

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
53rd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN RUSSELL FAGG**, on March 4, 1993, at
9:00 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. 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: None

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 93, SB 194, SB 193
Executive Action: SB 125, SB 93

HEARING ON SB 93

Opening Statement by Sponsor:

SEN. TOM BECK, Senate District 24, Deer Lodge, said SB 93 is an
act eliminating death by hanging as a method of execution of

defendants sentenced to death. **SEN. BECK** is not against capital punishment, and he is not supporting this bill to determine that hanging is cruel and unusual punishment. He distributed a letter from **Judge Ted L. Mizner**, judge of the third judicial district in Deer Lodge who handles Montana State Penitentiary's cases.

EXHIBIT 1 He said that a recent challenge of hanging in the state of Washington as cruel and unusual punishment was overturned. This bill would apply only to future sentences; it does not apply to anybody who has been previously sentenced to execution. Those prisoners still have the choice of lethal injection or hanging.

Proponents' Testimony:

Mickey Gamble, Department of Corrections (DOC), pointed out that, currently, only four states include hanging as capital punishment. Those states are Delaware, Montana, New Hampshire, and Washington.

Beth Baker, Department of Justice (DOJ), addressed section 2 of the bill which states this law applies to death sentences imposed for capital crimes committed on or after (the effective date of this act).

Opponents' Testimony:

Scott Creighton, Executive Director, American Civil Liberties Union (ACLU), made it clear to the committee that the ACLU does not oppose the death penalty. The ACLU does believe, however, that lethal injection should not be left as the sole means of execution. He said lethal injection is not a sanitary method of death, and it can be extremely torturous to find a vein in a drug addict to inject the substance.

Questions From Committee Members and Responses:

REP. BROOKE asked **Ms. Baker** how much lethal injection costs the state versus hanging. **Ms. Baker** said DOJ did not have the numbers broken down.

REP. WHALEN asked **Mr. Gamble** if any inmates sentenced to death donate any of their organs; and if they choose death by lethal injection, whether the injection damages the organs. **Mr. Gamble** said the inmates requests to have his or her organs taken out, i.e. eyes, liver, kidney, before lethal injection so they are not damaged by the injection.

REP. VOGEL asked **Mr. Gamble** how many inmates are currently on death row, and how long they usually are there. He also asked whether, after drug rehabilitation for a number of years, that would rejuvenate their veins.

REP. SAYLES asked Mr. Gamble what the cost of lethal injection is. Mr. Gamble responded that DOC does not have the resources to do testing for costs, but hanging is more costly. REP. SAYLES asked whether, if an inmate chose lethal injection a week from this hearing date, would DOC be able to do that. Mr. Gamble said it would be difficult, but not impossible.

REP. BIRD asked who administers lethal injection. Mr. Gamble said it is administered by a trained technician.

Closing by Sponsor:

SEN. BECK said one of the appeals of cruel and unusual punishment is based on having to choose between lethal injection or hanging. He believes there has to be a halt to this. He asked that there only be one type of death penalty in the state of Montana, and that would be lethal injection.

HEARING ON SB 193 and SB 194

Opening Statement by Sponsor:

SEN. MIGNON WATERMAN, Senate District 22, Helena, informed the committee that SB 193 and SB 194 work in conjunction with each other and will be presented together.

SB 193 allows corrections facilities to charge for room and board. Right now, 20 percent of defendants have an income. The Department of Corrections (DOC) asked, in order to save money, that offenders who have the ability to pay more for their incarceration do so. If they can do that, it will go towards their rehabilitation.

SB 194 simply authorizes DOC to collect room and board from residents and establishes guidelines for the board rates.

Proponents' Testimony:

Mike Ferriter, Bureau Chief, DOC, said these two bills simply allow DOC to provide much needed community corrections. DOC recently added 45 beds without any additional tax money. DOC is seeking to place more PRCs throughout the community. These two pieces of legislation will simply open the door for more payments by the offender. These payments are part of making offenders more and more responsible for their actions, and it will take some burden off taxpayers.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. WINSLOW asked SEN. WATERMAN if she anticipates a fiscal note on these bills as it looks like they will require some funds to implement. SEN. WATERMAN said there was not a fiscal note requested with these bills. This legislation will increase the ability to provide community corrections, but she doesn't believe it will impact the general fund. Mickey Gamble, Administrator, DOC, said there are 45 men and women rooming at PRCs at a per diem rate which has gone from \$4.00 to \$7.00 per day.

REP. RUSSELL asked how many inmates at the PRCs can actually pay the \$7.00, and whether the \$7.00 is from their work earnings while they are incarcerated. Mr. Gamble said the per diem is from what they earn, and it's based on their ability to pay.

REP. RUSSELL asked where the additional 45 beds are being located. Mr. Gamble said the beds have already been placed in existing facilities throughout the state.

REP. SMITH asked what the \$7.00 per day is used for. Mr. Ferriter said it costs \$39 per day for someone to oversee a PRC. The \$7.00 per inmate collected goes towards rent and decreases the cost to \$32 per day per resident to operate the centers.

REP. RICE referred to SB 193 and asked why the current distribution formula is being deleted from the law. Mr. Ferriter explained that SB 193 deals with the Community Corrections Act, and this Act was written after the statute dealing with payments for room and board. DOC felt that deleting that language from statute would save confusion and that putting the language into administrative rules would negate DOC having to come back to the legislature every year.

REP. BIRD referred to SB 194, page 3, line 13, and asked Mr. Ferriter what services encompass room and board. Mr. Ferriter said that PRCs offer a variety of services, from intervention, budgeting, fitness programs, and in some PRCs, even security training. In most facilities, room and board includes chemical and alcohol counseling. Each PRC resident is assigned a case worker, and each case worker may have ten clients. They see those residents every day, plus they also see to the day-to-day operations. PRCs are highly structured.

REP. WINSLOW mentioned that PRCs are expanding throughout the state and wondered how DOC decides where they are placed and how they are being received by these new communities. Mr. Ferriter said they look at the commitment rates at Montana State Prison, probation and parole caseloads; they also check for communities that could provide services, such as Great Falls and Missoula. One of their goals is to establish PRC-type programs on Indian Reservations. Those are the key communities PRC leaders have been visiting and communicating with.

REP. BROOKE asked if the money collected from PRCs goes to the general fund and whether PRCs use any federal money for funding. Mr. Ferriter said the Life Skill Center (LSC) in Missoula and Billings each collect \$7.00 per day per resident. PRC facilities do not meet some of the Federal Bureau of Prison's requirements in terms of goals. PRC management has made the decision that there really may not be an interest in housing federal inmates because it would greatly affect its state inmates and a number of people it serves in Missoula. Because of the small facilities, finances are tight in that area.

REP. BROOKE asked if the Missoula facility expansion is in the appropriation budget. Mr. Ferriter confirmed it is and added that the number one goal for the Missoula facility is to put it on a par with facilities in Butte, Great Falls, and Billings.

REP. MCCULLOCH asked Mr. Ferriter if the plan is to expand all PRCs statewide or just Missoula, and how much money this will cost. Mr. Ferriter said there's a lot planning going on in the DOC right now, and there's a possibility of capping the state prison. They are planning on expanding existing PRCs statewide, including Missoula. In addition to that, they're working on a new program called "Live Out" which allows seven residents in each of the PRCs, or ten individuals on their last phase of PRC residency, to actually live in their own apartment. This is another transition phase of PRC living, so that more individuals may be added to PRCs without adding more beds. Mr. Gamble said the ballpark figure for expansion and adding the Live Out program would cost approximately \$7 million.

REP. BIRD asked if the expansion will affect the cost per inmate, and Mr. Ferriter said yes, it could bring the cost up from \$39 per day to \$41 per day, per resident.

Closing by Sponsor:

SEN. WATERMAN said if there is a concern about rulemaking authority to cover restitution and policy support payments, language that was stricken from SB 194, on page 3, subsection (4), that section was stricken on the Senate floor because SEN. AKLESTAD had a concern about the budget on page 2, line 17. He suggested removing that, and in his amendment, removed subsections (2), (3), and (4). SEN. WATERMAN said the simplest way would be to restore subsection (4) in the bill.

She asked that the committee review the overall picture of what the state wants to do with its corrections process: moving inmates from a prison setting to being productive citizens. One of the best ways to do that is through cost-effective PRCs.

EXECUTIVE ACTION ON SB 125

Motion: CHAIRMAN FAGG MOVED SB 125 BE CONCURRED IN.

Motion: CHAIRMAN FAGG moved the amendment proposed by the Legislative Council. EXHIBIT 2

Discussion:

MR. MACMASTER said this amendment is necessary because section 36 of the bill amends and repeals 46-16-107.

Vote: Amendment carried unanimously.

REP. BROOKE referred to page 51, line 25 where the word "illegal" was stricken and replaced with the word "erroneous." She said if erroneous is used, the state would be protecting itself in court. CHAIRMAN FAGG agreed with REP. BROOKE and suggested she move it as an amendment.

REP. RICE said he doesn't see the difference between an erroneous sentence and erroneous manner. He cannot vote on the amendment or the bill until without more definite information on this.

Since the committee did not have sufficient information to complete action on SB 125, CHAIRMAN FAGG asked REP. BROOKE to discuss her amendment with SEN. VAN VALKENBURG and the Attorney General's office. Executive Action was postponed 24 hours. See March 5, 1993, minutes for SB 125 executive action.

EXECUTIVE ACTION ON SB 93

Motion: REP. WINSLOW MOVED SB 93 BE CONCURRED IN.

Discussion:

REP. WHALEN said he does not like SB 93 because he doesn't believe giving death row inmates choices on how to be executed is a problem. These people might want to perform at least one act before they're executed, such as giving life to someone else by donating organs, and he doesn't believe that organs which have been injected with a lethal substance can or should be donated. REP. WHALEN suggested tabling the bill.

REP. TASH said there is a substantial cost to the state of Montana for execution, postponement of execution in particular. Incarceration alone costs \$37,000 a year. He feels these people are taking advantage of the corrections system and have been offered the opportunity to use the system as a postponement.

Motion: REP. BROWN MOVED SB 93 BE TABLED.

Discussion:

REP. RUSSELL asked the committee to give the people on death row, at least, the dignity of choosing how they want to die.

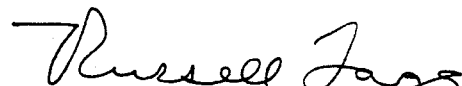
REP. BROWN closed on his table motion. He said that, since this bill has been introduced, he feels it does have to do with people's perception of capital punishment. He doesn't think the public will favor the bill.

Vote: SB 93 BE TABLED. The motion failed on an 8-10 vote with REP. BROWN, BIRD, BROOKE, MCCULLOCH, RUSSELL, TOOLE, WHALEN, and WYATT voting yes.

The Chairman announced that, without objection from the committee, the vote on SB 93 would be reversed from TO TABLE vote of 8-10 to a DO CONCUR vote of 10-8.

ADJOURNMENT

Adjournment: 11:30 p.m.



REP. RUSSELL FAGG, Chairman



BETH MIKSCHKE, Secretary

RF/bcm

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

3-4-93

| 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

March 4, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 93 (third reading copy -- blue) be concurred in.

Signed: _____

Russ Fagg, Chair

Carried by: Rep. Smith

HOUSE OF REPRESENTATIVES

Judiciary COMMITTEE

ROLL CALL VOTE

DATE 3-4-93 BILL NO. JB93 NUMBER 18

MOTION: JB 93 Be Concurred 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 | | ✓ |
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| | 10 | 8 |

EXHIBIT 1
DATE 3-4-93
SB 93

TED L. MIZNER
JUDGE OF THE DISTRICT COURT
409 Missouri Avenue
Deer Lodge, Montana 59722
(406) 846-3680, ext. 38
(406) 563-8421, ext. 222

THIRD JUDICIAL DISTRICT
Deer Lodge, Powell and
Granite Counties

BEVERLY GIANNONATTI
Court Reporter

January 15, 1993

Senator Thomas A. Beck
Capitol Station
Helena, MT 59620

Dear Senator Beck:

I am writing in support of your proposed legislation amending Section 46-19-103, MCA, which would eliminate hanging as an optional method of execution. As you may know, there are only four states left which still allow hanging as a permissible form of execution. I believe that there is a genuine question as to whether or not hanging would constitute cruel and unusual punishment under the law. As such, the present Montana law merely creates another issue for appeal for defendants that are facing the death penalty. Your legislation would eliminate any issues relative to cruel and unusual punishment and thus eliminate an appellate challenge on this basis.

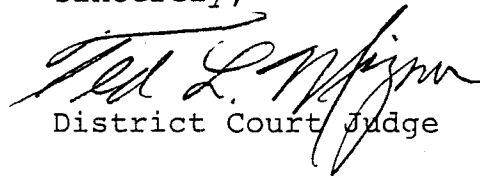
I have had personal experience with a defendant who has elected hanging, then elected lethal injection and later chose hanging and then appealed on the basis that hanging was cruel and unusual. I believe that the elimination of this kind of "game playing" in the courts is important. I believe there is widespread frustration with the way death penalty cases are handled, particularly as to the way the lengthy appellate process applies. I believe your proposed amendment may well address some of the frustration involved with this judicial process.

The recent hanging in the State of Washington exemplifies this issue. I am convinced that there would no doubt have been stays of execution entered in that case, and further appeals filed on the hanging issue, if the Defendant and his attorney had not insisted on hanging as the method of execution. There were several individuals who attempted to intervene on the defendant's behalf without his permission to stop the execution

because they felt hanging was cruel and unusual. I believe your legislation could prevent a similar scenario in Montana.

Please contact me if you have further questions. I apologize that my schedule would not allow me to appear in person.

Sincerely,



District Court Judge

TLM:jj

EXHIBIT 2
DATE 3-4-93
SB 125

Amendments to Senate Bill No. 125
Third Reading Copy

For the Committee on Judiciary

Prepared by Greg Petesch
March 2, 1993

1. Title, line 21.
Strike: "46-16-107,"
2. Page 29, line 11.
Strike: "48"
Insert: "47"
3. Page 45, lines 8 through 12.
Strike: section 36 in its entirety
Renumber: subsequent sections
4. Page 62, lines 14 and 16.
Strike: "48"
Insert: "47"

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 193
DATE March 4, 1993 SPONSOR(S) M. Waterman

PLEASE PRINT

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| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
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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. *SB 194*

DATE *March 4, 1993* SPONSOR(S)

M. Waterman

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| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
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HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary

COMMITTEE

BILL NO.

SB 93

DATE

March 4, 1993

SPONSOR(S)

T. Beck

PLEASE PRINT

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| NAME AND ADDRESS | REPRESENTING | SUPPORT | OPPOSE |
|------------------|-----------------|---------|--------|
| BETH BAKER | DEPT OF JUSTICE | ✓ | |
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