MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **ACTING CHAIRMAN RIC HOLDEN**, on March 14, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

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

Committee Business Summary:

Hearing:	HB 84, HB 256, HB 345, HB 356, HB 357
Executive Action:	HB 84, HB 356, HB 357, HB 240, HB 429, HB 214. HB 74 - discussion only.

{Tape: 1; Side: A; Approx. Counter: 00}

HEARING ON HB 256

Opening Statement by Sponsor:

REPRESENTATIVE ROGER SOMERVILLE, Kalispell, House District 78, presented what he characterized as a good common-sense, get-tough-on-drunk-drivers bill. This bill would add a felony

conviction to the current DUI (Driving Under the Influence) laws, providing a surcharge on the court fine to buy Jaws of Life equipment for the counties' emergency teams for accidents. He stated that in the current law on third and subsequent convictions, a person would be imprisoned for a term of not less than 30 days (at least 48 hours consecutively) or more than one year, and a fine would be imposed of not less than $500 or more than $1,000. Under this bill, a person receiving a second conviction would have a last chance to receive a misdemeanor. A group of law enforcement officials and judges from his area had asked for the bill, which they considered the most important judicial issue to date. They felt that people in the third and fourth DUI situation needed stiffer punishment and to be placed in a follow-up system. They are usually not wealthy, so a heavy fine had little impact, neither did taking their cars away. He said many times it cost more to haul the car away than it was worth. The bill would impose the threat of hard time in the pen and a follow-up system in the courts. He reminded the committee that a bad check writer could receive a felony. The DUI offenses, meanwhile, could only carry the penalty of a misdemeanor. On the first conviction, as seen in Section 1, Line 16, HB 256 would change the minimum sentence from 24 to 48 hours. The maximum would change from 60 days to 6 months. In discussions with the House Judiciary Committee, it was determined that the sentences on the first and second offenses should be increased. They thought it should change to a felony after the third offense, rather than the four suggested by another bill. It would also add that some of the sentence could be waived if the defendant voluntarily enrolled in a chemical dependency program approved by the court and conducted by an approved private or public treatment facility. On Line 25, the bill increases the penalty for a second conviction, of not less than 7 to 30 days of which 72 hours must be served consecutively and a maximum of one year, which has been increased from 6 months. They were giving the judges some leeway in deferring part of the sentence if the individuals enroll in the ascribed treatment programs. The biggest change, he said, was on Page 2, Line 4, for a third or subsequent conviction. The person shall be punished by incarceration in the county jail or state prison for a term of not less than one year or more than 10 years, an increase from 30 days and not more than one year. The fine would increase from $500 to $1,000, and not exceeding $50,000. Again, the judge has been given leeway, but a minimum of 60 days would be required in the county jail. On Page 4, Line 13, a section was taken out that was initially proposed revoking drivers' licenses. The committee took it out and he agreed. At the bottom of Page 4, they added a surcharge of 10 per cent to the current fine. The money would be given to the County Treasurer for deposit to the Sheriff's account for the purchase of Jaws of Life equipment so that the volunteer departments in the counties will be properly equipped to extract people from wrecked vehicles. The City of Kalispell has all the equipment necessary, he said, but it would really help in the rural areas. The fiscal note noted 12 assumptions. On Item 3 it noted that 8 per cent of

the fines are third offense penalties. In Item 4 they estimated the per diem cost to the counties at $8 per day, which is on the high side. On the back page, it showed that the cost to the counties at $801,360. He thought it should be more like $400,000 to $800,000. In assumption 11 the additional revenue and additional surcharge, the bottom line is $175,000 to the county treasurers to buy the equipment. In FY 96 the cost is estimated at $169,280, which decreases to $10,430 in FY 97.

Proponents' Testimony:

John Mercer, House District 74, Northwestern Lake County, added his support to HB 256. He spoke of a personal involvement with the bill. He said **John Campbell, Polson,** was a friend of his. He had played soccer with the **Campbell's** daughter, Jana, who was the victim of a tragic driving accident that absolutely ripped their community apart, breaking many hearts. Their community had tried to work on the Jaws of Life equipment and to examine DUI laws. **Mr. Campbell and his wife, Jill,** had done everything they could to bring something positive out of what had happened to their family. They brought the idea of the bill forward. He said the legislature is a citizens' legislature and many of the ideas brought forward do not come from governors or lobbyists, but private citizens. He hoped they would see the government respond to this idea.

John Campbell, Polson, water and sewer superintendent, spoke in support of HB 256, **representing himself.** He said he was involved with the volunteer fire department in Polson for 18 years, as well as the Jaws of Life program. He came to the conclusion recently that he could not do this work anymore, but still did fundraising work for the program. He said the DUI laws could not be too strict. Seven months ago he was just another citizen, watching the news of wrecks, things happening to someone else. Then it was something that happened to him. The Jaws of Life equipment was purchased for the Polson area for the cost of $10,000 ten years ago, on a voluntary basis. Their family and the family of the other girl killed in the accident had set up a memorial to buy a new vehicle, raising $35,000. Most larger counties would need more than one Jaws of Life to achieve any decent response time, he said. There are many drunk drivers out there, and he said that it was not a social problem anymore, but a serious crime. He urged a favorable consideration of the bill. He presented written testimony. **(EXHIBIT 1)**

Brenda Nordland, Department of Justice, appeared to support HB 256. This bill is a representation of a groundswell community effort to strengthen the DUI laws. She reiterated **Mr. Campbell's** opinion that society owed no debt to the DUI offender. She supported the idea that a DUI offender should no longer be treated as a misdemeanor offender. They should draw the line at the third offense making it a felony. SB 315 made the offense a felony on the fourth offense, which would be the only conflict she saw in the bills. She left it to the discretion of the body.

Clearly, the message is that a felony penalty must result for multiple DUI offenses. Other conflicts in the bill are minor, falling on Page 2, Line 4-17, which is the creation of the third offense felony. SB 315 had a $10,000 maximum; HB 256 lists a $50,000 maximum fine. This bill has a 60-day minimum imprisonment; SB 315 has 6 months minimum imprisonment. HB 256 has a provision for a deferral of sentencing; SB 315 does not allow deferral of sentencing at all. She urged support of the bill.

James Lofftus, represented the Montana First District Association. Their organization supported HB 256. He urged the purchase of the Jaws of Life equipment. He said they needed the equipment in the rural areas mostly. Many times people were lost because they were unable to extract them from wrecked cars in a timely manner.

Kathy McGowan, represented the Chemical Dependency Programs of Montana, as well as the Montana Sheriffs and Peace Officers Association. She said those organization strongly endorsed the bill. On behalf of the Chemical Dependency programs, she had drafted some amendments to the bill, to reflect the conflicts with other bills that **Ms. Nordland** was talking about. She recommended a sub-committee and asked for their inclusion. She read the amendments, as presented in **(EXHIBIT 2).** She said some changes had been put on in the House by **REPRESENTATIVE DUANE GRIMES.** He approved of their suggested changes as well.

Norma Jean Boles, Manager of Standards and Quality Assurance with the Alcohol and Drug Division, Department of Corrections and Human Services, supported HB 256 as it strengthened the DUI laws and encouraged treatment for those who are chemically dependent. The department supported the amendment brought by **Ms. McGowan,** she said. Of the first amendment, she commented that 40 per cent of the people convicted of DUI on first offense are chemically dependent, as their departmental statistics show. To require treatment unless needed, would be expensive. In the second amendment, the deletion of in-patient treatment allows the professionals using established patient placement criteria the opportunity to select the most appropriate, effective and cost-efficient treatment. The third amendment was very beneficial as it assists that client in supporting abstinence if there is a problem. SB 333 was also introduced at the request of the DUI Task Force and also deals with disposition of the DUI offender similar to this bill. She asked for the successful merger.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN asked about the sentence deferral. He thought there had not been a deferral for a long time, yet it appeared they were trying to build the deferral idea back into this bill. What was the thought of the House on this deferral issue? **Brenda Nordland** said she didn't know what the thoughts were in implementing the treatment language as a contingent to allow deferral or suspension. She did know SB 315 contained no deferral because of a 1991 amendment where a grammatical change left a gap leaving a deferral of sentencing in both DUI and BAC law. When discovered, it was already occurring in some counties. The purpose of SB 315 was to make sure DUI deferrals were not an option. She did not know if the House committee was aware of that error in the 1991 session. **SENATOR HALLIGAN** addressed **Dennis Paxinos, Yellowstone County Attorney.** Since they wanted to make this as serious as they could, he wondered if the deferral would send a message that it was not. He further stated that a suspended sentence could stay on the record, but the deferral let it go off a person's record. **Dennis Paxinos** answered that he had given one deferred sentence in his many years for one case in bizarre circumstances. He said there should be NO deferrals for DUI's. **SENATOR HALLIGAN** asked the sponsor about the 4th offense felony in another bill and asked the committee's thoughts about moving it to the third offense? **REPRESENTATIVE SOMERVILLE** said he would prefer the 3rd, as proposed. There was some thought initially that the 4th offense would be easier to get legislated. Much to his surprise, the committee in the House was eager to change it to the 3rd, strengthening the bill. **SENATOR HALLIGAN** asked about the restriction to purchase the Jaws of Life equipment. He said it was a mandate to do a certain thing with the money. He wondered why they would want to dictate to the communities, when they might want to put the money into student information programs on drinking, for instance. **REPRESENTATIVE SOMERVILLE** said there was a fear that if the money went into the counties' treasury, it would be used to fix potholes. Left off the list and to be added was: breathylyzer and other equipment along those lines for law enforcement. He said they would leave the language alone and maybe in two years put the money in the general fund. **SENATOR HALLIGAN** said they had put money in the past into local DUI Task Forces. If they did not have one, they could create one, and that way the counties could dictate where the money goes. **SENATOR HALLIGAN** questioned the treatment issue on Page 1, Line 17, and asked if their intention was that the sentence could not be suspended at all for the 60 per cent of the population that would not be chemically dependent? **Kathy McGowan** said that was the way it was framed, but they wished the provision to be compatible with the other bills, as well. **SENATOR SUE BARTLETT** stated that community service programs did not exist in all communities, and wondered where the money used to establish and maintain those programs might be considered for the communities that already have the necessary Jaws of Life equipment. The sponsor agreed. **SENATOR BARTLETT** asked **Kathy McGowan** what indication they would have that first time offenders were chemically dependent. **Ms. McGowan** said the amendments they

recommend addressed that concern, following SB 333, stating, "unless the defendant is chemically dependent as determined by an approved private treatment facility or an approved public treatment facility is declined." In **Ms. Boles'** (DCHS) testimony, she had said 40 per cent were found to be chemically dependent. She had also said it would be a waste of time and money requiring attendance for someone who did not need it, she quoted. **SENATOR BARTLETT** made a statement that there was belief in their community that the screening program that is conducted for the informational procedure finds too many people chemically dependent, and used as a means of continuing their own program by putting people into the treatment programs. She had no opposition for the necessary treatment assignments, but stated that one of the first questions when people came through the door was, "do you have insurance?" There is a potential for abuse that needed to be examined, she said. She asked **Mr. Connor** about the realities of the requirement that people be imprisoned in the county jail for not less than 48 consecutive hours on first offense? **Mr. Connor, Department of Justice,** said, in visiting with county attorneys around the state found that those people who are sentenced under the DUI statute are able to make arrangements to do the time so that the overcrowding situation is not so affected by the sentences. He got the sense that the attorneys did not think the punishment was very effective in deferring DUI sentences, nor was it an appreciable deterrent. **Mr. Paxinos** answered the same question. In Yellowstone County when someone is sentenced for a DUI violation, they have to make a reservation at the "inn." What has deterred these offenses is the 95 per cent of the population that thinks drinking and driving is wrong. They don't want to go to jail. The 5 per cent hard core drinkers, or alcoholics, are the problems. Even after they are incarcerated for 6 months or a year, they walk out of jail and head for the bar. He said sentence enhancements should not be the panacea. They had the same problem in Yellowstone County where they found everyone in need of treatment at the treatment center. **REPRESENTATIVE BOHARSKI** said there was a feeling in the House that the sentences should be increased, both minimum and maximum. They didn't want people to be required to serve the whole six months. The intent of **REPRESENTATIVE GRIMES** was that the original 48 consecutive hours could not be suspended pursuant to the old language, but the remainder of the 6 months could be deferred.

Closing by Sponsor:

REPRESENTATIVE SOMERVILLE closed on HB 256. He stated that last November this issue was a grassroots effort from the Flathead Valley. He said he was initially contacted by **Judge Lympus** and **Curtis Stattler**, and then he called **John Mercer** to arrange for the bill. **Speaker Mercer** already had a draft which dealt with the surcharge so they merged the two bills. He worked with the Billings DUI Task Force as well. He believed that treatment was important and the follow-up system was a key. Making the offense a felony would require that the individual deal with a parole officer as part of the aftercare. The surcharge would be used to

purchase the Jaws of Life equipment, and also to maintain that equipment, which was very expensive. He recounted a story about the U.S. Army. In years past, they dealt with their drinking and drug problems by ending the career of any person convicted of a DUI. He said it cleaned up the problem very quickly. Because of the "hammer," he said many people who might have taken the chance stopped taking that chance. Those people became responsible individuals in dealing with alcohol. He hoped this bill would bring the same results. He told the committee that the tragedy occurring in the Flathead last year involving the **Campbells'** daughter might have been averted if the perpetrator, who was a repeat offender, had been dealt with before.

{Tape: 1; Side: B; Approx. Counter: 00, Comments: poor recording}

HEARING ON HB 356 and HB 357

Opening Statement by Sponsor:

REPRESENTATIVE WILLIAM BOHARSKI, House District 79 from the Flathead Valley, introduced HB 356 and HB 357 which had been worked on by everyone in the country, he said. He thanked the Department of Corrections and Human Services for their assistance on the technical work. Basically, these bills would change the rules of the game. The judges, prosecutors, victims and all of society do not know what it means when a judge sentences a person to a prison term. He said legislators (including himself) and society were responsible. He said it had been a mistake in the past to put the money spent on the prison system on the table as a negotiating tool when it came time to balance the budget. He also guessed that public awareness brought a willingness to spend additional money on the problem. On HB 356, he said, language had been removed from the bill. Anywhere a reference to Title 53-30-105 was used, it referred to "good time," which the bill was eliminating at the beginning of the 1997 biennium. At present, they did not have the prison capacity to deal with it, but he hoped for construction. Page 2 amended the innocuous section on how consecutive sentences were served. The House Judiciary put some amendments on how much time the department had to notify folks at the local level, and the intent of the locals for notifying victims. Section 4, Line 23, changed the language from 1/2 to 1/4, appearing as though it reduced the prison time, but, by eliminating good time, it ends up being the same thing. In addition, they eliminated the "dangerous" and "non-dangerous" offender statutes. They were not reducing sentences for anyone in this bill. He discussed the argument for taking away good time, but said it was a powerful tool for the department to use. The sponsor briefly explained each section of the bill. He said they were changing how the concept of good time worked. If left to him, he would eliminate it tomorrow, he said. Because of the money required for prison space, it would take a good number of years for the resolution of the problem. **REPRESENTATIVE BOHARSKI** said in light of that problem, the Department of Corrections and Human Services had requested HB 357. He said

judges were jacking up sentences to make sure individuals served at least a minimal amount of time. If they change the rules with the elimination of the good time provisions, they would certainly have a wreck on their hands with the state prison system. Judges currently sentenced people to 40 years, hoping they would serve one or two or five. If they change the rules, a sentence would be for 40 years when they really only wanted them to serve for ten. **REPRESENTATIVE BOHARSKI** stated that the fiscal note on the bill was far too low. He projected the amount to be upwards of $100,000 to $150,000 range. The money would be discussed when HB 2 made its way through the system. He said they must take a look at: 1) what the judges and prosecutors are doing to deal with current sentencing guidelines, and 2) perhaps some of the sentences in statute need to be changed because the top end of the sentences had been increased in many cases. Title 45 statute and what really goes on in the prisons were very interdependent upon each other, he stated.

Proponents' Testimony:

Rick Day, Director, Department of Corrections and Human Services, read written testimony. **(EXHIBIT 3)**

John Connor, Bureau Chief, County Prosecutor Services Bureau, Department of Justice, represented the Governor's Advisory Council on Corrections and Correction Policy and the Truth In Sentencing Sub-Committee, also the Attorney General's office whose Law Enforcement Advisory Council who supported this measure. He added that the **Montana County Attorneys Association** supported both measures as well. He said **REPRESENTATIVE BOHARSKI's** depiction of the issue was correct in that it was an absolute mess which none of the prosecutors can understand. It made it difficult or impossible to explain the ramifications of a particular sentence to a victim, and also made it impossible for judges to tell the individual how much time they would be sentenced to. He said it was very frustrating for the people in the criminal justice system to address this system. Judge Lympus, during the Sub-committee hearings for the Truth in Sentencing Council, suggested that they do away with "good time" altogether. He said they could not do that because there were no sentencing incentives provided without "good time" to the defendant in looking at potential rehabilitation. "Good time" was also used by the prison officials as an effective management tool. They set up a "good time" study group, which ended up as HB 356. While it may not be actual, "truth in sentencing," he said it was more truth than they had now, and they saw the need to approach it on a more gradual basis. The most significant example to them in terms of confusion is found in Section 46-23-201 which allows for the designation of dangerous or non-dangerous offenders. Those terms are misnomers, he said, because people who commit acts of violence and who are dangerous can be designated non-dangerous. People who are potentially not dangerous, because of their history, can be designated dangerous. More accurately, they should be described as, "repeat," or

"persistent," offenders. The statute says that a dangerous designation would require one-half of the time before parole eligibility, and if designated non-dangerous, one-fourth of the time must be served. It talks about, "less good time received," but says in any event, if a person got a sentence for a period of years, the parole would become eligible in 17 and 1/2 years. If a person commits a homicide, for example, and gets a 100-year sentence, that person is parole eligible in 17 and 1/2 years. If another person got a sentence of 50 years, he, too, would become eligible in 17 and 1/2 years. Explaining that to victims, he said, was a travesty, and justifiably so. He said the most arguments prosecutors had with the Department of Corrections were over the bill passed in the last legislature which allowed the Department to grant discretionary "good time" toward parole eligibility without any restrictions. Prison overcrowding became a reason for those decisions and the prosecutors objected to it. He said they finally came to agreement that the "good time" provisions need to be phased out gradually, which was proposed. The fiscal note points out that the population of the prison may increase and present some substantial financial problems if the courts do not take into account these changes in the law after 1997. Based on his experience, the courts would take it into consideration. This bill is not a perfect system, he said, but he didn't know what a perfect system would be with the confusion in the law. He stated that HB 357 was also a good start. In answer to why do they need HB 356 if they were going to do the study under HB 357, he said the two bills are not inconsistent. There are problems that HB 356 addresses that need to be fixed now. If the study is done, they may make some recommendations to retain some of the existing law. HB 357 gives them the opportunity for a more detailed, long-range approach. He encouraged support of the bills.

Mike Salvagni, Gallatin County Attorney, also a member of the Governor's Advisory Council on Corrections; Chairman, Sub-Committee dealing with Sex Offenders, spoke in favor of the bills. He said the bills considered by the committee on lifetime supervision of sex offenders and DNA testing were part of his committee. He praised **Rick Day** and **Governor Racicot** who had led the way in responding to public outcry concerning the criminal justice system, in addition to **REPRESENTATIVE BOHARSKI. Mr. Connor** had characterized the present criminal system as a, "mess," he said, but he thought it was a fraud. The manner in which prison time and parole eligibility was determined is a fraud, he maintained. He supported the revision in HB 356 concerning parole eligibility. He focused on the dangerous and non-dangers designation system. He said they were nothing more than a component in a formula to determine a date for parole eligibility of an inmate. The passage of HB 356 and the establishment of these truth-in-sentencing requirements are a beginning of the attempt to restore and maintain confidence in the criminal justice system. He cited the **Larry Moore/Brad Brisbin** murder case, in which **Moore** was convicted of shooting **Brisbin** and disposing of the body (the first case in Montana in

which DNA testing was used for conviction). **Moore** was designated as a non-dangerous offender. He said to explain that to **Mrs. Brisbin**, the mother of the victim, and the family, was a complicated situation they couldn't understand, nor could the public. The removal of these designations for the purposes of determining parole would not only clarify the system, but would remove the negative perceptions of the public. He argued that the current system was an insult to the public and the victims and a contradiction of the murderous behavior of some cases. A judge could still restrict the eligibility date if he thought that the particular defendant required more time, which was current law. He stated that we need to do better. We need truth-in-sentencing. **Mr. Salvagni** also supported HB 357 because there was so much more to do, and the information was not available.

Laurie Koutenik, representing the Montana Christian Coalition, supported both HB 356 and HB 357. Her organization had surveyed the candidates in the last election. One of the questions was about truth-in-sentencing because they had been hearing from the public of their desire for harsher sentences, tougher crime bills and accountability. 100 per cent of the respondents, regardless of party designation, supported the concept of truth-in-sentencing. She asked the committee to hear the concerns of the public when criminals are released back into their communities in what they consider to be an unreasonable amount of time.

Dennis Paxinos, Yellowstone County Attorney, said he was not as enthusiastic as **Mr. Salvangi,** but would rise to support the bills. Yellowstone County would register between 900 and 1,000 felonies in the current year, he said. The next largest county would be Missoula, with perhaps 450 cases last year, and Cascade County filed 400. He spent a good deal of time with victims, he said. It was difficult to speak to survivors of homicides, explaining why the death penalty would not be imposed, mostly because there were few criteria in Montana under which it would ever be imposed. There must be a kidnapping or the murder of a uniformed officer, for example. In explaining the sentence probability, it was like a labyrinth, he said, with dangerous designation, weapon additions, good time, and other variables. This bill would help them, he maintained. In the past, the state had balanced the budgets on the backs of the victims over and over again. These bills would make elected officials responsible. If passed, the public could hold the judge responsible for sentences, making the judge a better judge. It would also make the prosecutors more responsible with the knowledge of the time expected in the sentence. Everyone would know what the playing field was and what the rules were. He lacked enthusiasm somewhat because he felt the bills did not go far enough. He urged support.

Kathy McGowan, appeared on behalf of the Montana Sheriffs and Peace Officers Association. She said the Board of Directors wholeheartedly supported both HB 356 and HB 357.

Craig Thomas, Executive Director of the State Board of Pardons, said they were responsible for executive clemency, supervised release and parole in the State of Montana. He spoke in favor of the bills. He had worked in the field of corrections as a correctional officer, probation officer and counselor for 16 years. During that period, the major complaint he'd heard was the victim's misunderstanding of the sentencing impositions and time served. The second area was the dangerous and non-dangerous designations, which made people extremely angry when a sex offender was declared non-dangerous and a check forger called dangerous. He urged the passage of HB 356 and HB 357.

Ron Richards, represented himself as a victim, citizen and taxpayer. He supported the measures because it was a common-sense approach to a problem that was long overdue. For each of the 1,200 inmates in Montana, there were between 1 to 20 victims each. He stated that the citizenry knew it would cost money and were willing to pay more to obtain a just system that served all.

Opponent's Testimony: None.

Questions From Committee Members and Responses:

SENATOR REINY JABS asked for clarification of "good time." **REPRESENTATIVE BOHARSKI** explained that the elimination of good time would be delayed for two years because of the overcrowded situation at the prison now. Under current law, good time is mandatory. Upon passage and approval of the bill, good time becomes, "may". He had some discussion with the department about someone who had currently earned good time and he inquired if it could be taken away. Under the rules and disposition of the department, they said it could not, but he thought there was a strong possibility that it could. Then, in January, 1997, good time would be eliminated altogether. **SENATOR BARTLETT** asked **Director Day** about the function of good time as a management tool. **Mr. Day** said there was a split decision in the corrections system over the subject of good time. Some think it was an effective tool, others felt that it encouraged inmates to participate in programs to give the impression that they were rehabilitating just to earn the good time. There is no conclusive evidence. After good time is eliminated, if the inmate has the ability to get out earlier under parole, then the Board of Pardons would require their participation in rehab programs. They had been asked to look at good time provisions, and they would have adequate time to come back to the next legislature for revision, if required. He felt it had been fairly considered in a fairly thoughtful direction. **SENATOR BARTLETT** asked if an effective date of April, 1997, would be a more accommodating date regarding the legislative session if there was further recommendation to maintain good time or considerations made. **Director Day** said the council went through the same discussion and the date was a compromise. If the

legislature would decide to re-impose good time, they could make it applicable and he did not think reducing the sentence would be illegal. He said the system could still function.

SENATOR BARTLETT asked for further information. She supported the bill, but was interested in the department's best estimates of not only these bills, but ALL the changes proposed in this session that will affect our corrections system. He agreed. **SENATOR SHARON ESTRADA** asked **Mr. Thomas** for an estimate of how many people were paroled last year. **Mr. Thomas** said the Parole Board releases approximately 350 people a year into adult supervision. In response to a further question, he said there were 1,355 prisoners now. There was not a quota system, he said.

{Tape: 2; Side: A; Approx. Counter: 00 Comments: poor quality sound}

Closing by Sponsor:

REPRESENTATIVE BOHARSKI stated that before he compiled this bill he read an NRA crime report which stated that 80 per cent of the prisoners had a possibility of getting 20 per cent shorter time-served amounts if they did good time. He stated that he had voted in this session to spend four times the amount of money than in all the sessions he'd been there. Legislators are responsible to the public to explain that they just cannot build 1,000 new prison cells in the next 6 months. It's impossible. This bill would be a step in the right direction, though. It is not a panacea to solve all the problems. This bill would make the judges more accountable, and it would eliminate some of the negotiations prosecutors engage in with defense attorneys, making the presentation to the judge much cleaner.

HEARING ON HB 84

Opening Statement by Sponsor:

REPRESENTATIVE ROBERT STORY, House District 24, Stillwater County and the Southern and Eastern portion of Sweetgrass County, sponsored HB 84. It is a simple bill, he said, allowing the people assigned to the Department of Corrections and Human Services to transfer people suffering from a mental disease or defect to the State Hospital or the State Prison, for example.

Proponents' Testimony:

Dan Anderson, Administrator, Mental Health Division, Department of Corrections and Human Services, read and presented written testimony. **(EXHIBIT 4)** He also presented written testimony from **Carl L. Keener, M.D., Medical Director, Montana State Hospital,** who was unable to be present. **(EXHIBIT 5)**

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR BRUCE CRIPPEN asked about current law. **Mr. Anderson** said the issue was unclear. The law talks about placing a person in the appropriate institution but was not very explicit as to whether it referred to a mental health institution or a correctional institution. To his knowledge, every person had ended up at the state hospital, where they've stayed. In some cases, either it was a poor evaluation to begin with, or they've recovered enough of their mental health so that they should not be in that kind of facility. **SENATOR CRIPPEN** asked if they were moved, were they moved after hearing the recommendations of the professionals treating them? **Mr. Anderson** said yes, they had done that, but they had to go to the court to get the authority. **SENATOR CRIPPEN** said the court never loses its jurisdiction over a person. What if there was an objection to the removal, and what would be the proper form? **Mr. Anderson** said either the director or the defendant may petition the sentencing court for a review of the sentence. **CHAIRMAN HOLDEN** asked about the number of the bill (low), and if there was a hang-up in the chain? The sponsor said the bill went into the House Judiciary Committee the first week of the session and came out the last. They were very thorough in their examination and they did amend it. He thought they just had bigger fish to fry. **SENATOR JABS** asked for clarification on Line 22, and if it meant that a person would be committed under Section 1, that they could only be treated for that amount of time? **Mr. Anderson** said it was correct, they were under time sentences. If at the end of that sentence they are still considered to be mentally ill, they could go into a civil commitment to keep them at the hospital.

Closing by Sponsor:

REPRESENTATIVE STORY said it was a simple bill to put the rules into statute to prevent the department from getting into a bind. It was determined that **SENATOR JABS** would carry the bill in the Senate, should it pass this committee.

EXECUTIVE ACTION ON HB 84

Motion: **SENATOR CRIPPEN MOVED THAT HB 84 BE CONCURRED IN.**

Motion/Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 356

Motion: **SENATOR ESTRADA MOVED THAT HB 356 BE CONCURRED IN.**

Discussion: **Valencia Lane** asked the Department of Corrections to provide reviews and summaries that would include estimates of these bills and all related bills that have passed both houses at this point for total costs. It would be provided to the committee members before they schedule to finish hearing all the bills. **SENATOR STEVE DOHERTY** said the fiscal note estimated 898 additional inmates in the prison by fiscal year 2001. He wanted to know how many people would be added during the interim and what the estimated costs would be. He supported the bill, but worried about the impact in five or six years and wanted to know the whole story on the fiscal note. **SENATOR CRIPPEN** agreed that the legislation would be costly, and that even the presentation on the floor should include this financial implication, should the bill pass committee. His constituents were in concurrence with the fiscal impact.

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 357

Motion: **SENATOR ESTRADA MOVED THAT HB 357 BE CONCURRED IN.**

Discussion: **SENATOR CRIPPEN** questioned **Director Day** if some of the provision of HB 356 were included in HB 357 to be studied. **Mr. Day** said it was correct. **CHAIRMAN CRIPPEN** further asked if there was the possibility if what they had enacted in HB 357 will be modified or rejected? **Director Day** said that was correct. Part of the concept of HB 357 was to provide for an opportunity to gather information on various impacts of the bill and provide it to the next session. **SENATOR CRIPPEN** asked if the commission met once a quarter and if they had enough time in the biennium to bring it back to the next legislature? **Mr. Day** said the commission would have to go right to work. **SENATOR CRIPPEN** asked if they would use other sources, including the legislative council. He said it was a big, big, big undertaking. The fiscal note was too low, he said, but the time element concerned him the most. **Mr. Day** said some research with other states had already been done. He agreed that they would begin immediately upon approval and passage of the bill. **SENATOR JABS** asked if the changes would be approved by the next legislative session, and not made by the commission? **SENATOR CRIPPEN** said it would be decided by the 55th legislative session. **SENATOR LINDA NELSON** stated that the fiscal note was appallingly low. Since it is going into statute, it bothered her that it was that inaccurate. **SENATOR ESTRADA** said the sponsor acknowledged it was low. **CHAIRMAN HOLDEN** asked about his intention in the presentation of the bill to the taxation committee. **Mr. Day** said their initial fiscal note was $180,000, and they were working on it yet. He said the sponsor asked for the higher amount. **SENATOR CRIPPEN** asked for an updated supplemental fiscal note requested by the sponsor.

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

HEARING ON HB 345

Opening Statement by Sponsor:

REPRESENTATIVE ROYAL JOHNSON, House District 10, Billings, presented HB 345. He said the bill would increase fines upon people who probably ought to have fines increased. The money would be used for a particularly important function that had been experimented with by the Montana Highway Patrol. On Page 2, Line 6, he pointed out the $15 surcharge on the DUI fine. The money would be used to buy small videocameras for patrol cars to film DUI stops and arrests. In their experiments, they had found that conviction rates were extremely high.

Proponents' Testimony:

Dennis Paxinos, Yellowstone County Attorney, Billings, said he had drafted the bill, along with others. He thanked the sponsor. He started in 1985 as a prosecutor and defense attorney. One of the most difficult juries to convince beyond a reasonable doubt was a DUI case. The jury can identify with that defendant because most people have had a similar occasion, or could have. People had friends tell them to sit quietly in front of the TV camera at the station house, and juries were loathe to convict a person based on the pictures. The video cameras would be watching the car, just like the officer. Perhaps it would swerve or do something to attract the attention of the officer. These sophisticated cameras are like a penlight pen. It would accompany the officer to the car, recording the interview. When the person comes back to the car, the camera will record that transaction as well as the person's movements and if the eyes are glassy. This would prevent all kinds of civil lawsuits that counties are involved in now because of complaints of rudeness, etc. It would protect citizens from the rogue officer as well. When used it a situation of domestic abuse, it would record the sound and sights of the situation. He said in Yellowstone County the DUI Task Force had generated enough funds through service groups to buy three cameras, one for the Patrol, one for the Police Department and one for the Sheriff's Office. With the implementation of those cameras, they had not had one single DUI arrest ever go to trial. The people had plead guilty in 100 per cent of the cases. The defense attorney sees the same thing and knows that the judge/jury would convict them. It cuts down on expenses for trials, juries, judges, plus they get convictions. The cameras cost about $5,000 each, he said. This bill is flexible. It would allow the local law enforcement agency that gets the conviction to determine what type of law enforcement equipment it needs. He predicted $100,000 per year statewide would be collected.

Mark Cady, Billings Police Department, supported HB 345. He contended that in a visit to the doctor's office, the customer pays for the use of his equipment. This bill would make the perpetrator pay for the DUI equipment.

Mike Salvagni, Gallatin County Attorney, supported the measure. He said he was strong supporter of the rule for making those who are responsible for creating a need for the system to contribute to the cost of it. He said it would not be sufficient money to adequately supply all the departments with the equipment, but believed it was a good bill.

Craig Reap, Colonel, Montana State Highway Patrol, spoke in favor of HB 345. He said they had used the cameras in the Highway Patrol for several years with a high degree of success. Some were purchased with DUI Task Force money and some from service club money. They also had money available from the federal government to purchase more. He agreed that the person using the service should help to support it. There were several other reasons for the cameras, he said. From time to time their officers were accused of mistreating people or violating civil rights. It became word against word. Cameras would eliminate that problem. It would also make better law officers. He urged support.

Jim Kembel, represented the City of Billings. He appeared to support **Officer Cady's** testimony and strongly supported the bill.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR CRIPPEN asked **Mr. Paxinos** about Constitutionality. He inquired if the law had been challenged by other jurisdictions? **Mr. Paxinos** stated that other jurisdictions had already fought the battles and that there had not been a successful Constitutional challenge. In response to a question about the physical difficulties, **Mr. Paxinos** explained that the camera would be mounted to the ceiling of the car. The cables would run to the car's trunk to the main VCR, powered by the car's battery. A further question by **SENATOR CRIPPEN** asked about the reverse problem of losing a conviction if the camera or battery would fail. **Mr. Paxinos** said they might possibly lose a case, but they went through the cases now without a camera. Malfunctions had a low rate, he said. **SENATOR CRIPPEN** said he would simply refuse to face the camera if he were a defendant. He acknowledged the attempt to buy equipment for the local DUI units.

Closing by Sponsor:

REPRESENTATIVE ROYAL JOHNSON stated that the bill would provide equipment that they already know works. It would also provide money for the area providing the conviction. Their primary objective was to cut down the number of DUI prosecutions in the state. He hoped the bill would be a deterrent in that respect. He displayed a newspaper article about a family left fatherless as a result of a DUI accident. He said that accident could have been avoided. **SENATOR DOHERTY** said he would carry the bill in the Senate should it be approved.

{Tape: 2; Side: B; Approx. Counter: 00}

CHAIRMAN CRIPPEN ASSUMED THE CHAIR.

EXECUTIVE ACTION ON HB 240

Discussion: **CHAIRMAN CRIPPEN** said there were no conflicts on this bill. **SENATOR HOLDEN** said **REPRESENTATIVE MOLNAR** had made some good points in his opponents' testimony. He said he would have to oppose the bill. **SENATOR HALLIGAN** said there were some technical problems in regard to the appointment of some of the members of the commission because no one was designated to appoint them. He said he had experience in Youth Courts issues and it was all over the map, as the sponsor had described. He maintained that the legislature made intelligent decisions when they did interim committees in a bi-partisan way. None of the studies shown were part of a comprehensive study. He suggested that they get this done, then set a precedent for future studies. **SENATOR LARRY BAER** said **REPRESENTATIVE MOLNAR** had asked this bill be held until HB 540 came over to the Senate. He said it was just another study. **CHAIRMAN CRIPPEN** said the problem was that the other bill was in House Appropriations. The transmittal date would be March 30, after the deadline of this bill. **SENATOR DOHERTY** said a number of bills in 1991 dealt with some of the problems, but the legislature did its best work in the interim committees. **CHAIRMAN CRIPPEN** suggested amendments on Page 2, Line 22, to determine how the guardian for the youth to be supervised would be appointed to the board. **SENATOR NELSON** said the sponsor had been asked to provide amendments for Line 20.

Motion/Vote: **SENATOR HALLIGAN MOVED TO AMEND HB 240 ON LINE 20 TO HAVE THE GOVERNOR PICK A MEMBER OF THE YOUTH JUSTICE ADVISORY BOARD FROM A LIST OF THREE SUBMITTED BY THE BOARD OF CRIME CONTROL. HE FURTHER MOVED, ON LINE 22, THE GOVERNOR WOULD BE ABLE TO PICK A PARENT OR A GUARDIAN OF A YOUTH BEING TREATED OR SUPERVISED.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Discussion: **CHAIRMAN CRIPPEN** asked if there was discussion on what would define a, "young adult." **Beth Baker** said they had in mind someone who had been through the system but was no longer a juvenile. They wanted someone with the experience of having gone through the courts and could offer the benefit of the experience. She stated that it would be someone who had recent experience.

Motion: **SENATOR HALLIGAN MOVED THAT HB 240 BE CONCURRED IN AS AMENDED.**

Discussion: **SENATOR HOLDEN** asked **SENATOR HALLIGAN** why they should not hold the brakes a bit and wait for the last set of laws they were currently dealing with to see how they worked? **SENATOR HALLIGAN** said the existing structure was not coordinated nor comprehensive as it deals with the issues. It is not uniform in regards to treatment. He hoped that Congress would help with grants. He argued that this was new material they were looking at and that it made youth accountable for the first time. He spoke from a decade of experience working in this area, saying interim committees had tremendous power for change. **SENATOR BAER** said that argument was probably the preface to every study passed over the year. He said it was time to take action, not do another study for an imprudent use of taxpayers' money. **CHAIRMAN CRIPPEN** said it was a good point if they didn't have the two related bills yesterday and HB 429 today, which he said were pro-active bills. He thought the study might be needed to tie the bills and the results together. **SENATOR JABS** asked if the studies shown were agency or legislative studies? **CHAIRMAN CRIPPEN** said they may have been both, that mistakes had been made in ordering too many studies that sit on the shelves. **SENATOR AL BISHOP** said the DUI bills he sponsored were put together by a group involved with the issues and they were well put together. He supported the study. Newly-elected legislators would be at a disadvantage to understand this huge problem in a short time. **SENATOR BAER** asked if there was any guarantee that fruitful legislation would come from this study? He suggested an amendment to give direction to the study group, that they, "will" make recommendations to statutory changes, putting the duty into their hands. **CHAIRMAN CRIPPEN** said on Page 4, Subsection 4, Line 16-18 there was similar language. **SENATOR BAER** preferred the word, "shall," over, "if" the report contained recommendations. . ." He also suggested a sample draft of legislation be included. **CHAIRMAN CRIPPEN** said the danger would be legislation submitted that was really unneeded. **SENATOR HALLIGAN** said he did not disagree, but suggested the wording to include an explanation of why legislation was not recommended in certain areas. **SENATOR DOHERTY** recommended a definitive report why some parts need fixing and some parts do not. **SENATOR BAER** said he would agree as long as they create a duty of the commission to recommend some legislation. **SENATOR NELSON** said she would be surprised if they did NOT recommend some legislation. She didn't want to direct them to do that, and cause willy-nilly legislation. **CHAIRMAN CRIPPEN** posed the language, "shall contain the recommendations for legislation as well as explanations why legislation is not necessary in certain areas."

Motion/Vote: **SENATOR BAER MOVED THAT HB 240 BE AMENDED BY THE ABOVE LANGUAGE.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Vote: On **SENATOR HALLIGAN MOTION THAT HB 240 BE CONCURRED AS AMENDED,** the **MOTION CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 74

Motion: **SENATOR HALLIGAN** stated that **Gordon Morris of the Montana Association of Counties** was present and anticipating the ability to discuss HB 74 which had been tabled. He said there was the possibility of an amendment.

Discussion: **Mr. Morris** addressed the committee. He came prepared to offer an amendment previously, and the bill had been tabled. It had been stated that, "the judges can already do that," but he defied them to show where in the civil procedures it was stated that judges in the court of record can instruct the jury that costs can be assessed against either a plaintiff or a defendant when the case it deemed frivolous. He presented a proposed amendment. **(EXHIBIT 6)**. **CHAIRMAN CRIPPEN** said they would consider it the following day.

EXECUTIVE ACTION ON HB 429

Discussion: **Valencia Lane** stated there had been a conflict notice that three separate bills amended 41-5-604. Those bills were: HB 429, HB 551, and SB 64. There was also a conflict in HB 429 which repeals two sections which are also amended in SB 64. **Judge John Larson** said it was fine with the people interested in the bill that HB 429 repeal the sections in SB 64. The repeal will override the amendment which are 41-5-601 and 602. There is a problem with the three bills amending 41-5-604. To address the conflict, she drafted amendments **(EXHIBIT 7)** as shown in hb042901.avl. If both HB 551 on DNA testing and HB 429 pass, this is what the section would look like. The only substantive change in HB 551 was the insertion of DNA records in the list of records that are not to be filled. This was addressed in Subsection 5 of 41-5-604. The DNA amendment from HB 551 goes into 41-5-604. The rest of the changes are clean-up, editorial changes incorporated from both bills. The substantive changes from HB 429, which were the inclusion of fingerprints and photographs in Subsection 5, which are not to be filled. She started to draft changes from HB 429 to HB 551 and she hit a point where they could not be reconciled because one was putting in DNA records in the exception clause and the other bill was striking the exception clause. She did the coordination instruction which shows if both bills pass, this is how it would look. If either bill does not pass, she said, the amendments to this section of law contained in either bill that does pass, stay.

Motion/Vote: **SENATOR JABS MOVED THE AMENDMENTS.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Discussion: **SENATOR BARTLETT** referred to Page 1, Line 20, the new section said, " all filed matter related to a youth cited in a justice's court, are public record." At the beginning of that

section the words, "except as provided in Section 5," should be added. **Valencia Lane** explained that they would have to say, "except as provided in 41-5-604." She said it was a good idea and had nothing to do with the conflicts. On Page 1, Line 20, after, "all filed matters," insert, "except as provided in 41-5-604."

Motion/Vote: **SENATOR HALLIGAN MOVED THE AMENDMENT AS STATED ABOVE.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Motion/Vote: **SENATOR HALLIGAN MOVED THAT HB 429 BE CONCURRED AS AMENDED.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 214

Discussion: **CHAIRMAN CRIPPEN** said there was a question brought up by some people that the striking of Section 45-5-505 on Page 5, Line 19, would strike that section in its entirety from the code. He did not think so, since there was nothing in the title repealing it. **Valencia Lane** said the question had been raised on Page 5, Line 19, if 45-5-505 was struck, if somehow it would repeal the crime of deviate sexual conduct. She said there was no way that striking that reference in that section of law repealed the crime of deviate sexual conduct. 45-5-505 is still on the books, it creates the crime of deviate sexual conduct. There is a definition in the Title of 45 that defines maybe 17 pages of amendments. Deviate sexual conduct is defined in there. On Page 5, Line 19, 45-5-505 is the crime of deviate conduct. If the reference is stricken to that section on Line 19, it would say that a person convicted of the crime of deviate sexual conduct does not have to register under Title 45, Chapter 23, Part 5, which is the registration of sexual offenders. Line 18, says, "sexual offense means these following offenses:" Line 16 says sexual or violent offender means a person convicted of a sexual or violent offense. Sexual offenses are listed. She said if sexual conduct is removed from the definition, it would say those people who might be convicted of deviate sexual conduct won't have to register as a sexual offender under these sections of law. But it would not repeal the crime of deviate sexual conduct. **CHAIRMAN CRIPPEN** said **Arlette Randash** was concerned that it was stricken from the bill. He didn't know if the concern was that it was stricken from the registration. He said he did not think anyone had ever been convicted under this section, for bestiality or the other items covered. **SENATOR BAER** said he had spoke with **REPRESENTATIVES DENNY AND BOHARSKI** who related that there was an attempt in the House on HB 157 to also strike 45-5-505, and there were hostile murmurings that if it were stricken, it would not pass. Having an inconsistency in two like bills, whereby one retains 45-5-505 and the other strikes the code section, was maybe an oversight by the sponsor or the House committee. He proposed, unless there was any significant impact of why 45-5-505 was stricken, that they amend the bill by re-inserting it.

Motion: **SENATOR BAER MOVED THAT HB 214 BE AMENDED ON PAGE 5, LINE 19, FOLLOWING: "45-5-505," INSERT: "45-5-505."**

Valencia Lane said that HB 157 relates only to sexual offenders and it also amends Section 46-6-2502. It does not strike the reference to 45-5-505. If both bills pass with the reference stricken in one bill and not the other bill, the bill that strikes it will override and it will be stricken in that section of the code. **SENATOR JABS** asked if it would be stricken from the other bill as well if they left it in? **Valencia Lane** replied, no. She explained that when two bills amend one section, at the end of the session, they do a process called, "codification," and all the bills passed have to be inserted in existing codes. If two bills amend the same section, they have to codify all the changes in both bills. If the language does not fit together, they do a "coordination instruction". She said these two bills do not conflict, and can both be codified, but where one strikes 45-5-505, to honor the amendments contained in both bills, they would strike that from the code so when they are codified, 45-5-505 will not appear in this section anymore. **CHAIRMAN CRIPPEN** said it would also not appear in HB 157. **SENATOR BAER** said he did not know why 45-5-505 was stricken, but it was an excellent bill and should pass. If the House members were correct in their knowledge that 45-5-505 was stricken, which they may not have picked up before, and making the statement that if it had been stricken as attempted in the other bill, it would not have passed, perhaps this committee was condemning the bill to death if they left it stricken. He did not want that to happen.

{Tape: 3; Side: A; Approx. Counter: 00}

SENATOR HOLDEN . . .(tape change) . .a definition of sexual offense. What they are saying is that bestiality or homosexuality or anything else that fits under that segment, 45-5-505, is not going to be considered a violent offender. He said there was no doubt in his mind that he was going to vote to re-insert that clause back into the bill. **SENATOR BARTLETT** said she believed that it was stricken at the sponsor's request, as part of the amendments made in the House. **SENATOR BISHOP** said he agreed. He said no one could object to it and it could not hurt anything. No one would have to register because there were no convictions under that section. It would not accomplish anything one way or the other. He thought he would like to see it kept in. **SENATOR BAER** said he was concerned that this was stricken from his bill. He was told if it were stricken, it would not pass the House. **CHAIRMAN CRIPPEN** hoped he realized the importance of it. If it were not stricken from this, it limits and affects his bill as well. **SENATOR BAER** had moved that P. 5, Line 19, following, "stricken 45-5-5-5," insert, "45-5-505."

Vote: The **MOTION CARRIED** on an oral vote, with **SENATORS BAER, ESTRADA, HOLDEN, JABS, BISHOP, LORENTS GROSFIELD and ESTRADA**

(proxy) voting yes, and **SENATORS HALLIGAN, BARTLETT, DOHERTY, NELSON AND CRIPPEN** voting no.

Discussion: **CHAIRMAN CRIPPEN,** in voting no, said he had fought against the exclusion of that provision from the law as hard as anyone over the years, but he had a problem applying it here. He did not want **REPRESENTATIVE DENNY'S** bill to be jeopardized.

Motion: **SENATOR HOLDEN MOVED THAT HB 214 BE CONCURRED IN AS AMENDED.**

Discussion: **SENATOR BARTLETT** asked **Valencia Lane** about 45-5-507, "unless the act occurred between two consenting persons 16 or older." She thought that was the incest statute and she was concerned there were some varying in ages. **Valencia Lane** had asked **John Connor,** because she could see no reason to have it one way in one bill, and one way in the other. He said there was a lack of coordination in some bills in two different sessions. He said there was a discrepancy, but he saw no problem. **Valencia Lane** said for the purposes of this bill, they would not have to get into clarifying discrepancies in incest laws. **SENATOR BARTLETT** said it was conceivable that some people who could be convicted of incest but not be covered by HB in terms of a lifetime registration. **Ms. Lane** said HB 157 and this bill read the same because neither addresses the discrepancy. If they change this bill, they would have the affect of changing the other bill in the codifying. The problem is that in 45-5-505, there is an escape clause which says 18 years or older. **Ms. Lane** stated that it listed 16 years of age in the incest statutes and there would be a different penalty in that section. It said, "consent is ineffective if the victim is less than 18 years old."

Vote: The **MOTION CARRIED** on an oral vote with **SENATOR BARTLETT** voting no.

Discussion: It was determined that **SENATOR CHRISTIAENS** would carry the bill in the Senate.

ADJOURNMENT

Adjournment: **CHAIRMAN BRUCE D. CRIPPEN** adjourned the meeting at 12:08 P.M.,

BRUCE D. CRIPPEN, Chairman

JUDY FELAND, Secretary

BDC/jf

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3/14/95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN	✓		
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
wp.rollcall.man

SENATE STANDING COMMITTEE REPORT

March 15, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 214 (third reading copy -- blue), respectfully report that HB 214 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 5, line 19.
Following: "~~45 5 505,~~"
Insert: "45-5-505,"

-END-

97
Amd. Coord.
Sec. of Senate

Sen. Christiaens
Senator Carrying Bill

601201SC.SRF

SENATE STANDING COMMITTEE REPORT

March 15, 1995

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration HB 240 (third reading copy -- blue), respectfully report that HB 240 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 2, line 20.
Following: "council"
Insert: ", appointed by the governor from three candidates nominated by the board of crime control"

2. Page 2, line 22.
Following: "SUPERVISED"
Insert: ", appointed by the governor"

3. Page 4, line 17.
Following: "conclusions."
Strike: "If the"
Insert: "The"
Following: "report"
Strike: "contains"
Insert: "must contain"

4. Page 4, lines 17 and 18.
Following: "legislation," on line 17
Strike: remainder of line 17 through "include" on line 18
Insert: "including"

5. Page 4, line 18.
Following: "legislation."
Insert: "The report must also contain a discussion related to any area of study for which the commission does not recommend legislation and an explanation of why legislation is not recommended."

-END-

Amd. Coord.
Sec. of Senate

Sen. Halligan
Senator Carrying Bill

601137SC.SRF

SENATE STANDING COMMITTEE REPORT

March 15, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 429 (third reading copy -- blue), respectfully report that HB 429 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 1, line 20.
Following: "**record.**"
Strike: "All"
Insert: "Except as provided in 41-5-604, all"

2. Page 6, line 25.
Insert: "NEW SECTION. **Section 10. Coordination instruction.** If both [this act] and House Bill No. 551 are passed and approved and if both include a section that amends 41-5-604, then 41-5-604 is intended to read:

Section 1. Section 41-5-604, MCA, is amended to read:

"**41-5-604. Disposition of records.** (1) ~~All~~ Except as provided in subsections (2) and (5), youth court records and law enforcement records ~~except fingerprints and photographs~~ pertaining to a youth ~~coming under~~ covered by this chapter ~~shall~~ must be physically sealed when the youth reaches ~~the age of~~ 18 years of age.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the ~~above~~ records and files ~~shall~~ not exempt from sealing under subsection (5) must be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, ~~any~~ an agency or department that has in its possession copies of the sealed records ~~so sealed~~ shall also seal or destroy ~~such~~ the copies of the records. Anyone violating the provisions of this subsection ~~shall be~~ is subject to contempt of court.

(4) ~~Nothing herein contained shall~~ This section does not prohibit the destruction of ~~such~~ records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section ~~shall~~ do not apply to fingerprints, DNA records, photographs, or youth traffic records or to records ~~directly related to an offense to which access must be allowed under 41-5-601~~ in any case in which the youth did not fulfill all requirements of the court's judgment or disposition.""

Renumber: subsequent section

-END-

Amd. Coord. _____
Sec. of Senate

Sen. Halligan
Senator Carrying Bill

601149SC.SRF

SENATE STANDING COMMITTEE REPORT

March 14, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 357 (third reading copy -- blue), respectfully report that HB 357 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Sen. Estrada
Senator Carrying Bill

591250SC.SPV

SENATE STANDING COMMITTEE REPORT

March 14, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 84 (third reading copy -- blue), respectfully report that ~~HB~~ 84 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

SEN. JABS
Senator Carrying Bill

591248SC.SRF

SENATE STANDING COMMITTEE REPORT

March 14, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 356 (third reading copy -- blue), respectfully report that HB 356 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

SEN. ESTRADA
Senator Carrying Bill

591250SC.SRF

Post-It™ brand fax transmittal memo 7671 | # of pages ▸ 1

To Roger Somerville	From John Campbell
Co. Capitol Station	Co.
Dept. H O 78	Phone # 883-2661
Fax # 1-900-225-1600	Fax # 883-4003

3-14-95 HB 256

Dear Roger & Committee Members:

My name is John Campbell. I am the water and sewer superintendent for the City of Polson. I am also an 18 year veteran of the Polson Fire Dept. and Jaws of Life.

I felt I should write to you when I heard of your bill to strengthen Drunk Driving Laws. I would like to give my full support to HB 256.

I became interested in current DUI Laws and how to make them tougher about 5 months ago. On Aug. 19 1994 my sixteen year old daughter, Jana Campbell and her friend Anita Myers were coming home from the rodeo in Kalispell. Their day of fun was ended when they were hit head on by a drunk doctor. He crossed a double, double yellow line to pass at a speed of 85 to 90 mph. This doctor was the head of the emergency room of Kalispell Regional Hospital. His blood alcohol level was .23 ! Anita died instantly but Jana suffered for two days at the hospital before dying. This doctor has slipped through the system for years. Even though he admitted guilt last week to two counts of deliberate homicide, when this is all over he still will not have a DUI on his record.

You should all be commended for your efforts to make these laws tougher. All Montana will benefit from your work.

Sincerely: John Campbell

My name is Jill Campbell. My daughter was only 16 on Aug. 19 1994 when DR. John Miller choose to drink and drive. Not only did he take my only daughter, but he took her good friend Anita's.

I can not help but wonder if our DUI laws were different maybe I would not have gone through two days of hell. Watching and praying that Jana would regain conciousness and knowing that the doctor that did this was still walking around free. You never think something like this can happen to you.

If you pass HB 256 and it can stop just one family from going through what we had to, it will be well worth it.

On Section 3 #5, if you could include somewhere to have part of the money go toward buying hand held breath analysis machines for officers. If in 1994 officers had one of these in there car Dr. Miller might not have gotten out of his DUI. Plus in 1988 and 91 his careless driving tickets could have been DUI'S and he might have been off our roads.

Thank You; Jill Campbell

Proposed Amendments to House Bill 256
Presented by Chemical Dependency Programs of Montana

Page 1, line 19, after "well-being" delete remainder of sentence. After "well being, insert "OR UNLESS THE DEFENDANT IS CHEMICALLY DEPENDENT AS DETERMINED BY AN APPROVED PRIVATE TREATMENT FACILITY OR APPROVED PUBLIC TREATMENT FACILITY, AS DEFINED IN 53-24-103, AND THE DEFENDANT VOLUNTARILY COMPLETES AN APPROVED CHEMICAL DEPENDENCY TREATMENT PROGRAM."

Page 1, line 30, delete "AN INPATIENT".

Page 2, line 2, after "53-24-103." Insert new sentence, "THE TREATMENT PROGRAM SHALL INCLUDE FOLLOWUP PROCEDURES DETERMINED NECESSARY BY THE PROGRAM FOR A PERIOD OF AT LEAST ONE YEAR FROM THE DATE OF ADMISSION TO THE PROGRAM."

Page 2, line 16, after "53-24-103." Insert new sentence, "THE TREATMENT PROGRAM SHALL INCLUDE FOLLOWUP PROCEDURES DETERMINED NECESSARY BY THE PROGRAM FOR A PERIOD OF AT LEAST ONE YEAR FROM THE DATE OF ADMISSION TO THE PROGRAM."

Testimony HB 356 and 357
Truth in Sentencing
Sentencing Commission
Hearing House Judiciary
February 13, 1995
Senate Judiciary
March 14, 1995

"Truth in Sentencing" a politically popular phrase but just exactly how can we achieve it and how do we know what we have is not working. Let's take just a moment to take a look at what we have now.

Suppose a criminal offender was sentenced to 12 years in prison. Sounds simple enough and you may assume under the current law this means he or she stays 12 years at Montana State Prison . Not so, our system allows for good time to be applied to reduce the sentence; however, the amount the inmate earns varies widely- 15 days a month if the inmate is involved in an industries program, 13 days if enrolled in school, 3 days if in self improvement and even 10 days per month in maximum security. As you can see the rate that good time reduces time served will change almost daily.

Now where are we with our 12 year sentence. Would you believe under the present system after applying good time and considering the average inmate this would mean given a 12 year sentence the inmate would serve approximately 6 years to discharge.; but given the various good time calculations I just referred to how would anyone including the victim, judge and offender really know the minimum length of time to be served in a correctional institution.

Suppose at this point I've given you a basic idea of how to calculate good time and you feel more comfortable with the system. But hold on because we are not done yet. Actually the offender with the 12 year sentence may not serve the six years.

Why, because the system also allows for parole. So let's take another look at the 12 year sentence. If the sentence is 12 years we must first know if the judge imposed a dangerous designation if not then the offender is eligible for parole in three years. But not so because the statute requires that good time apply to parole eligibility which means the offender would be eligible in 1 1/2 years.

What has this all done to our original sentence of 12 years. Essentially it is possible that a 12 year sentence could mean only 1 1/2 years in prison or less as an inmate within 2 years of parole is eligible for pre-release placement.

If I have confused you at this point, let me throw a few other points in. Actually, an offender sentenced to an longer period will be eligible for parole in 17 1/2 years and a life sentence could actually mean 15 years under the current law.

Where has all this gotten us. According to Corrections Yearbook statistics Montana's average length of sentence is 150 months which is the highest in the United States. In addition, our average time served of 44 months is the longest of the eight mountain states. However, our percentage of sentence served is below average. Consequently, Montana's criminal offenders, when compared to the performance of other states, serve a significant portion of their sentence. But given our length of sentence the public sees a system in which the offender serves only a small percentage of the prison sentence.

I hope this example has described the problem. The Governor, the Department and the Governor's Council on Corrections and Criminal Justice believe HB 356 begins to provide solutions. If passed the bill would reform the good time system to essentially go to "bad time". An inmate would receive a flat day for day good time grant and would lose the good time only for disciplinary reasons. So up front all would know a sentence of 12 years

EXHIBIT 3
DATE 3-14-95
HB 356, 357

would mean a minimum of 6 years in the institutional system. If the inmate incurred disciplinary violations the time would increase. In addition, the parole eligibility would be governed through a flat 25% which essentially equals the present dangerous designation requirement. Finally, by the end of January 1997 good time would be eliminated entirely for any offender sentenced to prison.

So if you accept this legislation after January 1997 an offender sentenced to 12 years would either serve the 12 years or at least 3 if granted parole during the first year of eligibility and be on parole supervision for 9 years.

You might wonder what is the impact on our overcrowded system. That has been taken into consideration. This bill is a TRUTH bill not a mandatory sentencing bill. The legislation was designed to simplify sentencing so everyone could understand but do so in a way that allowed us to operate under within the resources requested through the Governor's executive budget. The first steps to reform good time and move to a flat percentage for parole eligibility reflect a neutral impact on populations. The step of removing good time depends largely on the sentencing patterns of Judges. If judges continue to sentence under today's length of sentence then the corrections population expansion will be dramatic. If ,however, judges respond to the elimination of good time and flat parole eligibility then the average length of sentence will drop and the impact on prison population will be more controlled.

However, can we just predict a change in sentencing patterns will be forthcoming, will the elimination of good time have a negative impact on rehabilitation, and do we really know what the public believes are appropriate penalties for criminal behavior. I would say no and that is why HB 357 which establishes a SENTENCING COMMISSION is critical to the task of reforming our criminal justice system to meet public expectations

and accomplish truth in sentencing .

Crime, punishment and public expectations are all important topics to our own personal safety, how we invest limited resources and the kind of society we create for our children. I believe we would all agree that in order to be effective our criminal justice system must be firm, fair and decisive. Criminal offenders must be held accountable a some must be separated from society for life. But the hard part is how to achieve this goal while continuing to recoginize the individual freedom, circumstance, and choices involved in human behavior.

To make our discussion even more challenging let me put forth a few examples:

If if were to describe a criminal offense which invovled deliberate stalking and a premeditated viscious murder I'm guessing this committee will have alot of common ground regarding the appropriate penalty.

However, if I described a criminal offense which included an unemployed alcoholic, from an abusive family who out of negliegence in a vehicle or in a bar fight caused the death of an innocent victim the picture may not be so clear.

If I described a offender who is 19 but has committed two previous burglaries or an offender who has 3 childern and a drug habit and is found guilty of felony theft again the answers may not be so clear.

All these criminal acts are wrong and deserve firm and fair punishment from society; but as well, each involves a myraid of individual circumstances that may need to be considered before we pass judgment.

EXHIBIT 3
DATE 3-14-95
HB 356, 357

This may seem as a long way around to get to HB 357; but in all the rhetoric about crime have we really taken the time to ask those we serve to help develope the appropriate penalties. Have we taken the time to ensure those we serve have the information necessary to make informed decisions about something as important and costly as crime and punishment.

HB 357 establishes a sentencing commission whoose task is to involve the public at the community level in these important decisions. As we reshape government and work to respond more effectively to the public isn't it time we quit guessing and established a process to really ask and then build a system to respond to those wishes.

HB 356 & 357 provide that opportunity for a thoughtful approach to give guidance to judges, evaluate good time, consider correctional resources to improve public safety and the restoration of victims of crime. Consequently, on behalf of the Governor and the Department I hope you will vote do pass on HB 356 &357.

HB 84 Testimony of Dan Anderson, Administrator, Mental Health Division, Department of Corrections and Human Services.

The purpose of this bill is to clarify the authority of the Director of the Department of Corrections and Human Services with regard to the placement of certain persons who have been convicted of crimes and sentenced to the Director's custody.

It applies to individuals who have been found guilty of a crime but who, at the time of commission of the crime, were mentally ill to the extent that they could not appreciate the criminality of the act or could not conform their behavior to the requirements of the law. The Judge may sentence these individuals to the custody of the Director for placement.

HB 84 makes clear that the Director has the discretion to place the individual in a correctional or mental health institution and that, based on changes in the person's condition, can transfer the individual between institutions.

It is important when a convicted criminal is placed in a mental heath facility, such as Montana State Hospital, for treatment that the Department be able to move that individual to a correctional facility when the person no longer needs hospitalization. Similarly, the Director should be able to transfer the inmate back to the State Hospital if his or her psychiatric condition deteriorates at later time.

Current law does not explicitly describe the authority of the Director to make these judgements. HB 84 would allow the Director to determine the appropriate placement based on assessments done by mental health and correctional professionals working for the Department.

hb84test.1

TESTIMONY TO THE SENATE JUDICIARY COMMITTEE ON HOUSE BILL 84

Carl L. Keener, M.D.

Medical Director

Montana State Hospital

House Bill 84 would allow the Director of Corrections and Human Services to transfer individuals sentenced as guilty but mentally ill to the most appropriate setting. Individuals who might need transfer from the hospital to the prison fa11 in three main groups:

1. Those who were misdiagnosed initially or quickly recover from any mental illness soon after being placed at the hospital.

2. Those who have a mental illness but refuse to cooperate with treatment.

3. Those who do not respond to any treatment, such as personality disorders and delusional disorders.

Individuals who might be transferred from the prison to the hospital include those who have shown symptoms of mental illness and who have been at the prison but need to be transferred back to the hospital for appropriate treatment.

We want to provide treatment for those who need it; however, it interferes with the mission of Montana State Hospital to have people sentenced there who no longer need treatment, who refuse to cooperate with treatment or for whom no known treatment is available. On the other hand, anyone sentenced for the commission of an offense, but who suffered from a mental illness at the time, will benefit from transfer to the hospital for immediate treatment when symptoms of mental illness recur. Evidence continues to accumulate supporting the benefit of immediate intervention when signs of mental illness first appear.

I firmly support House Bill 84 which I think provides not only for the best treatment of individuals with mental illness but also provides for the most cost effective intervention. I think this bill is particularly helpful for those individuals who may have been sentenced as guilty but mentally ill who later show no signs of mental illness. Those individuals are best served if released from the prison where at the time of release they can be channeled through appropriate programs of supervision and accountability. Those who have a mental illness, when released, are best served by discharge from the hospital to appropriate community services such as a mental health center where they can continue to get treatment as outpatients.

AMENDMENTS TO HB 74

In response to the disappointment over committee action on HB 74 which strikes me as putting the interests of Insurance Companies and Trial Lawyers ahead of taxpayers, I would ask the committee to reconsider its action and amend the bill as follows:

Title, line 7: strike "impose economic sanctions"

Insert: "Assess the reasonable public expenses of impanelling the jury, including jury fees and mileage expenses paid or owing under 3-15-201 and other costs as may have been incurred by the court"

Line 7: following "the"

Insert "plaintiff's or the defendants"

Line 22 strike: "impose economic sanctions"

Insert: "Assess the reasonable public expenses of impanelling the jury, including jury fees and mileage expenses paid or owing under 3-15-201 and other costs as may have been incurred by the court"

Line 23, following "the"

Insert: "plaintiff's or the defendants"

Amendments to House Bill No. 429
Third Reading Copy (blue)

Requested by Senator Crippen
For the Committee on Judiciary

Prepared by Valencia Lane
March 13, 1995

1. Page 6, line 25.
Insert: "NEW SECTION. **Section 10. Coordination instruction.** If both [this act] and House Bill No. 551 are passed and approved and if both include a section that amends 41-5-604, then 41-5-604 is intended to read:

Section 1. Section 41-5-604, MCA, is amended to read:

"**41-5-604. Disposition of records.** (1) ~~All~~ Except as provided in subsections (2) and (5), youth court records and law enforcement records ~~except fingerprints and photographs~~ pertaining to a youth ~~coming under~~ covered by this chapter ~~shall~~ must be physically sealed when the youth reaches ~~the age of~~ 18 years of age.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the ~~above~~ records and files ~~shall~~ not exempt from sealing under subsection (5) must be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, ~~any~~ an agency or department that has in its possession copies of the sealed records ~~so sealed~~ shall also seal or destroy ~~such~~ the copies of the records. Anyone violating the provisions of this subsection ~~shall be~~ is subject to contempt of court.

(4) ~~Nothing herein contained shall~~ This section does not prohibit the destruction of ~~such~~ records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section ~~shall~~ do not apply to fingerprints, DNA records, photographs, or youth traffic records or to records ~~directly related to an offense to which access must be allowed under 41-5-601~~ in any case in which the youth did not fulfill all requirements of the court's judgment or disposition.""

{*Internal References to 41-5-604: None.*}
Renumber: subsequent section

DATE 3-14-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB 84, HB 256, HB 345
HB 356, HB 357

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Brenda Nordlund	DOJ	HB256	X	
John Mercer	HD 74	HB256	X	
John P. Campbell	Polson	HB256	X	
John Connor	MT County Attys Assn Dept of Justice	HB356 HB357		
James A. Loftus	MT FORE DIST ASSN	HB256	X	
Norma Jean Boles	DPHS	HB256	X	
W James Kembel	City of Billings	HB 345	✓	
Kathy McGowan	CDPM, MSPOA	HB256	✓	
" "	MSPOA	356 357	✓	
Mike Salvagni	Gallatin County Attorney	356 357	✓	
Jon Richards	self	356 357	✓	
Doug Dorn	Board of Pardons	356-357	✓	
Janet Cox	MSP	356 & 357	✓	
Dennis Bakewas	Yellowstone Co	356, 357 345	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Dan Anderson	DCHS - MH	HB84	X	
Andrée Larose	Montana Advocacy Prog.	HB84		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10