

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on February 7, 1995, at
7:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: NONE

Members Absent: NONE

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

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

Committee Business Summary:

Hearing: SB 90, HB 258, HB 323, HB 332
Executive Action: HB 65 DO PASS AS AMENDED

{Tape: 1; Side: A; Comments: Side A of this tape is recorded on 4.8 speed.}

EXECUTIVE ACTION ON HB 65

Motion: REP. DUANE GRIMES MOVED HB 65 DO PASS.

Discussion: REP. DANIEL MC GEE said he could not discern the fiscal logic in closing the facility. He could not determine why a \$10 million, 110-bed facility would be built at Boulder to replace a 185-person bed facility. He had visited the community-based home and found they were getting excellent care. He felt the committee was not being told the whole story.

REP. LOREN SOFT described his experience in a similar program for over 30 years and he believed the process for weighing the various aspects and options presented were analogous to this proposal. Then he reviewed the history behind this bill and the decision-making process. He outlined the difficulty of the committee in making a determination based on limited time and information. He felt that they should not be bringing the decision to the legislature but rather should be using the process he outlined in his experience where the people involved weigh, discuss and decide based on their experience and more extensive information to arrive at what is best for the people being served in the facility.

REP. JOAN HURDLE spoke from the perspective of a special educator and cautioned against saying there was only one proper way to serve people. She agreed with REP. SOFT that it was strange that there was such a demand to close the facility at all. She wondered why those people are in the care of the Department of Corrections and Human Services (DCHS). She felt that the emphasis should be on examining all the human service-type departments in reorganization rather than on education. She could not support closing Eastmont with that much need for those kinds of facilities.

REP. ELLEN BERGMAN said those who were proponents of the facility being closed kept saying, "they prefer the least restricted..." and did not know what that meant. She could not tell what was restrictive about the facility, nor could she say it seemed much like an institution when she visited it. She felt they would lose many advantages by going to a group-home concept of care. Further, she was concerned about uprooting the residents.

REP. DEB KOTTEL was generally perplexed but remembered the testimony that said there are 70 people who have been identified between both institutions as inappropriately institutionalized. She said she remembered that there would likely be a lawsuit case against the state because of that. A problem is that there are no community-based programs to put those 70 people in because of the lack of funding. She thought the rationale behind it was that they don't have more money going in to set up the community-

based programs, the people stay in the institutions, the threatened lawsuit comes, the state fights the lawsuit. It would cost a great deal, they'd probably lose the suit, be ordered by the court to de-institutionalize those people into community settings and then be back at the beginning. She understood that the idea was to take the money saved from that to build the community facility, put the 70 inappropriately institutionalized people into those community settings, move those who cannot be institutionalized from Eastmont to Boulder, leaving those institutions in place and the net-net would still be the same. This would avoid the lawsuit against the department for not putting those people in the least restrictive setting. If that were true, she felt the responsible thing to do would be to transfer the dollars and set up a community program.

REP. BILL CAREY reviewed a fact sheet from the Governor's Human Services Subcabinet's Interagency Task Force on Developmental Disabilities. It seemed to him that they made a strong case for the Eastmont closure while freely admitting that Eastmont is an excellent institution. It states that, "if implemented, it would re-allocate over \$3 million from a service without a waiting list to a set of _____ (inaudible) [which] many Montanans are seeking out and waiting for." It states that the institutional model is the issue. Apparently people are not signing up to get into the institution, but waiting to get into community-based services. In looking at where to put the money, he thought they were forced to look at where the people affected want it. That was the issue for him.

REP. BILL TASH referred to his notes and the concern about litigation. He felt that many of their decisions were running scared in the event of a lawsuit. He felt that made it very difficult to make decisions and that their decisions should be based on what is right or wrong, rather than on what they might predict could happen. He had noted that in testimony the question was asked what effect the Eihler decision would have in the event Eastmont was closed. The answer was that it wouldn't affect the decision. In regard to threats of lawsuits and constitutionality, he thought those things should be left up to the people in the department or in the Attorney General's office to sort out.

REP. LIZ SMITH had concluded that Eastmont had more federal matching funds and so Eastmont wasn't as costly to the state as group homes would be. Another hang up was that the only way to be committed to Eastmont was by court order. By just addressing group homes, choices and opportunities were being limited. There was agreement that the quality of care was excellent at Eastmont. She felt they needed to be most responsible for those who have no families or have no alternative and should change the commitment criteria and allow it to not be just by court order.

REP. HURDLE asked the committee to look at page 8, line 19 where residential facility, meaning the Montana Developmental Center and Eastmont Human Services Center, is crossed off. Then she asked them to go to page 7, lines 5 - 9, where it says, "community-based facilities." Her point was that because Glendive is an isolated place and because they house fewer than 50 people, it would be possible to make a case for the fact that a community-based facility could mean services that are available for the evaluation, treatment and rehabilitation in a community setting or in an isolated community facility housing fewer than 50 persons.

Motion: **REP. HURDLE MOVED TO AMEND HB 65 TO ADD ON LINE 7, PAGE 2, "OR IN AN ISOLATED AREA OF MONTANA, A FACILITY HOUSING FEWER THAN 50 PERSONS."**

{Tape: 1; Side: B; Comments: Side B is recorded at 2.4 speed.}

REP. BRAD MOLNAR suggested rather than closing Eastmont making it one of the chain of community-based operations.

REP. GRIMES said they might as well vote the bill down if they were going to start tinkering with the department's study, which this amendment would do. Ultimately he felt what they were deciding was to take the same dollars and redistribute them in order to provide for the same number, and eventually more people, with those same dollars in community-based services. He said the amendment would take the reallocation and put it back the way it was. He opposed the amendment, but supported the bill.

Vote: The motion to amend HB 65 failed by voice vote.

REP. WILLIAM BOHARSKI requested the amount it would cost to build a group home and what the operating cost for one year would be and how many it would serve.

CHAIRMAN CLARK said the construction cost was \$330,000 and the operating cost was \$342,000 which would serve six to eight people.

REP. DEBBIE SHEA suggested that the committee examine the impact on the lives of the people who live there. She wondered how many would not survive the transition. She said they should be concerned about the impact on jobs in the area, and there was no way she could support it.

REP. KOTTEL reiterated previous testimony about the 70 inappropriately institutionalized people according to the decision of the psychologists and caretakers. Those people are distributed between Boulder and Eastmont. Eighteen of those have been designated for group homes and the other 52 remain inappropriately institutionalized. She said if the committee voted it down, they needed to come up with the money to put them in group homes and the money is not there. She said if they vote

it up, the money from Eastmont is channelled to group homes and the 52 people are transferred. The ones who cannot go into group homes would go to Boulder. She said she had to have faith in the people who made the decision.

REP. BERGMAN asked what inappropriately institutionalized meant.

REP. KOTTEL replied that it referred to those who can function outside the institution in volunteer-style jobs in the community. The institution is too highly restrictive for those people.

REP. BERGMAN said that was just not true. She had been there and the overwhelming majority at Eastmont, in her opinion, were really not those who can be taught. From what she saw, the most they can handle is stuffing envelopes and make their beds, but they are not able to go into the community to hold jobs.

REP. KOTTEL said her understanding was that between the two institutions there are 70 individuals who can be out in the community. She said they should heed the recommendations of the professionals who have made that decision.

REP. BERGMAN objected to taking everybody's recommendations which don't really make sense to the "rest of us" and felt they should not assume their word for it is accurate.

REP. HURDLE said the same people who had made this decision just spent \$10 million to make a smaller institution with fewer beds. She said it looked to her as if it had more to do with their plans for the facility than their concern about the people.

REP. KOTTEL said those were federal funds and the decisions were made because of federal and legal restraints having to do with the condition of the other facility, so it sounded to her as if they were making rational decisions. They are downsizing the institution so that the people who are inappropriately institutionalized would go out to community-based living. She did not see inconsistency in the decision, but a fairly consistent chain of decisions leading in this direction.

REP. HURDLE was concerned about the numbers of people on the waiting list while they are downsizing one facility and eliminating another one.

REP. KOTTEL said the people on the list were waiting for community-based services. There were none on the waiting list for institutional services.

REP. HURDLE said she did not understand why that would be and believed there was more to it than they knew.

REP. MC GEE said the law was changed in 1991 to redefine the developmental problem issue and that was the point. The report stated that there is nothing wrong with Eastmont, but that the

institutional model was the issue. He continued to quote from the report to explain the reasons behind the proposal in HB 65.

REP. CURTISS asked if the 70 people are all developmentally disabled (DD) or whether some of them were in the corrections system.

REP. KOTTEL responded that none of them were in the corrections system, some might be dually diagnosed in terms of being DD with mental illness layovers.

REP. SOFT remembered from testimony that there would be no long-haul savings on it, the cost to build group homes and maintain them would be about the same. There was a \$1.3 million closure cost. With regard to the funding, Eastmont is a Medicaid-certified facility so most of the cost associated with a group home is not quite the same. The drain in the general fund is nearly the same.

REP. KOTTEL recalled that it was the staff in both facilities who identified those who were inappropriately placed reinforcing the professional opinion that those people needed community settings.

REP. BERGMAN asked what those people would be doing.

REP. KOTTEL replied that they would be working in smaller settings involved in community projects such as Easter Seals. They would be living in smaller groups developing family-style relationships.

REP. SMITH saw it as cost-shifting rather than cost-saving. She asked **Mr. MacMaster** to research the change of law in 1991. In her view, when a court commitment is made for a person to be institutionalized, there is no choice or flexibility. But she felt that people on the waiting list could be put in Eastmont.

Mr. MacMaster was not familiar enough with the reference in the report and would have to research it.

REP. CHRIS AHNER expressed concern about uprooting the people from one institutional setting to another. She pointed out that the need would be \$4,500,000 to build the homes for the people on the waiting list. She asked **REP. SOFT** to recall what the experience of local groups homes was in reference to families visiting the residents in that setting.

REP. SOFT said there were a few who received regular family visits and there were others who did not. There did not seem to be more visits to people in group home settings than in institutions.

REP. AHNER recalled the numbers from testimony. She said that demonstrated that their families become the ones they live and

work with rather than their natural families. Therefore, she felt this would have a negative affect on them personally.

REP. MOLNAR asked if there was any testimony to demonstrate if the money was used to build the group homes that there would be enough to handle the population. There was consensus on the committee that there would not be enough and that there would continue to be a waiting list for the group homes. He then wanted to know what they would do with the people once Eastmont was closed.

REP. BOHARSKI pulled from his experience as a disabled person and said that the thought of community-based services sounded like a good idea, but it is not always realistic. He expounded on the benefits of a facility such as Eastmont. His suggestion was that they take the \$1.3 million to build and staff a few group homes and keep Eastmont operational. He did not think just saying someone was placed inappropriately was good enough. He felt the facility had demonstrated that it had a place in the continuum of care and the proposal was premature and that the bill should be tabled while further study was made of the situation.

CHAIRMAN CLARK pointed out that the committee was moving into the time for hearing of other bills and postponed further action on HB 65.

{Tape: 1; Side: B; Approx. Counter: 35.9}

HEARING ON HB 323

Opening Statement by Sponsor:

REP. WILLIAM RYAN, HD 44, presented HB 323 which enables a person who has a concealed weapon permit to purchase firearms without going through a five-day waiting period. This would save time and paperwork since those people would already have gone through a background check and scrutiny in applying for their concealed weapons permit.

Proponents' Testimony:

Alfred "Bud" Elwell, Weapons Collectors Society of Montana and Northwest Arms Collectors, said the bill was brought because of hardships in the gun shows which came about when Judge Loble declared the Brady bill unconstitutional because it was an unfunded mandate. He believed this was to avoid a greater conflict with the Tenth Amendment. He said the waiting period was changed to a cooling off period, but he agreed that the people wanting to purchase a firearm had already been so thoroughly scrutinized in applying for and receiving the concealed weapons permit that they go far beyond the Brady concept.

Gary Marbut, Montana Shooting Sports Association, Gun Owners of America, National Citizen's Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association and Big Sky Practical Shooting Club of Montana, supported this bill as a useful and effective measure. People who undergo background checks for concealed weapons permits go through much more thorough scrutiny than what is required or done under the Brady five-day waiting period. Federal courts have ruled that the requirement for a background check is an unconstitutional infringement on the prerogatives of the state. He said they felt that this bill was good public policy and consistent with the intent of Brady. They felt it would be functional to delete the requirement that a person get a letter from the sheriff. Once they have a permit with a picture ID, that should be sufficient.

Sheriff Chuck O'Reilly, Lewis and Clark County, Montana Sheriffs and Peace Officers Association, submitted written testimony and proposed amendments to eliminate the need for a letter waiving the five-day waiting period. **EXHIBITS 1 and 2**

William D. Hollenbaugh rose in support of HB 323.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. MC GEE asked the sponsor if he followed and approved of the amendments proposed by Sheriff O'Reilly.

REP. RYAN accepted the amendments.

Closing by Sponsor:

REP. RYAN closed.

HEARING ON HB 258

Opening Statement by Sponsor:

REP. JOHN BOHLINGER, HD 14, presented historical background for HB 258. He was re-proposing the bill because of an increase in incidents in Montana involving weapons on school grounds. This bill would make it a criminal offense for a person to possess, carry or store a concealed weapon on school property or for a parent, custodian or guardian to purposely or knowingly allow a minor to carry or store a concealed weapon on school property. He drew a contrast between this bill and one brought by REP. SHEA which provided only for expulsions of those carrying firearms and thereby bringing Montana into compliance with federal law. He felt they needed a definition beyond firearms. He also believed

that the federal requirement under the Gun Free School Act fell short in holding parents responsible and involved.

The sponsor read a letter from the Attorney General's office in support of HB 258. **EXHIBIT 3**

Proponents' Testimony:

Dennis Paxinos, Yellowstone County Attorney, told of the increase in drug traffic and weapons traffic in the public schools. In using dogs to detect the presence of drugs on school property, when a weapon is also found, there is no legal action taken because presently it is not a crime in Montana to possess a weapon on school property. From a law enforcement officer's point of view, there are problems in that the previous bill as proposed by the Governor only provides for coming into compliance with the federal crime bill. The only penalty in that bill is that school boards must put a suspension in effect for a one-year period if a student possessed a weapon on the school grounds. It is an administrative solution and satisfies the federal mandate so the school can receive federal reimbursement and grants. Suspension will not solve the problem because the student can return to the school grounds and continue other activities such as selling drugs while carrying a weapon. From an administrative point of view, they can be expelled, but from a law enforcement point of view, there is no way to monitor them once they are expelled unless there is a penalty provision. The sole purpose of this bill is to provide that penalty provision. He felt the bill had a problem in the fact that it applied to all persons, not just minors.

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Mary Ellerd, Montana Juvenile Probation Officers Association, strongly supported this bill. The portion of the bill which also makes parents accountable is especially attractive to them.

W. James Kembel, City of Billings, went on record in support of HB 258.

Jim Foster, Montana Rural Education Association, supported the legislation. They requested that the word, "concealed," be struck from line 22.

Loren Frazier, School Administrators, supported the legislation which would make schools safer. He felt it did not alleviate the problems, but would help law enforcement dealing with people who bring weapons to school grounds.

Christine Kaufmann, Human Rights Network, supported the bill.

Michael Keedy, Montana School Boards Association, spoke in favor of this legislation. They proposed an amendment on line 15 following the word, "person," insert "is under the age of 21 and"

to address concerns that the gun control measure is over-broad and would address people who are not really the subject of this legislation.

Opponents' Testimony:

Gary Marbut, Montana Shooting Sports Association, Gun Owners of America, National Citizen's Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association and Big Sky Practical Shooting Club of Montana, rose in opposition with reluctance because they believe kids should not take guns to school except for hunter safety training or gun safety training. They also believe law enforcement should be equipped with tools to deal with kids who take guns to school. Their opposition lies in their belief that it is unnecessary since there are already laws making it a crime for a child to carry concealed weapons to school under 45-8-3., MCA. It is unlawful to carry a concealed weapon without a permit and a permit is not issued to persons under 18 years of age. He cited the federal Gun Free Schools Act as another law under which a child can be prosecuted requiring a one-year expulsion penalty.

He also felt problems exist with the bill also making it a crime for someone to store a concealed weapon in school. Since concealed weapon is defined as being partially or wholly covered by clothing, if the bill were enacted it would not allow for punishment of anyone for having a firearm in a locker. They were also concerned about holding parents criminally liable for acts of their children. To be consistent in public policy, the holding of parents liable would have to extend to illegal possession of drugs or alcohol and he believed it would be inconsistent to restrict their liability to this one crime.

Alfred "Bud" Elwell, Weapons Collectors Society of Montana and Northwest Arms Collectors, stated that despite his concern for his child's safety, he felt that this bill would say that it is against the law to break the law. He felt it was more appropriate to encourage courts to enforce the laws already on the books.

William Hollenbaugh was opposed to the bill, not because of lack of parental responsibility or lack of agreement that there should not be guns in schools, but because it goes too far in criminal penalties for parents.

Questions From Committee Members and Responses:

REP. TASH asked if there were distance parameters in the bill the sponsor had submitted to the previous legislature.

REP. BOHLINGER said there was no language that spoke of distance in the previous bill. The only reference might have been that it said, "if a person purposely, knowingly or negligently allowed a

student to carry or store in the school or on the school grounds without the consent of the administration...."

REP. TASH asked if the sponsor would be amenable to the suggested amendments to delete concealed weapons.

REP. BOHLINGER addressed both previously suggested amendments. Both would be considered friendly amendments.

REP. SHEA spoke in favor of the bill but asked for clarification regarding how the bill addressed weapons stored in a locker and asked if there wasn't a law on the books concerning anyone licensed having a gun in a state building as being a crime.

Mr. Paxinos said there are a number of statutes in the code and cited 45-8-328, MCA. He said the problem comes with the definition of carrying the weapon on their person which does not cover having it placed in the locker.

REP. SHEA also clarified with **Mr. Paxinos** that this code doesn't tie in with the broader definition of weapons.

REP. CLIFF TREXLER asked why there was no application of responsibility to teachers, superintendents, or principals in the school who might observe such a situation on lines 17-18 where custodians, guardians and parents are included. He wanted to know why it should not include all persons.

REP. BOHLINGER clarified that "custodian" was applicable as the custodian of the child [rather than an employee of the school]. However, he felt the concern to cover all persons was valid though the primary responsibility rested at home.

REP. MOLNAR referred to 45-8-316, MCA, which includes enumerated deadly weapons. Since this code covers the weapons, he said that the crux of the bill points to the parental responsibility. He was concerned that parents probably would not know the child was carrying a concealed weapon and would not knowingly send them to school with one.

REP. BOHLINGER cited the case of a parent who encouraged her child to protect himself with a weapon and instructed him in its use.

REP. MOLNAR asked if the gun which was used in the incident in Butte was a concealed weapon.

REP. BOHLINGER said he did not mean to imply that had this bill passed in the previous session, schools would have been made safe. But he felt that it is a step toward making schools safer.

REP. MOLNAR asked the sponsor if he would agree that it is already illegal for a child to carry a concealed weapon and that

the bill basically set the crime as a misdemeanor while under current law it is a felony.

REP. BOHLINGER agreed there was existing legislation which speaks to the carrying of weapons and deals with the crime of using those weapons. What is lacking is enabling legislation as far as the county attorneys are concerned which would help bring prosecution.

REP. MOLNAR asked if a parent knew their child was wearing an item which could be used as a weapon, but did not know what the item was or that it could be used as a weapon, would that parent be liable under this law.

REP. BOHLINGER said that the bill did not contemplate holding a parent liable if they did not know the item was a weapon.

REP. SHEA gave an example from personal experience to support the intent of the bill as it related to parental responsibility.

REP. SMITH and **REP. BOHLINGER** discussed the responsibilities foster parents might have with children in this regard and that the bill provides for at least some inquiry into those issues.

CHAIRMAN CLARK asked the sponsor if he was concerned that the way concealed weapons were treated in the bill would change the way the law currently defines them.

REP. BOHLINGER read 45-8-315, MCA, and addressed the concerns of the Yellowstone County Attorney about the inability of law enforcement to deal with a student who brought a weapon to school, stored it in his locker and then went on selling drugs. Under current law there is no way to prosecute this student for having the weapon, but only for selling drugs.

CHAIRMAN CLARK asked the sponsor to clarify the line which refers to storing a weapon.

REP. BOHLINGER said that would refer to placing the weapon in their locker or some hiding place.

CHAIRMAN CLARK said that once the child takes the weapon out from under clothing used to conceal it, it is no longer considered a concealed weapon. He asked if this bill would change the concealed-, carry-weapons law to include lockers or other storage places.

REP. BOHLINGER said he felt the definition should be expanded for school safety. He said that the language under HB 258 would make it easier for county attorneys to prosecute.

CHAIRMAN CLARK referred to testimony about three incidents in Yellowstone County and asked **Mr. Paxinos** how he responded to those cases.

Mr. Paxinos said they were transferred into a youth court and subsequently placed with a probation officer, one went to Pine Hills School. One was charged with felony assault and one was charged with discharging firearms within the city limits. One who was caught with a sawed off rifle on the school grounds was tried for possession of drugs and was placed in Pine Hills and later put on probation.

CHAIRMAN CLARK asked why that individual was not charged under the concealed weapons law as it is currently written.

Mr. Paxinos said that he could have been charged with that, but the officer at the time did not. He understood that the juvenile was on the grounds, but not in the school building.

CHAIRMAN CLARK asked how long the weapon was.

Mr. Paxinos said it was one to two inches longer than the legal definition of "sawed off."

CHAIRMAN CLARK asked, "That would have been a federal offense, correct?" (Meaning that had it fit the definition, he could have been charged with a federal offense.)

Mr. Paxinos said he could have been charged with one, but they have a problem prosecuting those cases.

CHAIRMAN CLARK asked how many students they had contact with for carrying guns or other weapons to school were drug dealers.

Mr. Paxinos said they had no records of kids carrying guns in school. They have innuendo and rumor, but no evidence. They have a small minority of students, 20 - 50, who deal in drugs in each school.

CHAIRMAN CLARK asked if all of the students who carry weapons are doing so because of drug dealing, or were some carrying weapons for self protection.

Mr. Paxinos said he did not have a numerical breakdown, but they have a group of people who are afraid who carry guns for their own protection.

CHAIRMAN CLARK asked if a student carried a hunting knife in a sheath on his belt to school and put it in his locker, would he be covered under this bill.

Mr. Paxinos requested that the sponsor remove the word, "concealed" from the bill. He believed that no weapons should be brought to the school grounds, concealed or unconcealed. He agreed that there would be a ripple effect if they tried to broaden the bill.

CHAIRMAN CLARK recalled a telephone call with **Mr. Paxinos** when they discussed the Gun Free Schools Act. He said that he had talked to the U. S. Attorney's office about why they were not prosecuting students under that act and was told that they were referring those cases to the county attorney. He recalled **Mr. Paxinos** saying that he referred the cases to the schools. He asked if he would continue that policy if this bill passed.

Mr. Paxinos said the purpose of this bill was to allow prosecutors and youth probation officers and youth court judges to deal with those problems where right now prosecutors cannot do any more than help the schools. There is no criminal offense in place. There may be a federal offense, but that involves federal jurisdiction.

{Tape: 2; Side: B}

CHAIRMAN CLARK said 45-8-316, MCA, covers every person who carries or bears concealed weapons as liable for prosecution. He asked why a student, who is a person, is not being prosecuted under that statute.

Mr. Paxinos said the problem was that when they bring them in a backpack, that is not considered carrying a concealed weapon. It is difficult to make that arrest in and of itself; it is usually because of an arrest for some other type of offense. The purpose of the statute is to prevent the carrying of weapons onto school property and the only way they will find them is by a student telling them or while searching for drugs in a locker. This would provide the mechanism for getting them into the youth court system. With drugs in lockers, the problem is the denial by the owner of the locker and the difficulty in lifting fingerprints from those. But fingerprints on a weapon are easier to establish.

CHAIRMAN CLARK asked if another student's prints are on the weapon, would he also be liable for prosecution even if it wasn't in his locker.

Mr. Paxinos said that would have to be established on a fact-by-fact basis.

REP. SHEA asked **Mr. Marbut** to validate her statement that they were all moving in the same direction to prevent kids from killing kids and that they all needed to put aside personal agendas and work together toward that end.

Mr. Marbut said that was a valid statement. He said that because he is concerned about safety in schools that would not mean he would accept lightly another law to control guns being layered on top of many laws which are already on the books designed to control guns. He felt there is sufficient authority in the law to deal with this problem.

REP. SHEA asked him if he would work together with the committee while putting aside personal interests to make schools safe for kids.

Mr. Marbut said, "Absolutely, there is no limit to my concern for gun safety. However, I wouldn't want that construed as indicating support for this particular bill. But, yes, in any form, in any circumstances, I would be glad to participate in working toward safety in the schools."

Closing by Sponsor:

REP. BOHLINGER said he had learned some things from the hearing that could help make it a better bill. He reiterated that what was said in testimony, "kids need to feel safe in school." Under present laws they don't feel safe. He said the concern was for weapons, which don't have to be concealed and suggested that an amendment strike "concealed" from the language of the bill. He summarized the intent of the bill.

CHAIRMAN CLARK relinquished the chair to VICE CHAIR DIANA WYATT.

HEARING ON HB 332

Opening Statement by Sponsor:

REP. BOB CLARK, HD 8, presented HB 332 to the committee. This bill was also heard in the last session and tabled at that time. He was presenting it again for consideration. It is an attempt to circumvent the Gun Free School Zones Act of 1990 for the legitimate law abiding citizens of Montana. The provisions of this act and its definitions are demonstrated in **EXHIBIT 4**.

In HB 332 the intent is to legitimize the carrying of firearms in a school zone for law abiding Montanans. It is estimated that 85% of Montana homes contain at least one firearm and 65% of Montanans hunt or otherwise use firearms for recreational purposes. Most are unknowingly breaking the federal law because of situations where schools may be only one block from a main highway and during hunting season, many vehicles pass within 1,000 feet of the school. The purpose of this bill is to provide a state license to carry the weapon and that would exempt the law abiding citizen from the federal law. It would also provide for possessing and carrying a firearm for purposes additional to hunting.

Proponents' Testimony:

Gary Marbut, Montana Shooting Sports Association, Gun Owners of America, National Citizen's Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association and Big Sky Practical Shooting Club of Montana, presented a history of the

Gun Free School Zones Act as passed by Congress. He said this act was never debated on the floor of Congress or the U. S. Senate but was inserted into the Crime Bill in a conference committee and presented to both houses without time for debate or testimony. He felt the committee would agree that it is not good public policy to criminalize the majority of the population. They were concerned that it provides for discriminatory and selective enforcement. He emphasized that the bill would not exempt school kids because children are not lawfully able to possess firearms under the Montana Constitution. It would not prevent the enforcement of laws concerned with concealed weapons permits.

Alfred "Bud" Elwell, Weapons Collectors Society of Montana and Northwest Arms Collectors, echoed the previous testimony.

REP. AUBYN CURTISS, HD 81, went on record as supporting HB 332. She said that in her county, they stand by the statement that an unloaded gun is more dangerous than a loaded gun.

REP. BILL TASH, HD 34, also rose in support of HB 332.

William C. Hollenbaugh rose in support of the bill.

REP. DANIEL MC GEE, HD 21, supported the bill.

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. SHEA asked if there was a case before the court presently trying to establish that the Gun Free School Zone Act is unconstitutional.

REP. CLARK said that both the 5th and 10th Courts of Appeal have overturned the Act of 1990 using the same arguments which have been offered in this hearing. The 9th Circuit did uphold the 1990 Act.

REP. SHEA asked if an adult could go into a state building like a school carrying an unconcealed firearm.

REP. CLARK said a person could not carry a weapon into a state building unless they were a law enforcement officer.

REP. SHEA asked what this means to schools in relationship with adults.

REP. CLARK said that if prosecutors would do their job, all of those issues could be covered.

Mr. Marbut answered the first question she asked. In Montana there was no problem before the Gun Free School Zones Act was passed. There have been no prosecutions in Montana so far. In addition to the other enforcement options in the law, if there is a problem in urban areas, there is a provision in 45-8-351, MCA, which provides for any local government passing a law restricting the carrying of firearms into public buildings.

REP. SHEA described the ordinance passed in Butte-Silver Bow and asked how this bill would affect it.

Mr. Marbut said this bill would have no affect on that ordinance, but only would exempt people from the federal law.

REP. SHIELL ANDERSON wondered about the provision of the bill for a person to have a firearm on school grounds in conflict with perhaps a municipal ordinance or in conflict with 45-8-328, MCA. He asked if they should stipulate that nothing in this new section contained in this bill would supersede existing state law and regulation of firearms on school grounds.

Mr. Marbut was convinced that it is already covered on the last three lines of the bill. Considering that the federal law could be stricken, it might be wise to put a contingent termination clause in this bill.

REP. ANDERSON said as he read the federal law, by passing this law, a state license would be issued to a person to carry a firearm on school grounds. Because they would have that license, they could not be prosecuted under the federal law even though the license would be a state license.

Mr. Marbut said that in the Gun Free School Zones Act there is a provision to exempt people who are licensed by the state to own or possess firearms. He said they could clarify it through language that would say that it is not intended to impact any state or local laws, that would bring no objection; however, he felt it was already covered.

{Tape: 2; Side: B; Approx. Counter: 37.3}

REP. CAREY, in reference to a statement by **REP. CURTISS**, asked why an unloaded gun is more dangerous than a loaded gun.

REP. CLARK replied that the first thing that is heard in an accidental shooting is, "My goodness, I thought it was unloaded." If every gun was loaded all the time, people would be more careful.

REP. CAREY asked why locking a gun rack in a vehicle was not a common practice.

REP. CLARK said the primary reason was there are very few locking gun racks available. Another reason is accessibility while hunting.

REP. CAREY asked why an additional cite to the Second Amendment to the U. S. Constitution was not included.

REP. CLARK said that the Montana Constitution prohibits anyone who has been convicted of a felony from owning or possessing a firearm while they are under supervision. The federal Constitution, with the Second Amendment is not addressed here because it wasn't necessary in this particular legislation.

Closing by Sponsor:

REP. CLARK emphasized that this bill would not allow criminals to possess or carry firearms. It would prevent criminal acts because of the laws already in effect. He suspected that it would be challenged constitutionally, but believed it would pass muster.

CHAIRMAN CLARK resumed the chair.

HEARING ON SB 90

Opening Statement by Sponsor:

SEN. LARRY BAER, SD 38, gave his opening remarks on SB 90, which he characterized as a good public policy, public safety bill. This would alleviate fear of vicarious liability for good qualified firearms instructors willing to teach other people the proper handling and safety precautions of firearms in Montana. Their liability would be restricted to any instance where they exhibited gross negligence resulting in a liability situation caused by the handling of firearms by one of their students.

Proponents' Testimony:

Gary Marbut, Montana Shooting Sports Association (MSSA), Gun Owners of America, National Citizen's Committee for the Right to Keep and Bear Arms, Western Montana Fish and Game Association and Big Sky Practical Shooting Club of Montana, told of the difficulty they are having in recruiting good firearms instructors related in part to the fear of liability for mishandling of the weapons by a student. Although there have been no successful prosecutions of this kind in Montana, there is evidence that this occurs in other states and there seemed to be a rising threat of those actions. He recounted the history behind bringing this legislation in previous sessions and the background in drafting this particular bill. He said they are comfortable with the way it has been amended by the Senate and urged its acceptance. He distributed a copy of the MSSA review of Montana law for gun owners booklet. **EXHIBIT 5**

{Tape: 2; Side: B; Approx. Counter: 53.3}

Alfred "Bud" Elwell, Weapons Collectors Society of Montana and Northwest Arms Collectors, said as a firearms instructor certified by National Rifle Association (NRA), he had found that liability insurance is too costly. He said he feels at risk in the current climate of litigation in this country.

William Hollenbaugh supported SB 90 to increase safety instruction.

Opponents' Testimony:

Russell Hill, Montana Trial Lawyers Association (MTLA), stood in opposition to the bill. He presented written testimony. **EXHIBIT 6**

{Tape: 3; Side: A}

Questions From Committee Members and Responses:

REP. MC GEE asked **Mr. Marbut** if a person applied for a concealed weapon permit from a sheriff and the sheriff contracted with a private group to conduct the competency testing and the person later committed a crime, if the intent of this bill was to hold those instructors not liable for the acts of the individual.

Mr. Marbut said it depended upon what the instructor was actually teaching. The bill is directed at firearm safety instructors rather than people teaching aggressive uses of firearms. The commission of the crime would have no relation to the gun safety course and this would exempt the instructor from liability. The most prominent occurrence they are concerned about is where someone might drop a gun or use one carelessly and therefore be involved in some civil liability rather than a criminal situation.

REP. MC GEE said for him there was a major difference in teaching someone to use a firearm and training people commensurate with what was discussed in getting a concealed weapon permit to satisfy the sheriff that there is competency to handle the firearm. People don't carry concealed weapons with the intent to hunt. Concealed weapons are carried with the intent to use them against a person who might be threatening them. He said there was a very broad definition in this bill of firearms safety instruction and instructor. His concern was that it should be more specifically defined.

Mr. Marbut took exception to the statement that people carry concealed weapons with the intent to use them against another person. It is their intent that the instructors would teach a course that would be acceptable for people who wouldn't apply for concealed weapons permits. They will teach gun safety. What the

concealed weapons law requires is that someone pass a course teaching them safe gun handling, not necessarily defensive use of firearms or anything like that.

REP. MC GEE stated the proposed amendment offered by MTLA outlined in **EXHIBIT 6** and asked if **Mr. Marbut** would support such an amendment.

Mr. Marbut said he would oppose the amendment because it looked like an invitation for litigation because of its "fuzzy" wording. A perfectly legitimate use for firearms as protected under constitutional law is for personal protection and that amendment could be construed to say that if a firearm was used for personal protection, the person who participated in the instruction was not sheltered from liability or could be construed to be exposed to liability.

REP. MC GEE directed attention to line 19 and asked **Mr. Hill** if that phrase did not release an instructor from the immunization he was referring to in his testimony.

Mr. Hill said that it did not because it drastically narrowed the scope of accountability by excluding immunity for carelessness.

REP. MC GEE referred to the bottom of page 1 of his testimony and asked **Mr. Hill** why he thought citizens are liable for their own acts.

Mr. Hill said he carefully used the words, "most other Montana citizens...." because there are categories of people who are vicariously liable for the acts of others.

REP. MC GEE rhetorically asked if, in the hands of a competent lawyer, any citizen could be held liable for anybody else's act. He asked why they would want to limit the firearm safety instructor in such a way that he was not defined as a safety instructor when he in fact trained people in that fashion.

Mr. Hill said that answer had to do with the intent of the proponents. If they wanted to expand the bill beyond firearm safety courses to self-defense courses, then that needed to be acknowledged and be very clear to the committee. He felt they were not talking about the volunteer instructor who handed a loaded gun in an unsafe fashion to a student thereby causing an accident. He believed it dealt with a situation where an instructor might tell his student that in certain situations, there would be justification in using deadly self-defense. That kind of carelessness in instruction which would result in injury or damage should not be immunized.

REP. SMITH wanted to know why the bill did not include standardization in consistent instruction requirements for setting credentials for safety instructors.

SEN. BAER said that most instructors are highly trained individuals who have taken a course through NRA or some similar organization. In the past they had been informed that this would present a different liability situation. He suggested to the committee that if they had a pertinent interest in the bill by adding language which would not interfere with its passage, to feel free to do so. He said they had been stopped everywhere they turned in clarifying or standardizing because they were told the more that was included, the more likely they would incur some different kind of liability. The only intent of the bill was to promote firearm safety.

REP. SMITH asked if those who teach hunter safety had been certified if they had gone through NRA instruction.

Mr. Marbut said there are two types of gun safety instruction in the state, one is hunter safety. Those instructors are trained and certified by the Department of Fish, Wildlife and Parks. The other is NRA-certified instructors. The NRA is not making any new instructors, thus producing a vacuum in instructors. In discussing standards, he suggested adding language such as, "those who are certified by Montana non-profit organizations," or something like that.

{Tape: 3; Side: A; Approx. Counter: 22.0}

REP. HURDLE suggested wording to clarify the boundaries of what a firearms safety instructor is responsible to teach.

Mr. Marbut referred to the brochure, **EXHIBIT 5**, in answering her question. He said there is a Montana law that prohibits training people to use lethal weapons for non-peaceful civil disorder.

REP. HURDLE referred to **Mr. Hill's** proposed amendment and asked for clarification of it and **Mr. Hill** clarified his proposal.

REP. KOTTEL stated that this bill did not eliminate liability for the instructor's own negligence which resulted directly in injury.

Mr. Marbut affirmed that was the intent and that it would cover those situations where acts or omissions of pupils following their active instruction were outside the instructor's control.

REP. KOTTEL said it only attempted to eliminate the vicarious liability of instructors for the intentional or unintentional actions subsequent to the training, but maintained their liability if they were negligent during the training.

Mr. Marbut concurred and fleshed out that interpretation of the intent of the bill.

REP. KOTTEL asked if there was an issue with including the wording of "a certified instructor of firearms safety."

Mr. Marbut did not have a problem with it, but suggested that someone would ask who could certify the instructor and felt that the definition of that was too narrow.

REP. KOTTEL asked if they could offer an amendment to that definition in the concealed weapons law which would be broad enough to then insert the word, "certified" in this bill.

Mr. Marbut did not have any objection to adding that word. He added to some possibility of problems with certification in more local programs.

SEN. BAER had no objection to adding the word, "certified."

REP. BOHARSKI asked if the basic intent on lines 17 and 18 was to cover people who give instruction on the lawful use of firearms.

SEN. BAER said that was true. While he would not want to cover the instruction of how to use a firearm against another human being, he would not want to limit himself from not giving legal advice as to the proper situation where self-defense would be allowed under the law.

REP. BOHARSKI said the scope of the course involved the lawful use of firearms and what a person did with that instruction would not be the liability of the instructor.

SEN. BAER said that was precisely correct.

REP. LINDA MC CULLOCH asked if the wording of the title on line 5 referred to the exclusion of the governmental entities when it used the word, "certain."

SEN. BAER believed it was the intent not to interfere with the acts of government instructors. The bill has limited application to private firearms instructors.

REP. KOTTEL asked about an amendment on line 18 by inserting, "instruct a student in lawful use of firearms and."

SEN. BAER had no objections to that language.

REP. CAREY referred to **Mr. Hill's** testimony that SB 90 would immunize gun instructors whose careless instruction on the safe and proper use of guns resulted in death or injury and asked the sponsor if he accepted that.

SEN. BAER replied that they had used the words, "gross negligence," to set a high water line whereby a firearms instructor wouldn't be held liable for any acts or omissions out of his control.

REP. CAREY said that it seemed to him that an instructor would be exempt unless the instructor exhibited gross negligence,

therefore the instructor was immunized against careless instruction.

SEN. BAER repeated his previous answer.

REP. CAREY understood that gun instructors are not vicariously liable now.

SEN. BAER replied that under current law vicarious liability can be implied and inferred under many situations and they want to remove the stigma from the firearms instructor simply to encourage them to be willing to promote the safe handling of firearms in this state.

REP. CAREY understood that the bill would raise the standard from carelessness to gross negligence of the instructor.

SEN. BAER affirmed the statement.

REP. CAREY asked if the sponsor knew of any lawsuits against a Montana gun-safety instructor.

SEN. BAER said he did not.

REP. CAREY referred again to **Mr. Hill's** testimony that SB 90 immunized instructors who meet no criteria at all and who offer gun instruction for profit and asked if the sponsor agreed.

SEN. BAER did not and recalled some amendments to the bill which would qualify the instructors it pertained to.

Closing by Sponsor:

SEN. BAER closed by asking the committee to keep in mind that it was a safety-promotional bill and contained no mischief or hidden intent for profit on anyone's part.

EXECUTIVE ACTION ON HB 65 CONTINUED

Discussion: **REP. SOFT** offered a solution to the committee as a suggestion which entailed adopting the sponsor's amendments, then utilizing the \$1.3 million earmarked for the closure of Eastmont for the start-up and operating costs for two group homes, downsize Eastmont over the next biennium to three 24-bed units located on the same campus and transfer the 19 patients to Boulder (MDC-program). He suggested that the employees at Eastmont be offered the opportunity to form a private, not-for-profit corporation and purchase the property to run three community-based group homes. If they did not purchase and privatize it, then offer it to another entity and if not taken up by anyone, then move on the bill as submitted to shut it down.

REP. GRIMES said that they were not selling the facilities but closing the current use of the facilities. This allows the department to find another use for them. He suggested that REP. SOFT'S intention could be accomplished by adding to the bill that it would be sold. However, that might be detrimental as well since the department could find an alternative use for it, then that would benefit the whole community through provision of some different types of jobs. Conceptually he liked the suggestion, but thought it might tie their hands more than it would assist with finding another use for that facility.

REP. ANDERSON said they had heard testimony on the alternatives of leaving the facility open or closing it but there had been none on this current suggestion. His inclination was to pass it unamended on to the Appropriations Committee where the decision could be more appropriately made.

REP. SMITH felt that the committee was on the spot to make decisions without expertise or consensus of opinion. She wondered if they were premature in trying to make the decision. She said she would be opposed to closing Eastmont at this time.

Motion: REP. HURDLE MOVED THE JOHNSON AMENDMENTS.

Discussion: REP. GRIMES opposed the amendments because of the cost and explained his reasons. He was told by Appropriations Committee members that their decision would be affected by how this committee acted on the bill. The question for him was where they could get the most from the money that is available.

Vote: The motion failed by roll call vote, 7 - 10. REP. AHNER later changed her vote, making the count 8 - 9.

Discussion: REP. SOFT asked if the bill should be sent to appropriations with a strong recommendation that they look at the other concepts which he had proposed as a part of the process.

REP. ANDERSON believed it could be sent to them with recommendations as proposed and if they were to change the bill from the way it was sent to them, there would be a conference committee to come to some consensus.

REP. SOFT and CHAIRMAN CLARK discussed how to facilitate the process in the time allowed. REP. BOHARSKI and REP. GRIMES also had suggestions for facilitating the process.

{Tape: 3; Side: B}

Discussion: REP. WYATT explained her reasoning for suggesting reconsideration of the Johnson amendments.

Motion: REP. MC GEE MOVED TO ADOPT THE SOFT CONCEPTUAL AMENDMENTS WHICH INCLUDED THE JOHNSON AMENDMENTS.

Discussion: REP. MC CULLOCH felt there was no guilt-free decision in this situation. She asked if this amendment would water-down the community-based part of the bill in an effort to continue with the Eastmont facility.

REP. SOFT explained his conceptual amendment.

REP. MC CULLOCH asked if she understood that would not short-change or water-down any of the already planned facilities (other group homes) in other parts of the state.

REP. SOFT did not believe it would and that it would put three on line right away.

CHAIRMAN CLARK asked, without objection from the committee, that REP. JOHNSON and someone from the department address the conceptual amendment.

REP. JOHNSON described the purpose of his amendments and how the conceptual amendments would affect the bill. He said he could not address how the community would feel and react to it. He was not opposed to parts 1 and 2, but did not know about parts 3 and 4 of the proposal.

Bob Anderson, Department of Corrections, addressed the conceptual amendments in terms of how the task force had viewed downsizing Eastmont in the DD system and detailed the problems they had felt would arise. He could say that it probably would cost more than the proposal on the table and described why. He reminded the committee that this bill affected two appropriations committees. He further suggested that the committee look at the original proposals which came out of the task force. He asked that the Johnson amendments be adopted so that the commitment laws are changed if Eastmont were left open.

Information: EXHIBITS 7, 8, 9, 10, and 11 are included.

Motion/Vote: REP. WYATT MOVED A SUBSTITUTE AMENDMENT TO RECONSIDER THE JOHNSON AMENDMENTS WITHOUT THE SOFT CONCEPTUAL AMENDMENTS. The motion carried by roll call vote, 10 - 8.

Motion/Vote: REP. ANDERSON MOVED HB 65 DO PASS AS AMENDED. The motion carried 10 - 8, REPS. SHEA, ANDERSON, MC GEE, MC CULLOCH, CAREY, GRIMES KOTTEL and SOFT voting no.

Motion: REP. WYATT MOVED TO ADJOURN.

ADJOURNMENT

Adjournment: The meeting was adjourned at 12:45 PM.



BOB CLARK, Chairman



JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 2/7/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		



HOUSE STANDING COMMITTEE REPORT

February 7, 1995

Page 1 of 2

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 65** (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, lines 7 and 8.
Strike: "DISCONTINUING" on line 7 through "DISABILITIES;" on line 8
2. Title, lines 9 and 10.
Strike: "53-1-202," on line 9 through "53-1-402," on line 10
3. Title, line 12.
Following: "53-20-146,"
Insert: "AND"
Following: "53-20-161,"
Strike: "AND 53-20-501,"
Following: "53-20-105"
Strike: ", "
Insert: "AND"
4. Title, lines 13 and 14.
Strike: "AND 53-20-502," on line 13
Following: "PROVIDING" on line 13
Insert: "AN IMMEDIATE"
Strike: "DATES" on line 14
Insert: "DATE"
5. Page 1, line 18 through page 3, line 2.
Strike: Sections 1 and 2 in their entirety
Renumber: subsequent sections

2/8

mm

Committee Vote:

Yes 10, No 8.

321728SC.Hdh

6. Page 7, line 1 through page 14, line 23.
Strike: Sections 4 and 5 in their entirety
Renumber: subsequent sections

7. Page 30, lines 13 through 17.
Strike: Section 24 in its entirety

8. Page 30, line 19.
Following: "53-20-105"
Strike: ", "
Insert: "and"
Strike: "53-20-502,"

9. Page 30, line 28.
Strike: "dates"
Insert: "date"
Strike: "(1) [Sections 3, 6 through 23, 25, 26,"
Insert: "[Sections 1 through 21"

10. Page 30, line 30 through page 31, line 1.
Strike: subsections (2) and (3) in their entirety

-END-

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/7/95 BILL NO 1165 NUMBER 1

MOTION: Amend as attached

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner	✓	✓
Rep. Ellen Bergman		
Rep. Bill Boharski		✓
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes		✓
Rep. Joan Hurdle	✓	
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee		✓
Rep. Brad Molnar	✓	
Rep. Debbie Shea	✓	
Rep. Liz Smith	✓	
Rep. Loren Soft		✓
Rep. Bill Tash		✓
Rep. Cliff Trexler		

Amendments to House Bill No. 65
First Reading Copy

Requested by Rep. John Johnson
Prepared by Susan Byorth Fox
February 6, 1995

1. Title, lines 7 and 8.
Strike: "DISCONTINUING" on line 7 through "DISABILITIES;" on line 8
2. Title, lines 9 and 10.
Strike: "53-1-202," on line 9 through "53-1-402," on line 10
3. Title, line 12.
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Following: "53-20-161,"
Strike: "AND 53-20-501,"
Following: "53-20-105"
Strike: ", "
Insert: "AND"
4. Title, lines 13 and 14.
Strike: "AND 53-20-502," on line 13
Following: "PROVIDING" on line 13
Insert: "AN IMMEDIATE"
Strike: "DATES" on line 14
Insert: "DATE"
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Strike: Sections 1 and 2 in their entirety
Renumber: subsequent sections
6. Page 7, line 1 through page 14, line 23.
Strike: Sections 4 and 5 in their entirety
Renumber: subsequent sections
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Strike: Section 24 in its entirety
8. Page 30, line 19.
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9. Page 30, line 28.
Strike: "dates"
Insert: "date"
Strike: "(1) [Sections 3, 6 through 23, 25, 26,"
Insert: "[Sections 1 through 21"
10. Page 30, line 30 through page 31, line 1.
Strike: subsections (2) and (3) in their entirety

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/7/95 BILL NO. HB65 NUMBER 2

MOTION: Amend as Attached

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner	✓	
Rep. Ellen Bergman		
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes		✓
Rep. Joan Hurdle	✓	
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee		✓
Rep. Brad Molnar		✓
Rep. Debbie Shea	✓	
Rep. Liz Smith	✓	
Rep. Loren Soft		✓
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	

Amendments to House Bill No. 65
First Reading Copy

Requested by Rep. John Johnson
Prepared by Susan Byorth Fox
February 6, 1995

1. Title, lines 7 and 8.
Strike: "DISCONTINUING" on line 7 through "DISABILITIES;" on line 8
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Insert: "AN IMMEDIATE"
Strike: "DATES" on line 14
Insert: "DATE"
5. Page 1, line 18 through page 3, line 2.
Strike: Sections 1 and 2 in their entirety
Renumber: subsequent sections
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Strike: Sections 4 and 5 in their entirety
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7. Page 30, lines 13 through 17.
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Insert: "[Sections 1 through 21"
10. Page 30, line 30 through page 31, line 1.
Strike: subsections (2) and (3) in their entirety

No-Johnson
Amendments

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2-7-95

No. bill

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

H Bill No. 65

Representative Bill Casey AD67 voting (aye or no)

"and all amendments pertaining thereto." wjc

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date 2-7-95

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

HB Bill No. 65

Representative Chris Almer voting NO ASIS -

(aye or no)

No for discontinuing EASTMONT

Yes for keeping Eastmont open + Amendments by Ted Johnson + Grant

HOUSE OF REPRESENTATIVES

ABSENTEE VOTE

Date _____

Mr. Chairman/Mr. Speaker:

I, the undersigned member, hereby vote absentee on:

House Bill No. 65; "No" to clause of Eastmont
"Yes" to revisions of definitions
amendment

Representative Rep. Liz Smith voting _____ (aye or no)

Proxy —

Support HB 65

Opposed to all ~~the~~ amendments
that would change the
intent.

John Farmer

EXHIBIT 1
DATE 2/7/95
HB 323

**Testimony of Sheriff Chuck O'Reilly
Representing the Montana Sheriffs & Peace Officers Ass'n.**

Section 1 of this bill merely adds paperwork to the Sheriff and in fact could add 5 days to the Brady requirement of a 5 day waiting period. For example if a person was granted a concealed weapon permit on February 1st and asked for a letter from the sheriff waiving the 5 day waiting period under Brady, the sheriff has 10 days, or until February 11th, to issue the letter. But if the person went directly to a gun dealer the same day he received the concealed weapon permit without requesting a letter from the sheriff, the maximum he would have to wait would be 5 days or until February 6th!

For these reasons we are proposing deleting Section 1 in its entirety and on line 17, following "a" we suggest striking "letter issued under subsection (1), the...". Paragraph 2 would then become paragraph 1 and would read as follows:

"Upon showing any handgun seller in this state a person's concealed weapon permit, and a driver's license or other identification card with the person's picture on the card, the person is entitled to buy, and the seller shall sell the person, a handgun without complying with the 5-day waiting period."

The obvious intent of this bill seems simply to be to allow the showing of a current concealed weapons permit to a gun dealer in order to waive the requirements of the Brady 5 day waiting period since the background check has already been done for the permit.

I believe our proposed amendment does not change that intent and in fact simplifies it and removes what we feel is an unnecessary amount of paperwork and a possible additional 5 day waiting period.

Your favorable consideration of our amendments would be appreciated.

EXHIBIT 2
DATE 2/1/95
HB 323

Proposed Amendments

HB 323

Submitted by the Montana Sheriffs & Peace Officers

1. Delete Section 1 in its entirety.
2. Line 17, following "a" strike "letter issued under subsection (1), the"

EXHIBIT 3
DATE 2/7/95
HB 258

ATTORNEY GENERAL
STATE OF MONTANA

Joseph P. Mazurek
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

February 7, 1995

Rep. John Bohlinger
House of Representatives
Montana State Capitol
Helena, MT 59620

Re: House Bill 258

Dear Representative Bohlinger:

I write to offer the support of the Department of Justice for House Bill 258. Unfortunately, other committee meetings this morning will prevent us from being able to testify on the bill, but I would appreciate your conveying our support to the House Judiciary Committee.

Attorney General Mazurek, together with Superintendent of Public Instruction Nancy Keenan, conducted five community forums last fall to discuss the problem of youth violence. The forums were held in Missoula, Butte, Great Falls, Billings, and Glendive, and included visits to schools in each community. There was substantial turnout at each forum--parents, teachers, school administrators, law enforcement officials, and students--and a great amount of concern was expressed about the trends Montanans believe are occurring in youth behavior. Reports of weapons in the schools were not uncommon.

Curbing the trend of violence among our youth requires a balanced and comprehensive effort, including prevention and enforcement strategies. House Bill 258 addresses an important component of this broad based strategy: Montana will not tolerate weapons in its schools, and both parents and students will be held accountable. Standing alone, of course, the bill will not solve the problem of violence in the schools. But it will provide an important tool to schools and law enforcement in their efforts to keep Montana's schools safe for our children.

Thank you for sharing these comments.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth S. Baker".

ELIZABETH S. BAKER
Assistant Chief Deputy
Attorney General

LEGAL SERVICES DIVISION

Appellate Legal Services Bureau • Agency Legal Services Bureau • County Prosecutor Services Bureau
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zone, by an individual who is participating in the program;
“(iii) by an individual in accordance with a contract entered into between a school in a school zone and the individual or an employer of the individual; or
“(iv) by a law enforcement officer acting in his or her official capacity.

“(3) Nothing in this subsection shall be construed as preempting or preventing a State or local government from enacting a statute establishing gun-free school zones as provided in this subsection.”
(2) DEFINITIONS.—Section 921(a) of such title is amended by adding at the end thereof the following new paragraphs:

“(25) The term ‘school zone’ means—
“(A) in, or on the grounds of, a public, parochial or private school; or
“(B) within a distance of 1,000 feet from the grounds of a public, parochial or private school.

“(26) The term ‘school’ means a school which provides elementary or secondary education, as determined under State law.

“(27) The term ‘motor vehicle’ has the meaning given such term in section 10102 of title 49, United States Code.”

(3) PENALTY.—Section 924(a) of such title is amended by adding at the end thereof the following new paragraph:

“(4) Whoever violates section 922(q) shall be fined not more than \$5,000, imprisoned for not more than 5 years, or both. Notwithstanding any other provision of law, the term of imprisonment imposed under this paragraph shall not run concurrently with any other term of imprisonment imposed under any other provision of law. Except for the authorization of a term of imprisonment of not more than 5 years made in this paragraph, for the purpose of any other law a violation of section 922(q) shall be deemed to be a misdemeanor.”

(4) EFFECTIVE DATE.—The amendments made by this section shall apply to conduct engaged in after the end of the 60-day period beginning on the date of the enactment of this Act.

(5) GUN-FREE ZONE SIGNS.—Federal, State, and local authorities are encouraged to cause signs to be posted around school zones giving warning of prohibition of the possession of firearms in a school zone.

SEC. 1703. REPORT ON MANDATORY MINIMUM SENTENCING PROVISIONS.

(a) REPORT.—Not less than six months after the date of enactment of this Act, the United States Sentencing Commission shall transmit to the respective Judiciary Committees of the Senate and House of Representatives a report on mandatory minimum sentencing provisions in Federal law.

(b) COMPONENTS OF REPORT.—The report mandated by subsection (a) shall include:

- (1) a compilation of all mandatory minimum sentencing provisions in Federal law;
- (2) an assessment of the effect of mandatory minimum sentencing provisions on the goal of eliminating unwarranted sentencing disparity;
- (3) a projection of the impact of mandatory minimum sentencing provisions on the Federal prison population;

18 USC 921 note.

18 USC 922 note.

private entity shall—
“(A) be located in a district that has been designated as needing additional Federal detention facilities pursuant to paragraph (1);
“(B) meet the standards of the American Correctional Association;

“(C) comply with all applicable State and local laws and regulations;
“(D) have approved fire, security, escape, and riot plans; and
“(E) comply with any other regulations that the Marshals Service deems appropriate.

“(3) The United States Marshals Service shall provide an opportunity for public comment on a contract under subsection (a)(3).”

SEC. 1702. GUN-FREE SCHOOL ZONES ACT OF 1990.

(a) SHORT TITLE.—This section may be cited as the “Gun-Free School Zones Act of 1990”.

(b) PROHIBITIONS AGAINST POSSESSION OR DISCHARGE OF A FIREARM IN A SCHOOL ZONE.—

(1) IN GENERAL.—Section 922 of title 18, United States Code, is amended by adding at the end the following new subsection:

“(q)(1)(A) It shall be unlawful for any individual knowingly to possess a firearm at a place that the individual knows, or has reasonable cause to believe, is a school zone.

“(B) Subparagraph (A) shall not apply to the possession of a firearm—

- “(i) on private property not part of school grounds;
- “(ii) if the individual possessing the firearm is licensed to do so by the State in which the school zone is located or a political subdivision of the State, and the law of the State or political subdivision requires that, before an individual obtain such a license, the law enforcement authorities of the State or political subdivision verify that the individual is qualified under law to receive the license;
- “(iii) which is—
→ “(I) not loaded; and
“(II) in a locked container, or a locked firearms rack which is on a motor vehicle;
- “(iv) by an individual for use in a program approved by a school in the school zone;
- “(v) by an individual in accordance with a contract entered into between a school in the school zone and the individual or an employer of the individual;
- “(vi) by a law enforcement officer acting in his or her official capacity; or
- “(vii) that is unloaded and is possessed by an individual while traversing school premises for the purpose of gaining access to public or private lands open to hunting, if the entry on school premises is authorized by school authorities.

“(2)(A) Except as provided in subparagraph (B), it shall be unlawful for any person, knowingly or with reckless disregard for the safety of another, to discharge or attempt to discharge a firearm at a place that the person knows is a school zone.

“(B) Subparagraph (A) shall not apply to the discharge of a firearm—

- “(i) on private property not part of school grounds;

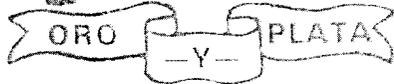
1. Free School Zones Act of 1990. USC 921 note.

EXHIBIT 5
DATE 2/7/95
BB 90

MONTANA SHOOTING SPORTS

ASSOCIATION

P.O. BOX 4924
MISSOULA, MT 59806



ALLOWABLE USES OF

LETHAL FORCE

A REVIEW OF MONTANA LAW FOR GUN OWNERS

\$2.00

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February 7, 1995

Sen. Bob Clark, Chair
House Judiciary Committee
Room 312-1, State Capitol
Helena, MT 59620

RE: Senate Bill 90

Mr. Chair, Members of the Committee:

Thank you for this opportunity to express MTLA's opposition to Senate Bill 90, which would insulate careless gun instructors from accountability for their mistakes.

Background. Senate Bill 90 closely resembles a bill which came before the 1993 Legislature, SB 224. The Senate Judiciary Committee tabled that 1993 bill after hearing testimony from the Montana Department of Fish, Wildlife and Parks (FWP) that the state agency had experienced no difficulty in attracting gun-safety instructors because of fear of liability. Consequently, MTLA disagrees with the assumption in Senate Bill 90 (page 1, lines 11-13) that special immunity is necessary to "improve the quality and availability of firearms safety instruction in Montana."

Last month, the Senate Judiciary Committee made two amendments to Senate Bill 90. First, the committee clarified (on page 1, line 19) that the bill only extends immunity to gun instructors in circumstances related to guns. Second, the committee deleted the requirement (on page 1, lines 21-23) that gun instructors maintain "sufficient records" in order to qualify for immunity.

Senate Bill 90. MTLA opposes Senate Bill 90 because:

- *Under current Montana law, no gun-safety instructor is legally liable for the acts or omissions of their students.* Gun instructors, like most other Montana

citizens, are only liable for their own acts or omissions. Gun instructors are not vicariously liable for the carelessness of their students. The carelessness of a student is not automatically attributable to the instructor. Senate Bill 90, however, *immunizes gun instructors whose careless instruction on the safe and proper use of guns results in death or injury.*

- MTLA disagrees with the assumption in Senate Bill 90 (page 1, lines 9-10) that regardless of legal realities, the mere "perception of potential exposure to liability for the conduct, acts, or omissions of students" is sufficient justification for granting special legislative favors to private gun instructors. *MTLA knows of no lawsuit against a Montana gun-safety instructor for the conduct of a student.*

- Senate Bill 90 applies only to private gun instructors, not to those who happen to be "employed by a governmental entity." Ironically, this distinction between instructors ignores the rigid requirements for gun-safety courses offered by such governmental entities as the Montana Fish, Wildlife and Parks Department; instead, Senate Bill 90 immunizes instructors who (1) *meet no criteria at all*, and/or (2) *offer gun instruction for profit* rather than as volunteers.

- Senate Bill 90 doesn't just ignore criteria for proper gun instruction--*it completely avoids any definition of "firearms safety instructor."* Consequently, in addition to immunizing traditional volunteer hunter-safety instructors, Senate Bill 90 also apparently immunizes *other* gun instructors, including those who teach *self-defense with guns*. MTLA urges this committee--and proponents--to carefully define "firearms safety instructor," perhaps by amending Senate Bill 90 as follows:

"For purposes of this section, a firearms safety instructor is one who instructs on the unintentional consequences of firearm use. For purposes of this section, a firearms safety instructor does not include one who instructs on the intentional use of firearms against another human being."

If MTLA can provide more information or assistance to the Committee, please notify me. Thank you again for this opportunity to express MTLA's opposition to Senate Bill 90.

Respectfully,



Russell B. Hill
Executive Director

DATE 2/2/95

HR 65

Glendive United Methodist Church

Towne and Kendrick
Box 200
GLENDDIVE, MONTANA 59330



January 23, 1995

The Honorable Members of the Human Services Committee
Montana State Legislature
Helena, Montana

Representative John Cobb, Chair
Representative Betty Lou Kasten
Representative Beverly Barnhart

Senator Charles Swysgood
Senator John Lynch
Senator James Burnett

Dear Friends,

We, the undersigned clergy of Glendive, write with enthusiastic support for the excellent, caring services provided by the Eastmont Human Services to its residents in a homelike atmosphere. Dispersing most of the residents to Group Homes and the remainder to Montana Development Center at Boulder will change forever the life these residents have come to know.

What is the quality of life at Eastmont in which these residents thrive?

1. A large number and variety of staff who are familiar with each resident, who can quickly step in for emergencies or when residents have a special need situation.
2. Annual progress in achieving personal goals. Staff members tell of the steady and marked progressive changes residents have made since moving to Eastmont as seen from their many and various perspectives.
3. Professional physical therapy supervised in large, cheerful, well equipped areas.
4. Professional occupational therapy that addresses a resident's capacity to work within Eastmont and other possible settings.
5. Professional educational organization of the residents into 5 units of 10 each, who are similar in need and aptitude, with personalized plans for the group and individuals.
6. Trained staff persons, with the necessary knowledge and comprehensive experience to quickly procure from Medicaid and Medicare the prescribed treatment needs as ordered by physicians, physical therapy and occupational therapy. (No simple task!)
7. Twenty-four hour a day special needs professional and nursing care that is so vital to the quickly changing conditions and needs of the residents.

8. A comprehensive, multi professional Personal Annual Evaluation of each resident's self help skills, social and recreational skills, physical and occupational therapy progress, communication skills and progress with behavior.
9. Professional Dietician services that ensure the quality and correctness of the necessary therapeutic and modified diets required by the residents.

Providing the above tangible quality of life assets in the required most intensive level group home settings CANNOT BE DONE IN SOME INSTANCES (Items 1-5), AND CANNOT BE DONE IN OTHERS WITHOUT COSTLY DUPLICATION OF FACILITIES, EQUIPMENT AND TRAINING.

The Federal Medicaid requirement for serving Eastmont's residents mandates "A continuous, aggressive active treatment program" carried on through twenty four hours a day. Can a series of group homes do that as professionally and efficiently as Eastmont can considering the level of functioning of the residents?

Today's challenging, honorable belief is that everyone is entitled to live in the least restricted environment possible. Sometimes this has achieved positive results. Other times it has not and has created serious problems. (The homeless in our streets for example). Who best determines what the "least restrictive environment" is for persons who require 24 hour a day active attention in order to function? Who knows the issues better than those with the "hands on" practical experience?

We know of no resident's family who has complained or requested this change. We wonder why the legislature would want to take its valuable time.....and spend precious tax funds.....to try to fix something that isn't broken.

We respectfully ask that Eastmont Human Services Center remain intact and funded to continue its excellent care and services. We see and hear about Eastmont's high quality work daily! It is a witness to the intangibles of love, dedication, spirit and reverence that radiate among the Eastmont staff and the Glendive community and which make Eastmont's residents thrive!

Sincerely yours,

Members of the Glendive Ministeral Association

Pastor Dennis Franklin - Assembly of God
 Pastor Kenneth Bjerde - First Lutheran
 Pastor James Berglund - United Methodist
 Pastor Allen Solheim - Evangelical Church
 Pastor James Sinclair - First Baptist Church
 Pastor Mary J. Logue - Christian & Missionary Alliance Church
 Pastor Arlio D. Hand - Community Bible Church

EASTMONT HUMAN SERVICES CENTER

January, 1995

Eastmont Human Services Center (EHSC) is an intermediate care facility presently serving 49 adults ranging in age from 25 to 72.

The residents that live at EHSC are diagnosed as profoundly mentally retarded and many have severe physical handicaps. This means that their IQ's are below 25, compared to the average adult IQ of 110, most have a functioning age of under 2 years, many are wheelchair bound and do not communicate verbally. All of the residents require 24 hour supervision to ensure their safety. The majority of the residents need an intense amount of staff assistance to dress, bathe, and eat, as well as to complete all other aspects of their daily living routine. Many of the residents have multiple health conditions; for example, 23 residents are diagnosed with seizure disorders, others have heart disorders, mental illness, Alzheimer's, kidney and liver disorders, and those disorders related to age as well.

The kinds of treatments and services that are provided at EHSC include daily programs to maintain and encourage participation in daily routines. Given that the residents are functioning at 2 years old or less and with multiple physical handicaps and health concerns, their daily program may include: learning to toilet on a schedule to decrease the number of accidents due to lack of ability to be toilet trained, learning to pick up a named object, having arms and legs moved by a caretaker to keep flexibility and discourage further atrophy, passing objects to others to increase awareness of surroundings, and learning to fold a washcloth in half in preparation for entry into the Vocational Program.

Community outings are also part of the services provided and require adapted vehicles to transport the residents to and from the activities. These activity programs are mainly used to provide exposure to other sights, sounds, and textures.

EXHIBIT 9
DATE 2/7/95
HB 65

ATTENTION: EASTERN MONTANA RESIDENTS

As indicated in a previous newsletter, a proposal to close Eastmont Human Services Center is being moved forward.

The proposal, if included in the Executive Budget and forwarded to the Legislature in 1995, would move the residents into group homes. By 1997, Eastmont Human Services Center would be closed.

Eastmont Human Services Center provides excellent care and rehabilitative programs for the severely developmentally disabled.

Please read the attached materials. Questions concerning the issue should be directed to Artis Zody, Chairman, Retain Eastmont Committee, 300 E. Barry, Glendive, Montana, 59330.

EASTMONT

The concept of a community based facility to serve the needs of Developmentally Disabled persons in eastern Montana was brought before the 1967 session of the legislature. Legislation establishing Eastmont was passed and Eastmont opened its doors in 1969.

Parents of those individuals in need of services provided by Eastmont, brought them in on Sunday and picked them up Friday. This arrangement provided respite for the parents during the week. This allowed the residents to receive the needed services and training. Family ties were maintained by the individuals returning home over the weekends.

Another benefit of this approach was that it made it possible for the parents to visit with staff and thereby receive advice and information for carrying on the training while the residents were at home.

Eastmont - Past

Eastmont Human Services Center now serves a maximum of 50 adults who are mentally retarded/developmentally disabled. They range in age from 25 to 72 and reside at Eastmont on a full time basis.

The facility is licensed by Medicaid. These regulations require the facility to provide an aggressive and continuous active treatment program for each individual resident.

Each resident is evaluated annually in the following areas:

Psychological /Behavior Management

**Developmental (i.e. dressing skills, eating skills,
Personal hygiene skills, attending to tasks, etc.)**

Recreation/Leisure

Communications

Medical

Nutrition

Occupational Therapy

Physical Therapy

An interdisciplinary team then meets to determine strengths and weaknesses of each individual. A treatment plan is devised for the coming year. The plan is monitored monthly to ensure the resident is receiving the care and treatment needed.

The residents are actively involved in the community. They go out for meals and snacks at local restaurants, attend activities such as fairs, rodeos and various types of ball games and shop at various businesses.

In order to provide the type of program that is needed for the residents, the facility has 105 full time equivalents (F.T.E.) allocated. This translates into 110 - 120 full and part time employees.

The State of Montana provides the facility with a budget of approximately \$3.5 million. Medicaid then reimburse the State approximately 70% of the total budget

Eastmont - Present

"Array of Services"

Currently, the Development Disabilities services in Montana provide the following:

1. **Eastmont Human Services Center. Residential campus style center. Has 49 residents at present.**
2. **Intensive care group homes--Up to six residents.**
3. **Standard group homes--Up to eight residents.**
4. **Transitional living; individual apartments but staff available in same building.**
5. **Independent living; independent of others but services available as needed.**
6. **Supported living; Aids come to home to help.**
7. **Montana Developmental Center, Boulder; Room for 110 residents.**

The Committee believes that the Eastern Montana Human Services Center is an option for placement in the services available to the developmentally disabled.

**EASTMONT RETENTION COMMITTEE
POSITION STATEMENT**

EXHIBIT 10
DATE 2/7/95
HB 65

IT IS OUR POSITION THAT THE PROPOSAL TO CLOSE EASTMONT HUMAN SERVICES CENTER IN 1997 IS NOT IN THE BEST INTEREST OF THE RESIDENTS OF THE CENTER OR IN THE BEST INTEREST OF THE DEVELOPMENTALLY DISABLED POPULATION IN THE STATE OF MONTANA FOR THE FOLLOWING REASONS:

1. **A DEDICATED STAFF DELIVERS QUALITY SERVICES TO THE RESIDENTS OF EASTMONT HUMAN SERVICES CENTER. IN OUR OPINION, THE BEST GROUP HOME SETTING MAY NOT BE ABLE TO MATCH THESE SERVICES.**
2. **USING THE CRITERIA OF "LEAST RESTRICTIVE ENVIRONMENT" IT IS OUR FIRM BELIEF THAT THIS CRITERIA IS MORE THAN MET AT EASTMONT HUMAN SERVICES CENTER.**

THE RESIDENTS ARE ACTIVELY INVOLVED IN THE COMMUNITY. THEY GO OUT FOR MEALS AND SNACKS AT LOCAL RESTAURANTS. ATTEND CHURCH AND ACTIVITIES SUCH AS FAIRS, RODEO, BALL GAMES, BOWLING, AND SWIMMING. THEY ALSO GO TO THE LIBRARY AND SHOP AT VARIOUS BUSINESSES.

3. **IT APPEARS THAT AN EXPENDITURE OF 1.5 TO 2.0 MILLION DOLLARS IN ADDITION TO THE CURRENT OPERATING BUDGET WILL BE REQUIRED IN THE CLOSING OF EASTMONT HUMAN SERVICES CENTER.**

4. **THERE ARE OVER 1300 PERSONS ON THE COMMUNITY WAITING LIST WHO ARE IN NEED OF SERVICES. OF THESE, OVER 450 RECEIVE NO SERVICES THROUGH AGENCIES CONTRACTING WITH THE DEVELOPMENTAL DISABILITIES DIVISION (DDD), WHILE OVER 850 ARE UNDERSERVED INDIVIDUALS NEEDING ADDITIONAL OR DIFFERENT SERVICES THAN THOSE THEY CURRENTLY RECEIVE THROUGH THE DDD. FOUR HUNDRED (400) PERSONS ON THE COMMUNITY WAITING LIST ARE REQUESTING SERVICES SIMILAR TO THOSE WHICH WOULD BE NEEDED BY THE INDIVIDUALS PROPOSED TO BE MOVED FROM RESIDENTIAL FACILITIES. OF THIS GROUP 300 RECEIVE SOME DDD FUNDED SERVICES, WHILE OVER 100 RECEIVE NO SERVICES.**

5. **EASTMONT HUMAN SERVICES CENTER CURRENTLY IS SERVING A SEGMENT OF THE DEVELOPMENTALLY DISABLED POPULATION DESPERATELY IN NEED OF THESE SERVICES. GIVEN THE SITUATION FOR DELIVERY OF SERVICES TO THE DEVELOPMENTALLY DISABLED POPULATION AS INDICATED BY THE FIGURES ABOVE, THE EASTMONT RETENTION COMMITTEE STRONGLY RECOMMENDS THAT THOSE MONIES THAT WOULD BE EXPENDED TO CLOSE EASTMONT HUMAN SERVICES WOULD BE FAR BETTER SPENT TO BRING SERVICES TO THOSE IN NEED.**

HB 65

HB 65 was recommended by the Governor's Human Services Subcabinet's Interagency Task Force on Developmental Disabilities. The bill accomplishes two major goals:

1. Revises current commitment laws to clarify language and definitions, improve the commitment process, and eliminate current sunset provisions.
2. Discontinues Eastmont Human Services Center's function as a residential facility for the developmentally disabled.

Note: Changes in item 1. are needed even if Eastmont is not discontinued.

Over the past two decades Montana has faced increasing pressure to reorganize its services for individuals with developmental disabilities. In 1989 the Governor's Human Service Sub-cabinet appointed an Interagency Task Force on Developmental Disabilities including representatives from the five human services departments, advocates, family members, institutional and community service providers. Over the last four years the task force has recommended and implemented major initiatives that have substantially reduced and enhanced institutional services while also expanding and improving community services for the developmentally disabled. HB 65 reflects the task force's continuing effort to improve services for individuals with developmental disabilities now and in the future.

Through its ongoing review and evaluation of Montana's Developmental Disabilities Service System, it was determined by the task force that many of the individuals currently being served at both Eastmont and the Montana Developmental Center (MDC) could and should be served in less restrictive community services. From this evaluation the task force developed a specific plan to expand community services for approximately 66 individuals in FY 96-97, and for an additional 12 individuals in FY 98-99. These 78 individuals would come from both Eastmont and MDC, with Eastmont discontinuing as a residential facility effective **January 1, 1997**. Also, as part of this plan, revisions in the commitment laws were recommended. Passage of HB 65 is needed to carry out this plan.

HB 65 is not being presented as a criticism of Eastmont's facility, services or staff; and it is not being presented as a cost savings measure. The bill proposes to reallocate current level resources from institutional services to community services, and is being recommended for the following reasons:

1. Philosophy of Normalization - Making available to persons with developmental disabilities the patterns of everyday life which are as close as possible to regular circumstances and normal ways of life and society. Community services can better provide this normal environment than institutions.

2. State and Federal Laws - State law and federal regulations require individuals with a developmental disability be committed to institutional facilities only when they cannot be safely and effectively treated in community based programs. Assessments on 173 individuals committed to institutions indicate that approximately 70 could be served in current types of community based programs.
3. Eastmont Mission - Over the last five years there have been no new commitments to MDC or Eastmont of the types of individuals resembling those being considered for community placement under this proposal. Also the majority of clients being served at Eastmont could be moved to community services. This calls into question "what is the current or future mission of Eastmont?"
4. Reallocation of Resources - When possible, the reallocation of resources from institutional services to community services expands our ability and capacity to provide services.
5. Future - Future needs for institutions is diminishing. Parents of kids with developmental disabilities tell us they will not accept institutional placement as an option for their children.

As part of this plan, the Department Corrections Human Services (DCHS) has recommended funding for an employee transition and benefit package for affected Eastmont employees, and is also researching alternative uses for the Eastmont facility. It is imperative that local officials, labor organizations and legislators also assist in the effort to find an alternative use for the facility.

HB 65 is drafted rather unusual as it requires 3 effective dates. Refer to Section 27:

1. The first effective date is the date of passage and will implement all the commitment language changes but leaves Eastmont and the definition of seriously developmentally disabled alone.
2. January 1, 1997 - keeps in all of the commitment language changes and also eliminates Eastmont.
3. January 1, 1998 - keeps in all commitment language changes, eliminates Eastmont, and changes the definition of seriously developmentally disabled.

The bill was drafted in this manner so effective dates correspond to dates of patient transfers. It also allows for changes in the commitment language to be implemented even if Eastmont is not discontinued, simply by amending out items 2. and 3. from Section 27.

COMMUNITY SERVICE ALTERNATIVES TO EASTMONT(HB65)

Proposal: House Bill 65 and the Executive Budget both contain parts of a proposal to close Eastmont Human Services Center(EHSC) and re-allocate the funding to develop community based programs for 48 current residents of state operated institutions for people with developmental disabilities. The plan is based on the recommendation of the Interagency Task Force on Developmental Disabilities, a group made up of parents, services providers, advocates and state agency personnel.

The following are the questions that are most often asked regrading the proposal:

1. What community services will be developed?

Answer: The plan calls for developing up to eight new six-person intensive group homes and accompanying day services in communities across the state. Fewer homes may be constructed if current group home residents who are seeking other service alternatives are enabled to move into more integrated living situations such as supported apartments. People from the institutions would then be able to move into the openings created in existing homes. This kind of approach would allow more people to immediately benefit from the Eastmont initiative and reduce the need for new home construction.

2. What will the group homes be like?

Answer: The homes are specially constructed to meet the needs of people with disabilities in accordance with nationally recognized health and safety standards. Homes are totally physically accessible and barrier free and include built-in fire sprinkler systems. Great care is taken to ensure that the homes are attractive and that they blend into the neighborhoods in which they are located. The cost of construction is between \$250,000 and \$300,000 per home.

3. How will the homes be staffed?

Answer: During the hours that people are awake and in the home a minimum of three staff persons will be on duty. At night there will be at least one staff person who is awake and working in the home. Staff receive training in all areas of working with people with disabilities, including, but not limited to: first aid, CPR, supervising the administration of medications, infection control and other health care procedures, and behavior management and other teaching techniques.

4. What will people do during the day?

Answer: People who live in group homes leave the home during the day in order to attend a day program. The activities at the day program are based on the needs and desires of the persons served. Some people work or receive training at the day program; others may receive the assistance and support they need to find and keep a job, if that is possible.

5. Who will operate the services?

Answer: Services are delivered by private not-for-profit corporations under contract with the Department of Social and Rehabilitation Services(SRS). Each corporation is governed by a board of directors made up of citizens with an interest in services to people with disabilities. SRS currently contracts with 52 agencies to provide services to almost 3,300 people with developmental disabilities and their families.

6. Will specialized health related services such as nursing or occupational and physical therapy be available?

Answer: In order to deliver services, the intensive group home provider agency must demonstrate that all the needs of the people they will be asked to serve can be met, including needs for specialized services. Some community agencies directly employ therapists and nurses. Most agencies contract with private providers or home health agencies to deliver these services based on individual need(Eastmont also contracts with private providers for some of these services). No one will move to a place that does not have the resources readily available to meet their specific needs, including specialized therapies.

7. What will the proposal cost?

Answer: When fully implemented the annual cost of the new community services is virtually the same as the cost of operating EHSC, with a small projected general fund savings of about \$50,000 per year. There is a one time cost to make the transition to community services during the 1997 biennium of about \$1.3 million in state general fund. The one-time funding covers start-up costs for new group homes, costs in phasing out the EHSC facility and employee assistance costs for EHSC staff.

8. Why not spend the money on people waiting for community services?

Answer: Since the proposal re-allocates money that the state is already spending on one type of service to another more appropriate type of service, using the money to address the needs of people on the waiting list is not an option. Addressing the immediate needs of the waiting list would require an ongoing appropriation of additional funding, this proposal does not require any more money once it is fully implemented. The Eastmont closure will, however, have a dramatic impact on the people who will need services in the future. If implemented, the plan will re-allocate over \$3.0 million from a service without a waiting list to a set of services that many Montanans are seeking out and waiting for.

9. What's wrong with Eastmont?

Answer: The plan to develop community services is not intended as an indictment of the way Eastmont provides treatment. Eastmont does a good job of providing residential services within the framework of an institutional model of service. The institutional model is the issue. For some extremely aggressive people and some people who require total care and/or are medically fragile, institutions are an appropriate service option. The vast majority of the people with developmental disabilities who live at Eastmont do not have these kinds of needs. Even the most caring and dedicated professionals can't overcome the built-in limitations that are part of serving large numbers of people living in an big residential facility. Because of the limitations of the service model, only folks who really need to be there should be placed in institutions; that's what this discussion is all about.

10. What about the Montana Developmental Center?

Answer: Some states have taken the position that institutions have no role to play in services. Montana's plan for developmental disabilities services has, however, defined a specific role for state operated institutions and assigned that role to Montana Developmental Center (MDC). The mission of MDC has two distinct parts: 1) the treatment of people with severe behavior problems that present a significant danger to themselves and others. 2) services for some people who require total care and may have severe medical conditions. Some of the long term residents of MDC do not meet either of the criteria described above; they will be considered for placement in the community if the plan is approved. All of the people admitted to the institution since the state commitment

law was revised in 1991 fit the new MDC mission. In addition to the Eastmont proposal, the Executive Budget also contains funding to reduce the population at MDC by 18 people. Six of the people will be placed into community services this year, the remainder will be placed in Fy 97. These placements are necessary in order to accommodate the MDC remodeled campus and will go forward regardless of whether or not Eastmont is closed.

11. What do the people in Eastmont look like?

Answer: The average age of the forty-nine people who live at Eastmont is 45 years old. The oldest person is 72, the youngest is 25. The average resident of Eastmont has lived there for a little over 9 years. Seven of the people are from communities east of Billings. Assessments done within the last year indicate that the "typical" Eastmont resident requires a good deal of personal assistance due to their limited ability to meet their own basic self-care needs (feeding, dressing, bathing, toileting etc.). Some residents engage in behaviors that are a challenge for staff to deal with, but few if any present a significant danger to themselves or others. A number of people receive occupational, physical and speech therapy, but the majority of the services are delivered by EHSC direct care staff under the periodic supervision of the contracted professionals. On-site nursing is a need for a very limited number of people.

12. Can community programs really serve the kind of people who live at Eastmont?

Answer: The majority of people with developmental disabilities in Montana who have needs similar to the Eastmont population are already served in community programs. Many of the adults served in intensive group homes and day services have the same needs as the Eastmont group. Since there is no one under the age of 18 in either EHSC or MDC, all of the kids with similar needs are in the community. A survey of parents and advocates of people placed from MDC and EHSC over the last four years revealed that while they were generally satisfied with services at the institutions, having experienced both institution and community services, they prefer the community service model.

13. Who will be placed into community services?

Answer: Assessments done within the last year indicate that at least 70 residents of EHSC and MDC could be served in community programs. If the proposal to close Eastmont is approved, the needs of all of the residents of the two institutions will be re-assessed. The only people who

will be considered for placement will be the individuals from MDC and EHSC who have been determined to be ready after the re-assessment of their needs is complete. Eastmont residents who do not go to community programs will be transferred to MDC.

14. Where will the services be located?

Answer: Efforts will be made to accommodate the desires of the individuals who will be placed. If, for example, a resident has a brother or sister in Butte who would like them closer to home, we will try to develop the services in Butte. Additional criteria that will come into play when making the decision on where to develop services will be the availability of the necessary specialized support services and the long term demand for the group home services in that location.

15. What is the impact on the Glendive community if HB 65 is passed?

Answer: Currently Eastmont has 105.12 positions (fte) and employs approximately 115-120 people. These state jobs would be eliminated under this proposal. The Task Force was unable to identify an alternative mission for EHSC in the developmental disabilities service system. DCHS is currently looking into alternative uses for the Eastmont facility outside of developmental disabilities. The development of an alternative program or use for the Eastmont facility will require assistance from the local community leaders and legislators, and would help mitigate job loses and impact on the community. Also, the Eastern Montana Veterans Home will soon be providing an additional 70-80 jobs and SRS will be looking at developing at least one or even two group homes in Glendive.

16. What is being done to assist the Eastmont employees if this proposal goes forward?

Answer: The Executive Budget includes an Eastmont employee assistance package. This package calls for the continuation of the current state reduction in force (RIF) registry, state employee insurance participation for six months after layoff, moving assistance, and a severance/incentive payment of \$650 for every year of state service. Also the Department of Labor will provide training and layoff assistance to Eastmont employees under Title III of the Job Training Partnership Act.

17. Why are we doing this?

Answer: For more than twenty years Montanans have engaged in an ongoing, sometimes lively and contentious, discussion regarding the best ways for the state to assist and support its citizens with developmental disabilities. The place where Montana has drawn the line separating those who can best be served in the state's institutions from the people who can and should live in the community has changed over the two decades. Part of the change is a product of the maturation of community programs. Playing an even larger part in the move towards community services are the changing expectations of parents, advocates and the people with disabilities themselves. The Eastmont proposal represents the latest chapter in the ongoing discussion. It's a fairly straight forward policy question: What is the highest and best use of the money the state has chosen to spend on developmental disabilities services.

Some facts are clear:

- 1) There is no waiting list to get into Eastmont;
- 2) The only admissions to Eastmont over the past five years have been people transferred from MDC;
- 3) People are waiting in line for community services;
- 4) Because of special education and supports for families, no kids are in state operated institutions;
- 5) The families of the kids with disabilities who have kept their children at home are telling us they do not want institutional services in the future.

Boiled down to its simplest form, the proposal to close Eastmont is an attempt to listen to the customer and re-allocate scarce resources away from a service where demand is decreasing to the services people are telling us they want in the future.

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GARY MARBUT	MSSA GOA CCRKDA WMFGA BSPSC	✓	
A. Nim (Bud) Elwell	wesm/nwac	✓	
William C. Hollenbaugh	Self	✓	
Stan Frazier	Self	X	

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MARY ELLERD	MT JUV PROB OFF	✓	
W. James Kuybel	City of Billings	✓	
Dennis Paxinos	Yllustrn Co.	✓	
A. M. (Bud) Elwell	worm / NWAC		✓
J. Frain	J Am	✓	
Charles R. Brooks	Yellowstone City Comm.	✓	
William C. Hollenbaugh	Self		✓

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