MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on January 6, 1999 at 9:00 A.M., in Room 104 Capitol.

ROLL CALL

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

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Services Division

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 6, SB 8, SB 24, SB 54, 1/3/1999
Executive Action: SB 6

HEARING ON SB 6

Sponsor: **SEN. DON HARGROVE, SD 16, Belgrade**

Proponents: **Mike Batista, Administrator of the Division of Criminal Investigation, Dept. of Justice**
Kent Funyak, Cascade County Undersheriff

Roland Mena, Bureau Chief of Chemical Dependency, Department of Public Health and Human Services
Brad Griffin, Montana Retail Association
Jim Smith, Montana Sheriffs and Peace Officers Association
Bill Stevens, Montana Food Distributors Association
Troy McGee, Montana Chiefs of Police Association
Jerry Williams, Montana Police Protective Association

Opponents: None.

Opening Statement by Sponsor:

SEN. DON HARGROVE, SD 16, Belgrade, introduced SB 6. He remarked that the narcotics problem is one of the most important issues dealt with by the legislature. A large percentage of the persons incarcerated in Montana for violent crimes are there because of drug-related problems. This legislation addresses the ingenuity of the people who manufacture and traffic illegal drugs.

{Tape : 1; Side : A; Approx. Time Counter : 9:02}

Proponents' Testimony:

Mike Batista, Administrator of the Division of Criminal Investigation, Dept. of Justice, commented that 80 % of their cases are methamphetamine related. This compares with 10 % to 20% five years ago. A recent study identified that most of the Rocky Mountain states are suffering abuses of methamphetamine far beyond the abuses of cocaine. In 1997 they seized three working methamphetamine labs and in 1998 twelve methamphetamine labs. There is also an increase in the number of people seeking treatment for methamphetamine addiction. They would like to make the law pro-active in dealing with the circumstances taking place in the field.

Kent Funyak, Cascade County Undersheriff, rose in support of the bill on behalf of the **Montana Narcotics Officers Association.** The precursor legislation is needed for the officers who are out on the streets on a daily basis trying to stop methamphetamine productivity in the state. This legislation will allow persons to be charged before the product is actually produced. The sparse population in Montana makes these labs difficult to find.

Roland Mena, Bureau Chief of Chemical Dependency, Department of Public Health and Human Services, spoke in support of the bill, **EXHIBIT(jus03a01).** Since 1997 they have seen a 24% increase in the number of individuals admitted to the chemical dependency center in Butte. Of great concern is the female population's use of this chemical. Approximately 48% of the females admitted to the residential program report the use of methamphetamine as their drug of choice. Statewide, methamphetamine is the third ranking drug of choice.

Brad Griffin, Montana Retail Association, rose in support of SB 6. He provided a letter from the **National Association of Chain Drug Stores** also in support of this legislation, **EXHIBIT(jus03a02).**

Jim Smith, Montana Sheriffs and Peace Officers Association, rose in support of SB 6.

Bill Stevens, Montana Food Distributors Association, stated that this legislation places the responsibility in the right places. He provided a position paper submitted by the Nonprescription Drug Manufacturer's Association, **EXHIBIT(jus03a03).**

Troy McGee, Montana Chiefs of Police Association, rose in strong support of SB 6.

Jerry Williams, Montana Police Protective Association, rose in support of SB 6.

Opponents Testimony: None.

Questions from Committee Members and Responses:

SEN. BISHOP questioned whether there would be an occasion for someone other than a drug dealer to be in possession of the materials listed in the bill. **SEN. HARGROVE** stated that some of these materials were common items. He added that a court order was needed which stated that there is probable cause that persons have possession of these materials for the purpose of manufacturing drugs.

SEN. BARTLETT questioned whether a certain quantity would be necessary to manufacture drugs. **SEN. HARGROVE** affirmed that it would.

SEN. BARTLETT raised a concern that the legislation included a minimum penalty of two years for criminal possession of these precursors. **Joe Thaggard, Assistant Attorney General,** stated

that mandatory minimum sentences have been the practice in the area of drug charges. Under §45-9-202, there is a provision for alternative sentencing which permits a district court to consider the individual circumstances of a drug offense. Specific circumstances are not mentioned. This is broader than provisions in Title 46 which apply to mandatory minimums for other crimes.

CHAIRMAN GROSFIELD questioned how the intent to manufacturer drugs could be verified. **Mr. Batista** stated this was demonstrated through the information which surfaced from an investigation. The information can be provided by an informant, corroboration of an undercover agent, or through the purchase of the drugs.

Closing by Sponsor:

SEN. HARGROVE closed on SB 6.

{Tape : 1; Side : A; Approx. Time Counter : 9.22}

HEARING ON SB 8

Sponsor: **SEN. DON HARGROVE, SD 16, Belgrade**

Proponents: **Mike Batista, Administrator of the Division of Criminal Investigation, Dept. of Justice**
Kent Funyak, Cascade County Undersheriff
Troy McGee, Chiefs of Police Association
Jim Smith, Montana Sheriffs and Peace Officers Association
Jerry Williams, Montana Police Protective Association

Opponents: **Scott Crichton, American Civil Liberties Union**
Barbara Ranf, U.S. West

Opening Statement by Sponsor:

SEN. DON HARGROVE, SD 16, Belgrade, introduced SB 8 which adds another tool for law enforcement. This legislation would allow for the use of a device to provide numbers dialed in a particular location. This is not a phone tap. It allows law officers to be pro-active and focus their effort at a higher level.

Proponents' Testimony:

Mike Batista, Administrator of the Division of Criminal Investigation, Dept. of Justice, explained that a pen register

and trap and trace device is an investigative tool that would allow for better focus of quality violators. This would include violators who are the ones making the money in the organization. After a law enforcement officer obtains a court order, it would be presented to the telephone company which would help to install the device on a suspect's phone line. The information would include outgoing telephone numbers dialed from a suspect's phone and incoming telephone numbers received at the suspect's home phone. Homicide investigations, solicitation to commit murder, and witness tampering are good applications for a pen register or trap and trace device. This device is also valuable for officer safety in surveillance of a drug case.

Mr. Batista provided a chart illustrating the use of a trap and trace device, **EXHIBIT(jus03a04).** The phone numbers provided would allow law enforcement agents to identify the street level dealers and the supplier. Once the key persons are identified, the investigative resources can be focused towards those persons. A pen register and trap and trace device may currently be used in Montana by going through a federal law enforcement agency. There are four drug enforcement agents in the state who are spread very thin. Urban traffickers are moving to rural areas in Montana in record numbers.

Kent Funyak, Cascade County Undersheriff, stated that it is extremely important for law enforcement personnel to be pro-active in all areas of investigations. This is a timesaving tool which can provide valuable information with minimum man hours invested. It makes sense to gather information quickly and get to the higher level of drug traffickers. These people are very ingenious and use other people as buffers to prevent them from being caught.

Troy McGee, Montana Chiefs of Police Association, stated that for law enforcement to be able to get a trap and trace device, it would be necessary to prove to the prosecutor in the county that one is deserved. The next step is approval by the district court through probable cause.

Jim Smith, Montana Sheriffs and Peace Officers Association, rose in support of SB8.

Jerry Williams, Montana Police Protective Association, rose in support of SB8. He added that this device does not record telephone conversations, but only provides the investigators with telephone numbers to conduct further investigation.

{Tape : 1; Side : A; Approx. Time Counter : 9.30}

Opponents' Testimony:

Scott Crichton, American Civil Liberties Union, provided written testimony, **EXHIBIT(jus03a05).** He remarked that the Fourth Amendment was devised by people who understood the meaning of intrusive government in their homes and private lives. Section 3 of the bill attempts to respect the Fourth Amendment. Section 2 raises some questions. He has spoken with representatives of the phone company and understands that these are technical issues regarding maintenance of lines and handling of accounts and would not provide any open doors for circumventing a court order. He has had a discussion with **SEN. HARGROVE** regarding the amount of governmental resources aimed at addressing the impacts of drugs in our society. He hoped that discussions would be centered on discussing the pros and cons of the prohibitions which have been sent up.

{Tape : 1; Side : B; Approx. Time Counter : 9.33}

Barbara Ranf, U.S. West, stated that with an amendment, they would be comfortable with the legislation. On page 1, new section l includes the definitions of pen register and trap and trace device. They requested inserting the language that these terms do not include communication services, such as, but not limited to, caller identification services.

Questions from Committee Members and Responses:

SEN. GRIMES questioned whether this legislation may inadvertently make it illegal to record a telephone communication. In the definition section, it states that this term does include a devise used by a provider or customer. It later states that it does not include a devise used for the following things and doesn't include ID caller services nor normal voice recording systems. **Mr. Batista** stated that an additional definition on caller ID would be warranted.

SEN. GRIMES added that there may be an instance in a domestic abuse case, in particular, that a party may want to record a communication for defensive purposes. **Joe Thaggard, Assistant Attorney General,** stated that a voice recording does not fall within the definitions of pen registers and trap and trace devices. Voice recordings would be covered under the privacy and communications statutes. He agreed that an amendment regarding caller ID would be appropriate.

SEN. GRIMES commented that on page 3, subsection (5) stated that a person who is a landlord or provider or any other person may not disclose the existence of the order to any person without the

court's permission. This needed to be clearly communicated to people who are affected. **Mr. Thaggard** explained that the practice with investigative subpoenas is that it states broadly and boldly that disclosure is unlawful.

SEN. GRIMES remarked that someone may be acquainted with a person who happens to be involved with drug dealing. If this person's number was on the list numerous times, would the person be implicated. **Mr. Thaggard** contended that a negative inference would not be drawn in that instance.

SEN. DOHERTY remarked that an analogy was made to a search warrant. Section 3 creates a new body of law for an order for a pen register and trap and trace device. He questioned why this wasn't incorporated into the normal standards used by judges when determining whether to grant a search warrant. **Mr. Thaggard** explained that several years ago there were amendments to the federal pen register statutes. This legislation sets out distinctions between pen registers and search and seizure.

SEN. DOHERTY maintained that the standards and the criteria employed by the judges are analogous as to whether they would grant a search warrant. **Mr. Thaggard** affirmed and added that this is a probable cause standard. It is necessary that this be separate from the search and seizure provision. When a search warrant is issued and served, within 10 days a written return needs to be provided to the person whose property has been searched. Applying this to a pen register would cause the advantage in investigating the crime to be lost.

SEN. DOHERTY asked for further clarification of Sections 4 and 5. If this is analogous for the search warrant, is a new body of law being created for judges to determine an irregularity in a proceeding in order to determine when exclusion of this type of evidence would be warranted in trial. Also, if this is analogous to a search warrant, are individuals who disclose information obtained in a search warrant immune from suit. **Mr. Thaggard** explained that the provisions on procedural irregularity were drawn from the search and seizure statutes. He referred the Committee to §46-5-103 which addressed the exclusion of evidence in search and seizure cases in which there may have been a procedural irregularity. Regarding immunity from suit, the intention is that this legislation not burden the telecommunications industry given the fact that they will be a party to assisting in the execution of any pen register orders. This is also included in the Federal Pen Registry Act. There are provisions which provide law enforcement officers with the authority to instruct individuals to help them in the execution of a warrant. Once those people are instructed to act as agents

of the state, they should be indemnified in the event of a civil suit.

SEN. DOHERTY raised a concern about phone records of persons who have communicated with someone who is being investigated becoming public information. The immunity may also encourage a high degree of perfectionism in making sure an innocent party is not involved. **Mr. Thaggard** stated that subsection (4) refers to the telecommunications industry, landlords, custodians, employers, etc. If the records were unlawfully disclosed by a state agent, that person should be subject to liability for suit. This would not give the investigate agencies immunity from suit.

{Tape : 1; Side : B; Approx. Time Counter : 9.55}

SEN. BARTLETT questioned where the devices would be physically located. **Mr. Batista** stated that his understanding is that the actual device is placed on the phone line. The device that records the information would be in a law enforcement office in a secure area. **Barbara Ranf, U.S. West,** agreed to provide the Committee with this information.

SEN. BARTLETT questioned whether there were occasions where an order was sought but was denied by the judge. **Mr. Batista** stated that he has had experiences where an order was denied due to lack of information to support that someone was engaged in criminal activity.

SEN. BISHOP asked if neighbors and acquaintances would be used to screen out individuals who received numerous phone calls from a suspect. **Mr. Batista** stated that this would involve looking at the person involved and other information in the case. It is easy to make a determination as to whether the person would have the necessary involvement in the criminal activity being reviewed. Frequency of calls is insignificant on a pen register.

SEN. BARTLETT asked for clarification of the provisions in Section 2 which were questioned by the ACLU. **Mr. Thaggard** stated that their perception of Section 2 is that it applies only to providers and insures that a provider is not prevented from conducting their normal course of business. Section 2 would not provide a basis for any law enforcement agent to circumvent the provisions for a court order requirement. The Fourth Amendment is important to everyone including criminal suspects. **Ms. Ranf** remarked that the section allows the telecommunications industry to use the types of devices that allow them to track ingoing and outgoing traffic for the normal maintenance and testing of their network.

SEN. BARTLETT referred to subsection (iii) on line 2, page 2, which included protection of a user of the service and questioned whether there might be instances in which these devices might be used in domestic violence situations. **Ms. Ranf** remarked that she would provide examples for the Committee.

{Tape : 1; Side : B; Approx. Time Counter : 10.08}

SEN. HALLIGAN asked who would be able to obtain the information gathered from these devices. **Mr. Thaggard** responded that law enforcement agencies would be able to obtain the information. For other individuals, a petition would need to be filed in the district court and a specific finding would need to be made that some entity's right to know outweighed the right of privacy of the person involved. Routinely the state does possess sensitive information about a number of individuals and their privacy interest is protected. In the instance of investigative procedures and search warrants, the applications and search warrants are sealed until the court holds otherwise.

CHAIRMAN GROSFIELD questioned whether other states with similar legislation were limited to drug trafficking. **Mr. Batista** responded that other states apply pen registry and trap and trace devices to any type of criminal investigation where it may be valuable. This could be used for a severe domestic abuse case that included stalking.

CHAIRMAN GROSFIELD asked **Mr. Crichton** if the ACLU was strongly opposed to the legislation. **Mr. Crichton** explained that after discussing the legislation with **SEN. HARGROVE** he was assured that he understood the Fourth Amendment and would see that this legislation respected the Fourth Amendment. If the understanding is that the language in Section 2 will not be used to circumvent a court order, this would address most of their concern.

SEN. HARGROVE provided the Committee with an amendment from **U.S. West** and agreed to have it included in the bill. He added that he is very concerned about the protection of individual rights.

Memo of January 7th from Barbara Ranf, USWest, **EXHIBIT(jus03a06).**

HEARING ON SB 24

Sponsor: **SEN. NELSON, SD 49, Medicine Lake**

Proponents: **Gordon Morris, Montana Association of Counties**

Opponents: **Sandy Oitzinger, Montana Juvenile Probation Officers Assoc.**
Allen Horsfall, Board of Crime Control

Opening Statement by Sponsor:

SEN. NELSON, SD 49, Medicine Lake, introduced SB 24. She remarked that this legislation has been requested by the district court judge who has the three northeast counties of Sheridan, Roosevelt, and Daniels. He would like to be able to appoint a part-time youth probation officer who is already in an existing law enforcement agency. In this instance, there is only one youth probation officer and this individual serves three counties. There are times when the youth probation officer is needed in two counties at the same time and the sheriff's office would be the logical place to find part-time help. The training would be useful to these officers in their work, they are already on the county payroll and the counties would be getting better service for a lower cost. The statute does not allow for this.

Proponents' Testimony:

Gordon Morris, Montana Association of Counties, suggested that the bill be clarified. The last sentence would always leave open the question as to whether a part-time law enforcement officer could be appointed to this position. He requested that the last sentence be changed to read: "A person while serving as a law enforcement officer may be appointed or perform the duties of a part-time probation officer."

David Cybulski, District Judge, 15th Judicial District, written testimony, **EXHIBIT(jus03a07).**

Opponents' Testimony::

Sandy Oitzinger, Montana Juvenile Probation Officers Assoc., rose in opposition to SB 24. She raised a concern regarding the bill being contrary to due process for Montana's children and youth and also raised a concern regarding potential governmental liability.

Allen Horsfall, Board of Crime Control, stated that there are counties that need this assistance because they cannot afford to hire either part-time or full-time juvenile probation officers. In 1992 there was a legislative audit that identified many of the problems in the juvenile justice system. One of the problems identified is that there was no consistency of training for juvenile probation officers. This resulted in a basic academy that probation officers must attend in their first year of

employment. He also saw a potential conflict of interest in two areas. In a small rural county, there is a good chance the arresting officer would act as the probation officer in the case. There is also a good chance that the probation officer, as the arresting officer, would be charged with acting in court as an advocate for the youth. He added that the Youth Court Act requires probation officers to have a college degree in social sciences.

Questions from Committee Members and Responses:

SEN. HALLIGAN questioned whether there would be any other law enforcement personnel in an area that could serve as a substitute probation officer. **Mr. Horsfall** remarked that he did not know of any circumstances where a district court judge may be allowed to appoint a deputy juvenile probation officer to a part-time position without a connection to the employment by the county since the county pays the wages.

SEN. DOHERTY suggested that the bill could be amended to state that the part-time juvenile probation officer appointed would need to be trained for that position. **Ms. Oitzinger** commented that if the person working on the disposition of the case was the probation officer and they had obtained information as a law enforcement officer, this might affect the outcome of the situation. This would cut both ways.

John Larson, Missoula District Court Judge, remarked that the judge in eastern Montana needed this flexibility and would make sure that his appointee was properly trained. Guidelines could be set to avoid a conflicting situation. There are grant opportunities to help with funding and training.

SEN. BARTLETT asked the opponents how they would address the situation that exists and this bill attempts to address. **Mr. Horsfall** stated that if the same requirements in training and hiring were applied that are applied to the existing statewide probation staff and particular attention was paid to potential conflicts of interest, there are law enforcement officers in this state that would be good probation officers.

Closing by Sponsor:

SEN. NELSON remarked that she agreed with the suggested changes by **Mr. Morris.** She added that she believed the district court judges would use good judgment in these appointments. This makes good sense for rural areas.

{Tape : 2; Side : A; Approx. Time Counter : 10.42}

HEARING ON SB 54

Sponsor: **SEN. MIKE HALLIGAN, SD 34, Missoula**

Proponents: **Rick Day, Director of the Department of Corrections**
Matt Robinson, Department of Corrections
Sandy Oitzinger, Montana Juvenile Probation Officers Assoc.
Allen Horsfall, Board of Crime Control

Opponents: **John Larson, District Judge in Missoula and Mineral Counties, Fourth Judicial District**

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, SD 34, Missoula, introduced SB 54 which is a revision of the juvenile justice statutes. This bill is at the request of the Department of Corrections. He added that Section 7 includes a provision that has been added at his request which would give some discretion to juvenile probation officers to address youth who are committing misdemeanors or offenses that do not require district court action. Section 4 includes two new direct file offenses. Section 13 provides a cap on the youth correction facilities. Section 14 creates the label of "criminally convicted youth" which will be attached to the Section 206 youth in direct file situations.

Proponents' Testimony:

Rick Day, Director of the Department of Corrections, appeared in support of SB 54 and provided a copy of his written testimony, **EXHIBIT(jus03a08).**

Matt Robinson, Department of Corrections, explained that Section 1 of the bill contains the definition of "criminally convicted youth" as juveniles who are transferred to district court under Section 206 of the current statutes. Sections 2 and 3 contain technical changes and delete references to Section 208 which is proposed to be repealed in Section 19. Section 4 allows criminal charges to be filed against juveniles who assault staff at Pine Hills or Riverside or who assault other peace officers. It provides consequences for them that are beyond what is currently available. It also allows prosecutors to charge juveniles who are 16 years of age or older with a criminal offense for escaping a secure correctional facility. Sections 5 and 6 include

technical changes. Section 7 changes and clarifies the way juveniles are dealt with in a formal processes. Sections 8, 9, and 10 include technical changes. Section 11 eliminates the current impasse that exists when Pine Hills is at capacity and the court wishes to send a juvenile there on a determined sentence until he becomes 18 years old. Section 12 is a technical change to provide notice to the victims when a juvenile requests review under the sections which create the criminally convicted youth review. Section 13 would cap the number of juveniles at each facility. This is an emergency provision which would allow the department to halt admissions while still taking responsibility for placement of the individuals. This would allow the department to consistently keep its programs in the facilities intact.

Sections 14 through 17 create the Criminally Convicted Youth Act. These sections define a juvenile who has committed a crime which is transferable to district court under Section 206 as a criminally convicted youth. It provides sentencing options for the judges and tells them exactly how they must sentence these juveniles and how these juveniles should be treated by the corrections system. It also allows the department to provide reports to the court so that the court can track these juveniles. Information and progress reports are provided every six months. After receiving these reports, the court is allowed to review the juvenile's sentence to determine whether or not his progress in the system warrants a modification of the imposed sentence. The requirement is that a hearing is held once before age 21.

The constitutionality of these statutes is dealt with in Montana's Constitution which contains the unique provisions that allow for more protections for juveniles. The mandatory nature of the hearing is that there be one hearing prior to age 21.

Section 18 is a codification instruction and Section 19 repeals Section 208 which has created problems for the department in terms of transferring juveniles who are civilly committed to the department to criminal supervision under the criminal probation and parole officers.

Sandy Oitzinger, Montana Juvenile Probation Officers Assoc., rose in support of SB 54. She stated that her organization especially supports Section 7 of the bill which deals with the three misdemeanor requirement. The primary reasons the Association has opposed the existing statute are that it puts the youth into the formal system too early and tracks them; it overloads the justice system so that youthful offenders of all types are not dealt with in a timely fashion; and it increases cost to the counties and state due to earlier placements, more trials, and increased detention.

Allen Horsfall, Board of Crime Control, rose in support of SB54.

Opponents' Testimony:

John Larson, District Judge in Missoula and Mineral Counties, Fourth Judicial District, stated that the general concepts of the bill were good, but more work was needed. He agreed with the need for clarifying the three misdemeanor requirement and suggested that it be expanded into the consent decrees with petition. The statutes do provide loopholes for special circumstances. He referred to §41-5-1301, informal disposition, and remarked that there is no limitation on informal dispositions.

He further referred the Committee to the definition of "youth in need of intervention" on page 5, line 26 of the bill, which stated that a petition for a youth in need of intervention could be used even when the youth had committed acts that would qualify him for a delinquency petition. Regarding the language that deals with the commitment powers of the court, he stated that it is necessary to distinguish between the adult system where there is an array of community sentencing options and the youth system where the two options are Pine Hills or Riverside. He agreed with the old section that the department wanted to strike. Both the judiciary and the department's predecessor agreed to that language. It provided specific power to the district judge to tell a youth who is going to Pine Hills that he could not go back home until he satisfied the judge who sent him there that he was ready to go back. This is a community protection.

The cap has specific financial impacts on communities. He provided a handout on new commits at Pine Hills, **EXHIBIT(jus03a09).** Sixty percent of the commitments came from four counties. The remaining 38% was available to the other 52 counties. He expressed concern about the cap being reached by the four counties and the other counties needing to find a place to house their juveniles while the cap is being addressed. His understanding is that the department will propose an amendment that will allow counties to be reimbursed for these expenses. Unfortunately, there are only 36 detention cells in Montana. The juveniles who were sent to a correctional facility to receive treatment end up sitting in a detention facility. Communities on the state boundaries have traditionally used other state's facilities. They currently use the facility at Medical Lake, Washington which charges $118 a day to keep juveniles. Kalispell charges $250 a day and Butte charges almost $300 a day. He believes that the department is in agreement with allowing them to use the Washington facility. However, he requested that the legislation clarify the use of neighboring state and tribal

facilities as long as these facilities are licensed by their licensing authorities. He also supports the expansion of transferable offenses but a fiscal impact needs to be noted.

Section 5 on page 9 presents mechanical problems. When a case is transferred to the county attorney, this generally means the case is in conflict and there will not be a voluntary exchange of information.

Regarding the criminally convicted youth provisions, he is concerned for the family of the victim that has lived the case for a long time. When the sentencing takes place, they relive it again. Some people will request a review every six months. There is no special treatment that they will be receiving. Juveniles need specific treatment or responsibilities to address. Judges are not skilled at reviewing cases, this is a board of pardons function.

He requested that additional time be allowed for this legislation. This bill was not recommended by the Interim Corrections Committee.

Captain Mike O'Hara and **Lt. Alan Egge, Missoula County Sheriff's Department**, written testimony, **EXHIBIT(jus03a10).**

Questions from Committee Members and Responses:

CHAIRMAN GROSFIELD asked for clarification of the change to the definition of "victim". **Mr. Robinson** explained that currently the word "felony" is used and it allows only victim restitution for victims of felony crimes. Many of the crimes committed in Montana are misdemeanors. A criminal offense would allow restitution for victims and it would be much easier for the courts to impose that sanction.

SEN. JABS asked for clarification of line 5 on page 15 which addressed denying the youth eligibility for release. **Judge Larson** explained that this is current law and he has not heard of a specific instance where this needed to be changed. He has used this in restitution and sex offender cases.

Director Day stated that the law states that the judge can sentence a juvenile for a determinate period to Pine Hills unless the facility is full. The proposed legislation would reduce a lot of the verbiage in this section. There would be the availability of a sentence or commitment to the Department of Corrections facilities, Pine Hills, or Riverside. The majority of the commitments are indeterminate commitments. If there is a severe crime that needs a longer term application, there is the

criminally convicted youth provision. The restitution obligation remains and will more effectively be paid once the youth obtains employment.

CHAIRMAN GROSFIELD remarked that the there was a large gap between the $85 a day charge by the tribal agency and the $250 charge by Kalispell. **Judge Larson** explained that last year the rate at Kalispell was $155 a day. They had an agreement with Kalispell that at the end of the year they would audit and return any surplus. One-half of the funds were returned. Their daily rate works out to approximately $100 a day. This year their charge is $250 a day and five beds were held open.

Closing by Sponsor:

SEN. HALLIGAN requested that more time be spent reviewing these issues. The goal of the interim committee was to arrive at a system that was more coherent and sensitive to the issues related to early intervention and keeping these juveniles out of prison later in their lives. He agreed with the amendments regarding the consent decree with petition which would provide some flexibility for probation officers and the judges to be able to keep the juveniles out of the district court. He also agreed with clarifying that licensed facilities could be used. The criminally convicted youth issue provides the distinction for the direct file. The cap language needs to be reviewed. The department still maintains its fiscal responsibility for the juveniles. They want to make sure that judges are comfortable that individuals sent to a facility are completing their sentence. He agreed that this bill should be dovetailed with block grants to insure that the four or five large counties are not overloading the system at the expense of those that are trying to provide treatment in the rural areas or other communities.

EXECUTIVE ACTION ON SB 6

Motion: SEN. GRIMES MOVED SB 6 DO PASS.

Discussion:

SEN. BARTLETT raised a concern regarding mandatory sentences for criminal sale of narcotic drugs or opiates, possession of opiates, possession with intent to sell opiates, and criminal possession of precursors which all have mandatory two-year minimums. One of the issues in the sentencing structure is how sentences relate to each other given the severity of the crime. This legislation has the same mandatory minimum for criminal possession of precursors as does the possession with intent to

sell opiates. We need to be consistently aware of the questions about our sentencing system and hopefully we will have some avenue in the next interim to do a thorough review of the sentencing structure in the state.

Vote: Motion carried 9-0.

ADJOURNMENT

Adjournment: 11:45 A.M.

_____
SEN. LORENTS GROSFIELD, Chairman

_____
JUDY KEINTZ, Secretary

LG/JK

EXHIBIT(jus03aad)