

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **Acting Chairman SEN. RIC HOLDEN**, on March 12, 1999 at 9:07 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: Sen. Steve Doherty (D)

Members Absent: None.

Staff Present: Delila Croucher, Committee Secretary
Valencia Lane, Legislative Branch

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 366; HB 227; HB 115
Executive Action: HB 227

HEARING ON HB 366

Sponsor: REP. BETTY LOU KASTEN, HD 99, Brockway

Proponents: REP. DAN MCGEE, HD 21, Billings
Jeff Simkovic, Citizen
Colleen Murphy, MT National Association of Social
Workers

**Linda Sheaver, MT National Association of Social
Workers
Ann Gilkey, Supreme Court Assessment Program
Sami Butler, MNA
Sharon Hoff, MT Catholic Conference
Chuck Hunter, Department of Public Health and Human
Services**

Opponents: None

Opening Statement by Sponsor:

REP. BETTY LOU KASTEN, HD 99, Brockway, introduced HB 366. This bill was originally instituted through the Supreme Court Assessment Council and deals with Federal regulations. However it mostly concerns the safety and permanency of children that come into the care of others. It involves the parents and guardians more fully in hearings and reviews, it streamlines and clarifies the court procedures, and it expedites the termination of parental rights.

{Tape : 1; Side : A; Approx. Time Counter : 2.5 - 4}

Proponents' Testimony:

REP. DAN MCGEE, HD 21, Billings, rose in support of the bill. He chaired a Subcommittee in House Judiciary that compared HB 246 with HB 366. House Bill 366 was held as a base bill and HB 246 was merged, in line for line with full consideration by the House Judiciary Committee.

{Tape : 1; Side : A; Approx. Time Counter : 4 - 5.6}

Ann Gilkey, Supreme Court Assessment Program, rose in support of the bill. Her advisory Committee asked that they draft this bill and find a sponsor. Implementation of the Adoption and Safe Families Act requires states to incorporate various parts of that act into state statute. She pointed out some of the places in the bill where HB 246 were welded into the bill. Number one, the definition of child abuse. Number two, physical abuse was clarified as intentional acts. Number three, psychological abuse was changed to include acts or emissions. Number four, social workers must be educated or trained, not receiving education or training. Number five, unfounded was defined. Number six, youth in aided care was defined. Number seven, department records will be provided free of charge to parents. Number eight, the duties of guardian ad litem was clarified. Number nine, it was clarified that an affidavit must be filed with an abuse or neglect petition. Number ten, *show-cause* hearing was replaced with *emergency placement* hearing. Finally, the bill outlines the

requirements of a treatment plan. The bill is truly a compromise. **EXHIBIT(jus56a01)**

{Tape : 1; Side : A; Approx. Time Counter : 5.6 - 11.6}

Jeff Simkovic, Attorney, Billings, rose in support of the bill. He has represented families harmed by Family Protective Services. Some of the cases could have been prevented if this bill were in place. There is a need to protect children, and a need for this role in the government. However, there is a problem with the way current law is being implemented. Child Protective Services picks on poor and disenfranchised people. Families are broken up for days, weeks, or even months at a time due to hear-say. Due process is not being granted. Parents are treated guilty until proven innocent. Social workers are often obnoxious and outrageous in their comments to parents. Child Protective Services has an issue of secondary gain. Federal, or maybe even state, grants are awarded by the number of children served. The removal of children without due process should not be tolerated.

EXHIBIT(jus56a02)

{Tape : 1; Side : A; Approx. Time Counter : 11.6 - 15}

Sharon Hoff, Montana Catholic Conference, rose in support of the bill. The Conference is especially pleased with the efforts this bill makes to deal with women who are incarcerated and could lose access to their children.

{Tape : 1; Side : A; Approx. Time Counter : 15 - 15.6}

Colleen Murphy, Executive Director of the Montana National Chapter of Social Workers, rose in support of the bill. This law brings state statute into compliance with the 1997 Adoption and Safe families Act. This act clarifies that the health and the safety of children, served by Child and Welfare Agencies, must be their paramount concern. Agencies must aim to move foster care children more swiftly into permanent homes. This bill will shorten the time frame for a child's first permanency hearing.

{Tape : 1; Side : A; Approx. Time Counter : 15.6 - 19.8}

Sami Butler, Montana Nurses Association, rose in support of the bill. The intent of the bill is child protection and family reunification, when that course is in the best interest of the child. The bill recognizes that a stable home is best for a child and provides for, when needed, either termination of parental care or long-term custody-permanent foster care.

{Tape : 1; Side : A; Approx. Time Counter : 19.8 - 20.5}

Chuck Hunter, Administrator of the Child and Family Services Division of the Department of Public Health and Human Services, rose in support of the bill. Compliance with the Federal Adoption and Safe Families Act is an important aspect of the

bill. Federal monies that accompany compliance are an important component of the bill as well. Emotional issues that the bill addresses are also important. Clarification of disclosure issues are addressed within the bill. It allows copies of records to parents free of charge. The bill provides notice to parents, foster parents, pre-adoptive parents and relatives providing care to a child. It shortens the time frame for a hearing of a child in state care down to ten days. These are important provisions provided by this bill in addressing child care issues.

{Tape : 1; Side : A; Approx. Time Counter : 20.5 - 23.3}

John Larson, District Judge in Missoula and Mineral Counties, 4th Judicial District, rose in support of the bill. He has been a member of the Court Assessment Committee since its development. Child abuse and neglect cases will not end with the passage of this bill. There is a huge epidemic of substance abuse that prevails in our society and in this state. That abuse is what is causing this caseload to increase. There are children in his court that have been there for up to fifteen years, one of which has been moved around 34 times. Permanency planning is a difficult process and shortening the time line will be a great help though it will not be a cure all. **EXHIBIT(jus56a03)**

{Tape : 1; Side : A; Approx. Time Counter : 23.3 - Tape : 1; Side : B; Approx. Time Counter : 1.8}

Opponents' Testimony: none

Questions from Committee Members and Responses:

SEN. SUE BARTLETT noticed that when interviewing a child, it requires the consent of the child to have a parent or someone from the school present. She questioned the rationale of putting a child in that position. **Ann Gilkey** responded saying that that provision was discussed at great length in Sub-Committee and the way the amendment reads, a social worker, county attorney, or peace officer, when considered necessary may conduct an interview of the child, period. With the child's consent, the interview may be conducted in the presence of a parent. **SEN. BARTLETT** followed up asking if it is predicted that the child will be asked, in each instance, if they want someone present. **Anne Gilkey** responded by saying she does not know how it will work out in practice but some children, if thought necessary by a social worker, will be taken into consideration.

{Tape : 1; Side : B; Approx. Time Counter : 2.3 - 5.4}

SEN. HALLIGAN asked Chuck Hunter to respond to allegations that the Department is mining children, wanting to put them in foster care for financial benefits to the Department. He inquired how

reimbursements are allocated to the Department. **Mr. Hunter** responded by saying that they are able to access Federal money, between \$15 and \$20 million dollars per year projected into the next biennium. Those funds are available to those kids that are in care who meet the Federal definition. There is no incentive and no bonus for kids coming into foster care. That money is just there to help pay for them. Roughly 50% of the kids in foster care are not qualified for Federal monies. The one exception is that the Feds have set targets for the number of adoptions in the state, and if the state exceeds that target, there is an incentive of about \$4,000 per adoption. Montana targets are set at 200 adoptions a year. The state may receive some \$30,000 to \$40,000 each year of the next biennium if targets are met.

SEN. HALLIGAN asked about the insertion of the County Commissioners and why that is appropriate. **Mr. Hunter** was concerned initially whether or not that would politicize the process but the more he learned about it, the better he felt.

SEN. HALLIGAN asked **REP. KASTEN** if there was a guardian ad litem being involved. **REP. KASTEN** indicated no. **SEN. HALLIGAN** asked the same question to Judge Larson. The Judge indicated that he would support such involvement. **SEN. HALLIGAN** furthered his questions asking **Mr. Hunter** if there was someone from the Department looking into this. **Mr. Hunter** said that the only concern they would have, having very briefly reviewed the amendments, would be a broader array of people to come in and file a petition.

Closing by Sponsor:

REP. BETTY LOU KASTEN closed on her bill. She hopes that this Committee will deal with the amendments like the House dealt with them, bringing together the parties and finding a solution. Permanency in an expedient time frame for the courts is right where she needs to go with the budget she has to work with in the Health and Human Services Appropriation Sub-Committee. She recommends a do pass with or without the amendments once everyone is happy.

{Tape : 1; Side : B; Approx. Time Counter : 5.4 - 13.8}

HEARING ON HB 227

Sponsor: Rep. Brad Molnar, HD 22, Laurel

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. BRAD MOLNAR, HD 22, Laurel, opened on his bill delaying qualifications to go to small claims court. The amendment states that individuals that represent themselves in a small claims court, a partner may represent a partnership, a union may be represented by a union member or union employee, a corporation may be represented by one of its employees, and an association may be represented by one of its members or by a member of the association, and any other organization may be represented by one of its members or employees. The problem revolves around small business. If someone takes a small business to claims court, because they are the director of their own corporation and not an employee it has been held that they can't defend themselves. This bill will treat a corporation exactly like an association, union, or partnership in that one of its employees can show up on behalf of the operation.

{Tape : 1; Side : B; Approx. Time Counter : 17.8 - 21.5}

Proponents' Testimony: None

{Tape : 1; Side : B; Approx. Time Counter : 21.5 - 21.7}

Opponents' Testimony: None

{Tape : 1; Side : B; Approx. Time Counter : 21.7 - 21.9}

Questions from Committee Members and Responses:

SEN. HALLIGAN asked **REP. MOLNAR** who testified in the House hearing that was in opposition of the amendments. **REP. MOLNAR** noted that nearly all of the opposition to the bill has been dealt with by striking sections of the bill that were in question.

{Tape : 1; Side : B; Approx. Time Counter : 21.9 - 22.8}

Closing by Sponsor:

REP. MOLNAR thanked the Committee for a very short hearing and said that the bill was the closest thing to a housekeeping bill as could be.

{Tape : 1; Side : B; Approx. Time Counter : 22.8 - 23.8}

**Sponsor: REP. DAN MCGEE, HD 21, Southwest area of Billings and
Yellowstone County**

**Proponents: REP. CHRIS CHRISTIANS, HD 23, Cascade County
Mike Ferriter, Administrator of the Corrections
Division
Mike Grayson, Anaconda, Deer Lodge County Attorney
Diana Leibinger-Koch, Department of Corrections**

Opponents: Dennis Paxinos, Yellowstone County

Opening Statement by Sponsor:

REP. DAN MCGEE, HD 21, introduced his bill that was drafted on the request of the Department of Corrections. The bill deals with many topics.

First, it allows the district court judges to impose, as a condition of a deferred or suspended sentence, placement at boot camp.

Second, it provides for longer commitments to the Department of Corrections. This provision continues to allow for a five year placement in a correctional facility or program but expands the courts ability to suspend a portion of longer sentences, thus allowing for extended periods of probation and supervision.

Third, it clarifies when it is appropriate for probation parole officers to recommend to a district court or to a board of pardons for an offender to be conditionally discharged from supervision.

Next, a new provision allows a district court and a board of pardons and parole to unconditionally release an offender from the remainder of his/her sentence when all his/her obligation have been met.

Fifth, significant changes relative to managing the probation violators, the Probation Violator Diversion Program, would allow probation parole officers the ability to authorize an officer with the power of arrest, and the authority to detain a probation or parole violator in a county jail. This is funded out of the Department of Corrections budget.

Sixth, this bill would require the Department to collect the detention cost from the offenders in order to pay for the cost of the detention.

Seventh, the Department of Corrections would report to the next legislative session as to how the program is working.

Next, the bill permits the Probation Parole Bureau to collect up to thirty dollars a month from offenders for supervision.

Finally, the bill allows offenders who have committed offenses punishable by a life sentence, usually a drug offence, to be eligible for participation at the boot camp.

{Tape : 1; Side : B; Approx. Time Counter : 23.8 - Tape :2; Side : A; Approx. Time Counter : 1.2}

Proponents' Testimony:

REP. CHRIS CHRISTIANS, HD 23, Cascade, rose in support of the bill. **REP. CHRISTIENS** was a member of the Oversight Committee that worked on a number of bills before the Judiciary Committee, and stands in full support of this particular bill. A couple of different parts of this bill that make great sense are as follows. First, it allows for full judicial discretion. Second, it uses local jails. Third, individual offender pays for their own jail costs. Finally, it removes the age cap for those individuals qualified for boot camp. This bill goes a long way in making some changes that will help with future budgeting for the Department of Corrections. Having the Department report back to the legislature the next two sessions is a good idea.

{Tape : 2; Side : A; Approx. Time Counter : 1.2 - 4.7}

Mike Ferriter, Administrator of the Corrections Division, rose in support of the bill. The bill directly effects many functions of the Community Corrections Division. It enables the Division to move forward with many ideas relative to dealing with more offenders in the community. This bill impacts the Division in three major ways. One, the function and operation of the Treasure State Correctional Training Center, or the boot camp, allowing the camp to broaden the pool of offenders eligible for admittance, and allowing district court judges the option of suspending or deferring a prison sentence who is successful in completing the camp. Two, it allows for suspended sentencing as part of commitments to the Department of Corrections. Third, it makes changes to supervision options for offenders on adult probation and parole. One of the most significant pieces of legislation deals with the ability for the Probation Parole Bureau to sanction probation violators up to a thirty day period of incarceration in local detention centers.

{Tape : 2; Side : A; Approx. Time Counter : 4.7 - 9.4}

John Larson, District Court Judge in Missoula and Mineral County, Fourth Judicial District, rose in support of the bill. He attended some of the Interim Committee meetings. Those issues

that relate to sentencing discretion to judges is a good idea. The problems with the five year DOC Commitments were very clearly communicated to the Department and the Committee.

{Tape : 2; Side : A; Approx. Time Counter : 9.4 - 12.4}

Diana Leibinger-Koch, Attorney for the Department of Corrections, rose in support of the bill. She referred to two elements of the bill. It allows the possibility of deferred sentence after the completion of boot camp. The bill speaks to the Probation Diversion Program.

{Tape : 2; Side : A; Approx. Time Counter : 12.4 - 14.7}

Opponents' Testimony:

Mike Grayson, County Attorney for Anaconda, Deer Lodge County, rose in opposition of the bill. Generally there are a lot of provisions in this bill that are excellent. However, there are a few specific concerns that cause opposition unless amended. Sections two and five, dealing with unconditional release, will greatly erode the finality of a judgement imposed by a district court causing a lot of unintended but real problems in administration. Essentially a probation officer may approach a district judge and request an unconditional early release from supervision. **EXHIBIT(jus56a04)**

{Tape : 2; Side : A; Approx. Time Counter : 14.7 - 22.8}

Dennis Paxinos, Yellowstone County Attorney, rose in opposition of the bill. Other than the two points that Mr. Grayson pointed out, HB 115 is a good bill. They cause severe problems and repercussions for prosecutors, judges and legislatures. These provisions run counter to the legislatures Crime Victim Relief Act that was passed last session. The victim is taken out of the process. Sentence reduction or having an offender released unconditionally will not allow for a victim to be notified. Truth in Sentencing Laws are not being complied with under this bill. Deferred sentencing upon completion of boot camp is too much of a reward for an offender. Boot camp is a good program in that it allows an offender to go into the camp and essentially write his own ticket to get out of prison. The idea of violent criminals going through the boot camp program and receiving a deferred imposition is too much. Offenders that are tried by a jury and sentenced by a judge to be incarcerated, need some mark to remain on this individuals record. With these changes, it is a good bill.

{Tape : 2; Side : A; Approx. Time Counter : 22.8 - 27.8}

Questions from Committee Members and Responses:

SEN. BARTLETT asked what the definition of conditional discharge is. **Mr. Grayson** responded saying that essentially when a probation officer has someone who is on probation and doing well and no longer, in the officer's opinion, needs to check in every month, can then go forward to the court and ask the judge to approve a conditional discharge from probation. Upon approval, the offender is still technically under the terms of their suspended sentence but is still subject to being revoked. A conditional discharge can be revoked for other criminal violations. **SEN. BARTLETT** asked why provisions for victims input are not in place. **Mr. Grayson** said that the offenders are still under a certain degree of restriction that are imposed by the court.

{Tape : 2; Side : A; Approx. Time Counter : 27.8 - Tape : 2; Side : B; Approx. Time Counter : 0.5}

SEN. BARTLETT asked what the Interim Committee's thinking was in response to the County Attorney's two issues of concern, one being the unconditional discharge from supervision and the second being the potential for a deferred sentence if someone has been in through the boot camp even though they may have spent time in prison prior to that. **REP. MCGEE** responded by saying that he had a bill draft request in that came out of the Oversight Committee which would have allowed parole officers to grant offenders doing well on a day-to-day basis with a reward. Parole officers could also take this away. The Department had a bill and the Subcommittee had some thoughts and by the time they all got merged together, most of the things that were major concerns had been fixed and made into HB 115. This is an attempt to get to where we want to go, simply by giving them a reward, and encouraging them to learn how to live in society. If the offenders are doing well, recognize that they have messed up, paid their restitution, and the victim has been accounted for, then based on the recommendation of the parole officer, the court can decide what is appropriate.

{Tape : 2; Side : B; Approx. Time Counter : 0.5 - 6.5}

SEN. GROSFIELD asked the same question to Judge Larson. **Judge Larson** noted that there are no amendments to the other requirements for a deferred sentence. A deferred sentence can not be awarded if an offender has previously been convicted of a felony even though that offence has been previously deferred. There is nothing in this bill that amends that.

{Tape : 2; Side : B; Approx. Time Counter : 6.5 - 10.1}

SEN. HALLIGAN asked if someone would respond to the Truth in Sentencing Provision. **Judge Larson** noted that if a recommendation to boot camp were in place, all the options would be on the table at that time. **Mr. Grayson** noted that this bill

would apply to people who have already been sentenced. Victims, in the future, will have to be told that there is now a way to get off of probation earlier. People already having been sentenced will also qualify for this option. There is no way to go back and tell victims this.

{Tape : 2; Side : B; Approx. Time Counter : 10.1 - 12.6}

SEN. HALLIGAN asked if a suspended sentence is just as good as a deferred, or if it has the same effect. Would be possible to strike deferred from the bill and insert suspended. **SEN.**

CHRISTIENS noted that any time an individual is given an opportunity to be rewarded for doing the right thing more rise to the challenge. This allows for the inmate, or ex-offender, to demonstrate that they are willing to live as good, law abiding citizens. **SEN. HALLIGAN** asked Mike Ferriter the same question. He added that it is important to keep in mind that we are not talking about a lot of offenders, in either the conditional or unconditional or deferred. It is worth the one or two folks that the boot camp helps. This is an opportunity to move people through the system. The discretion of the district court judges are completely capable.

{Tape : 2; Side : B; Approx. Time Counter : 12.6 - 18.5}

SEN. JABS asked if essentially this bill would allow criminals to be released from parole without hearings and victim notification, and if parolees are currently being released without a hearing and without victims being notified. **Judge Larson** responded saying that currently he receives a notice, the sheriff is noticed, and the county attorneys are notified when the parole board is about to hear matters. All of the above mentioned are allowed to comment. **Judge Larson** referred to Mr. Ferriter's comments that there is a policy in place that states if there is an unconditional request for discharge, there is notification. At a minimum, there should be notification, but if requirement of judgement is successfully completed then only notification should be required, comment should be allowed, and then the judge should make the decision.

{Tape : 2; Side : B; Approx. Time Counter : 18.5 - 19.8}

SEN. JABS asked Judge Larson if there was really much difference in present law and this bill as far as notification is concerned. **Judge Larson** said that he thinks that we either need to have it in policy, either put it in statute and require notification, it doesn't make any difference in his case.

{Tape : 2; Side : B; Approx. Time Counter : 19.8 - 21.9}

SEN. HOLDEN directed a question to Mike Ferriter. As far as victims being notified in the unconditional release, the people of Montana are concerned that the victims are not being included

in the process anymore. This bill may need an amendment that addresses the concern of unconditional discharge. **Mr. Ferriter** responded saying that certainly he is concerned about the victims rights and that he hopes that the probation officers will address that when they are writing their recommendation to the judge. An amendment that includes the victims rights would be reasonable.

{Tape : 2; Side : B; Approx. Time Counter : 21.9 - 28.2}

SEN. BARTLETT asked Judge Larson what specific instances that unconditional discharges would be appropriate and preferable to conditional discharge. **Judge Larson** said that in a conditional discharge, almost everything is completed. In an unconditional discharge, an individual can work hard and complete all the requirements, and have committed a non-violent act. **SEN.**

BARTLETT asked Judge Larson to give a brief description of how a deferred sentence works. **Judge Larson** said that records are not expunged under a deferred sentence. They are still available but sealed.

{Tape : 2; Side : B; Approx. Time Counter : 26.9 - Tape : 3; Side : A; Approx. Time Counter : 1.9}

Closing by Sponsor:

REP. MCGEE said that the creation of an amendment would be worked on. This bill was crafted by the Department of Corrections and by the members of the Oversight Committee keeping in mind the requests of the district court judges. There are a lot of good things in the bill as well as question marks that need to be addressed. The proposed budget for the Department of Corrections is \$190 million. The Community Corrections portion is about \$35 million. There are about eight thousand people in the system, over six thousand of which are in the Community Corrections Division. This bill is an attempt to provide tools to the Community Corrections Division.

{Tape : 3; Side : A; Approx. Time Counter : 1.9 - 5.8}

Additional information was entered into the record for HB 366.

EXHIBIT (jus56a05)

EXECUTIVE ACTION ON HB 227

Motion/Vote: **SEN. JABS** moved that **HB 227 BE CONCURRED IN. Motion carried 8-0** with Dougherty being excused.

ADJOURNMENT

Adjournment: 11:10 A.M.

SEN. RIC HOLDEN, Acting Chairman

Delila Croucher, Secretary

RH/DC

EXHIBIT (jus56aad)