

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

#### FREE CONFERENCE COMMITTEE ON HOUSE BILL 547

Call to Order: By SENATOR MACK COLE, on April 7, 1995, at 11:05 AM

#### ROLL CALL

**Members Present:**

Rep. Robert C. Clark (R)  
Rep. Linda McCulloch (D)  
Sen. Mack Cole (R)  
Sen. Al Bishop (R)  
Sen. Sue Bartlett (D)

**Members Excused:** Rep. William E. Boharski

**Members Absent:** None

**Staff Present:** Mary Valencia Lane, Legislative Council  
Joanne Gunderson, Secretary

**Discussion:** REP. BOB CLARK had asked that the language beginning on Line 2 of page 2 from "offenses" through line 15 be stricken. This would be in keeping with the intent of the bill to deal with people who have been convicted of violent felonies where an enhanced sentence was involved. He said that line 16 fulfills the intent.

**Motion:** REP. CLARK MOVED TO AMEND HB 547 BY STRIKING FROM "OFFENSES" LINE 2, PAGE 2 THROUGH LINE 15.

**Discussion:** Valencia Lane recommended some clean up amendments to throughout the bill to reflect this change. REP. CLARK agreed to those and had no objection to her drafting those at her discretion.

SEN. SUE BARTLETT asked for clarification concerning the sponsor's intent in restricting the coverage of this bill to those using a dangerous weapon rather than including persons who commit violent crimes without using a firearm but some other dangerous weapon.

REP. CLARK said line 16 is pretty inclusive of everyone they wanted to cover with the bill without getting down to statutory references. If a person robbed a bank, for instance, with a weapon such as bomb, gun, or knife, they are entitled to an enhanced sentence. If they committed any other crime with a

weapon where the enhanced sentence came into it, they would be covered.

**SEN. BARTLETT** asked if he did not want to include crimes where a violent offense is committed without the use of something that would be considered a dangerous weapon and provide for the enhanced sentence were not an area he wanted to have covered.

**REP. CLARK** said that he believed that there is no enhanced sentence unless there is a weapon used. **Beth Baker, Justice Department** confirmed that and read 46-18-221, MCA.

**Ms. Baker** provided the committee with the information that enhanced sentences are subject to plea bargaining in terms of the charges. It is up to the Legislature to judge how many people they want to restrict from possessing firearms. If it is limited to those with an enhanced sentence is imposed, they would be narrowing the class of offenders who would be prohibited from possessing a firearm.

The statistics are that the average number per year since 1990 is about 50 who have a sentence imposed under the dangerous weapons statute. This makes the average at about 20% of all offenses per year under title 45, chapter 5.

**SEN. BARTLETT** was trying to understand why the original intent was to narrow to individuals who have received an enhanced sentence.

**REP. CLARK** said these people would be under lifetime supervision and including every single felon under it, parole officers would be overwhelmed with that many more to supervise. They would still have the appeals process as provided in the bill.

**SEN. BARTLETT** referred to a provision in the bill on page 2, line 26 which said they need not be under active supervision.

**REP. CLARK** said that in most cases it would be imposed by the court in the way they are currently leaning.

**Ms. Baker** provided the committee with further background information on the drafting of the bill. She recommended an additional amendment if the bill is going to be narrowed to include only weapons.

**SEN. BARTLETT** asked for clarification about how this bill coordinates with the Brady law.

**Jennifer Anders, Department of Justice**, submitted that clarification which had to do with Montana's unique provision that felons' civil rights are fully restored once they have discharged their sentence. These rights include the right to keep and bear arms. There is no current restriction on prior felons obtaining firearms. Consequently, there is no federal

violation as well. The intention of the Brady law was to create a conduit whereby either these felons would be subject to arrest and also to a Brady check either at the state or federal level. This would provide the impetus at the state level and because this would be in place, they would also be in violation of a federal law.

**SEN. BARTLETT** asked if this list is narrowed, would Montana have satisfied the requirements of that law.

**Ms. Baker** said it would and that the federal law is broader than either version of this bill whether the amendments are passed or not. Under the federal law, conviction of any felony prohibits a person from possessing a firearm. They had determined they did not want to go that far because of such felonies as bad checks.

**Ms. Anders** said that funding may be available for implementation of the Brady law.

**SEN. AL BISHOP** asked what model was used in the drafting of the bill.

**Ms. Baker** answered that it was not a model law, and described how it was developed.

**SEN. BISHOP** asked if there was any constitutional problem with the way the bill is drafted.

**Ms. Baker** replied that the way it is currently drafted it would meet constitutional scrutiny.

**REP. CLARK** closed by saying that he did not see any need for the statutory references included in the bill and asked for the committee's concurrence.

**Ms. Lane** read the proposed wording of the amendment as well as the technical changes necessary for the bill.

**Vote:** The motion carried unanimously by voice vote.

**Motion/Vote:** **REP. CLARK MOVED TO REINSTATE THE SENATE AMENDMENTS.** The motion carried unanimously by voice vote.

**Motion/Vote:** **REP. CLARK MOVED TO AMEND PAGE 2 FOLLOWING LINE 21 ADD SUBSECTION 3, "A PERSON WHO HAS BEEN ISSUED A PERMIT UNDER SECTION 3 MAY NOT BE CONVICTED OF A VIOLATION UNDER THIS SECTION."** The motion carried unanimously by voice vote.

**SEN. COLE** declared the meeting adjourned.

ADJOURNMENT

**Adjournment:** The meeting was adjourned at 11:35 AM.

  
MACK COLE, Chairman

  
BOB CLARK, Chairman

  
JOANNE GUNDERSON, Secretary

MC/jg



## FREE CONFERENCE COMMITTEE

on House Bill 547  
Report No. 1 , April 7, 1995

Page 1 of 2

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 547** and recommend the following amendments:

1. Page 2, lines 1 through 16.

Strike: line 1 in its entirety through "(m)" on line 16

Insert: ": (a)"

ReNUMBER: subsequent subsection

2. Page 2, line 16.

Following: "felony"

Strike: "not specifically listed in this subsection (1)"

3. Page 2, line 19.

Strike: "specifically listed in this subsection (1)"

Insert: "that when committed in Montana is subject to an additional sentence under 46-18-221"

4. Page 2, line 22.

Following: line 21

Insert: "(3) A person who has been issued a permit under [section 3] may not be convicted of a violation of this section."

5. Page 2, line 24.

Strike: "listed"

Insert: "referred to"

6. Page 3, line 11.

Strike: "listed"

Insert: "referred to"

7. Page 4, line 5.

Strike: "listed"

Insert: "referred to"

ADOPT

REJECT

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We recommend that the amendments considered above to House Bill 547 be acceded to by the senate.

And this FREE Conference Committee report be adopted.

For the House:

Clark

Bob Clark

Chair

Boharski

Wm E Boharski  
McCulloch

Linda McCulloch

For the Senate:

Cole

Wack Cole

Chair

Bishop

Al Bishop  
Bartlett

Sue Bartlett

HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 4/7/95

BILL NO. HB 547 SPONSOR(S) Rep. Clark

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NAME AND ADDRESS	REPRESENTING	Support	Oppose
<i>Jim Smelt</i>	<i>MSPOA</i>	<i>x</i>	
<i>DAVE OLLEN</i>	<i>Correction</i>	<i>x</i>	
<i>Beth Baker</i>	<i>Justice</i>	<i>✓</i>	
<i>Jennifer Anderson</i>	<i>Justice</i>	<i>x</i>	

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

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