

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on February 16, 1995, at
7:00 AM.

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (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:

Executive Action: HB 551 DO PASS; HB 366 & HB 450 TABLE
HB 186 DO PASS AS AMENDED
HB 240 DO PASS AS AMENDED
HB 256 DO PASS AS AMENDED
HB 380 DO PASS AS AMENDED
HB 429 DO PASS AS AMENDED
HB 443 DO PASS AS AMENDED
HB 540 DO PASS AS AMENDED
HB 543 DO PASS AS AMENDED

{Tape: 1; Side: A}

EXECUTIVE ACTION ON HB 543

Motion: REP. BILL TASH MOVED HB 543 DO PASS.

Motion: REP. DUANE GRIMES MOVED THE SPONSOR'S AMENDMENTS.
EXHIBIT 1

Discussion: REP. TASH said the amendments would remove the exemption for governmental entities.

REP. DEB KOTTEL said that 25-1-402, MCA, is the provision which applied.

Vote: The motion carried 12 - 6, REPS. WYATT, CAREY, SHEA, HURDLE, KOTTEL and MC CULLOCH voted no. REP. SMITH voted aye by proxy. REP. ANDERSON was absent.

Motion: REP. TASH MOVED HB 543 DO PASS AS AMENDED.

Discussion: REP. KOTTEL pointed out that this would require an undertaking for both restraining orders and injunctions. Restraining orders can be obtained without the other side being represented. She felt there should be an undertaking for that type of behavior. An injunction requires both parties to be present with a hearing and the judge makes the decision to issue the injunction. She felt an undertaking was inappropriate and would vote against the bill.

REP. TASH said it is the burden of proof which puts people out of business when injunctions are ordered. As grazers on Beaverhead National Forest they are wondering where they will find a summer home for 44,000 head of cattle because of the permanent injunction issued. It could break the county because it is the largest livestock producing county in the state. Those lands can't reasonably be utilized in any other fashion. He said it is an invasion of property rights and only fair that those who bring those kinds of onerous suits and force litigation post the bond in the same proportion as those who have to post their assets.

REP. KOTTEL was concerned about the consistency. She referred to a bill previously passed which gave the right to a legislator to intervene as a private party on behalf of the public interest. She asked if he would agree that if a legislator should do that under civil rules of civil procedure, that they should also post a bond or an undertaking.

REP. TASH answered, "Absolutely, in fact in this case in the Beaverhead National grazing suit, we have asked for and received intervening defendant status and so this parallels the same legislation" He said this was due process. But, he said, there are further costs incurred to reach that intervening

defendant status. He refuted the testimony of **Stan Frasier** as not being accurate and very much opposite to the facts.

REP. WILLIAM BOHARSKI spoke in favor of the bill. He said that the companies were required to put up a large bond before they start the projects. He said that large amounts of money are spent in the state agencies which for the purpose of carrying out this function--to keep organizations from coming in and violating these things and shutting industry down. He said it is a nightmare to try to get anything done in the state. They go through the process, pay the fees and then someone comes along to file some sort of lawsuit against them, puts a restraining order against them to keep them from doing business. He felt the protections are in place and he did not think using the courts was such a good idea, but the departments should be used to get it straightened out.

REP. DANIEL MC GEE asked the committee to keep in mind that the intent of the bond was to protect the wages, salaries and benefits of the employees.

REP. BRAD MOLNAR asked if there was any indication that it is just a particular activity which would be shut down or would a whole operation be shut down.

CHAIRMAN CLARK said he believed it was just the activities affected.

REP. MOLNAR asked if there was a problem with just working with restraining orders in the bill rather than both injunctions and restraining orders.

REP. TASH said that with both there is still an interference with business. Interference with business as well as the litigation and the threats of litigation are costly.

REP. CLIFF TREXLER pointed out that line 24 provided for orders against industrial operations and did not include grazing. Grazing according to this definition is not industrial. He asked how wages, salaries and benefits can be determined when the bond is required up front since there is no idea how long the injunction would last.

REP. TASH said lines 1 and 2 on page 2 state is it not limited to industrial activities.

Motion: **REP. TASH MOVED TO AMEND PAGE 1, LINE 24 TO INCLUDE "COMMERCIAL OPERATION."**

Discussion: **REP. BOHARSKI** said that would require a change in the definition of industrial operation or activity.

REP. TASH deferred to **John MacMaster** to conform the language.

Mr. MacMaster said it would not hurt to insert industrial or commercial operation or activity on page 1, line 24; then on page 2, line 1 they should also include industrial or commercial operation or activity.

REP. MC GEE believed all things were covered in the proposed language.

REP. TREXLER said he was referring to existing language which includes definitions about what an industrial operation is. He said he thought it needed to be narrowed.

REP. BOHARSKI asserted that the language on the top of page two applied to this section. He said it really did not matter where else in code the definition appeared because this particular definition applied to this particular section. He would be concerned about the scope of the bill in picking up a definition from somewhere else in statute without specifically defining it.

REP. TASH withdrew his amendment.

REP. JOAN HURDLE submitted that there are times when it might be necessary to interfere with business. She hesitated to support the bill because it placed restrictions on the people's right to intervene.

REP. AUBYN CURTISS strongly supported the bill. Many appeals and actions can currently be activated with just a simple postage stamp. She thought it was time that people became responsible for their actions and that frivolous actions can put many people out of work and cost large sums of money which gets passed on to consumers.

Vote: The motion (DO PASS AS AMENDED) carried 11 - 7, REPS. WYATT, CAREY, KOTTEL, SHEA, HURDLE, MC CULLOCH and TREXLER voted no. (REPS. SMITH voted aye and REP. SHEA voted no by proxy and REP. ANDERSON was absent.)

{Tape: 1; Side: A; Approx. Counter: 25.7; Comments: REP. SHEA'S proxy votes were reported and recorded, but not submitted to the secretary.}

EXECUTIVE ACTION ON HB 551

Motion: REP. KOTTEL MOVED HB 551 DO PASS.

Discussion: CHAIRMAN CLARK said that since it was a committee bill, he would get an additional sponsor sheet for the committee members to sign. REP. BOHARSKI agreed to carry the bill.

REP. KOTTEL said they had the information from the Attorney General's office and she presented and explained it to the committee. EXHIBIT 2

REP. MC GEE drew the committee's attention to the third paragraph of the letter.

REP. ELLEN BERGMAN asked if there was a cost estimate for preparing the lab for operation.

REP. KOTTEL said that could be found on the fiscal note for HB 191.

REP. BERGMAN asked if this bill would go to appropriations and she was told it would.

REP. MC GEE said that during the appropriations part of the process they might want to explore the option of continuing to get the tests done out of state.

REP. BILL CAREY wanted the committee to look into the information and suggestions from paragraph 2 on page 2 of the letter.

REP. KOTTEL discussed that suggestion. She wanted to get the bill out of committee and then adjust it through amendments later in the process.

REP. MOLNAR discussed his concerns regarding expunging the DNA records and the inclusion of crimes involving intimidation which he also wanted to have considered during the process of amending the bill.

REP. KOTTEL responded to those concerns.

Mr. MacMaster reminded the committee that under constitutional principles they cannot be tried for the same crime twice and that the bill was providing for a reversal and in that situation, there would be no need for the DNA evidence. If the court did not reverse the conviction, but ordered a new trial, then the DNA evidence could be used to try the defendant again. He said that on page 4, line 2, they could say, "If a conviction of a sexual or violent offense is reversed, but not if a new trial is ordered, the record must be expunged."

REP. BOHARSKI said that his concern was that it was not samples collected from the crime scene under section 5, but those collected from the suspect under section 3 which should be expunged. Evidence from a crime scene would be disposed of when they decide there is nothing left to do with the case.

REP. MC GEE reminded the committee that DNA could also prove innocence.

Vote: The DO PASS motion carried 17 - 1, REP. WYATT voted no. REP. SHEA and REP. SMITH voted aye by proxy. REP. ANDERSON was absent.

EXECUTIVE ACTION ON HB 366

Motion: REP. CAREY MOVED HB 366 DO PASS.

Discussion: Members of the committee discussed informally the problems with the bill which included the mandatory reporting requirement to the Department of Family Services (DFS) by independent advocacy groups and the access to records, as well as the immunity clause.

Motion/Vote: REP. GRIMES MOVED TO TABLE HB 366. The motion carried unanimously.

EXECUTIVE ACTION ON HB 186

Motion: REP. MC GEE MOVED HB 186 DO PASS.

Discussion: The Chairman reminded the committee that the bill had been amended twice in previous action by the committee.

Motion: REP. KOTTEL MOVED TO AMEND PAGE 11, LINE 4 FOLLOWING 41-3-205, BY INSERTING "AND SUBSTANTIATED BY THE DEPARTMENT,"

Discussion: REP. HURDLE wanted to clarify what is meant by substantiation because she was concerned about the substantiation process.

REP. BOHARSKI asked what subsection (2) provided.

REP. KOTTEL said that prior to the amendment, if a person would receive information from either of the two sections, it could be used as a basis for termination from employment and the employer would be immune from any civil liability in terms of wrongful discharge unless they acted in bad faith in the termination. The amendment would attempt to put balance back with the employer's right to protect children from people who had not yet been convicted of child endangerment crimes and also protect the rights of employees from mere allegations in the file. The amendment would require that the department substantiate the information or allegation.

REP. BOHARSKI asked if it related specifically to employees who are involved in activities with children and REP. KOTTEL affirmed that.

REP. HURDLE said that DFS has a blacklist of people who are refused payment and employment, even some who are still doing child care, because a DFS employee had "substantiated that an allegation was made." She said they have cases in court now which this relates to and she thought that was why DFS had included it in the bill.

REP. MOLNAR said REP. HURDLE was right, but he asked if there was an amendment already accepted to clarify this issue and the committee directed their attention to page 11, line 1 to affirm that had been done.

REP. HURDLE said the blacklist problem still existed and that this would only save money. She said they could continue in child care, but could not collect the funds from assisted child care programs. She said it was profitable for DFS to put people's names on the list.

REP. KOTTEL restated her amendment to include language suggested to clean it up to read, "that is substantiated by the department" following on line 3, 41-3-201; and on line 4, following 41-3-205.

Motion: REP. HURDLE MOVED A SUBSTITUTE AMENDMENT TO INSERT AFTER THE WORD SUBSTANTIATED, "WITH USE OF DUE PROCESS."

{Tape: 1; Side: B}

Discussion: REP. KOTTEL agreed with the concept but not with the placement.

REP. HURDLE said the basics of due process was the confronting of the accuser before being placed on a list.

REP. BOHARSKI clarified what he believed REP. HURDLE was trying to do. He said that if someone was accused, before due process the court could still impose a restraining order. But in the long term, before being placed on the list by the department, due process needed to be ensured. REP. HURDLE said that was exactly right.

Mr. MacMaster thought that the wording would seem vague to the department. He suggested that they use the words, "substantiated by the department by independent corroboration."

REP. HURDLE accepted that language as a friendly amendment.

REP. BOHARSKI asked about using clear and convincing evidence, beyond a reasonable doubt.

REP. KOTTEL said that in an administrative proceeding, it is the lowest standard to only allow the employer to have some immunity in using the information. She would support the suggested wording.

REP. HURDLE withdrew her original motion.

Motion/Vote: REP. HURDLE MOVED A SUBSTITUTE AMENDMENT TO INSERT AFTER THE WORD SUBSTANTIATED, "BY INDEPENDENT CORROBORATION."
The motion carried unanimously by voice vote.

Motion: REP. CAREY MOVED TO AMEND BY STRIKING LINE 30 ON PAGE 9 AND LINE 1 ON PAGE 10.

Discussion: REP. KOTTEL asked why they would take out the guardian ad litem portion.

REP. CAREY was open to changing the amendment.

Motion: REP. KOTTEL MOVED A SUBSTITUTE AMENDMENT TO DELETE, "AN ADVOCATE OR" AND INSERT BEFORE GUARDIAN, "A."

Discussion: REP. MC GEE reminded the committee that this was a turf battle.

Vote: The motion carried unanimously by voice vote.

Motion: REP. MC GEE MOVED TO AMEND PAGE 11, LINES 1 AND 2 TO STRIKE "THERE IS" ON LINE 1 THROUGH END OF LINE 2.

Discussion: REP. MOLNAR opposed the amendment because there was already a higher standard used and that if a person thinks a child is being abused, they should be able to make that claim to somebody to have it investigated without fear and that the investigator should exercise common sense in the investigation.

REP. MC GEE gave a personal example of how a rebuttable presumption could be inappropriately used.

REP. CURTISS asked if, besides granting immunity to some people, this bill would really be doing anything substantial to protect the interests of children.

REP. KOTTEL said she felt that the immunity was provided under section 9 and that section 2 was important to protect children from endangerment. She thought the other substantial area had to do with page 12 dealing with confidentiality. She believed the rest of the bill was clean-up language.

REP. HURDLE said she agreed that they were not accomplishing much with the bill. She hoped that they would come to see DFS as agents of community values and that they will authorize enough funding in HB 2 to supervise and train them.

REP. CURTISS said she was going to vote against the bill because she did not see where it would make DFS any more responsible than they had been. She felt they have all the laws they need to do their jobs and there was evidence that they are not doing their jobs.

REP. KOTTEL again directed the committee to the specifics in the bill she felt would accomplish resolution to concerns with the protection of children.

Motion: The motion to adopt the McGee amendment carried 18 - 1; REP. MOLNAR voted no.

Motion: REP. KOTTEL MOVED HB 186 DO PASS AS AMENDED.

Discussion: REP. MOLNAR said that the amendments had raised the standard considerably for DFS to use when they pursue these issues. He thought they had greatly improved the bill.

Vote: The motion carried 16 - 3; REPS. CURTISS, CLARK and SMITH voted no. (REP. BERGMAN voted aye by proxy.)

EXECUTIVE ACTION ON HB 256

Motion: REP. GRIMES MOVED HB 256 DO PASS.

Motion: REP. MC GEE MOVED AMENDMENTS ON EXHIBIT 3.

Discussion: REP. LINDA MC CULLOCH had a problem with branding drivers' licenses.

REP. MC GEE submitted that more people are killed on highways than with guns; therefore, he advocated the use of whatever it would take to curb this problem. He reviewed the amendments and summarized that they strengthened the first DUI, strengthened more so the second DUI and made the third DUI a felony.

REP. GRIMES described how each DUI penalty would be strengthened by the amendments.

REP. BOHARSKI said that the third offense was still not a felony through the wording of the amendment. A felony is defined by the length of time and where the incarceration would take place.

The committee worked with the wording of the amendment until they had come to the wording necessary for the intent of making the third DUI a felony offense.

REP. MC GEE withdrew his amendment and he and members of the committee as well as Mr. MacMaster adjusted the language for a new amendment.

Motion: REP. MC GEE MOVED A SUBSTITUTE AMENDMENT TO LINE 26 ON PAGE 1, AFTER "SHALL BE" STRIKE "IMPRISONMENT" AND INSERT, "INCARCERATION IN THE COUNTY JAIL OR A STATE PRISON FOR NOT LESS THAN ONE YEAR OR MORE THAN TEN YEARS AND A FINE OF NOT LESS THAN \$1,000 NOR MORE THAN \$50,000." HE ALSO MOVED THE BALANCE OF THE AMENDMENTS OUTLINED IN EXHIBIT 3.

Discussion: REP. BOHARSKI clarified for the committee that with the language of the amendment, the third DUI could still fall out of the felony category and REP. MC GEE replied that he was comfortable with it accomplishing the purpose of keeping the

offender off the road and taking into consideration the overcrowding of the prison, he thought it would still make the point.

Vote: The motion carried 15 - 2; REPS. SHEA and WYATT voted no. REP. MOLNAR was absent.

Motion: REP. SHIELL ANDERSON MOVED TO AMEND BY STRIKING ALL OF SUBSECTION (10) ON PAGE 3.

Discussion: REP. ANDERSON explained his reasons for the amendment that branding a driver's license would not act as a deterrent and REP. MC CULLOCH agreed with the amendment and thought it would set a precedent for branding them for other things.

CHAIRMAN CLARK said that drivers' licenses were branded at one time and that was challenged by the ACLU and the practice was stopped. It had not made any difference and present methods of communications would accomplish the same thing.

REP. CURTISS suggested that they should consider the liability of one who serves alcohol to persons who might not be served if the drivers' licenses were branded.

REP. ANDERSON said that was the only valid reason which was brought up during the hearing, but in looking at the statute and that a bar tender can refuse to serve someone who appears intoxicated, he did not think the DUI brand would make a difference.

Vote: The motion carried 16 - 3, REPS. MOLNAR, BERGMAN and BOHARSKI voted no.

Motion: REP. ANDERSON MOVED A CONCEPTUAL AMENDMENT TO PAGE 5 TO HAVE THE SURCHARGE GO INTO THE GENERAL FUND RATHER THAN TO BE ALLOCATED TO THE SHERIFF FOR EQUIPMENT.

Discussion: REP. CURTISS said some counties do not have the budgeting ability to do this and had been asked to be sure that the money would be allocated for purchasing jaws of life equipment.

REP. BERGMAN agreed that it should be designated because people would know it was going for this equipment and would be less inclined to object to paying it.

REP. BOHARSKI agreed with the sponsor of the amendment because it did not make sense to have the person who would benefit from the fine imposing the penalty.

REP. HURDLE agreed that the money should not be designated and there should be the option of using it in the treatment of alcoholism.

CHAIRMAN CLARK gave examples for opposing the amendment. He said that in his county, if the commissioners got their hands on the money, there would be no way it would ever be used for this intention. The money is not for the sheriff, but for victims. If the money is used only for that purpose, the sheriff can't use it for anything else but would merely administer the fund. He gave examples of the necessity for having the equipment.

{Tape: 2; Side: A}

REP. LIZ SMITH reiterated the previous testimony for need for designating funds for this equipment especially in rural areas. She felt it would over the long haul reduce costs as well as make a difference in the lives of the people helped by it.

REP. TASH supported the amendment because he had seen where the equipment had been purchased through voluntary contribution efforts. He felt the disbursement of the funds should be left in the hands of the elected officials and if they were not acting responsibly, they could be removed from office through the vote.

Vote: The motion failed by voice vote.

Motion: **CHAIRMAN CLARK** MOVED TO AMEND PAGE 5, LINE 26, AFTER "SHERIFF" STRIKE "SHALL" AND AFTER "FIRE DEPARTMENT" INSERT "OR EMERGENCY RESPONSE UNIT WHERE EQUIPMENT IS NEEDED" AND AMEND LINES 4 AND 5 ON PAGE 5 IN THE SAME WAY.

Discussion: **REP. KOTTEL** said she would not want the money to go to a for-profit emergency system and to so state that in the amendment. **CHAIRMAN CLARK** accepted that as a friendly amendment.

REP. SMITH also wanted to include in the amendment that it could be used for training for personnel or emergency equipment. He accepted that as a friendly amendment to be included.

REP. ANDERSON questioned whether the wording would preclude the sheriff's department from keeping the equipment.

CHAIRMAN CLARK said all sheriff's departments work with the emergency response units and fire departments and so they would not need the equipment in their own inventory.

REP. BOHARSKI pointed out a way to handle the intent by striking the words in the first sentences in those sections. He felt that would avoid micro-managing the sheriff's departments in it.

Motion/Vote: **REP. BOHARSKI** MOVED A SUBSTITUTE AMENDMENT TO STRIKE LINES 4, 5, 26 AND 27 ON PAGE 5. The motion carried 18 - 1; **REP. CLARK** voted no.

Motion/Vote: **REP. TASH** MOVED HB 256 DO PASS AS AMENDED. The motion carried 18 - 1; **REP. WYATT** voted no.

EXECUTIVE ACTION ON HB 443

Information: EXHIBIT 4 was submitted for the committee's consideration in executive action.

Motion: REP. ANDERSON MOVED HB 443 DO PASS.

Motion/Vote: REP. ANDERSON MOVED TO AMEND HB 443 SECTION 2, PAGE 2, INCLUDE 1(O) AT THE END OF THE LIST ON LINE 26, INCLUDE THE SAME ON LINE 5 OF PAGE 3; ON LINES 21 AND 22 ON PAGE 2 TO BE STRUCK AND REINSERTED IN SECTION 2(B) AND TO READ, "ATTORNEY FEES AND COSTS MUST BE AWARDED TO THE SUCCESSFUL PARTY IN AN ACTION UNDER THIS SECTION." The motion carried unanimously by voice vote.

Discussion: The committee had an informal discussion on reasons for the amendments. REP. ANDERSON said that the reason is to limit it to the causes of action enumerated in the underlying part of the bill rather than all causes of action under section 1 of the bill and it also pertained to a one-time cause of action.

REP. SMITH supported the bill but needed clarification. She said she was not in support of attorneys receiving their fees up front, but preferred that they be paid upon settlement.

REP. ANDERSON said that he did not read it that the attorney would get his money up front but that it just clarified who would pay the attorney fees. It would also depend upon the agreement about how he was to be paid.

REP. GRIMES supported it on principle, but was troubled by the point that Montana is the only state with an independent cause of action codified. He was not clear if this would double up on the insurers.

REP. BOHARSKI asked what would happen when medical claims are paid and then they discover they are not at fault and there did not seem to be an answer to the question.

Vote: The motion to adopt the Anderson amendment carried unanimously by voice vote.

Discussion: REP. MOLNAR suggested an amendment which he withdrew when it was discovered that the previous amendment provided for his suggestion.

Motion: REP. CHRIS AHNER MOVED HB 443 DO PASS AS AMENDED.

Discussion: REP. AHNER asked if the damages were cleared so that they could be paid.

REP. ANDERSON said, "No." He thought she was asking the same question previously asked by REP. BOHARSKI that was if they would know for sure that they had an injury that the insurance company

should pay. He thought that in some cases, the decision would be made by a jury because of the "reasonably clear" language in the bill.

REP. AHNER asked if the injured party would have to wait for the determination by the jury.

REP. ANDERSON said he did not think it would work that way. He thought the insurance company, realizing they would be liable for medical expenses or property damage claim, but in addition attorneys fees and perhaps a bad faith claim, they would be encouraged to pay the medical expenses if they thought that the liability was reasonably clear. This would edge it toward the claimant rather than the insurance company.

REP. AHNER asked how they would know how much to pay if the jury had not yet heard the case.

REP. ANDERSON did not think that "these" would go to the jury, but that there are policy limits on the insurance which they would not exceed, but up to that amount, the insurance company would be encouraged to pay the medical claims if they felt they were responsible for them.

REP. BOHARSKI felt the language was very strong in the bill, that they were going too far with this bill and felt it would put a burden on the insurance industry.

CHAIRMAN CLARK thought many of **REP. BOHARSKI'S** concerns were addressed on lines 15 through 19. The liability would have to become reasonably clear within a reasonable time.

REP. BOHARSKI asked what is reasonably clear and what is a reasonable time.

REP. HURDLE referred to written testimony which said that the Unfair Claims Practices Act doesn't require insurance companies to pay promptly and she felt this bill addressed that problem.

REP. BOHARSKI pointed out lines 10 and 11 and she read them. He said it seemed to him that they are already required to settle the claim. He asked why they should ask someone to settle a claim before it had been decided who was really liable.

REP. SMITH said the code stated that, "duty to attempt in good faith to effectuate prompt, fair and equitable settlements" give that direction already.

Motion/Vote: **REP. SMITH** MOVED TO TABLE HB 443. The motion failed 6 - 10; **REPS. SMITH, TREXLER, HURDLE, MC GEE, CLARK,** and **BOHARSKI** voted aye.

Discussion: **REP. LOREN SOFT** clarified the purpose of the bill was to deal with those cases where insurance companies were

disclaiming clear liability and investigation of the third party was being continued while the insurance companies delay payment.

Vote: The DO PASS AS AMENDED motion carried 15 - 3, REPS. SMITH, TREXLER and BOHARSKI voted no. (REP. SHEA was absent; REPS. ANDERSON and AHNER voted by proxy.)

CHAIRMAN CLARK said the committee would next consider the subcommittee bills dealing with juvenile justice. EXHIBIT 5 is included as information given to the committee for consideration.

EXECUTIVE ACTION ON HB 450

Motion/Vote: REP. MOLNAR MOVED TO TABLE HB 450. The motion carried 17 - 1; REP. BOHARSKI voted no.

EXECUTIVE ACTION ON HB 240

Motion: REP. SOFT MOVED HB 240 DO PASS.

Motion: REP. SOFT MOVED THE AMENDMENTS. EXHIBIT 6

Discussion: REP. SOFT explained the amendments.

{Tape: 2; Side: B; Approximate Counter 11.9.}

Mr. MacMaster discussed the necessary amendment to the funding part of the bill on page 3, lines 23 - 26 to say that the funds identified in this section have to be deposited in quarterly installments in a revenue fund to the credit of the legislative council. It would further state that the deposits must be sufficient to meet the commission's costs for the next quarter and that the first installment must be deposited on or before July 1, 1995.

Vote: The motion carried unanimously by voice vote.

Motion/Vote: REP. MOLNAR MOVED HB 240 DO PASS AS AMENDED. The motion carried 18 - 0. (REPS. AHNER, SMITH, WYATT, GRIMES voted by proxy.)

EXECUTIVE ACTION ON HB 429

Motion: REP. MOLNAR MOVED HB 429 DO PASS.

Motion: REP. MOLNAR MOVED TO AMEND HB 429. EXHIBIT 7

Discussion: REP. MOLNAR said the intent of the amendments was to hold youths responsible for their actions.

REP. KOTTEL found inconsistencies between the bill and the amendments as concerned confidentiality in the hearing.

Mr. MacMaster answered the concern, "With respect to the type of records that **REP. MOLNAR'S** amendments seeks to add in, he is right, **Judge Larson** did respond to this issue during one of the subcommittee hearings and he said that people don't come into his court and make these uncorroborated allegations." The judge had said that the attorneys for the youths don't come into court and start making allegations about the parents which are not true; and if they did, they wouldn't be practicing law very long.

REP. KOTTEL said that what they were doing between the two sections was inconsistent and she pointed out the where she saw that.

REP. MOLNAR felt the concern was covered under section 2 in outlining the discretion the judge could exercise in closing a trial if certain things were going to be discussed.

REP. KOTTEL asked then why the one section of the amendments provided for the non-exclusion of the general public.

REP. MOLNAR said he had had a problem with that as well and would not object to an amendment to keep a hearing of a youth in need of supervision confidential. However, he wanted to leave the records open on the act that got the youth there.

REP. BOHARSKI asked if they struck subsection 5, lines 9 - 11 would that leave the discretion to the judge to close a hearing.

Mr. MacMaster said that generally court hearings are open to the public whether civil, criminal or youth court cases unless there is a statute which closes it. He thought if they struck all of 5, they would still be open to the public.

REP. MOLNAR said currently the delinquent youth hearing is open, while misdemeanors and youth in need of supervision hearings are not.

REP. BOHARSKI asked which of those **REP. KOTTEL** was concerned with.

REP. KOTTEL said she was concerned with youth-in-need-of-supervision and youth-in-need-of-care hearings. She was concerned about protecting them from public scrutiny when they might make allegations.

REP. MOLNAR said that youth in need of care was not included in this bill. Section 1 was concerned with youth in need of supervision or delinquent youth.

REP. MC GEE asked if plea bargaining takes place where delinquency is plea bargained down to youth in need of supervision.

REP. MOLNAR answered, "Exactly, and that is why we are trying to keep the records open on what got the youth there. But we are trying to protect the people that in the judge's court [he was speaking of Judge Larson's court] you may not have that problems that quite frankly are rampant in just about all the others."

REP. MC GEE and REP. KOTTEL continued to discuss the issue.

{Tape: 2; Side: B; Approx. Counter: 35.2}

REP. MOLNAR suggested the following language:

"In a hearing on a petition under this section, the general public may not be excluded except in cases of youth in need of supervision."

Motion: REP. MOLNAR MOVED A SUBSTITUTE AMENDMENT TO INCLUDE THE LANGUAGE ABOVE.

Discussion: REP. KOTTEL expressed her concerns about the bill and made disclaimers about her lack of knowledge and experience in this area of the law. She was also concerned about the lack of other district court judges' support. These were some of her reasons for not supporting the amendment or the bill.

Vote: The motion to adopt the Molnar amendments carried 13 - 6; REPS. WYATT, SHEA, HURDLE, CAREY, MC CULLOCH and KOTTEL voted no.

Motion: REP. MOLNAR MOVED HB 429 DO PASS AS AMENDED.

REP. MOLNAR said this bill was a small step toward solving a large problem. It would try to give a first-time offender a small shock by publishing the name and the offense, but did not expect it to display background private information.

REP. MC CULLOCH said she remembered that the only proponents were in the newspaper industry while the opponents were the ones who actually work with the problem.

REP. MOLNAR responded to that by describing the affect of the amendment in closing certain hearings and he clarified that for REP. BOHARSKI.

REP. KOTTEL asked why information was being excluded from the public regarding discharge of an official duty by an officer on lines 15 - 17.

REP. MOLNAR said the information is being gathered and some of it would be private. There was additional committee discussion about this language.

Vote: The DO PASS AS AMENDED motion carried 12 - 6; REPS. WYATT, CAREY, HURDLE, SHEA, KOTTEL and MC CULLOCH voted no. (REP. BERGMAN'S proxy vote was not reported at the time of the vote.)

EXECUTIVE ACTION ON HB 380

Motion: REP. MOLNAR MOVED HB 380 DO PASS.

Motion: REP. MOLNAR MOVED TO AMEND HB 380.

Discussion: REP. MOLNAR explained the amendments and his reasons for supporting them.

{Tape: 2; Side: B; Approx. Counter: 50.8; Comments: A copy of the proposed amendments was not given to the secretary.}

REP. KOTTEL said there was no requirement for the youth to register as a sex offender. Section 46-18-254 and 46-23-506 were explained and she said there was no requirement that the youth be found adjudicated having committed any sex offense. She gave suggestions to deal with this problem in the bill.

REP. MOLNAR thought line 11 took care of it.

REP. SOFT had suggested language:

"may require a youth charged and convicted for sex offenses to register as a sex offender."

REP. KOTTEL agreed that it should go in subsection (d) at line 19.

Motion: REP. SOFT MOVED THE SUBSTITUTE AMENDMENT TO INCLUDE THE LANGUAGE REFERRED TO ABOVE.

Discussion: Mr. MacMaster suggested a better way to word and position the intent on line 30 1(0) and strike (d) on line 19:

"If the court finds the youth committed an act that if committed by an adult would have a criminal sex offense, they may require them to register as a sex offender."

This was a friendly amendment to the substitute amendment.

Vote: The motion on the Soft substitute amendment carried unanimously by voice vote.

Vote: The motion on the Molnar amendment passed 15 - 1; REP. HURDLE voted no.

Discussion: There was discussion about rewording the amendment to reflect the connection with the committee bill dealing with

registration of violent and sex offenders between Mr. MacMaster and REP. KOTTEL.

Motion/Vote: REP. TASH MOVED HB 380 DO PASS AS AMENDED. The motion carried 17 - 2; REPS. HURDLE and KOTTEL voted no.

{Tape: 3; Side: A}

EXECUTIVE ACTION ON HB 540

Motion: REP. MOLNAR MOVED HB 540 DO PASS.

Motion/Vote: REP. MOLNAR MOVED TO AMEND HB 540 TO STRIKE SECTIONS 1, 2, 3, AND 4; RESTORE "CONCURRENT" ON LINE 11 OF PAGE 13; SECTION 18 CHANGE "INCLUDE" TO "PRECLUDE" ON LINE 6; AND ITEMS 9 OF EXHIBIT 8; STRIKE THE AMENDED LANGUAGE ON LINE 30 ON PAGE 42; LINE 9, SECTION 7, LINE 12 INSERT "PREVENT AND REDUCE YOUTH DELINQUENCY TO IMMEDIATE, CONSISTENT, ENFORCEABLE AND AVOIDABLE CONSEQUENCES OF THE YOUTH'S ACTION AND A PROGRAM OF SUPERVISION, CARE, REHABILITATION, DETENTION, COMPETENCY DEVELOPMENT, PROTECT THE COMMUNITY"; SECTION 16 1(E), PAGE 20, LINE 6 ADD (E) DETENTION CENTER; PAGE 20 SUBSECTION 3(E), "PLACEMENT MAY BE IN COMMUNITY PROGRAMS BY YOUTH COURT"; ITEMS 10, 11 AND 12 OF EXHIBIT 8. The motion carried 14 - 4; REPS. WYATT, HURDLE, CAREY and KOTTEL voted no. (REPS. GRIMES and AHNER voted aye by proxy.)

Discussion: REP. MOLNAR discussed the proposed amendments item by item.

{Tape: 3; Side: A; Approx. Counter: 4.0; Comments: A copy of the amendments was not given to the secretary.}

Motion: REP. MOLNAR MOVED HB 540 DO PASS AS AMENDED.

Discussion: REP. KOTTEL said it was a significant bill and did not feel comfortable putting it through the system hoping it would all come together. She went through the issues item by item in the bill.

{Tape: 3; Side: A; Approx. Counter: 35.0}

REP. ANDERSON responded to the bill by stating that they could kill the bill in committee whereby they would be left with nothing to work with to solve the problem with youth. Though it might not be perfect, it had a long way to go in the process before it would become law. He suggested that they pass it out of committee and allow it to have the benefit of the process to make the necessary changes.

REP. DIANA WYATT felt that they did have other bills in the process which would address the youth problems. She did not like sending out bills which need to be fixed someplace else in the process and she said they needed to ask if there was really a

compelling need to make those drastic changes that affect children or could it be postponed another two years. She thought the changes were more than substantive, but extremely drastic and a change in the policy direction for the state.

Motion/Vote: REP. WYATT MOVED TO TABLE HB 540. The motion failed by voice vote.

Discussion: CHAIRMAN CLARK commented on the process in refining bills and agreed with REP. ANDERSON that if this bill would come out of the legislature in its present form it could be subjected to several changes. He asked REP. KOTTEL to stay with the bill while it progressed through the process with her compelling arguments.

REP. SOFT suggested that the subcommittee stay intact and stay with the bill as it progressed through the process.

REP. DEBBIE SHEA clarified the committee's choices and asked why this large and significant a bill was submitted so late in the session.

CHAIRMAN CLARK further clarified the committee's choices in the bill passage process and said he could not answer why they had received this particular one so late.

REP. TASH commented on the time constraints and conflicts of interest on similar bills, he reminded the committee that they could not make a perfect bill out of it.

REP. CAREY thought the bill belonged with the study commission.

REP. MC CULLOCH reiterated the statements made by REP. CAREY in commending the sponsor for the work invested, but that she also was in favor of it being studied over the next two years.

REP. TREXLER commented that there were many who recognized the extent of the work REP. MOLNAR had invested in the bill, but there were just too many things that needed to be addressed in it for its support at this time.

REP. MC GEE asked about the effect of tabling the bill.

CHAIRMAN CLARK said he understood that technically there is nothing dead until the session ends. He believed they could revive it after transmittal if it were tabled.

REP. MOLNAR argued against the tabling and against the charges brought against the bill to which he said he had not had opportunity to respond. He gave the committee his strong feelings regarding the need for the passage of this bill.

CHAIRMAN CLARK said that none who had spoken against the bill or pointed out problems with it had yet voted on the bill.

REP. MOLNAR said he would like to see the bill passed and would work to deal with the problems or "holes" in it and he wanted the opportunity to defend it all through the process.

Vote: The DO PASS AS AMENDED motion carried 12 - 5 by roll call vote.

{Tape: 3; Side: A; Comments: The vote was reported as 13 - 5 on the committee report, the roll call vote indicates 12 - 5 and the tape indicates some question about REP. TASH voting aye (no proxy was turned in for him.)}

Motion: REP. ANDERSON MOVED TO ADJOURN.

{Comments: This set of minutes is complete on three 60-minute tapes.}

ADJOURNMENT

Adjournment: The meeting was adjourned at 12 NOON.

Bob Clark

BOB CLARK, Chairman

Joanne Gunderson

JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 2/16/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓ late 8 ¹⁰	✓	
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓ late 8 ³⁰	✓	
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		



HOUSE STANDING COMMITTEE REPORT

February 16, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 186 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 7.

Strike: "OR ADVOCATE"

Following: "AS"

Insert: "A"

Strike: "REPORTERS"

Insert: "REPORTER"

2. Page 9, line 30.

Strike: "an advocate of"

Insert: "a"

3. Page 10, lines 27 and 28.

Strike: "A police" on line 27 through "attorney" on line 28

Insert: "Anyone"

4. Page 11, line 1.

Following: the first "the person"

Insert: "was grossly negligent or"

5. Page 11, lines 1 and 2.

Strike: "There is" on line 1 through end of line 2

6. Page 11, line 3.

Following: "41-3-201"

Insert: "that is substantiated by the department by independent corroboration"

Committee Vote:

Yes 16, No 3.

401548SC.Hbk

7. Page 11, line 4.

Following: "41-3-205"

Insert: "that is substantiated by the department by independent
corroboration"

-END-



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 3

Mr. Speaker: We, the committee on Judiciary report that House Bill 240 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 5.

Strike: "YOUTH COURT"

Insert: "JUVENILE JUSTICE AND JUVENILE MENTAL HEALTH"

2. Title, line 7.

Strike: "STUDY"

Insert: "COMPREHENSIVE REVIEW AND ASSESSMENT"

Strike: "YOUTH COURT ACT"

Insert: "JUVENILE JUSTICE SYSTEM AND JUVENILE MENTAL HEALTH SYSTEM"

3. Page 1, line 24.

Following: "balance"

Insert: "; and

WHEREAS, it is important that all services to youth in the juvenile justice system and mental health services delivery system be coordinated in a single, seamless continuum of care and treatment"

4. Page 1, lines 26 and 27.

Strike: "study" on line 26 through "system" on line 27

Insert: "complete a comprehensive review and assessment of the Montana juvenile justice system and the mental health services delivery system for youth and develop a plan to ensure the effective and efficient delivery of services to all youth in those systems"

Committee Vote:

Yes 18, No 0.

411629SC.Hbk

5. Page 2, line 1.
Strike: "Youth court"
Insert: "Juvenile justice"
6. Page 2, line 2.
Strike: "youth court"
Insert: "juvenile justice"
7. Page 2, line 8.
Strike: "district"
Insert: "youth"
Strike: "selected by the Montana judges' association"
Insert: "appointed by the governor"
8. Page 2, line 9.
Strike: "selected"
Insert: "appointed"
Following: "by the"
Insert: "governor from three candidates nominated by the"
9. Page 2, line 10.
Strike: "the presiding officer"
Insert: "a member"
10. Page 2, line 11.
Strike: "the chief" through "services"
Insert: "a parent or guardian of a youth being treated or supervised"
11. Page 2, line 12.
Strike: "the president or executive director of"
Insert: "a juvenile probation officer appointed by the governor from three candidates nominated by"
Strike: "and"
12. Page 2, line 13.
Strike: "a delegate selected"
Insert: "a county attorney, appointed by the governor from three candidates nominated"
Following: "association"
Insert: ";
(j) a victim of a violent crime committed by a youth, appointed by the governor;
(k) a member of a private agency that provides treatment services to youth, appointed by the governor;
(l) a young adult who was formerly adjudicated to be a juvenile delinquent or youth in need of supervision, appointed by

the governor; and

(m) one employee each of the department of family services, the board of crime control, and the department of corrections and human services, who shall serve as nonvoting members"

13. Page 2, line 20.

Following: "commission."

Insert: "At least one meeting must be held in each mental health region."

14. Page 2, line 30 through line 1 of page 3.

Strike: "Montana" on line 30 of page 2 through "system" on line 1 of page 3

Insert: "juvenile justice system and youth mental health services delivery system. The study must include:

(a) a comprehensive review of past and present programs used to successfully rehabilitate youth and reduce juvenile crime;

(b) a review of methods and programs in other states and nations that have been documented success in treating and rehabilitating youth;

(c) the development of a juvenile justice and mental health treatment continuum that provides for community protection, youth accountability, youth competency, meaningful restitution, and successful reintegration of youth into the community;

(d) a definition and delineation of the roles and responsibilities of the department of family services and other state and local government agencies working with youth;

(e) a definition and delineation of the roles and responsibilities of the juvenile justice system and the youth mental health services delivery systems; and

(f) a review of the effectiveness and efficiency of each state youth correctional facility and of each detention facility operated by the state, including the feasibility of privatizing each facility"

15. Page 3, line 24.

Following: "deposited"

Insert: "in quarterly installments that are sufficient to meet the commission's costs for each quarter"

16. Page 3, line 25.

Following: first "council"

Insert: ". The first installment must be deposited"

17. Page 3, line 26.

Strike: "until these funds have"

Insert: "the first installment has"



HOUSE STANDING COMMITTEE REPORT

February 16, 1995

Page 1 of 3

Mr. Speaker: We, the committee on Judiciary report that House Bill 256 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 4.
Strike: "PENALTY"
Insert: "PENALTIES"
Strike: "ON THE"
2. Title, line 5.
Strike: "FOURTH OR SUBSEQUENT"
Insert: "UPON A"
3. Title, lines 5 and 6.
Strike: "REQUIRING" on line 5 through "LICENSE;" on line 6
4. Page 1, line 15.
Strike: "(8)"
Insert: "(7)"
Strike: "(9)"
Insert: "(8)"
5. Page 1, line 16.
Strike: "24"
Insert: "48"
Strike: "60 days"
Insert: "6 months"
6. Page 1, line 19.
Following: "well-being"

Committee Vote:
Yes 18, No 1.

401550SC.Hbk

Insert: "or unless the defendant voluntarily enrolls in and successfully completes a chemical dependency treatment program approved by the court and conducted by an approved private treatment facility or approved public treatment facility, as defined in 53-24-103. A suspended or deferred sentence must include a condition that the defendant shall perform community service"

7. Page 1, lines 20, 23, 25, and 28.

Strike: "(8)"

Insert: "(7)"

8. Page 1, line 21.

Strike: "7"

Insert: "30"

9. Page 1, line 22.

Strike: "48"

Insert: "72"

Strike: "6 months"

Insert: "1 year"

10. Page 1, line 23

Strike: "3"

Insert: "30"

11. Page 1, line 24.

Following: "well-being"

Insert: "or unless the defendant voluntarily enrolls in and successfully completes an inpatient chemical dependency treatment program approved by the court and conducted by an approved private treatment facility or approved public treatment facility, as defined in 53-24-103. A suspended or deferred sentence must include a condition that the defendant shall perform community service"

12. Page 1, line 25.

Following: "~~or subsequent~~"

Insert: "or subsequent"

13. Page 1, line 26

Strike: "imprisonment"

Insert: "incarceration in the county jail or a state prison"

14. Page 1, lines 26 and 27.

Strike: "30 days" on line 26 through "consecutively," on line 27

Insert: "1 year"

15. Page 1, line 27.
Following: "more than"
Strike: "1 year"
Insert: "10 years"
Strike: "\$500"
Insert: "\$1,000"
Strike: "\$1,000"
Insert: "\$50,000"

16. Page 1, line 30.
Strike: "10"
Insert: "60"

17. Page 2, line 1.
Following: "suspended."
Insert: "The remainder of the term of incarceration contained in the sentence may be suspended or deferred only on the condition that the defendant successfully complete an inpatient chemical dependency treatment program approved by the court and conducted by an approved private treatment facility or approved public treatment facility, as defined in 53-24-103. A suspended or deferred sentence must include a condition that the defendant shall perform community service."

18. Page 2, lines 14 through 18.
Strike: subsection (4) in its entirety
Renumber: subsequent subsections

19. Page 3, line 27 through line 2 of page 4.
Strike: subsection (10) in its entirety

20. Page 5, lines 4 and 5.
Strike: "The" on line 4 through end of line 5

21. Page 5, lines 26 and 27.
Strike: "The" on line 26 through end of line 27

-END-



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 380 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Page 6, line 18.

Strike: ";"

Insert: ". A youth may not be sentenced to a state youth correctional facility unless the department informs the judge that space is available for the youth at that facility. The sentencing judge may not place limitations on the release unless the judge has sought and considered release limitations recommended by the youth placement committee."

2. Page 6, line 19.

Strike: "the"

Insert: "a"

Following: "youth"

Insert: "found to be delinquent"

3. Page 6, line 21.

Strike: ";"

Insert: ". Before placement, the sentencing judge shall seek and consider placement recommendations from the youth placement committee. The judge may not place the youth in an in-state residence unless the department informs the judge that space is available for the youth at that residence."

-END-

Committee Vote:

Yes 17, No 2.

411356SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 429 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Page 1, line 15.

Strike: "matters" in two places

Insert: "records" in two places

Strike: "All"

Insert: "Except as provided in 41-5-603, all"

2. Page 2, line 11

Following: "~~41-5-601~~"

Insert: ", except that in the court's discretion, the general public may be excluded if the petition does not allege that the youth is delinquent"

3. Page 2, line 24.

Following: "studies,"

Strike: "and"

4. Page 2, line 25.

Following: "probationers"

Insert: ", and any report, charge, or allegation that is not adjudicated pursuant to this chapter"

-END-

mm
2/17

Committee Vote:
Yes 12, No 6.

411353SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 16, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 443 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 5.

Strike: "CLAIMANTS WHEN"

Insert: "THE"

Following: "SUCCESSFUL"

Insert: "PARTY"

2. Page 1, line 11.

Strike: "(1)"

3. Page 1, line 13.

Strike: "(a)"

Insert: "(1)"

Renumber: subsequent subsections

4. Page 2, line 16.

Strike: "(i)"

Insert: "(a)"

Renumber: subsequent subsection

5. Page 2, lines 20 and 21.

Strike: subsection (2) in its entirety

6. Page 1, line 26.

Strike: "(1)(a)" through "(1)(m)"

Insert: "(1), (4), (5), (6), (9), (13), or (15)"

Committee Vote:

Yes 15, No 3.

401551SC.Hbk

7. Page 3, line 3.

Following: "(4)"

Insert: "(a)"

8. Page 3, lines 4 and 5.

Strike: "(1)(a)" on line 4 through "(1)(m)" on line 5

Insert "(1), (4), (5), (6), (9), (13), or (15)"

9. Page 3, line 6.

Following: line 5

Insert: "(b) Attorney fees and costs must be awarded to the
successful party in an action under this section."

-END-



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 2

Mr. Speaker: We, the committee on Judiciary report that House Bill 540 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, line 5.

Strike: "39-71-117, 39-71-118, 39-71-774,"

2. Page 1, line 18 through line 30 of page 5.

Strike: sections 2 through 4 of the bill in their entirety

Renumber: subsequent sections

3. Page 9, line 14.

Following: "detention,"

Insert: "competency development, community protection,"

4. Page 20, line 5.

Strike: "or"

5. Page 20, line 7.

Following: "10"

Insert: "; or

(e) in a detention facility"

6. Page 20, line 15.

Strike: "or"

7. Page 20, line 16.

Following: "facility"

Insert: "; or

(e) a community youth court program"

mw
2/17
Committee Vote:

Yes 13, No 5.

411352SC.Hbk

8. Page 21, line 6.

Strike: "include"

Insert: "preclude"

9. Page 25, line 13.

Following: "against"

Insert: "persons other than"

Strike: "or other persons"

10. Page 31, lines 6 and 7.

Strike: "A youth" on line 6 through "1 week." on line 7

11. Page 31, line 8.

Strike: "2 weeks"

Insert: "5 days"

12. Page 31, line 9.

Following: "points"

Insert: ", "

Strike: "30"

Insert: "10"

-END-



HOUSE STANDING COMMITTEE REPORT

February 16, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that **House Bill 543** (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Title, lines 5 and 6.
Following: ";" on line 5
Strike: remainder of line 5 through ";" on line 6
2. Page 1, line 13.
Strike: "On"
Insert: "Subject to 25-1-402, on"

-END-

Committee Vote:
Yes 11, No 7.

401553SC.Hbk



HOUSE STANDING COMMITTEE REPORT

February 16, 1995

Page 1 of 1

Mr. Speaker: We, the committee on **Judiciary** report that **House Bill 551** (first reading copy -- white) **do pass**.

Signed: Bob Clark
Bob Clark, Chair

Committee Vote:
Yes 17, No 1.

401405SC.Hbk

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

DATE 2/16/95 BILL NO. HB 540 NUMBER _____

MOTION: Do Pass As Amended

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner	✓	
Rep. Ellen Bergman	✓	
Rep. Bill Boharski	✓	
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes	✓	
Rep. Joan Hurdle		
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea		✓
Rep. Liz Smith	✓	
Rep. Loren Soft	✓	
Rep. Bill Tash		
Rep. Cliff Trexler	✓	

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE Dec. 16

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Brad Molnar.

Indicate **Bill Number** and your vote **Aye** or **No**. If there are
amendments, list them by **name and number** under the bill and
indicate a **separate vote** for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
HB 429	✓	
380	✓	
186	✓	

SENATE BILL/AMENDMENT	AYE	NO

Rep. Ellen Bergman
(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE Feb 16

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Sheila Anderson.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

Please vote me with the Chairman

HOUSE BILL/AMENDMENT	AYE	NO
240	✓	
540 Molnar Amd	✓	
54B	✓	
551 FABLE	✓	
186	✓	
366 TABLE	✓	

SENATE BILL/AMENDMENT	AYE	NO

Rep. Loz Smith
(Signature)

HR:1993
WP/PROXY

I have a Health Care meeting with the Speaker and will return ASAP. — TX'D

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE _____

I request to be excused from the Jud
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Sub Kattel.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
HB 240	X	

SENATE BILL/AMENDMENT	AYE	NO

Rep. [Signature]
(Signature)

[Handwritten mark]

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 2-16-95

I request to be excused from the Judiciary
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with Ellen Bergman.

Indicate Bill Number and your vote Aye or No. If there are amendments, list them by name and number under the bill and indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
HB 443	✓	
HB 491	✓	
HB 501		
HB 505		✓
HB. 450		✓
" 380	✓	
240	✓	
HB 358	✓	

SENATE BILL/AMENDMENT	AYE	NO

8 amendments

Rep. Chris Ahner
(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE 2-16

I request to be excused from the _____
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with _____.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

*

HOUSE BILL/AMENDMENT	AYE	NO
443	✓	
TABLE		✓
450 TABLED	✓	
247		

SENATE BILL/AMENDMENT	AYE	NO

* and all amendments

Rep. Bur Carney
(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE

2/16/95

I request to be excused from the _____
Committee meeting this date because of other commitments. I desire
to leave my proxy vote with _____.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
540		<u>NO</u>

SENATE BILL/AMENDMENT	AYE	NO

Rep.

(Signature)

HOUSE OF REPRESENTATIVES COMMITTEE PROXY

DATE _____

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to leave my proxy vote with _____.

Indicate Bill Number and your vote Aye or No. If there are
amendments, list them by name and number under the bill and
indicate a separate vote for each amendment.

HOUSE BILL/AMENDMENT	AYE	NO
All bills		
All Youth Court/ youth subcommittee votes and amendments vote me with Brad Molnar.		
vote ^{per} with Rep. Anderson on all other bills.		

SENATE BILL/AMENDMENT	AYE	NO
240	✓	
540 "	✓	

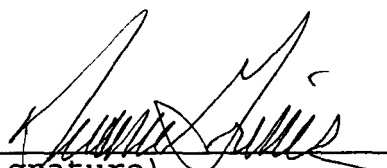
Rep. 
(Signature)

EXHIBIT 1
DATE 2/16/95
HB 543

Amendments to House Bill No. 543
First Reading Copy

Requested by Representative Wagner
For the Committee on

Prepared by Greg Petesch
February 15, 1995

1. Title, lines 5 and 6.
Following: ";" on line 5
Strike: remainder of line 5 through ";" on line 6
2. Page 1, line 13.
Strike: "On"
Insert: "Subject to 25-1-402, on"

EXHIBIT 2
DATE 2/16/95
HB 551

ATTORNEY GENERAL
STATE OF MONTANA

Joseph P. Mazurek
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

MEMORANDUM

TO: Chairman Clark and Members of the House Judiciary Committee

FROM: John Connor, Assistant Attorney General

DATE: February 15, 1995

SUBJECT: House Bill 551

Pursuant to Representative Boharski's request, I have obtained the following information on DNA processing from the State Crime Lab and the Board of Crime Control relative to House Bill 551.

In 1993, the most recent year for which statistics are available, there were 179 rapes reported or known, 25 of which were cleared by arrest; 1183 other sex-related crimes reported or known, 265 of which were cleared by arrest; 18 homicides reported or known, 13 of which were cleared by arrest; 788 aggravated assaults reported or known, 412 of which were cleared by arrest; 186 robberies known or reported, 53 of which were cleared by arrest; 179 arsons reported or known, 25 of which were cleared by arrest.

The Board does not have statistics on the number of arrests that actually resulted in conviction, or the number of cases that were pled down to a lesser or different charge. There were no statistics for intimidation, kidnapping or aggravated kidnapping.

According to Jim Streeter, a forensic serologist at the lab, it costs \$100.00 per sample to have samples analyzed by outside lab facilities. It would cost about \$50.00 per sample if they were done in the lab once the scientists were trained and the system on line. Mr. Streeter indicated that in his view, the sex crimes and homicide would probably be of the highest DNA priority, with aggravated assault, robbery, kidnapping and arson in descending order of priority.

He pointed out that DNA may be useful in cases involving threats, such as intimidation or threats against public officials because DNA can be recovered from saliva on postage stamps and envelopes. He thought it would have very limited use for arson because the blood and tissue samples in a fire are normally beyond an analytical capability.

Chairman Clark and Members of the House Judiciary Committee
February 15, 1995
Page 2

He indicated that if the analysis were expanded to include the additional violent offenses, it probably would not require more FTEs than reflected in House Bill 191, although they would be quite busy. However, once the data base and equipment were in place, the additional analysis would not be that difficult.

In response to Representative Molnar's concern, Mr. Streeter and I concurred that it might be a good idea to make testing mandatory in those cases in which physical violence actually occurred and discretionary with the court in other cases. This would then cover the situations where a person was charged under a statute in which actual violence occurred but where, for whatever reason, the defendant is allowed to plead to a lesser charge that does not carry a violent implication or proof requirement. In this same regard, it might be a good idea to put a severability clause in the bill.

Mr. Streeter pointed out that it would take about two years to get the serologists trained and capable of doing the testing, so if the bills involving DNA do not pass because of fiscal impact, there may be some worth in at least retaining a training capability, should it be a desired approach later. Thus, if the scientists were trained, at least if such legislation were to be adopted at some later point, it would not take two years thereafter to get the process implemented.

I hope this information is of some assistance to the committee.

Amendments to House Bill 256
Introduction Reading Copy

Prepared by David L. Nielsen
2/13/95 8:05am

REASON FOR AMENDMENT: This amendment increases the minimum imprisonment on DUI convictions. It increases the maximum sentence on a first offense to 6 months. It permits the suspension or deferral of imprisonment if the defendant completes an approved chemical dependency treatment. It requires community service as a condition of a deferred or suspended sentence.

1. Title, line 4.

Following: "THE"

Strike: "PENALTY"

Insert: "PENALTIES"

Following: "ON"

Strike: "THE FOURTH OR SUBSEQUENT"

Insert: "A"

2. Page 1, line 16.

Following: "less than"

Strike: "24"

Insert: "48"

Following: "more than"

Strike: "60 days"

Insert: "6 months"

3. Page 1, line 19.

Following: "well-being"

Insert: ", or the defendant voluntarily enrolls in and successfully completes a chemical dependency treatment program conducted by an approved private treatment facility or approved public treatment facility as defined in title 53, chapter 24, part 1, as approved by the court. A suspended or deferred sentence must include as a condition that the defendant shall perform community service."

4. Page 1, line 21.

Following: "less than"

Strike: "7"

Insert: "30"

5. Page 1, line 22.

Following: line 21

Strike: "48"

Insert: "72"

Following: "more than"

Strike: "6 months"
Insert: "1 year"

6. Page 1, line 23.
Following: "(8),"
Strike: "3"
Insert: "30"

7. Page 1, line 24.
Following: "well-being"
Insert: ", or the defendant voluntarily enrolls in and successfully completes an inpatient chemical dependency treatment program conducted by an approved private treatment facility or approved public treatment facility as defined in title 53, chapter 24, part 1, as approved by the court. A suspended or deferred sentence must include as a condition that the defendant shall perform community service."

8. Page 1, line 25.
Following: "third"
Strike: "~~or subsequent~~"
Insert: "or subsequent"

9. Page 1, line 26.
Following: "less than"
Strike: "30 days, at least 48 hours of which must be served consecutively,"
Insert: "6 months"

10. Page 1, line 27.
Following: "consecutively, or more than"
Strike: "1 year"
Insert: "10 years"
Following: "less than"
Strike: "\$500"
Insert: "\$1,000"
Following: "\$500 or more than"
Strike: "\$1,000"
Insert: "\$50,000"

11. Page 1, line 30.
Following: "first"
Strike: "10"
Insert: "60"

12. Page 2, line 1.
Following: "suspended."
Insert: "The remainder of the minimum 6 month imprisonment may only be suspended or deferred on the condition that the defendant successfully completes an inpatient chemical dependency treatment program conducted by an approved private treatment facility or approved public treatment facility as defined in title 53, chapter 24, part 1, as approved by the court. A suspended or deferred sentence must include as a condition that the defendant shall

EXHIBIT 3
DATE 2-16-95
HB 256

perform community service."

13. Page 2, lines 14 through 18.
Strike: subsection (4) in its entirety
Renumber: subsequent subsections

EXHIBIT 4
DATE 2/16/95
HB 443

LAW OFFICES

**Keller, Reynolds, Drake,
Johnson and Gillespie, P.C.**

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PAUL T. KELLER
PAUL F. REYNOLDS
GLEN L. DRAKE

February 16, 1995

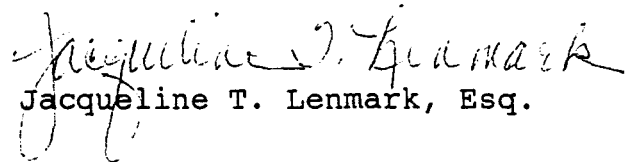
House Judiciary Committee
Capitol Station
Helena MT 59520

Re: HB 443

Mr. Chairman and Members of the Committee:

Please consider this legal opinion as you take action on HB
443.

Respectfully submitted,


Jacqueline T. Lenmark, Esq.

JTL:j
Enclosure

cc: Terry Miller
American Insurance Association
Western Region

WILLIAMS & RANNEY, P.C.

235 East Pine, P.O. Box 9440
Missoula, Montana 59807-9440
Telephone 406/721-4350
Fax 406/721-6037

Shelton C. Williams
Richard Ranney
Paul M. Sharkey
Mark S. Williams

February 15, 1995

Sent via Fax:	No. of Pages: 2
To: John Mercer	
From: Mike Williams	(406) 721-4350

The Honorable John Mercer
Via Fax: 444-3036
Speaker of the House
State Capitol
Helena, Montana 59620

Re: House Bill 443

Dear John:

I have reviewed the above Bill and think that, on balance, the Bill would do more harm than good. As you know, my practice is confined exclusively to litigation. I do mostly insurance defense, although some plaintiff's work is involved. I spend a great deal of time defending insurance bad faith litigation, but here again, I do some plaintiff's work. I have concerns both about the requirement to advance pay medical property damage and wage claims, and also about the attorney fee provision both in the Bill and in the proposed Blue Cross-Blue Shield amendment.

Obviously, there are cases where special damages should be advance paid. All of the insurance companies that I work for do frequently advance pay special damages. They do this voluntarily in the cases that they deem appropriate. I am frequently hired by insurance companies to defend insureds in these cases. I often have to tell the insurance companies to stop advance paying special damages because they are depleting the insured's limited policy limits, and reducing the possibility of getting the entire case settled and the insured released. The other problem is that we fairly frequently see claimants taking advantage of advance payments in terms of consulting multiple doctors, and excessive use of either physical therapists or chiropractors. We occasionally still see claimants who make a profit consuming medical services because more than one provider is paying each charge.

The primary problem with this aspect of the Bill, however, is that it will force insurance companies to advance pay specials in cases where it is not appropriate to do so. It will give the claimant the ability to deplete all of the policy limits without any need to release the insured from claims beyond his policy limits. The change is not necessary because insurance companies are already

EXHIBIT

4DATE 2-16-95HB 443

Hon. John Mercer
House Bill 443
February 15, 1995
Page -2-

advance paying these specials, in most cases where they have a large enough policy, and a claimant that, in fact, needs the money.

The attorney fee issue is more debatable. I have seen cases both from the plaintiff's side and the defendant's side where I felt that attorney fees should have been awarded to the prevailing party, either because the claim was frivolous, or because the conduct of the insurance company was particularly reprehensible. The problem with the attorney fee provision in the Bill is that it unfairly awards attorney fees only to the successful claimant. It does not award attorney fees to the successful insurance company defendant. The Blue Cross proposed amendment would award attorney fees to the successful party. The English rule is gaining popularity in Republican circles on a nationwide level. I have always had some misgivings about the English rule. It has been and is being advanced with the idea that it will reduce the volume of frivolous litigation in the system. I agree that there is a fair amount of frivolous litigation in the system, and I agree that steps should be taken to eliminate it. The English rule might, in fact, reduce some litigation -- both frivolous, and valid, claims. Unfortunately, the rule does not apply equally to all parties. The burden will fall much more heavily on defendants than it will on plaintiffs because defendants, particularly insurance companies, usually have assets to pay judgments for attorney fees and costs. A fair percentage of claimants do not have substantial assets, and therefore, have less reason to be concerned about the possibility of an adverse judgment for fees and costs. On the other hand, claimants with assets will be discouraged from filing even meritorious claims because they will not want to risk their wealth.

On balance, I feel that House Bill 443 should be rejected. Most meritorious requests for advance payment of special damages are being voluntarily acceded to by insurance companies if they are able to do so, considering the available policy limits. The attorney fee provision is not necessary because in cases of egregious misconduct, the claimant already has the ability to seek and secure punitive damage awards.

Best regards.

Yours truly,

WILLIAMS & RANNEY, P.C.

Shelton C. Williams
SCW:gb

Youth Court Services

Twentieth Judicial District

EXHIBIT 5
DATE 2/16/95
HB see below

LAKE & SANDERS COUNTIES

LAKE COUNTY COURTHOUSE
106 FOURTH AVENUE EAST
POLSON, MONTANA 59060-2171
(406) 883-7284

February 15, 1995

TO REPRESENTATIVE: Joanne Gunderson, Judiciary Committee

After having an opportunity to review a few of the Legislative Bills before this Judiciary Committee, I would recommend that the following documents be supported and passed to the House for reading.

House Bill 240 must be supported
House Bill 380 must be supported
House Bill 474 must be supported
House Bill 457 must be supported

The following matters cannot be recommended and should not in any form be supported. NOT PASS ON THE FOLLOWING.

House Bill 540 MUST NOT PASS
House Bill 429 MUST NOT PASS

I will be happy to discuss any of these bills with you.

Thank you for your concern on these matters.

Sincerely,



Barbara A. Monaco
Chief Juvenile Probation Officer

BAM:bjb

P1 - Line 5

Delete: youth court

Insert: Juvenile Justice System

P1 - Line 7

Delete Study
~~After Study~~

Insert: Comprehensive Review, ^{and} assessment

P1 - Line 7

Delete Youth Court Act

Insert: Juvenile Justice System

P1 - after Line 24

Insert: Whereas it is important that all services to children and adolescents in the juvenile justice system ^{and} the mental health service delivery system ~~shall~~ be coordinated in a single, seamless continuum ^{of} ~~services delivery system,~~ care and treatment,

P1 Line 26

Delete: study the provision of the

Insert: complete a comprehensive review and assessment of the Montana juvenile justice system and mental health service delivery system for children and adolescents; develop a plan to ^{ensure the effective} ~~conduct and effectiveness~~ and efficient delivery of services ~~in the current system including~~ to all children and adolescents in Montana's juvenile justice system.

P.2 Line 8

Insert after court: juveniles

Delete: selected by the Malawi judges association

Insert: appointed by the Governor.

P.2 Line 9

Delete: selected

Insert: appointed.

after: the

Insert: Governor from three candidates nominated by the

P.2 Line 10

Delete: the presiding officer.

Insert: a member

P.2 Line 11

Delete: Line 11 in its entirety

Insert: a parent/guardian of a child or adolescent in
treatment or detention;

P.2 Line 12

Delete: the president or executive director of the Malawi probation off

~~probation~~ association: and.

Insert: a juvenile probation officer appointed by the Governor
from three candidates nominated by the juvenile
probation officers association;

P.2 Line 13

Delete: entire line 13

Insert: a juvenile prosecutor

EXHIBIT 6

DATE 2-16-95

HB 240

P.2 after Line 13

ADD (j) A member of a juvenile violent crime appointed by the Governor

(k) a member of a private agency which provides treatment services to children and adolescents, appointed by the Governor

(l) a young adult, former user of the juvenile justice or mental health services system, appointed by the Governor.

(m) a member from the Montana Crime Control Board, the Department of Correction & Human Services and the Department of Family Services - who will sit as non voting member.

P.2 Line 20

ADD: after Commission: there will be one meeting held in each mental health region.

P.2 Line 30

After Montana: Delete youth court act and evaluate its effectiveness in meeting the needs of Montana's juvenile justice system.

Insert: juvenile justice system and child and adolescent mental health service delivery system which shall include:

(2) a comprehensive review of past ^{and} present programs utilized in Montana to successfully rehabilitate youth and reduce juvenile crime;

(3) ~~Review~~ ^{a review of} methods and programs from other states and countries which have documented, ~~successful~~ outcome results

- of successful treatment and rehabilitation of youth;
- (4) the development of a juvenile justice and mental health treatment continuum that provides for community protection, youth accountability, youth competency, meaningful restitution and successful re integration into the community.
 - (5) a definition and delineation of the roles and responsibilities of the state department(s).
 - (6) a definition and delineation of the roles and responsibilities of juvenile justice and mental health systems in each of Montana's five mental health regions.
 - (7) a review of the state operated programs for adolescents (Pine Hill School, Mountain View School) for effectiveness and efficiency ~~effectiveness and efficiency~~ - including the consideration of privatizing these programs and services.

Amendments to House Bill No. 429
First Reading Copy

For the Committee on the Judiciary

Prepared by Sheri S. Heffelfinger and John MacMaster
February 9, 1995

1. Page 1, line 15.

Strike: "matters" in two places

Insert: "records" in two places

Strike: "All"

Insert: "Except as provided in 41-5-603, all"

2. Page 2, line 11

Following: "~~41-5-601~~"

Insert: ", except that in the court's discretion, the general public may be excluded if the petition does not allege that the youth is delinquent"

3. Page 2, line 24.

Following: "studies."

Strike: "and"

4. Page 2, line 25.

Following: "probationers"

Insert: ", and any report, charge, or allegation that is not adjudicated pursuant to this chapter"

EXHIBIT 8
DATE 2/16/95
HB 540

Amendments to House Bill No. 540
First Reading Copy

For the Committee on the Judiciary

Prepared by John MacMaster
February 17, 1995

1. Title, line 5.
Strike: "39-71-117, 39-71-118, 39-71-774,"
2. Page 1, line 18 through line 30 of page 5.
Strike: sections 2 through 4 of the bill in their entirety
Renumber: subsequent sections
3. Page 9, line 14.
Following: "detention,"
Insert: "competency development, community protection,"
4. Page 20, line 5.
Strike: "or"
5. Page 20, line 7.
Following: "10"
Insert: "; or
(e) in a detention facility"
6. Page 20, line 15.
Strike: "or"
7. Page 20, line 16.
Following: "facility"
Insert: "; or
(e) a community youth court program"
8. Page 21, line 6.
Strike: "include"
Insert: "preclude"
9. Page 25, line 13.
Following: "against"
Insert: "persons other than"
Strike: "or other persons"
10. Page 31, lines 6 and 7.
Strike: "A youth" on line 6 through "1 week." on line 7
11. Page 31, line 8.
Strike: "2 weeks"
Insert: "5 days"
12. Page 31, line 9.

Following: "points"

Insert: ", "

Strike: "30"

Insert: "10"