MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 28, 1995, at 10:00 AM

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: None

Members Absent: None

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

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

Committee Business Summary:
Hearing:
Executive Action: HB 540, SB 136

EXECUTIVE ACTION ON HB 540

Discussion: **CHAIRMAN BRUCE CRIPPEN** stated **REPRESENTATIVE BRAD MOLNAR** had prepared a narrative on the amendments he proposed.

REPRESENTATIVE MOLNAR presented his proposed amendments, **EXHIBIT 1**, and a narrative **EXHIBIT 2**. The items on the narrative with two asterisks had substantial agreement within the group, one asterisk had general agreement, and no asterisk indicates a split decision.

On page 1, amendment 5, they changed the language to read that a parent may give a child medicine prescribed for him and to do so is not an abuse of parental right. His amendments say "require"

but he then ties it back to §53-21-145 which is the right to be free from unnecessary and excessive medication. When a child is on an outpatient basis, under the conditions given by a doctor, and as part of the treatment program, a parent can tell the child he must take the medication. The parent cannot force the medicine but can require it.

On page 1, amendment 6 opens the city and justice courts to minor youth crime. Currently the only time they would go before a city or justice court is for a fish and game violation, traffic violation, alcohol violations, or gambling violations. This amendment would include drug paraphernalia, assault, and defacing property charges, etc. The lower courts would be opened for the lower crimes for these youth.

On page 3, amendment 9 returns to the original language of age limitations. It limits the non-court consequences. The juvenile probation officer can handle the first crime; however, after that he would go before the city court or justice court. The juvenile probation officer then is to handle what the court determines. This will give the youth offender a consequence without costing anything. It will take away the situation wherein a youth will interact with a juvenile probation officer 20 or 30 times with no consequences.

CHAIRMAN CRIPPEN asked **Ann Gilkey, Department of Family Services,** to respond to the amendments.

Ms. Gilkey stated she is familiar with the amendments from both sides. With regard to amendment 5, she stated this would allow the giving of medication. She stated that §43-21-145 does not involve a treatment plan. It talks about the treating physician overseeing and administering drugs. Since statute does not discuss treatment plans, this amendment would be very confusing. They agree that parents can give medications to children; however, they are concerned with parents crossing the line of forcing medications upon children. Doctors are in charge of administering prescribed drugs. With regard to amendments 6 and 9, she commented they had worked very hard with Judge Larson of Missoula on HB 380 on issues dealing with court jurisdictions and transfer to criminal court. HB 380 deals with transfer to adult court and jurisdictional issues. HB 240 and HB 380 are the two bills which they support now regarding transfer to adult court and jurisdiction. This bill may have some ideas which would be workable over time.

David Hemion, Mental Health Association of Montana, stated the bill amended in the House handled the issue of what degree of force would be used to give prescribed medication. The section referred to deals with patient's rights and being free from unnecessary or excessive medication. A patient is assumed to have some rights to say that they are not comfortable with that degree of medication.

SENATOR MIKE HALLIGAN asked why an existing treatment plan prescribed by a doctor could not also provide that the parents have the ability to require that the medication be taken? Why could that not be accomplished under existing law?

REPRESENTATIVE MOLNAR stated that the Mental Health Bill of Rights states that all people have a right to refuse their medication and their treatment plan. The state is trying to get around that provision in the state hospital. They would like a parent to be able to say that their child must take the medication while he or she is a patient at the hospital. If this is taken to a judge, the judge can provide that a child be forcibly medicated. The parent must show that the child is an immediate harm to himself or others. The statute he pointed out goes both to in patient and out patient. It states, except in the case of outpatient, all prescriptions shall be written with a termination date which shall not exceed 30 days. Medication shall not be used as a punishment.

SENATOR HALLIGAN stated city, municipal, and justice courts are not courts of record. If children are brought in front of them for other activities, they will want an attorney present which will increase costs to local governments because they are not set up to handle the juvenile system. He had a real problem with that section.

REPRESENTATIVE MOLNAR stated the House agreed with this section. They accepted all amendments from DFS and one or two of **REPRESENTATIVE KASTEN's** amendments. The Justice of the Peace who testified at the hearing agreed. He also has letters from judges who agree. Is it wrong to expect a city or a county to provide that if a youth is caught with a half ounce of marijuana that he would go before the same judge as he would go before on an alcohol charge? The sheriff in Gallatin County stated that 75% of the violent felony offenses in his county are by juveniles and there is not a judge to hear them.

Motion/Vote: **SENATOR HOLDEN MOVED THE FIRST THREE AMENDMENTS ON HB 540.** The motion **FAILED** on oral vote.

Discussion: **REPRESENTATIVE MOLNAR** explained item 4 on the narrative. This would state that a placement must go through a placement committee. Currently, when a youth gets into trouble, the juvenile probation officer, under his own volition, will place the youth in foster care. Placement is very limited and is almost all licensed foster care. This is an extremely wide range of care. This has created a $3.5 million drain on the DFS budget. There is no attempt to place the youth with a grandparent, neighbor, etc. There are standing placement committees who should be able to okay placement of the youth. The next item on the narrative deals with shelter care. Currently shelter care may not have a locked window, door, gate or fence. If a youth wishes to walk away, by law they can do so. This would allow that if the youth escaped from shelter care,

they could go back to a detention center. Page 6 allows a youth to be held in a secure setting or be handcuffed in a police station. Federal regulations allow these youths to be held for six hours. They can be handcuffed and shackled in a squad car for transport to a police station. When they get to the police station, they cannot be handcuffed to a rail. They need to be in a room with an unlocked door and an officer watching them for the entire six hours. What is wrong with putting them in a room and locking the door or actually allowing them to be handcuffed? Some of these youths are 17 and 18 years old who can be twice the size of the police officer. A youth on angel dust can and will break handcuffs. They do not feel pain.

Ms. Gilkey responded on the 4th amendment on page 4 referring to placement committees. Probation officers are very opposed to having placement through placement committees. They need the authority to place children in foster care prior to the convening of a youth placement committee. The Department has asked for HB 150 which will have group placement committees meeting prior to adjudication and commitment to the Department. They are moving up the process. They do not want to move it up to the point where a probation officer could not act regarding placement of a youth prior to the convening of a youth placement committee. On page 5 the escape from shelter care to allow placement in secure detention would fly in the face of what a shelter care accomplishes. Shelter care is not detention. The page 6 amendment concerns the Board of Crime Control. If all the restrictions are not included, it could jeopardize their federal funding and grant money.

Gene Kiser, Board of Crime Control, stated there is six hour hold required which law enforcement has, but they still need to maintain the sight and sound separation of the secured lockup. The wording in the amendment is vague and may jeopardize their federal funding which goes to sight and sound separation of juveniles and adults in the same facility.

SENATOR HALLIGAN stated he has concern over that provision. A youth who has only been in trouble one or two times may only need a shelter care facility. With the changes in this bill, that person could be subject to the same kinds of potential lockup issues. The federal civil rights cases indicate the sight and sound issue is a major issue with the federal courts. When a shelter care facility would be made into lockup facility, there could be a problem with loosing court cases as a result of that. This bill addresses substantial changes.

REPRESENTATIVE MOLNAR stated regarding the shelter care issue he is only being realistic. He visited the shelter care facility in Billings and asked how many of the youths were taken for drug treatment. He was told they all had drug problems. The youth is put in detention the first day he is there and then is placed on the shelter care side the next day. The youth who was arrested for a violent felony the night before is in shelter care the next

day and can walk away from the facility. The page 6 amendment does not affect the sight and sound requirement. This allows that a youth can be in handcuffs while he is being booked or before he is placed into a cell for purposes of controlling the youth. He was brought in in handcuffs and will be take out in handcuffs. Handcuffs should be left on during the booking process or while they are waiting for a car to warm up. The average police officer is a parent and would not handcuff a youth for six hours if there were no problems. Law enforcement officers are dealing with youths who are in a police station for a very good reason.

SENATOR HALLIGAN asked **Mr. Kiser** how often children walk away from shelter care facilities?

Dick Meeker, Juvenile Probation for First Judicial District, stated they do not have statistics on how many children walk away from shelter care. The ones who do leave the home are not the felony serious offenders. These are usually youths who are emotionally disturbed who have a very difficult time following rules. Most of the facilities around the state are not designed the same way as the Billings facility and could not become a semi-secure facility and protect the children and the staff at the same time with the economic conditions which we have.

Motion/Vote: **SENATOR HOLDEN MOVED THE AMENDMENTS ON PAGES 4 AND 5 OF HB 540 DO NOT PASS.** The motion **CARRIED** on oral vote.

Motion: **SENATOR HOLDEN MOVED THE AMENDMENTS ON PAGE 6 OF HB 540.**

Discussion: **SENATOR BARTLETT** stated the second part of this amendment, amendment no. 8 which deals with §41-5-401, goes back to an amendment which has already failed.

Valencia Lane clarified the committee would be voting on amendment no. 8 which begins on page 6 and ends on page 7. On page 7, (d) would be excluded which would mean there would be no amendment to § 41-5-401. Amendment no. 8 would read page 27, line 6, insert section 10. At the bottom of page 6, section 11 would be crossed out.

SENATOR DOHERTY asked if they were striking (a)(b)(c) and (d) and inserting the new language. That would be contrary to what the sponsor wanted. That would be a radical change in terms of current law.

REPRESENTATIVE MOLNAR stated that the six hours which is allowed is considered holding as well as detention.

Vote: The motion **FAILED** on oral vote.

Discussion: **REPRESENTATIVE MOLNAR** explained the amendments on page 7, no. 9. Under current statutes, if a youth spends two

days in detox due to a serious drug overdose and then explains the drugs he was using and where he bought or sold the drugs to the county attorney or the police officer but does not tell the judge, it is not admissible. This would allow that a judge may order a urine analysis to determine whether or not the confession was valid. The amendment on page 8 deals with petitions and affidavits focusing on allegations against offender and proven facts. Currently, if a parent finds drug paraphernalia and takes it to the police station, they are not able to do anything. This would keep the focus on the youth.

Ms. Gilkey stated the amendment simply wanted some probable cause finding by the court prior to the order of a urinalysis so that a child's rights are protected. It would be in the court's discretion to decide if it was constitutional to charge a youth with a violation of a drug offense and whether a subsequent ordered urinalysis on a regular basis would be violating the child's rights. The House amendment stated that the court had to make an actual finding of some chemical violation prior to ordering urinalysis. This deals with youth's rights. The petitions she has seen are simply allegations which have not been proven. This may tie the hands of the county attorney.

Motion/Vote: **SENATOR HOLDEN MOVED THE AMENDMENTS ON PAGES 7 AND 8 OF HB 540 DO NOT PASS.** The motion **CARRIED** on oral vote.

Discussion: **REPRESENTATIVE MOLNAR** explained the amendments on page 9, 1(). Currently, if a youth has an SED label, even though he knows it is not right to deal drugs, etc., he knows that he cannot go to Pine Hills. He may go into day treatment. The SED label is overly broad. A truly mentally ill youth will not go to Pine Hills. This amendment would not take out any current practice.

Ms. Gilkey stated the language stricken on page 9 was negotiated long and hard with Montana Advocacy Program and others who were very concerned about seriously mentally ill youth at Pine Hills and Mountain View Schools. They were threatened with federal lawsuits. They tied this language into existing statutes and definitions and in judicial process to where courts make the determination whether a youth is mentally ill or seriously mentally ill. There are youth at both facilities who are SED. When they cross the threshold to seriously mentally ill, they do not have the capability for them at a state correctional facility. The amended language uses mental disease or mental defect which are not tied into current definitions in law. They prefer the existing language which they know how to use and negotiate with the concerned advocates for the mental health rights of children.

Mr. Hemion stated the other issue is whether a facility like Pine Hills has the ability to provide any treatment for seriously mentally ill children. If there is any possibility that those children would be placed there, that would put a different

program in need of being funded and organized for that facility. They would like to keep the law the way it is.

SENATOR BARTLETT commented that page 12, (15)(a) states that each county shall establish public works projects for offending youth. She asked **Gordon Morris, MACO,** what the impact of that would be on the counties. Are there counties which do not have public works projects for offending youth? **Mr. Morris** stated that in terms of adult corrections there would be the community service option afforded to local governments. They do not have an existing youth counterpart to that. They would need to provide necessary supervision and take into account the liabilities associated with being underage in a working environment.

SENATOR HALLIGAN asked if there would be federal issues to deal with in mixing populations of seriously mentally ill youth with violent offenders at Pine Hills.

Ms. Gilkey stated that was the primary issue of the Department of Criminal Juvenile Justice of the Civil Rights Division of the Federal Government. They were looking very closely at that issue and would use it as the basis for their lawsuit. The youth's civil rights would be violated by housing mentally ill youth in a facility which would not have the staff or expertise to monitor or treat a youth who is seriously mentally ill.

SENATOR HALLIGAN stated the Office of Juvenile Justice just completed an investigation. He asked if there was language in their report which would deal with this issue?

Ms. Gilkey stated they continue to be interested in this issue and all their correspondence continues to stress this point.

Ms. Lane stated that what is being discussed right now is amendment no. 11 which begins on page 8 and does not end until page 9. This would be listed as page 9 on the narrative.

SENATOR BARTLETT stated that page 8 also included amendment no. 11.

Ms. Lane stated that on page 8 the very first amendment goes to another amendment. If that was accepted, she would have to put the language in. If (15) was not accepted, she would leave that out of the amendment. (1)(a)(i) is not discussed in the narrative.

SENATOR BARTLETT asked if (1)(a)(i) would be part of the motion to amend?

CHAIRMAN CRIPPEN stated that would not be included.

The committee offered no motion to act on the above amendments.

REPRESENTATIVE MOLNAR explained the second amendment on page 9. The youth involved in youth in need of care are youth who have a lot of status offenses. However, quite often these are the most serious charges a youth may face. This amendment states a youth in need of supervision may not be placed in a youth correctional facility. Currently, a delinquent youth can be sent to a state facility. If the charge is youth in need of supervision, that youth may not be sent to a state facility. This would have the judge go with the actual facts of what the crime would be.

Ms. Gilkey stated this amendment would not address the problem. Currently a judge decides where a youth should go. The stricken language deals with a commission of an act which would not be a criminal offense if committed by an adult. Assault is a criminal act if committed by an adult. The youth they do not want placed in a state youth correctional facility are the pure status offenders. If an adult possess alcohol, that is not a crime. If a juvenile does, it is. Those are the juvenile offenses for which they do not want a youth placed in a youth correctional facility with the more violent youthful offenders. This bill would not address **REPRESENTATIVE MOLNAR's** concern. Judges currently could place a delinquent youth or youth in need of supervision who had committed criminal acts in a state youth correctional facility. It is the youth who have not committed a criminal act that cannot be placed there. She urged this amendment not be accepted.

CHAIRMAN CRIPPEN asked **SENATOR HALLIGAN** how the youth would be charged?

SENATOR HALLIGAN stated there would be discretion on the part of the probation officer. If the probation officer feels this can be handled through a youth in need of supervision process, that is what he will recommend. If the child is out of control, the criminal charge could be made.

Ms. Gilkey stated that if a youth is placed on probation as a youth in need of supervision, violating the terms of that probation could cause the youth to be labeled a delinquent youth. If the violation of their probation is truancy, they still have not created a crime. A judge can impose criminal contempt of court, which is a crime and then they would be sent to a correctional facility. There are ways to get out of control youths in need of supervision into a secure state youth correctional facility.

Motion/Vote: **SENATOR HOLDEN MOVED THE AMENDMENTS ON PAGES 9 2(A) DO NOT PASS.** The motion **CARRIED** on oral vote with **SENATOR JABS** voting **"NO".**

REPRESENTATIVE MOLNAR explained the amendments on page 12. The point system would give a measurable consequence to a youth at the entry level into crime. Everyone agrees that we are wasting our money trying to stop crime by nipping it in the blossom part

of a career. When a youth commits his first status offense, he would be given a point to let him know that he is being watched. A status offense is one point and a felony is three points. The average felony gets nothing right now. A second felony would be six points and he would then get five days of lock down. The counties feel this would be onerous on them. If five days detention for two felonies is onerous, what are they currently doing? There are youths with up to six felonies who do not even see a judge. The predatory youth program would deal with identifying the ring leaders. This would not be the youth who is caught with the drugs. It would be the youth who sold it to him. This would not be the person who stole the car; however, it would be the youth who talked him into it and had a guaranteed buyer. When they set up this program in California, the juvenile crime rate dropped 70%. Juvenile crime in Yellowstone County is going up 100% per biennium. In Gallatin County 75% of the violent felonies involve juveniles. If a youth has a substance abuse problem, they put them in a treatment center.

Mr. Morris stated that last week they sent out a questionnaire to the counties. Right now counties have a 96 hour holdover capability. This would expand that by another 24 hours with the five day provision. Lincoln County commented that if they had to transfer the youths to Kalispell where the regional facility is located for purposes of holding them for five days, the total new cost to Lincoln County would amount to $39,930. Blaine County felt the point system would impact them financially. They do not lock up youth in detention for punishment. Detention lacks programs to rehabilitate the youth. Yellowstone County stated the impact of this proposal would affect them in the amount of $500,000 relative to construction of four additional cells. They would anticipate a need for an additional eight. Other counties have indicated they are unable to support a free standing detention facility.

REPRESENTATIVE MOLNAR stated that most of the concerns of the counties were from the bill as originally written which allowed incarceration in an adult jail. The bill currently takes the cap off of five regions. Some of the counties are spending $25,000 to $30,000 a year transporting these youth to get them to a detention center. Currently fifty percent of the juvenile probation officers do not have community service as an option.

SENATOR HALLIGAN asked about the accessibility of the OJJDP money?

Mr. Kiser stated there are federal requirements attached to those juvenile justice funds. The governor has to appoint a committee who then receives the funds and the committee must have certain constituencies on it to represent the youth in Montana as well as elected officials and local government. The committee makes recommendations as to how the funds will be used through a grant process. This bill mandates that the Board of Crime Control shall appropriate those funds to county government. That

presents a problem of running the risk of not meeting the requirements set out by the federal government. They are also required to develop a three year plan which is updated every year.

SENATOR HALLIGAN stated the lottery money, along with the OJJDP money, went for shelter care, regional detention, and transportation.

Mr. Kiser stated that is primarily where the money goes. It goes for the detention facilities for the five regions which were established. SB 83 has taken the earmarked funds and placed them into the general fund.

SENATOR HALLIGAN asked if every county applied for assistance to offset juvenile costs?

Mr. Kiser stated that this is set up into five regions within the state.

SENATOR HALLIGAN asked if there were any problems with the existing disbursement of funds in the regional detention districts.

Mr. Kiser answered there are some problems. They introduced a bill which would allow them to assist the jurisdictions which have a overrun in their budget based upon an adverse impact of detaining juveniles.

SENATOR JABS stated that it appeared that the DFS is resisting every effort to get tougher on juvenile crimes.

Ms. Gilkey stated the parties worked for weeks with **REPRESENTATIVE MOLNAR** to address his revision of the Youth Court Act. These amendments are new and they are asked again to compromise. They have compromised as far as they can without jeopardizing the current system too much. This section costs money to the counties and to the state. There are violations of youths rights. It also has determinate sentencing which will be a direct cost to the state if the state has no control of the release of youth. For the last three years the DFS has been working with the Center for the Study of Youth Policy. For six months they field tested a risk assessment which is a point system. The probation officers are using it. They did not feel it was ready to be codified. Their current risk assessment conflicts with this point system.

Motion/Vote: **SENATOR HOLDEN MOVED THE AMENDMENTS ON PAGE 12 (15)-(18) DO PASS.** The motion **FAILED** on oral vote.

Discussion: **REPRESENTATIVE MOLNAR** explained the amendments on page 13, schools to reject placement of youth with active chemical or criminal issues. If a youth has been convicted of alcohol or drug possession, the schools may be notified if there

is a program in place for the youth. If the youth is selling drugs, the school is not allowed to know. If the youth is a violent sexual offender, he is taken out of one school and placed into another without informing the school of the problem. The school is not aware of the need to watch the youth. This amendment deals with a youth having an active chemical or criminal issue.. The school would be notified and can decide under what conditions they can accept or reject the youth. When a youth is moved from one school to another, all that is accomplished is to spread the drug problem. Possible options would be alternative schools, private schools, home schooling, or sending the homework home. The youth is not dealing drugs in school. The youth is removed until he is rehabilitated and ready to learn without being a danger to the other children.

CHAIRMAN CRIPPEN stated he had a hard time reading that section and asked **REPRESENTATIVE MOLNAR** to explain his intent.

REPRESENTATIVE MOLNAR commented this dealt with a youth involved with active issues relating to drug use or crimes who has been placed in foster care. The court would notify the school of the issues involved with that youth and the school may refuse to accept the youth as a student.

Ms. Lane stated it should state this addresses the school the youth will attend during foster care placement.

REPRESENTATIVE MOLNAR explained that his intent addresses when a youth is picked up for a crime the school be notified and when transferred to another school, the school would have the right to reject the placement and could make up the rules of acceptance or refusal of such youth. If the rules are not in effect at the time, the youth would be grandfathered in.

Ms. Gilkey commented there would be some legal issues regarding this section. In (4) an existing statute allows the sharing of the identity of a youth. This is a disclosure to the school officials in which that student is enrolled. The school then needs to look at their policies regarding substance abuse and whether or not that youth can play basketball or football or needs treatment. If a youth is under 16 and has active alcohol problems and is in foster care, providing the school with this information may violate the Montana State Constitution of the right to an education to reject them for that disability. Alcohol addiction is a disability. Schools could run into problems. It would be good for the schools to adopt policies related to this issue.

SENATOR DOHERTY stated if these youth are placed in foster care and then the school is allowed to refuse to accept that youth, how would the foster care parents deal with this as a practical matter?

Ms. Gilkey stated that would be a problem. The schools can find out about any child with alcohol issues under existing law and deal with them appropriately. Allowing the schools to reject students in foster care could cause extreme hardship on finding placement for these youth.

CHAIRMAN CRIPPEN asked **Ms. Gilkey** if keeping the last sentence to the amendment would cause any problems. This dealt with each school district adopting rules to govern acceptance or refusal of such a youth.

Ms. Gilkey stated they would need to define "such youth" and make other clarifications. The rulemaking would be a fine idea.

Motion: **SENATOR HOLDEN MOVED THE AMENDMENTS ON PAGE 13, Section 18(b).**

SENATOR HALLIGAN stated there would be a practical problem because the school districts have a compulsory education requirement. This would lead to a constitutional problem.

Vote: The motion **TIED** on oral vote.

CHAIRMAN CRIPPEN stated they passed a bill which dealt with the amendment on page 14.

REPRESENTATIVE MOLNAR stated everyone has agreed that they need immediate, enforceable and consistent consequences. Picking up a youth only to release him reinforces to that youth that nothing will happen.

Motion/Vote: **SENATOR HOLDEN MOVED THE AMENDMENTS ON PAGE 14 DO NOT PASS.** The motion **CARRIED** on oral vote with **SENATOR JABS** voting **"NO".**

REPRESENTATIVE MOLNAR explained the additional amendments, **EXHIBIT 3.** In Laurel they have two new cells which are secure and can handle incarceration of youths. They are not licensed because they are adult facilities and there is a need for the sight and sound separation. They normally have two people per month who stay overnight. On the days adults are not there, they could incarcerate juvenile offenders. This amendment would mandate that the Department of Family Services would make the rules which would allow for a provisional license providing that there are no adults in the cells they could then be used for youth.

SENATOR HOLDEN asked **REPRESENTATIVE MOLNAR** if youths would be next to adults in these cells.

REPRESENTATIVE MOLNAR stated the sight and sound provision would still have to be maintained.

Mr. Kiser stated one of the problems would be in the supervision and training necessary for the personnel. The site in Laurel is probably supervised by a dispatcher who has had no training for supervising youth in incarceration.

REPRESENTATIVE MOLNAR stated the training requirement is 16 hours. This is not very much.

SENATOR BAER stated in Flathead County the jails are crammed, they do not know how to deal with the influx of people in their jails. Would they be required to accept the youths?

REPRESENTATIVE MOLNAR answered this would be discretionary. They would have a choice on whether or not to apply for the licensing necessary.

SENATOR HALLIGAN commented he had a problem with the phrase "not to exceed 10 days" being placed into the statute because the wording came out of nowhere. They are trying to deal with federal rules and other requirements they have been working with for some time.

Motion/Vote: **SENATOR HOLDEN MOVED THE LAST AMENDMENT DO PASS.** The motion **FAILED** on oral vote.

SENATOR BAER stated that in recent years they had a halfway house for youth who attended the Bigfork school system and caused immeasurable grief to the student body and staff by their sometimes criminal actions. He believed schools should have the discretion to avoid that type of situation and also to have the duty to protect the good children from the bad children.

Vote: **SENATOR BAER** voted **"YES"** on the amendment on page 13.

EXECUTIVE ACTION ON SB 136

Discussion: **SENATOR HOLDEN** stated he had three sets of amendments he wished to present separately, **EXHIBIT 4.** The first amendment was on page 6, line 25. He suggested striking the words "affecting the constituents" and inserting "required in legislative rules". This would pinpoint the language to the legislative rules.

SENATOR BAER commented that the intent for the language was to require legislators to vote on matters even though that might represent an apparent conflict which had been properly disclosed by that legislator to the appropriate person. He agreed the language was somewhat vague.

SENATOR DOHERTY commented that it was a good amendment. If constituents had a meeting and wanted their legislator there, this would say that a legislator had a responsibility to his or her constituents to participate in all matters respecting the constituents. This language could give them a cause of action

against their legislator for violating the public trust which they hold. This amendments narrows the language down to voting.

SENATOR HALLIGAN asked if this language only covered the time frame during the session or if it also reached to matters after the session.

Ms. Lane stated if might clarify matters to insert the word "legislative" after the word "all".

CHAIRMAN CRIPPEN referred to a meeting of all Yellowstone County Legislators called by **REPRESENTATIVE BOLLINGER** during the session, would every legislator be required to attend?

SENATOR BISHOP stated this was to apply only during a legislative session.

SENATOR HOLDEN stated if this language stated "legislative rules" there would be a book to refer to which explained exact rules.

Motion/Vote: **SENATOR HOLDEN MOVED TO AMEND SB 136.** The motion **CARRIED** on oral vote.

Discussion: **SENATOR HOLDEN** explained amendment 2. Amendment 2 would strike the Ethics Commission from the bill. He felt the Commissioner of Political Practices could handle the implementation of this bill. The people who would want to be on the commission would be politically interested.

SENATOR BAER stated both subcommittees recommended this commission.

SENATOR NELSON stated this was a very important part of the bill in both subcommittees. It was felt that the Commissioner of Political Practices could carry things up to a certain point, but when matters were beyond that there would need to be a commission to be a guidance factor and to help the Commissioner. As far as the political activities on page 17, someone who has been living in a vacuum would have no interest in serving on the commission. The restrictions would only apply for the four years the member served on the committee.

SENATOR HALLIGAN commented that the commission would be the buffer needed to make sure that all the new powers which would be granted would be administratively handled in a fair and unbiased matter. The public trust is worth the cost.

Motion/Vote: **SENATOR HOLDEN MOVED TO AMEND SB 136.** The motion **FAILED** on oral vote.

Discussion: **SENATOR HOLDEN** explained amendment 3. Amendment 3 dealt with filing tax returns. He stated more potentially good candidates may decide not to file for office without this amendment. Although the language states this would not be

disclosed to the public unless it is essential to do so, he saw where this could become a political football depending on who was sitting on the commission and who the commissioner was.

SENATOR NELSON stated it was her understanding that a copy of the tax return would not be filed. Instead, this would involve filing an affidavit which said that a tax return had been filed.

SENATOR BISHOP commented the Department of Revenue testified twice regarding this and the committee felt it important that the candidate file a tax return.

SENATOR DOHERTY stated this would also include public employees. The Department of Revenue will come down on people who haven't filed taxes. This would cause a double punishment. He felt a person should only be beheaded once.

Motion/Vote: **SENATOR HOLDEN MOVED TO AMEND SB 136.** The motion **CARRIED** on oral vote.

Motion: **SENATOR HALLIGAN MOVED TO FURTHER AMEND SB 136. (EXHIBIT 5)**

Discussion: **SENATOR HALLIGAN** explained the amendment would strike the words "Requiring reporting of membership in organizations infringes upon the right to privacy and free association." He feels this language is unconstitutional.

SENATOR BAER stated the subcommittees felt this was important. He does not see it as unconstitutional in that it is not a condition of employment. Under the compelling state interest test, it is necessary to require this to avoid obvious conflicts of interest in people who will have discretionary powers.

SENATOR GROSFIELD stated this was discussed at some length in subcommittee and they agreed that this was a good provision. This does not say that these individuals cannot belong to any organization. It simply deals with disclosure.

SENATOR DOHERTY commented this applies to all public employees. In the case where a social worker would provide expert testimony to a judge about whether an individual's parental rights should be terminated or not and the social worker happens to belong to an organization that believes that mixed raced marriages are improper, and as a result of that belief, the social worker shades testimony about whether that individual's parental rights should be terminated. There are adequate safeguards in the law to determine a bias or prejudice on the part of anyone providing information or performing their duty. To require people to self report about their religion or organizations is reaching beyond the scope of their duties.

SENATOR BISHOP stated if a public employee is biased one way or another, it would take a period of time to deal with that.

SENATOR HALLIGAN commented if he were on the board of directors of a non-profit organization which had taken some specific action to sue the very agency he was involved with, he ought to be notifying his supervisor of his involvement in that non-profit. However, if he pays $25 a year to an organization and has no control over their decisions, that would not be anyone's business.

Vote: The motion **FAILED** on oral vote.

Motion: **SENATOR BARTLETT MOVED TO AMEND SB 136.**

Discussion: **SENATOR BARTLETT** explained her amendment. On page 9, lines 1 and 2, she would strike (b). This requires the supervisor to disclose the information about the employee to an interested person upon the person's request. There is nothing in the ethics legislation before us which would identify who an interested person would be and what that might be limited to. It is one thing to disclose that to a supervisor; however, it is another thing to require the supervisor to disclose the information to anyone who may be interested.

SENATOR HOLDEN asked if this would include local employees?

SENATOR BISHOP stated this would not go to local government.

SENATOR GROSFIELD explained this would also include a potential conflict of interest would have to exist. There only needs to be a disclosure when there is a potential conflict.

Vote: The motion **FAILED** on oral vote.

Motion: **SENATOR NELSON MOVED TO AMEND SB 136.**

Discussion: **SENATOR NELSON** explained the amendment which would be on page 5, line 11. She would delete the words "it costs in" and insert "the salary for". This would read, "(i) the public officer, legislator, or public employee reimburses the public entity from which the employee is absent for the salary for performing the function from which the officer, legislator, or employee is absent;". Without the change, we could be tying in benefits.

Vote: The motion **CARRIED** on oral vote.

Motion: **SENATOR DOHERTY MOVED TO AMEND SB 136. (EXHIBIT 6)**

Discussion: **SENATOR DOHERTY** stated that he would withdraw amendment 3. Amendments 1 and 6 deal with private interest. On page 3, line 8, following "interest" he would insert "contract or lease". Explaining amendment 6, he felt if the interest in real property needed to be disclosed there could be an interest in contract or lease on real property which may affect the individual the same as being owner of record.

SENATOR GROSFIELD stated they discussed real property in subcommittee. They did not see a need to disclose real property.

Substitute Motion: **SENATOR GROSFIELD MOVED TO AMEND SB 136 BY STRIKING LINE 8 ON PAGE 3.**

SENATOR BARTLETT stated that the subcommittee reached the conclusion that it should be left in because while under the disclosure requirements on page 13, you would not have to disclose the house that you owned. However, there could be an interest in potential ethics issues if you owned a 150 apartment complex.

SENATOR GROSFIELD stated that if the individual's income was from the apartments, that would come out in the disclosure anyway.

SENATOR BISHOP stated he believed it was more important to have a contract or lease included than an interest in real property. An interest in real property can be found by searching records.

SENATOR GROSFIELD withdrew his substitute motion.

Vote: The motion on amendment nos. 1 and 6 **FAILED** on oral vote.

Motion: **SENATOR DOHERTY FURTHER MOVED TO AMEND SB 136.**

Discussion: **SENATOR DOHERTY** explained amendment no. 2 which would add the words "or entity" as a public employee. Entities do business with the state which are corporations, partnerships, etc.

Ms. Lane stated there was a general statute which stated that person includes both individuals, corporations, partnerships, etc.

SENATOR DOHERTY withdrew the amendment.

Motion: **SENATOR DOHERTY FURTHER MOVED TO AMEND SB 136.**

Discussion: **SENATOR DOHERTY** explained amendment nos. 4 & 5. This language may have a chilling effect on getting people to serve on hospital or library boards which would be a non-profit. Non-profits have a difficult time attracting people to boards.

SENATOR GROSFIELD stated there are a lot of cases where a non-profit may be just as much involved in a conflict as a for profit entity.

Vote: The motion on amendment nos. 4 and 5 **FAILED** on oral vote.

Motion: **SENATOR BAER MOVED SB 136 DO PASS AS AMENDED.**

Vote: The motion **CARRIED** on oral vote.

EXECUTIVE ACTION ON HB 540

Discussion: **CHAIRMAN CRIPPEN** stated on page 13, Section 18 (b) the two votes which were held opened changed the vote to 6 to 5 in favor to amend.

Motion: **SENATOR HALLIGAN MOVED HB 540 AS AMENDED BE NOT CONCURRED IN.**

Discussion: **SENATOR HALLIGAN** stated the amendment violated the Americans with Disabilities Act. This would allow school districts to reject youths with an alcohol problem. They could accept the last sentence and allow the school districts to deal with some discretion.

CHAIRMAN CRIPPEN stated there could be a floor amendment which would deal with allowing school districts to have their own rules. The rest could be stricken.

Motion: **SENATOR BISHOP MOVED TO RECONSIDER THE VOTE ON THE AMENDMENT ON PAGE 13.**

Vote: The motion **CARRIED** on oral vote.

SENATOR HALLIGAN WITHDREW HIS MOTION HB 540 AS AMENDED BE NOT CONCURRED IN.

Motion: **SENATOR HOLDEN MOVED NOT TO ACCEPT THE AMENDMENT ON PAGE 13 OF HB 540.**

Vote: The motion **CARRIED** on oral vote.

Motion: **SENATOR HALLIGAN MOVED HB 540 BE CONCURRED IN.**

Vote: The motion **CARRIED** on oral vote.

ADJOURNMENT

Adjournment: The meeting adjourned at 1:15 p.m.

SENATOR BRUCE D. CRIPPEN, Chairman

JUDY J. KEINTZ, Secretary

BC/jjk

1

MONTANA SENATE
1995 LEGISLATURE
JUDICIARY COMMITTEE

ROLL CALL DATE 3/08/95

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

Strike: section 14 in its entirety
Renumber: subsequent sections

10. Page 15, line 11.
Strike: "17"
Insert: "16"

11. Page 18, lines 12 and 14.
Strike: "22"
Insert: "21"

-END-

SENATE STANDING COMMITTEE REPORT

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration SB 136 (first reading copy -- white) respectfully report that SB 136 be amended as follows and as so amended do pass.

Signed: _____
Senator Bruce Crippen, Chair

That such amendments read:

1. Title, line 27.
Strike: "PROVIDING THAT FILING TAX RETURNS IS AN ETHICAL REQUIREMENT;"

2. Page 4, line 14.
Strike: "16 and 17"
Insert: "15 and 16"

3. Page 4, line 15.
Strike: "15"
Insert: "14"

4. Page 4, line 16.
Strike: "22"
Insert: "21"

5. Page 5, line 11.
Following: "for"
Strike: "its costs in"
Insert: "the salary paid for"

6. Page 6, line 25.
Following: line 24
Strike: "affecting the constituents"
Insert: "as required in the joint rules of the legislature"

7. Page 7, line 20.
Strike: "15"
Insert: "14"

8. Page 9, line 14.
Strike: "16"
Insert: "15"
Strike: "22"
Insert: "21"

9. Page 14, lines 7 through 13.

RV Amd. Coord.
SD Sec. of Senate

SENATE STANDING COMMITTEE REPORT

March 28, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 540 (third reading copy -- blue), respectfully report that HB 540 be concurred in.

Signed: _____
Senator Bruce Crippen, Chair

Amd. Coord.
Sec. of Senate

Senator Carrying Bill

711334SC.SPV

Amendments to House Bill No. 540
Third Reading, Second Printing, Copy

Requested by Rep. Molnar
For the Committee on the Judiciary

Prepared by John MacMaster
March 27, 1995

1. Title, line 7.
Following: "~~41-5-301,~~"
Insert: "41-5-203, 41-5-206, 41-5-301,"
Following: "~~41-5-305,~~"
Insert: "41-5-305,"
Following: "~~41-5-401,~~"
Insert: "41-5-313, 41-5-401,"

2. Title, line 8.
Following: line 7
Insert: "41-5-521,"
Following: "~~41-5-601,~~"
Insert: "41-5-523, 41-5-529, 41-5-601,"
Following: "~~41-5-703,~~"
Insert: "41-5-703,"

3. Title, line 9.
Following: "~~41-5-810,~~"
Strike: "AND"
Insert: "41-5-810,"
Following: "41-5-811,"
Insert: "AND 41-5-812,"

4. Page 10, line 20.
Strike: "give"
Insert: "require"
Following: "~~prescribed~~"
Insert: "to take"

5. Page 10, line 21.
Following: "CHILD"
Insert: "as part of a treatment plan pursuant to 53-21-145"

6. Page 23, line 5.
Insert: "**Section 4.** Section 41-5-203, MCA, is amended to read:
"41-5-203. Jurisdiction of ~~the court~~ courts. (1) ~~Except as provided in subsection (2), the~~ The court has exclusive original jurisdiction of all proceedings under the Montana Youth Court Act in which a youth is alleged to be a delinquent youth, a youth in need of supervision, or a youth in need of care ~~or concerning any person under 21 years of age charged with having violated any law of the state or ordinance of any city or town other than a traffic or fish and game law prior to having become 18 years of age~~.
(2) Justice, municipal, ~~and~~ city, and district courts have

~~concurrent~~ jurisdiction ~~with the youth court~~ over ~~all alcoholic beverage and gambling violations alleged to have been committed by a youth~~ a person under 21 years of age who is charged with a violation of any state criminal or other law or municipal ordinance to the extent that the statutes relating to those courts in Title 3 and other titles give them jurisdiction over the violation charged."

Section 5. Section 41-5-206, MCA, is amended to read:

"41-5-206. Transfer to criminal court. (1) After a petition has been filed alleging delinquency, the court may, upon motion of the county attorney, before hearing the petition on its merits, transfer the matter of prosecution to the district court if:

(a) (i) the youth charged was 12 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act would constitute sexual intercourse without consent as defined in 45-5-503, deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult; or

(ii) the youth charged was 16 years of age or more at the time of the conduct alleged to be unlawful and the unlawful act is one or more of the following:

(A) negligent homicide as defined in 45-5-104;

(B) arson as defined in 45-6-103;

(C) aggravated or felony assault as defined in 45-5-202;

(D) robbery as defined in 45-5-401;

(E) burglary or aggravated burglary as defined in 45-6-204;

(F) aggravated kidnapping as defined in 45-5-303;

(G) possession of explosives as defined in 45-8-335;

(H) criminal sale of dangerous drugs as defined in 45-9-101;

(I) criminal production or manufacture of dangerous drugs as defined in 45-9-110;

(J) attempt, as defined in 45-4-103, of any of the acts enumerated in subsections (1)(a)(ii)(A) through (1)(a)(ii)(I);

(b) a hearing on whether the transfer should be made is held in conformity with the rules on a hearing on a petition alleging delinquency, except that the hearing will be conducted by the youth court without a jury;

(c) notice in writing of the time, place, and purpose of the hearing is given to the youth, his counsel, and his parents, guardian, or custodian at least 10 days before the hearing; and

(d) the court finds upon the hearing of all relevant evidence that there is probable cause to believe that:

(i) the youth committed the delinquent act alleged;

(ii) the seriousness of the offense and the protection of the community require treatment of the youth beyond that afforded by juvenile facilities; and

(iii) the alleged offense was committed in an aggressive, violent, or premeditated manner.

(2) In transferring the matter of prosecution to the district court, the court may also consider the following

factors:

(a) the sophistication and maturity of the youth, determined by consideration of the youth's home, environmental situation, and emotional attitude and pattern of living;

(b) the record and previous history of the youth, including previous contacts with the youth court, law enforcement agencies, youth courts in other jurisdictions, prior periods of probation, and prior commitments to juvenile institutions. However, lack of a prior juvenile history with youth courts will not of itself be grounds for denying the transfer.

(3) The court shall grant the motion to transfer if the youth was 16 years old or older at the time of the conduct alleged to be unlawful and the unlawful act would constitute is deliberate homicide as defined in 45-5-102, mitigated deliberate homicide as defined in 45-5-103, or the attempt, as defined in 45-4-103, of either deliberate or mitigated deliberate homicide if the act had been committed by an adult.

(4) Upon transfer to district court, the judge shall make written findings of the reasons why the jurisdiction of the youth court was waived and the case transferred to district court.

(5) The transfer terminates the jurisdiction of the youth court over the youth with respect to the acts alleged in the petition. A youth may not be prosecuted in the district court for a criminal offense originally subject to the jurisdiction of the youth court unless the case has been transferred as provided in this section.

(6) Upon order of the youth court transferring the case to the district court, the county attorney shall file the information against the youth without unreasonable delay.

(7) Any offense not enumerated in subsection (1) that arises during the commission of a crime enumerated in subsection (1) may be:

(a) tried in youth court;

(b) transferred to district court with an offense enumerated in subsection (1), upon motion of the county attorney and order of the youth court judge.

(8) If a youth is found guilty in district court of any of the offenses transferred by the youth court and is sentenced to the state prison, the commitment must be to the department of corrections and human services. The department shall confine the youth in whatever institution it considers proper, including a state youth correctional facility under the procedures of 52-5-111; however, no youth under 16 years of age may be confined in the state prison.

(9) (a) A youth's first violation of a state criminal or other law or municipal ordinance that is a misdemeanor may be handled by the probation officer pursuant to 41-5-401, or the probation officer may refer the youth to the county attorney, who may either file a petition in the youth court or file a criminal complaint or other appropriate proceeding in a court having jurisdiction over the violation.

(b) Upon a second or subsequent violation, the county attorney may file a petition, complaint, or other proceeding as provided in subsection (9)(a).

~~(9)~~(10) A youth ~~whose case is transferred to district court~~

who is charged with a crime may not be detained or otherwise placed in a jail, prison, or other adult detention facility before or after final disposition of ~~his~~ the case unless:

(a) alternative facilities do not provide adequate security; and

(b) the youth is kept in an area that provides physical, as well as sight and sound, separation from adults accused or convicted of criminal offenses."

Section 6. Section 41-5-301, MCA, is amended to read:

"**41-5-301. Preliminary investigation and disposition.** (1) Whenever the court receives information from any agency or person, based upon reasonable grounds, that a youth is or appears to be a delinquent youth or a youth in need of supervision or, being subject to a court order or consent order, has violated the terms ~~thereof~~ of an order, a probation officer shall make a preliminary inquiry into the matter.

(2) The probation officer may:

(a) require the presence of any person relevant to the inquiry;

(b) request subpoenas from the judge to accomplish this purpose;

(c) require investigation of the matter by any law enforcement agency or any other appropriate state or local agency.

(3) If the probation officer determines that the facts indicate a youth in need of care, the matter ~~shall~~ must be immediately referred to the department.

(4) (a) The probation officer in the conduct of the preliminary inquiry shall:

(i) advise the youth of the youth's rights under this chapter and the constitutions of the state of Montana and the United States;

(ii) determine whether the matter is within the jurisdiction of the court;

(iii) determine, if the youth is in detention or shelter care, whether ~~such~~ the detention or shelter care should be continued based upon criteria set forth in 41-5-305.

(b) Once relevant information is secured, the probation officer shall:

(i) determine whether the interest of the public or the youth requires that further action be taken;

(ii) terminate the inquiry upon the determination that no further action be taken; and

(iii) release the youth immediately upon the determination that the filing of a petition is not authorized.

(5) The probation officer upon determining that further action is required may:

(a) provide counseling, refer the youth and ~~his~~ the youth's parents to another agency providing appropriate services, or take any other action or make any informal adjustment that does not involve probation, ~~or~~ detention, treatment, or a placement;

(b) provide for treatment or adjustment involving probation or other disposition authorized under 41-5-401 through 41-5-403, provided ~~such~~ the treatment or adjustment is voluntarily accepted

by the youth's parents or guardian and the youth, and provided further that ~~said~~ the matter is referred immediately to the county attorney for review and that the probation officer proceed no further unless authorized by the county attorney or a youth placement committee, whichever is appropriate; or

(c) refer the matter to the county attorney for filing a petition charging the youth to be a delinquent youth or a youth in need of supervision or for filing a complaint or other proceeding under 41-5-206.

(6) The county attorney may either:

(a) apply to the youth court for permission to file a petition charging a youth to be a delinquent youth or a youth in need of supervision. The application must be supported by ~~such~~ evidence as the youth court may require. If it appears that there is probable cause to believe that the allegations of the petition are true, the youth court shall grant leave to file the petition.

(b) file a complaint or other proceeding under 41-5-206.

(7) A petition, complaint, or other proceeding charging a youth held in detention must be filed within 7 working days from the date the youth was first taken into custody or ~~the petition shall be dismissed and~~ the youth must be released unless good cause is shown to further detain ~~such~~ the youth.

(8) If ~~no~~ a petition, complaint, or other proceeding is not filed under this section, the complainant and victim, if any, ~~shall~~ must be informed by the probation officer of the action and the reasons ~~therefor~~ for the action and ~~shall~~ must be advised of the right to submit the matter to the county attorney for review. The county attorney, upon receiving a request for review, shall consider the facts, consult with the probation officer, and make the final decision as to whether a petition, complaint, or other proceeding ~~shall be~~ is to be filed.""

Renumber: subsequent sections

7. Page 24, line 16.
Insert: "**Section 8.** Section 41-5-305, MCA, is amended to read:

"41-5-305. Criteria for placement of youth in secure detention facilities or shelter care facilities. (1) A youth may not be placed in a secure detention facility unless:

(a) ~~he~~ the youth has allegedly committed ~~an act that if committed by an adult would constitute~~ a criminal offense ~~and the alleged offense is one~~ specified in 41-5-206;

(b) ~~he~~ the youth is alleged to be a delinquent youth and:

(i) ~~he~~ the youth has escaped from a shelter care facility, correctional facility, or secure detention facility;

(ii) ~~he~~ the youth has violated a valid court order or an aftercare agreement;

(iii) ~~his~~ the youth's detention is required to protect persons or property;

(iv) ~~he~~ the youth has pending court or administrative action or is awaiting a transfer to another jurisdiction and may abscond or be removed from the jurisdiction of the court;

(v) there are not adequate assurances that ~~he~~ the youth will appear for court when required; or

(vi) ~~he~~ the youth meets additional criteria for secure

detention established by the youth court in the judicial district that has current jurisdiction ~~over him~~; or

(c) ~~he~~ the youth has been adjudicated delinquent and is awaiting final disposition of ~~his~~ the case.

(2) A youth may not be placed in a shelter care facility unless:

(a) the youth and ~~his~~ the youth's family need shelter care to address their problematic situation when it is not possible for the youth to remain at home;

(b) the youth needs to be protected from physical or emotional harm;

(c) the youth needs to be deterred or prevented from immediate repetition of ~~his~~ the troubling behavior;

(d) shelter care is necessary to assess the youth and ~~his~~ the youth's environment;

(e) shelter care is necessary to provide adequate time for case planning and disposition; or

(f) shelter care is necessary to intervene in a crisis situation and provide intensive services or attention that might alleviate the problem and reunite the family.""

Renumber: subsequent sections

8. Page 27, line 6.
Insert: "**Section 10.** Section 41-5-313, MCA, is amended to read:

"41-5-313. Permitted acts -- detention of youth in law enforcement facilities -- criteria. ~~(1) Nothing in this~~ This chapter ~~precludes~~ does not include the detention of youth in a police station or other law enforcement facility that is attached to or part of a jail ~~if:~~

~~(a) the area where the youth is held is an unlocked, multipurpose area, such as a lobby, office, interrogation room, or other area that is not designated or used as a secure detention area or that is not part of a secure detention area, or, if part of such an area, that is used only for the purpose of processing, such as a booking room;~~

~~(b) the youth is not secured to a cuffing rail or other stationary object during the period of detention;~~

~~(c) use of the area is limited to ensuring custody of the youth for the purpose of identification, processing, or transfer of the youth to an appropriate detention or shelter care facility;~~

~~(d) the area is not designed or intended to be used for residential purposes; and~~

~~(e) the youth is under continuous visual supervision by a law enforcement officer or by facility staff during the period of time that the youth is held in detention.~~

~~(2) For purposes of this section, "secure detention" means the detention of youth or confinement of adults accused or convicted of criminal offenses in a physically restricting setting, including but not limited to a locked room or set of rooms or a cell designed to prevent a youth or adult from departing at will.~~"

Section 11. Section 41-5-401, MCA, is amended to read:

"41-5-401. Consent adjustment without petition. (1) Before a petition is filed, the probation officer may enter into an informal adjustment and give counsel and advice to the youth and other interested parties if it appears:

(a) the admitted facts bring the case within the jurisdiction of the court;

(b) counsel and advice without filing a petition would be in the best interests of the ~~child~~ youth, the youth's family, and the public; and

(c) the youth may be a youth in need of supervision and if the probation officer believes that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(2) Any probation or other disposition imposed under this section against any youth must conform to the following procedures:

(a) Every consent adjustment ~~shall~~ must be reduced to writing and signed by the youth and ~~his~~ the youth's parents or the person having legal custody of the youth.

(b) If the probation officer believes the youth is a youth in need of supervision, the probation officer shall determine that the parents, foster parents, physical custodian, or guardian exerted all reasonable efforts to mediate, resolve, or control the youth's behavior and the youth continues to exhibit behavior beyond the control of the parents, foster parents, physical custodian, or guardian.

(c) Approval by the youth court judge is required if the complaint alleges commission of a felony or if the youth has been or will be in any way detained.

(d) If a placement of the youth is made, it must be by the youth placement committee pursuant to 41-5-526 and 41-5-527.""

Renumber: subsequent sections

9. Page 29, line 16.
Strike: "FINDING"
Insert: "charge"

10. Page 30, line 18.
Insert: "**Section 14.** Section 41-5-521, MCA, is amended to read:

"41-5-521. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth~~, his~~ or the youth's parent, guardian, or attorney may demand a jury trial on ~~such~~ the contested offenses. In the absence of ~~such~~ a demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing ~~shall~~ must be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing ~~shall~~ must be held to determine whether the contested offenses are supported by proof beyond a

reasonable doubt in cases involving a youth alleged to be delinquent or in need of supervision. If the hearing is before a jury, the jury's function ~~shall be~~ is to determine whether the youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the judge shall make and record ~~his~~ findings on all issues. If the allegations of the petitions are not established at the hearing, the youth court shall dismiss the petition and discharge the youth from custody. The petition and affidavits may not contain allegations against persons other than the youth that have not been admitted or proved.

(3) An adjudicatory hearing ~~shall~~ must be recorded verbatim by whatever means the court considers appropriate.

(4) The youth charged in a petition must be present at the hearing and, if brought from detention to the hearing, may not appear clothed in institutional clothing.

(5) In a hearing on a petition under this section, the general public may not be excluded when the hearing is held on a contested offense to which publicity must be allowed under subsection (2) of 41-5-601.

(6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the hearing required by this section, a youth is found to be a delinquent youth or a youth in need of supervision, the court shall schedule a dispositional hearing under this chapter.

(7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title 25, chapter 7, part 2, and M.R.Civ.P., Rule 47.""

Renumber: subsequent sections

11. Page 39.
Following: line 30
Insert: "**Section 16.** Section 41-5-523, MCA, is amended to read:

"41-5-523. Disposition -- commitment to department -- placement and evaluation of youth -- restrictions. (1) ~~If~~ Except as provided in subsection (15), if a youth is found to be a delinquent youth or a youth in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department if the court determines that the youth is in need of placement in other than the youth's own home, provided that:

(i) the court shall determine whether continuation in the home would be contrary to the welfare of the youth, the youth's family, and the community and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home. The court shall include a determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for

the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(c) order restitution by the youth or the youth's parents;

(d) impose a fine as authorized by law if the violation alleged ~~would constitute~~ is a criminal offense ~~if committed by an adult~~;

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

(h) require the parents, guardians, or other persons having legal custody of the youth to furnish services the court may designate;

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth, the youth's family, and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. A youth adjudicated ~~mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed to a state youth correctional facility. A youth adjudicated to be mentally ill or seriously mentally ill~~ to have a mental disease or defect that renders the youth unable to appreciate the criminality of the youth's behavior or unable to conform the youth's behavior to the requirements of law after placement by the department in a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.

(k) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) ~~A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.~~

~~(b)~~ A youth may not be held in a state youth correctional facility for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. ~~Nothing in this~~ This section ~~limits~~ does not limit the power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

~~(c)~~(b) A youth may ~~not~~ be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an offense that is transferable to criminal court under 41-5-206.

(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206.

(8) An order of the court may be modified at any time. In the case of a youth committed to the department, an order

pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department

of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4.

(15)(a) A misdemeanor counts as one point, and a felony counts as three points. An offense that can be committed by a person only because of age counts as one point. Upon accumulating six points, a youth must be placed in a secure detention facility for not less than 5 days, and upon accumulating nine points, a youth must be placed in a secure detention facility for not less than 10 days. The staff of the secure detention facility must be properly trained in and give the youth counseling. Each county shall establish public works projects for offending youth.

(b) Upon accumulating 10 points, a youth may be designated as a "habitual offender" and may be placed in the custody of the department for not less than 90 days.

(c) If the court finds that a habitual offender commonly entices or assists other youth to perform illegal acts, the youth must be designated as a "predatory youth" and must be placed in a the custody of the department for not less than 180 days.

(d) Law enforcement, educational, and social service agencies, the court, and other agencies and entities involved with a youth who is found by the court or believed by the agency or entity to be a delinquent youth or a youth in need of supervision shall provide the chief youth court probation officer for the county in which the youth resides with any information in the possession of the agency or entity that may indicate that the youth is a habitual offender, a predatory youth, or a youth at risk.

(16) If a youth who is serving time in a state youth correctional facility because the youth was found to be a habitual offender or a predatory youth needs and is willing to accept advanced treatment for behavioral, substance abuse, or similar problems, the youth may be transferred to a residential treatment facility, but not until after the youth has served at least one-half of the imposed detention period. The department shall solicit requests for proposals for inpatient treatment of youth. A district judge may sentence a youth directly to an unused bed at a state youth correctional facility at county expense after the budgeted number of juvenile residents is reached.

(17) After determining the sources and amounts of funding, the youth court shall order the entities, agencies, or political subdivisions administering funds involving services to which youth are entitled to ensure that a youth's share of the funds follows the youth to the location of the youth's placement. Upon receipt of a completed application for services, the collection of funding and assignment of funding to the appropriated agency or entity must be enforced by the department of social and rehabilitation services through any remedy available to that department for the collection of child support.

(18) Before a youth is released from a state youth

correctional facility, the department shall adopt and the court shall approve a written supervision plan.

(19)(a) If the youth is still subject to the court's jurisdiction and to supervision under the disposition when the youth becomes 21 years of age, this chapter ceases to apply to the youth and jurisdiction over the youth is transferred to the department of corrections and human services, which shall make an appropriate placement and shall supervise the youth. The youth may not be placed and supervised for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court.

(b) When a youth is transferred to the department of corrections and human services, the department of family services shall transmit to the department of corrections and human services the dispositional judgment, copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(c) The department of corrections and human services shall confine the youth in whatever institution it considers proper, including a youth correctional facility under the procedures of 52-5-111. However, a youth under 16 years of age may not be confined in the state prison."

Section 17. Section 41-5-529, MCA, is amended to read:

"**41-5-529. Confidentiality of youth placement committee meetings and records.** (1) Meetings of a youth placement committee are closed to the public to protect a youth's right to individual privacy.

(2) Information presented to the committee about a youth and committee records are confidential and subject to confidentiality requirements established by rule by the department. Purposeful violation of the confidentiality requirements is a criminal offense and a person convicted of violating the requirements shall be fined $1,000."

Section 18. Section 41-5-601, MCA, is amended to read:

"**41-5-601. Confidentiality.** (1)(a) ~~No~~ Except as provided in subsection (1)(b), information ~~shall~~ may not be given concerning a youth or any matter or proceeding in the youth court involving a youth proceeded against as, or found to be, a youth in need of supervision.

(b) If a youth as to whom there are active issues relating to drug use or crimes is placed in foster care, the court shall notify the school that the youth will attend of the issues and the school may refuse to accept the youth as a student. Each school district shall adopt rules to govern acceptance or refusal of such youth.

(2) When a petition is filed under 41-5-501, publicity may not be withheld regarding any youth formally charged with 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 an adult. All court proceedings

must be open to the public ~~with the exception of the transfer hearing specified in 41-5-206~~ if the youth court finds that a failure to close the hearing would jeopardize the right of the youth to a fair trial.

(3) In all cases the victim is entitled to all information concerning the identity and disposition of the youth.

(4) The identity of ~~any~~ a youth who admits violating or is adjudicated as having violated ~~45-5-624 or 45-9-102 may~~ a statute must be disclosed by youth court officials to the administrative officials of the school in which the youth is a student for purposes of referral for enrollment in a substance abuse program or enforcement of school disciplinary procedures that existed at the time of the admission or adjudication. The information may ~~not~~ be further disclosed ~~and~~ but may not be made part of the student's permanent records.""

Renumber: subsequent sections

12. Page 40, line 30.
Insert: "**Section 20.** Section 41-5-703, MCA, is amended to read:

"41-5-703. Powers and duties of probation officers. (1) A probation officer shall:

(a) perform the duties set out in 41-5-401;

(b) make predisposition studies and submit reports and recommendations to the court;

(c) supervise, assist, and counsel youth placed on probation or under ~~his~~ the officer's supervision. The probation officer shall ensure that a youth adjudicated as delinquent or in need of supervision and not placed in a detention center or facility complies with the orders of the court~~;~~.

(d) perform any other functions designated by the court.

(2) A probation officer ~~shall have no power to~~ may make arrests ~~or to~~ and perform any other law enforcement ~~functions~~ function in carrying out ~~his~~ the officer's duties, ~~except that a probation officer may take~~ including taking into custody ~~any~~ a youth who violates ~~either his~~ probation or a lawful order of the court.""

Renumber: subsequent sections

13. Page 42, line 4.
Insert: "**Section 22.** Section 41-5-810, MCA, is amended to read:

"41-5-810. County responsibility to provide youth detention services. (1) Each county shall provide services for the detention of youth ~~in facilities separate from adult jails~~ and space must be found for a youth in need of detention. A youth may not be released from detention because of space problems. An arresting officer may place the youth in a detention center.

(2) In order to fulfill its responsibility under subsection (1), a county may:

(a) establish, operate, and maintain a holdover, a short-term detention center, or a youth detention facility at county expense;

(b) provide shelter care facilities as authorized in 41-5-802;

EXHIBIT 1
DATE 3-28-95
HB 540

(c) contract with another county for the use of an available shelter care facility, holdover, short-term detention center, or youth detention facility;

(d) establish and operate a network of holdovers in cooperation with other counties;

(e) establish a regional detention facility; or

(f) enter into an agreement with a private party under which the private party will own, operate, or lease a shelter care facility or youth detention facility for use by the county. ~~The agreement may be made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.~~

(3) Each county, ~~or~~ regional, municipal, or state detention facility of any type, detention center of any type, shelter care facility, or holdover must be licensed by the department in accordance with rules adopted under 41-5-809.""

Renumber: subsequent sections

14. Page 47, line 26.
Insert: "**Section 24.** Section 41-5-812, MCA, is amended to read:

"41-5-812. Creation of regions -- requirements -- ~~limitation on number of regions~~. (1) Counties that wish to establish a regional detention facility shall form a youth detention region.

(2) Each youth detention region must~~:~~

~~(a)~~ be composed of contiguous counties participating in the regional detention facility~~; and~~

~~(b) include geographical areas of the state that contain a substantial percentage of the total youth population in need of detention services, as determined by the board of crime control~~.

~~(3) There may be no more than five youth detention regions established in the state at any one time.~~"

NEW SECTION. **Section 25. Cost savings -- allocation -- implementation funding.** (1) One-half of the efficiency savings, other savings, and earned income derived from implementation of [this act] must be dispensed by the department of family services to the counties, based on the percentage of the state's total number of juvenile offenders in a given county, to help offset the costs of implementing [this act]. The department may retain the other half and use it for capital improvements and costs associated with the department's implementation of [this act].

(2) Discretionary funds received by the board of crime control from the federal office of juvenile justice and delinquency prevention must be dispensed by the board to the counties, based on the percentage of the state's total number of juvenile offenders in a given county, to help offset the costs of implementing [this act]."

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 3/28/95
BILL NO. SB 136

HB 540 - Narrative on Amendments

by Rep. Brad Molnar

March 28, 1995

**	page 1	5) Allows parents to enforce prescribed treatment plan
**	page 1	6) Opens city and justice courts to minor youth crime
*	page 3	9) Returns original language of age limitations and limits non-court consequences
	page 4	5a) Placement must go through placement committee
*	page 5	7) bi Escape from shelter care to allow placement in secure detention
	page 6	8) Allows youth to be held in secure setting, or be handcuffed in police station. Federal regulations allow for up to six hours.
*	page 7	9) Upon charge of illegal use of drugs or alcohol a judge may order a urine analysis
	page 8	41-5-521 (2) Petitions and affidavits must focus on allegations against offender and proven facts
	page 9	1 ( ) Youth must be able to appreciate the criminality of his act to be placed in youth detention facility
	page 9	2A Youth in need of supervision may be placed in youth detention facility
*	page 12	(15)-(18) Point system - transfer of existing funding. Guaranteed treatment.
**	page 13	Sec 18(b) Allows school to reject placement of youth with <u>active</u> chemical or criminal issues.
	page 14	Section 22 Arresting officer may place youth in detention center. Space must be provided.

failed

Amendments to House Bill No. 540
Third Reading, Second Printing, Copy

Requested by Rep. Molnar
For the Committee on the Judiciary

Prepared by John MacMaster
March 28, 1995

1. Title, line 9.
Following: "~~41-5-810,~~"
Insert: "41-5-810,"

2. Page 42, line 4.
Insert: "**Section 11.** Section 41-5-810, MCA, is amended to read:

"41-5-810. County responsibility to provide youth detention services. (1) ~~Each~~ Except as provided in subsection (4), each county shall provide services for the detention of youth in facilities separate from adult jails.

(2) In order to fulfill its responsibility under subsection (1), a county may:

(a) establish, operate, and maintain a holdover, a short-term detention center, or a youth detention facility at county expense;

(b) provide shelter care facilities as authorized in 41-5-802;

(c) contract with another county for the use of an available shelter care facility, holdover, short-term detention center, or youth detention facility;

(d) establish and operate a network of holdovers in cooperation with other counties;

(e) establish a regional detention facility; or

(f) enter into an agreement with a private party under which the private party will own, operate, or lease a shelter care facility or youth detention facility for use by the county. The agreement may be made in substantially the same manner as provided for in 7-32-2232 and 7-32-2233.

(3) Each county or regional detention facility must be licensed by the department in accordance with rules adopted under 41-5-809.

(4) The department shall adopt rules allowing and regulating the detention of youth in adult jails for a period not to exceed 10 days for each incarceration if the youth are separated from adults by sight and sound.""

Renumber: subsequent section

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 4
DATE 3/28/95
BILL NO. SB 136

SB 136 AA

Holden Amendment

(1.) Page 6 Line 24 Strike "~~participate in it~~" affecting the constituents"
Insert "~~vote on~~" Required in legislative Rules"

passed

(2.) Page 15 Strike Lines 24 To 30
Page 16 Strike Lines 1 To 30
Page 17 Strike Lines 1 Thru 11.

failed

(3.) Page 14 Strike lines 7 Thru 13

passed

Carried - Nelson

Page 11

Amendments to SB 136
Proposed by Common Cause and MontPIRG
Prepared by Debra Smith and J.V. Bennett

Page 3, Line 28-
Insert new subsection-
(9) "Substantial value" means an amount equal to or greater than $50 for an individual.
Current language leaves substantial value for gifts undefined.

Page 8, line 25 through page 9, line 2
Strike page 8, line 25 through page 9, line 2.
Requiring reporting of membership in organizations infringes upon the right to privacy and free association.

Page 12, line 27
Insert- (i) the value of which is greater than $10,000; or
(ii) from which the individual receives 20% or more of the individual's expected annual income or in which the individual owns 20% or more of the value.
Current language does not differentiate between major and minor economic interests and requires reporting of all economic interests.

MontPIRG

Montana Public Interest Research Group
360 Corbin Hall - Missoula, MT - (406) 243-2908

Testimony For Senate Bill 136, March 27, 1995
Chairman Crippen and members of the Senate Judiciary Committee:

For the record, my name is J.V. Bennett, for the Montana Public Interest Research Group, or MontPIRG.

MontPIRG is a non-profit, non-partisan research and advocacy organization working for good government, consumer rights and sound environmental protection. MontPIRG represents over 4000 members in Montana, with 2200 student members, and is funded with membership donations.

As an organization advocating good government, MontPIRG rises in strong support of Senate Bill 136.

Senate Bill 136 is a significant step in increasing public confidence in their government. While Montana has been spared any major scandals, it is none the less important to establish safeguards concerning the ethical behavior of elected representatives and employees of the State. Senate Bill 136 does this and the Senate Ethics Subcommittee and the Joint Ethics Committee should be commended for their hard and thoughtful work.

Senate Bill 136 contains many important provisions for insuring ethical behavior on the part of officials and employees. Most important are ethical guidelines for behavior, meaningful enforcement for ethical violations, and disclosure of conflicts of interest.

However, MontPIRG believes there are still some problems with the current form of the bill. The most important of these is language requiring the disclosure of membership in organizations of a state official or employee in certain circumstances. We believe this is an unacceptable and probably unconstitutional infringement of an individual's right to privacy and free association. We urge that this provision be removed from the bill.

Amendments to Senate Bill No. 136
Second Reading Copy (yellow)

Requested by Senator Doherty
For the Committee on Judiciary

Prepared by Valencia Lane
March 27, 1995

1. Page 3, line 8.
Following: "interest"
Insert: ", contract, or lease"

2. Page 3, line 15.
Following: "person"
Insert: "or entity"

3. Page 8, line 25 through page 9, line 2.
Strike: subsection (4) in its entirety
Renumber: subsequent subsections

4. Page 12, line 28.
Following: "entity"
Insert: "organized for profit that is"
Following: "(2)(c)"
Insert: "and"

5. Page 12, lines 29 and 30.
Following: "director" on line 29
Strike: remainder of line 29 through "profit" on line 30

6. Page 13, line 2.
Following: "residence,"
Insert: "and all contracts or leases related to the real property"

EXHIBIT 5
DATE 3-28-95
SB 136

In addition, we feel that a gift of substantial value should be defined. Disclosure of financial interests should also be defined in greater detail. Currently the language in the bill does not differentiate between major and minor economic interests. It is our belief that major economic interests are those which are most likely to cause conflicts of interest, while minor ones are less likely to be relevant. The language from the Senate Ethics subcommittee would be preferable in both these instances.

Also of concern is the absence of enforcement provisions and prohibitions on lobbying for Legislators that are on par with those for public officials and employees. We also feel that expanding the scope of the Ethics Commission to include the issuance of advisory opinions would improve the bill. We hope the Judiciary Committee will consider these additions to Senate Bill 136.

MontPIRG urges the passage of Senate Bill 136 as an important step to increase public confidence in their government.