

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRAD MOLNAR**, on February 14, 1995, at 12:30 PM.

ROLL CALL

Members Present:

Rep. Deb Kottel (D)
Rep. Brad Molnar (R)
Rep. Loren L. Soft (R)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

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

Committee Business Summary:

Hearing: HB 450, HB 540, HB 240, HB 429

{Tape: 1; Side: A}

The purpose of this meeting was to consider all bills pertaining to juvenile issues being considered by the Judiciary Committee.

Motion/Vote: REP. BRAD MOLNAR MOVED TO RECOMMEND TABLING HB 450. The motion carried unanimously.

Discussion: John MacMaster explained that there was a typographical error on HB 540, page 21, lines 5 and 6. It should strike "include" and insert "preclude."

Motion/Vote: REP. MOLNAR MOVED TO ADOPT THAT AMENDMENT TO HB 540. The motion carried unanimously.

Discussion: REP. LOREN SOFT discussed HB 240 and his concerns about the study. He brought up the list of those persons to be included on the commission. He was hoping to encourage the Governor to endorse it and felt it should not be given any less credence or support than the Health Care Authority or any task force. He read the list of those who would be included on the commission.

Candy Wimmer stated that persons from law enforcement and adult corrections wanted to be included. She remembered from the hearing that parents and providers of services also were to be included.

REP. MOLNAR said he would like to see included a parent of a child in treatment and a parent of a child who had recently been at Pine Hills or Mountain View because users of the system were not listed whereas providers were.

REP. DEB KOTTEL suggested including someone who had been in the system as a child but was now an adult out of the system.

REP. MOLNAR and **REP. SOFT** agreed that was a good suggestion. They continued to recommend other persons including law enforcement personnel who deal with youth as well as the administrator at Pine Hills.

REP. MOLNAR said this would not be the Youth Court Act when they finished. His desire was to examine what they didn't know but would like to know.

REP. SOFT wanted to be sure that they didn't overload the commission.

Judge Larson suggested that the victim and the family of the victim should be on the commission.

REP. KOTTEL strongly believed they should have two people from the House and two from the Senate on the commission. This would promote bipartisan support.

REP. MOLNAR said it made sense in terms of carry-over from the Senate, while members of the House would not necessarily carry over into the next session.

Ms. Wimmer felt county commissioners had a vested interest in the commission and **REP. MOLNAR** said a delegate from the County Attorneys' Association was included.

REP. MOLNAR and **Ms. Wimmer** discussed what the particular focus or direction should be. Among those things discussed was victim involvement in the prosecution of juveniles and more community involvement in the disposition of juveniles which would allow their return to the community with a sense of forgiveness. And the committee considered these provisions in the current act with provisions for restitution.

Judge Larson said restitution would keep going after they are no longer a juvenile. He said that was the purpose of the extended and expanded jurisdiction. Victims in HB 429 as well are involved in the system.

REP. MOLNAR asked to what extent they were involved other than notification.

Judge Larson replied, "Consultation as well in every stage in the proceeding beginning with initial release."

REP. MOLNAR said he was thinking of focusing it on Pine Hills and returning the use of the surrounding acres as a farm. He discussed his vision for the positive affect this would have.

REP. SOFT said this study should be kept free of details. He was sure that a complete and total evaluation of Pine Hills program would be part of the comprehensive study.

REP. MOLNAR disagreed with that and said, "If they start studying the Youth Court Act, then we will not get the answers to questions we might have; i.e., will it work, is it economically feasible to reinstate it as a farm,". He felt if they did not ask specific questions, they would not get specific answers.

REP. SOFT desired to ask the questions as a part of the study process but was not sure it could be done with this piece of legislation because of time constraints though he agreed the questions had to be asked.

REP. MOLNAR responded that they should list what questions were going to be asked in the study.

Ms. Wimmer said her experience was that when they were involved in the review of adult and juvenile detention and jail, the subject matter was voluminous and they did surveys and questioned every aspect of present practice. The result was the passing of juvenile detention legislation. She stated that she had full faith in the research capacity of the Legislative Council to respond to the questions of the committee members and to the public hearings. She did not want to see the focus narrowed at this point because this group was not broad enough to think of all the questions and to explore all the avenues.

REP. MOLNAR asked what costs would be involved in forming the commission.

Ms. Wimmer said they assumed \$20,000 would be sufficient. If they were going to expand the membership extensively, they would need to look at that. She believed that the commitment was great enough to do a comprehensive review but that they would invest whatever was necessary.

REP. MOLNAR asked if they held a public meeting at each of the five mental health center regions, would that be beneficial.

Ms. Wimmer said the detention regions were essentially those same geographic outlines and they had people who were deeply involved in the whole administration of juvenile detention. They would have good public response if they held regional meetings, she believed.

REP. MOLNAR suggested a new section outlining the public hearings to be held on a regional basis and asked if they would have support for that idea.

Barbara Monaco said that by having regional meetings they would obtain information that would be valuable because they would be able to look at the rural as well as urban areas. She said the Montana Educational Telecommunications Network (METNET) tool was also very effective and had gained a lot of insight with good participation.

REP. MOLNAR did not want to go with METNET and explained that it had limited membership.

Ms. Monaco disagreed with him because METNET is open to community and other probation officers and anyone who is interested.

REP. SOFT said that they should be sure that the intent that resulted [from this meeting] was not so limiting that they would start into a process which was not comprehensive enough to accomplish the goal.

REP. MOLNAR said they would propose an amendment that there would be regional meetings with the Board of Crime Control to provide funding.

Ms. Wimmer said that she had some minor amendments which also needed to be addressed having to do with expiration dates for the funding.

REP. SOFT said it was important to have the study completed and ready for presentation to the next legislative session.

REP. MOLNAR asked if it specified the completion date and **Mr. MacMaster** pointed out that it did on page 3, line 6.

REP. MOLNAR suggested another new section which would say that the scope of the study shall be the Youth Court Act and its effectiveness and that it shall focus on victim involvement, community involvement, restitution, reinstating the farm at Miles City, privatization of Pine Hills and privatization of Mountain View.

Al Davis, Juvenile Corrections Division, said he had a problem with the specificity and used an analogy to describe the reason for his hesitancy. He did not think it was appropriate for the consumer to tell the provider how to accomplish provision of the service. He believed the current problem had to do with micro-

management by demanding adjustments based on the perceptions of people who were not directly involved nor were they professionals in the field. (He was referring to the suggestion of reopening the farm at Pine Hills in particular.)

REP. MOLNAR said this would simply be a way to take another look at decisions which had made in the past. He said the purpose of the study was to ask questions and not to implement policy.

Mr. Davis said, "In all due respect, the only thing I am requesting, I guess, is how does that tie in with the Youth Court Act itself."

REP. MOLNAR responded, "If using a program like that will reduce juvenile criminality because now you have something for them to do. If you take a look at the audit report, one of the big problems is there is nothing for these kids to do. If they were doing what amounts to a 4-H project, working with livestock and training a colt, raising a garden to make some money, there's some valuable lessons in that and those lessons are far more valuable than watching TV....."

REP. SOFT suggested returning to the purpose of conceptualizing in the bill and insuring that they look at every option, but not to get too specific in this bill.

REP. MOLNAR asked if they would accept language to evaluate programs at Pine Hills and consider programs to increase efficiency.

REP. SOFT said they needed to include evaluating programs at other facilities and suggestions as well. He wanted it to be sufficiently broad to cover all programs and aspects.

Mr. Davis thought it should also include the 23 district courts' programs.

REP. MOLNAR said that would be covered under community involvement. He cautioned the committee that if they don't get some specificity, there is almost no will to create something without useable results and data.

Mr. Davis remarked that **REP. MOLNAR'S** bill spoke to the process being more important than the specific programs.

REP. SOFT said **SPEAKER MERCER** had made it clear that they did not want just another study and so this bill needed enough "teeth" so that it was not just another study.

Ms. Wimmer said she would like to think of it as a review and a rewrite of the Youth Court Act and suggested that everyone should think of it that way.

Motion/Vote: REP. MOLNAR MOVED TO AMEND HB 240 TO PROVIDE FOR PUBLIC HEARINGS ON A REGIONAL BASIS, REGION BEING DEFINED AS A DEPARTMENT OF FAMILY SERVICES (DFS) REGION. The motion carried unanimously.

Motion/Vote: REP. MOLNAR MOVED THAT THE MONTANA BOARD OF CRIME CONTROL WOULD FUND ANY ADDITIONAL COST. The motion carried unanimously.

The committee began to discuss the make-up of the commission. REP. MOLNAR suggested the membership be comprised of 12 voting members and other representing government agencies and listed as possibilities:

a law enforcement officer who specializes in youth, parent of a child currently in the care of a provider, parent of a child currently incarcerated, a victim, a county commissioner, Department of Corrections and Human Services (DCHS) and DFS.

REP. SOFT suggested that the two of them work out a comprehensive list.

Ms. Wimmer suggested combining representation when one person could represent more than one capacity.

REP. MOLNAR thought that considering the farm and instituting that as a program and other programs should be included in the study.

REP. SOFT suggested terminology to cover that by saying the study would be a thorough, comprehensive evaluation of the Pine Hills School program including a study of past, present and future procedures and programs as well as what other agencies in the country are using in dealing with youth.

REP. MOLNAR suggested the following wording:

The study of the Youth Court Act shall include but not be limited to victim involvement, community involvement, meaningful restitution, programs at Pine Hills and Mountain View to rehabilitate juvenile offenders, proper funding levels to reduce juvenile crime.

Gale Keil, **Juvenile Corrections**, reported that in her work with juveniles she had discovered a strong focus on family. She felt that in looking at the Youth Court Act, family involvement and family rehabilitation must be considered.

REP. MOLNAR accepted that addition to the wording outlined above. He felt the Act should be more like Jell-O than concrete. As the types of crimes change, then they must be able to move with it. Programs at all detention centers should be examined.

REP. SOFT suggested that they include a statement about including all juvenile corrections in with adult corrections. He had talked with others about combining all juvenile services in one department.

Ms. Wimmer felt that would become one of the goals within the study.

REP. SOFT said he wanted to be sure that when the committee and the House consider the bill they would know that this was not going to be just another study.

Ms. Wimmer said that categorizing and labeling youth has created a bigger problem than it has addressed.

REP. MOLNAR felt it was up to the commission to develop a useable proposal.

Motion: REP. MOLNAR MOVED TO INCLUDE IN THIS SECTION THAT THIS YOUTH COURT STUDY COMMISSION SHALL STUDY THE FOLLOWING BUT IS NOT LIMITED TO: VICTIM INVOLVEMENT, COMMUNITY INVOLVEMENT, MEANINGFUL RESTITUTION, PROGRAMS AT PINE HILLS, MOUNTAIN VIEW AND ALL DETENTION CENTERS PAST AND PRESENT TO EFFECTUATE REHABILITATION OF YOUTH, PROPER FUNDING LEVEL TO REDUCE JUVENILE CRIME, FAMILY INVOLVEMENT AND REVIEW OF OTHER PROGRAMS AROUND THE COUNTRY.

{Tape: 1; Side: B}

Ms. Wimmer said the purpose of detention centers is not to rehabilitate. It is currently defined as a place to detain youth prior to disposition. She felt they should segregate that out from the rehabilitation language.

REP. MOLNAR disagreed with that. He said that those who run detention centers are trained in working with the youth and he saw that as the beginnings of rehabilitation.

Ms. Wimmer replied that detention and corrections are two different things.

Vote: The motion carried unanimously.

REP. MOLNAR said they would move on to HB 429 and discuss the confidentiality concepts. He was concerned about section 1 primarily that in a youth-in-need-of-supervision hearing where a youth's parents actually bring the charge after having found drugs in their possession, for instance, that youth might accuse the parents of abuse, etc. The result might be that the parents would be intimidated into dropping the charges because they did not want it going on into court on a public affidavit. He felt that if it became public notice, they would have trouble involving parents. He was proposing amendments which would clarify those issues which would become public knowledge.

Judge Larson said he had no objection to the amendments and he said from his point of view they did what the sponsor intended. He said their whole concern was that as soon as the matters were serious enough to reach the Clerk of the Court's office, they are serious enough that the community should be aware of them. Their intent was to have matters actually in the file which were pleadings and transcripts of dispositions for testimony given would be open in the proceedings.

REP. MOLNAR and **Judge Larson** further clarified the intent which includes opening the proceedings in a youth-in-need-of-supervision trial. People would not be invited, but they would not be excluded from the hearing. Currently they are excluded.

REP. MOLNAR asked if there was a way to avoid the situation where the youth would accuse his parents of abuse or neglect in order to get the charges dropped. He wanted to open the portion of the hearing process on the action of the youth which brought the charge while closing the portion where secondary testimony is given.

Judge Larson replied that the court has discretion to close a portion of the hearing. His experience was that the press did not report every excuse that a defendant might give. He did not think it presented a risk. There is the ability of the court to limit access to information in the interests of privacy exceeding the right of the public to know. The courts have the power to manage their own documents and to seal files.

REP. MOLNAR wanted to know if they left public the part of the hearing which would determine whether the youth did commit the act but closed the adjudication portion, would that be the way it currently works.

Judge Larson said it is now only open if it is a felony offense. Youth-in-need-of-supervision hearings are closed. Very few cases are disputed. The whole idea was to get the information that these things are happening into community awareness.

They continued to discuss the current process and the implications of the proposed legislation.

REP. MOLNAR said his concern as well as **Mr. Meeker's** concern was the family issues that are disseminated by the youth's attorney as a defense. He wanted to know how they could protect the family in this and still get the knowledge out to the community.

Judge Larson said he did not think it was feasible. He said, "If you want to keep it closed, then keep it closed. If you want to have access, then leave it to the discretion of the court to manage its own courtroom."

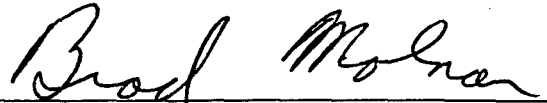
REP. MOLNAR shared with the members present the amendments which had been proposed and had been agreed to.

Motion/Vote: REP. MOLNAR MOVED TO ADOPT THE AMENDMENT. The motion carried unanimously.

{Comments: This set of minutes is complete on one 60-minute tape.}

ADJOURNMENT

Adjournment: The meeting was adjourned at 2:00 PM.



BRAD MOLNAR, Chairman



JOANNE GUNDERSON, Secretary

BM/jg