

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE CRIPPEN, on January 7, 1997, at 8:30 a.m., in Senate Judiciary Room - Room 325.

ROLL CALL

Members Present:

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

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Judy Keintz, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: Organizational Meeting
SB 6, 12/27/96
SB 2, 12/27/96
Executive Action: None

ORGANIZATIONAL MEETING

CHAIRMAN BRUCE D. CRIPPEN welcomed everyone back to the Judiciary Committee. He introduced the new committee member, SEN. WALTER MCNUTT, as well as the rest of the staff.

The Judiciary Committee will have full minutes. The hearings will start promptly at 10:00 a.m. No members of the Judiciary Committee are on another morning committee. Written testimony should be presented by all witnesses. All questions should be directed through the chair.

CHAIRMAN CRIPPEN stated that there is very little politics involved in the Judiciary Committee. Members are on the committee because of their ability and expertise to handle the types of bills which are heard in this committee.

During the interim there was some concern about setting schedules for executive action. On major bills, we will post executive action dates. We will start earlier in the morning. Simple bills which have little or no problems may be dealt with after the hearing.

CHAIRMAN CRIPPEN stated he had no problem with absenteeism voting. He asked that absentee voting be in writing. There are a number of different ways this could be handled. The vote could be held open. He asked the committee's thoughts on this.

SEN. MIKE HALLIGAN commented that the rules indicate the committee would need to take a vote on the matter.

SEN. RIC HOLDEN felt that the vote should be held open during executive session due to cramped schedules.

SEN. HALLIGAN suggested that votes not be held open automatically for 24 hours because it would hold up the progression of the bills to the Floor.

Motion: **SEN. HALLIGAN MOVED THE COMMITTEE ALLOW FOR VOTING IN ABSENTIA PROVIDED THAT THE BILL HAS NOT BEEN AMENDED.** The vote is to be given to the Chair or Vice Chair. If there are any changes, the vote in absentia is no longer valid. The vote would then be held open for 24 hours at the maximum.

Vote: **MOTION CARRIED UNANIMOUSLY.**

CHAIRMAN CRIPPEN commented that he would vote last on roll call votes. **SEN. HALLIGAN** stated that when he chaired a committee they rotated the sequence of roll call votes.

CHAIRMAN CRIPPEN explained he would ask each committee member, who presently is not a chairman and has never chaired a committee, to chair the Judiciary Committee at least twice during this session. The reason for that is term limits.

SEN. SHARON ESTRADA questioned what the procedure would be in case of a tie vote, since the committee is composed of ten members. **CHAIRMAN CRIPPEN** stated that would be handled on an individual basis.

SEN. HOLDEN will be responsible for scheduling bills for the committee.

CHAIRMAN CRIPPEN explained that the Legislative Council reviewed a number of bills in December and asked that drafts be made of eight bills to be presented to this committee for a member to take one or two bills. The bills are LC504 to LC511.

Greg Petesch commented the above-mentioned bills are suggested legislation. They are not included in the Code Commissioner Bill because they contain substantive issues which need to be decided.

All but one of these bills are the result of Supreme Court cases where a law has been struck down. Six are Montana Supreme Court cases.

LC504 (**EXHIBIT 1**) is in response to a letter forwarded by Chief Justice Jean Turnage to **Mr. Petesch** from an anonymous woman. This bill would allow a name change to proceed on a sealed record basis where there is a finding that the privacy of the individual is required. Currently under the law, name changes are required to be published. In this case, a battered woman was fleeing an abusive husband. Requiring the new name to be published in the paper defeated the purpose of changing the name. This bill would allow, when the protection of the individual is required, the name change to proceed on a sealed record basis. **SEN. SUE BARTLETT** will carry the bill.

Greg Petesch commented that the bills were ready for introduction and could be picked up in the offices of the Legislative Council.

LC505 (**EXHIBIT 2**) is in response to the United States Supreme Court decision in Doctors Associates v. Casarato. In that case, the Supreme Court held that the provision in the Montana arbitration law which requires any contract subject to arbitration to contain a specific notice on the front page of the document in capital letters and of a certain type was in conflict with the Federal Arbitration Act. This bill would remove that requirement for contracts subject to arbitration which contain that specific designation so that Montana law will conform with the Federal Arbitration Act. **SEN. WALTER MCNUTT** will carry the bill.

Mr. Petesch commented that LC506 (**EXHIBIT 3**) was a complex bill. This bill would clarify concurrent jurisdiction for former prosecutions in another jurisdiction. There have been three Montana Supreme Court cases, the most recent in 1996 and another in 1982, in which the court asked the legislature to look at the statute for clarification purposes. This bill clarifies that for purposes of another jurisdiction, what is being referred to is another state. This bill would not separate concurrent jurisdiction in this state. That is handled elsewhere in the Rules of Civil Procedure. The clarification in this statute on criminal prosecutions only, is that for another jurisdiction the reference is to another state. The court has struggled with this in three separate cases. **Mr. Petesch** has been assured by John Connor, the State's Chief Prosecutor, that this would not cause problems for his office.

SEN. HALLIGAN questioned if the problem dealt with double jeopardy issues? **Mr. Petesch** commented there was a different issue in each of the three cases. They are struggling to find when jurisdiction has attached. This involves double jeopardy in which court is rightfully hearing the matter. **SEN. AL BISHOP** will carry the bill.

LC507 (EXHIBIT 4) simply clarifies that truth is an absolute defense in a criminal defamation case. In State v. Helfrich, the Court struck down a conviction because the truth of the allegedly defamatory matter was not allowed as an absolute defense. This bill will clarify that when a statement is proven true, one cannot be prosecuted or convicted of criminal defamation. **SEN. STEVE DOHERTY** will carry the bill.

LC508 (EXHIBIT 5) is a tax lien case. This provides that in a tax sale proceeding, when a delinquent taxpayer can be identified, then actual notice must be provided to that individual and notice by publication does not suffice where the individual is actually known and his name and address is reasonably ascertainable. **SEN. HOLDEN** will carry the bill.

LC509 (EXHIBIT 6) is a criminal law case. In cases where the defense of compulsion is raised, there is also the defense of necessity. The court struggled with our statutory difference which was an attempt to codify the common law defense of necessity, but only codified half of it. We have added a change where you act to prevent infliction of serious bodily injury or death on yourself or another person, that defense is a complete defense to the criminal action. Before you were only allowed to take action if you were going to be harmed. All that is added here is that you can also act to prevent serious bodily injury or death to another person. **SEN. CRIPPEN** will carry the bill.

LC510 (EXHIBIT 7) deals with the judiciary itself. This clarifies the oath of office for substitute or acting justices of the peace. Currently there is a requirement that each county maintain a list of people who are qualified to serve as an acting justice of the peace, but those people were not required to take the oath of office prior to assuming office. When an acting justice was called in for a justice who was gone from the jurisdiction, that person had not yet taken the oath of office although he was on the list of names of people qualified to serve. All actions taken by that person were invalid. This clarifies the procedure for getting on the list and requires those people who are on the list to take the oath of office at the time they are placed on the list. **SEN. ESTRADA** will carry the bill.

LC511 (EXHIBIT 8) clarifies the procedure applicable to the appeal of irrevocation of a suspended sentence by a justice's court. This clarifies that a jury trial, which is normally available in district court on appeal from a justice court, is not available for an appeal of a revocation of a suspended sentence. **SEN. REINY JABS** will carry the bill.

HEARING ON SB 6

Sponsor: **SEN. CHRIS CHRISTIAENS, SD 23, Cascade County**

Proponents: Barry Michelotti, Sheriff of Cascade County
Gail Kyle, Administrator of the Cascade County
Regional Youth Services Center
John Strandell, Undersheriff of the Cascade County
Sheriff's Office

Opponents: None

Opening Statement by Sponsor:

{Tape: 2; Side: 1; Approx. Time Count: 3.0; Comments: .}

SEN. CHRIS CHRISTIAENS, SD 23, Cascade County, presented SB6 which is an act that revises the offense of possession of a deadly weapon by a prisoner making it an offense for a youth in a youth detention facility. There have been some incidents in which weapons have entered or attempted to be entered into some of the juvenile detention facilities. It is not a major problem at this point, but the county attorney's office has been very concerned about the problem. The bill mentions those items which would be considered weapons.

Proponents' Testimony:

{Tape: 2; Side: 1; Approx. Time Count: 5.0; Comments: .}

Barry Michelotti, Sheriff of Cascade County, spoke in support of the bill. The county jails, approximately ten years ago, did not have a law such as this on the books. That law has been very important. When a juvenile has a weapon in a facility, there is nothing the juvenile authorities or the county attorney's office can do about the problem. This law provides the county attorney to charge the individual and also adds some deterrent because the individual would know he could be charged with the possession of a weapon.

Gail Kyle, Administrator of the Cascade County Regional Youth Services Center, rose in support of the bill.

John Strandell, Undersheriff of the Cascade County Sheriff's Office, rose in support of this bill. Weapons in a detention facility should be treated very seriously.

Opponents' Testimony: None

Questions From Committee Members and Responses:

{Tape: 2; Side: 1; Approx. Time Count: 7.0; Comments: .}

SEN. HALLIGAN asked if a youth charged would be adjudicated pursuant to the Youth Court Act. How would a youth be dealt with who was being transported in a car and had "knuckles" or something like that?

SEN. CHRISTIAENS replied that Mike Rausch from the County Attorney's Office was not able to attend this hearing since notice was short. This bill would give the county attorney's office the opportunity to pursue the fact that there is real harm and danger presented to staff involved which would support a need for further penalties.

SEN. HALLIGAN asked Candy Wimmer, Department of Justice, if a petition would be required to be filed by a county attorney which would charge this offense instead of an informal consent decree or some other informal option less than a petition?

Ms. Wimmer stated she understood the concern that a juvenile could not be charged with possession of a firearm or weapon if the words detention facility are not listed in the offense charge. If someone pulls a weapon or is assaultive in behavior, there is a provision for assault on the books. Under these circumstances the county attorney would charge the youth with a felony offense and the provisions for sanctions would be as broad as offered throughout the Youth Court Act.

Closing by Sponsor:

{Tape: 2; Side: 2; Approx. Time Count: 10.9; Comments: .}

SEN. CHRISTIAENS stated that Mike Rausch would like to have had his testimony presented this morning but was unable to attend. He will make sure the committee receives this written testimony.

HEARING ON SB 2

Sponsor: SEN. RIC HOLDEN, SD 1, Glendive

Proponents: Lois Adams, Attorney for Department of Corrections
Arnie Olson, Administrator of State Parks Division
for Fish, Wildlife and Parks

Opponents: Jerry Driscoll, Montana Building Construction
Trades Council
Betty Waddell, Montana Association of Churches
Carl Schweitzer, Montana Contractors
Association
Don Judge, Executive Secretary of the Montana
State AFL-CIO
Scott Crichton, Executive Director of the ACLU
Sharon Hoff, Executive Director of the Montana
Catholic Conference
John Forkan, President of the Montana State
Building and Construction Trade Council

Opening Statement by Sponsor:

{Tape: 2; Side: 1; Approx. Time Count: 11.2; Comments: .}

SEN. RIC HOLDEN, SD 1, Glendive, presented SB2. He expounded that he was proud to be from a state which has a strong work ethic. Most of the pioneers who came to this state believed that work provided good things. This new legislation would allow the use of inmates to pick up trash along roadways and public parks of Montana. The Department of Corrections could institute a program which would also include the clearing of weeds, the cleanup of graffiti on bridge pillars, and other items related to road clean up and maintenance. This is enabling legislation. It is not mandatory legislation. There is nothing new in Montana about using inmates for labor. We have been doing that for a long time. Inmates work on the ranch, furniture factory, and license plates projects. This is merely an expansion of what we already allow the inmates to do.

In the past our inmate work programs have been focused under both Health and Human Services and the Department of Corrections. With respect to the reorganization of the Department of Corrections and Health and Humans Services Departments last session, this bill would consolidate all the labor inmate work programs under the Department of Corrections. These programs would no longer be under the health and human services area of the law. The heart of the bill is on page 6. Lines 9 and 10, 16 and 17, are the most important parts of the bill. The bill allows the Department of Corrections, for public security reasons, the right to secure inmates while performing work. It does not require that the Department of Corrections do that. We are dealing with minimum and medium security inmates. Some of these inmates are already involved in work programs for the state and are not bound. If these inmates are taken out on the roadways to pick up trash, they may need to be secured. Lines 16 and 17 includes the insertion that the public roads and the public parks would be included into the present statutes. The bill is quite narrow in scope. It only involves four lines of legislation, not including all of the reorganization and consolidation of the work programs under the Department of Corrections.

Proponents' Testimony:

{Tape: 2; Side: 1; Approx. Time Count: 17.5; Comments: .}

Lois Adams, Attorney for Department of Corrections, appeared on behalf of Governor Racicot and Rick Day, Director of the Department of Corrections to support SB2. The Governor's plan has supported public park cleanup and community service projects to be performed by offenders. This provides the opportunity for offenders to contribute back to the Montana communities that they came from. In the Governor's own words he said, "I agree that this type of work program would be generally acceptable to Montanans and could enhance the rehabilitation of inmates by instilling a work ethic among prisoners. I also believe, as the legislation suggests, that work programs for inmates should not be simply a make work program but should provide real benefits

back to the people of Montana." The Department support comes from two areas. There are two parts to the bill. The first is the reorganization separating out DPHHS from DOC industries. We strongly support that. The second part of the bill enables the Department to place inmates, who have demonstrated sufficient reliability and trustworthiness, to work in public areas such as parks or roadways and it gives the Department an increased ability to provide work for offenders as we now do. The Department has a similar piece of legislation. This bill is in keeping with the Department's mission to hold offenders accountable through supervision and work. She recommended an amendment which has been submitted to Valencia Lane. This amendment simply adds language allowing the Department of Corrections to require one correctional facility to purchase industry products from the other correctional facility and also included two minor cleanup changes. Written Testimony - **EXHIBIT 9**.

Arnie Olson, Administrator of State Parks Division for Fish, Wildlife and Parks, stated their department operates 41 state parks across Montana. To maintain this number of parks in a cost effective manner, they have utilized several sources of labor including volunteer, student intern, welfare recipients, court appointed youth doing community service and green thumb workers. In 1996 they utilized over 800 such workers for over 35,000 hours of service. Senate Bill 2 could expand the work force available to them to continue to maintain the parks in a cost effective manner. Handout - **EXHIBIT 10**.

Opponents' Testimony:

{Tape: 2; Side:a; Approx. Time Count: 21.6; Comments: .}

Jerry Driscoll, Montana Building Construction Trades Council, rose in opposition to SB2. At the prison right now 945 prisoners, out of a population of 1311, are working. Those who are not working are in maximum security. He was the Chairman of the Prison Industries Advisory Council. They always made sure that prison industries did not interfere with private enterprise. SB2 states that the furniture made at the prison is sold through a retailer in private business. The prison also sells firewood to California which is trucked out of Montana by a common carrier. If the intent of the Department is to pick up trash and remove graffiti, the bill should so state. The bill, however, on page 4, lines 17 and 18, states "provide for the repair and maintenance of property and equipment of institutions, public roads, and public parks". Maintenance is not picking up trash or removing graffiti. The TVs and recreational equipment at the prison were purchased with the inmates welfare fund. Anything sold pays for the program plus 15% for the welfare fund. The prisoners have a job. The prisoners look forward to getting out of their cells and doing something. If you want to punish prisoners, don't let them out of their cells. If the bill is

amended to remove graffiti and pick up trash, he would not have a problem with it.

Betty Waddell, Montana Association of Churches, presented her written testimony in opposition to the bill. (EXHIBIT 11)

Carl Schweitzer, Montana Contractors Association, rose in opposition to the bill. On page 4, line 17, the bill contains "the providing for repair and maintenance of property and equipment of institutions, public roads, and public parks by inmates." If the goal is to have them pick up trash and eliminate graffiti, why not change "repair and maintenance of property" to "pick up trash and repair graffiti." They see this as the camel's nose getting under the tent and taking work away from taxpayers. The other section they have a problem with is line 26 which provides for the manufacture by prison industries of highway, road and street marking signs. There currently are a number of businesses in Montana which make street signs. The state will be providing competition against private industry which already exists in Montana. Handout - EXHIBIT 12

Don Judge, Executive Secretary of the Montana State AFL-CIO, rose in opposition to the bill. He did not feel a need to repeat what had already been said. He thanked **SEN. HOLDEN** for contacting them early and asking them to support the legislation. They have no problem with prisoners performing work in which there is a trade or occupation which is learned which will provide them opportunity to employment once they are released from prison. They do have a problem when that work involves taking jobs away from decent, hard paying citizens of the state of Montana. They also have a problem when people are being trained for jobs which do not exist. They are taking jobs from workers who would normally be doing the maintenance and construction work for streets and roads and training the prisoners to go out and do that work. The jobs will not exist because more prisoners will be doing the work. Montana has had quite a year. We are now the state that is known as the "Land of the Freeman", "The Home of the Unabomber", and protected on all four sides by the "Militia of Montana" and now we can add "We have chain gangs." We need to think about the image we are portraying for the state.

Scott Crichton, Executive Director of the ACLU, presented his written testimony in opposition to SB2. (EXHIBIT 13)

Sharon Hoff, Executive Director of the Montana Catholic Conference, commented that due to the time change of this hearing she did not hear the opening of this bill. However, if indeed this bill would allow for chain gangs, they would object and hope the committee would give the bill a do not pass.

John Forkan, President of the Montana State Building and Construction Trade Council, spoke in opposition to SB2. For the last four or five sessions inmate labor has taken up quite a bit

of time in the legislature and each session it comes up in an expanded roll.

Questions From Committee Members and Responses:

{Tape: 2; Side: b; Approx. Time Count: 12.4; Comments: .}

SEN. ESTRADA asked Jerry Driscoll to explain the funding programs at the prison.

Mr. Driscoll explained the prisoner's welfare fund. When an inmate is in prison, he cannot have money. People on the outside can put money in his account. If he works, he gets a dollar a day. If the inmate is in a certified prison industries program, the prisoner then makes minimum wage less room and board. A lot of money comes from the hobby shop. Some inmates make horsehair bridles. When sold, fifteen percent of the money goes into the welfare fund.

SEN. ESTRADA questioned if the welfare fund was the same as the canteen fund?

Mr. Driscoll commented that if there were profits from the canteen fund it would go to the welfare fund. Cigarettes and candy need to be purchased from the canteen. When a profit is made it goes to the fund to buy recreational equipment. The warden decides.

SEN. ESTRADA stated her understanding is that the majority of the televisions and the satellite dish costing \$42,000 were purchased with monies from the canteen fund. They do not work for that. That is a kickback from the telephone companies.

Mr. Driscoll replied they do make a lot of money on the telephone. An inmate needs to make collect calls and they receive a lot of money from the phone companies.

SEN. ESTRADA stated that her understanding from his testimony is that inmates paid for their television sets by working. There is \$200,000 plus from the telephone company kickbacks which goes into funds to buy them these items.

SEN. LORENTS GROSFIELD stated that Lois Adams mentioned in her testimony that this work would be available to inmates who demonstrated reliability and trustworthiness. That is not in the bill. He asked if the Department of Corrections was involved in the drafting of the bill?

Lois Adams commented that they did not draft this particular bill.

SEN. GROSFIELD continued that from the perspective of public security, this language may be necessary in the bill. He asked

if it was the intention of the Department to only use inmates who demonstrated their reliability and trustworthiness.

Ms. Adams confirmed that the Department always keeps public safety in mind when taking an inmate outside of the fenced perimeter.

SEN. GROSFIELD asked if there are any cases wherein they use the light weight cables described in the briefing paper by **SEN. HOLDEN**.

Ms. Adams stated they do not use physical restraints. They use staff security at this point. What this bill will allow them to do would be to use some type of restraint. The minimum being staff security. As far as the chain gang issue, she stated the Department is not interested in the traditional chain gang type of activity which would be inmates chained up, marching up and down roadways. The reasons would be public safety reasons as well as staff safety. The Department's position is rehabilitation through work not humiliation. They are looking at the ability to take an inmate who may be sitting in a cell, being totally unproductive, and deciding to send him out to clean property, pick rocks, etc.

SEN. GROSFIELD commented that the language on page 4, line 17 referring to repair and maintenance of property was fairly broad and could mean major repair jobs that otherwise would be in the private sector. He asked **SEN. HOLDEN** what his intent was with that language and whether he would consider modifying that language.

SEN. HOLDEN commented that perhaps the opponents could come up with an amendment which could be included in the bill.

SEN. SUE BARTLETT, referring to **SEN. HOLDEN's** handout (EXHIBIT 14) which addressed outside work crews, asked **Ms. Adams** if this was part of the budget request which the Department of Corrections has submitted to the legislature?

Joe Williams, Fiscal Bureau Chief for the Department of Corrections, stated that it is in the executive budget. It is new proposal #22.

SEN. BARTLETT stated that **SEN. HOLDEN** commented that prisoners on the work crews would be served lunch at the work site and would be provided with water and toilet facilities on site. The proposal #22 simply addresses funding for supervisors, officers and vans. She asked Mr. Williams if there would be costs for providing toilet facilities, lunch at the work site and water for the work crews.

Mr. Williams answered that the current operating expenses would provide for those expenses. The fiscal note mirrors their executive budget request. They asked for a total of \$347,733 in

fiscal year 1998 and \$241,513 in 1999. That is for 9 FTE and operating expenses. Equipment in the first year would be \$102,000 of that. They currently provide lunches to the ranch. They are expecting to use five, 15 man crews. Any crews used on site would have one officer for every 15 inmate workers and any off site crews would have two officers for every 10-15 inmates. They would have clothing, ID cards, cameras, film, etc.

SEN. BARTLETT stated the new proposal #22 mentioned crews consisting of approximately 12 high and low security inmates. **SEN. Holden's** background paper (**EXHIBIT 15**) mentioned putting medium security prisoners to work. What would be the security level of the prisoners who would be assigned to these work crews?

Mr. Williams stated that should be asked of Warden Mahoney.

SEN. BARTLETT continued that the bill stated the maximum rate of pay for these work crews must be determined by the appropriation established for the program. Does the fiscal note address the additional funds beyond vans, supervisor's salaries, etc. that would be provided to pay the inmates?

Mr. Williams stated there is a pay schedule set at the Montana State Prison and that was included in the executive request. A portion of that is General Fund and a portion is paid from the inmate welfare fund. They had an inmate wage increase recently and that increase is paid by the inmate welfare fund.

SEN. BARTLETT asked for a copy of the pay schedule which has been adopted by the prison.

Mr. Williams confirmed that he would provide the committee with copies of same.

SEN. BARTLETT commented that **SEN. Holden's** paper stated that the program would help both the Department of Transportation and the Department of Fish, Wildlife, and Parks and because of that these Departments can reallocate funds to assist with the purchase of transport buses and security guard pay. She asked **Mr. Olson** if he knew of any plans within the Department of Fish, Wildlife and Parks to set aside some money to reimburse the Department of Corrections for expenditures for buses to transport the work crews and the necessary security guard pay for their supervision.

Mr. Olson commented there was nothing in their budget for that purpose at this time.

SEN. STEVE DOHERTY asked if this would apply only to areas in counties and parks within a limited area around the Montana State Prison or whether this would apply to all correctional facilities of the state of Montana.

Ms. Adams commented that they presently have inmates doing this kind of work at Pine Hills and Montana State Prison. They would

be using this type of work at all of their correctional facilities around the state.

SEN. DOHERTY stated he would like to know in which state parks the inmates would be working. There would have to be a geographical range. How many additional inmates will be able to do this type of work if this legislation passes?

Ms. Adams commented that she could not give an exact number at this time. The increase would be those people not doing anything right now who would be at a security level where they could be outside the fence perimeter.

SEN. DOHERTY commented that at a cost of \$600,000 the committee needed to know how many prisoners would benefit.

Mr. Williams stated they anticipate having five 15 man crews which would mean an additional 75 inmates would be working.

SEN. DOHERTY asked if only the inmates who were reliable and trustworthy would be eligible for the program, why would we chain them?

Ms. Adams stated that it is not the Department's plan to have chain gangs. What they envision are inmates who would be at a security level where they had worked in a relatively secure fashion on the prison grounds. These inmates would have earned the privilege. At other places around the state they would have to have adequate security for the custody level of the offender who was working. If they are minimum security, staff security may be appropriate to ensure the public safety.

SEN. DOHERTY inquired if the Department had any problem with striking the language on page 6, lines 9 and 10, 16 and 17. That is just redundant language to the policy which we would get from the Department of Corrections.

Ms. Adams remarked that lines 9 and 10 were not redundant because they stated that the Department may secure the inmates. In correctional vernacular, securing inmates can be staff secure or physically restrained secure. Lines 16 and 17 would be the pleasure of the committee and the legislature.

SEN. HALLIGAN questioned what the cost would be per inmate for an additional 75 inmates to go out into the field? His understanding is the cost would be a \$347,000 in 1998 and \$241,000 in 1999.

Chairman Crippen remarked that these questions would be addressed in the fiscal note when it was ready.

SEN. HALLIGAN asked **Ms. Adams** if they had considered a pilot project? Perhaps they could try a project for six months where the inmates were not chained.

Ms. Adams commented that in implementing anything new like this the Department definitely looks at pilot programs.

Chairman Crippen asked **SEN. HOLDEN** if these workforces were coming from Montana State Prison in Deer Lodge?

SEN. HOLDEN expounded that this bill involves Montana State Prison inmates. Those prison inmates could be in Deer Lodge, a regional prison in Great Falls or a regional prison in Dawson County. They would expand out from those prisons into a geographical area in such a way that they could go out during the daylight hours and come back in the daylight hours.

Chairman Crippen stated that sooner or later all the state parks in Montana would be included. From a transportation standpoint there is only so far they can travel. He then asked Mr. Driscoll if his concern was primarily with the scope of the work? If the work was simply cleaning the graffiti off of bridges and picking up trash along the highway, would his organization have any problems with this bill?

Mr. Driscoll stated they would not.

Chairman Crippen asked if he had a problem with physical restraints for security purposes.

Mr. Driscoll stated that the people outside the fence are at the dairy and the ranch. He does not object to restraints.

Chairman Crippen observed that **Mr. Judge** objected to the same things as Mr. Driscoll objected to but he also objected to the use of physical restraints.

Mr. Judge remarked that this bill would not limit the use of chain gang structures where several residents will be chained together along the highway or some other public location. Two things apply here. He feels this is not the image Montana wishes to portray. The second thing is the advent of private prisons in Montana. The Department has supported the possibility of going to private prisons. Private prisons will still have prisoners who are incarcerated by the Montana Department of Corrections under contract with a private prison. There would be a massive expansion of chain gang activities through the expansion of private systems in the state.

Chairman Crippen summarized that Mr. Judge and his organization were then opposed to the use of inmates in this manner.

Mr. Judge asserted they did not oppose constructive work in which inmates are performing a service for the state provided they are not taking jobs from people who would normally be employed in those jobs and, hopefully, that they provide some sort of useful service so that when these people get out of incarceration they become productive taxpayers of the state.

Chairman Crippen asked Betty Waddell if the Montana Association of Churches would object to the aspect that this would be non-rehabilitating in nature and would mean further humiliation.

Ms. Waddell asserted they support productive work and rehabilitative activities so that when prisoners leave the prison they have higher self esteem and want to work.

Chairman Crippen asked if she had any information she could provide the committee that this would lower the prisoner's self esteem.

Ms. Waddell stated she could provide research from psychology studies which show that when people are treated in an inhumane way they suffer a lower self esteem.

Chairman Crippen remarked that when offenders are sent to prison they go through an area of great humiliation. He would be interested to know how much more this might add.

Ms. Waddell expounded that some people in treatment need to have a feeling of shame brought to them and sometimes that is therapeutic. If the main goal is to rehabilitate prisoners and have them become productive citizens the goal would be to help them leave prison with the feeling that they can find a job and be productive.

SEN. DOHERTY questioned what the impact would be for the individual taxpayers in the counties at the regional prison level. That budget is very tight in Cascade County.

Mr. Williams asserted that the proposal in the executive budget worked out of the state institutions. They would pay a county a set cost per day for care and custody of inmates.

SEN. DOHERTY felt that this contradicts the earlier testimony that it would be run out of all of the facilities.

SEN. GROSFIELD observed there would be some costs associated with these projects right now. The biennial costs discussed would not be all new costs. Someone is paying for this now. The fiscal note should address this.

SEN. HOLDEN felt that the per inmate cost per day the first year would be \$12.70 and the second year would be \$8.82. There is some overlapping in costs between departments.

SEN. HALLIGAN remarked that this bill is not about whether you support inmates working or whether you do not support inmates working. We have all voted to make sure that inmates are productive. Reoffending is related to self esteem and we are committed to helping inmates come out of prison with skills and competency. This is a bill which could set the tone for the session on a long term solution to make this work.

SEN. ESTRADA asked if the Women's Correctional System in Billings was addressed.

Ms. Adams stated the facilities which the Department of Corrections looks at as their facilities would be Montana State Prison, Women's Correctional Center, Pine Hills, and Montana Youth Alternatives. The regional correctional facilities are a joint project and not under the direct auspices of the Department of Corrections so they are not looking at operating at those facilities right now.

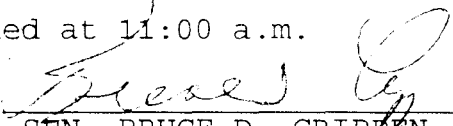
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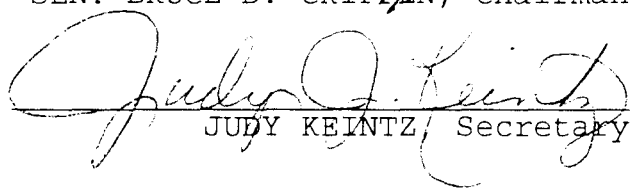
SEN. HOLDEN commented that locking a person in a room is the best way to kill someone's spirit. This bill would help rehabilitate inmates. He stated he looks forward to an amendment from the contractors. Additional handouts - **EXHIBITS 16 AND 17.**

ADJOURNMENT

Adjournment: The hearing adjourned at 11:00 a.m.



SEN. BRUCE D. CRIPPEN, Chairman



JUDY KEINTZ, Secretary