

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION

Call to Order: By CHAIRMAN DON HARGROVE, on February 3, 1997, at
10:00 A.M., in Room 331

ROLL CALL

Members Present:

Sen. Don Hargrove, Chairman (R)
Sen. Kenneth "Ken" Mesaros, Vice Chairman (R)
Sen. Vivian M. Brooke (D)
Sen. Delwyn Gage (R)
Sen. Fred Thomas (R)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: David Niss, Legislative Services Division
Mary Morris, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SR 14, 1/28/97
Executive Action: None

HEARING ON SR 14

Sponsor: CHAIRMAN DON HARGROVE

Proponents: SEN. SHARON ESTRADA, SD 7, BILLINGS
Judy Browning, Chief of Staff, Governor's Office
Karen Peake-Seiler, Helena
SEN. TOM BECK, SD 28, DEER LODGE
Larry Brown, Helena

Opponents: None

Opening Statement by Sponsor:

CHAIRMAN DON HARGROVE reviewed the Legislative process for
confirmation of the Governor's appointees as department
directors. He welcomed Rick Day, Director, Department of
Corrections, and indicated that he will have an opportunity to
make a statement, followed by questions from the Committee, and

that the public will then have the opportunity to ask questions or make comments. He explained at length the hearing format which will be followed.

Rick Day, Director, Department of Corrections, read written testimony attached (**EXHIBIT 1**). He distributed copies of a resume (**EXHIBIT 2**), a list of accomplishments by the Department of Corrections (**EXHIBIT 3**), and a brief history of the Department of Corrections (**EXHIBIT 4**).

{Tape: 1; Side: A; Approx. Time:10:28 a.m.; Comments: None.}

Proponents' Testimony:

SEN. SHARON ESTRADA, SD 7, BILLINGS, reported that the Women's Correctional Center is in her district, and she is the Chairman of the Sentencing Commission, noting that she is not testifying on behalf of the Commission, that she is here as a working member of that Commission, as is **Mr. Day**. She reported that, over the past two years, they have worked very hard on many of the issues that concern the Department of Correction, and she is here in support of this very caring, sincere individual that, in her opinion, is extremely qualified for this position. She referred to the incident that happened in Billings with **Mickey Gamble**, and stated that **Mr. Day** is not **Mickey Gamble**. She urged a speedy confirmation.

Judy Browning, Chief of Staff, Governor's Office, said that **Rick Day** may have the most difficult job in State government because, in the area of corrections policies, you please almost no one. She cited examples of competing interests; we want to lock up all second offenders for life, but, on second thought, when faced with the costs, maybe it is better to put them someplace else that is less costly; we promote boot camps and community release facilities, but, on second thought, not near our community; if someone re-offends, we think prison is the only answer for these people; we want our youth who commit serious crimes to be tried as adults, but, when it comes to sentencing and treatment, we don't want to treat them as adults; we hate the concept of inmates earning good time, which may lead to early release, we would prefer they stay in prison for their full sentences, but, on second thought, that goes back to overcrowding. She indicated that this is a vicious cycle, which is difficult to address, adding that all states have these problems, and are discussing these very issues. She stated that she thinks **Mr. Day** has approached these problems with honesty, extremely hard work, long hours, and a willingness to be very innovative, that he has taken an agency with very few written policies to address some of the most painful issues in dealing with the punishment of offenders, such as escapes, conditions of confinement, standards for pre-release, alternatives for working with delinquent youth, and community involvement with every one of these issues, and has established citizen task forces, a sentencing commission and other alternatives to standard practices of the past. She stated

that he has worked diligently to handle the legacy of the prison riot, which he inherited upon becoming Director, as well as confronting a prison that is bursting at its seams, a product of the State's refusal to address decades of overcrowding. She indicated that she has worked with **Mr. Day** since he was an administrator for the Law Enforcement Services Division, and knows him to be eager and willing to air any problems involving the Department, his budget, policies and personnel. She stated that she represents **Governor Racicot's** strong trust in **Mr. Day**, and his belief that he should be confirmed as Director of the Department of Corrections.

Karen Peake-Seiler, Helena, reported that she is president of a firm specializing in long-term planning and organizational development and that, in May, 1995, **Mr. Day** asked her to facilitate a public process involving victim advocates, correctional officials, sheriffs, law enforcement people, and others, to redesign the Department of Corrections to accommodate the shifting of the juvenile system into the Department, and to decide what that reorganization would look like. She stated that there were one hundred angry, hostile people but that, at the end of two days, they were able to find common ground, and developed a draft reorganizational structure for the Department. She added that, since, they have trained correctional professionals in a unified mission and vision for the Department, and are able to see the progress that has been made. She agreed that there have been mistakes along the way, remarking that they continue to learn, that it is a complex system and requires diligence, which she believes is exactly what **Mr. Day** provides. She added that the corrections system involves issues where opponents can learn a lot from each other, even if they continue to disagree.

She indicated that **Mr. Day** is unwavering in his commitment to the people of Montana, the Department, and his employees, in spite of repeated public criticism from individuals who do not fully understand the depth and complexity of the Department. She said that political leaders of the 60's tried to resolve conflicts by mediating differences but, in the 90's, they merchandise them, often into character assassinations which substitute for measured debate, and that the cultivation of conflict, rather than its resolution, is, in her opinion, powered by self-promotion that does not inspire respect. She indicated that any attempt to rectify Montana Corrections must contend with economic and cultural forces which continue to undermine them, and they need a leader who asks what economic arrangements are necessary to support and sustain an effective corrections system in Montana. She stated that effective leadership can move organizations from current to future states, instill within employees commitment to change, and new cultures and strategies, which will mobilize and focus energy and resources. She added that **Mr. Day**, in her opinion, is such a leader, he has earned her respect and that, as an organizational psychologist, she has worked with several hundred leaders across the United States and abroad, and wholly supports **Mr. Day's** appointment.

SEN. TOM BECK, SD 28, DEER LODGE, noted that Montana State Prison is in his district, and reported that he and **Mr. Day** have had some frank discussions over the years. He stated that **Mr. Day** is an open, up-front person, that they might not always agree on everything, but there are no hidden secrets when dealing with him and, in these days and times, an individual of that character is needed to operate the State's correctional facilities. He then referred to the fact that there has been some controversy in this administration, but pointed out that it all started with the prison riot, and **Mr. Day** was not part of the administration at that time, that **Mickey Gamble** was brought in to offset some of the problems identified at Montana State Prison. He indicated that **Mr. Gamble** was trying to cut the prison population, while the Legislature was compounding the problem every session with legislation adding penalties or new crimes resulting in prison sentences. He added that **Mr. Gamble** also "stepped on his own toe", but that **Mr. Day** appropriately took care of that problem immediately, that there was no delay or procrastination. He then referred to the boot camp incident, and reported that the people working at the camp were convicted of murder, which is usually a crime of passion that is never repeated, and that these inmates are usually model prisoners. He indicated that he does not know what happened or the circumstances involved, but that **Mr. Day** corrected that problem, also.

SEN. BECK stated that he would like to point out some of the good things **Mr. Day** has accomplished, and reported that, during **Mr. Gamble's** administration, the Warden was moved from Deer Lodge to Helena. He indicated that they complained, asking that the Warden be returned to Deer Lodge, and that this has now been accomplished. He reported that major changes have been made in the administration policies at Montana State Prison, that there is now professionalism in the guards, which did not exist before, and that **Mr. Day** deserves the credit for that. He stated that **Mr. Day** has a lot of challenges coming down the road, and this is not the time to change the administrator, that he has been in the trenches and knows what goes on. **SEN. BECK** stated that **Mr. Day** is a good man and a good director, that they may not always agree on things, but they have had a good relationship, and he would support **Mr. Day's** confirmation as Director of the Department of Corrections.

{Tape: 1; Side: A; Approx. Time: 10:41 a.m.; Comments: End of Tape 1, Side A.}

Larry Brown, Helena, stated that he wishes to speak as a proponent for **Mr. Day**. He indicated that they have had differences based on the siting of a pre-release center in Helena, but pointed out that they are not here to debate that incident, they are here to talk about the integrity and respect this position deserves, not only in the Director's position, but also in the State of Montana, as well as being accountable to the taxpayers who pay the bills, and deserve the best that they can get. He said that he debated whether to testify as a proponent

or opponent, but thinks every person deserves an opportunity to defend themselves, and he does not think there is any question that **Mr. Day** has one of the toughest jobs, not only in this state, but also in the country. He added that corrections is not a popular issue, and not a popular place in terms of things that have happened in the last five years, and the publicity that Montana has received. He remarked that **Mr. Day's** leadership has reflected downward, as well as upward, not only on the Governor, but also on the people of Montana. He reported that, regarding the pre-release facility, **Mr. Day** stated "The law is perfectly clear. I can locate a facility anywhere I want and I don't have to answer to anyone." **Mr. Brown** said that, certainly, those kind of statements lead him to question if the Department of Corrections is under control, but that he believes, overall, it is, adding that there have been a number of successes, and he is surprised **Mr. Day** does not have a Saturday morning super-hero crime-stopper show, that he has done a good job in a lot of ways.

He indicated that there is certainly an opportunity to address budgets in this Legislature, pointing out that the Department is put in the difficult position of not knowing how many inmates they will have to deal with, and it is difficult to put that budget together. He then referred to criteria and policies, and the lack of those in the Department, stating that the success of the Department's programs is very questionable and he thinks it would behoove this Legislature, and the Department, to look at these policies, and how the administration, and the networks that have been developed in the individual programs, can address these issues. He indicated he has found that the Department is always trying to play catch-up because they have harder things to do, but that is no excuse. He stated that a lot of money, and people's lives, are dependent on the decisions made by the Department, and he would urge the Committee, as well as this Legislature, to look at this issue from the standpoint of how it reflects on the integrity and the efficiency of the Department, how it ties in with non-profit status, and with privatization, and where it ties in with policy.

He concluded by reiterating that there have been a number of mistakes, that he would ask how many more mistakes have to be made, and how many more victims will they read about in the papers. He thanked the Committee for the opportunity to testify, wished **Mr. Day** good luck in his endeavors, and added that he hopes **Mr. Day** is confirmed very quickly, that it is a tough job.

Questions From Committee Members and Responses:

SEN. KEN MESAROS reported that he was involved with the regional prison issue, specifically in Cascade County, and asked **Mr. Day** what he perceives as the future of the regional prison concept.

Mr. Day stated that he is extremely proud and excited about the possibilities for regional prison development, that he thinks it provides the opportunity for the State to rethink how it has gone

about correctional services across the State. He indicated that this concept moves, out to the communities, the full range of services needed in the interest of public safety, and provides an opportunity to increase jail capacity at the local level, adding that, especially at the State level, they often lose track of how important that is for local public safety, as well as to the State correction services. He reiterated that he feels strongly about the concept, that they have solid proposals, and he thinks the public has spoken very effectively in the cities where it has been presented for their decision. He added that they have proposed an expansion of regional correctional facilities in the State, and are hopeful to site up to five in the next five years.

SEN. MESAROS asked **Mr. Day** to review the boot camp concept, projecting what he sees in regard to that program for the next four years.

Mr. Day stated that he is extremely supportive of the boot camp concept, particularly how it is applied in Montana. He reported that, as they move into the budget process, they will produce reports which reflect statistical information regarding numbers in, numbers out, and numbers returned, but that does not tell the entire story. He indicated that, although they are obviously interested in clear evidence that individuals do not come back into the corrections system, do not again commit crimes, the program has actually had a more significant impact. He reported that individuals in the program have acknowledged more severe criminal activity, leading to the resolution of crimes that would otherwise have gone unsolved, that this is unmeasurable and hard for them to identify, but he believes it indicates the impact of the program and the need to have various responses. He then reported that, as they move that program to the Montana State Prison grounds, they do not plan to re-establish a correctional program in the Swan, that the issues have remained the same regarding transportation, the ability to retain staff, housing, and those issues that came to their attention two years ago. He reiterated that they look forward to moving that operation onto Montana State Prison property where it can be better supported, and they look forward to an increased number of offenders moving to the boot camp, once it is there and stable.

SEN. MESAROS indicated that **Mr. Day** has referred to citizen task forces and more community involvement, and asked him to review where they were in that regard, where they are now, and what has been developed to create more citizen involvement.

Mr. Day responded that there are two key parts, one of which is with law enforcement personnel across the State. He emphasized that he firmly believes, at this point, the Department of Corrections, particularly the sheriffs across the State, have a closer and more cooperative relationship than in the history of the State. He stated that part of this is due to the regional prison program, but that it is also attributed to their joint efforts to manage correctional populations across the State. He

then pointed out that, four years ago, there was no formal public participation process in the Department of Corrections. He reported that they have established advisory councils, bringing together people from all walks of life, including crime victims, in each community where they operate correctional programs, that Pine Hills, Montana State Prison and the Women's Correctional Center are examples where citizens advisory groups make recommendations to improve prison operations. He stated that, the blunt fact is that this was nonexistent, that it does exist today, and goes so deep that, in one instance, a family member of a crime victim is involved in taking a look at Department policies, and offering suggestions as to how they might improve operations. He concluded by stating that he is extremely proud of that public involvement system, and looks forward to it continuing.

SEN. BILL WILSON reported that the Montana Constitution clearly states that incarceration requires rehabilitation, pointing out that, this session, there are a number of bills and proposals which seem to shift the emphasis from rehabilitation to a more punitive approach. He asked if that would not return more angry, aggressive and, perhaps, vengeful, hardened criminals to the communities and, further, referring to **Mr. Day's** support of the \$.5 million for "chain-gangs", asked what his philosophy is in that regard.

Mr. Day responded that there is some misconception regarding the Department's proposals before the Legislature. He stated that the Montana Constitution speaks to restoration and reformation, that it does not directly mention rehabilitation, and that their current criminal and corrections policy reflects punishment and rehabilitation. He reported that the Department has proposed a straight-forward change, which he believes is good for the State, and which comes from public discussions held across the State. He indicated the proposal is that they refocus on the purpose of criminal law, which is punishment and the protection of society. He added that the proposal does not eliminate the concept of rehabilitation, pointing out that rehabilitation has a negative concept with the public, and is vastly misunderstood. He explained that, often, it is defined as the system's ability to change people, but the Department believes in an approach that directs an individual in an atmosphere, in corrections, which solicits self-change.

He stated that they are advocating focusing their attention on accountability of offenders, and the ability to have programs and facilities which encourage offenders to change themselves. He reported that there are significant programs in their budget to address that possibility, in addition to those in the last session, noting that they have doubled the chemical dependency services available for inmates. He added that, this session, they are proposing the establishment of an intensive treatment facility at the Montana State Hospital campus designed around chemical dependency, sex offender treatment and geriatric and

mental health issues, bringing the mental health population out of Montana State Prison, and into a facility that is more conducive to that kind of environment. He pointed out that, clearly, they have to continue to provide forms of treatment in the correction system which allow for cognitive change and behavioral changes in inmates, to encourage the long-term public safety of the State of Montana, and that those proposals are involved in, across the scope, what the Department, as well as the Governor, have proposed.

He referred to "chain-gangs", explaining that the Department has actually requested authority to establish forced work crews, and there is specific application in the Department for that proposal. He reported that, in the reception units and the reception over-flow units, there are approximately one hundred offenders, that about 50% of them have had a chance in the community, and have returned for policy violations, drinking violations, or some infraction in the community, that they have already been in the correction system. He indicated that the Department feels it is significantly important for this population to be occupied, and working in a manner that is productive, so they are focusing on initial concentration of forced work crews for that population which has been out in the community and have chosen, of their own volition, to return to Montana State Prison. He added that there are inmates who have refused productive work inside the prison, indicating that is a higher security population, and may be retained on Montana State Prison property to do more menial tasks as a result of that type of attitude in the prison. He suggested that this goes back to their whole concept, and is enjoined with an earned incentive program to change the environment of the prison, so that they are emphasizing offender accountability, promoting personal responsibility, and providing an atmosphere for them to change how they behave, and how they relate to the rest of society.

He stated that their proposals do not endorse the traditional "chain-gang" approach, which often places minimum security inmates, in some form of restraint, out along the highway. He indicated that they have over 950 inmates employed in productive work at the prison, many of which are minimum security inmates, and they do not feel that kind of large approach is appropriate use of enforced labor in a work supervision crew, adding that, however, they do feel that, for certain segments of their population, it can be a productive and important aspect.

SEN. WILSON reported that a 1993 State law requires that inmates be provided with a State I.D. card upon release or parole from prison. He stated that, to his knowledge, this is not being done, that it would seem to him a card of this nature would help assimilate the parolee or discharged inmate into the job market, and asked **Mr. Day** why this is not being done, and why this law is not being followed.

Mr. Day noted that he believes this was incorporated into their budget in HB 2. He stated that, at this time, inmates are allowed to retain their identification upon leaving Montana State Prison, and that, in effect, they are fulfilling the requirements of that statute. He indicated that they have worked with the Department of Justice, and inmates have the ability to obtain additional identification through the Montana Identification System, pointing out that there are two methods for an inmate to obtain additional identification, so he believes they are complying with the technical language of the law. He remarked that, at this point, there continues to be some debate as to whether this is the best mechanism, but that, with existing funding levels and staff to produce and issue new identification, he thinks it is.

{Tape: 1; Side: B; Approx. Time: 11:01 a.m.; Comments: None.}

SEN. VIVIAN BROOKE indicated that, with regard to the balance between rehabilitation or restoration, versus punishment, she is concerned that the Department of Corrections now has charge of juvenile offenders. She pointed out that, as she understands it, some of the policies of the Department emphasize punishment for juvenile offenders, giving the impression that the Department has given up on juveniles as far as rehabilitation, restoration or hope for the future, and that to concentrate on punishment seems inappropriate with regard to juveniles, noting that she was opposed to the transfer of juveniles to the Department of Corrections, that she felt it was inappropriate for the Department to have that authority. She asked **Mr. Day** to comment.

Mr. Day pointed out that the question underlines the point made by **Chief of Staff Browning**; on one hand, we want accountability and, on the other hand, we want punishment, as well as, in pursuing some of those issues, we want treatment. He indicated that he does not think they have to lose one for the other, and that, in juvenile corrections, along with discussions about treatment, he thinks everyone in the system will agree that what is important, as well, is consequences. He explained that there has to be immediate and effective consequences, in addition to addressing the underlying reason for the juvenile's behavior, and this is what the Department's proposals and directions are trying to accomplish. He pointed out that, in juvenile crimes, as in adult crimes, there needs to be a consequence, or punishment, if you wish to phrase it that way, but they need to keep in mind that there is also a victim, and that is how they are applying their juvenile corrections theory. He indicated that the evidence of that combined approach in program operations is in their budget proposals, and their actual application, that, in particular, rehabilitation needs to be present, balanced with effective consequences and protection of the community. He noted that "competency development" is the term currently used in connection with juvenile rehabilitation.

SEN. BROOKE indicated there has been talk among Legislators, corrections officials in the field, and judges, that there is a lack of trust with the Department, that it is felt the Department operates under one direction one week, and the next week, they are operating under another direction. She reported that, in 1995, the Department declared there was no need for a secure-care facility for girls but, this session, the Department has now decided that there is a need for one. She pointed out that, in order for the Legislature to develop a stronger sense of trust that the Department has good long-range planning and has thought out various approaches, rather than just from the budgetary standpoint, it would seem they would have known in 1995 that they would need a secure-care facility for girls, rather than turning the facility they had over to the law enforcement agency.

Mr. Day responded by stating that he thinks the Department has gone through a substantial process, including going out and talking with people to find out what the system needs, what is going on in the system, and what they are going to do in the future. He reported that they have talked about a policy development process, complete revision of Department of Corrections policies at the department level, and the subsequent adoption of those policies at the program level to insure consistency of application across the Department.

Regarding the secure female facility, he stated that, as with a number of issues that come with the Department of Corrections, he was not involved in the initial advocacy of not having a secure juvenile female program, that, at that particular time, the juvenile corrections operations was under the jurisdiction of the Department of Family Services. He indicated this does not mean that he thinks it is appropriate to say "it was their fault, it was not our's", or that there is no responsibility in the Department, because he believes the decisions made at that time were genuine and factually sound, based on the information they had, stating that it made no sense, and still does not, to operate a small juvenile female secure facility on a large campus like Mountain View. He added that it makes an excellent law enforcement academy, an education facility for an increasingly large population, but makes a poor cost-effective facility for juvenile female offenders. He indicated that, in addition, a number of discussions were around the number of offenders, that they anticipated five to six juvenile females who would need that level of custody, and made the decision to look toward sending them to out-of-state, or in-state residential placements. He reported that, as it turns out, this was a definite under-estimation, that they have anywhere from twelve to fifteen average daily population of female juvenile secure placements. He stated that one of the placements designated in the planning process was the Wilderness Program, that there have been about twenty-four juvenile female offenders in that program, of which at least twenty have stayed in and completed the Wilderness Program, and these juvenile females were at the score level which would have justified placement in a secure facility. He added

that what the system has to recognize, and probably did not do an excellent job of at the time, is that juvenile females commit serious crimes, that there is an issue of longer-term, secure custody for these juvenile females, and that is what the Department is facing. He indicated that they have looked at the actual figures of what they are attempting to accommodate now, at how they can remodel their programs to meet that emerging need in the State, and do that in a cost-effective fashion at Boulder by re-focusing staff with juvenile female secure experience, and re-direct them in a smaller, more efficient facility to pick up this task once again.

Mr. Day remarked that it does reflect on the accuracy and number of statistics available, acknowledging that the data the Department has available is, often, not as complete as it should be, and indicated that the Legislature will have the opportunity to consider a proposal to modernize and upgrade their data collection and capture system, which he thinks is extremely important as they plan ahead. He added that the Legislature will also be asked to establish a long-term corrections plan, in cooperation with the Department, which envisions at least five years, if not further ahead, to put an end to a process that, over a number of years, has taken a look at two years, and then changed in the next two years. He said that he thinks it is time, and the proposals are here to address that.

SEN. BROOKE referred to the Aspen program, and asked **Mr. Day** when they expect to have hard data about the outcomes of that program.

Mr. Day responded that the program has only been in operation about a year and a half, and that data regarding the number of individuals in, the number out, and the number of those who have returned, will be available when they start their Budget Committee procedures. He added that long-term outcomes regarding how the juveniles eventually mold into the community, avoid or reduce the risk of re-offense, will take a longer period of time to develop, at least three years from the time an individual comes into the program. He noted that, the last he was aware of it, those outcome measures are set, that a study group is helping develop these outcomes, and they will proceed ahead in that direction.

SEN. BROOKE asked if the Aspen Program is a for-profit agency, and if the Department has to request a supplemental in connection with that program.

Mr. Day responded yes, that is correct.

SEN. BROOKE indicated that it is her understanding that, if Aspen overruns their budget, the State has to pick up the slack, that the Aspen program has no responsibility to pick up that slack, so their budget can continue to grow as they see the need for it, and come back to the State saying "this is what it cost to take care of those kids, and that's what you've got to pay us."

Mr. Day noted that, on occasion, that seems to be a problem regarding their juvenile programs, particularly state-wide, but that, with this particular group, that is not the case, that they have a set contract amount the State pays, and they do not pay over that amount. He indicated that the majority of the costs are attributed to the orientation program, that it is a state-wide program, but was clearly under-funded in the last session, so they are looking at privatizing that entire function and moving that State staff to secure girls, and that the group responsible for the entire operation will be put under a subcontract amount that is clearly accountable. He added that this is a contract they were responsible for developing and, hopefully, they will be able to initiate it, that it will be before this Legislature.

SEN. BROOKE noted that there was an article on the front page of the *Missoulian* today regarding Interstate Regional Juvenile Placements, and asked if the Department of Corrections has anything to do with that.

Mr. Day replied that they consolidate it, they do interstate exchanges, both juvenile and adult, and they have an Interstate Unit, noting that there was only part-time staff until it moved to the Department, and they now have some full-time staff who work with both juvenile and adult populations.

SEN. BROOKE asked if that offender exchange program was reviewed by the Legislature.

Mr. Day answered that the Interstate Compact has been in statute for some time, that they maintain agreements, noting that the last time he worked with adults, they exchanged many more offenders who left the State than those who stayed in the State of Montana. He indicated that this Legislature will have the option of looking at this again, because Probation and Parole is bringing forward a request to add some staff to the Interstate Unit.

SEN. BROOKE indicated that she sent **Mr. Day** a copy of a bill draft called, for lack of a better name, the "Governmental Accountability Act", and asked for his response.

Mr. Day replied that he had an opportunity to take a look at it and, as far as the policy and issues that the legislation describes, the Department endorses those. He reported that he goes out and visits employees to find out if they have concerns and complaints against the Department, whether about his own operations or anyone else's and, as far as making sure their employees have the ability to speak up and be heard effectively, and insuring no retribution, he would heartily support that concept. He indicated that the other issue is whether they should recreate litigation around that kind of issue, instead of staying within the current framework of law, and he would ask

this body to consider that there is a current personnel framework that addresses those issues.

{Tape: 1; Side: B; Approx. Time: 11:16 a.m.; Comments: End of Tape 1, Side B.}

SEN. DELWYN GAGE stated that he offered to the full Senate the opportunity to pose questions, through himself or other Committee members, noting that he thinks it is important for **Mr. Day** to have the opportunity to respond, and also healthy for these questions to come up in the Committee hearing. He noted that several were given to him in writing, and he would ask them just as they were written.

He indicated that the first question is: "How can we trust your direction, as you told us back in 1993 that you could manage the prison population, if we capped it at 850. We did that, and the population never got below 1,000. You are now projecting over 3,000 by the year 2001. Why should we believe this?"

Mr. Day stated that he is glad that the discussion came up, and he will try to be as direct as he can in answering. He indicated there is no question that, at the request of the Legislature, they have looked for ways to reduce their budget requests. He reported that one theory was the possibility of diverting offenders, noting that he thinks they need to be clear about that, he repeated "diverting offenders", and another would be capping Montana State Prison. He pointed out that this was a voluntary cap at 850 inmates, and the whole theory was based around the Department of Corrections' ability to divert and release offenders. He acknowledged that this was not successful, adding that it is a lesson they learned, but he would also point to numerous past efforts that were very similar. He cited the example that, in 1988, there were proposals which did the same thing, in some respects, that the prison population was not capped, but they looked to advance release procedures, improved parole requirements, alternatives to divert additional offenders, and that the whole idea was to try to reduce the numbers coming into Montana State Prison. He then indicated that, in 1979, there was a similar approach, and he thinks the message is that the Department of Corrections is a responding agency, that they have to make sure to the best of their ability that the capacity is there. He said that, for a number of years, under his leadership and under previous leadership, they have done their best to hold down the population, and that the proposals before the Legislature now point out that this is not within the Department of Corrections' control. He added that it is time to address the issues realistically, that Montana State Prison population will continue to be above 1,000 and, most likely, larger, so they should build that facility and staff it, recognizing that inmates do not come to the Department of Corrections unless sentenced for criminal felony, that this is the source and they have to react to that demand.

SEN. GAGE said the next question is: "The State has been told that no trustees were in the community, and that all those formerly at Swan River are back at Montana State Prison, yet the trustee who intervened in saving the victim's life has been in Great Falls at the Pre-release Center for at least a year. Can we believe what we are told?"

Mr. Day indicated that he is not sure he tracked with the question, so he would address the trustee issue briefly, and hope that he covers it. He reported that all of the trustees who were at the Swan River Boot Camp were removed, that he believes a total of fifteen were, at one time or another, involved in the boot camp operation, and that, at this time, two committed some type of crime, that one was an escape and the other was a homicide, and they have been re-sentenced back to prison. He reported that the remainder are in some other form, and there are at least two, including that trustee, who have worked their way through the system, to some form of community placement, and there are still placements in pre-release centers. He stated that he is not aware that the Department ever said there are no trustees anywhere in the system, that they did say there are no trustees at the boot camp, which there are not. He added that there are trustee positions available at pre-release centers across the State, and they are still re-addressing that issue with the various pre-release centers as they proceed ahead on whether to continue to allow those placements, pointing out that the centers have reported they are effective, that they need them to continue operations, noting that it will be a very difficult issue. He indicated that the trustee involved in the boot camp incident was placed, that it was a public placement openly discussed with the news media in the Great Falls area, and family members of the crime victims, and that the final decision was made by a local pre-release screening committee, not the Department of Corrections.

SEN. GAGE then read "The public was told no one sent to Texas was parole-eligible, nor would be in the near future, and a report from the Board of Pardons says 117 of the 250 are eligible, and have been for some time." He asked **Mr. Day** to comment on that.

Mr. Day stated that he would question the 117, noting that he has not actually calculated the number who might be parole-eligible today, but that, when they made the move and publicly stated their criteria, one thing they were looking for was those who would not be eligible for at least three years. He indicated that they were also looking to get 250 inmates who they could identify for movement, that a number of other issues, besides parole eligibility, which would have allowed them not to have movement back and forth from Texas, were looked at, including medical issues, involvement in programming at Montana State Prison, and productivity, where the inmates were contributing and producing, adding that they also considered those who requested the change to Texas. He stated that, on the bottom line, he is aware that they did move some inmates who were closer to parole

eligibility, however, that decision was necessary as they screened the cases, and had to get to the numbers to move, to relieve overcrowding in the State of Montana.

SEN. GAGE continued with questions from other Senators, and asked: "You told the public there would be no supplementals last summer, then ran out of money and dumped the juveniles from group homes in December, and placed community-based services in jeopardy of being there for juveniles in the future. We have six months remaining in this fiscal year, can you manage these services, not only through the balance of fiscal '97, but what assurances do we have that you will be able to do so in the next biennium with the budget requests that you have?"

Mr. Day replied that he is not aware of, last summer, making a bold statement that there would not be any supplementals and, if he did, he would have to revisit that because he was already aware that they would have the need to transfer funds from fiscal '97 to '96. He added that they did that, and have initiated a broad range of activities, particularly relative to juvenile placements, and that to his knowledge, they have not "thrown" anyone out of juvenile placement, but have asked for reassessment of those placements to insure they need to be continued. He reported that one case received a lot of discussion, which was actually not a Department decision, explaining that there is a statutory requirement that placement, particularly in a shelter, be ended at forty-five days, and that is what transpired, that the female in consideration came up against the forty-five days statutory discharge, and was then considered for an additional placement. He indicated that the juvenile placement issue is going to continue to be a difficult issue, even with their controls, and requests that local administrators participate directly in the decisions, that they do involve community security and protection of youth, and are hard decisions to make, noting that it will be tough for them to manage within the supplemental, but that, right now, he is confident they can do that.

SEN. GAGE related the next question: "How many convicted murderers do we have outside the walls of the prison in any capacity?"

Mr. Day stated that he could not answer that, off the top of his head, that there are people who have been convicted of homicide and are on probation, parole, trustee status, in pre-release centers, at Montana State Prison, and involved in the work unit outside the prison, but that he could not say the total number. He added that he could get that total.

SEN. GAGE asked if he would get that figure for him.

SEN. FRED THOMAS asked **Mr. Day** to give the Committee a clear and definitive statement of his vision for the Montana corrections system in the future under his stead.

Mr. Day stated that he believes that vision is described very clearly in their mission statement, that the mission statement point-blank states that the Department is dedicated to public safety and trust by holding adult and juvenile offenders accountable for their actions through custody, supervision, treatment, work and skill development. He added that, for him, that, plus the programs they have seen and will see in this legislative session which stress public safety, offender accountability, and an opportunity for change, and the realistic budget and numbers, are what their vision is as they move forward, adding that he is confident they will continue to see progress and improvement, and professionalism in the Department of Corrections, and he looks forward to that over the next four years.

CHAIRMAN DON HARGROVE stated that it is arguable that the only real reason for the Legislature to convene is to attend to the appropriation of the public funds, pointing out that, as a director in the Executive Branch, **Mr. Day** has considerable impact and responsibility. He asked him to explain what his process and intentions are in terms of self-evaluation, explaining that the Legislature must depend on people in his position to keep things cleaned up as they go along, and asked further, how he goes about making those priority judgements and getting rid of the "deadwood."

Mr. Day remarked that is definitely a difficult question, and does point out that one of the nation-wide problems with corrections programs is the ability to truly evaluate the impact of corrections programs. He reported that they have doubled their effort in their evaluation and research operation, which they think is important, that, before you can evaluate a program, you have to have someone available to do that. He added that they have established consistent policy, and are continuing to establish that, that their project will be done this fall, and they will have a state-wide Department policy, which is important for them to evaluate their programs, noting that they have actually proposed combining or making changes in programs they felt were important, from a cost-effective standpoint. He cited the example of the laundry program at Montana State Prison, reporting that, at one time, it involved three agencies with three separate laundry facilities, and three separate staffing contingents. He reported they came to the Legislature and requested a consolidated facility at Montana State Prison, that they have since occupied that new facility, and presently do the institutional laundry for three systems. He pointed out that, in the long run, they will continue to do that, and are looking at consolidation of food preparation facilities, noting that there is some controversy associated with that in this session, and they are consulting national corrections support systems. He then reported that they have moved toward some cognitive behavioral treatment approaches which, from studies by the National Institute of Corrections, have shown about a 30% impact in reduction of recidivism. He stated that they are trying to

improve their data collection and processing ability so they can have something to gauge against, their successes and failures, and make decisions around those issues for recommendations back to the Legislature.

CHAIRMAN HARGROVE pointed out that the Legislature serves in a representative and oversight role for the Executive Branch, even when they are not in session, and asked **Mr. Day** what his policy is regarding employees in his Department responding to requests for information by the Legislature.

Mr. Day indicated that he could not recite, verbatim, the policy of the Department of Corrections, but they do have a policy on communications, which is to respond to requests for information by the Legislature. He added that they have recently completed an audit by the Legislative Auditors, who are provided with headquarters in the Department, and they clearly support, and inform their staff to cooperate, in the auditors' efforts to gather information. He reported that, in 1994, there were twenty-one audit points and, this year, they understand there will only be two. He added that he believes access to the information is clearly available, and the only time they get involved, from a management level, in screening or working with the response is in making sure they know what has been requested, and whether or not the information is provided.

SEN. GAGE asked **Mr. Day** to provide information regarding how many people have been placed on house arrest since he became Director.

Mr. Day replied that would be happy to get an exact figure from 1993 to present, but that he would cautiously suggest that there has been a 50% increase from when he took office four years ago. He reported that they have added two communities to intensive supervision.

SEN. GAGE asked **Mr. Day** if he has an idea of what the high and low salaries for directors of departments of this nature are around the country, and where he is compared to those.

Mr. Day responded that he could provide more detail, but that, in 1993, the average correctional administrator salary was \$74,000 nationwide. He added that, in the northwest area, the average is in the area of the mid to high \$70's, to as high as \$90,000. He reported that his salary is just over \$60,000, and that he is scheduled to move to \$70,000. He indicated that if **SEN. GAGE** would like more detail, he would be happy to provide it.

SEN. GAGE then asked how many private prisons **Mr. Day** has visited around the country.

Mr. Day answered that he has not visited any private prisons around the country, that, when they selected the Texas facility, they sent a task force which included security personnel, program personnel, budget personnel, and so forth, to visit seven

different facilities to look at what they provided and what the cost would be, reiterating that he, personally, has not visited any.

SEN. GAGE stated that he has served on the Criminal Justice Task Force for the American Legislative Exchange Council, and that, at one of their meetings in Kansas, they toured Leavenworth and, on the way back to Kansas City, they toured one of Correction Corporation of America's facilities, which he was really impressed with. He then asked **Mr. Day** what the recidivism rate was before he took over as Director, and since then, or if he has any reason to believe that it has changed.

Mr. Day responded that he believes the return for new crimes is around 4.9% or 5%, that the recidivism rate to the percentage of releases was about 10% in 1996, and that it is down slightly based on the preliminary figures. He added that it has been largely consistent, that he would hesitate in taking credit for dramatically reducing recidivism.

SEN. GAGE reported that, at one time, he received a letter from an inmate, and that he corresponded with him, off and on, for about three years. He indicated that the initial letter was well written, and the inmate indicated he would like to pursue a rehabilitation program put together by the prisoners and run by the prisoners, pointing out that this is the same type of program as Alcoholics Anonymous (AA), which is put together by alcoholics, run by alcoholics, for alcoholics. He said that he corresponded with the inmate for some time, noting that he does not think anyone would argue that AA has been a tremendously successful program, and asked **Mr. Day** if there are any programs like this in the country, or if he has looked into this possibility at all.

Mr. Day indicated that the last that he was familiar with was a program called "Addictive Diseases Studies Program", which, he believes, is operated by a group of inmates as part of their addiction treatment inside the Montana State Prison, but there is no broad, comprehensive approach to that.

SEN. GAGE reported that everyone he has talked to in the corrections area has said that, until the hard-core inmates are segregated from the rest of the population, the chances of rehabilitation are probably slim and none. He indicated that he does not think Montana has the kind of population that they could have a separate facility, but asked **Mr. Day** if he has ever talked with North Dakota, South Dakota and Wyoming about a facility for these hard-core inmates from all four states, so that they could hope for some rehabilitation success with the remainder.

Mr. Day stated that he has not specifically addressed that with the neighboring states, but pointed out that Montana State Prison does accomplish that, and they are working on an improved process. He pointed out that part of the issue is that, in many

cases, they identify a hard-core inmate by the particular crime, but that does not necessarily end up being the individual who is the most difficult and most of the threat inside the institution. He stated that, although there is a common misconception, Montana's system does separate out a substantial number of lower-level offenders, which is indicated by the 5200 offenders who are on probation and parole across the State, noting that the majority of those are on probation, that they are diverted up-front by the court system and, compared to the number who are incarcerated, it is easy to see they are already a long way towards trying to separate first-time and lower-level offenders from repeat offenders.

SEN. GAGE indicated that the comment made was that it can not be done in the same facility, because the correspondence pipeline in prisons is pretty sophisticated.

Mr. Day remarked that it is more difficult to operate a multi-classification facility such as that at Montana State Prison, and that many states do have maximum, medium, minimum, or a medium, minimum facility, as opposed to a maximum.

SEN. GAGE asked **Mr. Day** if there is a population at Montana State Prison of inmates over the age of 75 and who, as well as for health reasons, would probably be very little risk to society.

Mr. Day responded that there are some inmates who, although not necessarily older inmates, are physically debilitated for other reasons, that he knows of six who are on oxygen. He added that they also have the highest percentage in the nation of population over the age of 50, about 10%, and reported that they have incorporated this into their planning, which is why some of the proposals before the Legislature include geriatric placement, institutional as well as personal care, and mental health group home approaches in the community. He further indicated that the Legislature will consider a bill to remodel medical parole, that current statute places too much burden on physicians to determine that an inmate will not be a threat anymore, which they are not willing to do. He added that the proposal would ask physicians to comment directly on what the inmate's condition is, and let the Board make the decision. He indicated that they have also taken into consideration the public role, as well, reporting that, in the Sentencing Commission survey, the public was asked if, with regard to long-term offenders, violent crime offenders, and repeat offenders, there should be a lessening or some kind of process whereby an inmate who becomes medically infirm can be released, and about 65% of those responses did not indicate any interest in that.

SEN. THOMAS noted that **Mr. Day** had testified that he has not visited any private prison facilities, including the Texas facility they are using. He then asked **Mr. Day** if he has plans to tour any private prison facilities, including the one in Texas.

Mr. Day answered that he and the Warden, who also has not visited that facility, had planned to do that, but preparation for, and the Legislative session got in the way of that trip. He added that they are taking a look at doing this after the legislative session.

SEN. THOMAS asked who they are relying on in the area of private prisons, that has done such.

Mr. Day replied that part of the reason he is not overly concerned about rushing out to visit that facility, or other facilities, is that they sent a capable team to examine the private prison facilities, including a Deputy Warden with an extensive term of duty with the Department, who was sent to address security and other issues, their Chief Legal Counsel, their Contract Manager, who is a long-term employee with the Department, at the prison, and was sent to review programs, their Chief of Budget, and their Medical Services Coordinator, who is a registered nurse. He stated that a wide array of corrections professionals were sent to provide a review, and subsequent audit report, which should be available some time this week.

SEN. MESAROS asked, with regard to hard-core inmates, if they are drifting towards developing the Deer Lodge facility to that type of facility, when they take into consideration the regional prison objective, and all the programs offered at the Deer Lodge campus.

Mr. Day responded that, to a certain extent, that is accurate, but pointed out that the prison is divided into a high and low side and that, in a regional prison concept, the prison will serve as the hub of the system and continue to provide custody of maximum security inmates, the most dangerous, the death-row inmates, and those who the communities and sheriffs do not feel it is beneficial to house in regional facilities. He added that the regional facilities, themselves, are designed for lock-down populations, so that, on the flip-side of that, the minimum populations who might be eligible for an expanded level of work programs will most likely continue at Montana State Prison on the low side, working on the ranch, and in the industries and furniture concepts. With regard to the most severe offenders, noting that a substantial number of inmates who were moved to Texas had very significant and continuous crimes, he explained that is a relative term, that classification is what will determine where an inmate goes throughout the system, adding that this is a uniform system which is designed, approved and employed nationwide. He stated that the prison is definitely where the true maximum inmates will be placed.

SEN. BROOKE indicated that she would like to address some concerns about the Women's Correctional Center, and stated that she believes the Department made some decisions, with a lot of influence by **Mickey Gamble**, regarding siting of the Women's Correctional Center at the Rivendell facility. She reported that

they were told the facility had a capacity of 50 persons, and pointed out that, in 1991, in working with the site selection bill, they had information that the future needs for a women's correctional facility were much more than that. She indicated that, currently, there are 70 or 80 people there. She asked **Mr. Day** if that is correct.

Mr. Day responded there are 70.

SEN. BROOKE noted that this is crowded, and reported that she visited the facility in October, that the rooms are terribly crowded, the beds are flimsy, that they are not institutional-type furniture, and it does not look as if they planned ahead. She indicated that another concern is that the gymnasium was taken over for the Industries Program. She acknowledged that the Industries Program is a vital piece of rehabilitation for the women inmates, and she applauds the Department, but pointed out that this eliminates recreation, which is constitutionally mandated, as she understands it, and that, not only is it necessary, but is a vital part within an institution to alleviate the pressure of an over-crowded facility, and being in prison.

She reported that a .5 FTE for a parenting counselor was eliminated from the Women's Correctional Center budget, but there was an increase in security FTEs, and stated that she believes that was a judgement call, that they could have had one FTE in security, and a .5 FTE for counseling. She acknowledged that some of the programmatic activities are handled by volunteers, but stated that she thinks this was an essential piece of rehabilitation among women inmates.

She stated that, in light of the overcrowding, there has to be community corrections programs, that for the Department to continue with another **Mickey Gamble** idea of a state-wide Community Corrections Board seems, at this time, not to be a very wise decision. She explained that, in her experience in Missoula, local boards of directors make decisions for local pre-release centers, and, to administer it from the State, rather than from local, private, non-profit groups does not seem to make sense. She indicated that, based on some of the policies of the Community Corrections Boards, and their responsibilities, if those are implemented, she does not know how they will ever site a pre-release center. She remarked that it looks to her like **Mr. Day** has again taken a knee-jerk reaction to the incident in Helena, referred to by **Mr. Brown** in testimony, that they are not going to allow these kinds of things in neighborhoods and inappropriate places, adding that, in Missoula, they are much more capable in their community to make that kind of decision, rather than having the State make it for them. She asked **Mr. Day** to comment.

Mr. Day noted that he did not have his notepad, but will attempt to address each issue **SEN. BROOKE** raised, beginning with the last one. He stated that he believes she is referring to the siting

criteria for pre-release centers in the Community Corrections Act, and reported that the Department has presented a bill before the Legislature which will result in changes to the Community Corrections Act, now known as the Community Corrections Board, which will make it substantially simpler. He explained that they will not be restricted to felonies, and communities will be allowed to make discretionary decisions on whether to pursue a Community Corrections Board, and the Community Corrections Board will be allowed to contract with pre-release centers, but that they need to recognize there is a difference. He indicated that the Community Corrections Board, and the Community Corrections Act, are designed around diverted offenders, as opposed to those coming out of pre-release centers or inmates at Montana State Prison. He then indicated that they do ask for the authority to adopt rules and administrative procedures for siting of pre-release centers, with appropriate public comment, which is important for any community, but there needs to be an appropriate and uniform process, noting that, obviously, the community will have to take action to go forward with the process. He pointed out that, in Missoula, much of that process has already taken place, with the Correctional Facility Campus concept and, most likely, the expanded pre-release, and stated that he does not concur with **SEN. BROOKE's** description of the legislation, that he thinks it actually will make it more workable, and allow judges to sentence directly to pre-release, and will be more functional, adding that, as it works through the Legislature, if it needs modification and improvement, he is sure they would endorse that and support it as it works through.

With regard to the Women's Correctional Center, **Mr. Day** stated that it is not the best situation to have five or six inmates in a particular cell area, although they are large in comparison to Montana State Prison, but pointed out that they recently opened an expanded Community Corrections Center, that the Great Falls pre-release center has opened an 18-bed women's facility somewhat designed around the possibility of longer-term placements for female offenders. He explained that part of what impacted the prison population at the Women's Correctional Center was the ability to get that Community Corrections Center opened in Billings, which was primarily a financial issue, and that, in Great Falls, they were able to step up the model and build it next to their facility, so that it proceeded ahead, and has resulted in a drop in population at the Women's Correctional Center down into the 60's. He then reported that planning is underway for an Industries Building at that campus, and that, as a matter of fact, they are planning for long-term development as they identify population numbers that the women's prison will need to accommodate, that this is part of the long-term phased-in plan.

{Tape: 2; Side: A; Approx. Time: 11:57 a.m.; Comments: End of Tape 2, Side A.}

Mr. Day reported that there was discussion, in the initial stages, of 200 inmates, that this was initially reduced to 120 and, eventually, further reduced to 84, which is about twice the average daily population (ADP) of the facility, and indicated that the question is if they should build a much larger facility, anticipating that it will be filled, or take the approach of recognizing there will be incremental expansion as they need to accommodate the system.

Closing by Sponsor:

Mr. Day indicated he had no closing remarks, that he is ready to get to work, and thanked the Committee for their consideration.


CHAIRMAN HARGROVE reminded **Mr. Day** that **SEN. GAGE** had requested certain information, and asked that he provide the information for the Committee's review.

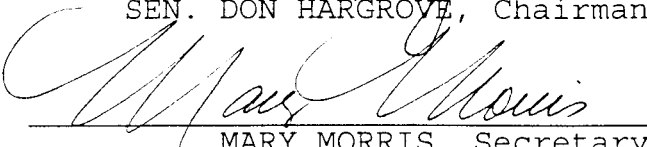
Mr. Day replied that he will speak with **SEN. GAGE** to confirm what information has been requested.

CHAIRMAN HARGROVE remarked that would be appropriate. He then announced that a proponent statement has been received from the Montana Federation of Probation and Parole (**EXHIBIT 5**), and that a statement in opposition is expected from **REP. JOAN HURDLE** (**EXHIBIT 6**). He indicated that executive action would be delayed until that statement and the requested information have been received and reviewed by the Committee. He thanked **Mr. Day** for appearing before the Committee, and congratulated him on his willingness to serve the State of Montana.

ADJOURNMENT

Adjournment: 11:59 a.m.


SEN. DON HARGROVE, Chairman


MARY MORRIS, Secretary

DH/MM