

MINUTES

MONTANA SENATE 55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 25, 1997, at 10:09 a.m., in the Senate Judiciary Chambers (Room 325) of the State Capitol, Helena, Montana.

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
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, consideration of House Amendments (new procedure)
Executive Action: SB 48, HB 203, HB 231

HEARING ON SB 48

Discussion: **CHAIRMAN BRUCE CRIPPEN** explained that since SB 48 was substantially amended in the House, it could be sent back to the Senate Judiciary Committee for concurrence of rejection, but cannot be changed.

SEN. MIKE HALLIGAN. We need clarification of some of these amendments. **CHAIRMAN CRIPPEN.** We need to treat them somewhat like a hearing and make recommendations even though that is not clearly stated in the rules. The sponsor is no longer involved, other than to make suggestions. If we reject the amendments, the

bill goes to a conference committee or free conference committee which can rewrite the whole bill if they deem necessary.

Sponsor: SEN. MIKE SPRAGUE, SD 6, Billings

Proponents: Beth Baker, Department of Justice
Lois Adams, Counsel, Department of Corrections
Candy Wimmer, part of the Interim Juvenile Justice
Mental Health Subcommittee
Richard Meeker, Chief Juvenile Probation Officer,
First Judicial District
Toni Jensen, Montana Association of Homes and
Services for Children

Opponents: REP. BRAD MOLNAR
Laurie Koutnik, Christian Coalition
Kathy Collins, parent

{Tape: 1; Side: A; Approx. Time Count: #4.5; Comments: None}

Opening Statement by Sponsor: SEN. MIKE SPRAGUE, SD 6, Billings. These amendments are complex and controversial, and I want to go on record as opposing them. We spent 17 months on this, and were not entirely satisfied with it in the interim committee. I believe if we don't do something, we will do some harm. I wish we had clear-cut answers, but we're still molding an imperfect product. I am trying to stay at a jurisprudence level. These amendments are a result of three people trying to do what 17 couldn't in the House Judiciary Committee. I believe it would be prudent to reject these, and go to the floor and reject the bill, and then take it to a special subcommittee to find common agreement.

Proponents' Testimony: Beth Baker, Department of Justice. We agree with SEN. SPRAGUE's request to reject the amendments. Ninety percent of them are fine, but the bill needs coordination instructions beginning with Section 18, on page 20, concerning transfer of youth offenders to district court, as the bill no longer allows transfer.

Lois Adams, Counsel, Department of Corrections (EXHIBIT #1). I have conceptual amendments for the amendments we want rejected. We need to take into account the direct filing language in the other bill. I believe the House Select Committee on Corrections did a good job. Our concerns are with the amendments by REP. BRAD MOLNAR, particularly amendment 6 concerning points.

The bill doesn't define "at risk" and "habitual offender". The Department just went through a process with the sentencing commission. Approximately \$35,000 more is needed, along with months more research to find out the impact of the points system on juveniles. Pine Hills uses length-of-stay guidelines now, and average length of stay there is seven months under their pilot program. If this works, we will adopt it as rules. This might

work without recreating the juvenile act. One pages 7 and 27, #13, and on page 46, we see problems with dissemination of confidential information and privacy.

{Tape: 1; Side: A; Approx. Time Count: #17.9; Comments: 10:30 a.m.}

Candy Wimmer, a part of the Interim Juvenile Justice Mental Health Subcommittee. We currently have 196 youth to be sent to correctional facilities for evaluation, and have only 24 beds for them. We would have 831 youth once they reach 9 points, and we can't handle this volume.

In Section 33, residential treatment is most expensive, at \$350 per day, and there is no consideration of whether the youth needs treatment. On page 57, line 9, there is no funding for the communication work program. On page 58, there is nothing in current law to limit the number of detention facilities.

Richard Meeker, Chief Juvenile Probation Officer, First Judicial District. I am asking that you reject the bill as amended.

Toni Jensen, Montana Association of Homes and Services for Children. We also ask that you reject these amendments.

Opponents' Testimony: REP. BRAD MOLNAR. If a kid commits nine crimes, and is convicted of those nine crimes, he must go to Pine Hills for 45 days. On the fourth felony as a youth, it's 90 days, half of which can be in a treatment facility. We get a 70 percent recoup from the federal government for kids in treatment. Under this bill, if they act up in treatment, they finish their entire sentence. In California this has reduced crime by 68 percent.

{Tape: 1; Side: A; Approx. Time Count: #28.2; Comments: None}

When we say we're building 65 percent more prison beds over five years, we're saying we know that intervention and treatment will fail at a record rate. A juvenile probation officer currently does give terms of probation, but is not responsible for enforcement, and no one else is responsible either. We need to enforce terms of probation - school, work, restitution, etc. Why should the State stand in the way of a county building a youth detention facility? We don't have to fund any of it. Missoula is building its own, and Jefferson County wants to do the same.

These amendments were accepted by the House. Four felonies is the minimum sentencing guideline. The victims are the other kids these offenders drag into the system.

{Tape: 1; Side: B; Approx. Time Count: #00; Comments: 10:54 a.m.}

Laurie Koutnik, Christian Coalition of Montana. We believe these amendments do more to address the concerns of parents in Montana for quicker intervention by holding kids accountable and requiring kids to make their own restitution. Mile City has worked out a restitution program. Kalispell has a program where probation officers contract kids to haul logs. We believe these are in the right direction, and are not burdensome to the State. Showcap has been shown to be very successful in California. Let's make the necessary changes requested by parents in Montana, but not take the teeth out of the bill.

Kathy Collins, parent. I believe you have done an excellent job in putting on the amendments. We are not going to achieve perfection, but I am happy to be part of the process. I would like to see this pass as it stands.

CHAIRMAN CRIPPEN. It is up to the Chair in the Free Conference Committee whether there will be public input if the bill goes that direction.

Letter from Janice Henderson (EXHIBIT #2).

Questions From Committee Members and Responses: SEN. RIC HOLDEN.

Who proposed amendment #33 on page 5 of the green bill? **Susan Fox.** This was an Office of Public Instruction amendment. **Geralyn Driscoll, OPI Counsel.** It codifies current law and regulates IDEA-qualified persons who are required to have education. Currently, we have no one under this, but it is in federal law (page 22, line 29).

SEN. STEVE DOHERTY. How many of these House amendments were considered by and rejected or accepted by the Interim Study Commission? **SEN. SPRAGUE.** We considered everything. The question is, if we can't do it right, should we do it at all? The points system seems to have the most contention at this point. Everyone can improve it, but no one can make it perfect. All of us were once youths and were probably delinquent at times.

{Tape: 1; Side: B; Approx. Time Count: #8.0; Comments: None}

SEN. DOHERTY. If the Interim Committee looked at all of these possibilities, and didn't put these amendments on then, what's changed now? **SEN. SPRAGUE.** The bill has been a moving target always, and our awareness has improved, as we've gone along.

SEN. SHARON ESTRADA. You don't want these amendments? **SEN. SPRAGUE.** I can't piecemeal at this point.

SEN. ESTRADA. Do you want the Committee to reject the amendments as they are? **SEN. SPRAGUE.** Yes.

{Tape: 1; Side: B; Approx. Time Count: #10.2; Comments: None}

SEN. HOLDEN. Would you explain #35 on page 5 of the green bill?
Susan Fox. This was originally called family assessment, but was changed to youth assessment.

SEN. HOLDEN. Would you comment specifically on (d)(i)? Are we saying youth assessment is upon request? **Susan Fox.** This amendment would be placed in 41-5-301, MCA - the preliminary investigation and disposition section - which means they're already in the youth court process because of an offense. Families could require, however, that both families and youth would have to agree.

{Tape: 1; Side: B; Approx. Time Count: #13.3; Comments: 11:07 a.m.}

Closing by Sponsor: **SEN. SPRAGUE.** We haven't addressed the Youth Court Act for 20 years, and we have a responsibility to do something to better the situation.

EXECUTIVE ACTION ON SB 48

Motion/Vote: **SEN. ESTRADA MOVED TO REJECT THE HOUSE AMENDMENTS TO SB 48. THE MOTION CARRIED UNANIMOUSLY.**

EXECUTIVE ACTION ON HB 203

Amendments: Alan Cranford amendments (EXHIBIT #3)

Motion: **SEN. ESTRADA MOVED TO ADOPT ALAN CRANFORD'S AMENDMENT TO ADDRESS SPIRITUAL TREATMENT THROUGH PRAYER.**

{Tape: 1; Side: b; Approx. Time Count: #16.6; Comments: None}

Discussion: **VICE CHAIRMAN LORENTS GROSFIELD.** I would like to have "serious" inserted prior to "harm" in the following sentence.

SEN. HALLIGAN. Give me an example of the State intervening in the past few years. **Alan Cranford.** No incidents have occurred, but it is a possibility.

SEN. HALLIGAN. Could the state intervene if I were part of a Christian Science church and my child had leukemia, and wasn't responding to prayer? **Alan Cranford.** The State could still intervene under these amendments. We're trying to restore adequate health care to the same definition it had in 1993.

SEN. HALLIGAN. You'd have to go to court to prove your record of success. Under (b), either Reverend Joe Healer or a Christian Scientist could be forced to give up a child. You take a child whose bones are not healing to a doctor, right? **Alan Cranford.** That is correct.

{Tape: 1; Side: B; Approx. Time Count: #29.5; Comments: None}

CHAIRMAN CRIPPEN. As I mentioned to you previously, I think the concern you have is how to take these people into account. The answer is that you don't, as they have every right in the world to do that. On the other hand I don't know if that's going to harm anything because all you're doing is adequate health care. Of course, you or Reverend Joe Healer would have to go to court to prove your record of success, and that might be difficult to do. But under (b) either one of you might be forced to give up a child, especially for a child with cancer or a bone that's not healing right. Any church is going to get caught up without this language.

SEN. REINY JABS. You mentioned Section (b); what does that take care of? **Alan Cranford.** The first page of Section 42-3-102, MCA deals with the definition, and Mr. Cranford wants to put back in "adequate health care also includes spiritual treatment through prayer alone that has a reasonable proven record of success". His church has been around for a long time, and believes they can document this, so I guess we have to assume that they can. The Christian Scientist Church is distinguished from Reverend Joe Healer holding a meeting on the edge of town, so I don't see a problem.

SEN. HALLIGAN. I took kids away from people who hated the system in general, and am concerned that they'd be brought in under this language. The House didn't adopt this, and I want a valid public policy reason, and we don't have one here. **Bob Torres, National Association of Social Workers.** We worked in the task force on this issue. The amendments were faxed and no one was there at the meeting, so we decided not to include them.

SEN. ESTRADA. Does this amendment open the door to any religions to tell law enforcement they can heal thorough power of prayer? I admire Mr. Cranford and wish I had his faith, but am worried about children outside of Christian Science.

SEN. WALTER MCNUTT. I am concerned about opening this up to these other groups, so I oppose the amendment.

SEN. DOHERTY. Part of the problem is in "proven record of success" and what a legitimate religion is. We need to be very careful of this.

Vote: SEN. ESTRADA'S MOTION TO ADOPT THE CRANFORD AMENDMENTS FAILED WITH ALL MEMBERS VOTING NO EXCEPT SENATORS CRIPPEN AND DOHERTY.

Motion/Vote: SEN. HALLIGAN MOVED TO STRIKE "or" BEFORE "substantial" ON PAGE 3, LINE 4 OF THE BILL. THE MOTION CARRIED UNANIMOUSLY.

Motion: VICE CHAIRMAN GROSFIELD MOVED TO INSERT "SERIOUS" ON PAGE 2, LINE 4, BEFORE "HARM".

Discussion: SEN. HALLIGAN. At what point does it become serious? There are stages of this, and it could interfere with a preventive approach.

Vote: VICE CHAIRMAN GROSFIELD'S MOTION TO AMEND CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS JABS, HALLIGAN, AND DOHERTY WHO VOTED NO.

Motion/Vote: VICE CHAIRMAN GROSFIELD MOVED TO CHANGE 41-3-1011 TO 41-3-1010, A TECHNICAL CORRECTION ON PAGE 13, LINE 10. THE MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. HALLIGAN MOVED HB 203 BE CONCURRED IN AS AMENDED. THE MOTION CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON HB 231

Discussion: VICE CHAIRMAN GROSFIELD. How is the child going to trigger periodic review of the parenting plan? SEN. HALLIGAN. Through a lay person as guardian ad litem or the Court. Jennifer Bordy told us she wanted averages in child support extinguished as part of final planning. Also, it was brought up that the fee was too high.

SEN. DOHERTY. There is a fairly high threshold now, and this would change in the bill. But, given that spite exists, are we increasing the possibility of people requesting a change out of spite? SEN. HALLIGAN. In the case in Sanders County where there was a change of custody, a change of circumstances in addition to serious endangerment of the child's health or welfare, it is a very heavy standard to change custody unless parents consent. This repeals that from the law, as it doesn't reflect the reality. For example, as boys become teenagers, they mostly want to go live with dad. The bill does make it easier for the parents to bring an action for a custody change, but it still has to be in front of a judge.

{Tape: 2; Side: A; Approx. Time Count: #11.5; Comments: None}

SEN. ESTRADA. I talked with Judges Larson and Fagg who support the bill, as well as SEN. HALLIGAN.

SEN. HALLIGAN. I am asking for time to get together with Valencia Lane to produce an amendment.

SEN. JABS. Do you want the language on page 24, line 15 removed?

SEN. HALLIGAN. Yes, as dads and moms will be sharing parenting a lot more.

SEN. MCNUTT. How often do you encounter serious endangerment?

Motion: SEN. ESTRADA MOVED HB 231 BE CONCURRED IN.

Discussion: SEN. HOLDEN. On pages 19-20, in new Sections 19 and 20, why do we need this in statute? SEN. HALLIGAN. All of this is essential in existing law. It takes "best interest" and "custodial" statutes and brings them into one.

SEN. DOHERTY. I have been asked to change custody orders, and I don't like it, but I tell people that unless they can demonstrate substantial endangerment, I don't care. Is there any comfort that only good will happen in the bill, and not bad?

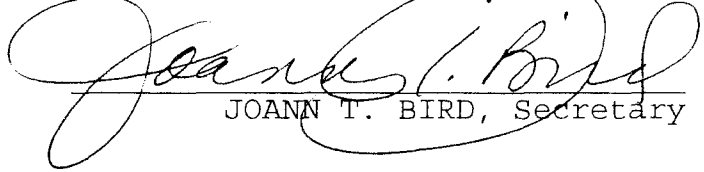
SEN. ESTRADA WITHDREW HER MOTION. NO FURTHER ACTION WAS TAKEN ON HB 231 THIS DATE.

ADJOURNMENT

Adjournment: 11:50 a.m.

A handwritten signature in black ink, appearing to read "Bruce D. Crippen", written over a horizontal line.

SEN. BRUCE D. CRIPPEN, Chairman

A handwritten signature in black ink, appearing to read "Joann T. Bird", written over a horizontal line.

JOANN T. BIRD, Secretary

BDC/JTB