Motion: REP. TOOLE MOVED A SUBSTITUTE MOTION TO TABLE HB 602.

Discussion:

CHAIRMAN FAGG said a realtor is potentially liable. A lawsuit could be filed, and it would be up to a jury to determine whether there was liability there.

REP. RICE said that the issues for which realtors are seeking immunity are already part of federal law that says they are not allowed to conceal any information about homes. If they do disclose information about the home, they will hire a lawyer anyway to defend them.

Vote: HB 602 BE TABLED. Motion carried 10-8. Those voting against the tabled motion are CHAIRMAN FAGG, REPS. VOGEL, BIRD, BERGMAN, CLARK, RICE, SMITH, and TASH.

EXECUTIVE ACTION ON HB 487

Motion: CHAIRMAN FAGG MOVED HB 487 DO PASS.

Motion: CHAIRMAN FAGG moved the amendments presented by REP. BRANDEWIE. EXHIBIT 3

Discussion:

Mr. MacMaster explained the amendments. Changes in amendments 6 and 7 each change the "for and against" clauses that would go on the ballot. The last part of the clause gives the legislature authority to allow subrogation.

REP. RICE said that he understands the amendment but is trying to understand the effect of the amendment. He said there are provisions for subrogation now and asked if the effect of this amendment, specifically referring to subrogation, is to prohibit the state legislature from eliminating or changing subrogation.

Mr. MacMaster said the amendment is going to say that the legislature may authorize subrogation. It allows the legislature to set eligibility criteria and benefit levels.

REP. RICE requested the amendments be segregated. Amendments 1 and 4 have to do with actuarial soundness, and amendments 2, 3, 5, 6 and 7 have to do with subrogation.

Motion/Vote: CHAIRMAN FAGG moved amendments 1 and 4. Amendments passed unanimously.

Motion/Vote: CHAIRMAN FAGG moved amendments 2, 3, 5, 6 and 7. Amendments failed 1-17 with REP. VOGEL voting yes.

Motion/Vote: REP. BROWN MOVED HB 487 DO PASS AS AMENDED. Motion carried 10-8. Those voting against the motion were REPS. BIRD, BROWN, BROOKE, RICE, RUSSELL, TOOLE, WHALEN, and WYATT.

EXECUTIVE ACTION ON HB 610

Motion: REP. WHALEN MOVED HB 610 DO PASS.

Discussion:

REP. WHALEN proposed amendments and Mr. MacMaster explained them to the committee. These are amendments that REP. WHALEN and CHAIRMAN FAGG asked the Department of Health and Environmental Sciences (DHES) to work out with Doug Olsen, Montana Independent Bankers Association. EXHIBIT 4

Motion/Vote: REP. WHALEN moved the amendments. Amendments carried unanimously.

REP. WHALEN disbursed another set of amendments, and Mr. MacMaster explained the difference in this set from the first set. These amendments are clean-up amendments. Mr. MacMaster said the person who drafted these amendments is familiar with health insurance law, but not criminal law; therefore, the amendments consist of criminal terminology. EXHIBIT 5

REP. WHALEN offered amendments with the criminal penalties going where they should and asked Mr. MacMaster to prepare those amendments.

Motion: REP. CLARK moved to strike section 7 from the bill.

Discussion:

REP. CLARK'S intention is to remove the patient protection account; he would like to take the fine imposed in a criminal conviction and have that money go where all other criminal offense fines are allotted, rather than the patient protection fund. REP. CLARK added that he also does not like earmarked funds going toward the patient protection fund. Mr. MacMaster agreed with that but then explained that there are also other places where civil penalties in various civil proceedings also go to the patient protection fund. He said that those references would also have to be deleted from the bill, and REP. CLARK affirmed that would be his intention.

REP. WHALEN said, for clarification purposes, as soon as Mr. MacMaster explained the list of amendments, he would like to vote on those amendments with the exception of those amendments having to do with section 7.

Motion/Vote: REP. WHALEN moved the amendments being explained by Mr. MacMaster with the exception of section 7. Amendments carried unanimously.

Motion/Vote: REP. CLARK moved to strike section 7 from the bill and any reference to civil fines also.

Discussion:

REP. BROWN isn't clear on what REP. CLARK'S motion is and asked him if he is striking out all civil fines, or the civil fines allotted according to code distribution. He is also concerned that REP. CLARK wants to create another statutory account; however, on page 10, subsection (b), line 4, one of the main reasons for having this kind of account is so that if there are gifts or grants or other reimbursements, there is a place to put them. Without a statutory appropriation, a person can't receive gifts or grants, etc. REP. BROWN recommended striking lines 2 and 3 on page 10.

Motion/Vote: REP. WHALEN moved a substitute motion to eliminate subparagraph (a) and renumber the following sections on page 10, line 2 and 3 of the bill which would be the penalty collected under the administrative enforcement provision of the bill; a new section would be added or any section would be modified that requires these penalties that go under the general fund. Amendment carried unanimously.

With all that has taken place in this bill, REP. WINSLOW said there is still no definitive answer as to what the real purpose of this bill is, and she moved to table the bill.

Motion: REP. WINSLOW MOVED A SUBSTITUTE MOTION THAT HB 610 BE TABLED.

Discussion:

REP. SMITH thinks there is a great need for direction in this area, and waiting two years, till the next legislative session, will be very devastating to the residents in health facilities, She opposes the table motion.

CHAIRMAN FAGG spoke in favor of tabling the bill mainly because the people who have written amendments have not agreed with each other, and the committee is dealing with information that they don't completely understand.

Vote: HB 610 BE TABLED. Motion failed 7-10 with REP. BIRD excused from voting. Those voting no to the table motion were REPS. VOGEL, BROWN, BROOKE, GRIMES, MCCULLOCH, RUSSELL, SMITH, TOOLE, WHALEN, and WYATT.

Motion: REP. WHALEN MOVED HB 610 DO PASS AS AMENDED.

Motion/Vote: REP. RICE moved an amendment to require that the notice contains the right to apply in writing within 30 days for a hearing. Motion carried unanimously.

Vote: HB 610 DO PASS AS AMENDED. Motion carried 12-5 with REP. BIRD excused from voting. Those voting against the do pass motion were REPS. BERGMAN, CLARK, RICE, TASH, and WINSLOW.

EXECUTIVE ACTION ON HB 633

Motion: REP. RUSSELL MOVED HB 633 DO PASS.

Discussion:

Ms. Beverly Gibson, Assistant Executive Director, Montana Association of Counties (MACo), explained that she had not had a chance to speak to the committee during the scheduled hearing; she presented her testimony to the committee during executive action. EXHIBIT 6

REP. VOGEL asked REP. RUSSELL if it is her intention to totally eliminate the mentally ill from incarceration. REP. RUSSELL said the intent is to give them more appropriate attention, such as rehabilitation, rather than incarceration. These people have committed minor misdemeanors. REP. VOGEL agrees with her, but he reiterated that there are times when law enforcement doesn't have a facility immediately available, and as a remedy to the immediate situation, there has to be a holding area until a facility is available. He is referring to the small towns in which there are not enough facilities. Rather than eliminating incarceration in a prison, the mentally ill must be detained in a safe facility.

Vote: HB 633 DO PASS. Motion carried 17-1 with REP. BROWN voting no.

ADJOURNMENT

Adjournment: 12:00 p.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHKE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE 2-18-93

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 Savles	✓		
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 18, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Joint Resolution 21 (first reading copy -- white) do pass.

Signed: _____
Russ Fagg, Chair

Committee Vote:
Yes 10, No 1.

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HOUSE STANDING COMMITTEE REPORT

February 19, 1993

Page 1 of 4

Mr. Speaker: We, the committee on Judiciary report ~~that~~ House
Bill 610 (first reading copy -- white) do pass as amended.

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

1. Page 2, line 5.

Following: "[section 1]"

Insert: "that threatens the health or safety of one or more
individuals entrusted to the care of the person"

2. Page 2, line 6.

Following: "each"

Insert: "day that a facility is in"

Following: "violation"

Insert: "of a provision of part 1 or 2 of this chapter or of a
rule, license provision, or order adopted or issued pursuant
to part 1 or 2"

3. Page 2, lines 6 and 7.

Strike: "Each" on line 6 through "offense." on line 7

4. Page 2, lines 15 and 16.

Strike: "patient protection account provided for in [section 7]"

Insert: "general fund"

5. Page 2, line 22.

Strike: "an"

Insert: "a criminal"

6. Page 2, line 23.

Following: "knowingly"

Insert: "does any of the following and by doing so threatens the
health or safety of one or more individuals entrusted to the
care of the person"

7. Page 3, line 12.

Strike: "guilty of an offense"

Insert: "convicted"

8. Page 3, line 15.

Committee Vote:

Yes ____, No ____.

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Following: "offense"

Insert: "for each day that a facility is in violation of a provision of part 1 or 2 of this chapter or of a rule, license provision, or order adopted or issued pursuant to part 1 or 2"

9. Page 3, lines 15 and 16.

Strike: "Each" on line 15 through end of line 16

10. Page 3, line 17.

Strike: "Action"

Insert: "Prosecution"

11. Page 3, line 20.

Strike: "an action to collect a penalty"

Insert: "prosecution"

12. Page 3, lines 23 through 25.

Strike: subsection (5) in its entirety

13. Page 4, lines 2 and 3.

Strike: "--administrative" on line 2 through "penalty" on line 3

14. Page 4, line 11.

Following: "violation."

Insert: "The notice must inform the alleged violator of the right to a hearing and that the contested case provisions of the Montana Administrative Procedure Act, Title 2, chapter 4, part 6, apply to the hearing."

15. Page 4, lines 15 and 16.

Strike: ", or" on line 15 through "both" on line 16

16. Page 5, lines 2 and 3.

Strike: "or an" on line 2 through "or both" on line 3

17. Page 5, line 5.

Strike: ";

Insert: "and the"

18. Page 5, lines 6 and 7.

Strike: "; or" on line 6 through "paid" on line 7

19. Page 5, line 11 through line 5 of page 6.

Strike: subsections (3) and (4) in their entirety

Renumber: subsequent subsections

20. Page 6, lines 16 through 18.

Strike: "This" on line 16 through "means." on line 18

Insert: "prevailing party"

31. Page 14, line 23.

Strike: "patient protection account provided for in [section 7]"

Insert: "general fund"

32. Page 15, line 6.

Following: "~~not~~"

Insert: "not"

33. Page 16, line 15.

Following: "patient's"

Insert: "or resident's"

34. Page 17, line 5.

Following: "board"

Insert: "or court"

HOUSE STANDING COMMITTEE REPORT

February 18, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 633 (first reading copy -- white) do pass .

Signed: Russ Fagg
Russ Fagg, Chair

Committee Vote:
Yes 18 , No 0 .

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HOUSE STANDING COMMITTEE REPORT

February 13, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 487 (first reading copy -- white) do pass as amended .

Signed: _____
Russ Fagg, Chair

And, that such amendments read:

1. Title, line 8.
Strike: "ACTUARIALLY SOUND"
2. Page 1, line 24.
Strike: "actuarially sound"
3. Page 2, lines 13 and 17.
Strike: "actuarially sound"
Insert: "set"

Committee Vote:
Yes , No .

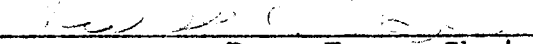
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HOUSE STANDING COMMITTEE REPORT

February 18, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 518 (first reading copy -- white) do pass as amended.

Signed: 
Russ Fagg, Chair

And, that such amendments read:

1. Title, line 6.

Strike: "SECTIONS 50-16-204 AND"

Insert: "SECTION"

2. Page 1, line 10 through line 3 of page 2.

Strike: "Section 1." on page 1, line 10 through ", or the hospital" on line 3 of page 2

Insert: "NEW SECTION. Section 1. Political use of health care information prohibited. A health care provider may not use health care information"

3. Page 2, line 22.

Strike: "50-16-204(2)"

Insert: "[section 1]"

4. Page 2, line 25.

Following: line 24

Insert: "NEW SECTION. Section 3. Codification instruction.

[Section 1] is intended to be codified as an integral part of Title 50, chapter 16, part 5, and the provisions of Title 50, chapter 16, part 5, apply to [section 1]."

Committee Vote:

Yes 11, No 1.

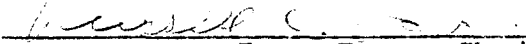
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HOUSE STANDING COMMITTEE REPORT

February 18, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 507 (first reading copy -- white) do pass as amended.

Signed: 
Russ Fagg, Chair

And, that such amendments read:

1. Page 1, line 13.

Following: "officiating"

Insert: "that is alleged to have affected the outcome of the
contest"

Committee Vote:
Yes 10, No 0.


4016166C.Hss

HOUSE STANDING COMMITTEE REPORT

February 18, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Joint Resolution 22 (first reading copy -- white) do pass and be placed on consent calendar .

Signed: 
Russ Fagg, Chair

Committee Vote:
Yes 17, No 1.

401407SC.Hrs

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2-18-93 BILL NO. HB 507 NUMBER 18

MOTION: HB 507 DO Pass 10-8

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		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen	✓	
Rep. Karyl Winslow		✓
Rep. Diana Wyatt		✓
	10	8

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2-18-93 BILL NO. HJR 21 NUMBER 17MOTION: HJR 21 DO Pass 10-7

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	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	Excused	
Rep. Diana Wyatt		✓
	10	7

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2-18-90 BILL NO. 620 NUMBER 18

MOTION: HB 620 Be Tabled 17-1

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	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2-18-93 BILL NO. HB 602 - NUMBER 18

MOTION: HB 602 Be Tabled 10-8

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	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith		✓
Rep. Bill Tash		✓
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	
	10	8

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2-18-93 BILL NO. HB 487 NUMBER 18

MOTION: HB 487 DO Pass as Amended 10-8

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		✓
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole		✓
Rep. Tim Whalen		✓
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt		✓
	10	8

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/18/93 BILL NO. HB 610 NUMBER 17MOTION: HB 610 Be Tabled Failed 10-7

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair		✓
Rep. Dave Brown, Vice-Chair		✓
Rep. Jodi Bird	NO	VOTE
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		✓
	7	10

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL VOTE

DATE 2/18 BILL NO. HB 610 NUMBER 17MOTION: HB610 DO pass as Amended 12-5

NAME	AYE	NO
Rep. Russ Fagg, Chairman	✓	
Rep. Randy Vogel, Vice-Chair	✓	
Rep. Dave Brown, Vice-Chair	✓	
Rep. Jodi Bird	NO vote	
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	✓	
	12	5

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

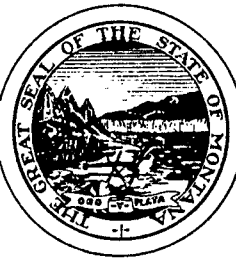
ROLL CALL VOTE

DATE 2/18/93 BILL NO. HB 633 NUMBER 18

MOTION: HB 633 DO Pass 17-1

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	✓	
Rep. Tim Sayles	✓	
Rep. Liz Smith	✓	
Rep. Bill Tash	✓	
Rep. Howard Toole	✓	
Rep. Tim Whalen	✓	
Rep. Karyl Winslow	✓	
Rep. Diana Wyatt	✓	

DEPARTMENT OF FAMILY SERVICES



MARC RACICOT, GOVERNOR

(406) 444-5900
FAX (406) 444-5956

STATE OF MONTANA

HANK HUDSON, DIRECTOR
JESSE MUNRO, DEPUTY DIRECTOR

PO BOX 8005
HELENA, MONTANA 59604-8005

February 17, 1993

DEPARTMENT OF FAMILY SERVICES
FACT SHEET IN SUPPORT OF H.B. 638

Submitted by Al Davis, Administrator
Juvenile Corrections Division

A handwritten signature in dark ink, likely belonging to Al Davis, the Administrator of the Juvenile Corrections Division.

- ✓ Approximately 400 youngsters are committed to juvenile correctional institutions in Montana each year. A total of 135 secure-care beds are available for these referrals. (80 beds at Pine Hills School and 55 beds at Mountain View School) In order to appropriately respond to Youth Court referrals, the Juvenile Corrections Division must be reshaped in an effort to adequately react to the needs of referred youth and the state's juvenile justice system.

Major effort has been devoted to examining the Montana system as well as researching national trends in juvenile corrections programs. Assistance has been solicited from nationally recognized juvenile corrections consultants, other state's juvenile corrections leaders, as well as from Montana experts in corrections in an effort to devise a corrections system that responds more appropriately to the state's needs.

Redefining existing corrections division components, enhancement of classification procedures, development of community based opportunities for corrections youth, and networking with existing support programs are actively being pursued. A pilot project involving 6 judicial districts is nearing implementation to test modified programs.

- ✓ H.B. 638 modifies current statutory language allowing for a more sophisticated and responsive corrections system. Most of the suggested changes are proposed to clarify currently practiced procedures. Two of the changes are considered to be critical in the successful implementation of the corrections system reform movement.

Determinate Sentencing:

Committing youngsters to specific programs for specific periods of time restricts the ability of the Department to best utilize its assets. Programs are being designed based on assessed needs and public safety issues. The type and duration of placement is dependent on each youth's needs which oftentimes not positively corresponds with a court-ordered determinate period of confinement.

The national trend and statistics suggest that an indefinite period of confinement responsive to each individual's need will allow the division to provide a more meaningful impact on referred youth - as well as insure that public safety issues are not jeopardized.

Seriously Mentally Ill:

Juvenile correctional institutions are not staffed, trained, or physically designed to respond to the needs of mentally ill youth. Treatment required for mentally ill youngsters is significantly unlike what is required of delinquent youth. Confining SED youth with non-SED delinquent youth places the well-being of the SED youngster, other youth and institution staff at risk. Potential law suits resulting from mentally ill youth being placed in a correctional facility environment are currently pending. There is an increased potential for serious incidents (suicides, assaults, etc.) when mentally ill youngsters are placed in our juvenile institutions.

The incidence of mentally ill youth being committed to correctional institutions is not great. (historically about 12 each year) Their presence, however, has major impact on the total facility program.

H.B.638 clearly states that seriously mentally ill youngsters as defined in 53-21-102 are inappropriate for placement in a juvenile correctional facility. The result of passing H.B.638 would be to reduce the institution's liability, allow for the afflicted youth to receive appropriate treatment, and enhance the quality of the treatment programs at the institutions.

Amendments to House Bill No. 610
First Reading Copy

Requested by Rep. Whalen
For the Committee on the Judiciary

Prepared by John MacMaster
February 17, 1993

1. Page 2, line 6.
Following: "each"
Insert: "day that a facility is in"
Following: "violation"
Insert: "of a provision of part 1 or 2 of this chapter or a rule,
license provision, or order adopted under part 1 or 2"
2. Page 2, lines 6 and 7.
Strike: "Each" on line 6 through "offense." on line 7
3. Page 3, line 13 and line 14.
Following: "\$1,000" on line 13 and "\$2,000" on line 14
Insert: "for each day that a facility is in violation of a
provision of part 1 or 2 of this chapter or a rule, license
provision, or order adopted under part 1 or 2"
4. Page 3, lines 15 and 16.
Strike: "Each" on line 15 through end of line 16
5. Page 5, line 12.
Following: "each"
Insert: "day that a facility is in"
6. Page 5, line 13.
Following: "violation"
Insert: "of a provision of part 1 or 2 of this chapter or a rule,
license provision, or order adopted under part 1 or 2"
7. Page 5, lines 13 and 14.
Strike: "Each" on line 13 through end of line 14
8. Page 6, line 2.
Strike: "relative to the alleged violator's ability to pay"
9. Page 7, line 1.
Strike: "Upon"
Insert: "If receivership has not already been instituted under
medicaid or medicare, upon"
10. Page 10, line 2.
Following: "penalties"
Insert: ", costs, and attorney fees"
11. Page 10, line 13.

Following: "administration"

Insert: ", and only if general fund money appropriated to the
department is inadequate"

12. Page 15, line 6.

Following: "~~not~~"

Insert: "not"

13. Page 16, line 15.

Following: "patient's"

Insert: "or resident's"

14. Page 17, line 5.

Following: "board"

Insert: "or court"

1. Page 2, line 5.
Following: "[section 1]"
Insert: "which threatens the health or safety of individuals entrusted to the care of the person"
2. Page 2, line 23.
Following: "knowingly"
Insert: "commits the offenses described in subsections (a) through (c), and such acts of omissions threaten the health or safety of individuals entrusted to the care of the person"
3. Page 4, lines 15 and 16.
Following: "order"
Strike: ", or an order to pay an administrative penalty, or both"
4. Page 5, lines 2 and 3.
Following: "action"
Strike: "or an order for the assessment of an administrative penalty, or both"
5. Page 5, lines 6 and 7.
Following: "violation"
Strike: "; or the date by which the administrative penalty must be paid"
6. Page 5, lines 11 through 25.
Strike: "(3)" on line 11 through the end of line 25 on page 5.
7. Page 6, lines 1 through 5.
Strike: "(b)" through the end of line 5.
Re-number subsequent subsections.
8. Page 6, lines 16 through 18.
Following: "(7)"
Strike: "This" through the end of line 18,
Insert: "Before undertaking any action provided for in [Section 4], the department shall make efforts to obtain voluntary compliance through warning, conference, or any other appropriate means."
9. Page 6, lines 23 through 25.
Strike: "(9)" through the end of line 25.
10. Page 7, lines 13 through 22.
Strike: "(e)" on line 13 through "conditions" on line 22.
11. Page 7, line 23.
After: "emergency"
Insert: "which results in or presents an immediate and serious threat to the health or safety of patients or residents of a health care facility"

12. Page 10, lines 11 through 13.

After: "(a)"

Strike: "to" through the end of line 13

Insert: "to maintain operation of a facility during receivership;"

13. Page 10, line 17.

After: "5(6)]" on line 17

Strike: "."

Insert: ";

14. Page 10, line 18.

Insert: "(d) to reimburse residents or patients for personal funds
lost."

15. Page 14, line 16.

After: "the"

Strike: "department"

Insert: "prevailing party"

MONTANA ADVOCACY PROGRAM, Inc.

316 North Park, Room 211
Helena, Montana 59623

(406)444-3889
1-800-245-4743
(VOICE - TDD)

February 18, 1993

Russell Fagg, Chair
House Judiciary Committee
State Capitol
Helena, Montana 59620

Dear Representative Fagg:

RE: H.B. 638

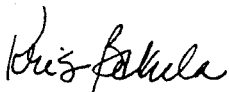
I appreciate this opportunity to express the endorsement of the Montana Advocacy Program (MAP) for H.B. 638, a bill which amends the commitment of mentally ill youth to correctional facilities in our state. For your reference, MAP is the federally mandated protection and advocacy system for persons with mental illness and developmental disabilities. The mission of MAP is to protect and advocate the human and legal rights of Montanans with disabilities by advancing dignity, equality and self-determination.

This bill makes several changes that our office has advocated for on behalf of mentally ill adolescents in the correctional system. First, if adopted, the amended language places the emphasis on rehabilitation and treatment of youth, as opposed to inappropriate placement in correctional facilities. Secondly, these changes would prohibit the initial commitment or prolonged confinement of a mentally ill youth in a state youth correctional facility. We would urge, however, that "reasonable time" needs to be specifically defined in terms of days or hours.

While I am not able to attend your committee hearing and testify, one of my staff, John McCrea will be in attendance and should be able to answer any questions you may have.

Thank you for time and consideration of our input.

Sincerely,



Kristin Bakula
Executive Director

AMENDMENTS TO HOUSE BILL 487

1. Page 1, lines 8
Following: "SET"
Strike: ACTUARIALLY SOUND
2. Page 1, line 9
Following: ";"
Insert: "PROVIDING FOR SUBROGATION;"
3. Page 1, line 24
Following: "benefits"
Strike: "and"
Insert: ","
4. Page 1, line 24
Following: "set"
Strike: "actuarially sound"
5. Page 1, line 25
Following: "benefits"
Strike: "and services"
Insert: "and authorize subrogation by a workers' compensation insurer, without regard to full legal redress, where an injured worker recovers against a third party responsible for the worker's injury."
6. Page 2, lines 11 through 14
Following: "FOR"
Strike: the remainder of line 11 through line 14 in their entirety.
Insert: "for allowing the legislature to set eligibility criteria for workers' compensation benefits, set limits on the duration and level of benefits and authorize subrogation by a workers' compensation insurer, without regard to full legal redress, where an injured worker recovers against a third party responsible for the worker's injury."
7. Page 2, lines 15 through 18
Following: "AGAINST"
Strike: the remainder of line 15 through line 18 in their entirety.
Insert: "for allowing the legislature to set eligibility criteria for workers' compensation benefits, set limits on the duration and level of benefits and authorize subrogation by a workers' compensation insurer, without regard to full legal redress, where an injured worker recovers against a third party responsible for the worker's injury."

EXHIBIT 4
DATE 2-18-93
~~SR~~ HB 633

MONTANA ASSOCIATION OF COUNTIES

2711 Airport Road
Helena, Montana 59601
(406) 442-5209
FAX (406) 442-5238

February 17, 1993

In 1991 legislation was enacted to protect mentally ill persons from being incarcerated for minor offenses. HB 103 had a delayed effective date of July 1, 1993, and requires sheriffs and jail administrators to screen and divert from jail persons who appear to be seriously mentally ill when they are charged with a minor misdemeanor offense.

During the interim, the Department of Corrections and Human Services brought together representatives of mental health providers, clients, and state and local government officials to find out how the new legislation could be made to work. A major concern was a lack of funding for training and facilities to carry out the requirements of the law. During this time, counties were assisted in preparing plans for implementation of the legislation. After a year and a half of work, MACo, together with the Montana Sheriffs and Peace Officers Association, agreed that the new law needed to be in place at least a year to see the actual impacts and to define any problems in implementation, including new costs to local governments.

Therefore, we have asked the law to be only minimally amended at this time. When persons are intoxicated from drugs or alcohol, it is not possible to immediately evaluate them for mental illness. Our amendment would allow a person to be held until an evaluation can be made, and also clarifies the term "mental disorder" so that a person is not automatically deemed to have a mental disorder just because that person is intoxicated or is addicted to drugs or alcohol.

We think HB 633 addresses these concerns, and we look forward to implementing the major requirements of this law as we work together with the Mental Health community in the coming year.

MACo

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

11:AM

Judiciary
DATE Feb. 18, 1993

COMMITTEE

BILL NO.

HB 638

SPONSOR(S)

W. Grimes

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Ron Gilkey</u>	<u>DFS</u>	<u>1</u>	
<u>Louise Kortnik</u>	<u>Christian Coalition</u>	<u>X</u>	

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