

# memo

To: Sen. Cynthia Wolken  
From: Peter Ohman  
CC:  
Date: 6/7/2016  
Re:

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When I looked at our sentences in Montana I compared them to various sentences I could find for similar offenses in our sister states of North Dakota, Wyoming and Idaho. What I found was our sentences are simply longer than what exist for the same conduct in some of these states.

Here is a rundown of some thoughts which led to suggested modifications:

Accountability and attempt – Montana sentences defendants the same for accountability and attempt as if they actually carried out and committed the crime; Idaho has a more nuanced sentencing structure for these types of crimes – 15 years for some attempts and half what could be imposed for lesser crimes. Accessories, i.e. accomplice liability is 5 years.

45-5-103 – Mitigated Deliberate Homicide. Our mitigated is referred to as manslaughter or a different form of murder in many other states. In Wyoming and Idaho it carries 20 years as opposed to 40 in Montana.

45-5-104 – Negligent Homicide – this is referred to as manslaughter in North Dakota. In Montana it carries a 20 years sentence – in North Dakota it is 5 years. For conduct that is accidental or a mistake, 20 years is remarkably punitive and very costly for people who probably aren't the type of criminals we're afraid of and need to be locked up.

45-5-207 – Criminal Endangerment – see notes

45-5-213 Assault with a Weapon – this statute covers a broad range of conduct. A weapon can be an incredibly varied set of objects in Montana. Reasonable apprehension of bodily injury – e.g. someone throws a bottle at someone else – carries the same penalty as if I stab someone with a knife.

The references to North Dakota's penalties illustrate the difference.

# memo

45-5-304: Custodial Interference – Once again, compared to Wyoming, our statute provides for double the punishment. People who take their kids need to be punished but imprisonment for a decade seems a bit expensive for someone who might have not criminal history and has otherwise been law abiding and paying taxes.

- see also, 45-5-634: Parenting Interference

45-5-401: Robbery – Montana’s robbery statute has a 2 year minimum, 40 year maximum catchall. We have many cases where a misdemeanor theft spirals into a robbery with potentially a 40 year sentence. These are usually shoplifting cases where the defendant runs away and the store employee trips or falls during the chase. This results in a usually young person, who has a positive future – taxpayer, contributing to society – becoming someone that society and other taxpayers pay to house, feed supervise, then also have to register as a violent offender, can’t get a job, housing etc. The Wyoming and N.D. statutes distinguish strong arm robberies from low level thefts avoiding placing people who are non-violent but exercised poor judgment into the same category as violent criminals.

45-5-503: Sexual Intercourse Without Consent: We have to do something about teenagers having consensual sex. Most states have a carve-out – here it is 3 or 4 years – better teach real sex ed than put our heads in the sand and criminalize normal development behavior.

45-5-624: MIPs – note the mandatory fines for children under 18 and those between 18 and 21. Instead of focusing on fines perhaps identify the kids who are developing severe CD issues as opposed to those who are drinking socially with friends.

45-5-625: Sexual Abuse of Children: Might consider a carve-out to cover sexting between minors.

45-5-637: Possession of Tobacco: see above notes for MIP

45-6-204: Burglary: In 2007 the Legislature expanded the definition of “occupied structure” to include “any outbuilding that is immediately adjacent to or in close proximity to an occupied structure and that is habitually use for person use or employment”.

Thus sheds, detached garages, and other assorted outbuildings fell under the definition of occupied structures in the burglary statute. Thought is do we want someone who goes into a garden shed and takes a basketball subject to 20 years in prison? Some

# memo

states punish burglary of a residence more harshly than a garage or storage shed, perhaps we could do the same recognizing the invasion of privacy is different for the two.

45-6-301: Theft: Highlighted mandatory fines – considering most thefts are crimes of poverty not sure why we need mandatory minimum fines.

Also tried to establish a tiered sentence structure so people who committed lower level financial crimes rec'd more proportional felony sentences compared to those who committed offenses with much larger amounts; e.g. the person who steals a \$1500 beater car does not get the same sentence as someone who has embezzled \$100k from their employer.

I also did this with other financial crimes including Failure to Return Rented Property, Issuing the Bad Check, Deceptive Practices, Forgery and Identity Theft and Forgery.

45-7-308: Bail Jumping – 5 years in prison should be sufficient for missing court. On a proportionality basis some jurisdiction don't file bail jumping charges if someone misses court, others do it regularly. The point is, whether such a charge is filed or not has no effect on public safety. It appears it isn't even a crime in Wyoming, although I would have to research that more thoroughly before stating so publicly.

Dangerous Drugs – Chapter 9: Generally trying to ensure the punishment fits the severity of the offense. Particularly the life sentence for distribution and modifying marijuana to a civil offense.

45-9-202: Alternative Sentencing Authority: Removing mandatory acts from statute with respect to driver's license. No good reason to take someone's livelihood away while simultaneously demanding they succeed in life with a job, caring for children, etc.

## **Second Document** - Title 46 edits

Areas of potential discussion are highlighted with comments.

Many of the areas are statutes commissioners were interested in working on or CSG staffers referenced.

At the end of the document are statutes with mandatory financial penalties that we might be interested in focusing on.

We should consider removing the prohibition on violent offenders participating in treatment court – 46-1-1104(8)

# memo

Considering allowing change of pleas in misdemeanor cases to occur by telephone with the concurrence of the prosecutor and defendant – 46-12-201(5) and 46-12-211(5) – or make it mandatory for courts to do via Skype or other video-conference options.

Example, fellow who drove from Browning to Missoula, to enter plea on a disorderly conduct case; was 15 minutes late; court issued a warrant; and when he showed up late refused to drop warrant and let case proceed. Client obviously poor, charge minor, court creating needless expenses – could have been done by telephone for such a minor offense.