

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE BILL 108

Call to Order: By Senator Halligan, on April 19, 1993, at 4:00 p.m.

ROLL CALL

Members Present:

Sen. Halligan, Chair (D)
Sen. Towe (D)
Sen. Gage (R)
Rep. Vogel, Chair (R)
Rep. Tash (R)
Rep. Brooke (D)

Members Excused: None

Members Absent: None

Staff Present: Greg Petesch, Legislative Council
David Martin, Committee Secretary

Discussion:

Rep. Brooke said there was concern in the House that the records of the children, who are not convicted, should be properly disposed of. She said the Department of Justice should not retain a continuing record, and that the child's privacy needed to be protected.

Sen. Gage said he thought a youth's records were sealed and asked for Sen. Halligan's opinion. Sen. Halligan said it was necessary to obtain a court order to unseal those records.

Peter Funk said he also thought juvenile records as part of the Youth Court File, were sealed.

Sen. Towe said, under 44-5-202(8), any photographs or fingerprints should be returned to the individual when they are not found guilty, or if charges do not result in a conviction. Sen. Towe asked if the whole amendment would be struck.

Sen. Halligan said the authorities could not disseminate the information unless it was to another appropriate agency which is listed under specific statutory authority.

Sen. Towe said the original theory of the Criminal Justice Task Force, which reviewed these statutes, was that information pertaining to juveniles would not accumulate in any central location. He said this legislation would allow that accumulation in the Department of Justice. Sen. Towe said every time a child is arrested and fingerprinted the information will be sent to the Department of Justice. He said, however, under 44-5-202, the information would be returned if they were found not guilty.

Sen. Halligan said he did not think a juvenile's records could be used in an adult proceeding. He said the records were sealed and could not be used, for example, not even for the enhancement of a sentence.

The conferees discussed what type of offenses would require that fingerprints be taken. It determined that they would not be taken for status violations.

Rep. Brooke asked if a youth would be fingerprinted if he or she were charged with a burglary. She asked what would happen to those fingerprints under the "new bill" if the youth was later found innocent, would the records go to Department of Justice.

Peter Funk, Attorney General's Office, said the fingerprints would not go the Department of Justice under the amendment language until there had been an adjudication or a conviction. He said, as SB 108 was originally drafted by the Department, the fingerprints would come to the Department immediately after being taken. He said subparagraph 2 was critical to the entire process. It states "youths may not be fingerprinted or photographed except for the". Sen. Towe interrupted and asked for an explanation of "the". Mr. Funk asked if that was pursuant to a search warrant, to which Sen. Towe replied affirmatively. Mr. Funk said that would apply when those fingerprints were needed for a comparison. The youth may not have been arrested under subsection (a), the youth might simply be a suspect. They could then ask a judge for permission to compare those prints to prints found at a crime scene. He said there was a built-in protection under the search warrant issuance process. He said the departments assumed the protections were "built-in" during this entire process. Mr. Funk said that no status offenses, only felony level offenses, would be dealt with.

Sen. Towe said subsections (a) and (c) were very clear about that issue. He asked if it was possible that a status offender could come out of subsection (b). Mr. Funk said yes, since it was not restricted by offense. He said it would be subjected to the scrutiny of a magistrate as is the issuance of any search warrant. Sen. Towe asked if this would be a search warrant for the specific purpose of taking fingerprints. Mr. Funk said that was the Department's interpretation of that section. Sen. Towe said there could be some merit in the first sentence, the question is, would it be enough. He said there is some

possibility that a status offense could be "picked up" by the first sentence in paragraph 4.

Sen. Halligan asked for the original basis for Department of Justice requesting this legislation. Mr. Funk said the fingerprints were restricted under the original statute to the judicial district in which the fingerprints are taken. He said the Department is the only agency in the state which conducts fingerprint comparisons and analyses. He said many districts do not have fingerprinting equipment available. He said the original statute intended to allow for fingerprint comparison which is impossible given the current setup in the state of Montana.

He said another factor for the Department of Justice wanting to use fingerprints was AFIS, Automated Fingerprint Identification System. He said the Department now has a much better opportunity to match prints on a state-wide basis since it is no longer a manual operation. He said the gathering of fingerprints from all the localities in the state with AFIS means fingerprint comparisons can be accomplished on a much broader basis than ever before. He said for better or worse, it was the Department's experience that juveniles were committing not only an increased amount of crime but an increased amount of serious crime.

Sen. Towe asked why the first sentence was objectionable. He said that perhaps the last sentence should be stricken, and the first sentence should be left.

There was a discussion about how cases were tracked, who tracked the cases, and what happened to the fingerprints.

Rep. Brooke said there was a discussion in the House about the "system". She said there was concern that a youth would enter the huge judicial system, at the age of 15, and would be forced to stay there for many years. She said perhaps the question is how to treat persons as individuals and still have the justice system function correctly. Peter Funk said that was a valid concern. He said local law enforcement agencies, which had seen SB 108, were concerned that they would be required to "track" all of the cases.

Rep. Brooke said it may be important to let children know that they can obtain their records from local officials.

Sen. Towe said if there were some way to let children know they could get their records back under section 44-5-202, that would provide some protection.

Sen. Halligan said he said he did not see the potential for abuse in SB 108. He said juvenile files are not readily accessible.

Sen. Towe said there have been some gross examples of violations of privacy concerning juveniles. He said under this system the records are not purged when a juvenile turns 21.

Motion/Vote:

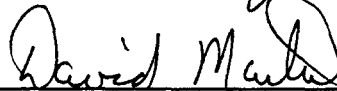
Sen. Gage MOVED TO AMEND SB 108 (Exhibit #1). The motion CARRIED with Sen. Towe voting NO.

ADJOURNMENT

Adjournment: Adjourned 4:21 p.m.



SENATOR HALLIGAN, Chair



DAVID MARTIN, Secretary

MH/dm

Conference Committee
on Senate Bill No. 108
Report No. 1, April 20, 1993

Page 1 of 1

Mr. President and Mr. Speaker:

We, your Conference Committee on Senate Bill No. 108, met and considered: House amendments to Senate Bill No. 108. We recommend that Senate Bill No. 108 (reference copy - salmon) be amended as follows:


1. Page 2, lines 12 through 19.
Strike: subsection (4) in its entirety

And that this Conference Committee report be adopted.

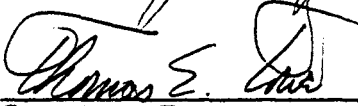
For the Senate:



Senator Halligan, Chair

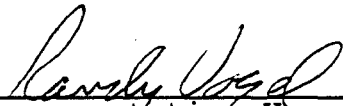


Senator Gage



Senator Towe

For the House:



Representative Vogel, Chair



Representative Brooke



Representative Tash

m-
Amd. Coord.
m
Sec. of Senate

ADOPT

REJECT

871317CC.Sma

Amendments to Senate Bill No. 108
Reference Reading Copy

For the Conference Committee

Prepared by Greg Petesch
April 19, 1993

1. Page 2, lines 12 through 19.
Strike: subsection (4) in its entirety

Exhibit # 1
SB 108 Conference Committee
4-19-93