

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

JOINT SUBCOMMITTEE ON INSTITUTIONS & CULTURAL EDUCATION

Call to Order: By **CHAIRMAN MARJORIE I. FISHER**, on February 1, 1995, at 8:00 a.m.

ROLL CALL

Members Present:

Rep. Marjorie I. Fisher, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Gary C. Aklestad (R)
Rep. William T. "Red" Menahan (D)
Rep. Steve Vick (R)
Sen. Mignon Waterman (D)

Members Excused: None

Members Absent: None

Staff Present: Lisa Smith, Legislative Fiscal Analyst
Mary LaFond, Office of Budget & Program Planning
Brandee Decrevel, Committee Secretary

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

Committee Business Summary:

Hearing: Department of Corrections
Executive Action: None

{Tape: 1; Side: A; Approx. Counter: 100}

HEARING ON DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES DIVISION OF CORRECTIONS

Regional Jail Proposal

Rick Day, Director, Department of Corrections and Human Services (DCHS) presented an overview of the regional jail concept.

EXHIBIT 1 (pages 6,7,8) and EXHIBIT 2 Flexibility in the regional jail concept is necessary because it requires a double approval process between state and local voter bond approval. Cascade County has already approved the bonding, and the interest of three locations is tentative based on voter approval.

The projected inmate capacity through 2005 indicates the corrections system will be able to address the needs. Part of

this projection is that community growth will freeze at the FY97 level. During this biennium a large extent of the ability to house and handle offenders will have to be contained at the community level. It is conservative to say that the correctional system will not be able to expand the growth of the community alternatives at the present rate. There is a limit to the number of offenders that can be served in a community of any given size, a limit to the number of communities that are willing to accept programs like pre-release and a limit to employment and other practical considerations that make pre-release successful. There's also a limit on the security side. There are a number of individuals that need the supervision in custody and the punishment provided through prison.

EXHIBIT 4 provides an age breakdown of offenders requested by **SEN. MIGNON WATERMAN**.

The regional prisons proposal addresses the evident and long standing growth in Montana's institutional correctional population. Admissions in 1994 were 15% higher than the record level recorded in 1993. The regional prison concept provides significant flexibility, including that for a single investment on the part of the state and the county the criminal justice system improves from both sides. Regional prisons improve the abilities of the jails in the local criminal justice system to function as well as providing capacity for the state. The state probation/parole and pre-release programs need to have local jail capacity in order to provide for short term incarceration if the client commits a violation that justifies that need. Consequently the availability of jail space is necessary for the success of those local programs. In addition each facility would be designed to be double bunked, although the goal is to be able to maintain the cells as single bunk units.

Because counties are not as restricted as the state in the ability to proceed with construction, the regional prisons could be built in approximately two years. State construction of a prison would take three to five years. The first regional prison would not be available until late spring of 1997, so this biennium's budget impact would only be for a few months. The budgetary impact in operating costs is the contract funds needed to pay for the per day cost for the inmates. This proposal was originally estimated to have 225 bed days in FY97. This will need to be adjusted down since it is not likely three facilities will be operating by the end of FY97.

The state is in negotiation with Cascade County with a rough draft contract completed. Major points agreed for the first fiscal year include a \$40 per day rate and a 30 year contract that will use the prison general fund cost as a cap. The Governor's Advisory Council on Corrections and Criminal Justice Policy supports this proposal (see Exhibit 1).

CHAIRMAN MARGE FISHER asked how many people the forensic unit at Warm Springs holds and if these patients are all from the Warm Springs facility. **Mr. Day** answered the forensic unit has a capacity of 112 with current patient count at 98. On occasion there are transfers from the men's and women's correctional centers if that transfer is needed for the prisoner. The mental health system does not double bunk while the corrections system would double bunk in some sections. The capacity with double bunking is 196. The area that is not full is the secured care area because it is essentially beyond the security of the regular mental health capacity. There are requirements to separate the mental health population from the criminal population. Montana State Prison (MSP) is trying to work out an arrangement to use that space on a contract between the two division, but it would have to be done on a treatment basis since by statute any one treated at Warm Springs must be mentally ill.

SEN. LARRY TVEIT commented that the juvenile facility at Pine Hills, which is operated by the Department of Family Services, is also at it's maximum capacity. Given limited dollars it might be wise to not build all four regional prisons and use some of that money to address the capacity issues at Pine Hills.

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REP. RED MENAHAN asked what kind of inmate would be assigned to regional prisons and what kind of facility it would be, i.e. minimal security. **Mr. Day** answered the facility will be for medium and close custody inmates. Minimum security inmates will be at Montana State Prison where there are more options such as the ranch operation. The largest need of the prison system is for hard cell capacity in the medium and close area.

REP. MENAHAN asked how many inmates the regional jails could hold and how much the per day cost is currently at MSP. **Mr. Day** answered 76 inmates is proposed for Cascade County, which could double with double bunking, but the capacity would be different in different communities. It is proposed that the state pays for the state pod and the percentage of common space shared by state and county inmates. MSP per day cost is just under \$40 a day, but will go slightly above \$40 a day in the next few years.

REP. MENAHAN asked how library, medical costs, etc. will be provided. The state can't spend more on an inmate in a regional prison than in MSP. **Mr. Day** explained that the per day general fund costs at the regional prisoners would be capped at the MSP cost. Expenses such as medical care are not part of the general fund costs and are substantially above \$40 a day. The medical will be handled by the state under the medical management program and the state would also cover attorney fees to provide legal support. So the rate will fluctuate as the general fund cost at MSP fluctuates.

SEN. AKLESTAD asked if general obligation bonds would be used to build the regional prisons and how much would be the state

indebtedness to the building. **Mr. Day** answered the state portion would be general obligation bonds and the state obligation to the costs would be approximately \$4.2 million in Cascade County.

SEN. AKLESTAD asked how minimal security prisoners are defined and how many are currently in the corrections system. **Mr. Day** said there are approximately 600 minimum security inmates. They are determined by an objective classification system that factors in original sentence, performance, behavior, disciplinary issues, program participation, etc. This system is not based on the original crime, such as violent, property, etc., but rather on their conduct during their incarceration. About 45% of the minimum security prisoners were sentenced for violent crimes.

SEN. AKLESTAD said he has a "real problem" with putting out additional dollars for regional jails or any type of jail. In the last session the proposal was going in a completely different direction which was to move more than 400 inmates out of MSP and that didn't happen. Then there is the recent problem at the Swan River boot camp. [A trustee, who is a convicted murderer, attacked and severely injured a female staff member] If the system can't move minimum security prisoners that are not violent offenders into some other type of mode of incarceration other than a lock up but there is a murderer as a trustee at Swan River that doesn't make too much sense.

SEN. AKLESTAD asked who makes the trustee determinations for Swan River boot camp. **Mr. Day** explained that the trustee decision is a very rigid process. Trustees have been part of the Montana prison system for probably 100 years so it is not unusual that there are trustees at Swan River. The legislature approved a trustee support system in the boot camp which has been very successful as far as providing management and saving state dollars that are used to fund the operation. The Swan River trustees were classified, selected and put in place along standard lines.

MSP cannot totally control the assignment of minimum security inmates. Prisoners have to meet certain standards for the length of time they must remain at MSP before being moved to other programs and there is limited capacity for trustees. In addition each facility such as community pre-release, intensive supervision and even the regional prisons are regulated to a great extent by the community.

Mr. Day said MSP has had a 40% increase in admissions in the past year. During the last session the goal was to work towards a population of 850 but this was not achieved. However the prison system did stay within its budgetary limitations. It is now time for the legislature to make the decision to fund prisons. With the "get tough on crime" bills this legislature has and will pass there is a requirement that the state provide the prison capacity. The decision of the legislature is going to have to be where that capacity is. The intensive supervision program has

emphasized the community pre-release. Over the next two years DCHS is still focusing substantially in that area and is working to place inmates in every possible alternative.

SEN. AKLESTAD asked if statute concerning minimum security, non-violent prisoners would have to be changed in order for MSP to move these inmates into a different type of setting. **Mr. Day** explained how the current system operates. "If you are convicted of burglary and the judge sentences you to 12 years in prison, then ... basically you're going to have to serve at least 1/4 of your time in prison, which is 3 years. But you get time off for good behavior, so you're going to have to serve 18 months in prison. We have the authority to move you to pre-release within two years of your parole eligibility; we have authority to move you to a trustee status once you've worked through that classification system, but you have to stay in that institutional system for that period of time mandated by your sentence. In order to change that you'd have to adjust the sentencing system."

SEN. AKLESTAD asked why during the last biennium the proposal was to move 400 prisoners out of MSP when it was operating under the strictures just described. **Mr. Day** answered that essentially last biennium's proposals were built around a budget emergency and also around a concept of admission reduction. A concept based on interfering with admissions, not moving current inmates out of the prison. With a 40% increase in admissions it's very difficult to switch the system enough to accommodate that. MSP has had a relatively stable population, which shows that even with the 40% increase DCHS has worked very hard to divert people to other alternatives. Now the pre-release centers are at capacity, the alternatives of the system are used to a maximum. There is no hard cell capacity left if that is the form of punishment.

It's important to emphasize that the need for hard cell capacity does not indicate a change in DCHS philosophy. The biennium budget proposes the most substantial increases at the community level - probation/parole supervision, expansion of pre-release, expansion of intensive supervision. But regardless of these efforts to divert and accommodate offenders in the community, there is going to be a need for prison capacity. The option for discontinuing some trustee placements is hard cell space.

CHAIRMAN FISHER questioned why prisoners were able to go to funerals. **Mr. Day** said some of this information is old. In November 1994 the administration curtailed the practice of allowing inmates in the community other than for medical visits. In January a new policy was adopted to govern decisions regarding social orientation. The review discovered there are some activities that are beneficial. Inmates have gone to communities, at the communities request, to talk to kids about drug abuse and those kinds of things, which seemed to make a significant impact. The new policy calls for a restrictive environment. The activity must have a correctional or treatment

purpose; the community will be notified, the offenders must acknowledge their crime and proper supervision and custody will be in place. The important thing about this issue is the facts - the facts are that a problem was discovered, the problem was addressed and the problem was fixed.

SEN. AKLESTAD said that although a tragedy such as Swan River could happen under any circumstances, why are murderers trustees when there are so many minimum security, non-violent inmates. **Mr. Day** explained that minimum security and trustee selection is an operation of the classification system, not just an issue of offense. A young, non-violent offender, may be more likely to escape or leave a trustee status than the longer term offender. What the corrections staff attempts to do when they select trustee staff is identify the correct balance of trustees that are going to be motivated to stay in that location and be trusted to operate. Often murderers or other long term inmates are in these positions. In the Swan River tragedy it should be noted that the inmate trustee that intervened in the attack was also convicted of homicide. The rest of the trustee population at Swan River have been performing exceptionally over the past two years. Six have moved through and out to pre-release and one has completed his entire supervision. So the trustee system at Swan River does in fact work. This tragedy is an issue of human behavior which can't necessarily be predicted. To react about the whole trustee system that's been around for a 100 years would be drawing a conclusion not based on the full issue.

{Tape: 2; Side: A}

SEN. AKLESTAD asked how the regional prison will be built to accommodate both medium and close security prisoners. **John Strandell, Undersheriff, Cascade County**, answered there will be different cell blocks between the pods so the actual housing can be separated between the medium and the close.

REP. MENAHAN asked where medium prisoners are housed at MSP. **Mike Mahoney, Bureau Warden, MSP**, explained that medium and close security populations are held together. From a physical standpoint the cells are divided through bricks and mortar types things - sheet rock and wood versus metal and cement. There isn't a security issue in terms of providing a safe and protective environment or putting staff at risk by commingling the populations.

REP. MENAHAN asked where the inmates are going to work and what they are going to do in the regional prisons. **Mr. Strandell** explained that currently many of these same types of prisoners are held in county jails until they move to MSP. County jails have similar circumstances to MSP in terms of classification and how to house and how manage these inmates. There is an industries component proposed within the state pod, which will be developed in conjunction with MSP industries and private industries in the community.

REP. MENAHAN asked how it is going to work from a classification and transportation standpoint when prisoners have to go to MSP to get classified as medium or close security and then get sent back to a regional prison. Mr. Strandell said with this proposal the judge would sentence directly to the regional prison without going to MSP first. Mr. Day said classification can be done immediately after sentencing through the probation/parole officers to determine if the prisoner needs to go to MSP.

Mr. Day said the regional prisons allow DCHS to have alternate locations, take advantage of smaller, more manageable populations, and move inmates around. It does contain costs under a 30-year contract and it also has the benefits of helping reduce the costs of hard cell construction.

{Tape: 2; Side: A; Approx. Counter: 425}

Montana State Prison Industries

Mr. Day explained that Montana State Prison Industries is comprised of four separate and distinct programs at the MSP location. The mission is to provide employment and training opportunities for eligible inmates consistent with the corrections division mission to return offenders to the community as law abiding citizens. The programs also provide productive work activities at MSP in which inmates contribute to the system which supports them. The prison ranch and industrial complex programs are self-supporting and as a result operations are run to insure continuation for their self-supporting nature. There are two advisory councils which review the activities in the industrial programs. Monies in the proprietary funds is earned through sales and revenue from these programs and deposited in the state treasury. Approximately \$75,000 in interest was earned in 1994 from the monies deposited. Approximately 233 inmates at the present time are employed on a monthly basis by these programs.

The ranch program provides dairy products to the state institutions and non-profit organizations at approximately 10% below market price. Barley, yearling cattle, surplus milk, cream, are sold on the open market. This program is self supporting through the ranch and proprietary fund. The program is currently using approximately \$940,000 of the ranch accounts to fund a portion of the honor dorm, which is an 80 bed facility that's under construction at MSP. On average 65 inmates are employed monthly on the ranch and there are 12.75 FTE's. Acreage is 37,720 with approximately 4,000 state lease. Income at the ranch in FY94 was over \$2 million and the expenditure level was about \$1.9 million. The projected expenditure for FY96 is just over \$2 million and for FY97 is \$2.1 million.

The industrial complex provides manufacturing projects for state agencies, political subdivisions of the state, a retail dealer network and non-profit operations. The program includes

furniture, upholstery, print, sign, logging, sewing, firewood and surgical gowns and is self-supporting proprietary fund. In 1994 the program received a new certification called "private sector industries enhancement" which certifies the program to ship products across state lines. It's a new program and a new approach. The inmates in this program receive minimum wage with reductions for state and federal taxes and room and board. They're required to make contributions to the crime victims restitution fund. The average number of inmates employed is 78. This is projected to increase to over 100 with 9.25 FTE. Sales in FY94 were close to \$1.6 million.

The license plate factory program is a general fund program with production based on orders from the counties. The major portion of this budget is for costs. It employs 16 inmates and 2 FTE. Last year more than 525,000 plates were made.

The vocational training program provides repair and maintenance services to state agencies and horticulture products to the state institutions. It also runs a telemarketing service for the Department of Commerce, which is travel promotion for Gold West County and Glacier Tourism. Business skills, industrial arts and vocational training is available as well as a cutaway training program for the Toyota company. This program is not intended to be self supporting, it uses a mix of general and proprietary fund. Total inmates employed are 74 with 10 FTE.

Ron Paige, Ranch Manager, MSP, said that there are no significant changes anticipated in the ranch program for the next biennium. **REP. STEVE VICK** asked if in recent years there have been changes in the types and behaviors of inmate workers at the ranch. **Mr. Paige** said he has been at the ranch nearly 12 years and has seen very little in the way of behavioral problems. The only change has been increasingly younger inmates and fewer inmates with agricultural backgrounds.

{Tape: 2; Side: B}

SEN. LARRY TVEIT asked how ranch profits are used. **Mr. Paige** answered they are put back into the ranch. Four houses were built for ranch supervisors along with some ranch business officers; the irrigation and sprinkler upkeep and new fences are paid from the profits.

Mr. Day said one of the reasons the ranch operation has been a success is that MSP has terminated some programs that were too costly. For instance the ranch beef isn't used to feed the inmates at MSP because more money is made selling the beef and then buying other beef because the slaughter house operation MSP used to have was too costly.

Ross Swanson, Ranch business manager, MSP said the present law request is for appropriation authority. The program has a ranch advisory committee that oversees and assists with various

decisions regarding equipment, improvements, etc. In conjunction with that advisory committee the cash flow determines what can be done at the ranch. In new proposals there are some appropriation authority requests for new or replacement equipment. These purchases will be made only if the cash flow allows.

Wes Estep, Industries manager, MSP, said at present there are some changes and growth spurts taking place. As a lot more inmates come into the system, part of the mission is to keep them productive. MSP now has authority through its new certification to develop partnerships with the private sector. The largest part of the budget request is for the laundry facility being built at MSP which will be provide laundry services for MSP, Montana State Hospital, Montana Development Center, and the Chemical Dependency Center. The request is \$80,745 for equipment - a truck to transport the laundry between the sites, on-site shuttle, and some computer equipment. This is general fund start ups because at this point the industries program doesn't have the cash flow. MSP is also asking for spending authority to operate the laundry facility. Also requested is additional authority for expansion so if a business opportunity arises there is authority to make the expenditures to generate revenue. New and replacement equipment will only be purchased if additional revenue is available to support the purchase.

REP. VICK asked what the legal parameters are for prisoner work. **Ms. Estep** said he wasn't sure of the specific regulations, but industries gear toward providing job skills and training so when inmates are released they're a little better prepared to take care of themselves. **Mr. Day** explained the law provides statutory authority to mandate work, but DCHS must weigh the cost for custody and control when considering work opportunities. If a prisoner refuses to work in a normal capacity when the opportunity is there that is a discipline problem.

David Watkins, Vocational Training Program manager, MSP, explained the vocational training program takes place in four different buildings and works with a number of different classification levels. The close security inmates work in the telemarketing program, which answers phones for tourists inquiries and prepares mailings of tourist information. A new building is underway for this program which is currently housed in a trailer. The telemarketing program should not have any costs related to it to move it into the new building. There's approximately 200 close security inmates presently in vocational education. Vocational programs in its pure form is expensive to run and with longer term inmates there are no additional programs after they complete the two year program. Expansion into other programs is being explored, such as clerical programs and inventory functions within food service. The slaughterhouse program needs to have a freezer installed. It was replaced in 1963. The slaughterhouse tries to maintain 1.5 months of product in the freezers in the event of emergency situations.

The medium and minimum security vocational training building houses the majority of the functions including almost all the formal classrooms. Increases in costs for this building include replacing shop equipment and older vehicles. There are some increased proprietary costs for vehicle repairs - this program repairs all passenger vehicles for MSP, ag equipment for the ranch and as time permits work for city, county and non-profits. A new program is a partnership with Toyota to make components used in Toyota training classes. The students have the opportunity to learn very current technology in automotive components. The prisoner is required to work on the products and take classes. At this time interest is so high among inmates that there are standards of an 80% average in class work to get into the Toyota program.

{Tape: 3; Side: A}

SEN. TVEIT asked if prisoners who, for whatever reason, can't participate in the work programs are required to take part in some sort of programming. **Mr. Watkins** said the programs are voluntary and within the program standards must be met to continue. Approximately 98% of minimum security prisoners are involved in the industries programs. **Mr. Day** said more than 1,000 of the 1,300 inmates are involved in some sort of program.

Gary Frank, Manager, Toyota Motor Sales USA, explained that Toyota became involved in education nine years ago because schools were not able to provide the training needed for the increasingly complex technologies of the automotive industry. Toyota has programs in 90 schools, including two in Montana. One of the big needs in the schools is for training tools and curriculum support. In September 1994 an agreement was formalized with MSP to build the training component, which included donating \$25,000 for the construction of the new industries building and committing for a two-year period to buy all the training material produced by the inmates. To date the program has been very successful. The quality of those training pieces has been outstanding. Toyota has no regrets and contacts the prison for bids on eligible new contracts. This is a win-win situation for Toyota and MSP. Also an agreement has been made to provide \$500 scholarships and \$1,500 in Snap-On Tools for released inmates who were involved in the program in prison and want to continue the Toyota training. This is a way to develop new, well-trained employees for Toyota dealerships. MSP is the only prison involved in this program.

SEN. TVEIT asked how many inmates are involved in the program. **Mr. Watkins** said there are currently eight with plans to expand to twelve.

REP. VICK asked why MSP was chosen for the program. **Mr. Frank** responded that he had lived in Montana for 14 years and had been on the MSP board. MSP came to mind when the need for building the training components became apparent.

Mr. Day said all MSP industries are intended to expand work activities available to the inmates with the focus at this point on close security inmates. The work is important to institutional security because it keeps inmates busy in productive activity. In addition most of these programs have the added benefit of offsetting some general fund costs in other areas, such as the interest that goes into the state treasury. The whole effort is to expand as best as possible with minimal general fund.

ADJOURNMENT

Adjournment: 11:20 a.m.

Notes Read 6/95

Mar I 2h

MARJORIE I. FISHER, Chairman

Paula Clawson

PAULA CLAWSON, Recording Secretary

Note: These minutes were proofread by Lisa Smith, LFA.

MIF/pc

INSTITUTIONS

Joint Appropriations Subcommittee

ROLL CALL

DATE February 1, 95

| NAME | PRESENT | ABSENT | EXCUSED |
|---------------------------------|---------|--------|---------|
| Rep. Marj Fisher, Chairman | ✓ | | |
| Rep. Red Menahan | ✓ | | |
| Rep. Steve Vick | ✓ | | |
| Sen. Larry Tveit, Vice Chairman | ✓ | | |
| Sen. Gary Aklestad | ✓ | | |
| Sen. Mignon Waterman | | | ✓ |

DEPARTMENT OF CORRECTIONS
AND HUMAN SERVICES

EXHIBIT 1
DATE 2-1-95
~~882~~ H02



MARC RACICOT, GOVERNOR

1539 11TH AVENUE

STATE OF MONTANA

(406) 444-3930
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PO BOX 201301
HELENA, MONTANA 59620-1301

January 17, 1995

Marc Racicot
Governor
State of Montana
Capitol Station
Helena MT 59620

RE: Governor's Advisory Council on Corrections and Criminal Justice Policy
Final Report

Dear Governor Racicot:

On behalf of the Council on Corrections and Criminal Justice Policy, attached please find the Council's final report. Following almost a year of deliberations, the Council is recommending a series of proposals designed to address key deficiencies in our criminal justice system. These proposals address sentencing reform; enhanced monitoring, detection and supervision of sex offenders; and expanded prison capacity.

To implement these initiatives and the assistance of the Department of Corrections and Human Services, the Council crafted the following legislative proposals:

- Establishing regional correctional facilities
- Lifetime sex offender supervision and registration
- Sex offender DNA registration
- Truth in sentencing and good time reform
- Establishing a Montana Sentencing Commission

The Council's work is detailed in the minutes of the attached report and summarized in the executive summary.


Advisory Council Final Report

January 17, 1995

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We appreciate the opportunity to work together and recommend these significant and creative solutions to problems facing all Montanans. Please don't hesitate to contact me if you have questions or concerns.

Sincerely,



Honorable Jeffrey Sherlock
Chairperson

RD/sab

*Governor's Advisory Council on
Corrections and Criminal Justice Policy*

EXECUTIVE SUMMARY

I. CHAIRPERSON APPOINTMENTS

Judge Jeffrey Sherlock was elected Chairperson of the Governor's Advisory Council on Corrections and Criminal Justice Policy. Mike Salvagni, Gallatin County Attorney, was elected Vice Chairperson of the Council. Three subcommittees formed as a result of the issues the Council decided needed to be addressed were: Regional Correctional Facility Subcommittee, Cascade County Undersheriff John Strandell, Chairperson; Sex Offender Subcommittee, Gallatin County Attorney Mike Salvagni, Chairperson; and the Truth in Sentencing Subcommittee, Judge Ted Lympus, Chairperson.

II. MONTANA CORRECTIONS OVERVIEW

A. Department of Corrections and Human Services

The Montana Department of Corrections and Human Services consists of five divisions, managing a total of nine "institutions". The Corrections Division, which is one of the five divisions, encompasses:

- Montana State Prison in Deer Lodge
- Swan River Correctional Training Center (boot camp) in Swan Lake
- Women's Correctional System in Billings
- Probation and Parole Bureau

One Interstate Compact Office

Five Regional Offices

Sixteen District Offices

- Private Contracted Pre-Release Centers

Butte Pre-Release Center

Missoula Correctional Services, Inc.

Great Falls Pre-Release Center

Alternatives, Inc. (Billings)

The Department of Corrections and Human Services has 1,882.05 full-time equivalent positions (FTE) and a FY94-95 general budget of \$153 million.

B. Vision and Mission Statements

1. Department's Vision Statement:

The Department of Corrections and Human Services is recognized as professional and the best at what we do – not because we think so, but because we have earned the respect and trust of the public, our peers, and those we serve.

2. Department's Mission Statement

The Department of Corrections and Human Services serves all Montanans by providing a

continuum of services appropriate to a diverse group of people whose illnesses, disabilities, or offenses inhibit their full participation in society.

We are a partnership of skilled, dedicated, and innovative staff making a positive difference in the lives of those we serve.

We operate in an environment of openness and mutual respect while taking pride in, and responsibility for what we do.

3. Corrections Division (Revised) Mission Statement

Montana Corrections, as part of the criminal justice system, contributes to the protection of society by actively helping offenders return to the status of law-abiding citizens, while recognizing and appreciating the needs of victims. That help will be provided in a respectful, principle centered, dignified manner within a safe, secure and humane environment.

C. Population Statistics

The Corrections Division of the Montana Department of Corrections and Human Services manages approximately 1,300 inmates in the institutions, approximately 230 inmates in community corrections facilities (including pre-release centers and the boot camp), and approximately 5,000 probationers and parolees on community supervision. The population of offenders in the community has increased by 1,500 from 1992 to 1994. Most of the increase

in the community offender population has been absorbed by the Probation and Parole Bureau; however, pre-release centers have also seen a significant increase in residents.

D. Crime Rate

On a national level, Montana ranks 33rd for its crime rate. Montana ranks eleventh among the thirteen western states for its crime rate, with the violent crime rate in Montana being the lowest. Montana ranks twelfth in the Western Region for its incarceration rate.

E. Legislative Discussion

Legislative proposals discussed by the Council included truth in sentencing through good time and bad time reform, a flat 25% of time served prior to parole eligibility, and establishing a Sentencing Commission; lifetime supervision, residence registration and DNA registration of sex offenders; and establishing regional correctional facilities.

The Council also briefly discussed legislation requiring judges to explain their sentences. The Council expressed concern that requiring judges to explain their sentences might constitute grounds for appeal. However, the Council felt victims should be made aware of sentences as soon as possible.

The Council recommended and approved the following legislation be introduced to the 54th Session of the Montana Legislature:

- 1) **Truth in Sentencing** by requiring a minimum amount of time be served prior

to parole eligibility; simplifying good time by eliminating dangerous and non-dangerous sentencing designations; and eliminating good time for life sentences, requiring offenders sentenced to life to serve a minimum of thirty (30) years before becoming parole eligible;

- 2) Establishing a **Sentencing Commission** to study sentencing practices and guidelines and the effects of sentences;
- 3) Requiring convicted sex offenders to provide **DNA samples** for a data bank;
- 4) Requiring **sex offenders to register for life**; provisions to allow judges to sentence sex offenders to **lifetime supervision**;
- 5) Establishing **regional correctional facilities**.

The Legislative Council drafts of the proposed legislation are included in the legislative package section of this report.

F. Crime Bill Discussion

The Council reviewed possible impacts of the Federal Crime Bill relative to Montana's future corrections policy, planned facilities, and programs. At this time, the Council was unable to specifically identify any Crime Bill monies which would be available for Montana programs. However, it was noted there were two grants, Truth in Sentencing and Violent Offenders, available through the Crime Bill that Montana might be interested in.

G. Miscellaneous

Mike Lavin and Senator Chris Christiaens attended the National Congress on Crime in New

York in June 1994. Mike shared with the group valuable insight gained relative to mandatory sentencing, truth in sentencing, and early prevention of crime.

The remainder of this report will be devoted to addressing specific issues and recommendations of each subcommittee.

III. REGIONAL CORRECTIONAL FACILITY SUBCOMMITTEE

RECOMMENDATIONS

John Strandell, Chairperson

A. Introduction

The regional correctional facility concept was originally introduced by Rick Day, Director of the Department of Corrections and Human Services. The idea was to bring the State and counties together to work cooperatively. A regional correctional facility would consist of a county jail with a separate area (pod) to house state inmates. The pod would house medium and close custody state inmates. To date, the following counties that have expressed interest in participating in the regional correctional facility program include Hill, Ravalli, Cascade, Yellowstone, Dawson, Missoula, Gallatin, and Custer.

B. National Institute of Corrections Grant

The Department of Corrections and Human Services received a grant from the National

Institute of Corrections (NIC) for technical assistance relative to the regional correctional facility project. Mr. Ken Schulsen of NIC submitted a report to the Department. A steering committee was formed, per recommendation of the subcommittee and Mr. Schulsen's NIC report, to formulate regional correctional facility guidelines.

C. Budget Information

Budgetary concerns were expressed relative to the level of State support available or planned to assist with funding regional correctional facilities. It was noted funding for three regional prison pod facilities is already incorporated into the FY 96-97 executive budget.

D. Advantages and Disadvantages

The following are many advantages of building regional correctional facilities:

- The State would gain hard cell capacity without adding to the on-site population at Montana State Prison;
- Staff members of the regional correctional facilities will be full-time county employees;
- The facilities will be geographically placed throughout Montana, which will save on transportation and staffing costs;
- State and county revenues will be pooled, allowing counties necessary operating capital, as well as a greater variety and availability to inmate programming and other resources at a reduced expense to both the county and state;
- Counties will qualify to utilize managed health care and pharmacy programs, which will reduce medical costs;

- Sentenced state inmates will be housed closer to home;
- Additional bed space will be available to house federal inmates, which will assist in offsetting costs;
- Provides counties with funding support to build and operate jail facilities;
- The facilities will remain under local control through the Sheriff of each county;

Problems noted relative to the regional correctional facilities concept were:

- Gaining approval from the Legislature;
- Lack of trust between State and local governments;
- Reactions from communities to having inmates in the communities;
- Impacts on local social services.

E. Recommendation

The Regional Correctional Facility Subcommittee recommended the regional correctional facility concept be presented to the 1995 Legislature. The first facility proposed for construction is in Cascade County, where voters approved a local jail bond issue. To support the Council's decision to recommend regional correctional facilities to the 1995 Legislature, the Department of Corrections and Human Services, drafted the legislation, which is included in the legislative package section of this report.

IV. SEX OFFENDER SUBCOMMITTEE RECOMMENDATIONS

Mike Salvagni, Chairperson

A. Introduction

The mission of this subcommittee was to consider more stringent and progressive responses to sex offenses. The Sex Offender Subcommittee was formed to consider lifetime supervision of sex offenders. During the discussions, DNA registration of convicted sex offenders, lifetime registration of sex offenders, and public disclosure of the offenders' identity and addresses were considered and addressed.

B. General Discussion Regarding Sex Offenders

Sandy Heaton, Psychologist Specialist at Montana State Prison, noted the sex offender treatment program currently in place at Montana State Prison has been operating since 1975. Sandy noted there are currently 400 sex offenders incarcerated at Montana State Prison. Of the 400, approximately 119 are non-compliant with treatment. Approximately 1/3 of this population have the potential to leave prison untreated.

Statistics show the greatest risk of reoffense is within the first six months. The second time frame most common for reoffense happens fifteen (15) to twenty (20) years later. Ted Clack, Research Manager for the Department of Corrections and Human Services, related that incest offenders have the lowest risk for reoffense and rapists have the highest risk for reoffense. The average sentence received by sex offenders is five years, half of which is usually spent on probation and/or parole supervision. One out of every four sex offenders completes their sentence and is discharged from prison without any supervision, due to no suspended portion of a sentence having been issued by the sentencing judge.

Sandy Heaton further noted that sex offender treatment works for the majority of offenders. Sex offenders can be safely managed in the community through probation/parole supervision and sex offender treatment participation. Therefore, the reader can conclude lifetime supervision of sex offenders would provide continued treatment and necessary monitoring.

The following points of discussion explain the proposed legislation contained in the recommendation section of this subheading.

C. Lifetime Supervision of Sex Offenders

The Subcommittee obtained and reviewed existing information and Arizona laws regarding lifetime supervision and registration. Sandy Heaton, Psychologist Specialist at Montana State Prison, who provides sex offender treatment, and Mike Ferriter, the Probation and Parole Bureau Chief, support lifetime supervision of sex offenders. The Montana Sex Offender Treatment Association (MSOTA) providers also support lifetime supervision of sex offenders.

According to MSOTA, the treatment component of sex offender supervision is vital. MSOTA suggested treatment for convicted offenders be mandatory and included as part of the original sentence. In addition to the treatment component, MSOTA providers indicated they are discussing management of sex offenders relative to approving/disapproving employment and imposing house arrest for high risk offenders.

Lifetime supervision is not intended to mean life in prison for the offenders. Lifetime supervision legislation would be based on successful completion of the sex offender treatment program in Montana State Prison prior to release. Sex offenders sentenced to the Department of Corrections and Human Services for life will not become parole eligible. Three steps that need to be accomplished to enact lifetime supervision of sex offenders are passing the legislation, allocating funding for treatment, and increasing Probation/Parole Bureau staff.

A stipulation allowing sentencing judges to be able to grant reprieve from lifetime supervision was discussed but not recommended by the subcommittee.

D. Impact of Lifetime Sentencing of Sex Offenders

MSOTA treatment providers related community based sex offender treatment programs are more cost effective than prison treatment programs. However, the costs of community based treatment poses a significant burden on offenders. It was also mentioned that requiring offenders to pay for their own treatment imposes accountability and responsibility. However, because offenders are paying for their own treatment, which is expensive, they often can't afford to pay for their victims' treatment. The Department of Corrections and Human Services currently has legislation pending to provide \$110,000 for treatment funding. A portion of this money is planned to be used to assist indigent sex offenders with paying for community treatment costs.

The subcommittee discussed whether lifetime supervision should be mandatory following a

second conviction or left within the discretion of the judge. The discussion included the acknowledgement that lifetime supervision may be the best response to a first conviction in order to avoid a second offense. It was decided lifetime sentencing for sex offenders for a first offense should be discretionary for the judge.

Questions arose as to whether or not lifetime supervision of sex offenders would significantly impact probation and parole caseloads. Mike Ferriter, Probation and Parole Bureau Chief, noted because the number of repeat, or second time, sex offenders is so low, which is the most likely target group for lifetime supervision, this sentencing option will have only a minimal impact on caseloads. However, this impact is primarily dependent upon how often the judges choose to impose lifetime supervision. In any event, the fiscal impact of lifetime supervision has already been included in the budget.

E. Lifetime Registration of Sex Offenders

Along with lifetime supervision of sex offenders, the subcommittee discussed the issue of lifetime registration of sex offenders. Under current Montana law, sex offenders are required to register with local law enforcement for ten years. Even though the Department of Corrections and Human Services has a data base of registered sex offenders, the subcommittee felt ten years is not a long enough time for sex offenders to be registered, especially if sex offenders will be supervised for life. Additionally, sex offender registration is currently the responsibility of the sex offender. Lifetime supervision in conjunction with sex offender registration should ensure compliance. Further, suggestions from the subcommittee relative

to lifetime sex offender registration were for statewide registration, accomplished by a sex offender registration file being added to CJIN; public disclosure of sex offenders' names, according to discretion exercised by the Department; and increasing the statutory penalty for failing to register to a \$5000.00 fine and/or five years in prison.

F. DNA Registration for Sex Offenders

Deoxyribonucleic acid, found in chromosomes, is unique for every person except identical twins. Thus, DNA offers the potential to make positive identification of perpetrators from blood, semen, hair, or tissue samples found at a crime scene, provided they are convicted sex offenders with DNA already in the data bank. Twenty-six (26) states currently have laws allowing for DNA sampling of convicted sex offenders and violent offenders. DNA testing would also provide information to clear innocent suspects who are previously convicted sex offenders. DNA samples would be analyzed and stored in the lab at the Forensic Science Division of the Department of Justice in Missoula. Only law enforcement agencies would have access to the confidential DNA information. California currently has DNA registration for sex offenders and the law has yet to be challenged.

DNA registration orders will be discretionary for the sentencing judge based on the crime and surrounding circumstances.

The subcommittee reviewed New York state's current laws relative to DNA registration of sex offenders and decided to adopt the New York example.

G. Estimated Budget Information Relative to DNA Registration

Estimated costs for a facility to maintain DNA registration for sex offenders would be two full-time employees; \$100,000 yearly operating costs; \$72,000 constructions costs (to add one room to the State Crime Lab in Missoula); \$75,000 for equipment; and \$50.00 per test for materials. It was noted it will take from one and one-half to two years to get this project up and running. Montana might be able to access monies from the Crime Bill to support this project, provided it is in operation when the funds are released for bid. In any event, a proposal to establish DNA registration will be effective upon identification of a funding source.

H. Recommendations

The Sex Offender Subcommittee recommended the following legislation be introduced to the 1995 Legislature:

- DNA Testing for Sex Offenders, currently numbered LC0285;
- Lifetime Sentencing and Registration for Sex Offenders, currently numbered LC0286.

Please refer to the legislative package section of this report for the specific details surrounding this legislation.

V. TRUTH IN SENTENCING SUBCOMMITTEE RECOMMENDATIONS

Judge Ted Lympus, Chairperson

A. Introduction

Subcommittee members met with Montana State Prison officials to determine needs and the impact of a truth in sentencing law. The priority of the subcommittee was to address the truth in sentencing issue and ensure it would have a neutral impact on the prison population. The subcommittee felt simplicity is vital to judges and others to know exactly how long an inmate will serve on a sentence. It was noted the subcommittee should carefully consider offender management and motivation at Montana State Prison, as they are two very critical aspects relative to good time. The subcommittee felt eliminating good time accrual for inmates in maximum security was critical.

B. Truth in Sentencing and Good Time Information

The subcommittee addressed the controversial and confusing issue of good time. The subcommittee decided to propose inmates receive a flat thirty (30) days of good time per month; in addition, inmates will have to serve at least 25% of their sentence before becoming parole eligible. The truth in sentencing proposal does away with dangerous and non-dangerous designations at sentencing by essentially adopting the minimum time presently required under the dangerous offender designation. Further, the subcommittee recommended eliminating the 17-1/2 year rule pertaining to parole; abolishing good time for life sentences, requiring inmates to serve thirty (30) years, not fifteen (15), as is presently required; and eliminating early parole releases relating to overpopulation.

C. Montana Commission on Sentencing

The subcommittee proposed establishing a Montana Commission on Sentencing to study good

time, sentencing practices and guidelines, and the effects of sentences.

D. Recommendations

The Truth in Sentencing Subcommittee recommended two pieces of legislation:

- Truth in Sentencing, currently numbered LC0983;
- Commission on Sentencing, currently numbered LC0984.

Again, please refer to the legislative package section of this report for details of the above proposed legislation.

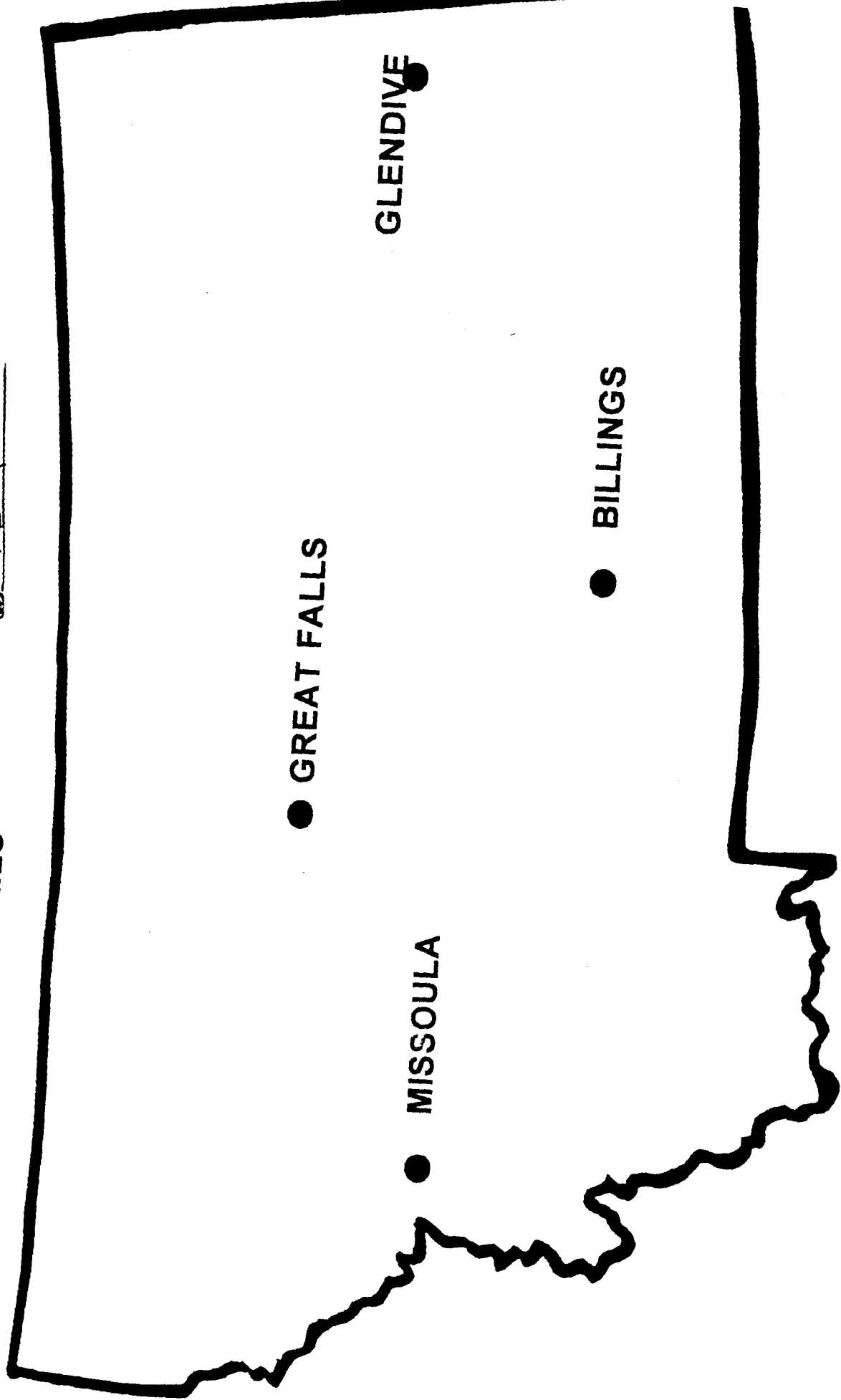
VI. CONCLUSION

The work of the Council and subcommittees was very productive. The Council provided specific recommendations designed around new solutions to long-standing problems, including improved detention; expanded prison capacity; supervision and penalties for sex offenders; and sentencing revisions.

Handwritten: 2/11/95

EXHIBIT 8.
DATE 2-1-95
HB 2

● PROPOSED REGIONAL JAILS



TO: RICK DAY

FROM: TED CLACK *JeV*

RE: LEGISLATIVE REQUEST FOR EXTENDED CORRECTIONS POPULATION PROJECTIONS.

DATE: 23 JANUARY 1995

EXHIBIT 3

DATE 2-1-95

~~SD~~ HB 2

I have serious reservations about extending our population projections beyond a five year horizon. If the attached extended population projections are shared with legislators, I ask you to please also share this memo with them. I cannot, in good conscience, defend the extended projections as anything other than a purely mathematical extension of the methods used for more short term and more plausible projections.

1. I have heard of **no one** in the business of forecasting who would seriously advance detailed projections of volatile trends which are determined, in large measure, by the unquantified variables of politics and public opinion and emotion for more than a few years. Our practice of projecting correctional populations for five years is pushing the envelope of respectability.
2. Correctional population size is demonstrably **not** a function of quantified, "natural" relationships or phenomena. As Montana and national data as well as numerous articles in the literature attest, those populations vary as a function of political trends and public perceptions and independently of crime rates and civilian population size. Given those determinants, corrections population size can fluctuate wildly in very little time, although increases occur more often and more quickly than decreases. One or two punitive laws resulting in increased prison admissions and/or increased length of sentence and length of stay would quickly invalidate the most impeccable projections. A lost civil rights suit over conditions of confinement, or an action like the 1972 Montana decision to arbitrarily parole a large number of inmates, would have a like effect.
3. "Official" numbers, no matter how suspiciously regarded and no matter how many qualifiers are attached, often acquire lives of their own. The suspicions and caveats seem to quickly disappear but the numbers linger on well beyond their legitimate life, particularly if they are compatible with some rhetorical agenda. It could be tragic to have the future shape and size of important programs determined by the existence of numbers that lack even face validity.

cc: Bill Furois

EXTENDED MALE CORRECTIONAL INSTITUTION POPULATION PROJECTIONS
DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES
JANUARY 1995

| FISCAL YEAR | PROJECTED MALE POP. | COMMUNITY BEDS | INSTITUTIONAL BEDS |
|----------------|------------------------|-------------------|-----------------------|
| 2000 | 2352 | 629 | 1723 |
| 2001 | 2474 | 629 | 1845 |
| 2002 | 2601 | 629 | 1972 |
| 2003 | 2713 | 629 | 2084 |
| 2004 | 2837 | 629 | 2208 |
| 2005 | 2951 | 629 | 2322 |
| 2006 | 3061 | 629 | 2432 |
| 2007 | 3177 | 629 | 2548 |
| 2008 | 3295 | 629 | 2666 |
| 2009 | 3405 | 629 | 2776 |
| 2010 | 3522 | 629 | 2893 |

ALLOCATION OF PROJECTED MALE CORRECTIONS POPULATION
AMONG INSTITUTIONAL BEDS

| FISCAL YEAR | INSTIT. POP | MSP | SRCTC | JAILS | OTHER |
|----------------|-------------|---------|-------|-------|-------|
| 2000 | 1723 | 1202 | 69 | 348 | 104 |
| 2001 | 1845 | 1232 | 69 | 348 | 196* |
| 2002 | 1972 | 1250 | 69 | 457* | 196 |
| 2003 | 2084 | 1200 | 69 | 619* | 196 |
| 2004 | 2208 | 1247 | 69 | 696** | 196 |
| 2005 | 2322 | 1361*** | 69 | 696 | 196 |
| 2006 | 2432 | 1471*** | 69 | 696 | 196 |
| 2007 | 2548 | 1587*** | 69 | 696 | 196 |
| 2008 | 2666 | 1705*** | 69 | 696 | 196 |
| 2009 | 2776 | 1815*** | 69 | 696 | 196 |
| 2010 | 2893 | 1932*** | 69 | 696 | 196 |

* Double bunking begins

** Maximum double-bunked regional jail capacity

*** Additional male prison capacity required - maximum MSP
campus infrastructure capacity = 1500

THESE PROJECTIONS ARE MERELY MATHEMATICAL EXTENSIONS OF PAST TRENDS. CORRECTIONAL POPULATIONS FLUCTUATE WIDELY AS A RESULT OF CHANGES IN PUBLIC OPINION AND POLICY. CONSEQUENTLY, CRIME RATES AND CIVILIAN POPULATION SIZE ARE NOT RELIABLE PREDICTORS OF CHANGE IN CORRECTIONAL POPULATIONS. THESE PROJECTIONS ALSO ASSUME NO FURTHER GROWTH IN COMMUNITY BEDS AFTER THIS BIENNIUM.

Handout 4 2/1/95

EXHIBIT 4
DATE 2-1-95
~~88~~ HB 2

TO: SEN. MIGNON WATERMAN

FROM: TED CLACK *Ted*
DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

RE: YOUR REQUEST FOR DATA CONCERNING AGED OFFENDERS AND
PERCENT CHANGE IN CORRECTIONS POPULATIONS

DATE: 25 JANUARY 1995

FISCAL YEAR END MALE CORRECTIONS POPULATIONS,
FISCAL YEARS 1985 - 1994,
AND PROJECTED FISCAL YEAR END AGED POPULATIONS

| FISCAL YEAR | TOTAL POP. | PCT. CHGE. | COUNT 50+ | PCT. TOT. | PCT. CHGE. | COUNT 60+ | PCT. TOT. | PCT. CHGE. |
|----------------|---------------|---------------|--------------|--------------|---------------|--------------|--------------|---------------|
| 1985 | 1078 | | 63 | 5.8 | | 24 | 2.2 | |
| 1986 | 1163 | 7.9 | 74 | 6.4 | 17.5 | 23 | 2.0 | -4.2 |
| 1987 | 1180 | 1.5 | 69 | 5.8 | -6.8 | 23 | 1.9 | 0.0 |
| 1988 | 1240 | 5.1 | 75 | 6.0 | 8.7 | 27 | 2.2 | 17.4 |
| 1989 | 1377 | 11.0 | 87 | 6.3 | 16.0 | 28 | 2.0 | 3.7 |
| 1990 | 1394 | 1.2 | 82 | 5.9 | -5.7 | 25 | 1.8 | -10.7 |
| 1991 | 1462 | 4.9 | 98 | 6.7 | 19.5 | 31 | 2.1 | 24.0 |
| 1992 | 1521 | 4.0 | 118 | 7.8 | 20.4 | 40 | 2.6 | 29.0 |
| 1993 | 1442 | -5.2 | 137 | 9.5 | 16.1 | 44 | 3.1 | 10.0 |
| 1994 | 1600 | 11.0 | 156 | 9.8 | 13.9 | 46 | 2.9 | 4.5 |

| | | | | | | | | |
|------|------|-----|-----|--|--|-----|--|--|
| 1995 | 1725 | 7.8 | 170 | | | 55 | | |
| 1996 | 1829 | 6.0 | 199 | | | 64 | | |
| 1997 | 1940 | 6.1 | 235 | | | 74 | | |
| 1998 | 2051 | 5.7 | 273 | | | 86 | | |
| 1999 | 2164 | 5.5 | 318 | | | 100 | | |
| 2000 | | | 381 | | | 120 | | |
| 2001 | | | 401 | | | 126 | | |
| 2002 | | | 421 | | | 133 | | |
| 2003 | | | 440 | | | 138 | | |
| 2004 | | | 460 | | | 145 | | |
| 2005 | | | 478 | | | 151 | | |

Projections of aged populations are based on average percent of those populations in the past three years inflated annually at a rate equal to the average of four three-year moving average rates of annual increase in those percentages until the year 2000, when future growth is calculated as a flat extension of the percent calculated for 2000.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Institutions +
Cultural Education SUB-COMMITTEE

DATE 2-1-95

BILL NO. _____ SPONSOR(S) _____

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

| NAME AND ADDRESS | REPRESENTING | Support | Oppose |
|------------------|----------------------------------|---------|--------|
| Myron Beeson | MSP - B.W- | ✓ | |
| Wes Estep | MSP | ✓ | |
| Ross Swaner | MSP | ✓ | |
| Ron Baigi | MSP | ✓ | |
| Sam Hall | Smith-McGowan | ✓ | |
| JOHN STRANDELL | CASCADE COUNTRY | ✓ | |
| DAVID WATKINS | MSP | ✓ | |
| GARY FRANK | TOYOTA MOTORSALES ^{USA} | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

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

HR:1993

wp:visbcom.man

CS-14