

## MINUTES

### MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

#### COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BRUCE D. CRIPPEN, on January 23, 1997, at 10:00 A.M., in Senate Judiciary Room.

#### ROLL CALL

##### Members Present:

Sen. Bruce D. Crippen, Chairman (R)  
Sen. Lorents Grosfield, Vice 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: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division  
Judy Keintz, Committee Secretary

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

##### Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 109 - January 13, 1997  
SB 172 - January 13, 1997  
Executive Action: SB 48

#### HEARING ON SB 172

Sponsor: SEN. DEL GAGE, SD 43, Cut Bank

Proponents: John W. Larson, Dist. Judge-4th Judicial District  
Patta Kahler, Administrative Assistant,  
Missoula Youth Court

Opponents: Gene Kiser, Administrator of the Montana Board of  
Crime Control  
Howard W. Gipe, Flathead County Commissioner,  
Chair of Western Region

Peggy Beltron, Cascade County Commissioner and  
Chairman of the North Central Montana  
Regional Detention Center Advisory Board  
Gale Keil, Director of Cascade County Regional  
Youth Services Center

Charles Brooks, Yellowstone County  
Leonard Wortman, Jefferson County Commissioner and  
Chair of the Southwest Montana Regional  
Juvenile Detention Board

Allen Horsfall, Director of the Western Montana  
Regional Juvenile Detention Center

Gordon Morris, Director of the Assoc. of Counties

Opening Statement by Sponsor:

{Tape: 1; Side: a; Approx. Time Count: 10:07; Comments: .}

SEN. DEL GAGE, SD 43, Cut Bank, explained that this bill is the result of a need for a revision from a grant system for youth detention services to a reimbursement system. There is a \$200,000 fiscal impact.

Proponents' Testimony:

John W. Larson, District Judge - 4th Judicial District, spoke in support of SB 172. This bill seeks to revise the basis for juvenile detention reimbursement. Currently there is \$1 million of General Fund money which is reimbursed to the counties each year for juvenile detention, transportation and home arrest. One of his handouts was the committee minutes when this committee and the House committee took up this bill in 1991, **EXHIBIT 1**. Their detention facility is in Kalispell and their youth are transported 120 miles each way to and from court. Last spring he became more involved in the budget cycle. This bill requires budgets for regions and counties to be reimbursed. In the adult system there is a reimbursement of expenses. The Supreme Court Administrator's Office reimburses counties for their adult criminal expenses. He suggests this system for the juvenile system. He served with **SEN. MIKE HALLIGAN** on the Juvenile Justice and Mental Health Study Commission during the interim. Transportation is the lynch pin of the juvenile detention system in Montana. The kids need to be transported to a facility and back to court. This year the budgets exceeded the amount appropriated by the legislature. They worked with the region on their budget. In April it was announced the region could no longer provide transportation for the counties. They have to send a sheriff up to Kalispell to pick up the youth, bring the youth to Missoula for the hearing, take the youth back to Kalispell and then the sheriff returns back to Missoula. If the facility provides the transportation, the cost is cut in half. Highway 93 is one of the more dangerous highways in the state and they are very concerned about the safety of the transport officers and the youth. As a region, all the counties sat down in the western region and agreed they want to continue

transportation. The Kalispell commissioners tried to eliminate it in several different ways. They showed transportation on their budget for the regional facility at about double what it cost before. That helped create the budget crisis which resulted in a subcommittee of the Board of Crime Control eliminating all transportation as reimbursement for any county in the state. This was appealed to the Board of Crime Control. They agreed that transportation should still be reimbursed. The detention region still maintained that they did not want to operate out of Kalispell. They decided to set up their own Missoula County employee, who lives in Kalispell. They purchased a van and stationed it in Kalispell. Now Missoula County serves all of the western region counties south of them. They couldn't do this without being reimbursed. One aspect of this bill not only says that it is reimbursable but requires transportation. We can't have these regions operate if the home counties will not provide transportation. Each major facility which is located in Billings, Great Falls, and Kalispell, receives a lot of state money. The transportation costs are approximately \$24,000 for the first two quarters. He suggested using the adult system to the Board of Crime Control. It was necessary for them to prepare three budgets between April and June. When the Board ruled in their favor, the detention region sent in the budget without any adoption of the rulings of the Board. The adult detention reimbursement program has been operating for fifteen years without a problem. On page 4 of the bill there are discussions of the evaluations which are conducted of youth. This provides that if there is an excess of money available, it can go back to the counties who are doing evaluations. There is no way to predict in advance how many youth will need to be assessed. The first year of the biennium, there was over \$250,000 in this fund reverted to the General Fund which could have helped other areas of the juvenile justice system through evaluations, attorney services, etc.

**Patta Kahler, Administrative Assistant, Missoula Youth Court,** spoke in support of SB 172. Her job at youth court is to set up all the hearings and notify the families. They follow through with the police reports if people do not show up at court. Preparing the budget involved trying to make a determination of the number of youth they would be involved with on detention issues. They looked at the number of trips involved, meals, and officer's time. They prepare quarterly expenditure reports which take an enormous amount of time away from her job.

**Opponents' Testimony:**

*{Tape: 1; Side: A; Approx. Time Count: 10:22; Comments: .}*

**Gene Kiser, Administrator of the Montana Board of Crime Control,** presented his written testimony, **EXHIBIT 2.**

**Howard W. Gipe, Flathead County Commissioner, Chair of Western Region,** stated they have problems with this bill because they

receive grants on the first of July without sufficient funding to run their center. Flathead County would have to up-front the money to run the regional detention center. They do not have the money to up-front the costs for the seven counties to run their regional detention center. Being the regional center, they pay all the employees and assistants. The task force turned down all transportation statewide. He presented a letter from Craig Anderson, Chief Probation Officer from the Seventh District.

**EXHIBIT 3.**

**Peggy Beltron, Cascade County Commissioner and Chairman of the North Central Montana Regional Detention Center Advisory Board,** stated their center is located in Great Falls and serves 12 counties outside of Great Falls. This bill would cause Cascade County great expense. They are the largest city in their region. Eighty percent of the youth in their center are from Cascade County. **SEN. CRIPPEN, BISHOP, DOHERTY and ESTRADA** have already paid for the centers in their communities through their property taxes. The taxpayers who built the facilities in their county enjoy the benefits. Missoula County residents did not have the resolve to build their own facility. It is currently under consideration and should open next year. At that time, these transportation issues will subside for Judge Larson but we will be left with a duplication of services. A probation officer who has to be in court with the youth comes to their center and takes the youth to the Cascade County Courthouse. He stays with the youth and then returns the youth to their facility. They are paying his salary. Under this scenario, they would have to hire two individuals, put them on staff and have them drive the youth to court. The probation officer would continue to take the child to medical evaluations, dental appointments, and other duties.

**Gale Keil, Director of Cascade County Regional Youth Services Center,** rose in opposition to Section 4 (2) of this bill. With the 295 youth they served last year, this would come up with a cost of \$96,500. Since they are in the process of building a regional jail, she had planned to ask her commissioners and the Board of Crime Control to co-fund video monitoring for their youth. She thinks it is time to look at this from a futuristic approach. As far as duplication of services, the bill just addresses transporting youth to court. Probation officers are on the road all the time with youth when they are getting psychological, medical, and educational evaluations, etc. She likes to reenforce that the probation officer be the one to spend time with kids. This is quality one on one time and provides another way of good case management.

**Charles Brooks, Yellowstone County,** stated that Commissioner Mike Mathews asked him to read his statement. Yellowstone County feels that the current program has been an excellent example of cooperation across the state. Issues were dealt with within each region and there is a statewide advisory council which makes budget recommendation to the Board of Crime Control. The system works and works quite well. He also read from a written

statement prepared by Val Rasch, Juvenile Probation Officer,  
**EXHIBIT 4.**

**Leonard Wortman, Jefferson County Commissioner and Chair of the Southwest Montana Regional Juvenile Detention Board,** stated he questioned the wisdom of a reimbursement program rather than granting the funding up front. He opposes reimbursement at the 80% level. He also has some concerns about the regional detention facility being responsible for the transportation to and from court appearances. Reimbursement of 80% will result in significant budget increases at the county level. The counties in the southwest region simply cannot afford any additional costs in juvenile justice. He encouraged funding of detention with grants and at the current rate. Jefferson County is proposing a regional juvenile detention center in Boulder. They discussed the possibility of providing transportation as part of their service. After discussions with other facilities and hearing about the many problems associated with facilities providing transportation, they decided not to offer that service.

**Allen Horsfall, Director of the Western Montana Regional Juvenile Detention Center,** stated that what the committee heard today was frustration for a lack of money to go around. When the legislature decided to get into the regional juvenile detention business, the key was getting the centers up and running and creating the bed space necessary to take Montana's youth out of the adult jails. Flathead, Cascade and Yellowstone Counties fronted the money and are now the only long term regional facilities in the state. The number of juveniles is on the rise. The length of stay is also on the rise. He just had a Missoula County youth in his facility for 197 days. The average stay is about eight days. Transportation is a fair amount of money on a regional basis. He is the only regional juvenile detention center director who has run a transportation program. It is a nightmare. This proposal also contains a reimbursement of a new item which is not presently reimbursed, psychological evaluations. When you take 56 counties and bill your process through the Board of Crime Control as opposed to five different regions, there would be a considerable amount of administrative problems.

**Gordon Morris, Director of the Association of Counties,** rose in opposition of SB 172. He pointed out to the committee that there were more bills which deal with youth detention issues this session than any other single subject. He asked the committee to hold this bill until some of the other bills arrived on the scene.

Additional letters in support of SB 172 - **EXHIBIT 5.**

**Questions From Committee Members and Responses:**

*{Tape: 1; Side: B; Approx. Time Count: 10:52; Comments: .}*

SEN. HALLIGAN asked that Judge Larson have an opportunity to respond to some of the specific concerns raised by the opponents.

Judge Larson commented on the amount of time it takes for a deputy to run back and forth from the regional centers. There are statewide responsibilities on transportation.

CHAIRMAN BRUCE CRIPPEN had concerns about assumption two in the fiscal note which stated that the provisions of this bill would change the allocation of detention funds from a statewide basis to a first come first serve basis. Are the allocations of detention funds on a regional basis?

Mr. Kiser explained that five regions submit a proposed budget to the board and they grant the funds based upon those budgets giving preference to where the facility is located.

CHAIRMAN CRIPPEN felt that under this bill one area could get funds over another area.

Mr. Kiser explained that the assumption of the Board is that the regional facilities would submit the largest bills. Those would be responded to on a reimbursable basis. Towards the end of the budget year, if a county had problems, the funding could be gone.

Closing by Sponsor:

SEN. GAGE closed in advance on SB 172.

HEARING ON SB 109

Sponsor: SEN. RIC HOLDEN, SD 1, Glendive

Proponents: Lois Adams, Department of Corrections

Opponents: None

{Tape: 1; Side: a; Approx. Time Count: 10:57; Comments: .}

Opening Statement by Sponsor:

SEN. RIC HOLDEN, SD 1, Glendive, introduced SB 109. He stated that the bill clarifies the names of the prisons and the correctional facilities across the state. It also explains the requirements for a sex offender therapist and on page 15 it clearly explains what information will be given to crime victims. The bill goes on to define what the word "work" means for inmates.

Proponents' Testimony:

Lois Adams, Department of Corrections, explained the bill contains four issues which are of concern to the department.

First is the clarification of the terms: Montana State Prison, a Montana prison, and the Montana Women's Prison. A Montana prison is generic. We have two prisons which are the men's and the women's prisons. Presently, the women's prison is called the Women's Correctional System. The wording in the present code needs to be expanded to include the regional correctional facilities and the out-of-state detention facility which now holds 250 Montana inmates. In terms of escape statutes, sentencing statutes and other places in the code where the term prison is used, it is critical that we clarify these terms so that an escapee from a regional detention facility does not argue that the escape statute does not apply because the definitions do not match. Page 5 addresses 46-18-111. It specifies that an evaluation of a sex offender prior to sentencing should be a psychosexual evaluation. The department would like to have psychosexual evaluations for every sex offender, not just the sex offenses where the victim was under the age of 16. A proper evaluation is the basis of any treatment which will be provided. The evaluation must be done by a sex offender therapist who is either a member of the Montana Sex Offender Treatment Association or a person who has comparable qualifications and is acceptable to the Professional and Occupational Licensing Bureau of the Department of Commerce. It also makes clear that the persons involved in the prosecution, defense and sentencing are entitled to the presentence investigation. The present code allows the court to make a finding that a PSI of a felony sex offender is not necessary. This bill makes a change in that. The amendment would leave the statute as is. Page 15, Section 12, clarifies what information shall be provided to victims by the department or by the Board of Pardons and Parole. Page 25, Section 24, expands the work that adult offenders must be required to perform to include the manufacture of products or the rendering of services. Page 12, Section 7, changes the term "parole" to "limited release".

Opponents' Testimony: None

Questions From Committee Members and Responses:

*{Tape: 1; Side: b; Approx. Time Count: 11:06; Comments: .}*

SEN. SUE BARTLETT asked what was being changed in Section 2?

Ms. Adams explained that on page 3, line 8, would be one of the amendments. This states "used for youth court and probation foster care placements if the Department of Corrections certifies to the Supreme Court". Presently the statute refers to the Department of Health and Human Services. This should have been lined out. There should be an underlining of Department of Corrections.

SEN. BARTLETT commented on the proposed change on page 15, lines 9 and 10, from the person's incarceration to person. This would broaden the term.

**Ms. Adams** stated that they wanted to provide information on the incarceration. They are not allowed to provide personal information on an inmate. This was not their intent.

**SEN. BARTLETT**, referring to page 17, line 27, asked why the word diagnosis had been dropped in the rephrasing?

**Mary Fay, Department of Corrections**, stated that with MYA the first 30 days is an assessment phase at Pine Hills School on an as needed basis.

**SEN. STEVE DOHERTY** asked if psychosexual evaluations were used for certain juvenile offenders at this time?

**Ms. Adams** explained the psychosexual evaluations were not just for juveniles. They are for all offenders who have been convicted of a sexual offense.

**Ms. Fay** stated this would be specific to presentence investigations. Previously it only stated an evaluation shall be included. The evaluations may increase if we take out the wording "involving a victim less than 16." They believe that psychosexual evaluations should be completed on any sex offender regardless of the victim's age. Their concern is that it is not done by a therapist who does not have sex offender clinical training.

**CHAIRMAN CRIPPEN**, referencing page 26, lines 1, 2, and 3, asked why they added the words "including the manufacture of products or the rendering of services"?

**Ms. Adams** feels they already have that authority. They wanted to have the legislature give another statement to that effect.

**CHAIRMAN CRIPPEN** asked the procedure when an adult refuses to do anything.

**Ms. Adams** stated that in prison policy a write up, which is called refusing a direct order, has consequences for the inmate. If an inmate refuses to work on a project, they are written up for disobeying a direct order which has consequences to their privileges, housing status, etc. When someone is incarcerated and their privileges are taken away, there is usually behavior modification.

**Closing by Sponsor:**

**SEN. HOLDEN** felt the additional language, instead of creating a list, would be getting away from a list.



EXECUTIVE ACTION ON SB 48

{Tape: 1; Side: B; Approx. Time Count: 11:18; Comments: .}

Amendments: sb004804.avl - EXHIBIT 6

Motion: SEN. HALLIGAN MOVED TO AMEND SB 48.

Discussion:

SEN. HALLIGAN explained he tried to address the fiscal note issues in the bill. The first four amendments return the definition of "delinquent youth" to existing law. This would have allowed a status offender to get boot strapped into Pine Hills. This would be too costly.

Valencia Lane explained that in amendments 7 and 10, "court-appointed" is stricken but "court-ordered" is not inserted.

SEN. HALLIGAN explained they wanted to get into the 45 day evaluation but only on a space available basis. The county would pay for this. Amendment 13 states that if the youth presents a danger to the public safety that the placement is recommended by a mental health professional. They want to keep the kids local whenever possible.

CHAIRMAN CRIPPEN asked if any of these amendments were in contradiction to SEN. HOLDEN'S amendments?

Ms. Lane felt they were not. Two of SEN. HOLDEN'S amendments are alternatives to his amendment.

SEN. HOLDEN asked for clarification of amendment 13.

SEN. HALLIGAN explained that the concern was that for a misdemeanor a youth would be evaluated by a mental health professional before he would go to Pine Hills.

Vote: MOTION TO AMEND SB 48 CARRIED UNANIMOUSLY.

Discussion:

CHAIRMAN CRIPPEN explained this bill would be passed out with the present fiscal note.

SEN. HALLIGAN stated that they had to ask for a revised fiscal note.

Amendments: sb004806.avl - EXHIBIT 7

Discussion:

Ms. Lane explained that this amendment would be an alternative suggestion to SEN. HOLDEN'S amendments sb004803.avl. (EXHIBIT 8)

**SEN. HALLIGAN MOVED TO FURTHER AMEND SB48 (Amendment sb004806.avl.)**

**Discussion:**

**SEN. HALLIGAN** clarified that **SEN. HOLDEN** was concerned that they were requiring families to do the assessments. This is explained on the back of sb004806.avl. They are striking the requirement that the youth's parents, guardians, family or persons having legal custody of the youth receive counseling. What they are adding is that the judge could allow any other condition ordered by the court to accomplish the goals of the informal agreement including but not limited to family assessment. We are saying that before ordering family assessment the court shall provide the family an estimate of the cost of the family assessment and the court shall take into consideration the resources of the family. They want the judge to consider the family resources before he or she does anything. Before the family gets involved in situations like this, they will have already signed the agreement in which they agree to help anyway.

**SEN. HOLDEN** understood that the amendment would provide for the judge notifying the family and take into consideration the family's personal assets. He would have the ability to order them to pay for the family assessment.

**SEN. HALLIGAN** commented that in this section of the bill they were only in the informal adjustment stage. Everyone has to sign the agreement, including the judge. If the parents do not sign the agreement to help the child and be part of the counseling, they cannot be ordered to pay for it.

**SEN. HOLDEN** asked where that was stated in the bill.

**SEN. HALLIGAN** explained there was no way for the judge to hold them accountable for something they haven't signed. The court has authority over the child, not the parents.

**CHAIRMAN CRIPPEN** clarified the court became involved in the original bill. That language was stricken. The bill as it was originally written gave the court the authority to reach out to the parents. This amendment would strike that authority. However, the only time the court could reach out to the parents is after this was all agreed to by the parties. If the family did not agree to help, the court could not impose anything more than is allowed in the statute.

**Ms. Lane** explained her understanding would be that when a child is brought before the court, the probation officer can handle this on an informal basis. They don't go into court. There are no petitions filed declaring him delinquent. If the parent and the youth refuse to sign the informal adjustment and refuse to proceed on an informal basis, then it is up to the probation officer to decide if it should be taken to the county attorney

for a petition to be filed declaring him to be a delinquent youth.

**SEN. HOLDEN** felt the amendment stated that the judge, before ordering the family assessment, shall provide the family an estimate of the cost. The court would take into consideration the financial resources of the family. He does that before ordering the parent contribution for the cost of the family assessment. He analyzes that the family has resources and then makes the family pay for the financial aspects of the law.

**SEN. HALLIGAN** clarified that the child may be ungovernable because the parent has a drinking problem. The child tells the probation officer that he does not want to go home because of the parent's abuse. The probation officer could then offer not to file a petition in court if the parent would agree that the child would have some counseling and in addition he could have the parent get counseling as well. The parent signs the informal agreement and it then goes to the judge. The judge cannot order the parent to get counseling, etc., without the parent knowing what the outside cost would be.

**SEN. HOLDEN'S** position is that the community and the family should be responsible in solving family problems.

**CHAIRMEN CRIPPEN** explained that the court could not order the parent to pay unless the parent agreed to participate. If the parent needs counseling, why should the state pay for that?

**Vote:** Motion to further amend SB48 (amendment sb004806.avl) carried with **SEN. HOLDEN** voting no.

**SEN. HOLDEN MOVED TO FURTHER AMENDMENT SB 48 (sb004805.avl EXHIBIT 9).**

**Discussion:**

**SEN. HOLDEN** referred to page 33, lines 9 and 10, stating that under this bill the parents and the guardians would be subject to contempt of the court. They would be held responsible for the youth's actions. He asked if they would be subject to misdemeanor fines?

**CHAIRMEN CRIPPEN** asked if this was after the parents entered into the agreement?

**Ms. Lane** clarified that on page 32 of the bill, the section of law which was being amended was 41-5-515. This section states that persons are to be advised of their rights and obligations under the Youth Court Act. Page 33, line 1, states that a person afforded rights under this chapter must be advised of those rights at the time of the person's first appearance in a proceeding on a petition under the Montana Youth Court Act and at any other time specified in that act. The bill amends that

section which advises people of their rights to indicate that these also are things which the people must be notified about the first time they appear in court and that is after a petition has been filed.

**SEN. HOLDEN** felt they would be legislating that parents will be held responsible for what their children do. He did not feel the state should be stepping into this area.

**CHAIRMAN CRIPPEN** felt this was for the benefit of the parties. If they enter into an agreement and do not follow through they are subject to contempt of court. The parties then know what the penalties entail. He asked if the court could find the parents in contempt without this language?

**SEN. HALLIGAN** stated that there would be no jurisdiction over the parent when the youth was in a petition. The county attorney may be able to file an endangerment action against the parents.

**CHAIRMAN CRIPPEN** stated that parents who enter into an agreement in court and failed to live up to that agreement, would be subject to the court's contempt powers.

**Judge Larson** stated he had a parent in court who would not bring the youth in to meet with the probation officer. He told her that from that time on she would have to bring the child in when they requested that he be there. She agreed. He told her that she was subject to contempt of court if she did not do so. He put that in the order. Having it in statute would be very useful to the probation officer. The judge already has the power. This would assist the probation officers to force parents to take this seriously.

Vote: **SEN. HOLDEN's MOTION TO AMEND SB 48 FAILED.**

**Ms. Lane** referred to **REP. BRAD MOLNAR'S** amendments and commented she received them at 9:30 this morning. **EXHIBIT 10**

**CHAIRMAN CRIPPEN** explained that **REP. MOLNAR** had the right to present amendments but they should be presented in a timely fashion. The hearing on this bill was a week and a half ago. We received these amendments at 9:30 this morning and they are not in order.

**SEN. ESTRADA** made a point that bills became totally confusing when amendments were presented at the last minute.

**SEN. HOLDEN** asked about the amendment dealing with a student missing school.

**SEN. HALLIGAN** stated that his amendment changed the bill to insert 10 unexcused absences. This is what most school districts have now. They went from one day to ten.

SEN. HOLDEN asked for clarification on the fiscal note.

SEN. HALLIGAN explained that one of the assumptions by the department is that these provisions were mandated. They are not. There is nothing in the bill which mandates that any county set up a family assessment center.

SEN. HOLDEN stated that he represented small counties who do not want to set up youth assessment centers. He asked where the bill explained that this was not mandatory.

Ms. Lane stated that SEN. HOLDEN'S amendment sb04803.avl would have eliminated all requirements for family assessments and all references to family assessments. These amendments were not offered.

SEN. HOLDEN felt that the bill mandated that the parents would take part in family assessments.

SEN. HALLIGAN stated that they added the court order requirement. There is no requirement that the county set up assessment centers. When the probation officer needs to bring in a multidisciplinary team, they may recommend a family assessment. This is the informal adjustment.

Ms. Lane suggested that the department of corrections explain what they thought was mandated.

SEN. HALLIGAN said they would have the revised fiscal note before the bill went on the floor.

Motion: SEN. SHARON ESTRADA MOVED SB 48 DO PASS AS AMENDED.

Discussion:

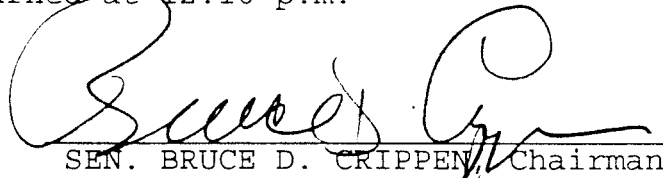
SEN. JABS felt that if there was a question on the bill, it should be held up for a day.

CHAIRMAN CRIPPEN explained that as a matter of courtesy they would hold the bill for a day.

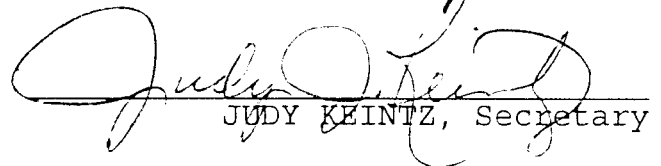
SEN. ESTRADA withdrew her motion.

ADJOURNMENT

**Adjournment:** The meeting adjourned at 12:10 p.m.



SEN. BRUCE D. CRIPPEN, Chairman



JUDY KEINTZ, Secretary

BDC/JJK