

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 048

Call to Order: By CHAIRMAN MIKE SPRAGUE, on April 7, 1997, at
7:10 p.m., in Room 325.

ROLL CALL

Members Present:

Sen. Mike Sprague, Chairman (R)
Sen. Mike Halligan (D)
Sen. Charles "Chuck" Swysgood (R)
Rep. Royal C. Johnson (R)
Rep. Brad Molnar (R)
Rep. Diana E. Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: Susan Byorth Fox, Legislative Services Division
Valencia Lane, Legislative Services Division
Angie Koehler, Secretary

FREE CONFERENCE COMMITTEE ON SB 48

Procedures:

CHAIRMAN MIKE SPRAGUE: Before we get started it's important to set some guidelines and rules. Members of the public or people who are here as witnesses or information givers, the best way I can put this in perspective for you is that this is more like an Executive Session. It's a Session where the House and Senate are going to find areas they can agree on that can be put on the bill. You're going to see a lot of conversation between us and we'd like to keep it rolling. Members of the Committee, please address your questions to the staff. My goal is to get through this whole process tonight. I would like you to expedite the best you can. Keep in mind whenever we're voting, there are three from each the House and Senate and it takes two from the House and two from the Senate to agree on an amendment.

We will pick up with this bill where it left off at the time it left the Juvenile Justice Subcommittee prior to going on the floor. If we go all the way back to the time it left our Juvenile Justice Subcommittee, we might be here all night.

Amendments:

Susan Byorth Fox: The last set of amendments were placed on the bill on the House floor. If we take those first, we'll be going back in time and will return it closer to the version as it came out of the House Select Committee. I'm going to take them in the order they were requested of me to process them. The only implication the numbers have is the order they were received by me. The (gray) amendment SB004810.ASF requested by **REP. ERNEST BERGSAGEL** in numbers 2-7 removes the point system. **(EXHIBIT 1)** Number 11 makes the juvenile probation officer responsible to "assist any" public and private community and work projects and deletes the language of "implement and maintain". Number 12 strikes the entire section that changed the detention regions and that would return it to status quo.

The second (dark purple) amendment SB004812.ASF was requested by **SEN. CHRIS CHRISTIAENS** and totally removes the point system as well. **(EXHIBIT 2)** It also removes the entire section that talks about "implement and maintain public and private community work projects". It also makes the similar change to the detention regions. **SEN. CHRISTIAENS'** and **REP. BERGSAGEL'S** amendments are very similar except for number 11. One removes that section totally, the other one just mitigates it by making it "assist any" which kind of softens it from "implement and maintain".

The third (blue) amendment, SB004816.ASF, is requested by **REP. BRAD MOLNAR**. **(EXHIBIT 3)** Instead of removing the point system language, number 2 clarifies that the point system applies only to acts committed by a youth that would be a misdemeanor or a felony if committed by an adult so therefore removing the status offenses. **REP. MOLNAR** had stated on the floor of the House that he would fix that if it got into Conference Committee. Number 3 removes the requirements of placement in a secure correctional facility for 45 days for evaluation upon accumulating 9 points. Number 4 states that Subsection b and c that trigger placement in a secure correctional facility are only minimum sentencing guidelines. Numbers 5 and 6 include the youth and others who contributed to the youth's delinquency in the examination of a parent's ability to pay for all costs. Number 7 clarifies the Section on victim notification. Number 8 and 9 provide a delayed effective date for the point system in January 1, 1998. Most of those amendments deal with the point system and also numbers 5, 6 and 7 go into different areas that are not touched by the **BERGSAGEL** or **CHRISTIAENS** amendment.

Motion:

SEN. MIKE HALLIGAN: MOTION TO ADOPT THE BERGSAGEL AMENDMENTS SB004810.ASF.

Discussion:

REP. ROYAL JOHNSON: Did you not say that the first amendments, 10 or 11, suggested that the point system was going to be out completely?

Ms. Fox: Yes.

REP. JOHNSON: What does that do to **REP. MOLNAR'S** amendment?

Ms. Fox: It would basically preclude it. If you take the point system out, then **REP. MOLNAR'S** amendment could not be placed on that Section. You wouldn't want the **BERGSAGEL** and the **CHRISTIAENS** amendment to both be passed because they both affect the point system equally, but they conflict in other areas. Amendments number 2, 3, 4, 8 and 9 conflict with the **BERGSAGEL** amendment.

REP. DIANA WYATT: The only difference I see down to number 11 is number 1 says strike 41-5-703 plus 41-5-812. What's the difference there? Two Sections are stricken versus one Section.

Ms. Fox: Correct. 41-5-812 is the Section that deals with detention regions and the amendment that was placed on the floor there deletes the requirement of five detention regions. So that is taken out in both bills. 41-5-703 is the powers and duties of probation officers. Under the **CHRISTIAENS** amendment you would strike the entire Section which would return it to existing language which is status quo. The **BERGSAGEL** amendment would merely amend the language that had been placed in that Section and right now, if you look on page 57 of your bill, 1 (d) says "implement and maintain public and private work projects". The **BERGSAGEL** amendment proposes to strike "implement and maintain" and insert the terms "assist any" which reduces the mandate and is closer to what probation officers do today in many districts.

REP. BRAD MOLNAR: This is only the second Subcommittee I've ever been on and the other went quite differently so I'm kind of confused as to how this works. If we don't segregate these per issue, then exactly how does that work? For instance, **SEN. CHRISTIAENS'** do not match **REP. BERGSAGEL'S** and **REP. BERGSAGEL'S** don't match mine. They all cover slightly different things. If these are not segregated by the issue to discuss the issue, exactly how do we ever find resolution via issue as opposed to personality of who wrote the amendment?

SEN. SPRAGUE: You could do that, segregate the amendment or portions of the amendment to keep it on subject matter.

{Tape: 1; Side: A; Approx. Time Count: 7:20 p.m.}

SEN. HALLIGAN: My intent in offering the motion is I thought the **BERGSAGEL** amendments were the middle ground. I thought **CHRISTIAENS** went too far with his amendments so I liked the

BERGSAGEL approach. Obviously, I have some concern about the point system so my intent, by adopting the **BERGSAGEL** amendments, would preclude doing **REP. MOLNAR'S** amendments. You would be separating the issues by the motion. I wouldn't expect anybody to offer the **CHRISTIAENS** amendments after this motion to adopt unless somebody wanted to do that motion with respect to your amendment. You could offer that again.

REP. MOLNAR: I think I would like to offer up the suggestion and I'm not quite sure of the proper motion, that we pick one issue - be it the point system, the juvenile probation officers, the regions, and handle the issues one at a time instead of the amendment sheets one at a time. I don't care which issue we take first, but there appears to be three that have common threads concerning the point system, the juvenile probation officers and the detention centers. I would make a motion that we take the point system. **REP. BERGSAGEL** wants to admonish it as does **SEN. CHRISTIAENS**. I want to modify it. I'm not quite sure if I should make a motion so we can then discuss my amendments and if it doesn't carry then I guess the next step would be to admonish and do away with the point system.

CHAIRMAN SPRAGUE: Further comments from Committee. If that was a question directed to me, it would seem to me that we can ask staff if we can solve **REP. MOLNAR'S** concerns in the gray copy. Were **BERGSAGEL'S** amendments covered pretty much...can we exclude?

Ms. Fox: Perhaps the best way to do it would be for **REP. MOLNAR** to make a substitute motion to adopt his amendments 1, 2, 3, 4, 8 and 9 which are the amendments that try to amend the point system. Depending on what happens with those amendments, we can then help you proceed with any of the other amendments.

REP. MOLNAR: I believe that's exactly what I'm trying to do.

Motion:

REP. MOLNAR: SUBSTITUTE MOTION TO ADOPT MOLNAR AMENDMENTS SB004816.ASF, NUMBERS 1, 2, 3, 4, 8 AND 9.

Discussion:

CHAIRMAN SPRAGUE: We're on the **MOLNAR** amendments SB004816.ASF - 1, 2, 3, 4, 8 and 9.

REP. MOLNAR: I would like to address it. The reason for the point system was that, as we traveled around the state and talked with a lot of people, there is a definite tendency that who needs a bed at Pine Hills is who needs one on the day we have one available and not necessarily one who needs one for the protection of himself and the community. We currently have about a four page criterion as to who gets in. The point system says that if you have committed three felonies or 10 misdemeanors you are guaranteed a place at Pine Hills. The purpose of the

amendments is they took out the status offenses and it takes out the 45 days. In discussing with **Steve Gibson** what this would do to his intakes at Pine Hills, he said that the incorrigibility level has not been shown to be significantly reduced with the 45 days intake, historically. The juvenile probation officers seemed to think it was successful, but we're going with that. By having the amendment where it is not in effect until January 1, 1998, there is virtually no way to be caught and convicted four times for felons in a year. So, when the Legislature comes back, we will know how many kids, in the pipeline, are serious, habitual offenders.

The benefit to the juvenile probation officers and society in general is, on their next offense, be it misdemeanor or felony, they go away and you enforce it. In other words, the state is stepping up to the plate as opposed to using the streets as the holding facility. With the point system it becomes clear to the offender and the community that we do have a limit to what we will tolerate. This is part of what's being used in California as the SHOCAP program. It is only part of it, but is the intricate part of it. What do you do with the information? You remove the serious habitual offender. It educates the kids around him that there is a boundary as opposed to educating them that there isn't a boundary and there is a line and you can't cross that line without going away.

The other side of the coin is, if you read all of it, it says that the second half of a sentence may be at a place like Yellowstone Treatment Center. Right now the cost is \$185.00 a day, but Medicaid picks up two-thirds. If they stay in Pine Hills, they pick up nothing. So there is almost a \$3 Million recoup from the feds and these kids are getting treatment as to how to handle their situation before they go back on the street as opposed to getting no treatment of the intensive variety before they go back on the street. In SHOCAP, the program as a whole has reduced juvenile crime 68 percent. We have, in this state, an increase. This is the only program I've found that does reduce it. If we do away with this we're back to, if we have room we'll put you away and if we don't we leave you on the street. Those are our only two options. I like the finality about the program.

CHAIRMAN SPRAGUE: Are there any questions for **REP. MOLNAR**? I think everybody pretty well understands.

REP. JOHNSON: On item number 2 and 3 of page 46, does that take this bill back to where it was before you added your amendment on the floor?

REP. MOLNAR: No. What this does, on 2 and 3, is make sure that the misdemeanors are not status offenses and number 3 strikes out the 45 days. Now it's strictly the 90 days and 180 days minimum.

REP. JOHNSON: Is the bill, on page 46, the way it was when it went to the floor or did these amendments come on the floor?

Ms. Fox: The amendments on those pages were placed on the bill on the House floor. **REP. MOLNAR** is seeking to amend amendments that were placed on the bill on the House floor. So the bill is inclusive of all amendments including the House Select Committee and the House floor amendments.

REP. JOHNSON: If we're going to get it clear, we need to get back to where the bill was when it hit the floor before any amendments went on it. Would you have to take out lines 5-30 or 5-25 on the next page, on page 46 and 47, take all of that out to take out the amendments that **REP. MOLNAR** put on the floor?

Ms. Fox: Correct. Yes, from page 46, line 5 through page 47, line 24, that entire Section would need to be removed plus some other amendments to return it to the condition it was when it got to the House floor as it came out of the House Select Committee.

REP. JOHNSON: What are you trying to do now with the amendments you're offering to what was put on the floor?

{Tape: 1; Side: A; Approx. Time Count: 7:30 p.m.}

REP. MOLNAR: As you may recall, on the House floor it was pointed out that a misdemeanor could also be a status offense. I'm making sure it's not a status offense so it greatly limits the number of kids that would come under this. In other words, you couldn't be caught smoking a cigarette or have a six-pack of beer for your fourth offense and wind up in Pine Hills. It would have to be a true misdemeanor or felony. I'm trying to reduce the number of kids that could impact our higher holding.

The other complaint I've heard is that the 45 days was not effective and the lack of detention facilities in the state was the reason we were using Pine Hills in the old days for the 45 days to try and get their attention. There was about a 70 percent recidivism rate from that according to **Steve Gibson**. Therefore, I agreed to pull that out so we would not be overly impacting the system. I'm trying to make the point system palatable with our current system. By giving it a later effective date we can see if it's working and see what's in the pipeline at the next Legislature because we will then have the information. If you recall, we never got the information as to how many kids had true felonies and true misdemeanors. Nobody is keeping that, but this would act as a score card so we would know what our true needs are.

REP. JOHNSON: If we defeat this substitute motion, we go back to the original motion. What happens then? What have we done?

Ms. Fox: **REP. BERGSAGEL'S** amendment for this point system removes the entire point system. It also completely takes out

one other floor amendment and then changes one floor amendment. It doesn't quite return it completely to the way it came out of the House Select Committee, but does go further to returning it.

SEN. HALLIGAN: I would oppose the motion to adopt 1, 2, 3, 4, 8 and 9. I think if we're going to do a point system, perhaps there is still a couple days to do a Simple Resolution or a Joint Resolution to direct **Director Day** and his staff to take a look at a point system for juveniles. They can probably do it through their existing budget to see if it's something we ought to be looking at. The Juvenile Justice Mental Health Study Commission could have been looked at and this was not something that was brought up.

CHAIRMAN SPRAGUE: If this were not adopted, would you or have you considered doing this on a regional basis or some smaller scale rather than doing it statewide?

REP. MOLNAR: Yes, I have. I've discussed this quite a bit with the people in Oxnard, California and they collect a lot of information. I asked them what happens when the information points to the kids having to go through your point system? They said the state is very helpful with us. If we say they have to go, they're gone, they have a bed. Montana has 80 beds and will add about 24 in about 14 months. What I'm saying is, this point system would then be putting kids into those extra 24 beds, but without the backup of the state saying yes, we'll give you a bed when you need it. Rather, you've got to squabble with all the other judicial districts to see if a bed is open on that day. I have no idea how a person would do that. We could ask them to keep the records, but by the time we implemented it, that entire generation of youth will have already become adult offenders. That's why we need 65 percent more beds in five years.

Vote:

MOTION FAILS ON MOLNAR AMENDMENTS SB004816.ASF, NUMBERS 1, 2, 3, 4, 8 AND 9. REP. MOLNAR - AYE.

Discussion:

CHAIRMAN SPRAGUE: We'll go back to the **BERGSAGEL** amendment with **SEN. HALLIGAN**.

SEN. HALLIGAN: What I'm trying to do is, what I believe **REP. JOHNSON** indicated, get the bill back to where it was before it came to the House floor. **Ms. Fox** indicated there may be a minor change that went a little bit farther than that. I was not aware of that. Could you identify where it may be a little different?

Ms. Fox: The difference is on page 57.

SEN. HALLIGAN: Is that the implement and maintain language?

Ms. Fox: Right. That entire Section was added to the bill on the House floor and instead of striking the whole Section which is what happens in **SEN. CHRISTIAENS** amendments, this is amended instead to strike "implement and maintain" under 1 (d) and change that to "assist any".

SEN. HALLIGAN: Was that one of **REP. MOLNAR'S** amendments? That was a good idea so we ought to leave that "assist" in there to public and private communities and work projects. Even if it went in on the floor, that one ought to stay.

CHAIRMAN SPRAGUE: Is everyone clear? It was difficult to hear. Would you mind repeating what your summary was?

SEN. HALLIGAN: This does take out the point system and changes that were made to the regions, but leaves in the **MOLNAR** amendment that was done on the floor. It is on page 57 where instead of requiring the probation officer to implement and maintain those community and work projects issues, to "assist". So there is some obligation to help out with that. I think that was a good idea and that's why it was in. The motion is still on the floor.

SEN. CHUCK SWYSGOOD: Is the last amendment the codification?

Ms. Fox: Yes, it's because we take out Section 50. It's just an internal reference.

REP. MOLNAR: Are we talking about two separate issues again, the regions and the juvenile probation officer amendment, Section 48?

CHAIRMAN SPRAGUE: **REP. MOLNAR** makes a good point about keeping it on the system, but if we keep segregating every line we're never going to get through this. I'm open to suggestions here.

SEN. SWYSGOOD: Why don't we take this amendment and vote it up or down?

REP. JOHNSON: I want to have **Ms. Fox** identify what is coming out besides the implementation and maintain on page 57, line 9 and all of Section 50 on page 58, that's 6-13 and then all of the language we were just looking at. Is that right?

Ms. Fox: Correct. The point system language comes out, the juvenile probation officer is changed to "assist" any public and private community work projects and the changes to the detention regions are removed so it returns that language to status quo. Those are three concepts that are included in the **BERGSAGEL** amendment.

Vote:

**MOTION CARRIES UNANIMOUSLY. ADOPT BERGSAGEL AMENDMENTS
SB004810.ASF.**

{Tape: 1; Side: A; Approx. Time Count: 7:40 p.m.; Comments: .}

Ms. Fox: The CHRISTIAENS amendment SB004812.ASF is no longer necessary.

CHAIRMAN SPRAGUE: REP. MOLNAR, do you have a desire to move your blue amendment? We didn't address 5, 6 and 7.

Motion:

REP. MOLNAR: MOTION TO ADOPT 5, 6 AND 7 ON MOLNAR AMENDMENTS SB004816.ASF.

Discussion:

REP. MOLNAR: I'll have to do these from memory. On page 51 we add "the youth and those that contributed to the youth's delinquency" on amendments 5 and 6. If the youth is placed in a detention center or youth assessment center or substitute care, it currently says in part of the old law that the youth's parents and guardians are to pay a contribution including the attorney's fees, costs of prosecution, defending the youth and costs. Elsewhere throughout the bill in the Subcommittee, we changed that to the youth could be the one who is responsible or the one who contributed to the delinquency of the minor could also be held responsible. Yet in this Section it doesn't show up.

Last time I checked, almost 10 percent of the kids in Pine Hills had social security checks coming in and they were fully capable of paying for part of their costs of restitution, etc. Many of them have cars that can be sold to pay their fines and whatever the case might be. So far as treatment goes, which I believes comes up later on, that might just be \$50.00 a week talking to a psychiatrist and if they paid that as opposed to trying to pop the parents for it, that's not a problem. There's no reason why they shouldn't, but this is broader than the balance because of it's place in the act in that we do leave in the youth's parents and guardians to pay for some of these things. This also adds in that the youth can be held responsible and if we can find out who was selling him drugs or who was fencing with him or whatever the case might be, that they also could be held responsible if we could prove that in a court of law.

SEN. SWYSGOOD: I'm going to oppose these amendments. What I read being placed here as it relates to page 51, line 6 following guardian, is you insert the youth and those that contributed to the youth's delinquency. How do you determine all those involved in contributing to the delinquency? There would never be an end to who contributed to the delinquency. How would you define which contribution was more severe than somebody else's? This thing just seems awfully open-ended and I don't think we need this kind of language in the bill.

SEN. HALLIGAN: I would be concerned about the constitutional issue. We discussed a little bit of this in the interim. If someone is not before the court, they can't be ordered to do anything. There should be accountability. If other kids are committing delinquent acts that are causing the delinquency here, they ought to be charged with it and if there's restitution or other fines or things that need to be done, they can be ordered in their own actions to be paying for costs of different things. I don't think you can constitutionally bring those people in to a proceeding here. I agree that the amendment should not go in.

Ms. Fox: I think **REP. MOLNAR** captured most of it. The thing to note about this amendment is the Section it's being placed in. The House Select Committee did remove any reference to the youth's parents or guardians under the disposition sections where the parents or guardians could have been ordered contributions for these different costs. So they were removed from the disposition Section and that was to allow the youth to be held accountable for those costs. This Section is generally a contribution for costs specifically for the parents because Subsections 3 on deal with the child support enforcement language which obviously could not be used to enforce the costs for a youth or others that have contributed to delinquency. It allows the others to be considered when you're looking at financial costs and the parents financial ability to pay. The remainder of the Section can't be used for those specific costs so it is worthy of note. The youth was included specifically in the disposition Sections when you're talking about the youth's disposition. Those costs can be ordered through that process and there are other places that those who contributed to the youth's delinquency appears in the bill.

REP. MOLNAR: I would point out that this says the court shall examine. They don't necessarily have to be at this hearing. If a kid is caught carrying large amounts of drugs and if they can prove who it was that he was carrying them for and get a conviction, then they can tap into his resources and have him pay for part of the cost of detention, etc. as opposed to the parents who may have nothing. Yes, we might not be able to use **Mary Ann Wellbanks'** outfit to do that, but the court can still make the order and still do a collection on it. That's what it's intended for, not every youth that contributed. Perhaps we can show who the leaders of this are, who is actually pulling the strings on this kid and we can have them pay for some of the cost. That's how we did it throughout the balance of the act and that's why I believe it's just as germane here.

CHAIRMAN SPRAGUE: We're going to take a vote on 5, 6 and 7.

REP. JOHNSON: Is that your motion?

REP. MOLNAR: Well, 7 is fairly unique in that it cleans up some language that goes nowhere. It says that the victim shall receive information as to where all of the holding facilities and

shelter cares are throughout the state, but it doesn't actually say, as the amendment would say, "that are responsible for the custody of the youth they are interested in". So they don't know where the kid is, they just know where all the shelter cares and detention centers are.

CHAIRMAN SPRAGUE: It may be my mistake of assuming too much here. We can vote on 5 and 6 and then you could follow up with 7.

Vote:

MOTION TO ADOPT MOLNAR AMENDMENTS 5 AND 6, SB004816.ASF, FAILS.
REP. MOLNAR - AYE

Discussion:

CHAIRMAN SPRAGUE: Do you want to explain 7?

REP. MOLNAR: Let it dangle.

CHAIRMAN SPRAGUE: Ms. Fox, would you mind explaining it?

Ms. Fox: Number 7 goes to the victim language. The Attorney General's office offered some amendments to the bill and I brought **REP. MOLNAR'S** concern to their attention. They didn't seem to have a problem with it, but if you listen to the Subsection that it's amending perhaps this clarifies the language somewhat. "The county attorney or designee that provides a consultation regarding the disposition of a case shall give the victim the opportunity to provide the victim's current telephone number and address and shall provide the victim with the name and address of the agency or agencies responsible for operation of youth detention, correctional or shelter care facilities". It doesn't specify that it has to be facilities that specifically have the custody of the youth which is what number 7 would clarify.

Motion/Vote:

REP. MOLNAR: MOTION TO ADOPT LINE 7 OF MOLNAR AMENDMENTS SB004816.ASF. MOTION CARRIES UNANIMOUSLY.

{Tape: 1; Side: A; Approx. Time Count: 7:50 p.m.; Comments:
Turned tape over.}

Discussion:

Ms. Fox: Perhaps we should go to the (orange) amendment SB004817.ASF requested by **REP. JOHNSON. (EXHIBIT 4)** It goes back into one of the amendments that was placed on in the House Select Committee. If you look on page 26 of the bill, that amendment requires a juvenile probation officer to collect certain kinds of data on the youth. The placement of that

amendment in the bill virtually requires that a juvenile probation officer has to collect this series of data on every single youth that comes to the attention of the youth court. That could be any status offender such as a first time offender or from a very minor brush with the law all the way to a kid that had committed a very serious offense. The amendment proposes to take it out of where it is right now which would be on every single youth. If you look at amendment number 2, it would say "the juvenile probation officer or assessment officer" because at this point we're a little bit further in the system. The juvenile probation officer or assessment officer shall collect the following information regarding a youth if the youth is alleged to be a delinquent youth and if the probation officer or assessment officer determines that the matter should be referred to the county attorney for filing a petition in youth court. This gleans out the number of youth you'd be collecting this kind of data on, though it's the exact same list of data. We're moving it from one portion of the bill to the next.

Amendment 3 is coordination instruction. If you remember, HB 114 recodified the Youth Court Act. Because of today's deadline, the general amendments to general bills had to be transmitted back to the other house. HB 114 went ahead. This catches HB 114 up with the changes we would be making in SB 14. Basically, that coordination instruction is a reiteration of amendment 2.

REP. JOHNSON: It does create a new Section that moves it into a different location in the bill. Is that correct? It adds the wording on line 24 and then takes the whole thing and puts it into what we call new Section 9.

REP. MOLNAR: A question on (1) social and medical services histories. Many psychiatrists and doctors will not give up this information sans a court order. If a probation officer or assessment is supposed to gather this and they say no and the parents refuse to sign for it to be given, does that create a conflict?

REP. JOHNSON: To answer your question, I need to know exactly where you are and I didn't catch that.

REP. MOLNAR: Page 1, (1) social and medical services histories.

REP. JOHNSON: What we tried to do was copy these exactly the way you suggested. I think that was your language.

REP. MOLNAR: Well, I still have a question about it. I think that came from **Janet Henderson**. She pulled it off of SHOCAP and that wasn't my language.

REP. JOHNSON: Okay. Since you understand SHOCAP better than I do, why don't you go ahead tell me what that means?

REP. MOLNAR: I know what it is they're looking for and maybe it's better to ask **Ms. Fox**. They are now being charged to get this. I think in many cases it's important they get it, particularly if we're going to send them on, but just as often, for instance, Yellowstone Treatment Center will not release it and most psychologist will not release it.

CHAIRMAN SPRAGUE: Is there any objection for alleviating or eliminating (1)?

REP. JOHNSON: I do. I'm not sure whether they can always get it or not, but whether they can get it or not we ought to leave it in to see if they can get it because it's a pretty important part of the information you want about this particular juvenile. I wouldn't take it out just because I couldn't get it. I would try and work for it.

SEN. HALLIGAN: I would agree and I think it's getting to that SHOCAP information that you've been wanting to get all along - the social part, the medical service stuff you mentioned that we can get releases on. I don't know of a case when the clients have not been willing to sign releases to get that information to the probation officer. I'd like to try it for a couple of years and see if we have problems with it. Maybe we'll need to clarify it later, but I think it ought to stay in.

REP. MOLNAR: I don't have any problem with it staying in. I was just worried about the conflict of telling them to do something they may not be able to do. I think it's good for them to try.

Motion/Vote:

REP. JOHNSON: MOTION TO ADOPT JOHNSON AMENDMENTS SB004817.ASF.
MOTION CARRIES UNANIMOUSLY.

Discussion:

Ms. Fox: Amendment SB004811.ASF is the yellow one and doesn't have a requestor, but different parts of it were requested by the Attorney General's office and Governor's office. **(EXHIBIT 5)** It performs coordination language based on SB 99 which is the Extended Jurisdiction Prosecution Act which basically amends 41-5-206. When we talk about transferable offenses, in this bill we change it to the County Attorney has to make a motion for leave to file and information directly in District Court. So they're no longer transferable offenses literally. They're offenses listed under 41-5-206. This is a concern that **Beth Baker** brought to the attention of **Valencia Lane** so it's basically cleaning up that language. That's the vast majority of the amendment. Amendment 8 is a coordination instruction with SB 6. It had new language in the bill that talked about a transferable language and again, we're going to talk about a charge being filed in District Court and upon that, the District Court has

jurisdiction. It's basically semantics, but this is by the request of those two different offices.

Motion:

SEN. HALLIGAN: MOTION TO ADOPT AMENDMENTS SB004811.ASF.

Discussion:

REP. MOLNAR: SEN. RIC HOLDEN also carried a transferable bill at the request of the judge from Missoula. It came over to the House, we amended that, it went back over to the Senate side and they formed a Free Standing Committee. Would this, in any way, run contrary to that and what's the status of that bill?

Ms. Fox: That's SB 99 and I think SEN. THOMAS is carrying that. I'm also staff on that Free Conference Committee and they have not yet met. If that bill goes forward in any way, this bill takes care of all the issues and does not conflict with it.

SEN. HALLIGAN: I don't believe the House has appointed the members of the Conference Committee for SB 99 yet.

REP. MOLNAR: Yes. We appointed them.

REP. WYATT: I don't understand the language on amendment 6 where it reads no commitment to Montana state hospital. "An individual who is under 18 years of age may not be voluntarily admitted or committed by a court to the Montana state hospital unless an information has been filed in district court." Does that make sense to everyone else?

Ms. Fox: It would make more sense in context in SB 99 because you have to file this motion for a leave to file an information. If that motion is granted and you file an information in district court, that means the jurisdiction of youth court is ended and the district court takes over. There are provisions in order to commit a youth, someone under the age of 18. This basically says they are not being considered a youth for the purposes of youth court anymore, they're being considered an adult for the purposes of their criminal offense. If the criminal offense goes forward, there are different kinds of convictions or judications that could then follow to the state hospital.

REP. WYATT: I guess we don't need the words "a motion for" or some other word in there. It's sufficient to say "an information".

Ms. Fox: Correct. The motion would be granted and then you can file the information. I think it works technically for those in the district court.

Vote:

MOTION CARRIES UNANIMOUSLY. ADOPT AMENDMENTS SB004811.ASF.

{Tape: 1; Side: B; Approx. Time Count: 8:05 p.m.}

Discussion:

Ms. Fox: The next one in numerical order is the Department of Corrections. They have requested this amendment. They brought it to the attention of the Senate Judiciary Committee. It's SB004813.ASF (pink) and the substance of the amendment is number 4. **(EXHIBIT 6)** What they seek to do is add additional alternative for disposition of a youth under a new section on disposition of delinquent youth. It would allow a commitment to the Department for placement in either a State youth correctional facility or in a correctional facility or program operated by the Department. This is an alternative that is offered now for adults. It would make it parallel. Right now you can be sentenced directly to prison or to the Department. This would allow the same thing. You could be committed directly to the State youth correctional facility which, the only one we have right now, is Pine Hills. If the judge was willing to give the Department the discretion, you could commit the youth to the Department specifically and then the Department could use its transition centers, any other correctional program that it may have or, in addition, Pine Hills or if there is a girls' facility that comes on board. The difference is, there is a placement allowed right now, but it's a youth court direct placement into a facility. So this would give yet another option. It makes it closer or more parallel to the adult option.

Amendments 1-3 and 5-8, because Section 35 talks about the restrictions on the placement of the Department we went through and cleaned up some of the language. That cleanup language doesn't need to happen, but if you pass this amendment it was a relevant way to clean up some language. The concept stays in the bill in either place and will rule, but this was to add this additional option for disposition for a delinquent youth only.

Motion:

REP. JOHNSON: MOTION TO ADOPT AMENDMENTS SB004813.ASF.

Discussion:

CHAIRMAN SPRAGUE: For those of you who may wonder why we're addressing into the bill, this is a Free Conference Committee so it allows us to not only take care of the amendments, but also allows this Committee to go back into the original bill as well.

Vote:

MOTION CARRIES UNANIMOUSLY. ADOPT AMENDMENTS SB004813.ASF.

Discussion:

Ms. Fox: REP. MOLNAR, do you want to offer the **BERGMAN** amendment? It's (green) amendment SB004814.ASF. (**EXHIBIT 7**)

Motion:

REP. MOLNAR: MOTION TO ADOPT **BERGMAN AMENDMENT SB004814.ASF.**

Discussion:

REP. MOLNAR: This was a bill that was left behind on the Committee and then it failed in a blast motion. However, there was a lot of confusion about it. A fellow member of the Commission wrote several letters to us pointing out that kids getting busted for beer ask to please be charged with marijuana because there is no fine, but there is for beer. There is a fine for cigarettes, but there is none for marijuana or hash. As written now, this is different than when the Committee heard it because they used the maximum fine. Not only will their fine be a no time in jail, but they will pay the \$100.00 fine so it will be the same as it is for alcohol or whatever and then they can graduate it up from there. I believe the maximum goes up to about \$500.00 and the youth will be the one responsible for paying for it. The concept is if he has the money for the drugs, he has the money for the \$100.00 fine. That is basically what it does. It brings dangerous drugs up to par with a six-pack.

CHAIRMAN SPRAGUE: Was this in response to the letter the members of the Juvenile Justice Committee got from the principal at Miles City?

REP. MOLNAR: That was **Fred Anderson** of Miles City.

SEN. HALLIGAN: Where did the bill die?

REP. MOLNAR: It died in this Committee on that fateful night when many bills died in this Committee and then **REP. ELLEN BERGMAN** didn't, with no disrespect to her, do a very good job of explaining it during the blast. It was one of those 1 for, and 1 against and there was never any information let out. Then **Mr. Anderson** contacted all the members again and said this is a real, true problem. Drugs have no consequence, but alcohol does so the kids prefer to buy and use drugs and if they have to be charged, they prefer that.

CHAIRMAN SPRAGUE: Let's make sure it gets a fair hearing this time.

Ms. Fox: This is very similar to one section that was in **REP. BERGMAN'S** bill. It is not exactly the same and perhaps in the amendment, **REP. MOLNAR** has addressed some of the concerns with **REP. BERGMAN'S** bill. Again, this only deals with one section. It's requiring a fine for criminal possession of dangerous drugs

by a minor for the first violation. The difference is, in the **BERGMAN** bill, it required a maximum fine. This requires a minimum fine. Requiring the maximum fine was problematic because it made the sentence harsher for the youth than it does for an adult. The **BERGMAN** bill also reduced the age from 21 to 16. The tobacco statutes are 18, the alcohol statutes are 21 so it's staying in the range of being similar to the alcohol and tobacco statutes. I believe the minimum fine for alcohol is \$100. I'm not sure what the minimum fine for tobacco is, but it makes it similar to that. This only has one element of HB 327 and some of the concerns with that language have been addressed.

SEN. SWYSGOOD: I guess my question would be, if this is a bill that died, how can you amend that idea into another bill?

Ms. Fox: This is a general revision of Youth Court Act bill. It deals with youth so it's very general and the policy decision is always up to you.

SEN. SWYSGOOD: I thought if a bill died in one House, it could not be introduced again. I will oppose this on that basis.

REP. MOLNAR: I don't believe this is reintroducing a bill. This is an amendment under the general revise statute. It is not the exact same bill, it is not the sponsor, it's an amendment.

SEN. HALLIGAN: It's like trying to do a different tax bill after something has been killed in one House and trying to come over here to the Senate and we would do mischief and try to do it over because you killed over in the House. You can't do that. The rule is that once an idea or a concept has been killed in one House, it cannot be introduced in another House and sent back to the other House. That's to prevent all the duplication. It keeps us from doing mischief on a lot of different bills and a lot of different ideas. I don't know whether you can do that in this bill.

CHAIRMAN SPRAGUE: The Chairman is going to allow it to be as an amendment so we'll just vote on it relative to it as an amendment whether it's been killed prior to or not. I think it has been reworked so it isn't quite the same and he's offering it as an amendment so we'll consider it under those circumstances.

Vote:

MOTION FAILS TO ADOPT AMENDMENTS SB004814.ASF. CHAIRMAN SPRAGUE, REP. JOHNSON, REP. MOLNAR - AYE. SEN. HALLIGAN, SEN. SWYSGOOD, REP. WYATT - NO.

Discussion:

Ms. Fox: Amendment SB004815.ASF (light purple) is a combination of some cleanup and some additional changes. **(EXHIBIT 8)** Amendment 2 limits a youth assessment upon request to a youth who

is alleged to be delinquent or in need of intervention. In the House Select Committee this amendment was placed on the bill. This is related to this. On page 13, the definition of assessment officer went into discussing which youth could be placed and an assessment be placed on or not. Subsequent amendments to the bill have made this cumbersome and in conflict so instead of defining which youth can be assessed under a definition of an officer, that language is being stricken. It will be clarified later on, so we're not taking care of substantive law under a definition. So we would just say an assessment officer means a person who is authorized by the court to provide initial intake and evaluation for a youth who appears to be in need of intervention or an alleged delinquent youth. That leaves the definition as simply a definition and not saying who can be assessed and who can't.

{Tape: 1; Side: B; Approx. Time Count: 8:20 p.m.}

SEN. HALLIGAN: As we go along here, I don't mind if somebody says they would like to segregate any of these. I'm not trying to do any mischief. This was trying to do some cleanup stuff, along with maybe a little bit more than that in some cases. So if anybody wants to segregate at any point, when we get down to voting on them, that would be fine with me.

Ms. Fox: Amendments 3 and 4 require the youth to be an alleged youth in need of intervention or delinquent for parents to be able to request a youth assessment. This amendment was placed on by the House Select Committee and we are attempting to create kind of a graduated level of which youth and assessment could be conducted on. (d) 2 in the bill on page 25 implies that a youth or a youth's parent can request a youth assessment as long as they both agree and are willing to cooperate. We've realized that left quite a loophole meaning any youth in world, in essence, and that the parent and youth could come up and say, will you do an assessment for us. That could consume a lot of resources so this amendment would define more closely which youth those assessments could be requested on.

Amendment 5 adds another category. Under (d) 1 you have to have a minimum of two misdemeanors or three offenses that would be, in essence, status offenses, but it doesn't discuss how many felonies you would have to commit for an assessment. This gives a standard that even if the youth has only committed one felony or what would be a felony if they were an adult, if the probation officer indicates that there's a need for a youth assessment and the safety of the community has been considered in determining where the assessment is going to take place, that those kinds of youth could also have a youth assessment placed on them. If the youth was sufficiently dangerous that they had to be in a detention center, then they don't fulfill the criteria for youth assessment placement and technically they would not get a youth assessment. There's a whole different set of evaluations that perhaps could be done by the probation officers if a youth is in

detention; but it's maintaining that middle ground of assessment of the youth that maybe they are not the first timers in the system, but have had a couple of brushes with the system or else this felony youth, that if it's serious enough, that they feel the youth assessment is warranted.

Amendment 6 on page 37 deletes language that also discusses that youth court personnel shall assist the parents to the most reasonably possible extent in implementing and enforcing interventions and consequences designed to modify the youth's behavior. This amendment was placed on by the House Select Subcommittee. It's under rights and obligations. Most of these rights and obligations are discussing personnel outside of the youth court. There have been other amendments made to the juvenile probation officers duties and responsibilities. It was felt that this language was awkward. Nobody was quite sure what most reasonably possible extent could mean and believed it to be an out. Parents could say they didn't have to fulfill their obligation because the youth court didn't fulfill theirs. It was a problematic statement so that language would just be stricken.

Amendment 7 is kind of a cleanup. It changes the reference to contributions by parents to the appropriate Section because we deleted that from the disposition Section and it's only in the one Section that deals with parental contributions.

Amendments 8 and 9 allow the court to exclude the public from a dispositional hearing during the taking of evidence on issues of the need for treatment and rehabilitation. It was noticed that you have to perform a dispositional hearing according to the Subsections in 41-5-521 and there is a statement that says in a hearing on a petition under this Section, the general public may not be excluded except that in the court's discretion the general public may be excluded if the petition does not allege that the youth is delinquent. But then in the next Section if the court finds that it is in the best interest of the youth, the youth or the parents or guardian may be temporarily excluded from the hearing during the taking of evidence on the issues of need for treatment or rehabilitation. If it did allege that the youth was delinquent, the parents and the youth couldn't be there, but the public could. This makes it consistent in this one area when you're talking about fairly sensitive issues on treatment and rehabilitation, if it's not in the best interest for the youth or the parents to be there it certainly is not in the best interest for the public to possibly be there.

Amendments 10, 11 and 12 along with 1 in the Title clean up an amendment. The Department of Corrections proposed amendments that went part of the way to clarifying this informal consent adjustment language so that all the references are now to consent adjustment without petition so these are, again, more clean up on that line.

Amendment 13 is a coordination instruction with 114. If you make these changes in SB 48, you also want to make the corresponding changes in 114 where the Youth Court Act is being recodified.

SEN. HALLIGAN: Rather than move the amendments, I'll wait and see if people want me to segregate. I will then move the amendments that people want to talk about.

REP. MOLNAR: I would like to segregate 6.

Motion:

SEN. HALLIGAN: MOTION TO ADOPT NUMBERS 1-5 and 7-13 ON HALLIGAN AMENDMENTS SB004815.ASF.

Discussion:

REP. WYATT: Maybe a friendly amendment to new Section 13. I'm not an English teacher, but I think it has to be fixed. A youth has been referred to the youth court as an alleged youth in need of supervision with a minimum of two misdemeanor offenses or three offenses that would not be offenses if the youth were an adult in the past year. Don't you think "offenses in the past year" needs to be put there instead of the "adult in the past year"? It's the offenses in the past year not the person.

REP. JOHNSON: I want to question amendment 7. I'm on page 39 and we're talking about inserting Section 41 which is over on page 51 into line 4. Is that what we want to do?

Ms. Fox: This is confusing. In 41-5-523 and in Section 34 we took out the reference to "or a youth's parents or guardians" as being able to be ordered to pay costs specifically under that disposition section. This no longer works because it's not required in those Sections anymore. The only place we can require parents to pay costs is in Section 41. If you look at the whole sentence, it says a dispositional hearing may involve a determination of financial ability of the youth's parents or guardians to pay a contribution. This would be a short step even though you have to have two separate and distinct orders, one is a dispositional order for the youth that can include the costs that the youth is held responsible for. If you're going to hold the parents responsible for a cost, it has to be a separate and distinct court order. There is no reason why, at the dispositional hearing of the youth where you'll know about the placement cost perhaps, treatment costs, costs of adjudication, prosecution, defense and all that, they can't use the dispositional hearing as the place where the parents financial ability to pay is also considered. It can only be ordered under Section 41 though, and can no longer be required in 41-5-523 or Section 34.

Vote:

MOTION CARRIES UNANIMOUSLY. ADOPT NUMBERS 1-5 AND 7-13 ON HALLIGAN AMENDMENTS SB004815.ASF AND AMEND TO "IN THE PAST YEAR" AFTER "THREE OFFENSES" IN NEW SECTION 78, LINE 1 (A).

Motion:

SEN. HALLIGAN: MOTION TO ADOPT NUMBER 6, HALLIGAN AMENDMENTS SB004815.ASF.

Discussion:

REP. MOLNAR: It may be that this is in the wrong section, it may be that what we should do is move it to Section 48, the powers and duties of probation officers. I don't think that is the crux of the issue. This is attempting to level the playing field. In that same Section we say that if you don't do what the juvenile probation officer and the court says, we'll hold you in contempt. As we traveled around the state, you will remember that parents lined up 30 deep at the microphone to say the juvenile probation officer gave terms of probation and the kids disappeared. They called and said we can't get him to do this, he has stolen another car, we found more drugs and nothing ever happened. We heard from a lady who moved to New Mexico to find help from the juvenile justice system. They FAXED a letter saying they had adopted the Youth Court Act in 1974 the same as Montana did. The difference was in the attitude. Instead of her going to them and saying please help me, they came to her and asked what they could do to help her modify the behavior of her youth and they did what they could and the parent did what they could. It was a team effort as opposed to what we do. Currently, we say here is what you're going to pay which includes the cost of prosecution, thanks for turning him in and if you don't have the money and we don't have the time, we're done. There is no attempt to reach out and ask the family what can we do to help. The purpose of this amendment was to get around that.

The House floor debate was basically, why don't we put this in here because it forms a team to work with this kid. If we pull the parents out, alienate them and ignore them as we have for 20 years you're going to get what we've got. This is an attempt to take a small part of what's working in other states, which is a team approach, and apply it. If, for purposes of discussion, we'd like to move it to 48 and make it a new Section under powers and duties; that they will assist parents to the best of their ability. I'm a little upset with the wording as well. It wasn't an attempt to give the parents an out, it's an attempt to give the parents an in. To say, we're asking for help Your Honor, don't nail us with contempt. We're doing what we can. When we call for help, we don't get it. To be able to raise that issue at the time and say this is what we are trying.

{Tape: 1; Side: B; Approx. Time Count: ; Comments: End of tape.}

SEN. HALLIGAN: Look at Section 48 on page 57, Sub (c) does say, including enforcement of terms of probation or intervention. So part of the language has an affirmative duty to supervise, assist and counsel youth placed on probation including those things. The Select Committee must have put that language in for a reason and I'm assuming it was basically for the same reasons you just talked about. I don't know why that language isn't enough.

REP. MOLNAR: I would hope that would be, but when it's under this Section of law where, if the parent doesn't do as follows, we can hold them in contempt. They should be able to say we did do everything we could, Your Honor, and here is what the terms of probation were. That goes a long way, but that isn't all there is to working with one of these kids is terms of probation intervention. It might mean lining up what the treatment program is going to be, it might mean a lot of things. This serves a purpose to say that both are going to be held equally accountable when they go before the judge on something that is basically falling apart.

CHAIRMAN SPRAGUE: Ms. Fox, would you mind commenting on this particular section? Is that a duplication of or, in your opinion, has it been covered adequately?

Ms. Fox: If you give me a minute, I'll check and see.

SEN. HALLIGAN: That language must have been introduced by somebody in the Select Committee. Do any of you recall that and what the context was?

REP. JOHNSON: I don't remember who introduced it, but there were so many people introducing amendments. We had 101 amendments on Sunday afternoon so somebody got it in there. The sense of the amendment, in my mind, is okay. I'm not sure it's exactly written correctly, but I don't know how to rewrite it to make it more correct than it is. I think what **REP. MOLNAR** says is that he thinks it's the responsibility of all the parties who are involved in this situation, including the probation officers and the court and so forth, to be responsive to each other. It doesn't hurt anything to request that they do this sort of thing.

SEN. HALLIGAN: It has to be in the powers and duties of a probation officer, not in that Section. Perhaps you heard of it in front of your Committee, but I have never heard of a parent being found in contempt yet. I do some juvenile probation practice quite a bit and have never heard of it. If we're going to be changing a Section and putting in awfully vague language and putting it in wrong the Section, we ought to do that very carefully, especially if it happens rarely. If you want to strengthen that language in the powers and duties, maybe that's where you want to look. I don't think that language belongs in the Section it's in.

{Tape: 2; Side: A; Approx. Time Count: 8:30 p.m.}

SEN. SWYSGOOD: I believe this language that is being struck is an amendment that was put on by **REP. MOLNAR** on the House floor, not in the Select Committee. If you look at your green papers, 551131CW in the Committee of the Whole, you'll see this exact language presented by **REP. MOLNAR** on the House floor, not in the Select Committee.

REP. MOLNAR: The language on 37, lines 21-24 I believe I did put on the floor. However, it's lines 25-27 I don't think I did. I don't know who did on Sub 4 there.

SEN. SWYSGOOD: We're not striking the second part of that on line 25. We're striking through 24.

REP. MOLNAR: **REP. JOHNSON** and **REP. WYATT** may recall this was the love-in between **REP. COCCHIARELLA** and myself on this amendment. It was in response to the top part of Sub 3 where the parents could be found in contempt for not doing something. That is wasted language because the judge can find somebody in contempt for a lot of things. It didn't have to be placed in the act. Only one case I'm aware of is in Helena. A father said he would supervise his kid and keep him away from alcohol. The kid got in alcohol related trouble so the judge held him in contempt.

SEN. HALLIGAN: I don't know whether this might be appropriate. I don't think, if you put it in this Section, that you're going to get relief in a court hearing. If you say, Judge, don't find me in contempt, look at these other guys; the court will look at the powers and duties section, see it's not there and say, so what.

CHAIRMAN SPRAGUE: Are you saying you don't have a problem with what is being proposed, it's just in the wrong Section?

SEN. HALLIGAN: Yeah, I guess.

REP. MOLNAR: If it pleases the Committee, we can make a new Sub 3 on Section 48, even though I would point out that this Section is entitled rights and obligations and that's part of the obligations.

SEN. HALLIGAN: It's parties to the proceeding and maybe the State is party to that proceeding, but I think you still want to include it under the duties and take it out of that other Section. Why don't we vote on my motion? If it goes out, you can entertain a motion to try to deal with language in Section 48. It's just beefing up the including enforcement of the terms of probation or intervention language that's there. Either vote my motion up or down and if it goes down, we're done.

Vote:

MOTION FAILS TO ADOPT NUMBER 6 OF HALLIGAN AMENDMENTS
SB004815.ASF. REP. JOHNSON, REP. MOLNAR - NO.

Motion:

SEN. SWYSGOOD: MOTION TO STRIKE "MOST REASONABLY" OUT OF LANGUAGE AND PUT IN "AND EXTENT" AFTER "POSSIBLE" AND MOVING "EXTENT" BEFORE "POSSIBLE" ON LINE 22, PAGE 37.

Discussion:

REP. JOHNSON: I don't understand.

SEN. SWYSGOOD: Under my motion it will read "the youth court personnel shall assist the parents to the extent possible in implementing and enforcing intervention and consequences designed to modify the youth's behavior". I'm striking "most reasonably" out of there. I don't know what that means. At least with "to the extent possible" there is some guideline there.

Vote:

MOTION CARRIES UNANIMOUSLY TO ADOPT SWYSGOOD AMENDMENT.

Motion:

SEN. HALLIGAN: MOTION TO ADOPT BERGSAGEL AMENDMENT SB004818.ASF. (EXHIBIT 9)

Discussion:

Ms. Fox: The Department came to the House Select Committee with a proposal on communities intervening in delinquency programs. It was to allocate the funds amongst the judicial districts and make them responsible for paying their own costs. That proposal was not adopted by the Select Committee and REP. BERGSAGEL has been attempting to work on a similar version to that. He has tried to figure out a way to encourage judicial districts to make the least restrictive and less costly placements for juveniles and to allocate the youth placement appropriation amongst the judicial districts. This language took that concept and then went a little bit further and said perhaps that's not possible to do. I think the Department amendment failed the House Select Committee because it was a major leap.

This is an attempt to create a Pilot Program that will allow the Department to take a look at the spending in the various judicial districts and to look at and analyze the spending for all the different variables that it can. Some of them are listed in Subsection 1 such as type of youth, type of crime, community sentiment, availability or lack of availability of placements, length of stay in placements or case management. The Department should target the high spending districts for the purposes of this program. They will create an account, in essence, and the program in itself would be all judicial districts. The pilot program would be a high spending, rural judicial district, a high spending, urban judicial district based on expenditures for FY

1996 and 1997. They will credit them with a proportion of the appropriated placement funds.

The Department has been working on a similar concept. This goes further in saying the proportionate share should be based on the types of youth, types of placements, the total youth population from 10 to 18 years of age and also a measure of the youth crime rate. The Board of Crime Control uses a similar formula for their detention regions, but some people feel it is skewed a little bit because the crime rate statistics are based on reporting that is not necessarily 100 percent across the State nor has been for the past couple years.

The Department has requested financial compliance specialists. I believe they received one and HB 2 will continue the negotiations. Basically, when it says the Department shall work with the Regional Supervisor, Chief Juvenile Probation Officer and the Youth Placement Committees in these two respective judicial districts, the intent is for them to work with these people regarding their allocation to identify the potential placements, funding sources and to help them consider all the lowest cost options that are in the best interests of the youth, the victim and the safety of the community.

In addition to this Pilot Project, the Department should be developing and setting the expenditures for placements for years 1996, 1997 and 1998 to develop an incremental cost scale for the purposes of developing a system that would expand this Pilot Program to all judicial districts. That would allocate the costs amongst the judicial districts to encourage them to use lower cost placements. Under Subsection 4 are some of the requirements that they use the information from the Pilot Program for. One is that they prepare a recommendation for the method to return any balance remaining at the end of the Fiscal Year to the judicial districts. In essence, the lower spending districts will be rewarded with a share of the remaining balances.

This proposal should come from the Department at the end of the next biennium on how they could redistribute those funds. If the Department has to come in and ask for a supplemental, there is not going to be any left over for a judicial district. They are supposed to develop this method by which you could reward low spending districts who use community resources and placements by giving them an allocation back so they can turn that money back in for additional community programs for youth court purposes.

There are some assumptions made based on costs and it's basically that the Department is responsible for the costs. This is not a way to dump the costs to the counties and say here, you get a small cut but anything over and above that you have to pay. That is supposed to be made very clear in Subsection 5. The Department also, in developing this proposal of this incremental cost scale, should provide a recommendation and a justification on whether to include State youth correctional facilities and

their other programs in the incremental cost scale. The term incremental cost scale is not defined here specifically, but it is to debit judicial district accounts more for the high cost than the low cost.

The judicial district that was placing youths in the lower cost would have a higher percentage reimbursed or credited to their account versus if they were using the higher cost programs. At this point we're thinking perhaps it would be Pine Hills, but often times that can be a mid-level cost and there may be out-of-state placements that would be even more expensive. It's kind of like a sliding scale.

The Department is going to prepare a summary of all these tasks they've been given and present a proposal of their communities intervening and delinquency program, the results of the Pilot Project, developing this incremental cost scale based on actual expenditures and these other variables and come back in two years to have further developed the proposal that originated with them.

{Tape: 2; Side: A; Approx. Time Count: 8:45 p.m.}

SEN. SWYSGOOD: Where is the money for this? There are 21 districts and the Department has to evaluate every one of these districts and come up with all this criteria. I can understand where **REP. BERGSAGEL** is coming from with this amendment, but I'm also wondering what the cost associated with doing all of this is for the Department. Where is that cost at? Is it in HB 2 or in this bill? What does it do to this bill? Where is the Pilot Project going to be located? How is that depicted on which one of these judicial districts?

CHAIRMAN SPRAGUE: If the Committee doesn't mind, we'll break our own rule and ask **REP. BERGSAGEL** to come up and comment.

REP. BERGSAGEL: I was looking for ways to make this work and was trying to do it with the money we had evaluated for the juvenile justice system which is about \$7.3 Million. I came to the conclusion that I couldn't do it for all 21 judicial districts. I would have to select two because the criteria for determining how we're going to do the reimbursement rates for the community based programs got to be too cumbersome. Then we had to figure out a way where we would reward communities, that are currently high spending districts, for reducing their costs by allocating monies from the savings to the communities so we could go for the low cost/no cost solutions associated with it. It will have to be voluntary, because I can't force a judicial district to participate and the Department of Corrections is going to have to write letters and try to select those judicial districts that they perceive to be high spending districts.

It is similar to what **REP. MOLNAR** is talking about on a point system where we pay a higher reimbursement rate for those that provide community based programs for their juveniles. Then you

provide a different reimbursement rate once you move to the mid-tier level of treatment of a juvenile versus the high cost treatment that Pine Hills might offer. It's an attempt to provide the carrot to the community that does the community based program. I don't know if, in HB 2 in the Conference Committee, they will be allocated those financial advisors, but that would be one of the ways we would do that. If you can get a good financial officer to work with a juvenile district, they can develop the type of policies or procedures that might enable this to happen. The reason it's here is because **Greg Petish** indicated to me that this was not the type of language I could get into HB 2.

SEN. SWYSGOOD: What I hear **REP. BERGSAGEL** saying and what this amendment says are two different things. **REP. BERGSAGEL** is saying this is going to be a voluntary thing because of the money constraints and everything. The amendment specifically says shall identify each judicial district and then shall go through all these steps so this amendment is saying you have to do that with all 21 judicial districts. That's going to be quite a financial burden on the Department and if we don't give them those financial advisors in the Conference Committee, it's going to be an even a worse situation. I don't have a problem with putting a Pilot Project in place to see whether they can implement some of these things, as long as you relegate it to a judicial district and see how it works. You not only have the 21 judicial districts that you're contending with, but you're also going into that judicial district and it may have a rural and urban district they would have to split out.

CHAIRMAN SPRAGUE: Is it your recommendation to turn the shall into a may?

SEN. SWYSGOOD: That would be one way of doing it.

REP. BERGSAGEL: I don't believe I would have any objection to that. The CAPs computer system is going to enable us to more accurately track the costs associated with those juveniles. I think many of the tools are in place.

SEN. HALLIGAN: I don't think the Department received the financial officers it needed in the budget. How are you going to do this without those people?

REP. BERGSAGEL: I can't guarantee that they're going to get their financial advisors. The Department of Corrections is an unusual animal in that they've primarily had to work with just General Fund and they've never had to cooperate with anybody else on their funding sources. When you add juveniles to the Department of Corrections, they're going to have to go out and look for Medicaid reimbursement funds. It's going to take somebody of some kind of caliber, no offense, that they don't have to start to do that. I don't know where we're going to get

the money, but it's my intent to at least try to get them some assistance in that arena. I cannot guarantee that.

SEN. HALLIGAN: What pot of money are we referring to?

REP. BERGSAGEL: Actually, the pot of money is whatever that they might identify for those particular judicial districts, but it would come out of the \$7.4 Million. We're not talking about increasing costs, we're talking about using current costs and helping them identify how to reduce costs. We're trying to identify ways that they might be able to reduce costs and then find a way to reward the judicial district for doing that.

SEN. HALLIGAN: I should know this, but don't. Did the Department exceed its budget the last two years with respect to the \$7.4 Million?

REP. BERGSAGEL: It is my understanding and I've seen documentation where they've exceeded it by a significant amount. It's also my understanding that they are eating it and they have indicated to me that they believe they are about \$1.8 Million short and how we deal with that in the Conference Committee is up in the air. I don't know how that will be accomplished.

REP. WYATT: I like your amendment and if judicial districts assume this responsibility and agree to do this, my concern is that we don't sucker them. They do this and save money and supposedly get to keep the money that they save and then there isn't any money for them to keep after they do that. The State is not honoring its word. What kind of assurances are there that, if we vote for this and it actually works, they will have some extra money in their budgets to work with on new programs?

{Tape: 2; Side: A; Approx. Time Count: 8:55 p.m.}

REP. BERGSAGEL: There are no assurances. It would just be the best faith attempt that we would attempt to make. Some of us believe that if we don't take on the juvenile justice system and make it work, we may as well give up and build every prison that everybody wants. That's no argument for your concern, but I would at least like to attempt and figure out a way to reduce costs in the juvenile system to spread those dollars further.

REP. MOLNAR: I'm finding lower cost, but I'm not finding proof that it works anywhere in here; recidivism and all those sort of things. It's very easy to take a high end kid, put him into low end cost and say we're done and look at the money we saved, but you might have to hassle with that kid for six, seven years and then move him onto the adults. There isn't a word in here about actually proving that it works, only that you've saved money.

REP. BERGSAGEL: That is probably an oversight on my part because I'm primarily a budget guy. Yes, we would like to see the results of the recidivism rates. Unfortunately, because of our

record keeping in the past, we don't even have a base to start with. It is my hope that, through the CAP system, we'll be able to more accurately track the juvenile as they go through the system and maybe develop some data that might demonstrate the recidivism rate for juveniles.

CHAIRMAN SPRAGUE: Is it your recommendation that you'd like to hear something in this that would say report back to the Legislature?

REP. MOLNAR: I would like to see conceptually because right after this cost criterion coming back to us, it would also have recidivism rates. Assuming this would take an effective date of June 1, 18 months isn't very much time to study recidivism rates or true costs.

CHAIRMAN SPRAGUE: Line 6, second page talks about the Department shall report back a summary. Do you want the word "recidivism rate"?

REP. MOLNAR: That there would be some sort of quality control as well as cost control. Frankly, I don't know if they can do that in 18 months. If a kid goes into Yellowstone Treatment Center right now, that's six months.

CHAIRMAN SPRAGUE: We're looking for recommendation of improving this.

REP. MOLNAR: It should be in there. I just don't know if it's going to be all that effective. I think most of the kids will still be in their programs.

SEN. SWYSGOOD: I have some problems with the way the amendment is written so I'm going to make a substitute motion. We're going to have to give staff a little bit of leeway here because this is a fairly long amendment and has a lot of shalls in it. In the title, you're going to have to change "requiring the Department" to "the Department may operate a Pilot Project". Do you get my drift there? Then we go on down through the bill and there are 12 "shalls" in the bill that I would like to change to "may". Then where it says "the Department shall prepare a summary of the results of the study in this Section and report to the 56th Legislature", it would say "if the Department conducts a Pilot Project under this Section, the Department shall prepare a summary of the results of the study in this Section and report to the 56th Legislature". That would be my substitute motion.?????

Motion:

SEN. SWYSGOOD: SUBSTITUTE MOTION TO AMEND THE BERGSAGEL AMENDMENTS SB004818.ASF.

Discussion:

CHAIRMAN SPRAGUE: When do you want to use the word may instead of if?

SEN. SWYSGOOD: Page 2, number 6 at the bottom says "the Department shall prepare a summary of the results". Instead of the Department may, I'm saying if the Department conducts a Pilot Project under this Section, the Department shall prepare a summary of the results of the study in this Section and report to the 56th Legislature. I think we need that report, but we don't need it if they don't conduct the Pilot Project.

CHAIRMAN SPRAGUE: Would you have a problem with the word when the Department conducts a program?

SEN. SWYSGOOD: Yes, I would. I think this covers it just like it is right now.

REP. JOHNSON: Even the way that **SEN. SWYSGOOD** has suggested you use may instead of shall and so forth in it, you're still starting a new program with no funding at all. We have kind of resisted that since January 4 and I wonder if we're going to back off of that program just a little bit now. I realize this is what you hope will be a cost saving program, but almost every one I've heard about has been a cost saving program this Session. Sometimes they don't work that way. I would vote for the substitute recommendations of **SEN. SWYSGOOD** except I wonder if you're not concerned at all about starting another program.

{Tape: 2; Side: A; Approx. Time Count: 9:00 p.m.}

REP. BERGSAGEL: If we can put together a program that works, it will actually reduce costs, not increase costs. I'm fully supportive of **SEN. SWYSGOOD'S** amendment because you can identify a high spending judicial district and if they don't want to participate, there isn't anything you can do about it. In terms of creating a new program, I'm just trying to figure out a way to work within an existing program of doing it differently so that we provide a carrot and stick approach to dealing with our juveniles. Hopefully, we empower judicial districts to look for different ways of doing it and then, if there are any cost savings, we can empower local communities to develop their own programs to deal with juveniles. Are we creating a new program? I guess we are and that's one of the reasons I don't want any more money into it as well as not having it.

SEN. SWYSGOOD: I want the Committee to understand that I would also incorporate, on the second page of this amendment, item 4 "if the Department conducts a Pilot Program, then the Department shall present the proposal to the 56th Legislature". That includes the following elements and then "the Department may" on those elements that are contained in that Section so we have an idea of what's coming to us.

CHAIRMAN SPRAGUE: Is the staff clear on that? Okay. **Mike Ferriter** what is your comment on the **BERGSAGEL** amendment as amended?

Mike Ferriter, Administrator, Community Corrections: I have only had the opportunity to review this in the last few minutes. It obviously does something that we intended to do earlier in the Session. We would like to try a new way as well. Our concern is will we receive the financial specialists which are important, not only to this Pilot Project, but certainly to managing the whole placement budget in general. The Department is willing to take a run at this. Of course, we're concerned about judicial districts being willing to volunteer to do this. When we presented it to the counties, they had some concern about their responsibilities if we slid the money in their direction to manage. We see where there would be some benefits. One of my concerns that I don't think is real clear here is on the second page, 4 (b). **REP. WYATT** brought it up relative to the incentive, whether or not counties would receive the money. It's my understanding, reading this, that during the Pilot Program, the counties would not receive the money. It talks about the Department shall prepare a recommendation for a method to return any balance. If a judicial district volunteers, are they going to reap the benefit of any funds they save? We probably need to get that clarified in the amendments.

CHAIRMAN SPRAGUE: Is staff clear on what he said? Let's run it by one more time.

Mr. Ferriter: On 4 (b), the Department is concerned whether or not we are to allocate money back to the Pilot Project, the judicial districts. As I read this, it appears that we're supposed to develop a method if this seems to work, in the future, after our recommendations to the 56th Legislature. If we're going to get a county or judicial district to volunteer, as I understand it now, they will not really get any reward. Their volunteerism would be just for the sake of cooperating.

Ms. Fox: Correct. Under this assumption, 4 (b) uses that as an assumption that, if you're going to develop this actual program, what has to be or should be part of the program is developing the carrot part of the program. You're right, as this is drafted now, that isn't provided for the way the language reads right now.

SEN. SWYSGOOD: That's why I made the amendment to include the same language in number 6 as in number 4. These are the elements you're going to base the criteria on for returning monies to judicial districts or whatever and these are the recommendations made by the Department of the Legislature to review on how they would distribute these funds back. I would not read this to say that, during the Pilot, they're going to get money back for cooperating or anything.

REP. BERGSAGEL: I want to reemphasize that in order to make the Pilot or the general placement budget work, we're definitely in need of the financial specialist to help us manage these funds.

SEN. SWYSGOOD: Since this is a Pilot, we need to review this. I don't know whether the Department in 18 months can get something put together. I'm going to throw this out for a little bit of discussion. In this motion, should we include some type of sunset at some period on this to see where it is or whether we're just going to go ahead with it?

REP. MOLNAR: My concept is about having something in there about recidivism and the quality of these programs as opposed to just the cost of the programs. Do I have to move that as a separate concept?

CHAIRMAN SPRAGUE: If you can come up with some language that we could add into the expectation of our experiment.

REP. MOLNAR: It goes along talking about the Pilot Program and then 5 is talking about payment and responsibilities for payment which is not a Pilot Program, I don't think. It ties back into the bill throughout which seems like a bullet in the water. It just ricochets off on a whole different topic. Am I reading this wrong or is that part of the Pilot Project as well for the kids in the Pilot Project areas?

Ms. Fox: This Subsection is intended, if you look at 4 (c) and perhaps I've used the wrong term, but it talks about "the Department shall incorporate the assumptions in Subsection 5 as a part of the proposed incremental cost scale". This was to clarify if the judicial districts run out of money, the Department is on the hook. The Department is the only entity that can go ask for a supplemental from the Legislature if their spending is higher than their appropriation. Certain costs, like the education costs, are the responsibility of the Department. There was a bill in to clarify that. Treatment costs, the assumptions 5 (a) and (b) are to illustrate to the Department that there are other funding sources they should review and that's part of the Pilot Project.

The term "assumptions" in 4 (c) implies that this is the state of affairs for this project right now. If the Department is going to make a proposal for a new system and they want to change these assumptions, then they need to make provisions for that. This is how it stands right now. The Department is responsible for these costs. The Department gets appropriated a placement budget and has to do these things. In their initial concept that they brought forth to the House Select Committee there was going to be a certain amount of money and after that point, the judicial districts or the counties were going to pick up the tab. That was a point of contention. This was to clarify that is not the case in this amendment. These are the assumptions that this program is built on right now. These are the responsibilities of

the Department and if they develop a program based on this, then they have to deal with these assumptions. If they need to change the system and say the State will only be responsible for "x" amount and then the counties have to pick up the tab, then they would have to deal with those assumptions. Right now, this is how these are who's responsible for the costs. That's all this was intended to do. I don't think it states anything different than is in the remainder of SB 48.

{Tape: 2; Side: A; Approx. Time Count: ; Comments: End of tape.}

SEN. SWYSGOOD: Substitute motion contains, for item number 4, the same language as item number 6, "if the Department conducts a Pilot Project, the Department shall present the proposal". From item 4 all the way down through, the "shall" should stay in that Section because you're saying if they have the Pilot then these are the things they "shall" do. Those "shalls" should stay in this amendment and those other "shalls" that are on the first page would be the ones that would be removed where it would not be mandating them to do this Pilot Project.

CHAIRMAN SPRAGUE: The Committee, I think, does understand and agrees that a certain amount of latitude is going to be given to accomplish this. The **BERGSAGEL** second amendment SB004818.ASF as assumed to be amended and may be amended.

CHAIRMAN SPRAGUE: Adopt the **SWYSGOOD** amendment and changes that we anticipate to be made and by doing that we'll adopt the **BERGSAGEL** amendment.

Vote:

MOTION CARRIES UNANIMOUSLY. ADOPT BERGSAGEL AMENDMENTS SB004818.ASF WITH SWYSGOOD AMENDMENTS.

Discussion:

Ms. Fox: The two issues that weren't dealt with in that amendment were do you want a sunset on this Section and do you want to incorporate language regarding lower recidivism and quality of programs? I don't know if anyone wants to offer those, but I don't believe we incorporated that in the first motion.

REP. MOLNAR: I'll move the part about quality of program and recidivism. It should probably go in Section 1 about 4 sentences up from Sub 2 at the end of the sentence where it says length of stay, case management, availability, etc. Some wording should go in there about they also shall report about the effectiveness of the programs studied and rates of recidivism.

CHAIRMAN SPRAGUE: Do you have a date in mind for sunset?

REP. MOLNAR: I'm not addressing that part with this.

CHAIRMAN SPRAGUE: Does the Committee understand the amendment? The discussion is on the recidivism recommendation by **REP. MOLNAR**. Is everyone clear?

{Tape: 2; Side: B; Approx. Time Count: 9:15 p.m.}

SEN. HALLIGAN: I'm not. If you say "the effectiveness", I think that's where you want to go. I don't know if you want to say "and recidivism", but if that's in the effectiveness part of it the record is going to be pretty clear.

REP. MOLNAR: I'll agree that we're looking at effectiveness and recidivism as one part of the way of measuring that.

Ms. Fox: Based on what **SEN. HALLIGAN** said, instead of the sentence that **REP. MOLNAR** was suggesting, perhaps we could say "the Department shall target high spending districts to work with them in identifying and creating appropriate, more effective lower costs and lesser restrictive placements". Is that enough? We can go to the sentence above that where it talks about types of youth, etc. and put recidivism in as one of those variables. I'm unclear.

CHAIRMAN SPRAGUE: Do you have a recommendation, **SEN. HALLIGAN**?

SEN. HALLIGAN: I think you need to go back up in the types of youth where **REP. MOLNAR** was initially. It has to go in that laundry list.

Ms. Fox: And then put effectiveness of programs?

SEN. HALLIGAN: Right.

REP. JOHNSON: Are you suggesting that to measure the effectiveness of the program, you should put it down in 6 at the very end which says "if the Department conducts, it shall prepare a summary of the results of the study showing the effectiveness of it"?

SEN. HALLIGAN: No. I'm looking at page 1, Sub 1, about the third or fourth sentence down where it says "the district shall analyze each category and identify the reasons for the spending characteristics and such". There's a laundry list stated there. It just adds the effectiveness language to that list. Do you see where I'm at?

REP. JOHNSON: It seems to me what we're really trying to do is find out what happened in the program if the program takes effect and so forth. The program is laid out to the very end of the amendments and on amendment 6 it says, and we changed the wording, "if the Department conducts this Pilot Project, it shall prepare a summary of the results of the study". Why not include it in that Section? Does that summarize what we're trying to do?

Valencia Lane: It occurs to me that what **REP. MOLNAR** is talking about is recidivism and what you want to know is what are their rates of recidivism? If you insert the phrase "effectiveness of programs", it is fairly ambiguous. What you want to know specifically is the rate of recidivism. I wonder if you wouldn't want to use that phrase, "rate of recidivism" versus "effectiveness of programs". I'm not sure why you would want to put it in Sub 6 unless you want to specifically state that the reported summary has to address rates of recidivism.

SEN. HALLIGAN: That's why I didn't think 6 was appropriate. That is the broad section where the whole report is going to be submitted. I thought, as long as it was in the detailed portion of it, that was going to be part of any report anyway. I wouldn't have any problem with the "effectiveness of the programs including but not limited to the recidivism rates".

CHAIRMAN SPRAGUE: I think we have the gist of it now and the staff understands where we're all going. **REP. MOLNAR**, are you satisfied with that?

REP. MOLNAR: Yes.

Motion/Vote:

REP. MOLNAR: MOTION TO ADOPT THE LANGUAGE AS GIVEN BY **SEN. HALLIGAN** IN SUB 1. MOTION CARRIES UNANIMOUSLY.

Motion:

REP. JOHNSON: MOTION TO SUNSET FOR TWO YEARS.

Discussion:

REP. MOLNAR: What would the date be? Will it be June of 1999?

SEN. HALLIGAN: Let's do December 31, 1998 so it's done prior to the last day before the start of the next Session and they can prepare the report. I would make that substitute motion.

REP. JOHNSON: That's fine. I change my motion. (Not using microphone, cannot hear.)

Motion:

REP. JOHNSON: MOTION TO SUNSET 18 MONTHS MAKING BILL EFFECTIVE JULY 1, 1997 AND TERMINATING DECEMBER 31, 1998.

Discussion:

Ms. Lane: **REP. MOLNAR** asked when would that be and **SEN. HALLIGAN** suggested that it should be 18 months. The bill is effective July 1, 1997 and I think **SEN. HALLIGAN** is suggesting that the motion should be the Section terminates December 31, 1998.

Vote:

MOTION CARRIES UNANIMOUSLY.

Discussion:

REP. MOLNAR: Was that on the amendment or the bill?

Ms. Fox: This falls from what REP. MOLNAR brought up and the Department is concerned that Subsection 5 may appear to give them more responsibility than they have in existing statute. Because I used the term "assumptions" under 4 (c) and I'm proposing this as language. We can see if the Committee and/or the Department want it. Under Subsection 5, the assumptions for the Pilot Project are as follows: the Department is responsible for the payment of residential and treatment costs and then the list that's there. It is an assumption solely for the Pilot Project. We're not making new substantive statutes that require the Department to go above and beyond what they currently are responsible for.

SEN. SWYSGOOD: Maybe, for this concern, you could put on Sub 5 "for the purposes of the Pilot Program, the Department shall assume the following", that it is responsible for the payments.

Ms. Lane: At the beginning of Subsection 5 insert the following phrase, "for purposes of the Pilot Program, the Department shall assume the following that: the Department is responsible, etc."

Motion/Vote:

SEN. SWYSGOOD: MOTION TO AMEND SUBSECTION 5. MOTION CARRIES UNANIMOUSLY.

Motion/Vote:

SEN. HALLIGAN: MOTION TO ADOPT CONFERENCE COMMITTEE REPORT AS AMENDED. MOTION CARRIES UNANIMOUSLY.

Discussion:

CHAIRMAN SPRAGUE: This Committee is closed. I want to thank everyone that participated. This has been a long two year process and everybody deserves a hand. I hope the bottom line is the kids will benefit.

(EXHIBIT 10) - SUMMARY OF PROPOSED AMENDMENTS TO SB 48.

ADJOURNMENT

Adjournment: 9:24 p.m.



SEN. MIKE SPRAGUE, Chairman



ANGIE KOEHLER, Secretary

MS/AK