

MINUTES

**MONTANA SENATE
57th LEGISLATURE - SPECIAL SESSION
COMMITTEE ON JUDICIARY**

Call to Order: By **CHAIR LORENTS GROSFIELD**, on August 7, 2002 at 11:00 A.M., in Room 350 Capitol.

ROLL CALL

Members Present:

Sen. Lorents Grosfield, Chair (R)
Sen. Duane Grimes, Vice Chair (R)
Sen. Al Bishop (R)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Walter McNutt (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Mary Gay Wells, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 18, 8/5/2002
Executive Action: SB 18 DPAA

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HEARING ON SB 18

Sponsor: SEN. CHRIS CHRISTIAENS, SD 23, GREAT FALLS

Proponents: Dennis Paxinos, Yellowstone County Attorney
Bill Slaughter, Director, Dept. of Corrections
Tom Esch, Flathead County Attorney
Mike Mahoney, Warden, Dept. of Corrections

Opponents: None

Opening Statement by Sponsor: SEN. CHRIS CHRISTIAENS, SD 23, Great Falls. He presented SB 18. When the bill was first presented three sessions ago, the savings were estimated between \$100 to \$150 thousand per year. The numbers were based upon 44 inmates discharged per month. The Dept. estimates those figures are between 44 and 50 per month now. In this Special Session, which was convened to cut the budget, this bill has come forward once again. The Senator's intent all along was that perhaps the money saved could be used within the Dept. of Corrections for some of the treatment that was given up in the Governor's previous cuts of 3.5 percent. He stated that there were some amendments being proposed at this time but **John MacMaster, Legislative Staff**, did not feel that amendments were necessary. One objection to the bill years ago was the possibility of 44 people descending upon the small community of Deer Lodge at one time. Since that time, Montana has three regional jail prisons-- Glendive, Missoula and Great Falls. There is Corrections Corp of America in Shelby in addition to Montana State Prison and five pre-release centers. Inmates would come from these different places on a regular basis. Therefore, the 44-50 inmates discharged monthly would come from a variety of places. Nothing is accomplished for the inmates by discharging them a few days earlier (up to 30) than discharging them at their regular discharge date.

He felt that the word "shall" should be changed to "may" on page 1, line 14 of the bill. That would cover those individuals who might be considered predators, dangerous or violent. This would give the corrections people the discretion to use this early release in a judicious manner.

Proponents' Testimony:

Dennis Paxinos, Yellowstone County Attorney. He indicated that he was also speaking on behalf of MT County Attorneys' Assoc. In the past, victim rights' groups have come forward to oppose this bill because they want the offender to serve every day of their time. His only concern, in an urban area, would be to release a

boatload of people in one place at one time. With all the pressure that the Dept. of Corrections is under and with all the facilities that are now in the state, they should have some flexibility to try to work through this release. The bill is only looking at 1-29 days. That is a reasonable number and he was in favor of the bill. There is a compliance issue in letting the victims know when a person is being discharged. This should not be a problem for the Dept. to notify those people in a timely manner, but it is important that this be done properly.

Bill Slaughter, Director, Dept. of Corrections. Originally, the Dept. opposed this bill because they try hard not to have several inmates at a bus stop at one time. Greyhound Bus does not even come to Deer Lodge anymore. The Dept. will work very hard to make sure that inmates, as they are discharged, will be at a bus stop one at a time. The amendment of changing "shall" to "may" will give the Dept. the discretion to do that.

Tom Esch, Flathead County Attorney. He appreciates the hard work of the Legislature to balance the budget and keep the safety of Montanans in mind. He approved of the proposed amendment of changing "shall" to "may" and was therefore able to support the bill.

Mike Mahoney, Warden, Montana State Prison. He felt that some amendments were critical. The bill fits the need of the attempts being made by the Legislature. The change of "shall" to "may" is of utmost importance. He also wanted to make sure that victims are notified at the proper time in the proper way. He was concerned about the numbers of inmates being discharged at the same time. Flexibility is key to having things run in a smooth manner.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. STEVE DOHERTY asked if 30 days would make any difference in rehabilitation. **Mr. Esch** replied that there are some people the Warden does not think should get out even 30 days early. But as he reads the bill, discharge means that an inmate has not been paroled. So for whatever reason, he feels that the Dept. must have the discretion of who should or could be released up to 30 days early.

SEN. DOHERTY inquired why parolees were not included in this bill. **SEN. CHRISTIAENS** replied that this bill does not address parolees, only those who are discharged. There are people at release centers who, for one reason or another, are discharged as

they are from prison. Not everyone who goes to a release center paroled out of that center. Some of them discharge from that location. Secondly, there seem to be many reasons why people waive parole. When he looked at last month's parole report, probably 100 people waived parole. He does not approve of inmates being allowed to waive parole. Ex-offenders have said that they don't think they could do a parole under strict supervision. Therefore, it is easier for them to discharge rather than parole and have a bunch of rules to abide by. **SEN. CHRISTIAENS** forgot to mention in his opening, but he suggested that if the bill is passed there should be a delayed effective date to at least Oct. 1. The Dept. of Corrections should be given some lead time in order to comply with the bill.

SEN. JERRY O'NEIL wondered if an inmate could be discharged 30 days prior to his regular discharge date and that way they wouldn't be piled up at the first of the month. The state would also get more of a fiscal impact. **SEN. CHRISTIAENS** thought that would be fine if the committee wanted to do so.

SEN. O'NEIL further asked if there would be less of a problem with due process since all inmates would be treated equally. **SEN. CHRISTIAENS** offered that they had talked about the equal treatment issue yesterday with the Dept's attorney and the attorney did not think there was unfair treatment under this bill.

SEN. DOHERTY asked for an opinion of the above issues. **Mr. Paxinos** said that he liked the bill as it was written.

SEN. RICK HOLDEN offered the possibility of discharging on the last day of the month as opposed to the first few days of the month. That would give the state a bit more money. **Mr. Slaughter** said that administratively, it could be done and might be easier to calculate.

CHAIR GROSFIELD asked **Beth Brenneman, ACLU**, a question concerning equal protection. **Ms. Brenneman** said there is no fundamental right to an early release and no class is created by distinguishing between prisoners on the basis of the day they are discharged. The government would, on a rational basis, have that decision and this would probably qualify as a rational basis.

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CHAIR GROSFIELD suggested that instead of saying the first day, they could say the first three days. **Matt Robertson, Attorney, Dept. of Corrections** answered and said they had discussed the bill for the last two sessions. They discharge between 25 and 45

inmates from Montana State Prison every month. All those inmates end up at the Butte bus stop. He felt the first week or first five days of the month would be better timing. **SEN. CHRISTIAENS** suggested looking at two months of discharges and get a better feel for how many days would be the best. He felt that one to three days would be sufficient.

CHAIR GROSFIELD definitely felt that "shall" should be changed to "may." If the days are set at one to three, the word "may" gives the Dept. the discretion of who, when and how. Everyone seemed to be in agreement.

CHAIR GROSFIELD had another concern if this bill would apply to all classes of inmates. He did not want to see a sex offender let out even a few days earlier. He felt that the public would feel the same. He asked for opinions.

SEN. DOHERTY did not feel that excluding some prisoners would be the way to go.

Mr. MacMaster said that he did not think there was an equal protection problem. The Dept. is constantly distinguishing between types of criminals especially in the sentencing process.

SEN. AL BISHOP inquired about the possibility of an inmate being discharged 10 days early and re-offending in that 10 day period, would there be any problem of liability for the state. **Mr. Robertson** said there should be no problem. Since the state has statutory ability to discharge them and they would no longer be under the state's supervision, there shouldn't be a liability issue.

SEN. BISHOP questioned the advisability of the Legislature to change the sentencing of the Judge. **Mr. Robertson** replied that the Dept. already does that when they shorten the sentence for good behavior. Discharging has a different set of circumstances than parole.

SEN. DOHERTY wanted some comments on equal protection or other constitutional issues that could arise. **Ms. Brenneman** offered that there could be an ex post facto problem with designating these particular individuals. It is different for individuals for the benefit of early release. Federal registration statutes have been subject to ex post facto challenges. This would be for all people who are currently serving their sentence. This would be an additional punishment or restriction on their ability to be discharged because of the sentences. For individuals who have already been sentenced and are already in prison, it would look like an ex post facto.

Mr. Esch agreed with **Ms. Brenneman's** first answer. But he did not accept that this is an ex post facto application because the judge imposes a sentence and, as she originally stated, it is at the discretion of the Dept. to award the benefit. He further stated that he thought the Dept. should have the discretion of picking the date from the first to the thirtieth of the month.

CHAIR GROSFIELD asked **Director Slaughter** if there was a problem about letting the victims know of an earlier discharge date. **Mr. Slaughter** answered that they have a system that is designed to identify the victims and notify them when necessary. They have a list and use it electronically. The wardens have a list of these people also. They seem to have neglected the county attorneys. Many times the victim witness lists are located right in the county attorneys' offices. They are working to fix that.

Closing by Sponsor:

SEN. CHRISTIAENS reminded the committee that most sex offenders do not parole. Most actually discharge. Many sex offenders have been sentenced prior to January 1997 when the law was changed doing away with "good time". The state, as policy, had "good time" given to offenders prior to January 1997 for crimes committed. Sex offenders are getting good time just as other inmates who were sentenced prior to that time. Probably about 1/3 of the prison population are in for a sex offense and that is the primary reason for their sentence. In addition to that, because of plea bargains, etc. many inmates have had sex offenses in their past. There will be pre-releases who do not take offenders because of sex offenses. It would behoove this Legislature to work with the Corrections Dept. to figure out a better way for sex offenders to return to communities under supervision than the way most of them leave now. They are the ones discharging because they are not being paroled.

He asked for the effective date to be changed to October 1. He also asked the committee to delay taking executive action and wait for the amendments to come.

CHAIR GROSFIELD informed the committee that they would meet in the afternoon upon the Floor adjournment. At that time, the amendment would be ready and they would then take executive action on the amendments and then the bill. 11:45 a.m.

The committee returned at 1:30 p.m. to finish the hearing on SB 18.

CHAIR GROSFIELD reopened the hearing.

Mr. John MacMaster offered to explain the two sets. The second set of amendments **EXHIBIT(jus03a01)** SB001802.ajm were submitted by **SEN. DOHERTY**. The first amendment changes "shall" to "may". The discharge will be discretionary. The second amendment states the inmate may be discharged at anytime within 30 days prior to the day on which the offender is eligible for discharge. To delete the effective date, the entire Section 3 is taken out.

The first set of amendments **EXHIBIT(jus03a02)** SB001801.ajm were submitted by **CHAIR GROSFIELD**. This amendment also changes "shall" to "may", would discharge during the first three days and changes the effective date to October 1. It would except out of the bill sex offenders. They will not be able to get an early release. Sex offenders is defined in 46-23-502 which is in the sexual and violent offenders law.

The first three numbers in both amendments are for clarification in the title if the amendments are accepted.

CHAIR GROSFIELD then asked for an explanation concerning the house bill that was similar to SB 18.

Mr. MacMaster explained that the rule states you cannot have introduced in or received in a house a bill to accomplish the same purpose of a bill that has already been killed in that house. If the committee kills SB 18 today, you couldn't introduce in the Senate or receive in the Senate from the House another that would accomplish the same purpose. The fact that the House has tabled their bill allowing the release of up to a year is not going to affect this committee's action because it is the House that killed that bill.

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Finally, he did not think the House would have accomplished the same purpose in their bill as in SB 18. This bill would release from one to thirty days early (if so amended). The House bill would have released up to one year early which is a significantly different purpose. The other difference between the two bills is that the House bill allows an early release when one of two things happen. One is that if a prison has maxed out in terms of their budget and the second is if the size of the prison and the staff is no longer capable of handling more people.

EXECUTIVE ACTION ON SB 18

Motion: SEN. HALLIGAN moved that SB 18 DO PASS.

Discussion: **Motion:** SEN. HALLIGAN moved that SB 18 BE AMENDED with SEN. DOHERTY'S amendment SB001802.ajm.

Discussion: SEN. HALLIGAN asked to vote on the amendments separately. Mr. MacMaster asked the committee to ignore amendments 1, 2, and 3. Those are the amendments to the title if the bill is amended. Similarly, amendment 4 would just amend the title or heading for section one of the bill to make it reflect what a later amendment does in the body of that section. The committee need look at only number 5 which changes "shall" to "may", numbers 6 and 7 which would allow up to thirty days and amendment 8 which strikes the effective date.

Motion/Vote: SEN. HALLIGAN moved that AMENDMENT 5 DO PASS.
Motion carried unanimously.

Motion: SEN. HALLIGAN moved that AMENDMENT 6 AND 7 DO PASS.

Discussion: CHAIR GROSFIELD said that he was looking to give the Dept. the discretion in the timing for the discharge of an inmate. The amendment SB001802.ajm will save quite a bit more money than his amendment would. This amendment says that anytime within 30 days prior. It could be one day or 30 days.

Vote: Motion carried unanimously.

Motion: SEN. MCNUTT moved that AMENDMENT 8 DO PASS.

Discussion: SEN. MCNUTT offered that the Dept. indicated they needed some time to get things in place. They preferred an effective date of October 1.

CHAIR GROSFIELD explained that with the passage of Amendment 5, the Dept. has the discretion to make it effective at any time or whenever they are ready. The word "may" gives them that discretion.

Vote: Motion failed. 0-8

Motion/Vote: SEN. HALLIGAN moved that SB 18 DO PASS AS AMENDED.
Motion carried unanimously. 8-0

ADJOURNMENT

Adjournment: 12:00 P.M.

SEN. LORENTS GROSFIELD, Chair

MARY GAY WELLS, Secretary

LG/MGW

EXHIBIT (jus03aad)