MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on January 26, 1995, at 8:00 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. Aubyn A. Curtiss (R)
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)
Rep. Cliff Trexler (R)

Members Excused: NONE

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 217, HB 232, HB 240, HB 302
Executive Action: NONE

{Tape: 1; Side: A}

HEARING ON HB 240

Opening Statement by Sponsor:

REP. LOREN SOFT, HD 12, presented HB 240 at the request of the Board of Crime Control. He discussed the history of the current Youth Court Act as well as the numerous amendments applied to it over the years. He recounted the reasons for proposing a comprehensive renewal of the act which is the intent of this legislation.

Proponents' Testimony:

Candy Wimmer, Montana Board of Crime Control, stated the background of the Youth Justice Council in reviewing the Youth Court Act. Creatively viewing the changes needed in the current act to fit the present problems and concerns was the goal and hoped-for result of the long range planning committee meeting over three years ago. She described in detail the actions which have been taken to accomplish a unified approach to the issues. They have been careful not to conclude or make specific recommendations about changes in the act because:

(1) Montana has not seen the same degree of escalation in juvenile crime, and

(2) any changes made in the act will have significant ramifications to other state agencies as well as to the children, communities and families.

The goal is to open the communication to a wide variety of sources for input in compiling a comprehensive study for legislative consideration in the next session. She said that if the bill were passed without noting a specific source of funding to that fiscal note, the study would be assigned to the legislative council as part of their regular workload and would not have to be addressed with a new funding source.

{Tape: 1; Side: A; Approx. Counter: 16.9}

Gene Kiser, Montana Board of Crime Control, concurred in support of this bill as well as the proposed Youth Justice Council's appropriation of a grant for $20,000 to commit to this study.

Beth Baker, Department of Justice, described the Montana Educational Telecommunications Network (METNET) meeting in July where the act was discussed in detail. The conclusion was that instead of continuing a piecemeal approach through the amendments process, a comprehensive view and evaluation of it should be taken, and then decide what would be the best system.

Al Davis, Administrator, Juvenile Corrections Division, Department of Family Services (DFS), discussed the role of the division he represents in evaluating changes to the Youth Court Act. In his experience, any adjustments or modification made in any part of the system has major impact on the rest of the system. This needs to be acknowledged as they approach the study.

Hank Hudson, Director, DFS, said the department as a whole is very supportive of this measure. He said they benefit greatly when the public and individuals scrutinize what they do. Because what they do is so important in the lives of the people of the state, they welcome that type of vigorous debate and dialogue and scrutiny which would make the system stronger.

{Tape: 1; Side: A; Approx. Counter: 24.5}

Gail Gray, Office of Public Instruction (OPI), said schools are directly influenced and affected by judicial decisions on the basis of the Youth Court Act. OPI encourages support of the bill and will assist the commission.

Mike Mathew, Commissioner, Yellowstone County, recalled the last time a study was undertaken when they had to deal with Montana's compliance with national standards for youth detention. He felt the study produced one of the best statewide cooperative efforts.

John Connor, Montana County Attorneys Association, supports HB 240. He said the current act causes trouble in advising county attorneys and he cited the many amendments over the years as part of the problem. He felt that a better approach would be to take a one-time inclusive look at the problems and solutions with the goal of making all the sections work together.

Mary Ellerd, Executive Secretary, Montana Juvenile Probation Officers Association, wholeheartedly supported HB 240. The composition and the time frame as described in the language of the bill is very important to them.

Joan-Nell Macfadden, Chair, Mental Health Association of Montana's Children's Committee and DFS State Family Advisory Council, encouraged the committee to pass the bill. She cited the many changes which have resulted in the need for the action proposed by this legislation.

Pete Surdock, Manager, Managing Resources of Montana (MRM), Department of Corrections and Human Services (DCHS), appeared in support of this bill. He said they had found that changing the laws concerning the approach to service to children in one part of the system has had significant impact on the other parts. This complex system which serves complex children deserves a thorough study. They would like to see expansion of the commission with enhanced coordination between the adult and child

systems by including a representative from the adult corrections system.

Richard Meeker, Chief Probation Officer, First Judicial District, said probation officers agree that the current law exists in a piecemeal form. They support a comprehensive revision over the next few years.

Opponents' Testimony:

None

Informational Testimony:

Mike Salvagni, County Attorney, Gallatin County, submitted a letter via **Mary Ellerd** for the record in support of HB 240. **EXHIBIT 1**

Questions From Committee Members and Responses:

REP. BRAD MOLNAR asked if a large part of the study would be concerned with the audit.

Ms. Wimmer replied that the study would need to address the audit in the way the Youth Court Act can support a better-functioning system which coordinates the efforts of the different elements.

REP. MOLNAR asked if she agreed that the majority of the things in the audit were focused on a "paper chase."

Ms. Wimmer did not agree with the characterization. The items noted in the audit addressed the lack of communication and coordination between the systems whether that is a bureaucratic matter or communication between individuals that was the problem.

REP. MOLNAR asked if those issues were reduced, if that would reduce the amount of juvenile crime in the state of Montana.

Ms. Wimmer said it would address meeting the needs of youth in a more timely manner, though she did not agreed that it addresses the cause of juvenile crime.

REP. MOLNAR asked if she was intimately familiar with the audit.

Ms. Wimmer answered, "Yes, I am."

REP. MOLNAR asked her to address the part of the audit which says that "the numbers are skewed downward" in what appears to be an attempt to "fool the legislature."

Ms. Wimmer asked him to repeat the question.

REP. MOLNAR restated the question as above.

Ms. Wimmer said she was not in the least familiar with that statement in the audit.

REP. MOLNAR asked her to address the portion of the audit which says, "three different major cities did not even put their numbers in, particularly Great Falls and Missoula, and therefore the amount of reporting of known crimes is down by 6,000." He said it was in the audit.

Ms. Wimmer said he would have to show her that portion of the audit. She further stated that there wasn't a way of calculating the youth crime which was not being reported from those particular cities. Those cities are reporting into the system at this point.

REP. MOLNAR asked if she planned to be here during executive action.

Ms. Wimmer said she could be.

REP. MOLNAR said he would like to discuss those with her at that time. He asked if she believed the system is now without balance.

Ms. Wimmer answered, "Yes, I do."

REP. MOLNAR asked if she agreed that the majority of the people listed to be in the study group were at the helm when "we fell out of balance" and therefore might not be objective in their ability to judge their own handiwork over the last 20 years.

Ms. Wimmer said they would welcome expanding the membership of the study commission.

REP. BILL CAREY asked if anyone had taken a look at including others on the study commission. And, he wanted to know why it was decided to keep to this group of people.

REP. SOFT had been assured that the composition of the group was not "etched in stone" and that it is open to change.

REP. MOLNAR recounted testimony that the system of juvenile corrections is without shape and without form and asked if he would agree that the current system lacks balance.

REP. SOFT replied that the Youth Court Act as established over 20 years ago is, in the main, no longer effective. He believed it is out of balance.

REP. MOLNAR asked why they would fix something which everyone seems to agree is out of balance.

REP. SOFT answered that if this were to be just another study, that is not the approach to take. He believes a broad approach needs to be used to examine what is needed to fix it. He believes the commission will accomplish this.

REP. MOLNAR wondered if the persons selected would skew the outcome and the next direction it would take.

REP. SOFT said new and fresh ideas are needed from outside while people within the system can lend some good support and ideas.

{Tape: 1; Side: A; Approx. Counter: 44.3}

Closing by Sponsor:

REP. SOFT said the bill needs some work, but it is a start in a right direction. He stated the mission statement which calls for rehabilitation and not retribution. He continued that a juvenile justice system provides rehabilitation for kids, but it also is important to have a system which holds juveniles accountable and responsible for their actions and which holds their parents accountable and responsible for their children.

HEARING ON HB 217

Opening Statement by Sponsor:

REP. JOHN JOHNSON, HD 2, is carrying HB 217 at the request of the school administrators of Montana. HB 217 makes an assault on a school employee a misdemeanor upon conviction and allows for a fine not to exceed $500 or confinement in the county jail not to exceed six months or both. The bill repeals 20-4-303, MCA, because of its vagueness.

Proponents' Testimony:

Loran Frazier, School Administrators of Montana, distributed copies of the title 20 sections being covered. **EXHIBIT 2** He said his testimony covered both HB 217 and HB 302 being heard on this date. From his interviews with administrators around the state, he determined that there is some vagueness in the law and inadequate interpretations of it. He provided copies of the judge's decision in a court case pertinent to his testimony in favor of the bill. The ruling in that case states that the current statute is "overbroad and void for vagueness." **EXHIBIT 3** By changing 20-4-303, MCA, to include assault as it is in title 45, the intent is to change what the decision in that case has done and to put some teeth into the titles they presently have. They are also seeking to expand 20-4-303, MCA, to include all school personnel.

Copies of title 20 are on the desks of all school administrators while title 45 is foreign material to most administrators. He

expected the committee to ask why title 45 is not used since much of this is covered under that section of code. If title 20 is amended by the bill, it will provide the option of either using title 20 or 45 and will give security to school personnel in having the provision for them made more clear.

Don Waldron, Montana Rural Education Association, said the 156 schools belonging to the association expressed the need to tighten up the laws in this respect. They have committed to informing the public of the changes which would result from the passage of this bill.

Phil Campbell, Montana Education Association, went on record in support of HB 217. He suggested the codification be placed in title 20 as opposed to title 45.

Pete Joseph, Montana Federation of Teachers, rose in support of HB 217.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. SHIELL ANDERSON questioned whether the intention was for codification into title 20 rather than title 45.

Mr. Frazier said his understanding in the drafting of the bill was that it would be codified in both places. The intent is to have in it title 20.

REP. ANDERSON understood that it could be put into the school administrators' manual and wondered whether it would work just as well to leave the current assault statute and include that in the manual and then the administrators would be aware that they can file a case under the assault charge in title 45.

Mr. Frazier said that would work except that they need to know they are directly covered without searching through all of title 45 or asking the opinion of an attorney. He felt the school employees should be named as those covered by the statute.

REP. ANDERSON believed that the school administrators could be educated to know that the current statute would provide all the coverage they would need.

Mr. Frazier agreed it was correct but this covers all school employees and they would like to see in writing that they are covered.

{Tape: 1; Side: A; Approx. Counter: 62.5}

REP. SOFT asked about the frequency of the necessity to enforce this over past school years.

Mr. Frazier replied that his information indicates there is a sense among administrators an increasing need exists though he did not have exact numbers.

REP. SOFT asked if most of it is occurring between adults and school personnel or between students and school personnel.

Mr. Frazier believed the increase was more with students.

REP. SOFT remembered from testimony that those incidents are covered under school policy and wanted to know if that was a statewide policy or up to the district.

{Tape: 1; Side: B}

Mr. Frazier said the school administrators have to look at each case to see how far they want to carry that after visiting with the county attorney. They have had cases where they have brought charges in order to obtain funding for a services for a special education student.

REP. SOFT asked if HB 217 could be applied in actions taken against a student who assaults a teacher in that the word, "person," could refer to a student.

Mr. Frazier replied it was more for adults, but it could be used for student assault.

REP. SOFT said he saw a problem if this was enforced against a student because of the wording on line 18 which calls for imprisonment at the county jail. Youth cannot be housed in county jails.

Mr. Frazier replied that lines 18 and 19 basically are under title 45 now and juveniles who are brought in for assault charges are confronted with this same language.

REP. ELLEN BERGMAN asked if these laws apply at Pine Hills School.

Mr. Frazier assumed they do.

REP. BERGMAN said the teachers belong to MEA but didn't know if the same laws apply because they are a state institution.

Mr. Frazier assumed the same laws would apply.

REP. LINDA MC CULLOCH commented many cases which would fit under this law are not reported and asked if that could be confirmed.

Mr. Frazier thought many times administrators have not followed up unless the teacher presses the issue; also, they have to look at the seriousness of the infraction and which policies have been violated.

REP. MC CULLOCH made the point that this legislation would put more teeth into the ability to handle these situations.

Mr. Frazier agreed that was the intention.

CHAIRMAN BOB CLARK asked who is to file the complaint.

Mr. Frazier said the employee, the administration, or the board of trustees can follow up with the complaint. Usually the employee must promptly go to the first level of supervision and if the employees is insistent, it will be carried forward with the support of the administration and the trustees.

Closing by Sponsor:

REP. JOHNSON said under 45-2-101, #50, MCA, there is a definition of "person" which includes an individual. If a child is an individual, the child would be included. There is no definition of an individual. He said **EXHIBIT 3** includes reference to 20-4-303, MCA, and its vagueness and overbreadth; therefore, he asked if a person of common understanding would be able to know what the statute would prohibit them from doing and from clear interpretation. He felt this bill would remove any chilling effect caused from lack of clear understanding and interpretation because it will spell out what an assault is upon a school employee.

HEARING ON HB 302

Opening Statement by Sponsor:

REP. JOHN JOHNSON, HD 2, said HB 302 increases the penalty assessed to a person who is convicted of knowingly disturbing any school meeting or activity. The penalty has been increased from less than $10 or more than $100 to not exceed $500 or be imprisoned in a county jail for a term not to exceed six months or both. The words, "knowingly and purposefully," are defined and are important in the implementation of the intent of this act.

Proponents' Testimony:

Loran Frazier, School Administrators of Montana, said his testimony is basically the same as for the previous bill. He described the specific changes in this bill.

Don Waldron, Montana Rural Education Association, gave an example which would prove that it would not be a document that every

administrator is going to use to go after people in the community. He said that had this bill been in place they would have known how to have stopped the situation before it reached the point that it did.

Phil Campbell, MEA, went on record as supporting HB 302. The definition in this bill is almost identical to what is in the law for disorderly conduct. He suggested that the bill be consistent with the fine and the committee consider 45-8-101, MCA, in determining the fine.

Pete Joseph, Montana Federation of Teachers, registered support of HB 302.

Informational Testimony:

David Gates, Juvenile Probation Officer, Bozeman School Board, said he is neutral toward this bill. He believes it is covered under section 45 and is concerned about how it would affect students. His concern is that students could be cited for this offense under subsection (2)(a), (b) and (c) for things which are typical of teenagers. He said students who get out of control in school are covered under existing policies and procedures. Students who break the law are handled by law enforcement procedures. He felt that it would be better to clarify sections rather than add to them. He believed this is already covered under existing statute in titles 20 and 45 both of which he contended teachers are aware.

Opponents' Testimony:

REP. DEB KOTTEL stood in opposition to HB 302 as written, in particular to the language in line 17, line 18, all of subsection (b), line 19, subsection (c), and line 22, subsection (f). Even though this language is included in the public disturbance statutes, she believes this language is overbroad and vague and has a chilling effect on free speech rights. She felt if the words, "committee meeting," instead of the word, "school," and then reflected on a previous hearing where the words referred to in the statute such as "quarreling, making a loud noise, abusive language" and perhaps "disturbing" could be applied. She questioned whether those testifying in such a manner would be guilty of a criminal offense. She suggested that people have a right to come before a school board to say what is on their mind. She reminded the committee that the Constitution provides protection for free speech in such places as schools, courthouses, public parks and the legislature. She said she would have asked a "trick" question during the testimony but decided to testify and she gave the following example:

"If someone comes into a school board meeting, wearing a sign (I'm sorry if this offends you) or label on the jacket that said, 'Fuck the school,' would he consider him out of line accordi[illegible] to

the statute and have him prosecuted. And yet in the Cohen case in the 70's a young man came onto the courthouse steps with the words, 'Fuck the draft,' on his jacket. He was arrested, he was convicted and that case went all the way up to the United States Supreme Court in which the Supreme Court said clearly, 'Those words are not obscene because physically you can't have sex with the draft.' Second, they said, 'Those words are offensive, but they are not fighting words because they are not directed towards any one individual' and the United State Supreme Court struck down that statute as being unconstitutional and having a chilling effect on free speech."

She continued to say that threats are absolutely different and in the Champlinski case, the Supreme Court said, "when someone personally threatens you, puts a finger in your chest, calls you a name personally, that is actionable. And that is something the state can protect its citizens from. But speech in general that is disturbing--that's what speech ought to be. The Supreme Court says, ideas ought to be disturbing, ideas ought to cause you to think and it's okay for ideas to make you mad. To quarrel, I think we do that around this table quite a lot, but we don't challenge one another to fight and we don't fight." She asked the committee to read the statute carefully. She did not have a problem with making it a crime to fight or to challenge one to fight, nor did she have a problem with threatening or using threatening language, discharging firearms, ingress and egress in (d), but she did have a problem with the chilling effect that vague words such as quarreling, making loud or unusual noises, profane or abusive language would have. They may be disturbing but she questioned that it should be a criminal offense subject to fine and incarceration for engaging in those activities. She outlined other ways the school board might handle the situation. She urged support of HB 302 but without ambiguous language that is vague.

Questions From Committee Members and Responses:

REP. DANIEL MC GEE questioned **Mr. Frazier** about his testimony regarding item (e), "rendering free ingress and egress to public or private places impassable" would not include strikes. He asked why.

Mr. Frazier said it was his understanding that at the time of labor negotiations there are already laws which cover this issue.

REP. MC GEE asked if he did assume that.

Mr. Frazier answered, "Yes."

REP. ANDERSON asked if there had ever been a successful challenge to this section that it is overbroad and too vague.

Mr. Frazier was not aware of any. He said that because of questions which were raised, they had looked at broadening and defining what a disturbance was.

REP. ANDERSON said since it hadn't been successfully challenged he wondered if he was concerned since he has the language in the disorderly conduct statute, they might have a situation that is not covered by specifying what constitutes a disturbance because it is not included in the language.

Mr. Frazier said it was his understanding that if you bring a charge to this, with this language and with the language presently in title 45, the attorney has the option of choosing which title they would use. In most cases, they are using title 45 and that is why there are no cases he is aware of that have been brought in title 20 because they have already gone to title 45.

REP. ANDERSON reiterated his point that they could charge under title 20 what is not covered under current disorderly conduct in title 45. He asked **Mr. Frazier** to respond to the claim that the teachers and administrators are well aware of the provisions of title 45.

Mr. Frazier replied that in Bozeman they may be aware, but in most school districts in the state, he did not think they are.

REP. ANDERSON asked who publishes the manual that is on the desks of the administrators.

Mr. Frazier answered, "The Office of Public Instruction."

REP. DEBBIE SHEA appreciated **REP. KOTTEL'S** argument, but questioned the effect of her testimony on her peers and people she might want to respect her. She asked her, "Excuse my language here, if I said, 'Representative, I think you are a f___in' b_tch', what would your reaction be?"

REP. KOTTEL answered, "I'm sorry you feel that way." She said that is threatening language to a person and Champlinski is a 1945 case which had to do with a gentleman who poked a finger and called an officer a "damned fascist." Then, those were fighting words. When it reached the Supreme Court, the Court said specific language like that to an individual are fighting words and the state can legislate that by making it a crime. She used other examples to delineate between generally threatening words and personally threatening words.

REP. SHEA asked if that was taking it out of context. She said she would have a hard time just saying she was sorry someone felt that way if as a school teacher, a child came up to her and "called her a f___in' b_tch."

REP. KOTTEL replied that those are fighting words under threatening conditions if said to her personally. Then she could bring action. But if profanity were spoken in a general way, she did not believe it was a crime under the free speech argument.

REP. SHEA wondered what message **REP. KOTTEL** was sending to women who have been verbally abused through the years. The message seemed to be that they really don't have any recourse.

REP. KOTTEL said that in this society the market place of ideas has always been upheld even if those ideas are offensive. She cited the Orion test for those things which incite people to violence. To her knowledge those are the only three exceptions historically in this nation to the free market place of ideas even if that market place is sometimes disturbing to us.

REP. SHEA commented to **REP. KOTTEL** that she has great respect for her and said, "I do not think you are f___in' b_tch."

REP. MC GEE asked **Mr. Frazier** to distinguish quarreling versus arguing.

Mr. Frazier answered that basically the term, "a quarreling fashion" falls under title 45 and means that the quarreling is done to lead to the challenge of a fight.

REP. MC GEE recounted a situation where school board members were heatedly quarreling and asked for distinguishing in statute between quarreling heatedly and arguing such that a person quarreling could be sent to jail.

Mr. Frazier said this is the language presently existing in title 45. He would refer that question to an attorney.

REP. JOAN HURDLE suggested some theoretical changes to the wording of the bill. She asked if she would be out of order to move those as amendments.

CHAIRMAN CLARK said she would.

REP. HURDLE asked the sponsor if he heard the proposed amendments.

REP. JOHNSON said he did and commented on them.

{Tape: 1; Side: B; Approx. Counter: 44.9}

REP. DUANE GRIMES spoke a point of order saying that he had a great deal of respect for everyone else on the committee and said there was great deal of integrity as a committee. He said he understood that the committee would be dealing with a lot of constitutional issues of free speech and the youth court act and he was concerned that the committee not get too far astray. He felt it was appropriate in some cases to discuss some things, but

he felt they could get out of hand. In view of the sensitive issues which would come up, he personally preferred that as much as possible they not "pull things out of the brown paper bag" and that would include some of the language that had been used in this hearing. He did not want to hinder free speech, but on the other hand, he did not think they had to unnecessarily use profane language just to prove to themselves what it is. He would prefer as a committee to use "fill-in-the-blank" types of discussion here. He was also concerned about the language getting into the press since they would be quoted directly.

REP. KOTTEL responded that she had not used the language lightly or in anger. She said she had used the language that was directly in a case of public record before the United Supreme Court to prove a point and it could not have been made, she felt, by saying, "blank." She said she had not used it to shock or offend the committee but to let the committee know that people had dealt with these issues before. She repeated that she did not do it to be offensive or just to shock but used it in reference to a case she felt was directly on point with the statute.

REP. WILLIAM BOHARSKI asked what the average school administrator in the state of Montana earns in wages.

REP. JOHNSON said he did not believe that is germane to the situation at hand and that he could not answer it.

REP. BOHARSKI asked for an answer.

Mr. Frazier said the latest figures from the OPI are around $48,000 for a superintendent, $46,000 for an elementary principle and $45,000+ for high school principles.

REP. BOHARSKI said he asked that question because it seemed to him that a professional making a salary at that level could distribute this material and not need to come to the halls of the legislature and asked them to duplicate statutes that are already in criminal code. The courts already have rules on some of those statutes. He felt they would clutter up the code books, create more problems with the court system and create problems for law enforcement. He did not understand why they were doing that and asked for a response from the sponsor.

REP. JOHNSON deferred to **Mr. Waldron.**

Mr. Waldron assured **REP. BOHARSKI** that most of the charges brought under the current law for misconduct to school employees were not brought by superintendents, though they might be brought by superintendents on behalf of the employees. Employees are the ones who usually get the abuse.

REP. BOHARSKI asked if the administrator is involved in all cases or if the teachers are expected to know these laws.

Mr. Waldron answered that administrators have access to title 45 and would know about it, but the average teacher does not have the time or the knowledge of law to know what they can and can't do. They simply submit it to the chain of command while making the decision to take action.

REP. BOHARSKI said it seemed to him that this committee would be adding sections to title 20 which already exist in title 45. He asked for a response to his comment that it seemed to him that these administrators ought to be versed in the appropriate sections of title 45.

Mr. Waldron understood but did not agree with the position.

REP. BOHARSKI asked for a general response to the question of an administrator being versed in title 45 as part of their job.

Mr. Waldron asked for clarification of the question.

CHAIRMAN CLARK said he believed the question asked why an administrator does not read title 45 to the people who are being affected by the legislation here.

Mr. Waldron did not believe that any school takes the time to go over school law and read title 45. Most of the time they try to be aware so that when a employee comes in with something, they can respond. Questions are usually referred to the county attorney or the school's attorney to be researched. With those statements the assumption could be drawn that the attorney could read what is there; but in listening to the sponsor and **Mr. Frazier,** he felt there are places in the law which need to be tightened up and explained.

REP. BERGMAN asked if it was true that this bill was just trying to get more teeth into the law. The complaints she had heard were that the laws aren't enforced and that is where the frustration lies. So the approach has been to get create another law and try to get enforcement.

Mr. Waldron said it was frustrating for him to testify while not telling the committee what really goes on in the schools. He spoke from some cases he had experienced to express his viewpoint that this is an attempt to tighten the law.

REP. GRIMES asked if they could reference section 45 at the end of lines 14 and 15 after defining the new fines and jail terms, therefore, the school administrators would see the reference.

Mr. Waldron said they had talked about doing that, but asked the committee to remember that the driving force behind the fines is the question of a definition of disturbance. He would see it as an alternative, but wanted to see it in title 20 since that is the statute which is used.

{Tape: 2; Side: A}

Closing by Sponsor:

REP. JOHNSON explained that the manual which was referred to is a compendium of state law which is furnished by OPI. It is not a manual of instructions, but it lists all the laws relative to education. He said **REP. GRIMES** had a good point relative to (g) which deals with false alarms that there is a penalty which is much stronger as well as the penalty for transmitting a false report for an impending explosion. He agreed to referencing that to those portions in title 45. He also did not object to changes suggested by **REP. HURDLE**, but urged the committee to view the bill favorably.

HEARING ON HB 232

Opening Statement by Sponsor:

REP. RICK JORE, HD 73, presented HB 232 as a revision to the concealed weapons permit application process. He went through the specifics of the bill. It asks for a written statement of a sheriff's cause for a denial of a concealed weapon permit to be given to the applicant. The bill clarifies the appeal of the denial of a permit. Some language is added to alleviate some of the workload for sheriffs in determining the familiarity of the applicant with firearms. The bill establishes a section whereby the governor can negotiate reciprocity agreements with other states regarding concealed weapons. The bill addresses the federal background check and the five-day waiting period requirements.

Proponents' Testimony:

Gary Marbut, Montana Shooting Sports Association, Gun Owners of America, Citizen Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association, Big Sky Practical Shooting Club, said he was not speaking on behalf of the National Rifle Association (NRA) at this time. He gave history concerning this bill and previously presented and passed bills especially as they addressed discretionary control by issuing agents. It is believed that the sheriff should have discretion as long as it is not abused, but they believe it would be a healthy balance for the sheriff to notify his reason for the denial. He said the appeal process was unspecified in prior legislation and it has caused some problems. They are suggesting that people who appeal through the district court be referred to the de novo process. He said the training problem is significant in Montana and training instructors are difficult to find as NRA is no longer training instructors. They are proposing some solutions to alleviate this shortage. He said many other states in America are passing laws similar to Montana's and this bill will help work out reciprocity with states having similar laws so that

permits issued in Montana would be honored in other states. The bill has the provision for the governor to work that out. The final portion of the bill exempts permit holders from provisions of the Brady law's five-day wait for handguns. The reason has to do with the thoroughness of the sheriff's background check which is more thorough than for Brady. They believe the sheriff's background check should serve to fulfill the Brady requirement.

{Tape: 2; Side: B; Approx. Counter: 19.8}

Stan Frasier supported the bill and described what happens at the local level and why he believed there should be more control instituted over the sheriffs. He believes the sheriffs have a wide latitude of discretion and very little control over them. He said the sheriff had expressed to him years ago that he doesn't believe in people carrying firearms and that many of the processes are designed to dissuade people from applying for permits.

Chuck Grazier voiced his support for this bill. He discussed the requirements which make it a lengthy process and his desire to change that. He also discussed the provision for the governor to negotiate reciprocal agreements with other states as being attractive to him and why that was so. **EXHIBIT 4**

Paul Glassco said the process made it very difficult for him to receive his permit. He felt the local sheriff had impeded the progress in obtaining his permit. He also told how the current law interferes with his ability to conduct business which necessitates his handling large sums of cash in that he cannot carry his weapon into the bank as a protection between the car and the bank.

William Hollenbaugh supported HB 232 particularly the section dealing with reciprocity and the section dealing with the exemption from the five-day waiting period. He requested the committee pass the legislation.

Alfred "Bud" Elwell felt that many of the laws are being changed which have the effect of creating a new class of criminals out of anyone who possesses a firearm. He said that the only way to counteract this was to create a new class of citizen and he believed that HB 232 would help accomplish that.

Stan Frasier, without objection from the committee, added to his previous testimony. He said the sheriff had taken longer than the allowed 60 days in his case to complete the permit process and he was unable to find anybody else in the justice system to make the sheriff do his duty in this regard.

Informational Testimony:

CHAIRMAN CLARK read into the record a letter of support by **REP. AUBYN CURTISS,** who had to leave the hearing. **EXHIBIT 5**

A letter from Amy Elliott, NRA, was submitted as support of HB 232. **EXHIBIT 6**

James Hamman sent a letter of support for HB 232. **EXHIBIT 7**

Opponents' Testimony:

Bill Fleiner, Undersheriff, Lewis and Clark County, Montana Sheriffs and Peace Officers Association, recounted the previous history of concealed weapons amendments brought before the legislative sessions. He said that after a divisive session in 1989, law enforcement concealed weapons proponents came together to negotiate existing law. He said the changes in HB 232 were issues discarded in the course of the negotiations in 1991 and were presented in the 1993 session where they were "killed" in the Senate Judiciary Committee. He said the association members feel the spirit and intent of the negotiations has been violated. Neither side got everything they wanted, but were able to come to a middle-of-the-road understanding which is represented in current law. He said that since it is the intent to bring forward the issues set aside for valid reasons in the negotiations, they must revert back to their original stand that:

a. Hunters, fishermen, recreationalists while engaged in those activities should be allowed to carry concealed weapons,

b. There are legitimate business people who have a need to carry a concealed weapon while involved in their business activity, and

c. All other carrying of a concealed weapon should be illegal.

HB 232 would require the sheriff to give persons involved in criminal activities investigative information should the suspect apply for a concealed weapon permit and be denied. He stated this is not a minor detail. He said there was a question of constitutionality in the changes in the appeal process because it limits the discretion of the court and appears to create a different standard for burden of proof.

He said that in 1993 there were 837 permits on record at the state identification bureau. In 1994 there were 1,369 permits on record and as of January 1, 1995, there are 2,925 concealed permits with the bureau at this time. He proposed that with this rapid increase in permits, there cannot be very many denials and it indicates that the intent of the law is being fulfilled by sheriffs. If the sheriffs are remiss in their duties, it is for the citizens of each county to decide the priority of the issue when the sheriff seeks re-election. They also have some displeasure with some areas of the existing law. But because they are not the ones bringing this proposed legislation and they are being true to the spirit of the former negotiations, they

will have to defend themselves. Obtaining a permit is not a right but rather a privilege. Amending the law to reverse right versus privilege is a poor method, he said, and urged the committee to "kill" HB 232.

He then addressed the issues which he felt were an effort to discredit Sheriff O'Reilly and perhaps the association. He rebutted the implication that the sheriff does not support the right to bear arms. He said this is not an issue of the right to bear arms. He said that very few permits are delayed but when they occur it is the result of the FBI background checks. FBI background checks are no longer being conducted. He then gave reasons for the other issues raised by proponents regarding the local sheriff's department which gave rise to questions about the efficiency of the permit process.

Questions From Committee Members and Responses:

REP. KOTTEL asked when someone has been permitted to carry a concealed weapon for a period if there were any provisions for revocation of the permit.

REP. JORE referred the question to **Mr. Marbut.**

Mr. Marbut answered that there is a revocation portion for the permit under 45-8-323, MCA.

REP. KOTTEL asked if the permit was a certificate which was carried.

Mr. Marbut replied that it is a laminated card with a photo.

REP. KOTTEL asked what happens if a person's qualifications change after having been issued a permit.

Mr. Marbut said he did not think there were methods for discovery by an issuing authority to know that a permit holder had fallen below the eligibility standards.

REP. KOTTEL asked if she understood that under section 4 of the bill a super class of individuals how have that permit who could go into any store and be exempt from the five-day waiting period.

Mr. Marbut did not see them as a super class of citizens. The intent is to say that once they have a concealed weapons permit they have satisfied the requirement because they have had a much more thorough background check than someone who would just get a background check which is very cursory under the Brady law. He added that that is allowed under the federal Brady law.

REP. KOTTEL wanted to make the point that someone who may have fallen below the standards could apply and with no further requirement for a background check to discover a recently

developed mental illness, commission of a violent crime or if they had been civilly committed for drug-related offenses.

Mr. Marbut said theoretically that would be possible, but the question could be addressed in terms of national experience. Especially in Florida as well as in other states where this type of law has been enacted, there has been a lot of study on this issue and the results have been that problems with permitees have been so low as to shock those conducting the investigations.

REP. KOTTEL directed his attention to lines 8, 9, and 10 on page 3. She questioned the sheriff delegating authority for conducting the test. She wanted to know if the statute contains any meaningful standards to constrain agency discretion. Her second question concerned delegation to private parties to regulate other private parties for this generally makes the delegation of authority more vulnerable to constitutional attack. This applies where the legislature delegates the authority to the sheriff who delegates his authority to a private entity to make decisions over whether another private individual has the right to carry the concealed weapon. She wanted to know if he saw any problem constitutionally in that broad delegation of power.

Mr. Marbut said that if this were the only way the applicant could satisfy the training requirement, he would share her concern. However, this is one of several options the applicant may exercise. Because it is an option and not a mandate and because most of the sheriffs will treat it reasonably, he did not see it as a realistic problem.

{Tape: 2; Side: A; Approx. Counter: 55.7}

REP. KOTTEL directed attention to lines 15, 16, and 17. She followed up on the idea of the separation of branch of government as it relates to someone seeking judicial review of an agency's determination which is generally limited to questions of fact to only overturning the agency's decision if those facts are clearly erroneous on the face of the record taken as a whole. She said that what they were doing in this section is giving the judicial branch greater power than it has ever had in second guessing an agency's decision based on questions of fact. She asked if they were comfortable with doing that and with the shift in the balance of powers between the two branches.

Mr. Marbut said if they were talking about something between the governor's office and the supreme court, that would be a greater issue. From his experience in local matters, the district court judges are in touch with the community and reasonable about handling things. He was not uncomfortable giving them the ability to review what decision the sheriff had made. There is the de novo option of appeal from district court which is all standard fare in Montana. He said if it was of concern, then legislation to correct it would be in order, but they are tying into an already established process.

REP. HURDLE asked if anybody who has been in the military service was qualified to use firearms.

Mr. Marbut said he did not know if they all are, but they are saying that if they can provide evidence that they qualify to use firearms from the military that ought to be sufficient.

REP. HURDLE asked if they had to show what kind of discharge they had.

Mr. Marbut was not certain about that. Under the current law, people with a dishonorable discharge are not authorized to apply for a concealed weapon permit. But otherwise, if their military qualification records are on a document other than their discharge papers, then they would not be required to show their discharge, but they would sign a form stating they had an honorable discharge. He believed that firearms qualifications were noted on their discharge papers.

REP. HURDLE asked if they have to show that they have had other than a dishonorable discharge when they apply.

Mr. Marbut replied that they are not eligible to even apply for a permit if they have had a dishonorable discharge and if they apply and falsify their application, that is a criminal offense.

REP. HURDLE in looking at section 5 asked if the person to whom the sheriff might delegate authority might charge a fee for the service.

Mr. Marbut said they deliberately left that open thinking that the free market ought to prevail there.

REP. HURDLE asked if this delegated authority has to have any qualifications.

Mr. Marbut replied that they had not specified any qualifications assuming the sheriff is not going to accept results of a test from someone who is not qualified. They have the greatest respect for sheriffs in that regard.

REP. HURDLE said she was confused about his attitude toward sheriffs because they trust them so much in one area and so little in other areas.

Mr. Marbut admitted a "split personality" about that. He recounted his positive experience with his local sheriff in Missoula County. In the context of delegation sheriffs are more likely tend to be restrictive and be very careful from whom they would accept test results.

REP. HURDLE retorted, "Just as they would be very careful who they would give concealed weapons to, right?"

Mr. Marbut answered that they don't give concealed weapons to anybody, they issue permits.

REP. SOFT addressed the significant increase in permit applications and said that it appears there hasn't been a significant hold up in the process although there are some isolated incidents. He also addressed testimony that the issues in this bill have been brought up in previous sessions. Most important to him was that **Undersheriff Fleiner** said they had negotiated in good faith to develop the current law and that now these issues were being brought back to the table and in doing so violating the good faith negotiations. He asked **Mr. Marbut** to respond to those statements.

Mr. Marbut said that the negotiations conducted over these issues were conducted during the 1991 session. They did have an agreement with the Montana Sheriffs and Peace Officers Association. They brought the results of that agreement to this committee. The chairman of this committee was a part of those negotiations. That negotiated agreement was breached then. The lobbyists of the association insisted on some restrictions in the bill which were not a part of the negotiated agreement and those restrictions became a part of the law because they prevailed.

{Tape: 2; Side: B}

He did not feel what was on the table four years ago is a big issue but rather what they are asking for has a reasonable basis and is good public policy. He said he knew they had the support of a good many Montana sheriffs, though from listening to testimony, he gathered that the association has taken a position in opposition to this bill. He suggested asking **Undersheriff Fleiner** if they have actually voted on a position. He was not concerned about the alleged breaches because if that were, so they weren't the first to do it and if it weren't so, they feel there are good public policy reasons to come to the legislature with the proposal to solve problems which exist.

CHAIRMAN CLARK asked **Undersheriff Fleiner** if he was representing the Montana Sheriffs and Peace Officers Association in this hearing as their representative or lobbyist.

Undersheriff Fleiner answered, "Yes."

CHAIRMAN CLARK asked if he polled the members as to their feelings on this bill before today.

Undersheriff Fleiner asked, "You mean every individual sheriff?"

CHAIRMAN CLARK said, "Every individual member of your association."

Undersheriff Fleiner answered, "No, we have not, this has been a longstanding position of the association. In 1991 when we

entered into those negotiations, and I don't agree with **Mr. Marbut** in his recollections of those negotiations, because I was the one that negotiated for the sheriffs and peace officers during that process. We strayed from the position on the two parts that I testified to in those negotiations because of the divisiveness. and this is a misdemeanor, and the problems it was creating with the legislature, we tried to find the middle of the road. Much like the Brady bill, sheriffs have differing opinions about the issue. Those who do not support it have gone out in front of the Brady bill to counter it; the other side of the position that sheriffs will tell you is that you as elected officials in this legislature and in congress who are sent by the citizenry to enact laws, it is not our position to set the standard, but we are held accountable for it. So it is not for us to say what we will and what we won't enforce. You determine that.....so, no, there has not been a poll about this, there is differing opinion among sheriffs. For the most part, however, from what we understand from the membership of the sheriffs that I did talk to before coming here today over the last couple of days, they believe foremost on the two point I made on the issuance of concealed weapons. We are willing to stand on what is currently in law and I believe that it is working well by the number of permits being issued. They may be voicing their discontent with it because it is not perfect."

CHAIRMAN CLARK asked if he had ever since this first came about in 1989 and was defeated here polled the members on this issue. He stated for the record the negotiations were originally initiated in October 1990 prior to the '91 session.

Undersheriff Fleiner responded, "Oh, yes we have. Oh, yes we did." And on non-legislative years, the association holds 10 meetings across the state. They send out questionnaires and talk about these issues. In 1994 they held those 10 meetings across the state and talked about concealed weapons and the position he presented is the position of those members that they gave at that time.

CHAIRMAN CLARK asked for a copy of the results of that poll which was held in the early stages of the concealed weapons issue. Secondly, he said that **Undersheriff Fleiner** said he had talked to sheriffs. He wanted to know if the association represents not only sheriffs but also deputies and other people involved in law enforcement.

Undersheriff Fleiner said it does, but this particular process speaks to the responsibility of the sheriff.

CHAIRMAN CLARK asked how many permits had been issued in Lewis and Clark County.

Undersheriff Fleiner said that 135 had been issued.

CHAIRMAN CLARK asked if he or the sheriff had ever had to revoke a permit in this county and if so, how many.

Undersheriff Fleiner said they had. He believed they had revoked two. Statewide there have been 12 revoked, eight as the result of crimes, two deceased and two moved.

CHAIRMAN CLARK again addressed the negotiations and asked if the agreement that was struck prior to the session included that sheriffs would not delay the issuance beyond 60 days but try to get them through quickly.

Undersheriff Fleiner said, "And I think we have done that."

CHAIRMAN CLARK asked if he would agree that perhaps the political atmosphere based on what was happening on a nationwide basis may have some impact on the increase in the numbers of permit applications.

Undersheriff Fleiner said there was no question about that. The majority of concern prior to what is existing statute was related to hunters, recreationalists and fishermen. When the issue of the Brady bill came about with the banning of assault weapons and the waiting period there was an increase in applications.

CHAIRMAN CLARK asked his next question for the benefit of the people who were not in the legislature when the original bill was debated and passed. He wanted to know what the association's reasoning for limiting business people who had to carry large amounts of money from carrying a firearm into a bank .

Undersheriff Fleiner said they believe there were legitimate times when business people should be able to carry a concealed weapon. They eliminated institutions, places where alcohol is served and public meetings in government buildings. In a banking institution that is already at a level of expectation of threat or at least trained to be aware of a person who might be a threat and a person walked in with a concealed weapon, the teller would respond and there is an established operation procedure for law enforcement response which would create a high profile situation. It was a preventive measure to eliminate banks.

CHAIRMAN CLARK asked if the weapon were concealed, how would the teller know that the person had it.

Undersheriff Fleiner said that may or may not work. It is difficult even for law enforcement people to carry a concealed weapon. He said, "The impression of it, if he bends over, any number of things, and the fear would be that he is standing in line, moving toward the teller that would create the alarm. If it is not seen, great, that's the purpose of it, but if it is seen, we are going to have a problem."

CHAIRMAN CLARK agreed on some of the points if the weapon is seen. His point was that in long term law enforcement experience, people never knew they were carrying concealed weapons. He felt the incidence of being seen was rare.

Undersheriff Fleiner responded that in the circumstance where it would be seen, it was a good preventive measure.

CHAIRMAN CLARK pointed out that most business people bank at certain banks and that most employees of the bank know these people whether they have a concealed weapon with them or not.

Undersheriff Fleiner was not worried about the employees, but he did not agree that the other people doing business there know all who are coming and going. The problem would be created by one of those people doing business.

REP. BOHARSKI asked **Undersheriff Fleiner** to clarify for him and for the sponsor of the bill where it sounded in testimony as if the sponsor was breaching some sort of an arrangement that had been reached. And since this is his first session, he couldn't possibly have been a party to that prior arrangement. "You weren't suggesting he was a party to anything along those lines, were you?"

Undersheriff Fleiner did not understand the question.

CHAIRMAN CLARK repeated the intent of the question.

Undersheriff Fleiner said, "Oh, no, not at all, the sponsor doesn't have anything to do with this at all. I think the sponsor is trying to do the right thing."

REP. BOHARSKI asked about the new language on page 2 which requires a written statement of reasonable cause for denial of a permit. He asked for an exposition on that portion.

Undersheriff Fleiner said that if they have to give a written reason for denial, and it is based on supportive evidence, it opens the door to anyone who wants to know if they are being investigated for criminal activity along with the evidence which supports it. Drug dealers most notably would be included.

REP. BOHARSKI asked if it seemed like under the current language without that, there is an opportunity for political reasons to be used and without a written denial a sheriff could deny the permit based on those political reasons.

Undersheriff Fleiner said he wouldn't deny there could be mischief here. The sheriff in the county is the primary law enforcement officer, the county attorney is the legal representative of the county. The Attorney General is the chief law enforcement officer of the state and they have discouraged as much as possible that type of mischief in personal biases and

influences that a sheriff may have. He felt that current law is the middle of the road which includes an appeal process for judicial review and he felt if they follow through with that process, it will work fine.

REP BOHARSKI asked if to his knowledge his department had ever denied a permit application for any reason they could not put in writing.

Undersheriff Fleiner answered, "Yes, we have."

REP. BOHARSKI asked how many times.

Undersheriff Fleiner said they currently have 135 application on file and he believed there had only been three occasions where they have denied the permit. One was related to an individual who was put in protective custody, but ultimately the person wasn't adjudicated as mentally ill and there were more details involved in the report.

REP. BOHARSKI said in the example the person would have known and there wouldn't have been any problem to tell them. He couldn't see any reason why a written statement could not have been issued.

Undersheriff Fleiner said they did not tell him at the time he was placed in protective custody that he wasn't going to get a concealed weapon permit. They denied the permit on those grounds and a series of other things, but at a time when the sheriff begins denying permits in writing questioning the mental capacity of individuals which he is not trained to do, it sets up a counterproductive situation.

REP. BOHARSKI asked him to read lines 13 and 14 on page 2 which indicated that the legislature has already been given the authority to exercise discretion to deny the concealed weapons permit. He could not see why there would be a problem issuing a written denial.

Undersheriff Fleiner said he thought it would set up a situation for district court and supreme court interpretation for overturning those types of judgements and did not feel it was in their best interest to do that. In the appeal process a district can review the sheriff's decision and the reasons for it. If the decision is overturned, that process is already in place and works well.

{Tape: 2; Side: B; Approx. Counter: 31.8}

Closing by Sponsor:

REP. JORE addressed the question of the law being adequate as it is in light of the significant increase in permits. He felt that it is no problem in certain counties, but in others there is a

need to make those sheriffs more accountable in the denial process. Of significance is that statewide only 12 permits have been revoked, two were deceased and two moved and there are no statistics showing that anybody with a concealed permit exhibited themselves to be a danger to themselves or to any member of society. He asked for a favorable view of this bill.

CHAIRMAN CLARK closed the hearing on HB 232.

Motion: **REP. SOFT MOVED TO ADJOURN.**

ADJOURNMENT

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

Bob Clark
BOB CLARK, Chairman

Joanne Gunderson
JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL DATE 1/26/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓ late	✓	
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	✓ late	~~✓~~	
Rep. Loren Soft	✓	~~✓~~	
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

EXHIBIT
DATE 1/26/95
SB 240

Gallatin County, Montana

Mike Salvagni
County Attorney
615 South 16th Avenue - Room 202
Bozeman, Montana 59715
Telephone: (406) 585-1410
FAX: (406) 585-1429

January 25, 1995

Rep. Bob Clark, Chairman
Judiciary Committee
Montana House of Representatives
State Capitol
Helena, MT 59715

Re: House Bill 240

Dear Rep. Clark and Members of the Committee:

I am writing to support the passage of H.B. 240 and the creation of a two year study of the Montana Youth Court Act. On July 18, 1994, I participated in a statewide teleconference during which several concerns and issues were raised about the Act.

Because of the youth who shot and killed his father in Galaltin County the validity of the arbitrary age distinction for the jurisdiction of the Youth Court, particularly with violent youthful offenders, is an issue which I believe requires consideration. The transfer hearing process is another issue which should be reviewed. Other issues appear in the notes from the teleconference, which I trust has been made available for your reference.

It is clear that the issues about the Act require careful and extensive consideration. The responsible approach to address the issues is to study the entire Act and not make piecemeal changes. A thorough review with input and recommendations from the public, law enforcement, probation officers, prosecutors, judges and other professionals cannot be accomplished during the legislative session.

I strongly encourage a through review of the Act and am available to provide any assistance which the legislature may request.

If you have any questions, please let me know.

Sincerely,

Mike Salvagni
County Attorney

EXHIBIT 2
DATE 1/26/95
HB 217

Oath of school trustees, 20-3-307, 20-3-309.
Teachers' oath, 20-4-104.
Oaths of community college district trustees, 20-15-210, 20-15-222.

20-1-203. Delivering items to successor. Whenever any member of the trustees, superintendent, principal, or clerk of the district is replaced by election or otherwise, he shall immediately deliver all books, papers, and moneys pertaining to the position to his successor. Any such person who shall refuse to do so or who shall willfully destroy any such material or misappropriate any moneys entrusted to him shall be guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not more than $100.

History: En. 75-5926 by Sec. 55, Ch. 5, L. 1971; R.C.M. 1947, 75-5926.

Cross-References
Personal liability of trustees, 20-3-332.
Destruction of public property, 45-6-101.

20-1-204. County attorney's duties. Upon request of the county superintendent or the trustees of any school district or community college district, the county attorney shall be their legal adviser and shall prosecute and defend all suits to which such persons, in their capacity as public officials, may be a party; however, the trustees of any school district or community college district may, in their discretion, employ any other attorney licensed in Montana to perform any legal services in connection with school or community college board business.

History: En. 75-8305 by Sec. 489, Ch. 5, L. 1971; amd. Sec. 2, Ch. 263, L. 1971; amd. Sec. 1, Ch. 22, L. 1974; amd. Sec. 6, Ch. 121, L. 1977; R.C.M. 1947, 75-8305; amd. Sec. 1, Ch. 273, L. 1979.

Cross-References
Office of County Attorney, Title 7, ch. 4, part 27.
County Attorney to assist in school district bond proceedings, 20-9-436.

20-1-205. Conflict of interest. In the event there should arise a conflict of interest relating solely to the performance of the official duties of the county attorney and which does not relate to a conflict of interest involving the private employment of the county attorney, the trustees of any school district shall employ any other attorney licensed in Montana.

History: En. Sec. 2, Ch. 22, L. 1974; R.C.M. 1947, 75-8305.1.

Cross-References
Limitation on activities of County Attorneys and Deputies, 7-4-2704.
Conflicts of interest, letting contracts, and calling for bids, 20-9-204.

20-1-206. Disturbance of school — penalty. Any person who shall willfully disturb any school or any school meeting shall be deemed guilty of a misdemeanor and, if convicted by a court of competent jurisdiction, shall be fined not less than $10 or more than $100.

History: En. 75-8306 by Sec. 490, Ch. 5, L. 1971; R.C.M. 1947, 75-8306.

Cross-References
Duties of pupils — sanctions, 20-5-201.
Disrupting of public meeting, 45-8-101.

20-1-207. Penalty for violation of school laws. Unless otherwise specifically provided by law, any person who violates any provision of this title is guilty of a misdemeanor and if convicted by a court of competent jurisdiction shall be punished by a fine of not less than $20 or more than $200 or by

(i) quell a disturbance;

(ii) provide self-protection;

(iii) protect the pupil or others from physical injury;

(iv) obtain possession of a weapon or other dangerous object on the person of the pupil or within control of the pupil;

(v) maintain the orderly conduct of a pupil including but not limited to relocating a pupil in a waiting line, classroom, lunchroom, principal's office, or other on-campus facility; or

(vi) protect property from serious harm.

(b) Physical pain resulting from the use of physical restraint as defined in subsection (4)(a) does not constitute corporal punishment as long as the restraint is reasonable and necessary.

(5) A teacher in a district employing neither a district superintendent nor a principal at the school where the teacher is assigned has the authority to suspend a pupil for good cause. When either a district superintendent or a school principal is employed, only the superintendent or principal has the authority to suspend a pupil for good cause. Whenever a teacher suspends a pupil, the teacher shall notify the trustees and the county superintendent immediately of the action.

(6) A teacher has the duty to report the truancy or incorrigibility of a pupil to the district superintendent, the principal, the trustees, or the county superintendent, whichever is applicable.

(7) If a person who is employed or engaged by a school district uses corporal punishment or more physical restraint than is reasonable or necessary, the person is guilty of a misdemeanor and, upon conviction of the misdemeanor by a court of competent jurisdiction, shall be fined not less than $25 or more than $500.

(8) A person named as a defendant in an action brought under this section may assert as an affirmative defense that the use of physical restraint was reasonable or necessary. If that defense is denied by the person bringing the charge, the issue of whether the restraint used was reasonable or necessary must be determined by the trier of fact.

History: En. 75-6109 by Sec. 90, Ch. 5, L. 1971; amd. Sec. 1, Ch. 388, L. 1977; R.C.M. 1947, 75-6109; amd. Sec. 1, Ch. 135, L. 1981; amd. Sec. 1, Ch. 325, L. 1991.

Cross-References

Duties of pupils — sanctions, 20-5-201.

Suspension and expulsion of pupil, 20-5-202.

Confidential relationship between student and school personnel, 26-1-809.

Use of force by parent, guardian, or teacher, 45-3-107.

20-4-303. Abuse of teachers. Any parent, guardian, or other person who shall insult or abuse a teacher anywhere on the school grounds or school premises shall be deemed guilty of a misdemeanor and, upon conviction of such misdemeanor by a court of competent jurisdiction, shall be fined no less than $25 or more than $500.

History: En. 75-6110 by Sec. 91, Ch. 5, L. 1971; amd. Sec. 1, Ch. 100, L. 1971; R.C.M. 1947, 75-6110.

20-4-304. Attendance at instructional and professional development meetings. The trustees of a school district shall close the schools of the district for the annual instructional and professional development meetings

EXHIBIT 3
DATE 1/26/95
HB 217

IN THE CITY COURT OF THE TOWN OF COLUMBUS,
COUNTY OF STILLWATER, STATE OF MONTANA
BEFORE MARILYN KOBER, COLUMBUS CITY JUDGE

TOWN OF COLUMBUS,	*	Case No. 026 B0493
Plaintiff.	*	Ruling on Motion to Dismiss
vs.	*	
ANDREW MICHAEL BORGMAN,	*	
Defendant.	*	

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History of the Case

The Defendant, Andrew Borgman was charged with "Abuse of a Teacher", contrary to 20-4-303, MCA. On June 9th, 1994, the defendant plead not guilty to the charge in Columbus City Court. Borgman filed a motion to dismiss through his counsel, Vernon Woodward, based on the grounds that the statute is overbroad, void for vagueness and violated his First Amendment rights. Douglas Howard, attorney for the Town of Columbus filed a response to the defendant's motion to dismiss, which claimed the City Court lacked jurisdiction to determine the constitutionality issues raised by the defendant. Defendant replied in support of his motion. The Court responded by inviting the prosecution to take the issue of jurisdiction to a higher court for review. Mr. Howard declined to take the issue for review and requested that this Court rule on the matters before it.

Believing that the Court does have jurisdiction to hear the constitutional issues

when Ostwald discovered the message, this Court cannot see how the words could incite violence.

The second issue is vagueness and overbreadth. Would people of common understanding be able to know what this statute would prohibit them from doing? Would they be able to know and define what would "insult" a teacher? Would this law have a "chilling effect" on the community in general to the point that for fear of insulting a teacher, a parent, student, or other citizen might avoid communications with teachers so as not to commit a crime?

Ruling on Motion to Dismiss

After careful consideration of all the issues in this case, this Court finds the Defendant's speech to be protected by the First Amendment, and further finds the State's statute, 20-4-303 to be overbroad and void for vagueness. Therefore, it is the judgment of the Court that the Defendant's motion to dismiss is hereby GRANTED.

Signed and Dated November 30, 1994

Marilyn Kober

Marilyn Kober, Columbus City Judge

EXHIBIT 4
DATE 1/26/95
HB 232

HOUSE OF REPRESENTATIVES

Judiciary -COMMITTEE

WITNESS STATEMENT HB 232

PLEASE PRINT

NAME CHARLES GRAZIER BUDGET

ADDRESS 19155 WAMPOLI LANE, HUSON MT DATE 1-26-95

WHOM DO YOU REPRESENT? SELF

SUPPORT ✓ OPPOSE AMEND

COMMENTS: RE: H.B. 232

PRESENT LAW REQUIRES GUN SAFETY CLASS BUT DOES NOT PROVIDE THESE CLASSES. AUTHORIZING THE SHERIFF TO DESIGNATE INSTRUCTORS FOR THIS PURPOSE WOULD HELP GUN PERMIT APPLICANTS TO FULFILL THIS REQUIREMENT.

IN THE MODERN MOBILE SOCIETY WHICH WE LIVE IN, IT IS OFTEN DESIRABLE TO CARRY A FIREARM ACROSS STATE LINES. WITH THE NUMEROUS GUN LAWS ON THE BOOKS AND BECAUSE THEY VARY SO MUCH FROM ONE STATE TO ANOTHER IT MAKE SENSE TO HAVE RECIPRICAL AGREEMENTS WITH OTHER STATES

HR:1993
CS16

EXHIBIT 5
DATE 1/26/95
HB 232

I want to go on record as a supporter of House Bill 232. An individual with whom our family is well acquainted was turned down when applying for a permit for no other reason than the obvious bias of the [redacted] SHERIFF.

He is a law-abiding citizen and an inventor who travels a lot and has reason to have concern for his personal safety because of the [redacted] technological and professional ramifications relative to his field of endeavor.

He finally acquired the permit, but not without experiencing much frustration and exhibiting much persistance.

Aubyn Curtiss
ND 81

EXHIBIT 6
DATE 1/26/95
HB 232

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
11250 WAPLES MILL ROAD
FAIRFAX, VA 22030-7400

MEMORANDUM IN SUPPORT

TO: MEMBERS OF MONTANA HOUSE JUDICIARY
FR: AMY ELLIOTT, NATIONAL RIFLE ASSOCIATION
RE: HB 232
DATE: 01/26/95

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On behalf of the members of the National Rifle Association in Montana, I respectfully submit our support of HB 232 for the following reasons.

1. **Affords applicant who has been denied the opportunity to rebut the case made against them.**

An open and honest government certainly requires that a permit applicant, who is denied a license due to a Sheriff's statement, be afforded the opportunity to rebut false or misleading information in the appeals process. This is not possible under the current system.

If an applicant has been denied based on what the local sheriff may determine as reasonable cause, it is their right to know exactly what that reasonable cause is.

2. **Allows the local sheriff to determine familiarity with a firearm.**

Unfortunately, there are simply not enough firearms safety courses taught throughout Montana. This especially affects those who live in smaller, more rural towns. Also, some of theses courses may be cost prohibitive to many law-abiding Montanans who have a vast knowledge of firearms. Allowing applicants to take a test given by their local sheriff will alleviate these problems.

EXHIBIT 7
DATE 1/26/95
HB 232

January 26, 1995

My name is James S. Hamman, 140 Hamman Road, Clancy, Montana 59634. I am a medically retired police patrolman with fourteen years of street experience, and I urge you to vote for House Bill 232 for the following reasons.

First it seems only fair that an applicant for a concealed carry permit being denied a permit be given a written reason why the application was denied by the sheriff who ruled negatively on the application.

Second it seems only logical for the appeal process to function at all the district court would have to consider evidence other than a negative ruling by the sheriff who originally turned down the application and not be bound entirely by that sheriffs findings.

Third reciprocity agreements with other states having similar laws need to be negotiated.

Fourth the exemption of concealed weapon permittee from a background check and waiting period is logical for two reasons. First the individual has already gone through an extensive background check to obtain the permit. Thus to require an additional check is a waste of manpower and money. Second waiting periods are to provide a cooling off period and thus in theory prevent crimes of passion. Is it not logical to assume a person with a concealed carry permit will already own at least one firearm. Thus the cooling off period argument becomes ridiculous.

Thank you for your consideration.

James S. Hamman

James S. Hamman

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1/26/95

BILL NO. HB240 SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Beth Baker	Dept of Justice	✓	
Jim Rivard	Bd of Crime Control	✓	
John Connor	MT County Attys Assn	✓	
Rick Meeker	Juv. Prob. officer	✓	
Mary Ellerd	JPO A	✓	
David Gates	Youth Probation	✓	
GENE KISER	MBCC	✓	
Joan-Nell Mcfadden	DFS State Family Advis Council	✓	
Pete W Surdock Jr	DCHS	✓	
Ann Gilkey	DFS	✓	
Gail Gray	OPI	✓	
AL DAVIS	DFS	✓	
Candy Wimmer	MBCC	✓	

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

HR:1993
wp:vissbcom.man
CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1.26.95

BILL NO. HB 217 SPONSOR(S) Rep. Johnson

PLEASE PRINT **PLEASE PRINT** **PLEASE PRINT**

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Pete Joseph	MFT		
David Gates.	Youth Protection		✓
Phil Campbell	MEA	✓	

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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1-26-95

BILL NO. HB 302 SPONSOR(S) Rep. Johnson

PLEASE PRINT ! PLEASE PRINT ! PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Pete Joseph	MFT	✓	
David Gates	Youth Probation		✓
Phil Campbell	MEA	✓	

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HR:1993
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HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY COMMITTEE DATE 1-26-95

BILL NO. HB 232 SPONSOR(S) Rep. Jore

PLEASE PRINT ! PLEASE PRINT ! PLEASE PRIN

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Bill Fleiner	Mt Sheriffs & Peace Officers		X
W. C. Hollenbaugh	Self	X	
Charles Grazier	Self	X	
Stan Frasier	Self	X	
Gary Marbut	MSSA, GOA, CCRKBA WMFGA, BSPSC	X	
A.M. (Bud) Elwell	WCSM/NWAC	X	
Paul Glassco	Self	X	

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

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