

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

CONFERENCE COMMITTEE ON SENATE BILL 99

Call to Order: By **CHAIRMAN FRED THOMAS**, on April 10, 1997, at 8:15 a.m., in Room 402.

ROLL CALL

Members Present:

Sen. Fred Thomas, Chairman (R)
Sen. Mike Halligan (D)
Sen. Walter L. McNutt (R)
Rep. Loren L. Soft (R)
Rep. Daniel W. McGee (R)
Rep. Diana E. Wyatt (D)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Fiscal Division
Val Palmer, Committee Secretary

CONFERENCE COMMITTEE HEARING ON SB 99

Opening Statements:

Valencia Lane, Legislative Fiscal Division (LFD) The problem all along in existing law has been with the understanding and the comprehension of 41-05-208. 41-05-208 was adopted as part of the extended jurisdiction juvenile act which is codified in Title 41, Chapter 5, part 11. 41-05-208 deals with extended jurisdiction kids who are dealt with in Title 41, Chapter 5, part 11. Before part 11 and 41-05-208 were adopted, and before last session, 41-05-206 was already on the books. 41-05-206 is the transfer section which deals with kids that are in youth court and can be transferred to adult court under 41-05-206 and you will continue to see references to transferred under 41-05-206 or offenses transferrable under 41-05-206. They're taking kids about 12 to 16 years old that go into youth court and right up front they say, "This was a really bad crime and we think you should be transferred over to the district court and we're not even going to deal with you." Last session 41-05-208 threw everyone for a loop because not everyone understood it. But it's kids that they want to keep in youth court under Title 41, Chapter 5, part 11, which are the extended jurisdiction provisions. They want to have this "hammer" over them that says "Yes kids, you're not all that bad but we're worried about you and we're going to keep you

in the youth court act. We're going to give you these duo sentences as a kid, but we're going to have this adult sentence that can be hanging over your head. If you've behaved well, you'll stay in youth court. We'll take care of it all here and nothing further's going to happen to you. But if you don't cooperate or you screw-up again, this hammer is coming down. We're transferring you over to the district court and you're going to serve that adult sentence." That's the distinction between 41-05-206 and 41-05-208. The reason I'm talking about this right now is because **REPRESENTATIVE MCGEE** said that he would like some explanation of the memo from Judge John Larson who wrote a memo (**EXHIBIT #1**) and explained: There is one section of amendments in the amendments that have been proposed that are sitting before you right now. That's amendment #3 which Judge Larson requested and Susan Fox has drafted. It would remove the capped language on page 3, line 6 and 7, and return the bill to the way the language was drafted originally and as justification for that requested amendment is Judge John Larson's memo which explains the reason he thinks that **REPRESENTATIVE MOLNAR'S** amendment should come out. **REPRESENTATIVE MOLNAR** doesn't understand the two tracts of kids that I just explained - the 206 kids vs the 208 kids. Judge Larson has requested that the language that was originally drafted in the bill be restored and that the House amendment come out.

REP. DIANA WYATT Valencia, I have a question. One is, where does the Diane Barz ruling come in to this? **Ms. Lane (LFD)** Actually her ruling has nothing to do with this amendment. It has to do with 208 and the confusion of the issue about 208 and 206.

REP. DAN MCGEE Why doesn't it have anything to do with this amendment? **Ms. Lane (LFD)** This is an amendment to 41-05-205. The section that we're talking about is amending or not amending 41-05-205 which has nothing to do with the Barz decision at all. The Barz decision had to do with double jeopardy and this does not deal with this in any way.

REP. WYATT The double tract does in the fact that you can keep a youth hanging. **Ms. Lane (LFD)** Yes, and I think that would be a problem. By amending the section the way **REPRESENTATIVE MOLNAR** has, you would compound the problem. This bill was drafted to address the Diane Barz decision and the concerns raised in that decision and the bill was drafted in an attempt to address those concerns and make Constitutional the separate tract. I guess the courts will tell us if we did it well or not.

REP. MCGEE Judge Larson's comments aside, as you read this language, is it your impression that **REPRESENTATIVE MOLNAR** is trying to accomplish what is already accomplished in 206 and 208 combined by referencing this change to 205 somehow? **Ms. Lane (LFD)** Is **REPRESENTATIVE MOLNAR** attempting to do what the bill was originally drafted to do, which was to take care of the problems? That may be true. I did not hear the discussions when that amendment went on, but I think if that was the attempt I

don't think it quite worked. **REP. MCGEE** Let me ask this way. 206 kids are transferred instantly? 208 kids stay in the youth court and then you have the "hammer." But this is amending 205 which is the retention of jurisdiction termination, etc. The amendment that we're dealing with that we want to strike here is in 205. Your discussion has been about 206 and 208. **Ms. Lane (LFD)** My discussion was an attempt to explain Judge John Larson's memo regarding **REPRESENTATIVE MOLNAR'S** attempt because John Larson thought that perhaps **REPRESENTATIVE MOLNAR** didn't understand the distinction. Actually, I probably need to go further in my explanation. **Ms. Lane (LFD)** 208 is the real concern for the Barz decision and there was a memo from Barz' law clerk after this bill was drafted and seen by the public. She thinks 208 is an abomination because it does more than it ever attempted to do before which is exactly what it was originally drafted to do two years ago but nobody understood it.

You've got three classes of kids. You've got the 206 kids that go straight to adult court. You've got the extended jurisdiction kids and I explained those well. I haven't misled you there. The 206 kids can go to district court immediately up front. They say that you are really bad kids and we're kicking you over. Part 11 kids which are the extended jurisdiction kids are the kids that they think are not so bad. We're going to keep them here and try to deal with them, but if they don't cooperate, then we're kicking them over. 208 picks up the third class of kids which are all the kids that were adjudicated in youth court that weren't 206 kids and weren't part 11 kids. In summary there are actually three classes of kids: (1) 206 goes right away; (2) the part 11 kids in the extended jurisdiction who they try to hold but they hold the "hammer" over them saying if you don't behave then we're kicking you over; (3) 208 actually applies to all those other kids that just went straight through the youth court.

SEN. MIKE HALLIGAN It states on page 5, lines 26, 27, and 28 that "After adjudication by the court of a case that was not transferred to district court under 41-5-206 and that was not prosecuted as an extended jurisdiction juvenile prosecution under part 11 of this chapter," that wraps in everybody.

Ms. Lane (LFD) That's why even though 208 was adopted as part of the same bill that adopted part 11, it was intentionally effective with the Code Commissioner or an instruction to the Code Commissioner to codify it over here in part 2 because of the way it was originally drafted two years ago at the request of Judge John Larson. He wanted it to apply to these run-of-the-mill youth court kids and that's what it was always originally intended to do but in Judge Barz' decision she was confused by 208, though it applied only to extended jurisdiction kids which it did not. And in this bill, the attempt was to clearly state that and that's why the language was clearly drafted to say "it's not 206 kids, it's not part 11 kids; it's everybody else's run-of-the-mill straight youth court act kid."

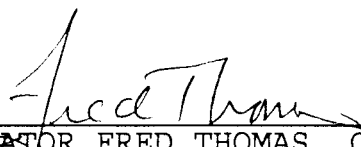
SEN. MCGEE The amendment is in part 205. So explain to me how 205 dovetails with 208, 206 and part 11? **Ms. Lane (LFD)** I think this is a personal note that it's ironic that 205 has become controversial because I drafted this bill and it was clearly an attempt just to clarify the law. If you look at what was already there, there was just like one sentence basically, about what is or isn't the jurisdiction of the youth court and retention of jurisdiction. So if you look at subsection 3 at the top of page 3, which is subsection 3 of 205. It talks about the jurisdiction of an extended jurisdiction juvenile. An extended jurisdiction juvenile is a kid that stays in the youth court and has not been transferred to the district court, and as originally drafted it says, "extends until the kid is 25." So it limits the "hammer". It says, "these part 11 kids who we're keeping here because we want to try and deal with them and not just automatically kick them into district court. Yes, we're holding the "hammer" over them but this jurisdiction of this youth court extends only to the age of 25. You behave until you're 25 and you're done with the youth court. That's what it clearly said as DRAFTED.

REPRESENTATIVE MOLNAR'S amendment would say, "it can extend for any period of incarceration included in the adult criminal sentence. He's trying to impose the adult criminal sentence in the youth court, which is part of the part 11 extended jurisdiction kids who are kept in youth court. We're trying to deal with these kids, not kicking them over to adult court. Judge Larson's memo attempted to say that **REPRESENTATIVE MOLNAR'S** amendment really wasn't appropriate and he thinks it was not appropriate because **REPRESENTATIVE MOLNAR** didn't quite understand the distinction. **REPRESENTATIVE MOLNAR** tried to put something in that really didn't fit and really doesn't work and he's requesting this Conference Committee to take out that language and return the bill to the way it was originally drafted.

Motion/Vote: **SEN. HALLIGAN** MOVED THE CONFERENCE COMMITTEE BE DISSOLVED AND A FREE CONFERENCE COMMITTEE BE APPOINTED TO ADOPT AMENDMENT #SB009902.ASF (EXHIBIT #2) DISCUSSED IN THE CONFERENCE COMMITTEE. MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 8:34 A.M.



SENATOR FRED THOMAS, Chairman



VALERIE PALMER, Secretary

FT/VP