

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on January 10, 1997, at 10:00 a.m., in Room 104 of the State Capitol.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused:

Sen. Lorents Grosfield, Vice Chairman (R)

Members Absent: None

Staff Present:

Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 48, SB 99,
Posted January 6, 1997
Executive Action: None taken

HEARING ON SB 99

Sponsor: SENATOR FRED THOMAS, SD 31, Stevensville.

Proponents: SENATOR FRED THOMAS, SD 31, Stevensville
Juvenile Justice Mental Health Commission

SENATOR MIKE HALLIGAN, District 34, Missoula
Mary Ellerd, Executive Secretary, Montana Probation
Officers

Opening Statement by Sponsor: **SENATOR FRED THOMAS, SD 31.**
Stevensville. This bill was drafted by staff attorney Valencia Lane, and is a rewrite of the bill passed in the 1995 legislative session, with the necessary changes.

Judge John Larson, Fourth Judicial District, Missoula, is not able to be present today, but supports the bill, as does the Juvenile Justice Mental Health Commission.

Line 10 of the title, following the first semi colon after "juvenile", denotes the two sections of the bill: 1) dual sentencing; and 2) transfer of cases in juvenile court.

Judge Barz of Billings found difficulty with current law and issued an opinion in 1996, addressing double jeopardy and due process protection for the juvenile. SB 99 is designed to be applied at the very beginning of a youth court case which can be expanded well beyond a youth's eighteenth birthday, i.e., as adult sentencing.

{Tape: 1; Side: A; Approx. Time Count: #7; Comments: None}

Part A of the bill states what an extended sentence could include if a youth sentence is violated. Juvenile laws are referenced under 1995 Montana law and Minnesota law. Three cases are currently on appeal with the Montana Supreme Court. Section 9 is concerned with revocation of one sentence with two parts, rather than two sentences.

{Tape: 1; Side: A; Approx. Time Count: #12.}

There are amendments to Sections 7, 9 and 10. The seriousness is of the sentence is communicated to the youth and the family early on, as well as ability to transfer the case to adult court, thus allowing treatment to be completed. (For example, a seventeen-year-old unable to repay damage before age 18.) The bill provides significant sanctions for repeat violators. Mineral County Attorney, Shaun Donovan, sent a fax in support of SB 99 (EXHIBIT #1).

{Tape: 1; Side: A; Approx. Time Count: #15; Comments: None}

Proponents' Testimony:

SENATOR MIKE HALLIGAN, District 34, Missoula. The Commission did look at both of these issues, and these were part of its recommendations.

Mary Ellerd, Executive Secretary, Montana Probation Officers.
The Probation Officers support SB 99.

Questions From Committee Members and Responses:

SENATOR SUE BARTLETT. Did you say a case could be transferred without an adult record? **SENATOR THOMAS** deferred to **SENATOR HALLIGAN.** **SENATOR HALLIGAN** asked that staff attorney Valencia Lane explain the difference between extended jurisdiction and transfer. **Valencia Lane.** The two parts of the bill are unrelated in "how" they work, but both are in the 1995 bill. 41-5-208, MCA is the transfer section, and Part 2 of Title 1, Chapter 5 on line 10 of the Title explains what the bill does to 41-5-208, MCA, the transfer statute. This statute says that the case of a youth adjudicated and dealt with by the Court as a run-of-the-mill youth, but is not cooperating with the Court, is subject to transfer to the District Court, i.e., Youth Court washes its hands of that youth. SB 99 attempts to clarify Part 2.

{Tape: 1; Side: A; Approx. Time Count: #22; Comments: None.}

SENATOR BARTLETT. If this were an extended jurisdiction case, would the youth end up with an adult record? **Valencia Lane.** I'm not sure.

SENATOR STEVE DOHERTY. If a sentence is extended beyond the age of majority, will the youth have an adult criminal record?

SENATOR MIKE HALLIGAN. Yes, but with immediate consequences and sanctions, it is hoped to prevent the youth from ending up in the adult system.

{Tape: 1; Side: B; Approx. Time Count: #00; Comments: None.}

SENATOR DOHERTY. Reference New Section 10s, lines 19 and 20, dispositions. A number are not doing sex offender analysis, as it is too costly. Are we going to give that juvenile to the adult side because we can't handle it on the juvenile side with dispositional treatment alternatives? The Study Commission recommended increases in provider alternatives. **SENATOR CRIPPEN.** Judge Barz' rationale was that due process was not followed in one situation.

{Tape: 1; Side: B; Approx. Time Count: #2.9; Comments: None.}

CHAIRMAN CRIPPEN. If you are sentencing a person to a work program and they become of age (18) during this process, do they still have the same due process privileges? **SENATOR HALLIGAN.** Yes. For example, however, if you have a juvenile proceeding in civil court, if it's transferred and it becomes a criminal proceeding, I don't know, theoretically or practically, if we've done all we can do to protect that juvenile's rights. There may still be some constitutional questions.

CHAIRMAN CRIPPEN. Are you trying to provide one sentence to cover an extended period of time? **SENATOR HALLIGAN.** Yes.

CHAIRMAN CRIPPEN. What happens if you don't have adequate juvenile facilities, and put a youth in an adult facility? Are we violating due process? **SENATOR HALLIGAN.** We are hoping early "plug-in" will save youths from becoming lost in the adult system, where there is little or no rehabilitation.

{Tape: 1; Side: B; Approx. Time Count: #82.; Comments: None.}

SENATOR BARTLETT. I want to hear from a representative of the Department of Corrections, Mr. Farriter, if possible, regarding the Department's attitude in dealing with juveniles. **Lois Adams, Department of Corrections.** The Department has taken no position on SB 99. In Section 5-23-45, MCA, a youth tried as an adult will go to the Women's Prison or to Pine Hills.

{Tape: 1; Side: B; Approx. Time Count: #12.4; Comments: None.}

SENATOR BARTLETT. I wanted to know what would be done preventively during the juvenile portion of the sentence. **Lois Adams** reiterated the "panoply of treatment available to the juvenile". **CHAIRMAN CRIPPEN.** You may need Director Day to answer this question. **Mike Farriter, Administrator, Community Corrections Division, Department of Correction.** We do not have a secure facility for juvenile girls now. We have a plan for secure care in Boulder, as they are now going to the Women's Prison. There are two problems: 1) the budget is earmarked only for adjudicated juveniles, and so we don't feel we can use those placement funds for youth adjudicated as adults to sent them out of state; 2) we can't send sex offenders to Pine Hills.

{Tape: 1; Side: B; Approx. Time Count: #17; Comments: None.}

Closing by Sponsor: SENATOR THOMAS. I would be happy to have Judge Larson visit with the Committee. As an example, a twelve-year-old in the Missoula area shot the owner of a pickup. The youth was stealing cigarettes from his pickup, and he hollered at the youth.

The law is designed to give the court system better ability to deal with these problems.

HEARING ON SB 48

Sponsor: SENATOR MIKE SPRAGUE, SD 6, Billings.

Proponents: **SENATOR MIKE HALLIGAN, District 34, Missoula**
Beth Baker, Department of Justice
Pete Surdock, Department of Public Health & Human Services
Lois Adams, Attorney, Department of Corrections
Richard Meeker, Chief Juvenile Probation Officer,
First Judicial District, Helena, and member of the
Study Commission

**Candace Wimmer, Montana Board of Crime Control and
Youth Justice Council
REPRESENTATIVE BRAD MOLNAR, District 22, Laurel**

{Tape: 1; Side: B; Approx. Time Count: #20; Comments: None.}

Opening Statement by Sponsor: SENATOR MIKE SPRAGUE, SD 6, Billings. SB 48 relates to SB 240 from the 1995 legislative session. The Report to the Governor and the 55th Legislature of the Juvenile Justice and Mental Health Study Commission includes meetings held at the five mental health regions in Montana (**EXHIBIT #2**). Youth are laughing at the system now, as there are no consequences. SB 48 is an inclusive bill dealing with "youth in need of intervention". Fourteen of seventeen were voting members of the Study Commission.

{Tape: 2; Side: A; Approx. Time Count: #3.6; Comments: Non.}e

Proponents' Testimony: SENATOR MIKE HALLIGAN. It's time to front-load youth treatment with early intervention, prevention, thus recognizing youth at risk. SB 48 addresses assessment centers, assessment officers, and looks at the family, not just the child. Communities will decide what treatment alternatives they want, and there may be funding associated with this.

SB 48 provides a set of graduated sanctions now. There is the possibility of a shelter-care alternative (community-based) for up to ten days. Assessors will get immunization, education, and other pertinent records within five days, subject to state and federal law. There will be a pilot program, with a single point of entry in two communities. There will be two different informal proceedings only one time each, then they will go on to a formal delinquency process. There is a financial responsibility to parents.

{Tape: 2; Side: A; Approx. Time Count: #10.3; Comments: None.}

Lance Melton, Director, Governmental Relations, Montana School Boards Association. I am offering a minor amendment to page 7, line 25, Section 5, subsection (z) (**EXHIBIT #3**) pertaining to the authority of a school district to protect and keep confidential certain information.

{Tape: 2; Side: A; Approx. Time Count: #14; Comments: None.}

Beth Baker, Department of Justice, provided written comments on the proposed legislation (**EXHIBIT #4**) and amendments (**EXHIBIT #5**).

The Department supports the Study Commission's work. The amendments are minor and have been discussed with the sponsor. The first amendment relates to disposition in youth cases, to provide consistency with current sex offender statute (in the process of change now). Amendments two through four deal with

Section 55 on page 56, specifically subsection (d) on line 23. It makes sure victims get noticed in the same manner required for offenses committed by adults.

Senate Bill 48 is comprehensive and complex. "A house bill is nearly identical with some major changes". The Department is concerned with Section 17, page 19, which eliminates the transfer process for listed offenses. We do agree the transfer process needs revision, but we see the need to retain the role of the judge in this process, for some sort of standard of review.

{Tape: 2; Side: A; Approx. Time Count: #20; Comments: None.}

Pete Surdock, Child Protective Services, Department of Public Health and Human Services (DHHS) -MRM Program. The Department also has concerns with the confidentiality provision. On page 13, lines 16-20, the public mental health program is managed care, and thus does not offer alternatives for assessment. On page 14, lines 9-29, the bill defines "mentally ill". We would suggest the definition used in other legislation being proposed to avoid confusion.

The Department also has concerns the language concerning truancy is too limiting.

Lois Adams, Attorney, Department of Correction. We want to thank the Commission for its work on the bill. Departmental legislation paralleling this legislation quite a bit, will come before the Committee on Friday, January 17, 1997.

{Tape: 2; Side: B; Approx. Time Count: #00; Comments: None.}

Richard Meeker, Chief Juvenile Probation Officer, First Judicial District Helena, also a member of the Study Commission. SB 48 sets forth many new, innovative programs and will cost money.

Candace Wimmer, Montana Board of Crime Control and Youth Justice Council, and a non-voting member of the Study Commission. The Board supports the bill, recognizes the technical problems in need of correction, and is available to help in this area, as needed. The Board also sees a problem with the truancy limit of one day, as well as the need to clarify who makes decisions on space available and who pays for it.

REPRESENTATIVE BRAD MOLNAR. The Montana juvenile justice rate is up ten percent in Montana, while it dropped twenty percent nationally; so something is not right in Montana. I'm asking that youths being assessed have the right to read their assessment and to make written comments.

On page 29 of the bill, I wanted second misdemeanor to go to a judge, rather than second felony. I would also like to see parents paying for all costs, based upon the income stated in their tax returns. A judge pro-tem is also known as a special

master. I don't believe we have the right to tell a judge who to hire for evaluations.

{Tape: 2; Side: B; Approx. Time Count: #14; Comments: None.}

I wondered why we were not holding a youth responsible for not getting to treatment appointments. Also, we were informed that social workers in one city refuse to work with "liberal" social workers in another city. Aftercare placement is the same place that the youths were sent prior to treatment, and is not a good aftercare environment.

{Tape: 2; Side: B; Approx. Time Count: #17.1; Comments: None.}

Howard Give, Flathead County Commissioner. I am responsible for the detention center there, and am a Montana Association of Counties (MACO) representative. I have concerns with overcrowding, and that the counties don't have the money to fund this bill.

Questions From Committee Members and Responses: SENATOR DOHERTY.

I would like to see language for a tighter confidentiality provision, and for the definition of "mentally ill" in the other bill. **Pete Surdock.** I would need to get with the Office of Public Instruction and Susan Fox on the confidentiality issue. DHHS has a bill sponsored by Representative Soft defining mental illness and circumstances denoting need for treatment.

{Tape: 2; Side: B; Approx. Time Count: #21.6; Comments: None.}

SENATOR DOHERTY. I would like to hear on managed care and those who are 200% of poverty level. In such cases, who would pay?

Susan Fox. If the youth were committed to the Department of Corrections, the Department would pay; if the were committed to Youth Court, the Court would pay. **SENATOR SPRAGUE.** The funds follow the child.

Closing by Sponsor: SENATOR MIKE SPRAGUE. No one on the Study Commission had all the answers, and no one will get all they want. We are trying to spread emphasis up-front to salvage youth, as we have found that 80 percent are salvageable. This, instead of too little, too late. This bill was a collaborative effort toward a solution.


I believe the Departments had good intentions, but the Commission was always "pulled to reality" by the testimony of individuals. This is an on-going process.

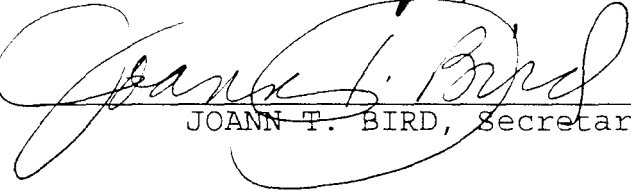
CHAIRMAN CRIPPEN. We will assign a subcommittee to look at these related bills. I thank the Commission and staff for their work on this bill.

The Committee will hold executive session on bills heard the first part of next week.

ADJOURNMENT

Adjournment: 11:55 a.m.


SEN. BRUCE D. CRIPPEN, Chairman


JOANN T. BIRD, Secretary

BDC/JTB