MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 13, 1995, at 8:00 A.M.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Larry L. Baer (R)
Sen. Sharon Estrada (R)
Sen. Lorents Grosfield (R)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Mike Halligan (D)
Sen. Linda J. Nelson (D)

Members Excused: Sen. Al Bishop

Members Absent: None.

Staff Present: Valencia Lane, Legislative Council
Judy Feland, Committee Secretary

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

Committee Business Summary:

Hearing:	HB 150, HB 240, HB 380, HB 429
Executive Action:	HB 380, HB 150, HB 551, HB 311, HB 74, HB 501. Discussed: HB 214, HB 429

{Tape: 1; Side: A; Approx. Counter: 00}

HEARING ON HB 150

Opening Statement by Sponsor:

REPRESENTATIVE CHRIS AHNER, House District 51, Helena Central Valley and East Helena area, sponsored HB 150. In the past, when a youth goes before the judge, they are sent to the Department of Family Services and the judge has no control over the youth, and has no further information about him. This bill would give the judge more control, she said. The bill would require that a collective group, including community professionals to form a

Youth Placement Committee that would recommend alternative plans to the judge before the youth was to be sentenced, thus giving the judge more control. She proposed an amendment on Page 3, Line 4, following "department," inserting "and to the youth court judge."

Proponents' Testimony:

Gail Keil, Program Administrator, Department of Family Services, Juvenile Corrections Division, provided a written copy of her support for HB 150 and read the same. **(EXHIBIT 1)** She also presented a written copy of the proposed amendment. **(EXHIBIT 2)**

John W. Larson, District Judge, Fourth District, rose in support of HB 150 with the proposed amendments, which would restore the judicial role as a full and equal partner with the Department of Family Services in determining what the placement should be along with the level of resources available.

Dennis Paxinos, Yellowstone County Attorney, spoke **on behalf of the County Attorneys' Association,** also endorsed HB 150.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR MIKE HALLIGAN asked **Judge Larson** how conflicts would be resolved between the bench and the department. **Judge Larson** stated the resolution would be handled between the regional director and the judge. There would be two alternatives presented and no one would have superior power. An agreement would have to be reached using the parole officers' judgement for placement. He said it would not be a power battle. Right now the judge said he had no role, nor notification about placement. **SENATOR BARTLETT** stated that the bill would require a youth placement committee in each judicial district, then stated on Page 1, Line 24-25, that the committee consists of persons who are knowledgeable about the youth and other resources appropriate to address the needs of the youth. This suggested to her that at least one person on the committee would have to be acquainted with the specifics of the youth's case. She asked **Ms. Keil** if she saw any conflict between the two? **Ms. Keil** stated that the intent is to have the professionals who are acquainted with the youth on the committee, usually the mental health person or a person with a MMR representative, or possibly even a school principal or superintendent, if the school had no counselor. In response to a further question from **SENATOR BARTLETT, Ms. Keil** stated that the committee's composition could change depending on the youth involved.

Closing by Sponsor:

REPRESENTATIVE AHNER hoped they had accurately covered all the bases in explaining the committee's make-up. She also noted that the committee members would serve without compensation. She said HB 150 would be an important change to the judicial system in providing a more appropriate and responsive placement of youth.

HEARING ON 240

Opening Statement by Sponsor:

REPRESENTATIVE LOREN SOFT, House District 12, representing the Northeast corner of Billings Heights, sponsored HB 240. He gave a brief history of the Youth Court Act, which celebrated its 20th birthday last year. It had been amended about 60 times since 1974 and the Supreme Court had considered upwards of 30 cases. Its' provisions had been the subject of nearly a dozen Attorney Generals' opinions as well. He interpreted this as a signal for a closer look at the entire juvenile system. Since 1974 juvenile crime, drug use and teenage pregnancies had risen at a drastic pace, he said. The mission and philosophy must change from that time. He said they had heard in the House Judiciary Committee many complaints of why the current system was not working, such as: the current system was a joke; it does not deal effectively with juveniles who break the law; the police and the probation officers are powerless; the system gives threats without enforcing them; they saw a slow and gradual destruction of youth in the society and were powerless to stop it; the youth court system is a morass; we need accountability from juveniles; we have a disjointed, non-unified system. He spoke to the last statement about a non-unified, disjointed system. He stated that the following bills would address that question:
1) HB 380 - to be heard in the same hearing. This bill would give youth court judges extended jurisdiction prosecution.
2) HB 429 - which would revise the youth court confidentiality provisions.
3) HB 540 - which is the revision of the Youth Court Act.
He said he had recently been informed of a grant to the Montana Supreme Court for the purpose of court improvement, which he stated **Mr. Chenovick of the Montana Supreme Court** would testify on. He said the 4-5 year grant contained from $400,000 to $500,000 to assess and improve the court process relating to foster care. He addressed the problems of pulling the various programs together. He stated that the Kellogg Foundation had made a grant of $1 million to the DFS to look at services. SB 345 would create the new superagency by combining SRS and DFS and mental health, substance abuse, and developmental disabilities into one big super agency. The bill would remove juvenile corrections from the DFS and place it with adult corrections. Another bill would expand the citizen review boards to promote better communications. Another bill would provide for the therapeutic wilderness camping program as part of the Mountain View Program. He will carry another bill dealing with minors in

possession which puts more teeth into the underage drinking problem. He said this study bill would pull together the various ideas presented. Although he had resisted ANOTHER study, he felt it was needed. He stated that the managed care bill he was also carrying was probably the most far-reaching managed care program ever proposed relating to mental health services and mental health services to children and their families. The bill would: 1) begin to give expertise in the area of management of systems and services, and 2) manage the funds for the providers. On page 2, he pointed to the language that would indicate a "plan" for the effective delivery of services to youth, not merely a, "study." He explained the system for appointing the members of the commission. 1) a youth court judge, appointed by the Governor; 2) a justice of the peace, appointed by the Governor; 3) a parent or guardian of a youth who was currently in the system; 4) a juvenile probation officer, appointed by the Governor; 5) a county attorney, appointed by the Governor; 6) a victim of violent crime committed by youth, 7) a member of a private agency that provides treatment to youth, 8) a young adult, formerly adjudicated to be a delinquent, now grown up, working and contributing to society, 9) some employees of the department. On Page 3, he read that the study would also include, "a comprehensive review of past and present programs used to successfully rehabilitate youth and reduce juvenile crime." He said there used to be an extensive therapeutic work program at Pine Hills, but that program no longer existed, partly because of programs like OSHA which say kids can't push lawnmowers for safety reasons. The bill would also look at programs in other states that might have examined their systems and implemented a plan that could be adopted for Montana. He said the new Section 4 addressed the roles and delineation of the justice system and mental health services, and also included a provision for an examination of privatization.

SENATOR HALLIGAN ASSUMED THE CHAIR.

Proponents' Testimony:

Patrick A. Chenovick, Administrator, Montana Supreme Court, testified that a performance audit of the juvenile justice system in Montana stated that, "juvenile justice is generally considered a system which implies regularly interacting, independent groups which form a unified whole. Based upon our review of the juvenile justice structure, Montana does not currently have a system, rather, a structure composed of interrelated, but independent entities that do not interact on a regular basis and could be working more effectively toward the unified whole. Additionally, current reforms are occurring without a formal planing process." He stated that HB 240 would allow for that formal planning process. Also, he stated the Supreme Court had received a grant from the federal government as part of the Family Preservation Act, requiring that the funds be used to look at foster care placements and to improve the system. The grant dictates that the court collaborate with all parties involved.

The grant would involve $75,000 this year without any state matching support, but in the next four years would require a 25 per cent match which was included in the House Appropriations' budget for two years. He said the study would involve youth courts and it would be a good place to start this unification.

Gene Kiser, Director, Montana Board of Crime Control, said the board would like support HB 240. A year ago, the Juvenile Justice Council began working with the problems enumerated by other testimony and made some recommendations, he said. He urged concurrence.

Beth Baker, Department of Justice, stated that her department supported HB 240. She said they had been involved in the Youth Justice Council and its review of the Youth Court Act and participated in the meetings with other professionals who work in the system. In July they had a video teleconference of a complete review of the Youth Court Act, hearing from attorneys, judges, probation officers and others who work with kids on how the Act is and isn't working. There was a perceived need for change, she said, however some of the people thought the system was working well. There was shift in the last 30 years of the types of crimes juveniles are committing. She said it was time to bring together all the professionals in this area to take Montana's youth into the next century.

Dennis Paxinos, Yellowstone County Attorney, also represented the Montana County Attorneys' Association. He said he would like to echo **Ms. Baker's** comments. In 1974 when the Youth Court problem was addressed, the #1 problem was runaways. In 1994, it is not the case. They are dealing with murders, robberies, rapes and violent assaults, mostly because of the permeation of drugs into the society that have gone from adult levels to school levels. He described a situation in Billings where some townspeople wanted juveniles jailed for spray painting and vandalism. Of course, kids can't be placed in jail, they must be placed in youth services center, away from adults. The director of the youth services center said he had eight beds, all full at the time, and he asked who they wanted him to remove? He had two murderers, two robbers, two rapists or the two aggravated assault people? He said the real issue came to the forefront when they tried to have something in place for the legislative session and realized through the Internet in dealing with prosecutors, judges, defense attorneys, *guardians ad litem*, health care professionals, and the vast array of people involved in these issues, that they would be unable to propose legislation. He urged the adoption of the bill. He said they needed to present a comprehensive foundation for the next legislative session, and to determine how it would be financed.

John Larson, District Judge, Fourth Judicial District, supported HB 240. He commended the sponsor, saying it was not another cookbook study. He had served during the last interim on the Judicial Unification and Finance Commission which undertook a

comprehensive study of some of the financial components of the justice system. The juvenile justice system was identified as one having significant costs on local counties. He presented a booklet he had prepared for HB 380. **(EXHIBIT 3)** Tab 5 showed what had happened in Missoula County in the last 18 years with the number of new cases brought into Juvenile Court. In 1976 there were 313 new cases; in 1994 there were 652 new cases. The overall criminal load for adults was 450. He said it was a serious problem.

Hank Hudson, Director, Department of Family Services, spoke in support of the measure. He said the best way to avoid a study from sitting on the shelf was the public's sense of urgency and interest. Judging from what he had heard in the session already, he thought the study would be followed closely and participated in by the public.

Candy Wimmer represented the Governor's Youth Justice Council. She told the committee that the Youth Justice Council had asked for the bill, fully supported the bill and it willing to support it financially to the extent that is was necessary. She said they had spent two years doing conferences, studies, soliciting public input and they believed any changes to the law needed comprehensive review by all the players in the field.

Laurie Koutenik, Executive Director, Christian Coalition of Montana, supported HB 240. She said it was an opportunity for everyone to come together. She had worked with the youth judicial system before and saw many inconsistencies that needed to be addressed. She said the measure was long overdue.

Sharon Hoff, representing the Montana Catholic Conference, supported the legislation. She acknowledged flaws in the judicial system and encouraged support of the bill.

Opponents' Testimony:

REPRESENTATIVE BRAD MOLNAR, House District 22, Laurel, said he found himself in a funny position in opposing the bill, because he said he wrote the bill. He wrote it in sub-committee, he said, it was fine-tuned by **REPRESENTATIVE SOFT**, they both agreed on it, he voted for it in committee, he voted for it on the floor, and now begrudgingly, he was coming up against it as somewhere between an opponent and an info-ponent. The bill was being used as a crutch, he said. Every time they had attempted a change in the juvenile justice system, they were told, "no," because they needed an additional study. He said this study was proposed, the Supreme Court had a proposed study, and DFS had on-going studies. He said a prior study had found there was no system. On page 104 of that study, it said, "the on-going JPIS system update efforts and mandate for full participation of the system by youth courts should improve completeness of JPIS data. However, if the system updates are not fully implemented and all judicial districts, as well as DFS, do not fully participate in

the input of data, the various annual reports being compiled will continue to be inaccurate. The effect of which will be to potentially mislead the legislature (which meant they were currently being mislead, he said), the federal government, applicable state agencies and the public, on the amount and type of juvenile crime committed as well as youth detention activities in the State of Montana." In other words, he said, we have the information; we don't want to share it. It's too painful; it's too costly; it's too embarrassing. He contended that it would not change with the new study, especially considering the people in charge of gathering and assimilating that information are the ones that asked for the study. **REPRESENTATIVE MOLNAR** had a boxful of studies he had collected from the library on youth problems, which he exhibited. He stated that the LAST thing they needed was a study that says, "don't do anything until we study it." We need action, he said. He asked the committee to table a bill that he put his heart and soul into, because it may stand on the verge of making sure they do nothing about the problem. The bill is heavy into mental health, he said. HB 540 would guarantee mental health treatment for the most violent offenders, which they do not do currently. Last session, the legislature cut $30 million from mental health. All the kids are in that system, he said. And this session they cut $10 million. He said he would like to see, "a seamless continuum of service," that he would love. For $40 million, they could be right back where they started from. He said they should not do something to make themselves feel good at the expense of the kids and to pretend to be doing something. The SRS in every division and the DFS in every division and the juvenile courts in every division can hold these meetings. They don't need our hokey-dokey, he said. He said the crimes have changed and they don't need a study to provide a guiding effort for the next 20 years, but the professionals should be meeting on-going and never stopping. He asked the committee to table the bill until the pro-active HB 540 arrived, and to subsume this bill into it.

Questions From Committee Members and Responses:

SENATOR BARTLETT said some of the proponents had suggested that the study also consider the funding for the juvenile justice system. She asked the sponsor if the bill addressed the funding. **REPRESENTATIVE SOFT** said there was nothing in the bill regarding funding. As **County Attorney Paxinos** said, there was no time to put it into the bill, plus they did not know what the system would look like after two years. He said they needed a system, perhaps called "childnet," to pull together all the services for emotionally disturbed children and delinquent children. **SENATOR SHARON ESTRADA** asked the sponsor to tell the committee his occupation. He said he had worked with kids for the past 32 years. He started at Yellowstone Boys' Ranch in 1963 as a college student, and had continued in the field. **SENATOR ESTRADA** asked about travel expenses for out-of-state participants. **REPRESENTATIVE SOFT** said he had an opportunity to travel all over

the country visiting other programs. As they put the program together, they wished to talk to other professionals about their programs. **Candy Wimmer** further answered the question. She said the Youth Law Center is a nationally recognized youth defense firm that had done work in a number of states. As they were constructing new legislation, they wanted to be very careful in protecting the rights of the youth and to avoid litigation. **SENATOR ESTRADA** asked about a joint sub-committee instead of an expensive study. **REPRESENTATIVE SOFT** said he was open to do whatever is best for kids. He stated that a dozen bills were working their way through the system that would impact services to children, adolescents and their families. **SENATOR LINDA NELSON** questioned Page 2 where it talked about members of the commission. Most of the people were appointed by the Governor and some had no designation of appointment. **REPRESENTATIVE SOFT** said she had found a problem. He said he would address that situation and also another problem that was brought up in the House hearing regarding the appointees being interested parties. He promised an amendment.

{Tape: 1; Side: B; Approx. Counter: 00}

SENATOR BRUCE CRIPPEN RE-ASSUMED THE CHAIR.

SENATOR HALLIGAN asked about the $50,000 on the fiscal note that may be necessary if the Legislative Council cannot provide the internal employees. He said they may need additional funds. **Candy Wimmers** had spoken with the budget office. The Legislative Council is wanting the Legislature to fully acknowledge the workload that is assigned to them, or the assumption in the fiscal note. If the Legislature chooses to assign that, the Youth Justice Council is fully committed to the bill and if it calls for more than the $20,000, she had no doubt that the Council would be willing to increase the amount they lend to that project. **SENATOR ESTRADA** asked the sponsor about the $1 million grant and if it was earmarked for the study. She thought the taxpayers in Montana would not be willing to spend another dime for another study. **REPRESENTATIVE SOFT** stated that the Kellogg Foundation money, as well as the Supreme Court grant should be blended together for a project. **Hank Hudson** said the Kellogg grant dealt with adoption and permanency planning. While there could be some overlap, he did not think they had the latitude to change their minds about the intended subjects. He said if the fiscal note was struck, the study would still go forward because the departments and agencies involved would find the money to do it. He said the $20,000 would be found in departmental budgets. **SENATOR LARRY BAER** asked **REPRESENTATIVE MOLNAR** if the bill was abrogated from his original intent. **REPRESENTATIVE MOLNAR** said his original bill was still alive in the process. HB 540 was currently in Appropriations, he said. He said the 40-some people opposing it were saying they did not want to do anything pro-active. **SENATOR BAER** asked if he wished his bill melded with the bill under consideration, to which he replied, "yes." He further explained that if they passed this bill, it would be two years

before they came back to the legislature. Two years after that the bill would come into effect, and the provisions would be three months old. In the next session they would say they couldn't accept amendments because it hadn't had a chance to work yet. It would be the year 2003 before they see the amendments to the Youth Court Act. He said all studies should be on-going. Because of the time lag problems, he was concerned about one generation of youth being in Deer Lodge before these things were implemented. **SENATOR BARTLETT** asked **Ms. Wimmer** how the Youth Justice Council reached the conclusion that this kind of study was necessary. **Ms. Wimmer** stated that the Youth Justice Council took this assignment to re-write the Youth Court Act and had every intention of having a document ready for this legislature's consideration. They began two years ago involving as many people as possible to notify the public about the current provisions of the act, then solicited a level of satisfaction with the act. Some of the conclusions were that: 1) there were provisions not being used. 2) there were questions about confidentiality and the inability to share information with schools. 3) Montana is doing some things very right, she said. They ranked 47th among other states in crime activity with juveniles. In the area of theft, the results were not as good with a 12th rating, but the against-persons crimes were down. They were resistant to radical change so as to not do damage to what they considered appropriate. **SENATOR BARTLETT** asked if there was dissention among people working in different facets of the youth justice system that were not brought to resolution sufficiently to bring legislation? **Ms. Wimmer** said it was exactly the problem, with confidentially being one of the big issues. Consensus was difficult, she said. The changes had been piecemeal for the past 20 years and each change had impacted the rest of the system. They can't change the Youth Court Act without changing the budget of DFS or without changing the practice of youth courts, which include 21 district courts. **SENATOR BARTLETT** asked **Judge Larson** if the study had his full support and if he thought it was a necessary step to take before making wholesale revisions in the Youth Court Act? **Judge Larson** stated he supported all four juvenile justice bills being presented at the hearing. Three of them took immediate action where there is virtually little or no opposition: the Youth Placement Committee, extended jurisdiction and sentencing powers for judges, and confidentially. He believed they were essential. He stated that there was no way to address violent crime in the Youth Court system and it needed to be done immediately. He said it was no secret that victims and communities had no confidence in the system and he felt the confidentiality issues were addressed to that situation. **SENATOR HALLIGAN** asked why there was not an immediate date? **Ms. Wimmer** said to go for it. **CHAIRMAN CRIPPEN** asked **REPRESENTATIVE MOLNAR** if he rejected the study because he wanted the legislation to be more pro-active. **REPRESENTATIVE MOLNAR** stated it was partially correct. He objected to the bill because it was being used as a placebo. It was being used to NOT take pro-active action from the streets to the courts. He said the study dealt with the courts on up. There is nothing in the study that would reduce

juvenile crime of any kind. HB 540 does that, he said. The bill would replace pro-activity, and he objected to it. He said there was a time lag between the study--action--see if it works--change it--try to get it to work again. By then the things first studied have changed again. **CHAIRMAN CRIPPEN** asked the sponsor if he considered the other bills inconsistent with **REPRESENTATIVE MOLNAR'S** bill. **REPRESENTATIVE SOFT** said he appreciated **REPRESENTATIVE MOLNAR's** frustration. He said in the field of working with mental health and juvenile delinquency, things take time. He disagreed that the bill was a placebo. He said there were other bills that were "immediate action" action steps. **CHAIRMAN CRIPPEN** said the committee could serve as an oversight committee on future legislation and the combination of the bills proposed.

Closing by Sponsor:

REPRESENTATIVE SOFT pointed out Page 4 of the bill, which recommended a continuum that provided for community protection, youth accountability, youth competency, meaningful restitution, and successful reintegration of youth into the community. He said if they were just going to get the kids' attention, send them to Pine Hills for three months and let them back into the system again, they might well indeed end up in the prison system, as **REPRESENTATIVE MOLNAR** had suggested. The money in the fiscal note to start the study was not taxpayers' dollars, he said, but rather it was federal dollars.

HEARING ON HB 380

Opening Statement by Sponsor:

REPRESENTATIVE JEANETTE McKEE, House District 60, Hamilton and Corvallis, sponsored HB 380. She stated that the youth justice system did not deal effectively with serious criminal acts committed by juveniles. HB 380, the extended juvenile prosecution act, seeks to toughen the juvenile sentencing laws with changes similar to those implemented in Minnesota. Like Montana, they were not having much success in deterring or addressing serious juvenile crime. The approach detailed in HB 380 blends the juvenile court with the adult correctional system. There has been no opposition from any people involved in the issue in Montana. HB 380 proposes: 1) Serious violent offenses would be subject to two sentences (one would be a youth court sentence, and the second is an adult sentence which is stayed pending performance of the youth sentence). This dual sentence provides community protection, accountability, and an incentive to follow the law. If the youth gets in trouble again or fails to follow through on the sentence, the judge can lift the stay and implement the sentence when the youth reaches 18. 2) In less serious cases, the sentencing judge retains jurisdiction to transfer to the Department of Corrections at any time after age 18 until age 25 to ensure compliance with restitution, treatment and educational requirements of the youth court sentence.

3) District Judges can require notification and their approval before the serious youthful offender is returned from Pine Hills. No objections to this limitation being recommended first by the youth placement committee. This message of "crime pays" is not the one that people had elected them to send, she said. 4) Judges' sentencing powers are restored for in-state placements to allow more community placements designed for the individual needs of the child and their families. Judges are accountable to their communities for the success of these programs. The Department of Family Services is not. If these local efforts are unsuccessful, the sentencing judge retains jurisdiction to implement more structure, including the wilderness camp or Pine Hills. As part of the sentence involving sex offenses, the youth may also be required by the court to register as a sex offender. Currently youth are not required to register if they commit a sex offense nor is there any state program available to treat juvenile sex offenders. These changes will put more teeth into the system. Youth will quickly appreciate that violence will be met with immediate sanctions. Seventeen will no longer be a safe age to commit serious or violent crimes because punishment will continue after age 18.

Proponents' Testimony:

Judge John W. Larson, District Judge, Fourth Judicial District, supported HB 380. He presented a packet **(EXHIBIT 3 - previously mentioned in HB 240)** for the committee that detailed some of the articles and observations that **REPRESENTATIVE SOFT** made about the general condition of the juvenile justice system. There are specific statistics from Missoula County that demonstrate the rise of violent crime. There is a transcript (Tab 3) from Hill County of a case before **Judge Warner,** demonstrating the general view on the street of the juvenile justice system in Montana and the level of unworkability that is there. A young lady had written $8,000 worth of bad checks. She assumed that since she was a minor, nothing would happen. He related some experiences he had been involved in just the previous week. One was a young man 13 years old who was filling Christmas tree bulbs with stain to make bombs. A 14-year-old juvenile sex offender in Mineral County, tried, through his attorneys to plead down a case to keep it confidential, but the judge kept jurisdiction through age 21 and required community service and treatment. He also heard a case in which a youth had turned over thousands and thousands of dollars worth of tombstones in Missoula who recently was brought to court on another charge of burglary including stealing weapons. A young woman was brought before him for stealing a car. He said the rash of serious crime has to be dealt with immediately. The bill would have an immediate effective date, he said, and would send a message to the juveniles that failure to perform the youth court sentence would mean the adult sentence would kick in automatically without further victimization. It would send a strong message to youth that think seventeen is a free age when they can do anything without accountability. It also has a provision for the registration of sex offenders

because the treatment is needed. The bill has widespread support, he said, pointing to the House vote of 99-0. He urged concurrence.

Dennis Paxinos, Yellowstone County Attorney, also spoke on behalf of the Montana County Attorneys Association. He urged the committee to concur on the bill, which was long overdue. He said it was very difficult to explain to the victims of violent crime that not very much was going to happen to the perpetrator. It was also frustrating to realize that Pine Hills was operating ineffectively because of the fact that the legislature had their heads in the sand in understanding what institutions cost. As it stands now, if they sent someone to Pine Hills, they might be there for 30 days. He said it was a badge of courage for these punks when they came back. HB 380 would allow them to deal with individuals as adults when they reach adult age if they do not perform as the judge instructed as juveniles. It is a minor change that could be made immediately to the Youth Court Act, he said.

Hank Hudson, Director, Department of Family Services spoke as a proponent. He said his department had an opportunity to work with the sponsor and others involved in the bill. He said over the years the judges felt they had no input into the decisions with kids and that DFS took over. It was determined to work with judges to ensure an on-going involvement in the cases. On the other side, total sentencing authority could not be handed over entirely to judges because they don't bear the responsibility for paying for incarceration, for instance, to Pine Hills. So the responsibility was separated to operate the system within the resources given to the department. The pendulum had swung over to the people who were responsible for the budget to make sure the corrections money was not overspent, which had left the judges out of the loop. This bill would reflect a compromise that says, "judges will have more authority, more involvement in the sentence of the youth, but in a working relationship with the department to consider what resources are available." He said it was somewhat of an experiment and a dramatic change. He thought they could make it work effectively, although there was a problem in Pine Hills School because of the number of youth sent there and the physical limitations of the facility demanded that youth were being sent out too soon. He said a good number of kids would be there until they were 18. He said steps had been taken to more than double the youths staying in the Mountain View School and more than doubled the length of time they would stay. They were seeking relief from the revolving door problems at Pine Hills during this biennium, he said. The institutional secure care needs of the state needed to be looked at in his estimation because it had been a while since they had studied those issues. He was concerned about a problem with the bill on Pages 6 and 7. Part e. stated, "place the youth in an in-state residence that assures the youth is accountable provides for rehabilitation and protects the public. Before placement, the sentencing judge shall seek and consider 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." On Page 7, he suggested the word, "resources," instead of, "space." He said they had more space than they could pay to have kids in. The bill would encourage the judge and the department to make decisions within the fiscal reality of the state.

Candy Wimmer, Youth Justice Council, spoke in favor of HB 380. They had worked with **Judge Larson** on the bill. They believed in the accountability the bill offered to youth who are reaching majority and who have not filled the disposition of their youth court sentencing. She urged support for the measure.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR BAER asked for an explanation of the fiscal note. He said it pointed to a total cost to the state of $50,000 for each person institutionalized. He also wanted to know if the numbers changed when they placed youth in places other than Pine Hills? **Hank Hudson** said it cost about $135 per day to keep a youth in Pine Hills, which was the most expensive level of care, but was consistent with national averages. There was a wide range of places youth may be placed, he said, with non-secure shelter care being the least expensive. Family foster care was $11 per day. **REPRESENTATIVE MOLNAR** also fielded the question. He stated that the DFS charges the State of Montana $135 per day, per kid, at Pine Hills. Full security for women costs $80 per day. Full security for men is $40 per day. To place a youth in a situation like **REPRESENTATIVE SOFT'S** facility would run around $1,400 per week. A child in the Deaconess Psychiatric Center would cost the state $1,000 per day. Foster care charges were $11 per day and therapeutic foster care would cost $48 per day. **SENATOR REINY JABS** asked **Judge Larson** about the frustration of judges, if no space were available for youths. **Judge Larson** responded that it was frustrating, but that for now, judges were not even in the loop. He said he had no dispute with the director about changing the network of resources, but the judges did want a say in the proceedings. Now, he said, when a youth came into court and was sentenced to Family Services, he did not know where the youth went, when he came back or had any further contact. He said the judge would get from HB 150 the same two recommendations that the regional DFS director gets. They would both sit down and look at the resources available and choose one in a partnership between the executive and judiciary, rather than letting money drive the whole show. He said they could be accountable to the community and also have some say in the type of treatment youths received. **SENATOR HALLIGAN** questioned Page 2, Line 8 on the extended jurisdiction and why it would only be a public safety focus at

that hearing rather than the danger to the youth himself and others? **Judge Larson** said it came from the Minnesota approach which gives a lower threshold for transfer. It would not take much of a showing to get them into an extended jurisdiction level. Now, he said, they had a transfer process, but it was never used because there were so many factual determinations that had to be made, subject to appeal. The youth would sit in a detention center for a year pending appeal. He said it was an ineffective portion of the statute. It would be easy to get a person into an extended jurisdiction proceeding, he said, but the more important part is where the youth violates that extended jurisdiction stay and comes back before the judge. Then the judge can look at all those things, determining if it was a minor or a serious violation before lifting or modifying the stay to kick in the adult sentence. He said it would send a message to the youth that if they were going to be in the extended jurisdiction situation, they would have to perform. **SENATOR HALLIGAN** stated that he had represented a youth in an assault with a car, first offense. How would they show that there was no pattern of conduct and no public safety issue, when homicide was the same situation although more serious. He said it appeared to be a lower threshold to begin with but there may be first-time offenders with minor ungovernable problems that may not be in the system or consent decreed that may not give the public a safety threshold. He asked if he were convinced of that. **Judge Larson** said it was better sometimes to have more youth in court. He said they had 652 first-time offenders in Missoula. At the same time, they had 1,500 re-offenses before the same youth court probation officers and possibly 500-600 minors in possession, which they had diverted to municipal and justice courts. They diverted them to encourage the youth to be in court with their parents and understand it was serious. He stated that families should work together on these problems from the beginning. The most violent people he'd sentenced as adults committing the most horrendous crimes were those with 6 or 8 or 10 juvenile run-ins, but never got into court until the 9th or 10th time. He said it was a change in philosophy, but one he recommended. **SENATOR NELSON** asked the sponsor about two different fiscal notes received, noting a vast difference between them. **REPRESENTATIVE McKEE** stated that the first fiscal note was estimated before the amendment. When the DFS determined the realities in recommending the options available within their resources, she had signed the second fiscal note, which denotes no fiscal impact. **SENATOR BARTLETT** noted that in the execution of adult sentence portion of the bill, it talked about an adult criminal sentence stayed under Section 4 if the youth violates the conditions or is alleged to have committed a new offense. She asked if it could be any type of offense, since no limitation was listed. **Judge Larson** said the law was broadly written and she was correct. The discretion would lie with the judge, then, to evaluate whether the state would only be modified, will be re-instituted without modification or will be lifted. They will look at specific circumstances. It is intended that there is a consequence to

these youth for every violation that occurs, and be back in front of the judge.

Closing by Sponsor:

REPRESENTATIVE McKEE was appreciative of the opportunity to work out the problems of the bill beforehand to resolve the difficulties and the fiscal note. She said the cooperation of the department and the judiciary was commendable. She quoted from **Judge Larson's** handout in which the young lady who was arrested for bad checks said, "my friends started telling me that I couldn't get in that much trouble because I was a minor." So the attorney said, "So, as a kid, you thought you could do almost anything, right?" She replied, "yeah." The attorney asked her if now she knew better. She said, "I mean, I thought the only reason you could get into trouble, if you're a kid, is if you kill someone." HB 380 would provide a middle ground for those problems that utilize the best features from both the juvenile and adult systems. It would grant youthful significant incentives to reform while retaining much-needed flexibility in the system to effectively deal with those offenders who do not. It does put some teeth into the system, she said. She urged their consideration.

HEARING ON HB 429

Opening Statement by Sponsor:

REPRESENTATIVE BRAD MOLNAR, House District 22, Laurel, sponsored HB 429. This bill would attempt to give consequences to youth for their actions, he said, particularly social pressure. Currently, if a youth is charged, the newspaper cannot print who they are, or if they had been charged in the past. Under current law, they can report it as a felony, but they don't. If they do report the crime as a felony, and then it is plead down to a misdemeanor, the newspaper is in more trouble than the kid is because misdemeanors are held to be quiet. Youth in need of supervision is totally confidential. This bill would change some of that. In the case of youth in need of supervision, it would make public the part concerning the youth. What often happens, he said, is the lawyer would maneuver the case until it was no longer the question of, "did you steal the car," or "did you steal and sell drugs," or "did you beat your parents to a pulp," but rather the affidavit would say, "the father abused the child physically," or "the mother did it emotionally and sexually," or "the grandmother starved the kid half to death." It leaves the kid looking at the parents, saying, "drop the charges, back off on this thing, or you are in more trouble than I am." Of course, with that information in the newspapers, the parents would be devastated. He said that through an amendment on the House side, they added that any report, charge or allegation that is not adjudicated pursuant to this chapter, is also held quiet. The pro-active bill would also provide for the notification of victims in juvenile crimes. The victims would know what is going

on, and if the perpetrator is being released from Pine Hills. The judge would also be notified. He said it was a simple bill involving consequences. As they had heard in previous bills, there are NO consequences in youth courts. He said that public information would be helpful to parents in deciding their childrens' friends, dates, etc., when they read about minors in possession or careless driving. He maintained there would be social consequences and the youth would know that their communities would not approve of their behaviors. Someone would frown on them on the street, perhaps, if they knew a youth had vandalized an old lady's house. This is the absolute beginning of an attempt to reclaim our streets by using social pressure. It does not cost anything. It works.

Proponents' Testimony:

John Larson, District Judge, Fourth Judicial District, supported HB 429. This bill had its' inception with his colleague, **Judge McLean,** who for many years was a Chief Prosecutor in Missoula County. He wrote to the other judges early last year and recommended the bill. All the judges he knew were in concurrence. It opens up all the files on the district court side, he said. It does not open up psychological information, sociological studies or probation officers' files. It does make all juvenile proceedings public and has the added benefit of advising the community about the seriousness of this problem. The general person on the street does not realize the level to which juvenile crime has risen and may help with community support of prevention projects needed. The victims' rights is an essential part of the bill. He had seen cases plead down to a misdemeanor or a youth in need of supervision to seal the file. He said one county in his district still felt that any sex offense involving a youth, no matter how serious, was a matter to close the file, forbidding anyone from inspection. He urged support of the measure.

Dennis Paxinos, Yellowstone County Attorney, also spoke on behalf of the Montana County Attorneys Association. He encouraged support of HB 429. He stated that the whole idea of keeping confidential youth records was that youth make mistakes, so let's not brand them and taint them for the rest of their lives. But unfortunately, youth crime had changed dramatically in the last 25 years. This bill would introduce the element of shame. Hopefully, it would be shame, and not a boastful, "hey, I got my name in the paper." He warned the committee that although there was no fiscal note, they would be mandating notification costs. He said in his county, one FTE would be needed to comply with the bill. Even so, the bill was long overdue and he supported HB 429.

Hank Hudson, Director, Department of Family Services, said his department supported the bill.

Charles Walk, Executive Director, Montana Newspapers Association, said their organization represented 75 Montana newspapers, including 11 dailies and 64 weeklies. They supported HB 429. That support was in keeping with their consistent support of reasonable legislation aimed at opening more and more records of public business and interest for the Montana public. They certainly believe this bill follows that criteria while at the same time provides reasonable protection and privacy consideration. He also asked to submit a written testimony for **Mike Voeller, Lee Newspapers of Montana,** who was unable to be present for the hearing. **(EXHIBIT 4)**

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR RIC HOLDEN asked **Mr. Paxinos** about Page 4 concerning his office consulting with the victim. He thought the word, "shall" should be changed to, "may." **Mr. Paxinos** said any victim of a crime thinks the associated activities are very important. He said as a public servant, he thought he at least owed them the contact and information. He said in their office they could not keep up. He did not want to amend the language to say, "may." **CHAIRMAN CRIPPEN** said he had been advised by Greg Petesch that there may be a potential conflict between HB 429 and SB 64 and HB 551, which referred to DNA testing. Because HB 429 would repeal sections of 45-5-601 and 45-5-602. He asked for comment. **Judge Larson** said he was familiar with SB 64 and the provision. He stated that judges believe that in the MIP (minors in possession) legislation that there is no benefit in keeping the MIP matters confidential. They had diverted all the MIP cases in Missoula into courts where there is no confidentiality. He spoke with **SENATOR GAGE** and they agreed they don't need the section in SB 64, and that the repealer in HB 429 should govern.

EXECUTIVE ACTION ON HB 380

Motion: **SENATOR HALLIGAN MOVED THAT HB 380 BE CONCURRED IN.**

Discussion: **SENATOR BARTLETT** said there were some minor clarifying problems on Page 3, Line 27. When the youth reaches 25 years of age, they could strike the first, "age." Page 7, Line 5, because of the amendments to the bill, the line is talking about the, "court shall determine whether continuation in the youth's own home would be contrary to the welfare." She asked for clarification of stricken language, and proposed adding, "youth's own," after the 2nd, "the," on Page 7, Line 5. **Judge Larson** had no objection to the amendment. **CHAIRMAN CRIPPEN** inquired if they wanted to adopt **Mr. Hudson's** amendment, as well, on Page 7, Line 1, striking, "resources." He was concerned about

the fiscal note and asked what they meant by "resources." **Mr. Hudson** said it meant dollars. The discussion with the judges would be identifying resources, or dollars. That change allows them to do away with the fiscal note, he said. They wanted "resources" to be at the top of Page 7 as well.

Motion: **SENATOR BARTLETT MADE A SUBSTITUTE MOTION TO ADOPT AMENDMENT # 1,** Page 3, Line 27, strike the first "age"; and **AMENDMENT # 2,** Page 7, Line 1, strike the word, "space is," and insert, "resources or,"; and **AMENDMENT # 3,** Page 7, Line 5, after the second, "the," insert the words, "youth's own".

Discussion: **SENATOR HALLIGAN** asked that the record reflect "resources" to mean dollars in this bill, because if it was looked up in the dictionary, it would mean much more than dollars. The record should read, "funding" or "dollars".

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Discussion: **Valencia Lane** explained an amendment from **Hank Hudson and Ann Gilkey** that they would like an additional change on Page 6, Line 22, to strike the words, "the judge has sought and considered release." **Ann Gilkey** explained the reason for the change is to make sure that the youth placement is recommending, along with the two recommendations to the judge for consideration, that any release limitations be imposed on the youth. Existing language seems to indicate that the judge needs to consider and not go along with the recommendations of the youth placement committee, giving the judge an override that was never discussed and not intended. **Judge Larson** has no objection.

Motion: **SENATOR BARTLETT MOVED TO AMEND HB 380,** on Page 6, Line 22, following the word, "unless," by striking the words, "the judge has sought and considered release limitations."

Discussion: **SENATOR HOLDEN** asked **Judge Larson** what "considered release limitations," meant. The judge said it was what they had to say, if they agreed or disagreed. The amendment would limit the judges to the recommendations of the youth placement committee, but at least the judges would have a role. He said that HB 150 also would have a notification provision in it as well that would put them back in the loop of notification of placements. **SENATOR BAER** asked the department attorney why the amendment was of such importance. **Ann Gilkey** replied that Line 21-22 simply clarified the recommendations of the committee were the recommendations the judge would act upon and there would not be an override where the judge could come up with a totally different recommendation regarding the length of stay at the correctional facility. **SENATOR BAER** asked why they wouldn't trust the discretion of a judge to make the decision? **Ms. Gilkey** said the problem is the budget and the 80 bed limitation at Pine Hills School. It could become a problem of space. **Judge Larson** indicated he could work well with the recommendation.

Vote: The **MOTION FAILED** on a roll call vote of 4-4. The vote was held open for absent members.

Discussion: **SENATOR HALLIGAN** stated there was no problem with the agency amendment on Page 7, Line 1, to say, after "the judge," "resources are available for the youth at that residence." After the word, "for," insert, "placement of."

Motion/Vote: **SENATOR HALLIGAN MOVED THE AMENDMENT.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Motion/Vote: **THE VOTE HELD OPEN ON SENATOR BARTLETT'S MOTION TO AMEND HB 380 ON PAGE 6, LINE 22 CARRIED** on a roll call vote, with the addition of **SENATOR LORENTS GROSFIELD'S** "yes" vote.

Vote: **ON THE ORIGINAL MOTION OF SENATOR HALLIGAN THAT HB 380 BE CONCURRED IN AS AMENDED, THE MOTION CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 150

Discussion: **CHAIRMAN CRIPPEN** explained an amendment, on Page 3, Line 4, following the word, "department," insert, "and to the youth court judge."

Motion: **SENATOR ESTRADA MOVED THE AMENDMENT.**

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

Motion: **SENATOR ESTRADA MOVED THAT HB 150 BE CONCURRED IN AS AMENDED.**

Vote: The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

EXECUTIVE ACTION ON HB 551

Discussion: **Valencia Lane** explained that the conflict between HB 429 and HB 551, saying they both would amend 41-5-604. She said HB 551 puts in references to DNA records. **REPRESENTATIVE MOLNAR** said that both bills blend and neither is harmed. HB 429 on Page 1, Line 20, insert, "except as provided in Section 5." On the same bill, Page 3, Line 30, put, "fingerprints and photographs," back in and after that, insert, "DNA records." On bill HB 551, Page 4, Line 29, after, "do not apply to," insert, "fingerprints and photographs." Or, to, "records", strike the rest of the sentence and put in, "in any case in which the youth did not fulfill all requirements of the court's judgement." **Valencia Lane** said she could see the substantive changes of the two bills, but only minor conflicts, for example, in HB 551, Page 4, Line 18, should read, "covered by." In the other bill they struck, "coming," but left, "under this." She said it could not be codified in this chapter. She asked to prepare an amendment for

one bill or the other to make the changes. **REPRESENTATIVE MOLNAR** suggested they do HB 429. **Valencia Lane** said she would amend HB 429 to address 41-5-604 to make sure that all non-substantive changes in these bills are identical so there are no conflicts.

Motion/Vote: **SENATOR HALLIGAN MOVED THAT HB 551 BE CONCURRED IN AS AMENDED.** The **MOTION CARRIED UNANIMOUSLY** on an oral vote.

{Tape: 2; Side: B; Approx. Counter: 00}

EXECUTIVE ACTION ON HB 311

Motion: **SENATOR BAER MOVED THAT HB 311 BE CONCURRED IN.**

Discussion: **SENATOR DOHERTY** explained his amendments, as shown in **(EXHIBIT 5).** In amendment # 1, Page 1, Lines 12 and 13, the language, "might result in depriving a property owner of all or part of the use of economic value of private property." was taken out and inserted, "a taking." He said it would try to clean up the language and make it consistent throughout. The second amendment would strike Line 29 and 30 of Page 2, then inserting, "whether the proposed action would constitute a taking of private property in violation of the United States or the Montana Constitutions; and". He said this was one thing the Attorney General should think about. **REPRESENTATIVE GRINDE** asked to have **Hertha Lund** represent the bill's sponsors for the purpose of explanation. **Ms. Lund** said they had worked with the Attorney General's office with the subject of this first amendment. She stated that the present form tracks the case law. The amendment would change the bill substantively and take it further from the case law which had found takings where it did not involve all of the economic value. On the second proposal, she said that 1 through 6 of the bill was set up in a decision "tree" (in the statement of intent) that she and Dean Huffman of Lewis and Clark County wrote. It clarifies the current status of takings law so that at each step the analysis could be stopped and make it an easier process. On Page 4, Section 5, the six things are what the bill flows under, she said. Then the following six steps are used in the procedure. **SENATOR HALLIGAN** said he recalled from the hearing that **Beth Baker** did not feel that it was an accurate summary of existing federal or state takings law, and that the Subsection was not an accurate summary. **Ms. Lund** said it was **Katherine Orr** that had mentioned that it was an approximation. **Ms. Lund** stated that the Attorney General's office had signed off on this bill. She said the question was whether or not the action would deprive the owner of economic and viable use of the property. That language is directly out of Lucas vs. Penn Central. The current debate is in the interpretation whether or not there is a partial takings, but nobody would argue that the language is not in those cases. **SENATOR DOHERTY** agreed with the origin of the language, but said if the intent of the bill was

not to advance or to diminish the current state of takings law, there were other cases and other language as well. He said it was an attempt to put into statute "some" phrases and "some" cases, and it would advance or diminish the law. He said the phrase, "depriving a property owner of all or part of use of economic value," is a significant change, he said. **Ms. Lund** disagreed. She said that **Dean Huffman** and other scholars who are not necessarily advocates for either side, have approved the takings analysis in the bill, and the State of Idaho also included it in the Attorney General's checklist. **CHAIRMAN CRIPPEN** said if it was not substantive, then they could leave it alone. **SENATOR DOHERTY** stated he would take them at their word. If they wanted a bill that would require the Attorney General to consider takings analyses, that would be fine. He believed the current language extended the language under legal theories and by adopting them would expand the definitions. The next step would be using the new language to go into court and argue that the legislature has expanded the definitions, therefore, their case would constitute a takings. **CHAIRMAN CRIPPEN** stated that a friend had been involved with the Billings Airport Authority and he understood the takings process. He would have preferred the bill to go further, including the eminent domain issue. **SENATOR DOHERTY** professed a loathing for eminent domain and would like to do a bill for property rights revisions. The next amendment, he explained, would strike, "constitute a deprivation of private property and violation of the U.S. and Montana Constitution," and insert, "deprive a property owner of private property in a manner of acquiring compensation under the 5th and the 14th Amendments of the Constitution, or the Montana Constitution." It is the same language as appears in # 4, he said. It was determined to vote on the amendment items individually. **REPRESENTATIVE GRINDE** said he had no problems with # 2, the word, "state" being left out was a clerical error.

Motion/Vote: **SENATOR DOHERTY MOVED TO AMEND HB 311 WITH AMENDMENTS 1 AND 3 OF HB0301101.AVL.** The **MOTION FAILED** by an oral vote.

Motion/Vote: **SENATOR DOHERTY MOVED TO AMEND HB 311 WITH AMENDMENTS 2 OF HB031101.AVL.** The **MOTION PASSED UNANIMOUSLY** on an oral vote.

Discussion: **SENATOR DOHERTY** explained # 4, relating to the things the Attorney General would have to consider. He struck Subsections 4 and 5 and part of 6, because the Montana law already dealt with the takings law and it would be redundant. He said # 6 would be a significant expansion of the current takings law by anyone's imagination. **Ms. Lund** repeated that the language was out of the Penn Central case, and had been used in several U.S. Supreme Court cases. **SENATOR HALLIGAN** asked **Beth Baker** for the Attorney General's interpretation. **Ms. Baker** said the court had used the language in terms of looking at the benefits and balancing them against the burdens, but she also stated she didn't know if the sentence in and of itself represented the

entire body of law. Since it was part of the statement of intent, in which the guidelines reflect the current state of the law, they would not be confined to the language of the statement, but to look at all the law to make sure that the guidelines conform with the Supreme Court's decision.

Motion/Vote: **SENATOR DOHERTY MOVED TO AMEND HB 311 WITH ITEM # 4 OF HB031101.AVL.** The **MOTION FAILED** by an oral vote.

Discussion: **SENATOR DOHERTY** explained amendment # 5. It went to the question raised during the hearing, the action with damaging implications. It would remove or permit condition or denial cases. It would give someone a health hand up in determining a case, he said. It was a substantive change, he said. **Ms. Lund** said that deleting the language as suggested would take away from the tracking of current law. She cited the Dolan and Nolan cases which were permit denial cases and should be considered.

Motion/Vote: **SENATOR DOHERTY MOVED TO AMEND HB 311 WITH ITEM # 5 OF HB0131101.AVL.** The **MOTION FAILED** on an oral vote.

Motion: **SENATOR DOHERTY MOVED TO AMEND HB 311 WITH ITEM # 6 OF HB0131101.AVL.**

Discussion: He explained this amendment would track the language used in Subsection 4. It would take out the language that would constitute a deprivation of private property and insert consistent language from the 5th and 14th Amendments relating to damage implications. **CHAIRMAN CRIPPEN** asked if this change was made in the House committee. **Beth Baker** said the House Judiciary Committee attempted to amend this part of the bill, to narrow the bill's focus. The whole purpose of the amendment was to make sure the bill was restricted to land and water use or other environmental regulations that would violate the Constitution if carried out. The language proposed would be better, she said. **Ms. Lund** stated it was one writer's way of saying the same thing, not changing much. She did not think it was significant enough to make the change. **Beth Baker** said it was technically more correct as proposed in the amendment. It did not violate the Constitution as it was, but would require compensation under the Constitution.

Vote: The **MOTION FAILED** on a 5-5 tie oral vote.

Motion: **SENATOR DOHERTY MOVED AMENDMENTS 7 AND 8 TO STRIKE SUBSECTION D.**

Discussion: He said they needed to look at state action to see what constitutes a "taking." He said it was an incorrect assumption to assume that repealing a rule and reducing regulation on private property might not constitute a taking and so would be something a person would not have to think about. He further stated that repealing a rule might have as big an effect as instituting a rule. **Ms. Lund** replied that the bills passed in

Idaho and Utah were the same as this measure. They did not want to put the burden on the state because there were few cases and they did not see that area being abused.

Vote: The **MOTION FAILED** on an oral vote.

Motion: **SENATOR DOHERTY MOVED AMENDMENT # 9 TO FURTHER AMEND HB 311.**

Discussion: **SENATOR DOHERTY** said this amendment was truly clerical. It would strike, "give," and insert, "assign." **REPRESENTATIVE GRINDE** said they would concur with the amendment.

Vote: The **MOTION CARRIED** on an oral vote, with **CHAIRMAN CRIPPEN** and **SENATOR ESTRADA** voting no.

Motion: **SENATOR DOHERTY MOVED AMENDMENT # 10 OF HB031101.AVL.**

Discussion: He said the amendment dealt with the consideration of the impact assessment and the guidelines for the Attorney General. He inserted a new Subsection A, "whether the proposed action would advance a legitimate state interest." He said it would track with the statement of intent # 2. He said if they were going to require an assessment, they should also identify what the legitimate state interest was that they were supposed to be advancing. **CHAIRMAN CRIPPEN** said the answer was on Page 1, Line 27. **Ms. Lund** said she and **Beth Baker** had put the analysis in the statement of intent so they could have a public process with the Attorney General's office on clarifying the status of the law. They wanted to allow them to give their interpretation of the law. She said # 2 a., the likelihood that a state or federal court would hold that actions of taking are damaging," would direct them to the six items listed in the statement of intent. **Ms. Baker** said whether the proposed action would advance the legitimate state interests would be considered even sooner than what **Ms. Lund** has suggested. On Page 2, Line 27, the first thing to be considered is what actions have a takings implication. At that point a person would first consider whether the proposed action would advance a legitimate state interest. She said it would probably be good for clarification, but would happen in the bill anyhow. **Ms. Lund** said the amendment would disrupt the analysis. She urged the committee not to make the amendment, unless they wanted to make many more. **SENATOR DOHERTY** said it was obvious that this was a "cookie cutter" bill, being used to disrupt the analysis. He said if they were going to require that the impact assessment be done, the first thing was to determine if they were advancing a legitimate state interest. If they were not, that would end the analysis. They were giving instructions on what had to be included in the impact assessment. Without the proper instructions, state agencies may not do that.

Vote: The **MOTION FAILED** on an oral vote.

Motion: SENATOR DOHERTY MOVED THAT AMENDMENTS 11 AND 12 BE WITHDRAWN. HE ALSO MOVED THAT # 13 AMEND HB 311.

Discussion: If an impact assessment were done and it was determined that there may be an action with takings implication, and that it may cost money, and they give it to the Governor, and in spite of that there is a legitimate state health and safety reason they adopt whatever it is, they have made a prior determination by a state agency that there is a takings. Under any tenet of administrative law, that decision will be given deference by any reviewing court rather than looking at the entire situation and not giving any prior administrative decisions. It will be, with the expanded definitions of takings, and the slippery definitions of takings, ensuring that anyone who believes that there may be a takings, will put into public evidence and influence the judge. He said that this document is supposed to help administrative agencies and help the executive to determine whether or not it is a good thing or a dumb thing. He would not like to give the thought process leverage by a reviewing court. **Ms. Lund** said in most circumstances they would not get to the point where the court would have this document in their hands. They would see an agency going about achieving the same purpose in a different way. She did not think it would be a problem. She asked the amendment not be put on. **Beth Baker** thought the amendment was good and would encourage the agencies to have a more open process. She was afraid that the agencies would be in fear that a court would hold this document up and they would be less likely to document the assessment. The more they put into the assessment, the more it would affect the purpose of the bill. In Montana, the standard is a little fuzzy now, she said. The court has handed down several cases where they did not defer to agency actions and found questions of law. The standard is whether the agencies interpretation is correct. As always, there are cases that continue to use the old standard of deference. This would help clarify for the court, she said. In response to the question from **CHAIRMAN CRIPPEN** why they didn't bring this up in the hearing, she said it never came up, but they would want to minimize the threat of litigation. **SENATOR HOLDEN** asked about "deference from any reviewing court." **SENATOR DOHERTY** explained that if the proposed action is objected to by anyone and it is taken to the district court, saying it was a takings, "pay me", the document could be used as evidence, but would not be given any deference, or assumption of validity or assumption that it is proper and correct by the reviewing court. **Beth Baker** said the rule of deference typically afforded to state agencies is based on the principle that when an agency is interpreting its rule, the agency has the expertise in that area, having the body to know its own rules. In the area of Constitutional Law, the agency ought not be given that deference, because it's not the same thing as the Health Department interpreting a rule on air quality, which she said is what **SENATOR DOHERTY** was trying to describe. **Ms. Lund** said, based on **Ms. Baker's** statement, the amendment would not be needed. She said the court would not give their authority to interpret the

Constitution to an agency. The deference rule could easily be defined to rulemaking. **SENATOR GROSFIELD** said it could cut both ways. There may be a rule objected to by an individual, and an agency might be worried, but decide to do it anyway, and the court would have one kind of deference. In another case, the agency looked at it and determined it wouldn't really fit. **Beth Baker** said there would be a difference between looking at it and the legal rule that the court has to give deference. It would be a public document and the court can look at it. In either case the court would have the information, but the question is just what standard of rule would be applied. **SENATOR DOHERTY** said that because any takings analysis or any eminent domain proceeding is heavily fact-bound by each individual situation, how much the property is worth, how much money it would be worth, how much it would be worth instead of grazing, if they subdivided, what the eventual highest and best use of it would be. Given those situations and the credible amount of facts that go into a determination of that, the decision is not just that of fact or law in determining the takings situation, it would be a fact-law question. That's why the amendment is needed.

Vote: The **MOTION FAILED** on an a 5-5 oral vote.

Motion: **SENATOR ESTRADA MOVED THAT HB 311 BE CONCURRED IN AS AMENDED.**

Discussion: **SENATOR DOHERTY** said he would look to the record, and encouraged others to do so, to ensure that if anyone tried to expand or diminish private property protections, there would be Rule 11 sanctions. The record of the committee is clear, he said, in Section 2, that it was not trying to expand it. He said he would take the bill and run with it to the hilt if he were trying to represent a compensable takings case. He said he would take the sponsor and the authors at face value that this was not an expansion and that anybody who attempted to expand it ought to be just right for Rule of 11 sanctions. **SENATOR BARTLETT** said the line that bothered her was the, "likelihood that a state or federal court would hold the action is a taking," and she said it was an exercise in futility. She said they could not predict the courts. They could go through the analysis and make a decision based on their judgement. If the thing goes to court, the judgement may be wholly different. Trying to assess the likelihood of what the court would do is futile.

Vote: The **MOTION CARRIED** on an oral vote, with **SENATORS DOHERTY, BARTLETT** and **BISHOP** voting no and **SENATOR HALLIGAN's** vote was held open.

EXECUTIVE ACTION ON HB 74

Motion/Vote: **SENATOR DOHERTY MOVED TO TABLE HB 74.** The **MOTION CARRIED** on an oral vote, with **SENATORS BAER, ESTRADA AND GROSFIELD** voting no.

Discussion: **Jacqueline Lenmark, representing AIA,** apologized to the chairman for her testimony the previous week on this bill. She said she had come to the hearing unprepared and did not convey well her client's feelings about the bill. She testified in favor of the bill, and should not have.

EXECUTIVE ACTION ON HB 501

Motion: **SENATOR DOHERTY MOVED THE AMENDMENTS TO HB 501.**

Discussion: He said **REPRESENTATIVE ANDERSON** had said there was a current section of law dealing with whether bonds were required in ANY civil action. He assumed it would apply here as well, but **SENATOR DOHERTY** suggested language out of the other statute that said the court could require a bond at the sum the court considered proper. It would also say that the court could waive the undertaking in the interest of justice. He said they were dealing with a whole new section of law dealing with state lands, civil procedure. He wanted to make sure it would apply and there would almost be a presumption to ask for a bond if an injunction is requested, but that the court, in its discretion, could determine what that was, or waive it. **CHAIRMAN CRIPPEN** asked for an example. **SENATOR DOHERTY** stated, for instance, the Board of Regents wants to sell Fort Missoula. The people do not think it's a good idea. Selling it will net the state $1 million. The business people decided it's not a good use, they don't like who they are selling it to, and will go to court. Under current law, the court would have discretion. With the bill, he said the court would be required to require a posting of a bond if they were going to enjoin the sale. **CHAIRMAN CRIPPEN** asked about Line 2, regarding the sum the court would consider. It did not give an amount, and would be proper anyway. **SENATOR DOHERTY** said it would require an evidentiary hearing about what the beneficiary might lose should the injunction later be dissolved and the courts later say they were wrong, that it had been a proper sale. **SENATOR CRIPPEN** questioned if a sale was pending and the contracts gave 30 days to accept the $1 million, and after 30 days the buyer said, "no" for other reasons, what would the bond then be? **SENATOR DOHERTY** said it would be in an amount sufficient to cover the amount lost to the trust, which would be $1 million. **CHAIRMAN CRIPPEN** said without the language, what would the bond be? **SENATOR DOHERTY** said about $1 million. But maybe the court needs to also consider that there are some out-clauses in it, the payments are going to be stretched over time, the initial loss might only be a down payment. **CHAIRMAN CRIPPEN** said they would consider that anyway. There was discussion about bonding procedures. **CHAIRMAN CRIPPEN** said the purpose for the bill was to make sure that there will be a bond. Without the language there, there would be no direction to the court that there would ever be a bond. **SENATOR DOHERTY** said in offering the amendment, he was saying, given the special nature of special school lands and the requirement of recovery for the beneficiaries, the rule would require an entity seeking to enjoin

action to have a bond. However, the court would get to consider how much or may waive it altogether. **CHAIRMAN CRIPPEN** said it was already in the law. He cited the Fort Missoula case.

Vote: The **MOTION FAILED** on an oral vote.

Motion/Vote: **SENATOR HOLDEN MOVED THAT HB 501 BE CONCURRED IN.** The **MOTION CARRIED** on an oral vote. **SENATORS BARTLETT, DOHERTY AND BISHOP** voted no.

EXECUTIVE ACTION ON HB 214

Discussion: **CHAIRMAN CRIPPEN** stated that the striking of one provision was the result of a furor. **Valencia Lane** said she did not know what the controversy was, but that there was a reference in both HB 157 and HB 214 to amend 46-23-502 which is existing law. In existing law there is a reference to sexual offenders listed in other sections of law. Both of them refer to 45-5-505, which is deviant sexual conduct. HB 214 strikes the reference to deviant sexual conduct as it applies to the definition of who is a sexual offender under the registration requirements. The other bill did not. **CHAIRMAN CRIPPEN** said some others in the legal department had seen that struck and that started the controversy. He had come to the same conclusion as **Ms. Lane,** that it would only apply to Section 46-23-502. It was not struck entirely out of the code.

ADJOURNMENT

Adjournment: **CHAIRMAN BRUCE D. CRIPPEN** adjourned the hearing at 12:07 p.m.

BRUCE D. CRIPPEN, Chairman

JUDY FELAND, Secretary

Shirley Herrin

BCD/jf

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3-13-95

NAME	PRESENT	ABSENT	EXCUSED
BRUCE CRIPPEN, CHAIRMAN	✓		
LARRY BAER	✓		
SUE BARTLETT	✓		
AL BISHOP, VICE CHAIRMAN			✓
STEVE DOHERTY	✓		
SHARON ESTRADA	✓		
LORENTS GROSFIELD	✓		
MIKE HALLIGAN	✓		
RIC HOLDEN	✓		
REINY JABS	✓		
LINDA NELSON	✓		

SEN:1995
wp.rollcall.man

SENATE STANDING COMMITTEE REPORT

March 13, 1995

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration HB 150 (third reading copy -- blue), respectfully report that HB 150 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 3, line 4.
Following: "department"
Insert: "and to the youth court judge"

-END-

Amd. Coord.
Sec. of Senate

SEN. ESTRADA
Senator Carrying Bill

581357SC.SRF

SENATE STANDING COMMITTEE REPORT

March 13, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 311 (third reading copy -- blue), respectfully report that HB 311 be amended as follows and as so amended be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 1, line 22.
Following: "PROPOSED"
Insert: "state"

2. Page 4, line 19.
Following: "shall"
Strike: "give"
Insert: "assign"

-END-

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

581414SC.SRF

SENATE STANDING COMMITTEE REPORT

March 13, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 551 (third reading copy -- blue), respectfully report that HB 551 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Jan Doherty
Senator Carrying Bill

581246SC.SRF

SENATE STANDING COMMITTEE REPORT

March 13, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 501 (third reading copy -- blue), respectfully report that HB 501 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

581244SC.SRF

SENATE STANDING COMMITTEE REPORT

March 13, 1995

MR. PRESIDENT:
We, your committee on Judiciary having had under consideration HB 380 (third reading copy -- blue), respectfully report that HB 380 be amended as follows and as so amended be concurred in.

Signed: Bruce D. Crippen
Senator Bruce Crippen, Chair

That such amendments read:

1. Page 3, line 27.
Following: "reaches"
Strike: "age"

2. Page 6, lines 22 and 23.
Following: "UNLESS" on line 22
Strike: remainder of line 22 through "LIMITATIONS" on line 23

3. Page 7, line 1.
Strike: "SPACE IS"
Insert: "resources are"
Following: "FOR"
Insert: "placement of"

4. Page 7, line 5.
Following: second "the"
Insert: "youth's own"

-END-

Amd. Coord.
Sec. of Senate

Sen. Grosfield
Senator Carrying Bill

581407SC.SRF

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3-13-95 BILL NO. HB 380 NUMBER 1

MOTION: Sen. Bartlett moved to amend P.6, L.22.

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	/	
LARRY BAER		/
SUE BARTLETT	/	
AL BISHOP, VICE CHAIRMAN		
STEVE DOHERTY		
SHARON ESTRADA		/
LORENTS GROSFIELD		
MIKE HALLIGAN	/	
RIC HOLDEN		/
REINY JABS		/
LINDA NELSON	/	

SEN:1995
wp:rlclvote.man

4 - 4

Failed - Left open

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE
ROLL CALL VOTE

DATE 3-13-95 BILL NO. HB 380 NUMBER 2

MOTION: Sen. Bartlett moved to amend P. 6, Line 22

NAME	AYE	NO
BRUCE CRIPPEN, CHAIRMAN	✓	
LARRY BAER		✓
SUE BARTLETT	✓	
AL BISHOP, VICE CHAIRMAN		
STEVE DOHERTY		
SHARON ESTRADA		✓
LORENTS GROSFIELD	✓	
MIKE HALLIGAN	✓	✓
RIC HOLDEN		✓
REINY JABS		✓
LINDA NELSON	✓	

SEN:1995
wp:rlclvote.man

5 4

Carried

DEPARTMENT OF FAMILY SERVICES

(406) 444-5900
FAX (406) 444-5956

MARC RACICOT, GOVERNOR

STATE OF MONTANA

HANK HUDSON, DIRECTOR

PO BOX 8005
HELENA, MONTANA 59604-8005

March 10, 1995

DEPARTMENT OF FAMILY SERVICES TESTIMONY IN SUPPORT OF HB 150

Submitted by Gale Keil, DFS, Juvenile Corrections Division

Support for HB 150 is a response to requests from judges and the Montana Probation Officers Association to provide the courts with the most current and comprehensive information essential to determine appropriate placements. This information consists of a profile of the youth and his or her family which includes: legal, and social history; educational and vocational status; psychological and medical diagnosis; and financial and social history.

HB 150 requires that a local youth placement committee convene prior to the commitment of a delinquent youth to the Department of Family Services. By meeting prior to the dispositional hearing and commitment to the department, the committee can use the Montana Guideline for Secure Care as a method of standardizing the procedures for determining the appropriate level of care for a youth based on the seriousness of the offense, prior criminal involvement and chronicity. This means that youth with similar offense histories will be treated the same statewide.

The bill also intends to include the juvenile parole officer in the youth placement committee meetings. This process eliminates interruption of case management when a youth is transferred from youth court to a correctional facility, and it allows for family involvement with the department prior to a youth entering the facility.

HB 150 allows the youth placement committee to meet when a change of placement occurs. For example, when a youth is discharged from a residential treatment facility back to the community, a youth placement committee meeting, at this critical point, will enhance communications between the providers regarding the treatment needs of a youth and services available.

I urge you to support HB 150 as a bill that will assist in improving the standardization, placement and continuum of care for delinquent youth in Montana. The process is a necessary element to support the judges in determining the appropriate level of care for delinquent youth.

Amendment to HB 150

1. Page 3, line 4.
Following: "department"
Insert: "and to the youth court judge"

H.B. 380

EXTENDED JURISDICTION

FOR JUVENILE OFFENDERS

March 13, 1995

Testimony in favor of House Bill 429

Mr. Chairman, members of the committee. For the record, my name is Mike Voeller and I represent Lee Newspapers of Montana.

We support House Bill 429 and the testimony by Charles Walk of the Montana Newspaper Association and would also like to present testimony on behalf of the bill

In the 1960s the late District Judge Lester Loble of Helena established a national reputation for his tough stance on handling juvenile offenders and his insistence that their names be a matter of public record. Today, the names of juvenile offenders, for the most part, are shrouded in secrecy.

I retired last August after 30 years with the Helena Independent Record and 36 years in the newspaper business. Most of my experience has been as an editor and/or editorial page editor. I don't know how many times during those 36 years that I have heard people express frustration with the secrecy surrounding offenses committed by juveniles.

This is just one of many cases in point. In November or December 1980 I wrote an editorial headlined "There oughtta be a law" which invited readers to submit their ideas for proposed legislation. I was surprised at the number of people who wrote, "Publish the names of juvenile offenders." Early in the 1981 session I approached former Gov. Stan Stephens who was then serving in the Montana Senate from Havre and discussed the concerns expressed by readers who responded to my editorial. Stephens sponsored legislation that eventually became Section 2 of 41-5-601. It states that when a petition is filed under 41-5-501, publicity may not be withheld regarding any youth formally charged or proceeded against as, or found to be, a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the youth were any adult.

But it seems like all too often authorities manage to circumvent this section of the law and the names of the perpetrators remain secret.

Under current law names of juvenile offenders are public record if they are cited for traffic offenses, including DUI. However, if juveniles are charged with illegal possession their names are not a matter of public record. What's the difference?

I admit that my opinion that the names of juvenile offenders should be published is based somewhat on anecdotal evidence. However, I think it has validity worthy of consideration and that the public would applaud passage of House Bill 429.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 3-13-95
BILL NO. HB 311

Amendments to House Bill No. 311
Third Reading Copy (blue)

Requested by Senator Doherty
For the Committee on Judiciary

Prepared by Valencia Lane
March 10, 1995

1. Title, lines 12 and 13.
Following: "IN" on line 12
Strike: remainder of line 12 through "VALUE" on line 13
Insert: "A TAKING"

2. Page 1, line 22.
Following: "PROPOSED"
Insert: "state"

3. Page 1, line 29 through page 2, line 3.
Strike: subsections 3 through 5 in their entirety
Insert: "(3) whether the proposed action would constitute a taking of private property in violation of the United States or Montana constitution; and"
Renumber: subsequent subsection

4. Page 2, lines 4 and 5
Following: "(6)" on line 4
Strike: remainder of line 4 through "CONSIDER" on line 5

5. Page 2, line 29.
Following: "rule"
Strike: ","
Insert: "or"
Following: "policy"
Strike: ","
Following: "~~license~~ or"
Insert: "a"

6. Page 3, lines 1 and 2.
Following: "WOULD" on line 1
Strike: remainder of line 1 through "OR" on line 2
Insert: "deprive a property owner of private property in a manner requiring compensation under the 5th and 14th amendments to the constitution of the United States or under Article II, section 29, of the"

7. Page 3, line 6.
Following: "statute;"
Insert: "or"

8. Page 3, lines 7 through 9.
Following: "proceedings" on line 7
Strike: remainder of line 7 through "property" on line 9

9. Page 4, line 19.
Following: "shall"
Strike: "give"
Insert: "assign"

10. Page 4, line 29.
Following: line 28
Insert: "(a) whether the proposed action would advance a legitimate state interest;"
Renumber: subsequent subsections

11. Page 5, line 2.
Following: "state"
Strike: "agency to one or more persons"
Insert: "to the property owner"

12. Page 5, line 3.
Following: "action"
Strike: "and the source for payment of the compensation"
Insert: "if it is found to constitute a taking"

13. Page 5, line 13.
Insert: "(4) An impact assessment required under this section may not be given deference by any reviewing court."

DATE 3-13-95

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: HB150, HB240, HB380, HB429
HB410

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
John W. Larson	District Judge Fourth District	150 380 240 429	✓	
Joe McKeon	DJS-Yth Ct	150	✓	
Charles Mack	MT. Newspapers	429	✓	
Beth Baker	Dept of Justice	240	✓	
Debbie Smith	Common Cause	410	✓ w/ amend	
Patrick A. Chenovick	MT Supreme Ct	240	✓	
Jim Jensen	MEIC	410		✓
Sharon Hoier	MT Cath Conf	240	✓	
Laurie Koutnik	Christian Coalition of MT	240	✓	
Gene Kiser	MBCC	240	✓	
Candy Wimmer	Youth Justice Council	240	✓	
" "	" " "	380	✓	
Howard Gipe	Flathead Co.	240	✓	
Dennis Paxinos	Yellowstone Co + MT Co Atty Assoc	All	✓	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE _____

SENATE COMMITTEE ON _____

BILLS BEING HEARD TODAY: _____

_____

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
Mary Alice Cook	Adv. for MT's Children	150 240 380 429	✓	
David Oliver	MT Chamber	243 470	✓	
Maureen Mary-Schwinden	WIFE	←		→

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10