

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FINANCE & CLAIMS

Call to Order: By **CHAIRMAN CHUCK SWYSGOOD**, on March 19, 1997, at 8:05 a.m., in Room 108.

ROLL CALL

Members Present:

Sen. Charles "Chuck" Swysgood, Chairman (R)
Sen. Thomas F. Keating, Vice Chairman (R)
Sen. Larry Baer (R)
Sen. Thomas A. "Tom" Beck (R)
Sen. James H. "Jim" Burnett (R)
Sen. B.F. "Chris" Christiaens (D)
Sen. Eve Franklin (D)
Sen. Loren Jenkins (R)
Sen. Greg Jergeson (D)
Sen. John "J.D." Lynch (D)
Sen. Dale Mahlum (R)
Sen. Ken Miller (R)
Sen. Arnie A. Mohl (R)
Sen. Linda J. Nelson (D)
Sen. Mike Taylor (R)
Sen. Daryl Toews (R)
Sen. Mignon Waterman (D)

Members Excused: None

Members Absent: None

Staff Present: Taryn Purdy, Legislative Fiscal Division
Sharon Cummings, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 102, 3/14/97; HB 125,
3/14/97; HB 405, 3/14/97
Executive Action: HB 100, BCCAA; HB 208, Tabled;
HB 559, Failed

HEARING ON HB 125

Sponsor: REP. ED GRADY, HD 55, CANYON CREEK

Proponents: Mike Ferriter, Department of Correction

Diana Leibinger-Koch, Department of Correction

Opponents: Larry Brown, Helena

Opening Statement by Sponsor:

REP. ED GRADY, HD 55, CANYON CREEK HB 125 does a number of different things. It differentiates between community corrections facilities and pre-release centers. With the amendment to sentencing statute, a judge may sentence an offender directly to either facility. It creates a 5 year maximum sentence if the Department of Corrections (DOC) commitment is to be an alternative to prison. It also makes the community corrections act easier for communities or tribes to utilize. Since these are strictly community facilities, the community or tribe does not need to consult with the DOC for planning, siting or implementation of a facility, nor are they accountable to the department for running the facility. This legislation eliminates the prohibition against incarceration of violent offenders in these facilities. HB 125 widens the definition of offender to include misdemeanor or felony offenders. The bill changes the composition of the community corrections board from 9 to 3-7 members. It is left to each community or tribe to decide which offenders their facility will handle and how they want to handle them. It makes the home arrest statute more user friendly, the court must refer the offender petition for home arrest to the supervisor, usually the probation department, for exception or rejection. If the supervisor accepts the offender for home arrest, the court then makes the decision on the suitability of the petitioner for home arrest. It also changes and clarifies DOC policies concerning pre-release centers. The department is here to present more facts on this bill and answer questions.

{Tape: 1; Side: A; Approx. Time Count: 8:09; Comments: None.}

Proponents' Testimony:

Mike Ferriter, Department of Correction HB 125 is an attempt to clarify a variety of issues that the department has struggled with over the last several years. One of the key issues is clarification of the definition of pre-release versus community corrections facilities. The bill also clarifies the length of DOC commitments, it gives judges the option to directly sentence offenders to the department. The department then has the flexibility to make a placement with a 5 year limit. I'd appreciate your support of HB 125.

Diana Leibinger-Koch, Department of Correction This bill goes a long way toward clarifying a number of things. (EXHIBIT #1) handed out, this explains the differences, clarifications and purposes of this bill. Currently, there is no clarification in statute about the difference between a pre-release center and a community corrections facility. This bill takes the DOC out of

the community corrections process, the community can do what they want. The pre-release center is an entity from DOC, this legislation proposes enacting siting criteria in administrative rules before another pre-release center is sited. Currently, judges can sentence an offender to DOC for 100 years, this legislation would make that limit 5 years which makes meaningful alternatives to a prison sentence. This also reorganizes the home arrest statute, it doesn't change policies or procedures. We urge your support of HB 125.

{Tape: 1; Side: A; Approx. Time Count: 8:18; Comments: None.}

Opponents' Testimony:

Larry Brown, Helena My family and I were in the middle of the mess in the Helena valley this past year. We spent over \$7,000, which the department still owes us, to prove they were violating the law. There has been an attempt to address this. I hope you can hold the department to what they say this bill will do, then this might work. I have a lot of problems with what this bill does not address. It doesn't go into the detail that needs to be addressed on how pre-release or community corrections facilities are sited in people's neighborhoods. These programs don't work as well as they are designed to work, there is room for improvement. This bill takes a portion of the community correction board out of the process. They have lowered the number of public people on these boards to 1. The department wants to divorce themselves from responsibility, which this bill does, leaving the problem and responsibility on the community, community corrections board, county commissioners and local law enforcement agency. I believe there needs to be some work done on that section of the law. I think it is important to dot all the i's and cross all the t's on these corrections bills. The department or non-profit organizations will find a way to get around it if it isn't in black and white. The siting criteria is very vague. Part of the criteria is how fast the department can spend the money and how fast they can get these sites established as once a facility is sited it will be very difficult to change it. If you follow the money, you will follow the problems. I hope you give careful consideration to this bill, possibly to the extent that an interim committee be established to address this pre-release, community corrections issue. The DOC needs to be held accountable for how they administer this program.

{Tape: 1; Side: A; Approx. Time Count: 8:26; Comments: None.}

Questions From Committee Members and Responses:

SEN. CHRIS CHRISTIAENS Why is there a change from 9 members to 3-7 on the community corrections board? **Mr. Ferriter** The bill intends to clarify that the DOC's role is in pre-release and not in community corrections facilities. The community corrections business is a local entity. It was our impression that the local communities should have some flexibility on how many people they

want on the board. We specify who the key members need to be on the board.

SEN. CHRISTIAENS How many communities have community corrections boards? **Mr. Ferriter** Bozeman and Helena.

SEN. CHRISTIAENS How would the state work in siting pre-release centers on tribal land? **Mr. Ferriter** The tribe or local community would be on their own, the state would not be involved with siting on tribal lands. We could be involved if they sited a facility on the reservation and then came to the department with available bed space.

SEN. DALE MAHLUM Can you put this in any community you want or does the community have a say in this decision? **Mr. Ferriter** HB 125 gives the department rule making authority to establish a siting process for pre-release centers. This policy requires the support of local authorities and public hearings. We can't do this in any community, we need their support.

SEN. MAHLUM What if you find a perfect site and the community says they don't want the facility, can you force yourself into that community? **Mr. Ferriter** No, we have no intentions of doing that. We had a very difficult time in Helena and we did not force our way in. Corrections is a community problem but if the community is not interested in having that program we won't do business there. We feel we are a part of the community with the 4 pre-release centers we have now.

SEN. LARRY BAER I presume you will not try to place a pre-release center in a place that is restricted by covenants and zoning or in a community that does not want a pre-release center. Would you be willing to have an amendment to this bill that will clarify your position on this? **Mr. Ferriter** Yes. **SEN. BAER** I appreciate your desire to have the rule making authority but I would like the mechanism in the bill so you cannot exceed certain criteria by your rule making authority.

SEN. TOM KEATING The pre-release center used to be a halfway house for a person coming out of prison. We had one in Billings, the Alpha House, and there was a high rate of recidivism from that pre-release center. This talks about sentencing prisoners directly to pre-release centers instead of to prison, is there a difference in the policies and make-up of a pre-release center? **Mr. Ferriter** Currently, through the Community Corrections Act, offenders are allowed to be sentenced directly to pre-release centers. The make-up is very similar to the original make-up of the Alpha House. The laws have changed, the department has the authority to place that offender where we feel they may best be served. We are serving 3 or 4 populations, the traditional method, DOC offenders, judges and a person who has violated their parole. We have a variety of different types of offenders in pre-release now and it seems to work fine.

SEN. KEATING When you say a 5 year sentence, are you talking about limiting sentences to 5 years depending on the crime? What is your intention? **Mr. Ferriter** If a judge chooses to make the decision to commit an offender to DOC, they generally do that because they are not 100% sure this offender needs to be in prison. They know this offender needs services, such as pre-release, boot camp or an intensive supervision program with an electronic monitor. We are comfortable with that commitment only up to 5 years. If the judge feels that offender needs to be sentenced to longer than 5 years the option would be restricted to the traditional method of being committed to the Montana State Prison.

SEN. KEATING This bill states a pre-release contract would be submitted to the legislative auditor and reviewed by the audit committee to make recommendations. What makes you think the audit committee knows any more than anyone else about pre-release contracts? **Mr. Ferriter** That was not in the original bill, that was amended by the Select Committee on Corrections. We've entered into 10 year contracts with pre-release centers but we can only commit to 2 years at a time based on legislative funding. The select committee felt it would be a good idea for the fiscal auditor to review that 10 year contract prior to the department entering into it.

SEN. MIGNON WATERMAN Is the department committed to paying the \$7,000 cost **Mr. Brown** referred to in testimony? **Mr. Ferriter** We have not made the decision to pay the \$7,000. I'm not sure if they have submitted a claim. **SEN. WATERMAN** What about the Upcountry Inn or the pre-release center in Butte, have we paid them anything or made a commitment to pay them or have they requested it? **Mr. Ferriter** We have not had any request or bill from the people at the Upcountry Inn. We assisted the Butte pre-release center in earnest money, we provided some of the money they lost, I believe the total was \$10,000. I will get that information for the committee.

SEN. MIKE TAYLOR What is the cost per bed in a pre-release center? **Mr. Ferriter** It is just under \$37 per day. The prison averages \$44 per day.

SEN. TAYLOR There was a charge about a siting company in the opponent's testimony that said they didn't meet the requirements for the siting and are now being considered for a regional jail. Would you like to comment on that? **Mr. Ferriter** We did a request for proposal (RFP) to site 163 pre-release beds. Through the RFP process, a corporation in Butte submitted a bid. We developed a committee and scored the RFP's. The Butte contractor was selected as it gained the highest number of points. The contract was never formally awarded because the siting criteria was never finalized.

SEN. TOM BECK I believe the department opposed **SEN. LYNCH'S** bill saying putting this to the vote of the people would be good

community support. How would you feel if we amended this to put it to the vote? **Mr. Ferriter** I'm not sure we opposed that bill, we struggled with SB 37 in that it encompassed existing facilities. The department feels the siting criteria being handed out now (**EXHIBIT #2**) is a better process in that we would specify site and the people in that area would have involvement on whether the facility should be in their specific area. One of the things that concerns me about a vote is if it is in the western side of the community maybe the rest of the community would vote for it. We know the public needs to be involved but I'm not convinced a vote is the best way to deal with this.

SEN. BECK Can you tell me the reason for the saving clause at the end of the bill? Is there some penalties or something going on that we don't know about? **Susan Fox, Legislative Service Division** That amendment was added in the House Select Committee on Corrections at the request of the Missoula pre-release center. They recently held a vote on a bond issue relating to regional correctional facilities that included the pre-release center concept. They were worried that rules adopted by the department would require them to go back and get a second vote as they felt the previous vote was sufficient. If any penalties have been or would be incurred by the department, the saving clause says this bill does not affect that so they are still responsible for anything that happened before that date.

{Tape: 1; Side: B; Approx. Time Count: 8:45; Comments: None.}

SEN. BAER I would like more specifics on the problem you had involving the establishment of a pre-release center in your residential neighborhood. **Mr. Brown** When we found out that DOC was proposing a pre-release facility, we investigated the situation and found out the department had problems siting in the City of Helena and decided to move to another location. West of Helena is a section that is not zoned. At that time Director Day told us he could site a facility anywhere he wanted to in the state. We found there was a lack of definition between community corrections and pre-release. We hear this bill reorganizes the statute, I'm fearful that it will continue to be business as usual. We had 2-3 public meetings, the department said they were going forward, they developed criteria and ignored public input. The criteria and rules they developed were to cover the mistakes they had made in contracting and siting criteria.

SEN. MAHLUM What happened? **Mr. Brown** We hired an attorney and the department backed off because they were going to be sued. There was a Supreme Court decision in August that says a community corrections facility and pre-release center are one and the same.

SEN. LOREN JENKINS On page 5, line 26, what is Title 45? **Ms. Leibinger-Koch** Title 45 involves criminal statute. **SEN. JENKINS** I'm carrying a bill that puts sex offenders under the DOC. If this were passed that sentence limit would be 5 years. **Ms.**

Leibinger-Koch Your bill would not conflict with what is being proposed here. This bill talks about when a judge sentences someone to the DOC for sentence. The judge can still sentence someone to MSP for any number of years. Sex offenders could have something else put on as criteria and have to undergo treatment.

SEN. JENKINS Why was the change in local correction boards put in this bill? **Ms. Fox** I believe that was to allow the community to choose how many members they wanted on the board.

SEN. EVE FRANKLIN Please give an example of how a community corrections facility is different from a pre-release center. **Mr. Ferriter** Through the process in Helena we learned a great deal about community corrections facilities. It was our understanding that a pre-release center was a community corrections facility. The attorney for the community corrections board in Helena informed us that the two facilities are not the same and the board didn't feel they had jurisdiction to rule on this issue. DOC wants to be in the pre-release business dealing with felons coming from prison, sentenced to the pre-release center or committed to DOC. We think community corrections facilities are a great idea for local jurisdictions.

SEN. KEATING You are repealing the good-time section, is there not going to be good-time in pre-release centers? **Dave Ohler, DOC** Effective January 31, 1997, the last legislature eliminated good-time. This is clean-up in the Community Corrections Act.

{Tape: 1; Side: B; Approx. Time Count: 9:00; Comments: None.}

Closing by Sponsor:

REP. GRADY I'm carrying this bill because the Helena issue showed us legislation is needed. I like the way this bill involves the public throughout the process. We have set up a working group consisting of city, county, legislators and the public to see if we can place another one in Helena. I think every community has a responsibility to these non-violent offenders. Pre-release centers are working fine in Great Falls, Billings, Missoula, Butte and could work in Helena, but the process has to be handled properly. Our group has been told we can be part of the rule making, I think this has been turned around and the department is making a real effort. There will not be one in Helena unless the Helena people accept it. **Mr. Brown** did not come to me once, since this bill was heard in the Select Committee, to request changes. He did not go to the department with suggestions.

{Tape: 1; Side: B; Approx. Time Count: 9:04; Comments: None.}

HEARING ON HB 102

Sponsor: REP. HALEY BEAUDRY, HD 35, BUTTE

Proponents: Dave Ohler, Department of Corrections

Opponents: Betty Waddell, Montana Association of Churches
Sharon Hoff, Montana Catholic Conference

Opening Statement by Sponsor:

REP. HALEY BEAUDRY, HD 35, BUTTE HB 102 is one of the most important pieces of legislation facing us this year. It defines policy for sentencing in the State of Montana. It punishes the offender, restores the victim, protects the public and offers the criminal the chance to rehabilitate themselves. It changes the emphasis of sentencing and sets the policy for the state.

Proponents' Testimony:

Dave Ohler, Department of Corrections Proposed amendments to HB 102 handed out. (EXHIBIT #3) These amendments return the bill to the form it was in before going to the House floor. The changes made by the House Select Committee on Corrections will remain in the bill. Amendments explained. HB 102 is the mission statement for this body, future legislative bodies, the department, judges and people in the criminal justice system. We have struck a lot of language and narrowed it down to make it understandable. The bill provides for four primary policy issues: 1) punish offenders who do violent crime; 2) protect the public; 3) provide restitution and restoration to the victims; and 4) encourage the offender's self-improvement. You will notice the word rehabilitation is not in this policy, rehabilitation implies the state has a responsibility to fix someone. We don't believe you can fix people, people need to fix themselves. Rather than say rehabilitation on page 2, line 12 we say "encourage the offenders self-improvement" because we think that is what we need to do. I ask for your support of the bill, it is an important bill. I hope that, as you go through this session and future sessions, you will refer to this while considering correctional and sentencing issues before you.

{Tape: 1; Side: B; Approx. Time Count: 9:10; Comments: None.}

Opponents' Testimony:

Betty Waddell, Montana Association of Churches We strongly oppose HB 102. The association's corrections policy position passed out and explained. (EXHIBIT #4) We think this is an important bill that if passed will have a devastating effect on those within the corrections system. It is impossible to use punishment as an effective tool in our society because the consequence is months after the act and is not consistent. For this reason we object to the proposal. This bill violates the Montana Constitution which includes the principles of prevention and reformation. I have the minutes from the sentencing commission meeting on November 20, 1996 in which rehabilitation was discussed. It was decided that the commission was not

prepared to suggest this bill. We would support some sort of restorative justice as a policy for Montana. Within the idea of restorative justice the offender must seek forgiveness, recognize his wrongdoing, confront the victim and work out a restoration relationship. This bill does not remove juveniles, therefore punishment will be used as the primary action on juveniles. Non-violent felony offenders will be treated the same way felony offenders are. HB 102 eliminates the possibility for a judge to consider the different characteristics of the offender. We are going to have increased recidivism because DOC is not correcting. Punishment without rehabilitation is going to lead to more crime and less public safety. We support the restitution section of this bill. I'm not sure why corrections is moving in this direction and am wondering if it is because at Spur, Texas they are not providing rehabilitation. Perhaps this is an attempt to save the state some money by removing rehabilitation from our public policy for corrections. For the sake of the prisoners, victims and communities, I urge you to defeat this bill.

Sharon Hoff, Montana Catholic Conference Prison overcrowding is a critical issue confronting the criminal justice system. We support more cost effective, community based, restitution oriented options to reduce prison overcrowding and lower recidivism rates while protecting the public from offenders. The emphasis of programs should be on rehabilitation, not merely punishment. I agree with the sponsor that no one can change my behavior but I don't think we can just punish people as a way to change them. We have not funded preventive programs or worked to enrich families. I encourage you to maintain the language that the department wants deleted with their amendment.

{Tape: 1; Side: B; Approx. Time Count: 9:27; Comments: None.}

Questions From Committee Members and Responses:

SEN. J.D. LYNCH What are your feelings on the sentence they are requesting remain in the bill? Who put it in? **REP. BEAUDRY** **REP. DEB KOTTEL** offered that amendment in the House. It seemed redundant to me and the department thinks it adds complexity to the bill that isn't needed. **Mr. Ohler** We are doing these things, we think it is good correctional policy to provide programs and opportunities for inmates. With these amendments we are trying to bring the bill back to the concept of a mission statement. It is my belief that encouraging an offenders self-improvement is an alternative to imprisonment.

{Tape: 2; Side: A; Approx. Time Count: 9:30; Comments: None.}

SEN. TAYLOR Could this amendment stay in as a clarification to D on page 2? **Mr. Ohler** I does reinforce that and depends on how much clarification you want to put in a mission statement.

SEN. TAYLOR Does this policy create more secure beds, will we have to build more secure beds? **Mr. Ohler** No.

SEN. TAYLOR At what point does your organization feel that there is no hope? Is there a point where rehabilitation won't work?

Ms. Waddell I believe that God is compassionate to all people forever and there is always hope. We would never give up on someone. We would feel a lot better if the mission included that the purpose was to restore, reform or rehabilitate.

SEN. TAYLOR The amendment on page 29 & 30, what about inserting "for the persons who are not 3 times repeat offenders or violent offenders," would that help? **Ms. Waddell** We believe that felony offenders should also be given the opportunity for education and work experiences for self-improvement.

SEN. DARYL TOEWS My feelings are that the role of government is to do justice and the role of the church is to restore. Are you doing restorative work? **Ms. Waddell** We are working on a survey to find out how much the churches do. Many churches visit the prisons. We have a mentoring program for kids coming out of Pine Hills. We feel we are partners with good government, we are asking you to do your part and we will do our part.

SEN. LINDA NELSON Your second amendment doesn't seem to change much. What are we crossing out? **Mr. Ohler** It made more sense to me by switching the words around. We are crossing out the statutory reference to restitution in the sentencing codes. It does not make sense to talk about a statute that should not be enacted until the policy is in force. I believe the policy comes first so it is not appropriate to reference this section.

SEN. CHRISTIAENS We are going into a great deal of information regarding restitution. If a judge orders restitution, can the offender file for bankruptcy and have that debt discharged? It is my understanding that the only debt that cannot be discharged is federal taxes. **Mr. Ohler** I don't know the answer to that question.

{Tape: 2; Side: A; Approx. Time Count: 9:40; Comments: None.}

SEN. CHRISTIAENS I believe 90% of these people will return to our communities. Does the language you are requesting be removed regarding rehabilitation say we are not going to be required to provide job training, education and treatment and that it is only available if the inmate asks for it? **Mr. Ohler** The answer is yes and no. If one of the state's responsibilities is to rehabilitate people, that implies we have the responsibility to fix them. I don't think the state can fix someone who doesn't want to be fixed. We have changed this to more realistic and appropriate language to encourage the offenders self-improvement. We are not going to eliminate programs, those fall under encouraging self-improvement.

SEN. CHRISTIAENS I'm concerned that violent offenders would be coming out as bad as they went in. This is a dangerous precedent to enter into. **Mr. Ohler** People equate punishment with prison.

Punishment does not necessarily mean prison. Many prisoners at MSP will tell you it is a lot tougher to be on parole. It is not our intent to stop their self-improvement.

SEN. CHRISTIAENS Did we ask for treatment in the contract with Spur, Texas and why isn't that occurring? **Mr. Ohler** The contract with Dickens County required 4 treatment programs and to the best of my knowledge the prisoners have been receiving this treatment.

SEN. WATERMAN **REP. WYATT**, I believe you have visited the facility in Spur, Texas. Can you describe the educational opportunities and treatment you saw there? **REP. DIANE WYATT** They have a small room with one computer and paperback books. A teacher comes in once a week to provide GED, I did not see that. One of the inmates I spoke with had a college degree and he was personally paying for correspondence courses.

{Tape: 2; Side: A; Approx. Time Count: 9:46; Comments: None.}

Closing by Sponsor:

REP. BEAUDRY We've heard witnesses who are opposed to this bill discuss aspects they view as a problem. Punishment for crime must be after the crime. This addresses crimes and sentencing, it doesn't address prevention. Punishment cannot be immediate in our system, we have to follow due process. Punishment includes probation and community corrections facilities, it doesn't just mean incarceration in MSP. This bill says the sentence must be commensurate with the crime. There are many programs available to prisoners and they will stay available for prisoners to avail themselves of treatment to better themselves. Self-improvement is up to the person in prison, not the state. I believe if we tell someone restitution is complete, when in fact it wasn't, then we are probably taking on liability on behalf of the State of Montana.

{Tape: 2; Side: A; Approx. Time Count: 9:50; Comments: None.}

HEARING ON HB 405

Sponsor: **REP. DIANE WYATT, HD 43, GREAT FALLS**

Proponents: **Betty Waddell, Montana Association of Churches**
Sharon Hoff, Montana Catholic Conference
Mike Ferriter, Department of Corrections

Opponents: **None**

Opening Statement by Sponsor:

REP. DIANE WYATT, HD 43, GREAT FALLS HB 405 is a different kind of approach or solution. It creates a pilot program with 4 sites to serve 100 offenders, 25 offenders in each judicial district.

The judicial districts would apply for this program. The purpose is to provide a less costly and restrictive alternative to incarceration for offenders who have committed felony offenses. It will hold the offender accountable, provides for restitution to the victim, provides for monitoring, addresses the needs of the offender so they may obtain treatment and gain and maintain stable employment and meet the responsibilities of being a member of society. An increased level of supervision for probation is also part of this. This program could potentially divert 100 people from MSP. The purpose is to provide restitution with the offender staying in the community with intensive supervision and the possibility of maintaining their job. They will pay for their room and board and treatment. This program will have people working in a masters level program supervising the way the inmate would interface with the community.

{Tape: 2; Side: A; Approx. Time Count: 9:56; Comments: None.}

Proponents' Testimony:

Betty Waddell, Montana Association of Churches We support HB 405 and individualized corrections programs. We urge your support of HB 405.

Sharon Hoff, Montana Catholic Conference We support HB 405, we think it fits in with our teachings. We see it as a more holistic approach with the involvement of the family. It holds the offender accountable and promotes public safety. This is an opportunity to try something new. We urge your support.

Mike Ferriter, Department of Corrections The department supports HB 405. This is a creative option to incarceration. It affords judicial districts a new opportunity to apply for a program in their community. The program will serve adult and juvenile offenders, brings in a variety of community members to help deal with the problems of corrections and affords college and university students with a learning opportunity that will serve as an excellent foundation for a future career in corrections. The program involves the victim and focuses on restitution and offender accountability. This pilot program can serve as a foundation for future less costly alternatives to incarceration. Thank you for your support.

Opponents' Testimony: None

{Tape: 2; Side: A; Approx. Time Count: 10:00; Comments: None.}

Questions From Committee Members and Responses:

SEN. LYNCH I liked it better when it was non-violent, why add felons in this bill? **REP. WYATT** I agree with you in many respects. The people in pre-release centers were threatened by this bill because they thought it took their base of operation away from them. I didn't object to the change because the

community will be making the final determination on this group of people. Some violent offenders may be better placed in the community. Many of the things they learn in prison are not what we want them to learn.

SEN. LYNCH What institutions in Montana have this graduate program? **REP. WYATT** MSU-Bozeman, MSU-Billings and the University of Great Falls. **SEN. LYNCH** Could towns that don't have a university still avail themselves of the program? **REP. WYATT** I hope so, masters level students don't attend classes everyday.

SEN. LYNCH Don't people in pre-release centers go to prison first or are we sending them directly to the pre-release centers? **Mr. Ferriter** Offenders can go directly to pre-release if the district court judge sends them there on probation status or if they are committed to DOC and the department determines that pre-release would be a good option. Offenders in both of these circumstances would be screened by the local screening committee.

SEN. LYNCH Can the victim's family oppose the idea of a person that has just killed their loved one still living in the same town? Can they veto the committee decision? **Mr. Ferriter** The parole officer writes a pre-sentence investigation report. A major piece of that is the victim's impact statement, we are very aware of the victim's issues and this program allows input from the victim. We suggested the amendment to include all felony offenders, I see this program as similar to the intensive supervision program in different communities.

SEN. BECK I would feel much more comfortable if you had non-violent in here. I think the felon offender should go through the process of going to prison and then the pre-release center. It sounds like the exception to me to take a felon directly to the supervisory release program. **Mr. Ferriter** I didn't think there would be enough offenders to make this program work. Probation and parole violators who have been through the system could be in this program. That is where I see the violent offender coming in.

SEN. BECK Once an offender is tagged with a felony, is that his tag forever? What if he escaped and didn't do anything violent wouldn't that be classified as a non-violent crime versus the felony he was put into prison for in the first place? **Mr. Ferriter** If he was a violent sex offender and escaped, he would have a new offense for escape but we will always look at the more serious offense. The record is never clean, once you have committed an offense it sticks with you and is examined when classification is required.

SEN. BECK What about 4th offense DUI, same thing? **Mr. Ferriter** When we do our classification for an offender and what level of supervision, we would ask how many DUI arrests. All of that

would pose a risk to the community and show the offender has a need that ups the level of supervision.

SEN. TAYLOR This program pays for itself. Is there a possibility we could lose beds if this program works? **Mr. Ferriter** We included intensive supervision as offenders beds, if this program were successful and we decided to continue with it, we would include it on our chart.

SEN. JENKINS Your record hasn't been very good on intensive supervision, you want them to pay for their own program but they may not be able to and the department will have to start paying. **Mr. Ferriter** Right now we have 175 offenders on intensive supervision, those offenders would probably be in MSP if it were not for intensive supervision. The cost per day is \$8 in intensive supervision versus \$44 at MSP. If this pilot program can do the same thing, then it does pay for itself.

SEN. JENKINS I agree that it will pay for itself as it was originally drawn, for non-violent offenders as an alternative to a jail sentence. Someone from the department came in and changed the intent of the bill as it was introduced. **Mr. Ferriter** We were approached by the sponsor to work with her on the bill. We made some suggestions, the sponsor was in agreement with the amendments. We did not force the amendments on the sponsor. This is a great way to deal with violent offenders in the community they will be coming back to. **SEN. JENKINS** That was not the intent of the bill to start with, it was for non-violent offenders not having to go to prison. You are talking about violent offenders who come back, we have pre-release programs for them right now. **Mr. Ferriter** Violent offenders are not a big piece of our pre-release centers. I would say less than 5-10% of violent offenders get to pre-release because of the concerns of the screening committees. We are enthused about this program because it is a way to deal with violent offenders who have been released, the parole violators, instead of sending them back to prison.

SEN. KEATING Do they do a psychological profile during the pre-sentence investigation? **Mr. Ferriter** That is not part of the standard pre-sentence investigation. That will happen if requested by the district court judge and is required on sex offenders.

SEN. KEATING It's been said that there are a lot of prisoners in MSP that have personality disorders, did DOC do a psychological profile to determine the mental attitude of some of those people? **Mr. Ferriter** Generally, the parole board will request a psychological profile if they have someone coming up for parole and they have concerns about the offense and what happened in the law violation. It is not standard but is done on more serious crimes.

SEN. KEATING The treatment communities are dealing with mental health, chemical dependency and sex offenders and it is considered that the rehabilitation of a personality disorder is practically impossible. Our primary job is to protect the public and I'm seeing too many crimes by repeat offenders in our state. The opportunity for rehabilitation should be there but you can't force this on a person. I don't see much difference between this program and what we are already doing in pre-release centers.

Mr. Ferriter I agree with you, however, siting pre-release centers is not simple. Siting intensive supervision programs are easier. I envision this program in a community like Havre, which will probably never see a pre-release center. In treating sex offenders a program like this or intensive supervision is what will work. We need to insure these people are getting counseling. This program stays on top of that, a parole officer with 80-90 offenders can only see them 1-2 times per month. This is simply another option as a pilot program.

SEN. BAER This reminds me of the Swan River Camp situation. We were assured that non-violent felony offenders were under control. What would be the difference in the level of security that was provided by the Swan River Camp compared to this proposal which talks about violent offenders? **Mr. Ferriter** What makes community corrections work is public involvement. This program has to have the agreement of the public. The level of supervision wouldn't be as close as the trustees at Swan River, they were living there. These offenders will live in their own homes with possible electronic monitoring, they will report to the student intern, one parole officer will be attached to this group of 25 offenders. There is no guarantee that these people will not re-offend but we can try to narrow that opportunity through urinalysis, routine checks and keeping them in programming and counseling.

SEN. BAER Would you consider this program an alternative to lock up in MSP? I don't see the value of this program. **Mr. Ferriter** The intent was designed to divert these people from going to prison. We also suggest that probation and parole violators go into this program.

{Tape: 2; Side: B; Approx. Time Count: 10:23; Comments: None.}

Closing by Sponsor:

REP. WYATT HB 405 is an alternative, it is not a silver bullet. It has the potential to work with 100 inmates. We may not have to build more beds for people that the community is willing to take back or divert from going to MSP. We have to trust the community and the people within the system. This group of people will have higher supervision than the group you have on parole and probation. I ask for your support.

{Tape: 2; Side: B; Approx. Time Count: 10:45; Comments: None.}

EXECUTIVE ACTION ON HB 100

Motion: SEN. CHRISTIAENS MOVES HB 100 BE CONCURRED IN.

Discussion: SEN. TAYLOR I have a note saying an amendment would be brought addressing the length of this term.

SEN. BAER I spoke with REP. SOFT about bring an amendment that clarifies the situation of how many convictions over how many years.

SEN. LYNCH Right now the judge has the discretion to suspend the 6 months sentence. We are eliminating the ability for parole, as I understand this. Dave Ohler, DOC Under current law a judge can suspend all the sentence except for 6 months. In the bill a judge has to sentence them for a minimum of 6 months and they are not eligible for parole.

Motion/Vote: SEN. LYNCH MOVES TO AMEND HB 100 BY STRIKING PAGE 2, LINE 18 AND PAGE 6, LINE 15 AFTER THE WORD SUSPEND. THE MOTION CARRIED UNANIMOUSLY.

Motion: SEN. CHRISTIAENS MOVES HB 100 BE CONCURRED IN AS AMENDED.

Discussion: SEN. KEN MILLER Originally the bill was written for more than one year, why changed to more than 13 months? Mr. Ohler It was changed to 13 months to be sure it meets the definition of a felony offense. Anything up to a year is a misdemeanor.

Vote: THE MOTION THAT HB 100 BE CONCURRED IN AS AMENDED CARRIED WITH SEN. WATERMAN, MILLER, MAHLUM AND MOHL VOTING NO. SEN. CHRISTIAENS will carry HB 100.

{Tape: 2; Side: B; Approx. Time Count: 10:53; Comments: None.}

EXECUTIVE ACTION ON HB 208

Amendments: Amendment #hb020802.asf. (EXHIBIT #5)

Motion: SEN. LYNCH MOVES TO AMEND HB 208 WITH AMENDMENT #HB020802.ASF.

Discussion: SEN. LYNCH I don't know that this bill should pass at all as I think the fines are pretty high now for the people I represent. It seems this fine should be based on one's ability to pay. I'm trying to be fair to everyone.

SEN. TAYLOR I'm against the amendment. I understand what SEN. LYNCH is trying to do but we are setting precedents where equal protection could be questioned in a court of law. That could be unconstitutional. Also, when you start delving into personal

incomes to define 5% you may run into big problems. I don't think this is a good attempt to do what you want to do.

SEN. BAER We definitely have an equal protection problem here.

SEN. BECK If I was driving a vehicle for a major company and got picked up, could that fine be assessed on the company? **SEN.**

LYNCH No, a DUI is on your personal license.

SEN. ARNIE MOHL Would this be based on your tax return? **SEN.**

LYNCH Yes, last year's net income.

SEN. GREG JERGSON I don't see why this amendment has an equal protection problem, I'd like this explained to me. **SEN. BAER** Under the equal protection clause all citizens are entitled to equal protection under the law. Just because you make more money than someone else doesn't mean you should be fined a higher amount than another person that commits the same act.

SEN. MILLER Many times we impose penalties based on the ability to pay depending on the size of the company. **SEN. BAER** We're getting into the realm of punitive damages now. Punitive actions are intended to punish, we need to hit them hard enough in their pocketbook to make it hurt. That is a totally different situation than the equal protection that applies to this.

SEN. LYNCH Putting up bail is based on their ability to pay. Judges impose fines based on one's ability to pay. I'm just trying to be fair with this. I think there is something drastically wrong with trying to hit one segment of our society versus another.

Vote: THE MOTION TO AMEND HB 208 WITH AMENDMENT #HB020802.ASF
FAILED 6-9 ON ROLL CALL VOTE.

Amendment: Amendment #hb020803.asf. (EXHIBIT #6)

Motion: SEN. LYNCH MOVES TO AMEND HB 208 WITH AMENDMENT
#HB020803.ASF.

Discussion: **SEN. LYNCH** This is an attempt to leave the fine up to the judge's discretion. Instead of \$1,500 the judge can make the fine as high as \$10,000. The judge could impose a sentence based on one's ability to pay.

Vote: THE MOTION TO AMEND HB 208 WITH AMENDMENT #HB020803.ASF
PASSED 9-6 ON ROLL CALL VOTE.

Amendment: Amendment #hb020805.asf. (EXHIBIT #7)

Motion: SEN. BECK MOVES TO AMEND HB 208 WITH AMENDMENT
#HB020805.ASF.

Discussion: SEN. BECK The purpose of this amendment is to leave it to the discretion of the judge to use the ignition interlock device and not limit the license for 5 years. In the event he doesn't use it, the license cannot be reissued for at least 5 years.

Brenda Nordlund, Department of Justice This allows the court to impose an alcohol ignition interlock device on an offender who is a third or subsequent offender within 5 years. If the court opts not to impose that then no driving privileges can be conferred on that offender for 5 years.

CHAIRMAN SWYSGOOD Does this affect SEN. WILSON'S bill on imposing the interlock device after the second offense. **Ms. Nordlund** No.

SEN. MAHLUM Does this amendment take care of my concern yesterday on an offender that has cleaned himself up? **Ms. Nordlund** Not necessarily. If alcohol ignition interlock devices are not readily available in a community, the court would be unlikely to impose this restriction. There is no way for that person to obtain driving privileges for the 5 year period.

SEN. CHRISTIAENS As I understand this there would be no provisional license for work. Is that correct? **Ms. Nordlund** That is correct.

Vote: THE MOTION TO AMEND HB 208 WITH AMENDMENT #HB020805.ASF CARRIED UNANIMOUSLY.

Motion: SEN. TAYLOR MOVES HB 208 BE CONCURRED IN AS AMENDED.

Motion/Vote: SEN. JENKINS MOVES TO TABLE HB 208. THE MOTION CARRIES 12-4 ON ROLL CALL VOTE.

{Tape: 2; Side: B; Approx. Time Count: 11:09; Comments: None.}

EXECUTIVE ACTION ON HB 559

Amendments: Amendment #hb0559.bgn. (EXHIBIT #8)

Motion: SEN. CHRISTIAENS MOVES TO AMEND HB 559 WITH AMENDMENT #HB0559.BGN.

Discussion: SEN. CHRISTIAENS This amendment allows the department to record violations that occur on an Indian reservation. It also takes care of the concerns of REP. HEAVY RUNNER.

SEN. TAYLOR Can you tell me the pros and cons of this amendment? **Ms. Nordlund** In many respects this is a semantic amendment. It doesn't make a substantive change other than reversing the position of who is the actor and who is passive in this

relationship. It gives the department the ability to record if the tribal court says it should.

SEN. BECK I have a problem with **REP. HEAVY RUNNER** coming in here We pointed out that the current language is "may" and is up to the tribal government's discretion. **SEN. CHRISTIAENS** I don't disagree with you but if it makes it more palatable and encourages tribal governments to cooperate with the release of those records I think we should do it.

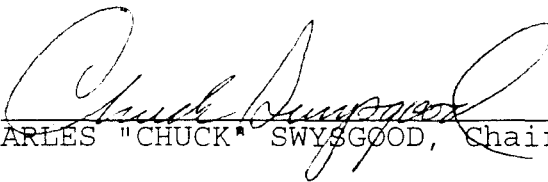
Vote: THE MOTION TO AMEND HB 559 WITH AMENDMENT #HB0559.BGN
FAILED 7-9 ON ROLL CALL VOTE.


Motion/Vote: SEN. LYNCH MOVES THAT THE AMENDMENT WE JUST PUT IN HB 100 COORDINATES WITH HB 559. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. CHRISTIAENS MOVES HB 559 BE CONCURRED IN AS AMENDED. THE MOTION FAILED 8-8 ON ROLL CALL VOTE.

ADJOURNMENT

Adjournment: 11:17 a.m.


SEN. CHARLES "CHUCK" SWYSGOOD, Chairman


SHARON CUMMINGS Secretary

CS/SC