

MINUTES

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

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on February 17, 1995, at 7:10 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Aubyn Curtiss
Rep. Cliff Trexler

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

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

Committee Business Summary:

Hearing: HB 566
Executive Action: HB 501 DO PASS
HB 491 DO PASS
HB 366 DO PASS AS AMENDED
HB 505, HB 566 TABLE

{Tape: 1; Side: A}

EXECUTIVE ACTION ON HB 501

Motion/Vote: REP. SHIELL ANDERSON MOVED HB 501 DO PASS. The motion carried 11 - 6. REPS. WYATT, HURDLE, CAREY, MC CULLOCH, SHEA and KOTTEL voted no. (REPS. GRIMES, TREXLER and TASH voted aye by proxy; REP. KOTTEL voted no by proxy, (REPS. CURTISS and SMITH were counted as absent at the vote.)

{Tape: 1; Side: A; Comments: REP. KOTTEL'S proxy was reported, but not given to the secretary; REP. CURTISS'S proxy was not signed; and REP. SMITH'S proxy was not reported, thus not recorded on votes on the bills during the portion of executive action when she was absent.}

EXECUTIVE ACTION ON HB 505

Motion: REP. DIANA WYATT MOVED HB 505 DO PASS.

Discussion: John MacMaster explained the amendments. He said they amended two sections of the Youth Court Act to include the same language as the bill regarding what the court can order parents or guardians to pay.

Motion: REP. WYATT MOVED THE AMENDMENTS.

Discussion: REP. DANIEL MC GEE and REP. DUANE GRIMES asked for further clarification from Mr. MacMaster.

REP. ANDERSON said he read it that the parent would pay the state to have the state evaluate the child for treatment. It would include all the costs of adjudication and disposition of what happens to the child.

REP. GRIMES said that would seem to be the case and asked for further interpretation for the committee to determine if it was appropriate.

REP. BRAD MOLNAR said he had a similar concern as REP. ANDERSON. The bill would say that if the state brought a parent before the court to prove neglect or abuse, the parent would pay for the court cost and all the other things which would be paid if found guilty. It would mean being convicted under a system in which the parent would be investigated without being questioned.

REP. GRIMES said the answer was, yes, the parent is liable even if proven innocent.

REP. ANDERSON said, "We're setting up a system, it seems, with a possibility where if you're a parent of any means, you're paying for your own child's adjudication and if you are not, you are

not liable under this until that child is actually placed; in which case you are probably not liable either."

REP. JOAN HURDLE was concerned about the inclusion of a guardian and thought it would preclude people from taking troubled kids into foster homes or into therapeutic placement.

CHAIRMAN BOB CLARK said some of it was current language and discussed what was changed in the bill as introduced. Currently, guardians are now somewhat liable under existing statute.

REP. GRIMES suggested that there was discretion by the court allowed in the use of the word, "may," in subsection (11). He explained that he believed the intent of the sponsor was to deal with cases which are not clear cut and to deal with kids who are just taking abnormal portions of the dollars and their parents are financially able to contribute to offset some of the costs. He asked if it was dealing with the same set of circumstances in subsection (10).

Mr. MacMaster said he thought that in the amendments it was. The first section amended is the section which would provide for a disposition that it called an informal adjustment. The second section which is amended would provide for disposition after a formal hearing and procedure.

REP. GRIMES asked if that meant in either case it would be totally discretionary whether the parents pay for care, placement and treatment.

Mr. MacMaster said the current law provides that the court shall order parents or guardians to pay an amount based on uniform child support guidelines. They pay for care, commitment and treatment. The amendments provide that, in addition, the court may also order that they pay for part of the adjudication, disposition and supervision.

REP. GRIMES asked if that explanation helped with the concerns.

REP. MOLNAR said he did not like the part which provided that the parent would pay for the supervision and disposition. He felt that the first part of the amendments would expand the authority of the JPO (Juvenile Probation Officer) handling the information adjustment referred to on page 1 of the amendments. He was seeking to trim back their authority and let the judges make decisions based on law.

REP. GRIMES asked if the same problem applied in the original bill without the amendments.

REP. MOLNAR said the dispositional hearing is in the court with a judge.

REP. GRIMES suggested that the amendments be set aside, a discussion be held with the sponsor and they be worked out in the Senate.

CHAIRMAN CLARK asked **Mr. MacMaster** if he thought the bill would accomplish the intent without the amendments.

Mr. MacMaster said the bill alone would work without the amendment. It would provide that the payments would be made in the child abuse and neglect proceedings in title 41, chapter 3. The amendments would amend title 41, chapter 5 which is the Youth Court Act proceedings against a delinquent youth or youth in need of supervision.

REP. GRIMES asked if it was the sponsor's intent to have these amendment on the bill at this point.

CHAIRMAN CLARK recommended segregating the amendments.

REP. ANDERSON said this was a bill they should not send out and expect it go through the process and get "fixed" because it is very simple and straightforward. He had a problem with requiring someone to pay to not have their child be a youth in need of supervision. The sponsor seemed to be wanting to make parents be more responsible for their children. There were other bills which would accomplish that.

Motion/Vote: **REP. ANDERSON** MOVED TO TABLE HB 505. The motion carried 11 - 7. **REPS. WYATT, CAREY, SMITH, SHEA, MC CULLOCH, KOTTEL,** and **HURDLE** voted no. (**REPS. KOTTEL, TASH** and **TREXLER** voted by proxy.)

EXECUTIVE ACTION ON HB 491

Motion: **REP. ELLEN BERGMAN** MOVED HB 491 DO PASS.

Discussion: **REP. ANDERSON** asked what the legal ramifications were and what would be accomplished by this legislation.

CHAIRMAN CLARK said there is some question now between county attorneys and sheriffs as to which one of them is the chief law enforcement officer. Some county attorneys want no part of it and others claim to have that position. Traditionally, the sheriff has always been the chief law enforcement officer.

REP. MC GEE echoed the previous statement and gave his experience as support of the need of the bill. The argument has been that the county attorney is part of the judiciary [branch of government] whereas the sheriff is part of the executive [branch].

REP. HURDLE asked if they had clarified the situation between the metropolitan police chief and the sheriff.

CHAIRMAN CLARK said that a police chief has never been considered a chief law enforcement officer. His agency is the chief law enforcement officer in the community, but overall the county sheriff would be the chief law enforcement officer.

REP. HURDLE asked if that meant that the Billings police chief and the Billings police department would not longer be responsible for the background checks on the Brady bill.

CHAIRMAN CLARK said this would have nothing to do with that. The question is not between police chief's, it is between sheriffs and county attorneys.

REP. HURDLE said she was trying to determine who in Yellowstone County would do the background checks under the Brady bill.

CHAIRMAN CLARK said the sheriff is the one who does it now.

REP. LINDA MC CULLOCH asked how the decision is currently made in each county.

CHAIRMAN CLARK replied that until the mid-80's, the sheriff was always the chief law enforcement officer and then the legislature passed a bill which said the county attorney may be the chief law enforcement officer. Some county attorneys took it seriously and others did not want to do it. This bill would spell out who that is.

REP. MC CULLOCH asked who makes the decision at the local level.

REP. MC GEE said that no one makes the decision and that is the reason for the bill. County commissioners cannot rule on it because a dispute would involve two elected county officials.

REP. MC CULLOCH asked who is making the decision now.

CHAIRMAN CLARK said that in counties where there is a dispute, no one is making the decision. So far, there has been no challenge in court over it.

REP. MC CULLOCH wanted to make sure the legislature would not infringe on local government by making this decision.

CHAIRMAN CLARK said most county attorneys do not want that position because they would have to also prosecute the case.

REP. MC CULLOCH asked about counties where the county attorney is functioning in that capacity and they like it that way.

REP. ANDERSON asked for examples where this would be applicable.

CHAIRMAN CLARK said an example would be a standoff situation. If the county attorney thought that he was the chief law enforcement officer, he would be present, trying to give orders and trying to

direct everyone. The situation would be the same with the sheriff who would want to be directing the situation because he is the man directly in charge of his officers.

REP. LIZ SMITH said it sounded to her like a management problem. In her county the county attorney is the final law enforcement officer primarily because of the interpretation of the law and to be sure it is enforced. She thought they both performed investigations. She thought that the definition was not clear enough.

CHAIRMAN CLARK asked if she thought the county attorney would appreciate it if the sheriff went to his office and told him how to prosecute the cases.

REP. SMITH said, "No."

CHAIRMAN CLARK said the argument on the other side is that the sheriff would not want the county attorney in a hostage situation directing the officers.

REP. SMITH asked where it was happening.

CHAIRMAN CLARK answered, "That's what we are trying to prevent."

REP. MC GEE said this was not a turf battle, but rather a definition battle--law enforcement versus prosecution. The purpose of the bill was to clarify the definition.

REP. WYATT sought clarification of the terms. She did not think that the county attorney should direct in a situation, but if he should do that, who would be the person over him who would make the decision to correct him. She also wanted to know who would decide a dispute between the head of the highway patrol and the county sheriff.

CHAIRMAN CLARK answered, "First of all the county attorney and the sheriff answer to the voters and to no one else, they are elected officials. County commissioners do not tell the county attorneys or the sheriffs what to do except for budgeting purposes. If there was a question between the sheriff and the highway patrol, the sheriff is the chief law enforcement officer of the county, period, no matter what."

REP. HURDLE asked who issues injunctions.

CHAIRMAN CLARK said a judge determines the issuance of an injunction. The county attorney takes the information to the judge. The county attorney's decision in these matters is whether there will be prosecution.

REP. HURDLE cited a case where the county attorney asked law enforcement officers to stand at the door of a meeting to be sure people could go in.

REP. MC GEE said that was an example of enforcement versus injunction.

REP. HURDLE asked if that meant they were saying that the county attorney should not be able to do that.

REP. MC GEE said the county attorney would not stand at the door and that was the point. The county attorney might order that or prosecute that, but then he would direct the sheriff to enforce it.

CHAIRMAN CLARK said ask is one thing, ordered is another.

REP. HURDLE asked if that would tie his hands and the answer was, "no."

Vote: The DO PASS motion carried 16 - 2. REPS. SHEA and HURDLE voted no. (REPS. TREXLER and KOTTEL voted by proxy.)

EXECUTIVE ACTION ON HB 366

Motion: REP. LOREN SOFT MOVED TO RECONSIDER TABLE ACTION ON HB 366. The motion carried 17 - 2. REPS. WYATT and HURDLE voted no. (REP. TREXLER voted by proxy.)

Motion: REP. SOFT MOVED HB 366 DO PASS.

Motion: REP. SOFT MOVED THE AMENDMENTS. EXHIBIT 1

Discussion: REP. SOFT said that all of the references to the Montana Advocacy Program (MAP) had been deleted from the bill.

REP. HURDLE remembered that the committee's original objection to the bill concerned the requirement for MAP to report abuse cases to the Department of Family Services (DFS).

REP. GRIMES recalled that the objection was that something that was already federally mandated did not need to be state law and if all of that had been removed, he wanted to know what was left of the bill.

Without objection from the committee, Ann Gilke, DFS attorney, explained what had occurred. She said they had removed all the references to mandatory reporting by MAP, codifying their federal authorizing statutes, and their access to records. What would remain would be an expansion of the confidentiality of the records which DFS possesses and to whom they may release those records. It also would provide for limited immunity in certain hiring practices.

REP. SOFT said they had amended that section previously on page 9.

REP. DEB KOTTEL said they had inserted, after the comma, "that is substantiated by independent corroboration by the department."

REP. MC GEE asked for a repetition of the purpose of the bill with these amendments.

Ms. Gilke said they wanted to make it consistent with child protective services and to respond to the criticisms and concerns that the agency hides behind confidentiality. She expanded on that answer.

REP. MOLNAR referred to her testimony that under limited conditions the information would be released to the media and asked what those would be.

Ms. Gilke pointed it out on page 8, line 3 and said that it was limited to factual information regarding how the case was handled without violating the privacy rights of the client. Those who handle developmentally disabled (DD) case management were very interested in the immunity section being a part of the bill.

CHAIRMAN CLARK asked if that meant the language on page 8 remained in the bill.

Ms. Gilke said that was correct.

Mr. MacMaster said they did not amend code section 8 of the bill, but had amended the Youth Court Act section, 41-5-601, MCA. What this bill would amend is not the code section which they had previously amended to require that substantiation.

CHAIRMAN CLARK said his question was on section 7, page 8, if they were leaving the language in the bill.

Ms. Gilke said they were.

Vote: The motion to adopt the amendments carried unanimously,

Motion/Vote: REP. SOFT MOVED HB 366 DO PASS AS AMENDED. The motion carried 19 - 0. (REPS. TREXLER and CAREY voted by proxy, all other members were present.)

HEARING ON HB 566

Opening Statement by Sponsor:

REP. RICK JORE, HD 73, said HB 566 was a revision of section 28 in the Montana Constitution which would be a referendum to the people. It would change the philosophy and principles of punishment for crime from prevention and reformation to the principles of punishment of the convicted and restitution to the victim by the convicted.

{Tape: 1; Side: B; Approximate Counter: 6.8.}

Proponents' Testimony:

None

Opponents' Testimony:

Bob Campbell, Delegate to the Montana Constitutional Convention, said the words which the sponsor wanted to amend in section 28, article 2 of the Constitution were original words in the 1889 convention. He said he opposed it because it did not add anything new. Restitution is not prohibited by rights of the convicted. The statutes contain restitution 61 times and if it is not working, the statutes should be examined. Deleting prevention as a means of constructing criminal law in the state, would say that it is not to be an interest in law enforcement. By deleting rehabilitation, they would be saying that they did not want any rehabilitation programs when 80 - 85% of the people incarcerated would come out of prison some day and their experience would have been limited to punishment and revenge. He believed the amendment was not necessary when they can do everything now that it would provide for.

Russell Hill, Montana Trial Lawyers Association (MTLA), opposed the amendment because he said it was one more in a long line of changes and amendments to the Constitution as a ballot issue. He said his and MTLA's opposition had less to do with what they would be adding than what they would take away. He echoed comments of the previous opponent. He said that the written language is important because it would lend a permanence that he did not believe was well-enough thought out. He had no problem including punishment and restitution, but objected to taking out reformation and prevention. He said it was not just dealing with the prison system and just violent crime, but every crime and every way the court system deals with someone who has offended against the law. He was more concerned with prevention as a citizen than with punishment after it has happened.

Scott Crichton, Executive Director, ACLU, had observed a shift from denial to recognition of problems with the system. He has tried to advocate for "the least of us" instead of the rights of the majority. In that capacity, he was concerned about the prisoners as they are released back into society being deprived of any tools for rehabilitation.

{Tape: 1; Side: B; Approx. Counter: 17.6}

Questions From Committee Members and Responses:

REP. ANDERSON said he did not read the intent of the bill to mean to remove such prevention programs as DARE as was suggested by one of the opponents.

Mr. Campbell said that the move to delete prevention as a concept for state criminal law policy would serve to communicate that it was not a legitimate concern.

REP. ANDERSON said his point was not that he was against prevention, but the way he read the bill, they were talking about focusing on punishment and restitution after a crime was committed. In his mind, they were not taking away any prevention.

Mr. Campbell asked him if he then did not favor deletion of the word, "prevention," in this bill.

REP. ANDERSON answered that even if they took out prevention, they would have it as a deterrent measure if they had more punishment. As far as pre-crime prevention such as DARE, he did not see how the bill would change that.

Mr. Campbell replied that he was saying that they have the authority now and would not add anything. He said that if they want to go to a different standard for punishment, they can do it through statute and do not have to amend the Constitution. He contended that it was a false hope that this would improve the crime situation by deleting prevention and doubling the word, "punishment." It might be popular, but was not necessary in his view.

REP. ANDERSON asked if they changed this, would they significantly alter the system the way it is proposed.

Mr. Campbell said the law doesn't require idle acts. This was an unnecessary and idle act and won't change anything, he said, except to delete prevention and rehabilitation. Some change is necessary, but it should take place in the statutes and not the Constitution. The Constitution is not designed to address every possible need for the current and future times, but it allows for statute to address those changing needs.

REP. SOFT believed this was a philosophical question with regard to the Constitution. He asked if Mr. Campbell thought the current prison policy and philosophy was working in the state.

Mr. Campbell did not think any policy can't be improved, but it was the policy that needed to be examined, improved and enforced. The authority exists for the legislature to do that.

REP. SOFT asked if he thought the prevention part of the policy is working in the state.

Mr. Campbell said he did not think they should abandon any approach to reducing crime in the state. He thought it could be improved and increased, but not abolished.

REP. SOFT asked how the sponsor defined punishment within the prison system.

REP. JORE repeated his quote from Thomas Jefferson, "If punishment were only proportionate to the injury, men would feel it their inclination as well as their duty to see the law was observed." He said the punishment should be in proportion to the injury. He said he quite frankly was not satisfied with how it is done now.

REP. SOFT asked if he thought criminals in the prison system can be rehabilitated and reformed.

REP. JORE said he believed they can and the best tool for that is punishment. Punishment has a corrective rehabilitative function and effect. When punishment is given, the person has a strong tendency not to re-offend.

REP. SOFT asked what types of rehabilitation and reformation programs should be available to prisoners in the system.

REP. JORE said that was his point. From a philosophical perspective, he was not totally convinced that the state should be in the rehabilitative programs business. He believed the state's primary purpose was to punish criminals. He said he was not opposed to rehabilitation and prevention, but when the terms are defined, there is no end to the definition and if the state is going to do it, the state is going to pay for it. He said he was a proponent of the state staying within the realm of punishment and let other institutions in society handle more of the prevention and rehabilitation programs.

REP. SOFT asked if his proposal should include leaving in rehabilitation and reformation as a part of the process.

REP. JORE said it was important to note that this section was entitled, "Rights of the Convicted." So it pertained to what was expressed as a philosophy of punishment after an individual is convicted. Prevention is out already since it pertains to the convicted. He said he would rather see the concept of punishment more than the concept of reformation because focusing on reformation creates an endless series of programs.

REP. SOFT asked if he thought it could, however, be left as a part of the language.

REP. JORE said his original language was, "laws for the prevention of crime." He wouldn't be opposed to other language in it. He felt from a philosophical perspective that this would have significant impact on the system.

REP. SOFT referred to Chuck Colson and wondered if the sponsor felt he should have received more than what he did.

REP. JORE said he was not sure what Mr. Colson had experienced, but he felt that they can have rehabilitation through outside groups which are not funded by taxpayer money, but focus on the punishment aspect should be from the state's perspective.

REP. WILLIAM BOHARSKI asked if the sponsor had any objection to the state being in the business of rehabilitation of people in prison who would be later released.

REP. JORE said he did not have an objection, but wanted to define reformation and how much money that would mean for the broadened range of programs.

REP. BOHARSKI said it seemed to him that the sponsor was attempting to say, "If you are a convicted criminal in the state of Montana, the policy of the state of Montana will be that you will be punished as a matter of rights and you will do what you can in order to get restitution to your victim." The Constitution now says, "You have a fundamental right to be reformed." And that was what he saw the sponsor having a problem with and was trying to correct; i.e., "you believe that the fundamental rights you are left with are punishment and restitution for your victim, you do not have a fundamental right to be reformed by the state; that doesn't mean the state can't do it, you just don't believe that that is a fundamental right you have as a criminal."

REP. JORE agreed with that.

REP. BOHARSKI asked Mr. Campbell to respond to the same statement.

Mr. Campbell asked if the question was whether or not the state could still go ahead with all the rehabilitation they wanted to even by deleting reformation from section 28.

REP. BOHARSKI said he did not think there was any question that they could do that because though it doesn't say punishment, they certainly punish people. He asked **Mr. Campbell** to respond to **REP. JORE'S** statement that he didn't believe reformation is a fundamental right of a criminal under the Constitution of Montana.

Mr. Campbell said it was stated in there as a principle that their laws and statutes were to look at in enacting legislation which would decide what is reformation and rehabilitation and prevention. He asked why they don't pass legislation to correct deficiencies which past legislatures had enacted. Those did not evolve from the Constitution which was not designed to be a document which is being changed every time local conditions suggest voters would be receptive to changing it.

REP. BOHARSKI rhetorically asked, "If I were a convicted criminal and the policy of this judiciary committee and the legislature of

the state of Montana and the Governor decided that, 'forget it, we don't care about ever reforming you, we are going to throw you in the hole, you're the kind of person we don't want out on the street....reformation has absolutely nothing to do with the way we are going to treat you.....' If I get a prison lawyer andget ahold of the Constitution....and say, 'The principle of this state is to reform me.....don't you have to reform me, that's what your own Constitution says'....." Though the legislature can do a lot of things, the Constitution is the guiding document. It seemed to him that the word, "reformation," in the Constitution as a basic principle under the rights of the convicted has caused a lot of problems because it has led people to believe that is our principle. He said that was why he agreed that it needed to be changed.

Mr. Campbell refuted the example of someone who had committed many crimes and yet would say the state did not have a right to sentence them to many years in prison or to death because he had a right to be reformed. The supreme court had not recognized that argument as a valid argument for it being a right. He felt that **REP. BOHARSKI** was giving it far too much legal emphasis as to what the principle does in the courts. He did not believe people were gaining advantage from this in the courts.

REP. BOHARSKI respectfully disagreed and repeated his reasons.

{Tape: 1; Side: B; Approx. Counter: 46.0}

REP. KOTTEL asked if the sponsor agreed that they should have strong punishment for crimes which would act as a deterrent and the sponsor agreed.

REP. KOTTEL said, "And that deterrent prevents crime. So prevention is a policy in our system." The second reason for life sentences is to isolate them from society and prevent them from committing further crimes on the population. She asked if he agreed that was a good policy and he agreed. She said that then the word, "prevention," made sense to her under section 28.

REP. KOTTEL agreed that restitution for the victim should be a primary responsibility. She stated her philosophy. She asked if he agreed that accountability was a good principle and he agreed. She said if they are making criminals pay restitution, they are making them accountable and meeting the guidelines of reformation. She asked the sponsor if 40% of the prisoners have fetal alcohol syndrome and 80% have chemical dependency problems and 98% of the women in Montana's prison system have been sexually abused as children and physically beaten by the men in their lives and "we didn't protect them," and then they are rightfully in prison because they are accountable, but there are no tools to address their problems, how would they do prevention.

REP. JORE answered with the question, "Is it really the function of the state to make sure that every fetus is not affected by the

alcoholism of the mother, or those kinds of things? Are we going to place the state in that situation?" His concern was that the state had perhaps tried to do too much in those areas with parenting classes for instance. He felt it went to the root cause of so many of the social problems in that "we have become a society, in my opinion, very lacking in character." He felt that if we were going to rely on the state to do all these things, in the long run, that could be a very dangerous thing.

REP. KOTTEL cited a recent case in Great Falls to ask if society owed something to the children who are mistreated and abused who then grow up treating society like trash. She thought society did and that accountability and deterrents are needed. She also believed that the tools needed to be provided to allow those people to change their lives. She asked if he could accept an amendment to allow the two words to remain in while adding the other words.

REP. JORE said he was for swift and harsh punishment for the perpetrators of the crimes she had mentioned and that was the intent of what he wanted to do. The section was talking about the convicted--the title, "The Right of the Convicted." He said that if they are going to maintain that reformation is the right of the convicted and not focus on punishment, they were granting a right to a criminal he did not believe they should have.

REP. MC CULLOCH asked **Mr. Hill** if they left the words, "prevention and reformation," out of it, could it mean that they would eliminate programs such as DUI rehabilitation.

Mr. Hill said he did not think that dropping words out of the Constitution is meaningless. He thought it would have some impact. He said he thought if they took out the words, they would ignore those people the state did not have under their control and ignore the fact that crime is a warning. He thought it would have constitutional and real world impact.

REP. MC CULLOCH asked what can't be accomplished from the current wording.

{Tape: 2; Side: A}

REP. JORE said a primary motive in this is his concern that society is being intimidated by criminals rather than the state controlling the criminals. Though it is known that laws need to be passed to take away chances for parole, they were always concerned about the cost. Because of the concept of reformation and the intent of providing the frills it has become much more expensive than it should be. He said that if they would focus on punishment automatically equaling prevention, in his mind, it would not be as expensive to enact that kind of legislation.

REP. SMITH said she had raised her kids under the principle that they were as free as they were responsible. She said she did not

believe his intent was to enact laws for the punishment of crime and asked if that was correct and the sponsor indicated it was. She asked if he would be willing to amend it to include, following punishment, "prevention" on line 12.

REP. JORE said he would agree to the wisdom of the committee in drafting amendments to accomplish his intent.

REP. SMITH continued to give her views on deleting "reformation" and he agreed to the extent that he understood what she was saying.

REP. JORE expanded that his concept of prevention is assumed because they want to prevent crime. He thought it was obvious, but would agree to its inclusion though he did not believe reformation was appropriate.

REP. GRIMES asked if the sponsor had considered section 3 in not stating what was being taken away to use a "rather than" clause.

REP. JORE said it had not crossed his mind, but had left it to the drafters expertise. He said he would not be opposed to the suggestion.

REP. GRIMES assumed from the sponsor's answers that he would prefer not to have reformation amended back in.

REP. JORE said that was correct.

REP. MOLNAR asked if Mr. Hill would agree that prevention and reformation are something which should be included and society is convicted as well and that they have the right to expect that they will be reformed. He suggested the language to read on line 13, "principles of prevention, reformation, punishment of the convicted and restitution of the victim" as more accurately reflecting the philosophy of the state.

Mr. Hill wholehearted agreed and felt that was the appropriate language for the Constitution if it were to be amended.

REP. MOLNAR asked the sponsor to respond to the same question and expanded it by saying that reformation is a right of society who is convicted along with the perpetrator. He repeated the wording he proposed.

REP. JORE said he would not consider it appropriate in view of his intent.

REP. MOLNAR asked if he would not consider that a friendly amendment.

REP. JORE said he would not.

REP. MC GEE asked why.

REP. JORE said that if that concept were placed under the section dealing with the rights of the convicted, it would continue the philosophy he was trying to address.

Closing by Sponsor:

REP. JORE said he was not totally adverse to all of the points of the opponents. He agreed that most prisoners did not know that the word, "reformation," is in the Constitution. But he was sure that they did know that there are things to be gained in prison which are beneficial to them such as education, three meals a day, etc. He felt that until it was conveyed that the state is serious about punishment for crimes, they would continue toward more and more crime in the society. It was his intention to convey that seriousness.

EXECUTIVE ACTION ON HB 566

Motion: REP. ANDERSON MOVED HB 566 DO PASS.

Discussion: REP. ANDERSON said he agreed with the sponsor that this change in the Constitution would represent what the people are thinking. He addressed the statement that Deer Lodge is not a fun place to go by stating that when he worked with the defender project, many prisoners he interviewed thought it was a pretty easy "trip" compared to some of the places they had come from. He addressed the comments of the opponents as well as the proponents. He felt that one of the best reformers they could have would be punishment. He thought it would act as a deterrent. He expanded on his support of the bill.

REP. KOTTEL said she did not have a problem with adding the words, "punishment and restitution," but thought they were already there. She reiterated previous discussion on the existing language of the Constitution. She agreed with adding, but did not want to remove, "prevention or reformation."

{Tape: 2; Side: A; Approx. Counter: 24.1}

REP. SOFT reiterated that it was a philosophical issue and that they needed to send a clear message to criminals that there is punishment involved though he believed prisons should be safe and humane but without the frills. He supported the suggestion of adding back in the words while adding, "punishment."

REP. CHRIS AHNER said she was for the bill as proposed, but felt it had a better chance if they cooperated and changed some of the wording.

Motion/Vote: REP. AHNER MOVED TO AMEND BY SAYING, "LAWS FOR THE PUNISHMENT OF CRIMES SHALL BE FOUNDED ON THE PRINCIPLES OF

PUNISHMENT OF THE CONVICTED AND RESTITUTION FOR THE VICTIM BY THE CONVICTED AS WELL AS PREVENTION OF CRIMES AND REFORMATION OF THE CONVICTED."

Discussion: Mr. MacMaster quoted the Constitution from the article on the legislature which said, "A law shall be passed by a bill which shall not be so altered or amended on its passage through the legislature as to change its original purpose." He said they might amend the Constitution with this bill by putting this amendment on it and thus amend the Constitution with a bill which itself would violate the Constitution. He said that the sponsor had said that his purpose was to take out "prevention and reformation." If they were to put it back in, they would change the purpose of the bill. The Constitution says they cannot do that and if they pass it, it will change the Constitution with a bill which itself would violate the Constitution.

REP. AHNER recognized that she would be changing the intent of the bill.

REP. ANDERSON spoke against the amendment because they were fooling themselves to think that by removing reformation from the Constitution it would mean that they would take away the programs. Instead, he thought that by removing reformation, they would take away what they hold up as "their God-given right" by the Constitution. If there is enough elasticity in it to provide restitution and everything that is not mentioned, there is enough for them to have reformation.

REP. MC GEE said he would support the bill though he had some reservations as he agreed with **REP. KOTTEL** that they need to deter and prevent. He said he would oppose the amendment.

REP. AHNER withdrew her amendment.

Motion: **REP. ANDERSON** MOVED TO AMEND BY ADDING: ", EXCEPT AS PROVIDED BY STATUTE" ON THE LAST SENTENCE.

Discussion: After discussion **REP. ANDERSON** withdrew the amendment.

REP. SMITH felt there was a conflict between the title and the body of the bill.

Motion: **REP. SMITH** MOVED TO AMEND TO HAVE IT CONFORM TO THE TITLE BY CHANGING THE WORD FROM PUNISHMENT TO PREVENTION AS STATED IN THE TITLE AS, "LAWS FOR THE PREVENTION OF CRIME."

Discussion: Mr. MacMaster said that he thought they were also changing the purpose of the bill with that though he did not feel as strongly about it as with the previous amendment.

Vote: The motion failed by voice vote.

Motion: REP. MOLNAR MOVED TO AMEND LINE 12, "LAWS FOR THE PUNISHMENT OF CRIME SHALL BE FOUNDED ON THE PRINCIPLE OF PUNISHMENT OF THE CONVICTED."

Motion/Vote: REP. MC GEE MOVED TO TABLE HB 566. The motion failed 8 - 10 by roll call vote.

Discussion: REP. MOLNAR could not solicit support for his amendment and therefore withdrew it.

Motion: REP. ANDERSON MOVED TO CONFORM THE TITLE TO THE BILL BY CHANGING THE WORD "PREVENTION" TO "PUNISHMENT" ON LINE 6.

Discussion: REP. WYATT thought that amendment was a major change in that it equated prevention to punishment and restitution. She thought that it was a major change in the title and limiting it specifically to punishment. She did not believe that was the intent of that word in interpreting the Constitution.

REP. GRIMES said he concurred in including punishment in the list for prevention and reformation. He kept going back to the title with his question about it. He asked **Mr. MacMaster** if the constraint about changing the intent was with the title or the sponsor.

Mr. MacMaster explained that issue, "A bill shall not be so altered or amended on its passage through the legislature as to change its original purpose...that means you can't change the purpose of the bill." Another provision of the Constitution says, "that the body of the bill must be explicitly expressed in the title."

REP. HURDLE did not think the cause of crime would be addressed by this and she thought that they were trying in a short time to change the Constitution with an idle act.

{Tape: 2; Side: A; Approx. Counter: 45.0}

REP. SMITH developed her philosophy that it is destructive for the state to be giving prisoners a phoney way of showing them that they care for them and that reformation is over-emphasized instead of offering them something that would help them develop their own reformation rather than state-induce reformation. It has become the ownership of the state rather than the ownership of the individual to achieve reformation. Thus she thought it had become more harmful than helpful.

REP. GRIMES supported what the sponsor was trying to do, but because of the confusing way it was drafted, he was going to change his mind on it.

Motion/Vote: REP. GRIMES MOVED TO TABLE HB 566. The motion carried unanimously.


Discussion: Mr. MacMaster offered a point of information on Constitution law. There is a provision in the Bill of Rights which says that if the people don't like their Constitution, they can change it. The heading for that section is, *RIGHT OF REVOLUTION*. The supreme court held that the fact that that is the title but did not give the right to revolt against the government. His point was the section heading of the provision of the Constitution does not control the meaning and instruction of what is in it. If it did, he said, they would not be able to put the rights of restitution into it. The headings can be ignored, but they represent what the framers had in mind.

Motion: REP. MC CULLOCH MOVED TO ADJOURN.

{Comments: This set of minutes is complete on two 60-minute tapes.}

ADJOURNMENT

Adjournment: The meeting was adjourned at 10:05 AM.



BOB CLARK, Chairman



JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL - 7 AM

DATE 2/17/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss			✓
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓ 8 ⁴⁵		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ late 7 ³⁰		
Rep. Loren Soft	✓		
Rep. Bill Tash <i>in and out</i>	✓ 8 ⁴⁰ AM		✓
Rep. Cliff Trexler			✓



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that **House Bill 501** (first reading copy -- white) **do pass**.

Signed: Bob Clark
Bob Clark, Chair

Handwritten initials
2/17

Committee Vote:
Yes 11, No 6.

411122SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that **House Bill 491** (first reading copy -- white) **do pass**.

Signed: Bob Clark
Bob Clark, Chair

mm
2/17

Committee Vote:
Yes 16, No 2

411123SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 2

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 366** (first reading copy -- white) **do pass as amended.**

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, lines 8 and 9.
Following: ";" on line 8
Strike: the remainder of line 8 through the end of line 9.
2. Title, lines 14 through 16.
Following: ";" on line 14
Strike: the remainder of line 14 through ";" line 16
3. Title, line 16.
Strike: "50-16-603,"
4. Title, line 17.
Following: "52-3-804,"
Strike: "52-3-811,"
Following "52-3-813,"
Insert: "AND"
Strike: "53-20-161, AND 53-21-166,"
5. Page 1, line 23 through page 2, line 15.
Strike: section 1 of the bill in its entirety
Renumber: subsequent sections
6. Page 5, line 7 through page 6, line 15.
Strike: section 6 of the bill in its entirety
Renumber: subsequent sections

mm
2/17
Committee Vote:
Yes 19, No 0.

411631SC.Hbk

7. Page 9, line 14 through page 15, line 8.
Strike: sections 9 through 12 of the bill in their entirety
Renumber: subsequent sections

8. Page 15, lines 22 through 24.
Strike: section 16 of the bill in its entirety
Renumber: subsequent sections

-END-

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/17/95 BILL NO. HB 566 NUMBER _____

MOTION: To Table

NAME	AYE	NO
Rep. Bob Clark, Chairman		✓
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner		✓
Rep. Ellen Bergman		✓
Rep. Bill Boharski		
Rep. Bill Carey	✓	
Rep. Aubyn Curtiss		✓
Rep. Duane Grimes		✓
Rep. Joan Hurdle	✓	
Rep. Deb Kottel	✓	
Rep. Linda McCulloch	✓	
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea	✓	
Rep. Liz Smith		✓
Rep. Loren Soft		✓
Rep. Bill Tash		✓
Rep. Cliff Trexler		✓

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 2-17-95

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Stu Anderson.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
HB 501 with. shell	X	

SENATE BILL/AMENDMENT	AYE	NO

Rep. *Stu Anderson*
(Signature)

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2/17/95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

AB Bill No. 501, 505, Amds

Representative Atch

voting Aye
(aye or no)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE Feb. 17, 1995

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Shield Anderson.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

*not reported
being
re camp there
taking for
up on Smith*

HOUSE BILL/AMENDMENT	AYE	NO
501		
505		
491		

SENATE BILL/AMENDMENT	AYE	NO

Rep. Liz Smith
(Signature)

HR:1993
WP/PROXY

vote me with the Chairman

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE Feb 18

I request to be ^{late}~~excused~~ from the _____
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with _____.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
503		
501	✓	
505	✓	
491	✓	
566	✓	

SENATE BILL/AMENDMENT	AYE	NO

*if offered
amend on 505 which permits them
to keep part of Court costs*

Rep. _____
(Signature)

HR:1993
WP/PROXY

*Rep Custer's filled this out
in my presence but forgot
to sign it. Can't count since
not signed*

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE _____

I request to be excused from the _____
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with _____.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
366 amend	✓	
bill	✓	

SENATE BILL/AMENDMENT	AYE	NO

Rep. Bill Caney
(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE Feb 17

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Liz Smith.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
H.B. 5166	✓	

SENATE BILL/AMENDMENT	AYE	NO

Rep. Aubyn Curtis
(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 2-17-95

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Rep. Anderson.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
516	✓	

SENATE BILL/AMENDMENT	AYE	NO

Rep. Josh
(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 2/17/95

I request to be excused from the _____
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with _____.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
566		X

SENATE BILL/AMENDMENT	AYE	NO

Rep. R Wyatt
(Signature)

Amendments to House Bill No. 366
First Reading Copy

For the Committee on the Judiciary

Prepared by John MacMaster
February 17, 1995

1. Title, lines 8 and 9.
Following: ";" on line 8
Strike: the remainder of line 8 through the end of line 9.
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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 2/17/95

BILL NO. HB 566 SPONSOR(S) Rep. JORE

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Bob Campbell	Art II Sect. 28		X
Scott Cawth	ACLU MT		X
David Fenion	MT Assoc. of Churches		✓
Sharon Hoff	MT Catholic Conference		✓

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