

MINUTES

MONTANA SENATE 54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON STATE ADMINISTRATION

Call to Order: By **CHAIRMAN ETHEL HARDING**, on March 17, 1995, at
10:30 AM

ROLL CALL

Members Present:

Sen. Ethel M. Harding, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. Mike Foster (R)
Sen. Don Hargrove (R)
Sen. Vivian M. Brooke (D)
Sen. Bob Pipinich (D)
Sen. Jeff Weldon (D)

Members Excused: N/A

Members Absent: N/A

Staff Present: David Niss, Legislative Council
Gail Moser, Committee Secretary

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

Committee Business Summary:

Hearing: HB 304
Executive Action: HB 563 BE CONCURRED IN AS AMENDED

{Tape: 1; Side: A; Approx. Counter: 62.4}

HEARING ON HB 304

Opening Statement by Sponsor:

REP. MARJORIE FISHER, House District 80, Whitefish, said the main part of HB 304 is in its title, "an act authorizing the department of corrections and local government entities to contract for the design, financing, construction, and operation of regional correctional facilities," and it provides for contract terms and a time limit on contracts. **REP. FISHER** said the Montana State Prison in Deer Lodge was built for 850 inmates with a cap of 1,350, and there are 1,361 inmates there now. She said that with the "2-3 strikes you're out" legislation, the

"truth in sentencing" legislation, etc., it is apparent more facilities will be needed. The Department of Corrections has made a determination that it would be economically feasible and cost-effective to have prisons which would house 200-500 people. **REP. FISHER** stated that the City of Great Falls has passed a bond issue to build their section of a regional correctional facility, and allow the state to build the other part of the facility. The state and local government would join together contractually to operate the facility. She believes there are many advantages to using this method to address corrections issues, and one advantage would be reduced transportation/travel costs for both the state and family members of prisoners.

Proponents' Testimony:

Rick Day, Director of the Department of Corrections and Human Services, gave the secretary (**EXHIBIT 1** and **EXHIBIT 2**) to distribute to the Committee members. He said HB 304 is intended to provide the Department of Corrections and local governments the statutory structure needed to develop shared correctional facilities. The need for expanded correctional facilities is clear at both the state and local level. The concept of regional correctional facilities is supported by the Governor and the Department of Corrections. **Mr. Day** said a key to this concept is that projects be approached with a willingness for each government unit to accept its own cost and responsibilities. **Mr. Day** described some of the many advantages for both the state and local government in using the concept of regional correctional centers including the following:

The state would gain hard cell capacity without adding to the on-site population of Montana State Prison.

Staff members of the regional correctional facilities will be full-time county employees.

The facilities will be located throughout Montana which will save on transportation costs and be more reflective of the state's rural nature and size.

State and county revenues can be pooled allowing counties necessary operating capital as well as a greater variety of inmate programs and other resources.

Counties will qualify to utilize health care and pharmacy programs the state currently operates.

Additional bed space will be available to house federal inmates which will assist in offsetting the cost.

Mr. Day explained that further addition to Montana State Prison is not as simple as constructing another unit, as the present support structures involving food service, office space, class rooms, etc., are all at maximum capacity. **Mr. Day** described a

cost comparison of constructing a new 448 bed stand-alone prison (not including staffing) at a cost of \$71.5 million, and four regional prisons, on a scale of that proposed at Cascade County, would provide 608 beds at a cost of \$32.1 million. HB 304 and the regional prison concept will provide an opportunity to demonstrate that state and local governments can work together to use limited resources more effectively.

Beth Baker, Department of Justice, spoke on behalf of the Attorney General's Law Enforcement Advisory Council. She said they believe that HB 304 is consistent with the policy of the legislature enacted in 1991 to create possibilities for community corrections.

John Strandell, Undersheriff of Cascade County and Chairman of the Subcommittee on Regional Corrections Facilities, said for the last two years he has been involved in the planning stages of the local Cascade County Jail. He said the proposition to the voters in November for the county jail was in part successful due to the proposed partnership with the state. **Mr. Strandell** said many of the concepts Mr. Day spoke of have come true during their planning process for their facility, and he believes this to be an innovative and workable solution to the correction problems in the state.

Charles Brooks, speaking on behalf of Gordon Morris and the Montana Association of Counties, said they support HB 304.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SEN. JEFF WELDON asked what sort of process would go on at the local level to involve community members and where the regional facilities would be located. **Mr. Day** said community support is part of the key to this concept. He said the first step in the process is that it takes a bonding vote of the public in the area, and that passage of a bond indicates an overall acceptance of the plan in the community. **Mr. Day** added that this bill is flexible and other options may be available. He said one option being considered in the Missoula area is a "design bill", which would not necessarily require bonded dollars but would involve a hearing process.

SEN. WELDON asked Rick Day if there are possibilities of existing buildings being remodeled in addition to new facilities being built. **Mr. Day** stated there is flexibility and there could be combinations.

SEN. BOB PIPINICH asked Rick Day to comment on the facilities at Warm Springs and Galen and if those facilities are being considered for use under these concepts. **Mr. Day** said yes, and

explained that they have looked at the Warm Springs complex and proposed a complete redesign of the Warm Springs campus including a new state hospital. Part of that proposal requests the ability to convert what is known as the "new forensic building" for correctional purposes upon completion of the new state hospital. He said the building known as the "old forensic building" is already in process of opening as an 80-bed facility. The Galen facilities have been considered but the cost to convert them would be astronomical because they were initially designed as a hospital.

SEN. PIPINICH asked Rick Day for clarification on the number of prisoners that could be housed at Warm Springs. **Mr. Day** said the "new forensic building" would house approximately 196, and the "old forensic building" would house 80.

SEN. KEN MESAROS asked Rick Day if the State Prison would house the most serious offenders, with the somewhat less serious offenders being housed in the regional prisons. **Mr. Day** said yes, but not necessarily crime. He said that inmates who have committed severe crimes that have extremely impacted a community would be handled at the Montana State Prison, as well as inmates with behavior problems which make them difficult to handle locally.

SEN. MESAROS asked John Strandell to describe the process that Cascade County experienced through the advisory council and how they identified their community's needs. **Mr. Strandell** said a local citizen's committee was formed which consisted of about 20 members who were involved with every part of the planning process. A study was done which utilized the resources of a local architect, and when the type of facility was decided upon, informing and educating the community was the next step. He said he believes the community education is what provided the strong support on the bond issue. **Mr. Strandell** added it has been a two-year process.

SEN. DON HARGROVE asked Rick Day if HB 304 would provide the Department of Corrections authority to proceed with long-range planning responsive to the legislature for money. He also asked Rick Day for a general overview of what is needed in Montana and to further comment on concerns regarding levels of penalties and types of offenders and future population concerns. **SEN. HARGROVE** also asked Rick Day, if HB 304 passes, what would be the first actions taken in the first facilities. **Mr. Day** said much of the actual planning was through the Governor's Council on Corrections and Criminal Justice. A team of corrections professionals was brought together, and they also received assistance from the National Institute of Corrections on the initial planning for this concept. **Mr. Day** added that another grant has been received from the National Institute of Corrections to move to a more fine-tuning process. **Mr. Day** said that as far as the future of corrections, regarding populations, through the year 2005 (noting reservations on predicting populations beyond four years due to

the many factors involved), and with the Governor's budget as proposed, there would be about 804 beds through the year 2005. The intention of the regional proposal is to aid the correction system to respond appropriately by providing accommodations at various levels i.e., the probationary level up through maximum security.

SEN. HARGROVE asked Rick Day if he feels free to proceed with an overall plan based on HB 304. **Mr. Day** said HB 304 will definitely help and funding is also coming along, but there is still some distance to go in that area. He said HB 304 provides the statutory authority to pursue options he discussed earlier.

SEN. HARGROVE asked Rick Day if tougher penalties such as "two-strikes-you're-out" increase or decrease the prison populations over a ten year period. **Mr. Day** stated the population will clearly increase because of that sort of legislation.

SEN. VIVIAN BROOKE commented that this concept is interesting to her in that county jails do not provide services such as education, counseling, and work opportunities that Montana State Prison does, and she asked if there would be different pods that provide different services for different inmates. **Mr. Day** said he believes the facilities will have a shared common areas and there won't be separation because one is a state inmate and one is a county inmate. He added that this type of partnership will provide effective programs within each regional pod that will benefit all inmates.

SEN. BROOKE asked John Strandell if part of Cascade County's plan includes on-site industry such as the work opportunities at Montana State Prison, i.e., license plates, furniture, and dairy. **Mr. Strandell** said yes, their county plan includes an area designated for industry, and they are working with the Department of Corrections to identify a viable industry for that purpose.

SEN. BROOKE asked Mr. Strandell to comment on their contract amount of \$40 per day per inmate and if he believes that figure is realistic for the next biennium. **Mr. Strandell** said they arrived at their budget by considering the projections for operating a county facility and the projections for operating a state pod including program areas and housing of inmates.

SEN. BROOKE asked John Strandell how long that figure would meet their needs. **Mr. Strandell** said it is projected for 1997 costs which is when the facility will open. He added there will likely be escalated costs based on services provided within the facility, but they will work with the state to control those costs.

SEN. BROOKE asked Rick Day if HB 304 provides an allowance for a private-for-profit entity contracting to run one of these facilities. She referred to page 3, line 14 and the reference to "local government entities or private providers" being involved in negotiations. **Mr. Day** said he doesn't believe the legislation

allows the Department of Corrections to contract directly with a private operator, but they have tried to ensure that the local government entity can deal with whomever they choose. The state's relationship is with the local government entity.

Mr. Day added that the House did add an amendment to provide additional flexibility, but he doesn't believe there is an intention for the state to contract directly with a private company for regional facilities.

SEN. WELDON commented that in the area concerning community willingness and local approval there are several steps the state must go through before a contract is granted, and one of them is that the local governing body must approve the facility and the contract. He referred to **Mr. Day's** comment that often times they anticipate local voter approval through a bonding ballot measure.

SEN. WELDON asked Representative Fisher for her opinion on going one step further and putting in the bill a requirement that, as a prerequisite to the contract, local electorate approval of the facility be obtained by way of a bonding requirement or a referendum. **SEN. WELDON** said his reason for asking this question is that, because of the experience in Missoula County, he wonders if they would ever actually see a local governing body approve a contract because of significant public outcry. **REP. FISHER** said she could see some problem with that requirement in that it would delay the process for quite a period of time in waiting for the next election sequence. She said she believes if there was a significant outpouring of non-support, the state would not contract for a partnership in that area.

CHAIRMAN HARDING asked Rick Day if the prison pods would house about 76 people. **Mr. Day** said the Great Falls design is for 76 single beds or 150 double beds. The single/double combination is how they will ask all of them be designed, but he added that they will not dictate to the local entity the exact size.

Closing by Sponsor: **REP. FISHER** referred to a statement made about the Department of Corrections having a batting average that wasn't very good. She said in the last legislative session, there was a \$200 million deficit in the General Fund, and some hard choices were made, including choices to not fund corrections. She said that hopefully this session, Appropriations has put some personnel back in to corrections to help the Department with their job. **REP. FISHER** added that there is a bill in Appropriations for \$9 million in financing that would be bonded out to start work on these pods, and she encourages support for HB 304.

CHAIRMAN HARDING closed the Hearing on HB 304.

Motion: SEN. COLE moved that HB 563 BE CONCURRED IN.

Discussion: SEN. WELDON said he is trying to figure out where HB 563 is coming from. He said there had been argument that it is cost-savings issue, and he referred to a graph that was distributed at the Hearing on HB 563. He said significant increases such as postage - up 110%; fixed costs such as rent, audits, etc., - up 139%; paper costs - up 100% could not be handled any better by the Department of Administration.

SEN. WELDON added that the fiscal note does not reflect any cost for re-engineering computer equipment estimated to be \$150,000.

SEN. WELDON said a more significant consideration is that of a political question as it relates to a check and balance within the Executive Branch and that a check in the system will be lost by placing the warrant writing function with one elected executive. He said the bill sponsor responded to this concern by saying that the computer system will offer that check and balance. SEN. WELDON said the computer may be able to technically ensure everything is balanced out, but it does not address the policy issues involved. SEN. WELDON said that the last reason can only be that it is pure and simple politics -- a Democratic Auditor and Republican Governor and Republican majority in the legislature, and he wonders if that is the real reason this concept is being advanced.

CHAIRMAN HARDING said she didn't think political issues were involved but upon further investigation she realized that the warrant writing function may be a political position. She believes the warrant writing function should be in a non-political environment in the Department of Administration. She said that people in Departments go on regardless of who is Governor. CHAIRMAN HARDING said she initially favored the efficiency and streamlining aspects involved, and she believes there are checks and balances provided in advanced technology.

SEN. FOSTER said based on Chairman Harding's comments, he will vote to get the bill out of Committee. SEN. FOSTER added that Senator Weldon's comments are very well taken, and he will listen closely to the floor debate on HB 563.

SEN. BROOKE commented that she views this as an increasing unbalancing of the three branches of government. HB 563 and other bills this session have expanded the role and scope of the Governor and diminished the legislative role. She said whether the Department of Administration is political or not, it is still under the Governor.

SEN. HARGROVE commented that there must be some undercurrent that he naively doesn't see. He said HB 563 seems like a practical, administrative issue, and a matter of technology keeping things together for efficiency.

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SEN. COLE said he agreed with Senator Foster and will carefully listen to the floor debate on HB 563. He said from an efficiency standpoint, it appears the change would be beneficial.

SEN. WELDON said there's nothing he fears more than an efficient government. He believes it is a strength of our state government that there are several elected executives and, therefore, the power of government is diffused among those independently elected heads. **SEN. WELDON** said that as legislative power is diminished through a variety of schemes, naturally, there is an increase in the power and influence of the Executive Branch. By having two independent executives with spending responsibilities, some checks in the system can be maintained - which is, of course, the opposite of efficiency.

Vote: The MOTION CARRIED 5-3 on roll call vote.

EXECUTIVE ACTION ON HB 327

David Niss handed out amendments to HB 327 (EXHIBIT 3).

Motion: **SEN. PIPINICH** moved that HB 327 BE CONCURRED IN - without amendments.

Discussion: **SEN. HARGROVE** asked what would happen if the Committee voted YES, and what would happen if the Committee voted NO. **CHAIRMAN HARDING** explained that if the Committee voted YES, then without any amendments, HB 327 will carry as is. **SEN. WELDON** said that a substitute motion could be made to amend the bill.

Motion: **SEN. COLE** made a SUBSTITUTE MOTION TO ACCEPT AMENDMENTS (HB032703.ADN).

Discussion: **SEN. WELDON** said he believed the key to this is whether or not the Clerks and the Secretary of State were able to reach some consensus on these amendments. **SEN. WELDON** said he would like to have comments from Angela Fultz and Betty Lund. **Angela Fultz, on behalf of the Secretary of State's office,** said they have spent considerable time going over the amendments, and they are concerned, but they feel that in order to advance the bill, they would concur in the amendments. She stated specifically, they are concerned regarding the rule-making and putting so many procedures directly into law. **Betty Lund, on**

behalf of the Clerks & Recorders, said she worked for several hours with Mr. Niss on the amendments. She acknowledged the Secretary of State's concerns that the Clerks & Recorders have put too much into the law and restricted themselves too far. She said that after studying the NVRA at great length, they did put a lot into the law, but they believe it was necessary. **Ms. Lund** added that in two years, they may come back and say, "We've made mistakes," but she believes they did reach consensus.

SEN. WELDON asked Angela Fultz if the amendments essentially jeopardize Montana's reaction to the NVRA, and if the federal government will sue the state if HB 327 is not passed or if it is passed with the amendments. **Ms. Fultz** said as HB 327 is right now, she does not believe the federal government would take action against Montana. She said the Clerk & Recorders amendments clarify some of the procedures. **SEN. WELDON** asked Angela Fultz about the federal government reaction to the amendments. **Ms. Fultz** said "they would be fine" with the amendments.

Vote: The **SUBSTITUTE MOTION TO ACCEPT AMENDMENTS HB032703**. **CARRIED 5-2** on roll call vote. (**Senator Brooke** was not present during this roll call vote.)

Motion: **SEN. PIPINICH** moved that **HB 327 BE CONCURRED IN AS AMENDED**.

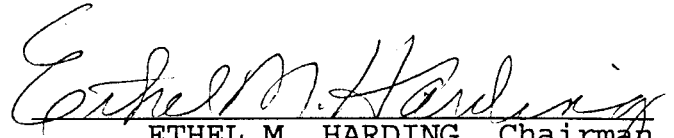
Discussion: **CHAIRMAN HARDING** said she doesn't believe this is a good bill with or without the Clerks & Recorders amendments. She said the threat of being sued by the federal government is not frightening to her. **CHAIRMAN HARDING** said the Senate (U.S.) has passed the unfunded mandate bill and the President is in favor of that, and information she's received from commissioners across the state, is that they believe HB 327 will cost too much money and is an unfunded mandate.

SEN. COLE said although he voted for the amendments, as a sponsor of unfunded mandate bills, he is concerned about the amount of money HB 327 would force counties to spend, and he believes this is an unfunded mandate.

Vote: The **MOTION TIED 4-4** on roll call vote, and **NO FURTHER ACTION WAS TAKEN**.

ADJOURNMENT

Adjournment: 11:45 AM


ETHEL M. HARDING, Chairman


GAIL MOSER, Secretary

EMH/gem

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE

ROLL CALL

DATE _____

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SENATE STANDING COMMITTEE REPORT


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March 17, 1995


MR. PRESIDENT:

We, your committee on State Administration having had under consideration HB 563 (third reading copy -- blue), respectfully report that HB 563 be concurred in.

Signed.


Senator Ethel M. Harding, Chair

 Amd. Coord.

 Sec. of Senate


Senator Carrying Bill

621232SC.SRF

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE
ROLL CALL VOTE

DATE Fri 3-17-95 BILL NO. H3563 NUMBER _____

MOTION: Sen Cae Moved That H356 Be Concurred

~~(CARPIS 5-3)~~

[illegible]

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE
ROLL CALL VOTE

DATE Feb 3-1995 BILL NO. #B327 NUMBER _____

MOTION: SEN PIPINICH MOVED THAT HB327. RE

CONCURRED IN -- WITH NO AMENDMENTS --

SEN. COLE MADE SUBSTITUTE MOTION TO

Accept Amendments		
NAME	A/E	N/O
37703 ADN		

[illegible]

MONTANA SENATE
1995 LEGISLATURE
STATE ADMINISTRATION COMMITTEE
ROLL CALL VOTE

DATE 3-17-85 BILL NO. HS 327 NUMBER

MOTION: SEN PIPINICH MOVED THAT HB327

BE CONCURRED in AS Amended

4-4)

[illegible]

HB 304

SENATE STATE ADMIN.

EXHIBIT NO. 1

DATE 03-17-95

BILL NO. HB304

Question and Answer

QUESTION 1:

If a disturbance occurred at any of the regional correctional facilities or Montana State Prison, who or what group is in a position to respond?

ANSWER:

Montana National Guard - The Governor is responsible for and has the authority to order the National Guard to assist in disasters and emergency services, which include by definition "riots." The Governor may authorize the National Guard to assist in the event of a disturbance at a regional correctional facility and/or Montana State Prison.

QUESTION 2:

Who would defend and pay costs associated with inmate litigation?

ANSWER:

Tort Claims - The State self-insurance fund applies only to State employees and agencies. Each political subdivision is responsible for defending and indemnifying its employees. The party responsible for the costs associated with litigation involving regional prison operations is dependent upon who is named as defendant in the action. For instance, a lawsuit alleging abuse by a local correctional officer would be a suit primarily aimed at and defended by the political subdivision, while a lawsuit challenging placement at a facility would be primarily aimed at the Department of Corrections and Human Services.

QUESTION 3:

Why aren't there specific requirements in the bill such as services to be provided or what happens when the contract is terminated?

ANSWER:

House Bill 304 is intended to allow flexibility and provide a general grant of authority to enter into contracts with local governments. The specifics of each contract will cover such issues as termination of the contract, provision of specific services including medical and rehabilitative programs, and other specific issues more appropriately addressed in each individual contract.

QUESTION 4:

Do you foresee an increase in litigation from inmates protesting where they are incarcerated? Will the conditions differ with regional jails and Montana State Prison?

ANSWER:

The Department's legal unit, which routinely handles inmate litigation for the State, does not anticipate that inmate lawsuits based upon differing conditions of incarceration at regional prisons versus Montana State Prison will be successful.

- Visiting is a privilege, not a constitutional right.
- Recreation and treatment needs have been considered and will be included in the construction and contract.
- American Correctional Association standards are being used to guide the planning and construction.

QUESTION 5:

Could you give us some examples of what the State has agreed to provide in regards to the Regional Jail concept?

ANSWER:

Examples of specific provisions of the Cascade County contract:

- \$40.00 per day per inmate to handle care and custody;
- State retains medical costs;
- State will provide legal advice;
- 30 year term with option to renew;
- guarantee single bed level of inmates (76);
- county employees;
- county is responsible for its own insurance which might actually decrease as they move into a new facility.

QUESTION 6:

Why wasn't expanding the already existing Montana State Prison an option to meeting the prison overcrowding?

ANSWER:

Montana State Prison is too large and contains too many inmates. Correctional experts agree that the optimum size for prisons is somewhere between 300 and 600 inmates. This represents the optimum level to gain the benefits of economies of scale, but reduces the potential difficulties associated with controlling larger populations of inmates who can and do resist authority. Further, to expand the population at Montana State Prison requires not only additional cells but additional support facilities including sewer, water, and administrative support facilities.

QUESTION 7:

What impact will there be on social services in local communities with the regional jail concept?

ANSWER:

There will not be any significant impact on social services because many of the inmates in the regional facilities will be from the region and already have families near the facility. Increased social services costs at Deer Lodge result from the relocation of inmates' families to be near the inmate. Regional prisons relocate the inmate, not the family, and promote stable family relationships in the family's community. Lack of family relationships is recognized as a leading cause of criminal behavior. This bill is pro-family, pro-rehabilitative, and anti-crime.

QUESTION 8:

Has this regional jail concept been incorporated in other states?

ANSWER:

Most states, unlike Montana, have many correctional institutions located throughout the state. Further, a number of states have already implemented regional prison agreements between the state and local governments which are authorized by this bill. This bill represents something new for Montana but is definitely acceptable correctional practice.

DEPARTMENT OF CORRECTIONS
AND HUMAN SERVICES

SENATE STATE ADMIN.

EXHIBIT NO. 2

DATE 03-17-95

BILL NO. HB304

1539 11TH AVENUE



MARC RACICOT, GOVERNOR

STATE OF MONTANA

(406) 444-3930
FAX: (406) 444-4920

PO BOX 201301
HELENA, MONTANA 59620-1301

January 17, 1995

Marc Racicot
Governor
State of Montana
Capitol Station
Helena MT 59620

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

Dear Governor Racicot:

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

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


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

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

Advisory Council Final Report
January 17, 1995
Page 2

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

Sincerely,



Honorable Jeffrey Sherlock
Chairperson

RD/sab

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

EXECUTIVE SUMMARY

I. CHAIRPERSON APPOINTMENTS

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

II. MONTANA CORRECTIONS OVERVIEW

A. Department of Corrections and Human Services

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

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

One Interstate Compact Office

Five Regional Offices

Sixteen District Offices

- Private Contracted Pre-Release Centers

Butte Pre-Release Center

Missoula Correctional Services, Inc.

Great Falls Pre-Release Center

Alternatives, Inc. (Billings)

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

B. Vision and Mission Statements

1. Department's Vision Statement:

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

2. Department's Mission Statement

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

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

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

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

3. Corrections Division (Revised) Mission Statement

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

C. Population Statistics

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

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

D. Crime Rate

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

E. Legislative Discussion

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

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

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

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

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

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

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

F. Crime Bill Discussion

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

G. Miscellaneous

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

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

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

III. REGIONAL CORRECTIONAL FACILITY SUBCOMMITTEE

RECOMMENDATIONS

John Strandell, Chairperson

A. Introduction

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

B. National Institute of Corrections Grant

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

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

C. Budget Information

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

D. Advantages and Disadvantages

The following are many advantages of building regional correctional facilities:

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

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

Problems noted relative to the regional correctional facilities concept were:

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

E. Recommendation

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

IV. SEX OFFENDER SUBCOMMITTEE RECOMMENDATIONS

Mike Salvagni, Chairperson

A. Introduction

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

B. General Discussion Regarding Sex Offenders

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

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

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

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

C. *Lifetime Supervision of Sex Offenders*

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

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

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

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

D. Impact of Lifetime Sentencing of Sex Offenders

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

The subcommittee discussed whether lifetime supervision should be mandatory following a

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

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

E. Lifetime Registration of Sex Offenders

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

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

F. DNA Registration for Sex Offenders

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

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

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

G. Estimated Budget Information Relative to DNA Registration

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

H. Recommendations

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

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

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

V. TRUTH IN SENTENCING SUBCOMMITTEE RECOMMENDATIONS

Judge Ted Lympus, Chairperson

A. Introduction

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

B. Truth in Sentencing and Good Time Information

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

C. Montana Commission on Sentencing

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

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

D. Recommendations

The Truth in Sentencing Subcommittee recommended two pieces of legislation:

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

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

VI. CONCLUSION

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

Amendments to House Bill No. 327
Third Reading CopyRequested by Sen. Cole
For the Committee on State AdministrationPrepared by David S. Niss
March 17, 1995

1. Title, line 13.
Strike: "13-1-202,"

2. Title, line 14.
Following: "13-2-402,"
Insert: "13-2-403,"

3. Page 1, line 19.
Following: "rules."

Insert: "[Section 10] requires the secretary of state to adopt rules providing alternative methods to be used by election administrators to ensure the maintenance of accurate voter registration rolls for elections for federal offices. In adopting the alternatives, the secretary of state shall consider the recommendations of the federal election commission.

[Section 12] requires the secretary of state to adopt rules specifying the time period in which agency-based registration forms must be transmitted to the election administrator of the county of the elector's residence. In determining the time for transmittal, the secretary of state shall consider the number of days remaining before the close of registration."

4. Page 3, line 22.
Strike: "13-2-207(3) or"

5. Page 4, line 28 through page 5, line 18.
Strike: section 2 in its entirety

Renumber: subsequent sections

6. Page 6, line 22.
Following: "completed"
Insert: "application for"

7. Page 6, line 24.
Following: "send"
Insert: "applications for"

8. Page 6, line 26.
Following: "make"
Insert: "applications for"

9. Page 6, line 27.

Following: "The"
Insert: "application for"

10. Page 6, line 29.
Following: "the"
Insert: "application for"

11. Page 7, line 9.
Strike: "(1)"

12. Page 7, lines 10 and 11.
Strike: "Mailed" on line 10 through "notices." on line 11.
Insert: "A notice sent to an elector to whom the notice is not personally given must be sent by nonforwardable, first-class mail, on which is endorsed "Address Correction Requested". If the notice is returned undeliverable within 15 days of the mailing, the application for voter registration will not be placed on the register of electors kept by the election administrator."

13. Page 7, lines 12 through 18.
Strike: subsections (2) and (3) in their entirety

14. Page 8.
Following: line 7
Insert: "Section 7. Section 13-2-403, MCA, is amended to read:
"13-2-403. **Challenge of registration.** (1) Forty-five or more days before the close of registration for an election, three registered electors of a precinct may challenge the registration of an elector by filing affidavits giving the name of the elector whose registration is challenged, the address at which he the elector is registered, and a statement that the affiant has personal knowledge that the elector does not reside at the address where registered.

(2) No later than 3 days after the filing of affidavits as provided in subsection (1), the election administrator ~~must~~ shall send written notice to the elector whose registration is challenged, at the address shown on the registration form. The notice must state that registration will be ~~canceled~~ moved to the inactive list within 15 days of the filing of the affidavits unless the elector refutes the affidavits by submitting proof or a sworn statement that ~~he the elector~~ he resides at the address given on ~~his the~~ the registration form.

(3) The election administrator ~~must~~ shall ~~canceled~~ move to the inactive list the registration of an elector whose registration is challenged under this section 15 days after the filing of the affidavits required in subsection (1) unless proof or a sworn statement as required in subsection (2) is received.

(4) If an elector proves or swears ~~he that the elector~~ he resides at the address given on ~~his the~~ the registration form after ~~his the~~ the registration has been ~~canceled~~ moved to the inactive list as provided in this section, ~~he may reregister by completing a new registration form~~ the elector's registration must be moved to the active list. ~~Such~~ The registration ~~shall be~~ is effective for the next election even though the registration for that election

is closed."

{Internal References to 13-2-403: None.}

Renumber: subsequent sections

15. Page 8, lines 15 and 20.

Strike: "13-2-207"

Strike: "or"

16. Page 9.

Following: line 9

Insert: "NEW SECTION. Section 10. Maintenance of voter

registration roll for elections for federal office -- rules by secretary of state. (1) The secretary of state shall adopt rules specifying a list of procedures from which an election administrator shall choose at least one procedure for the maintenance of accurate voter registration rolls for use in elections for federal office.

(2) The procedures specified by the secretary of state shall include the following procedures, which an election administrator shall follow in every odd-numbered year:

(a) compare the entire list of registered electors against the national change of address files, followed by the appropriate confirmation notice to those individuals whose address have apparently changed;

(b) mail a nonforwardable, first-class, "return if undeliverable-address correction requested" notice to all registered electors of each jurisdiction to confirm their addresses, followed by the appropriate confirmation notice to all returned notices;

(c) a targeted mailing to electors who have failed to vote over an extended period of time by either:

(i) sending the list of nonvoters a nonforwardable notice, followed by the appropriate forwardable confirmation notice to those electors who appear to have moved from their address of record;

(ii) comparing the list of nonvoters against the national change of address files, followed by the appropriate confirmation notices to those electors who appear to have moved from their address of record;

(iii) sending the forwardable confirmation notices provided for in section 8(d)(2) of Public Law 103-31, based on the assumption that failure to vote over a 4-year period may indicate that the elector no longer lives in the jurisdiction; or

(iv) door-to-door canvass.

(3) Any notices returned to the election administrator after using the procedures provided in subsection (2) must be followed by an appropriate confirmation notice that is a forwardable, first-class, postage-paid, self-addressed, return notice. If the elector fails to respond within 30 days of the confirmation notice, the elector must be moved to the inactive list.

(4) A procedure used by an election administrator pursuant to this section must be completed at least 90 days

before a primary or general election for federal office."

Renumber: subsequent sections

17. Page 9, line 26.

Strike: "second"

Insert: "confirmation"

18. Page 9, line 26.

Following: "notice."

Insert: "The notice must be sent by forwardable, first-class mail with a postage-paid, return-addressed notice."

19. Page 9, lines 26 and 27.

Strike: "The notice" on line 26 through "notices." on line 27

Strike: "second"

Insert: "confirmation"

20. Page 10, line 1.

Following: "registration."

Insert: "(1)"

21. Page 10, line 3.

Strike: "(1)"

Insert: "(a)"

Renumber: subsequent subsections

22. Page 10.

Following: line 6

Insert: "(2) Agency-based registration sites must:

(a) distribute voter registration forms with each application for services or assistance; and

(b) assist an applicant in completing a voter registration form, unless the applicant refuses assistance.

(3) The completed application for a voter registration form must be transmitted by the agency to the election administrator of the county of the elector's residence within the time period specified by rule adopted by the secretary of state. All declination forms must be forwarded to the secretary of state within 10 days of the completion of the form."

23. Page 12, line 12.

Following: "._"

Insert: "The secretary of state shall make the certification to the governor as required by this section promptly upon the National Voter Registration Act of 1993 being made discretionary."

24. Page 12, lines 14 and 16.

Strike: "11"

Insert: "10, 12"

Strike: "12"

EXHIBIT 3
DATE 3-17-95
HB327

Insert: "13"

DATE MARCH 17, 1995

SENATE COMMITTEE ON STATE ADMINISTRATION

BILLS BEING HEARD TODAY: HB 304

~~DEB~~ ACTION: HB 563 / HB 327

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
JOHN STRANDELL	CASCADE CANY	304	x	
Gordon Morris	MA CO	304	X	
Charles R. Brooks	Yellowstone County	304	✓	
Beth Baker	Dept of Justice	304	✓	
Marge Fisher		304		

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY