MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on March 4, 1999 at 9:05 A.M., in Room 325 Capitol.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Al Bishop, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Duane Grimes (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter McNutt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: HB 24, HB 176, HB 310, 3/1/1999
Executive Action: HB 116, HB 176

HEARING ON HB 24

Sponsor: **REP. LOREN SOFT, HD 12, Billings**

Proponents: **Joe Mazurek, National Conference of Commissioners on Uniform State Laws**
Justice James C. Nelson, National Conference of Commissioners on Uniform State Laws

Greg Petesch, National Conference of Commissioners on Uniform State Laws
Sharon Hoff, Montana Catholic Conference

Opponents: **None**

Opening Statement by Sponsor:

REP. LOREN SOFT, HD 12, Billings, introduced HB 24. He explained that in 1968 the Uniform Child Custody Jurisdiction Act (UCCJA) was promulgated. By 1981, every state in the country had adopted this uniform act. The primary focus was to address the issue where non-custodial parents would be taking children across state lines in hopes of finding a sympathetic court that might be willing to reverse an unfavorable custody order. The Parental Kidnaping Prevention Act (PKPA) was also passed in 1981.

The UCCJA did not give first priority to the home state of the child when determining which state exercises jurisdiction in a child custody dispute. The PKPA provided that once a state has exercised jurisdiction, that jurisdiction remains the continuing and exclusive jurisdiction of that state until every party to the dispute has left that state. Neither act clearly addressed the problem of interstate enforcement of custody orders. This bill reconciles the core principles of the UCCJA with the PKPA and also adds the interstate civil enforcements for child custody orders.

On page 3, Section 2 updates and clarifies the home state provisions. This establishes that the home state is the best jurisdictional ground and should always be the priority ground in child custody situations.

On page 14, Section 21 establishes the parameters for the initial child custody jurisdiction. The home state is where the child was at the beginning of the proceeding or was the home state within six months before the beginning of the proceeding.

On page 15, Section 22 establishes exclusive continuing jurisdiction. The state which makes the initial custody determination has continuing jurisdiction as long as a party to the original jurisdiction remains in that state.

On page 16, Section 24 clarifies the temporary emergency jurisdiction. This allows the court, which may not be the home state, to take jurisdiction of the child in that state if he has been abandoned, or if it is necessary to protect the child or a sibling or the parent of the child, or if they are subjected to or threatened with mistreatment or abuse.

On pages 17-18, Sections 27 and 28 require the state to enforce the custody or visitation order from another state that substantially conforms with this act. This addresses the problem of interstate jurisdiction with regard to custody orders.

On page 22, Section 35 states that if there is a danger to the child or it appears that the child may be removed from the enforcing jurisdiction or that the child may be harmed, a warrant to take physical custody of the child is available.

This act has been adopted by Alaska and Oklahoma. Currently 22 states, including Montana, are considering the adoption of this act.

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Proponents' Testimony:

Joe Mazurek, National Conference of Commissioners on Uniform State Laws, remarked that this act establishes a priority for the home state to have jurisdiction for the continuity of any issues relating to custody. It also provides for interstate enforcement allowing for judgments from this state to be registered and enforced in other states and given full faith and credit under the Constitution. He provided a summary of the Uniform Child Custody Jurisdiction and Enforcement Act, **EXHIBIT(jus49a01).**

Justice James C. Nelson, National Conference of Commissioners on Uniform State Laws, presented his written testimony, **EXHIBIT(jus49a02).**

Greg Petesch, National Conference of Commissioners on Uniform State Laws, emphasized that for the first time, visitation proceedings are defined as a child custody proceeding under this act. This bill does not determine who has custody of a child but simply addresses which court has jurisdiction to make those determinations. Also, under the Indian Child Welfare Act, this bill specifically recognizes that tribal courts have original jurisdiction in certain proceedings involving Indian children. It also allows those Tribal Court determinations of custody to be enforced in the same way that another state court custody determination would be enforced.

The bill also requires that when someone in another state files, the courts communicate with each other to make sure that the orders are not competing and that the home state priority is maintained until such time as an agreement is entered into by the courts that another court is the most appropriate court at that point in time.

Sharon Hoff, Montana Catholic Conference, related that her organization embraces a policy of children as a first priority. Parenting should be a partnership between mom and dad, but that doesn't always happen. She further remarked that she has a son who has two children. The family was living in Florida when the marriage ended. There was a joint custody agreement. She has not been able to access those children for five years. Uniform and clarified laws will help families in these situations.

Opponents' Testimony: None

{Tape : 1; Side : A; Approx. Time Counter : 9.25}

Questions from Committee Members and Responses:

SEN. GRIMES commented that the family law approach involves parenting plans which do away with custody issues. **Mr. Petesch** clarified that at the time the dissolution of marriage laws were modified to replace the concepts of custody and visitation with parenting and parental contact, the UCCJA was not amended. The reason is that most states still use the terms "custody" and "visitation". Those concepts were carried forward in that existing body of law that determines which court has the jurisdiction on that matter. The definitions of custody and visitation in this bill are carried forward. Once it is determined that Montana is the home state, for purposes of jurisdiction over the dissolution or the parenting plan, then the Montana court would apply those dissolution concepts in making a determination of which parent the child would reside with and how often parental contact would occur with the non-residential parent.

SEN. GRIMES remarked that some custody determinations would still be made by judges. **Mr. Petesch** explained that when the court takes jurisdiction, a determination of the parenting plan is made. The only time that custody would be involved would be in enforcing an order from another state. The terms and concepts were left in the bill for interstate enforcement purposes.

SEN. BARTLETT remarked that one advantage of the bill is that it requires courts in different states to communicate with each other when circumstances required the same. She questioned if this would only apply when the other state has adopted the uniform law. **Mr. Petesch** responded that this bill provides for communication by the states that have adopted the same. The UCCJA had been adopted by every state. There is a transition provision in the bill that allows for these enforcement orders under the law that was in effect at the time that the proceeding began.

SEN. BARTLETT questioned the exceptional circumstance in which neither parent has spent six consecutive months in the same state immediately before the commencement of a child custody proceeding. **Mr. Petesch** explained that in the event that there is no home state, the place where the child is located is considered to be the most appropriate forum. If all the parties have left the home state, that home state can relinquish jurisdiction to the more appropriate forum.

SEN. GRIMES questioned whether the agreement between the two parents regarding visitation rights would be affected if one parent were to move to another state. **Mr. Petesch** affirmed that there would be no change in the agreement if one parent moved to another state.

SEN. GRIMES referred to page 16 of the bill, which addressed temporary emergency intervention, and questioned if in the instance of threatened mistreatment or abuse, the state could take jurisdiction and declare a custody issue. **Mr. Petesch** responded that this section was designed to allow emergency protection of the child. The order is of limited duration. This is designed to implement the Violence Against Women Act, which allows a parent or child who has been harmed or is threatened with harm to seek the emergency protection of the court so that the court can step in to prevent the abuser from taking the child or harming the custodial parent.

SEN. GRIMES added that in another bill this session the wording "serious harmful endangerment" has been a major source of anxiety between members of the Family Law Section of the Montana Bar Association. **Mr. Petesch** responded that this section would only determine which court would have authority to act.

CHAIRMAN GROSFIELD remarked that on page 18, Section 29 stated that a child custody determination issued by a court in another state "may" be registered in this state. He questioned how this would work in practice. **Justice Nelson** explained that the import of the registration provisions is to make it procedurally simpler for a person with an order from another state to be able to have it enforced in this state. To have an out-of-state order enforced in this state, it is necessary to go into court and file another proceeding to have the Montana court take notice of the order and to enforce it under the procedures of full faith and credit. Under the Foreign Interstate Enforcement and Support Act, there is a simplified registration procedure where a certified copy of the out-of-state order can be taken to the clerk of the court, notice is given, demonstration is made that the order is valid in another state, and then enforcement is provided. If the other party has some legitimate reason for

contesting that order, the court will need to make a determination. If the court determines that the foreign court did not have jurisdiction to issue the order, this court would not be obligated to enforce the order.

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Closing by Sponsor:

REP. SOFT remarked that a recent study showed that at over 350,000 children were abducted by parents or family members and about half of those children were taken across state lines looking for a different decision on a child custody issue.

{Tape : 1; Side : B; Approx. Time Counter : 9.45}

HEARING ON HB 176

Sponsor: **REP. ERNEST BERGSAGEL, HD 95, Malta**

Proponents: **Matt Robertson, Department of Corrections**

Opponents: **None**

Opening Statement by Sponsor:

REP. ERNEST BERGSAGEL, HD 95, Malta, introduced HB 176. He explained that the interim committee which reviewed the correctional systems, became aware of a requirement that records for juveniles need to be sealed. As a result, their ability to develop statistical reporting is not available. This reporting is necessary to determine the best places to invest funds and programs for juveniles. The language states that any identifying factors will be removed from the records allowing for statistical information on juveniles.

Proponents' Testimony:

Matt Robertson, Department of Corrections, rose in support of HB 176. He added that it will help with population projections.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. HOLDEN asked for more clarification of the proposed automatic recording process. **REP. BERGSAGEL** explained that there is a requirement that all the records for the CAP system be purged from the system. This would leave the physical documents

that would be sealed in the local courthouse. He is only interested in retaining statistical information. The purpose is for information regarding what drives our youth into the juvenile system. He has been told that if children are taken out of foster care within 18 months, they will not end up in the juvenile system. He believes that this statistical information will help future legislators make policy decisions relating to the juvenile justice system.

Closing by Sponsor:

REP. BERGSAGEL closed on HB 176.

{Tape : 1; Side : B; Approx. Time Counter : 9.50}

HEARING ON HB 310

Sponsor: **REP. BRAD MOLNAR, HD 22, Laurel**

Proponents: **Lance Melton, General Counsel, Montana School Boards Association**
Al McMillan, Superintendent of Schools, Laurel
Rich Shaffer, Superintendent of Schools in Shields Valley
Warren Frazier, School Administrators Association

Opponents: **Catherine Love, Office of Public Instruction**
Mike McGrath, Lewis and Clark County Attorney
Phil Campbell, Montana Education Association and the Montana Federation of Teachers
Joe Connell, Chief Probation Officer, Fifth Judicial District
David Gates, Juvenile Probation Officer, Gallatin County
Joy Mariska, Director of Court Services - Yellowstone, Carbon, Bighorn, and Stillwater Counties
Allen Horsfall, Juvenile Justice Program Specialist for the Board of Crime Control
Sandy Oitzinger, Montana Juvenile Probation Officers Association

Opening Statement by Sponsor:

REP. BRAD MOLNAR, HD 22, Laurel, introduced HB 310. He explained that currently if a juvenile is in trouble with the law in one school district, he may be transferred to another school district

for treatment, foster care, or to a group home, etc. The school district is not informed about the reason. This bill states that if the child is in the custody or has been brought to the knowledge of a juvenile probation officer, that information will be given to the school. Currently this is done on a violation of a statute on a second offense. This allows the school to be informed if the child is a drug dealer or has terrible problems with anger. Under current policies, the school has the right to accept or reject that student up to and including the Americans with Disabilities Act or the Americans Educational Disabilities Act. Currently the only way to expel a child from school is if that child is carrying a gun.

This bill is about sharing information between the juvenile probation officer and the school. This information flows both ways.

Proponents' Testimony:

Lance Melton, General Counsel, Montana School Boards Association, presented his written testimony, **EXHIBIT(jus49a03).** Under the current law, school districts operate in somewhat of a parallel fashion with the Youth Court. This bill ensures that the Youth Court will provide information to the school district that will allow them to provide a safer learning environment for all the children.

He referred to the amendments, Section 1 (3). This states that the school district may apply its policies to information which it receives. The school district has independent statutory authority to adopt policies providing for suspension, expulsion, admission, and denial of admission to students in the state. These policies have been subjected to repeated court interpretations over the years in virtually every state in the nation. Those court cases maintain that a school district may take action when it constitutes something serious that has the potential to disrupt the educational environment. This bill is not seeking to expand the school district's role to take action.

He further remarked that opponents may hold that this creates liability for the juvenile probation officers who would be required to report. He urged the Committee to consider this carefully. If a school district does something inappropriate with the information received, the school district will be liable.

{Tape : 1; Side : B; Approx. Time Counter : 10:00}

Al McMillan, Superintendent of Schools, Laurel, remarked that the key element for schools is information if they are to serve the student. The need the information to prepare the system, accept the student and to provide the kind of instruction and supervision that will allow that student to succeed. Schools handle confidential information all the time. Their staffs are trained in this matter. They need to know the problems which the students might be bringing so that they can be alert and move quickly before a problem becomes a tragedy. In Laurel, the school district has a joint task force with the city council. They meet on a regular basis to work together in helping students. At a meeting regarding expansion of their search dog policy to include cars in the high school parking lot, a middle school student council member stated that this is something they expected from the school district. They expect to be protected and have faith that this would be handled correctly.

He provided written testimony from **Ed Sansom, Superintendent of St. Regis School District #1, EXHIBIT(jus49a04).**

Rich Shaffer, Superintendent of Schools in Shields Valley, rose in support of HB 310. When he first began working in the school system, the major concerns were chewing gum on the bottom of seats and the occasional tardy student. Today the concerns include guns, drugs, gangs, assaults, etc. Students come from all parts of the state and country. The schools know very little about the students. A safe learning environment is the single most important item in providing a school where children are able to learn.

Warren Frazier, School Administrators Association, contended that the purpose of this bill is to help the youth who are at risk. It is essential to share information on how to best help the student. A trust level needs to be developed. It takes a lot of time to make things better for these students. Sharing information should decrease liability as well as provide a deterrent. Schools are guided by federal law in regard to confidentiality.

Opponents' Testimony:

Catherine Love, Office of Public Instruction, claimed that they currently work with the Juvenile Probation Association to promote sharing of information between school districts and the Youth Court. They believe that this bill goes beyond sharing information and violates a student's right to due process. Without a finding by the Youth Court, a student may be expelled, suspended, or refused enrollment from the school for an action which they are suspected of committing. While the words "off

school grounds" do not appear in this bill, HB 310 allows schools to punish students for actions that were taken off school grounds. This is typically a right of parents and, in more serious situations, it is a duty of the Youth Court. They are concerned about where the expelled youth would go for an education, other than the streets. This bill allows a new district to refuse to enroll a student on the same grounds for which they were expelled from the previous school.

{Tape : 1; Side : B; Approx. Time Counter : 10.10}

Mike McGrath, Lewis and Clark County Attorney, remarked that the bill addresses a problem that does not exist. Section 2 of the bill shows that there already is a mechanism that allows for sharing of information which is done on a regular basis. County interdisciplinary child information teams are formed between the juvenile probation officer, the law enforcement community, and members of the school district.

Section 1(3) of the bill would require a juvenile probation officer who has reasonable cause to believe that a youth is currently involved with drugs or criminal activity to make a report to the school district. This does not require reporting on youths who have been adjudicated but on youths who have been rumored. There are serious due process flaws in this bill. If this bill is adopted, this section should be amended to limit it to situations involving youths who have been adjudicated and have been found to have committed a crime either through a consent decree or a trial.

Phil Campbell, Montana Education Association and the Montana Federation of Teachers, remarked that their concerns with this bill is that it involves sharing of information from the probation officers on situations where there has been no adjudication. If there is reasonable cause that they are involved in illegal activity, they should be arrested.

Joe Connell, Chief Probation Officer, Fifth Judicial District, opposed the bill on behalf of the juvenile probation officers in this state. The main concern is the inability of probation officers to effectively share information that may be suspicion.

David Gates, Juvenile Probation Officer, Gallatin County, explained that their interdisciplinary team in Gallatin County consists of persons from the school district, county attorney's office, youth probation, Department of Family Services, law enforcement agencies, shelter care, private therapist, placement programs, counseling, Department of Corrections, etc. The committee consists of 82 members, with half of the membership

from the public school system. Everyone on the team agrees that information can be shared. This is done through the team. The large group meets every two months and the smaller teams meet on a weekly basis. The parents and the child are welcome to their meetings. In one week, his office had two sex offenders come back to Gallatin County. One was from placement and another moved back from another state. They had both been to treatment and found guilty of sex offenses. There is still some risk with these students.

He further remarked that he had received a phone call from another state where a youth was coming to the community. This call came from the school. He was told that the youth had burned down his family home. He had never been charged with the offense. He was young and had gone through the mental health program. He recommended a mandatory requirement for every county to have an interdisciplinary team. He provided a copy of their confidentiality statement, **EXHIBIT(jus49a05).**

{Tape : 2; Side : A; Approx. Time Counter : 10.20}

Joy Mariska, Director of Court Services - Yellowstone, Carbon, Bighorn, and Stillwater Counties, remarked that they have probation officers who are assigned to the high schools and middle schools. They work directly with the deans and principals in those schools, specifically sharing information. This bill mandates a notification to schools based on suspicion. Having worked in law enforcement, she understands what it takes to put a case together. Many times what appears to be true is not the case until all the facts are out. If the information does not rise above the level of reasonable cause, it should not go any further. If a student is found with something in September, they are out of school until the next fall. This happens on a regular basis.

There were approximately 1900 referrals to their office in Billings last year. She could not imagine what the school districts would do with all of the reports if they were sent to the school district. If the schools are given the information and do not act on it, they are taking on additional liability.

Allen Horsfall, Juvenile Justice Program Specialist for the Board of Crime Control, presented his written testimony, **EXHIBIT(jus49a06).**

Sandy Oitzinger, Montana Juvenile Probation Officers Association, stated that in Section 1(3), the reasonable cause requirements apply to agencies as well as the Youth Court and juvenile probation officers. She presented her written testimony,

EXHIBIT(jus49a07). She also provided written testimony from Marie Studebaker, Juvenile Probation Officer from Libby, MT, **EXHIBIT(jus49a08)** and Gary J. Loshesky, CPO from Anaconda, MT, **EXHIBIT(jus49a09).**

{Tape : 2; Side : A; Approx. Time Counter : 10.38}

Questions from Committee Members and Responses:

SEN. GRIMES asked **Mr. Melton** to comment on the issues of due process and reasonable cause. **Mr. Melton** claimed that due process was a term of art and would attach anytime someone's property was taken. The due process in this case is that the obligation to provide the information only occurs after an investigation. On page 4, section 2, line 11, the language states that once the county interdisciplinary child information team meets, they can share information with or without an investigation. Any rumor could be shared with the team without any substantiation. Section 1(3), which has been introduced by the sponsor, provides due process substantially in excess of that provided by the current interdisciplinary child information team.

He further added that the term reasonable cause is not defined under the statute. It is used in licensing statutes. For example, if a board decided to take away a doctor's license, before they move ahead the board needs to have reasonable cause. The term "reasonable cause" is defined in court decisions outside of the state and is identical to the definition of "probable cause" as described by **Mr. Horsfall.**

Mr. McGrath remarked that reasonable cause did not mean anything to him since it is not a term that is used in the criminal justice system. It is not defined under Montana law. Probable cause means that based on specific evidence, there is a belief that a person has committed a specific act. He believed this was mostly defined through case law.

Mr. Horsfall maintained that probable cause is clearly defined in Henry v. United States and Beck v. Ohio,(1964).

SEN. GRIMES questioned how this statute would work with the current interdisciplinary teams. **REP. MOLNAR** remarked that interdisciplinary teams may meet once a month, which may not be often enough.

SEN. GRIMES further questioned how agencies would be included. **REP. MOLNAR** responded that this includes juvenile probation officers, the youth court, or an agency as defined in 41-5-103.

CHAIRMAN GROSFIELD remarked that the bill, in Section 1 (3), did not require a probation officer to notify the school. It required the youth court to notify the school. He believed a conflict existed on line 14. **REP. MOLNAR** explained that line 12 stated "or if a petition has been filed and the juvenile probation office or youth court finds that a youth is currently involved in illegal drug use, illegal drug distribution, or other criminal activity, the youth court shall notify the school district . . ." The youth court has a very specific obligation to notify the school of current happenings. For example, if the probation officer took a student from Columbus, MT, and placed that student under foster care in Winnett, it would be up to the agency to notify the school regarding the reason the student was moved which could be a drug problem, tail end of probation on a string of car thefts, etc.

CHAIRMAN GROSFIELD questioned what kind of petition would be involved. **REP. MOLNAR** maintained that the juvenile justice system does not mimic the adult justice system. There is an informal consent decree and a formal consent decree. This can be handled without adjudication. The youth admits to the juvenile probation officer that the drugs in his possession were his. This doesn't go to the county attorney. An informal consent decree is signed that this youth will not do this anymore. There is no adjudication but the juvenile probation officer is aware of the circumstances. This includes a petition to the youth court which states that the youth will go to drug treatment, attend school, and be at home by 10:00 p.m. every evening. The formal petition is a little stronger. These are the petitions included in the bill. They are pre adjudicated.

SEN. HOLDEN there are children who attend the same school as him children who are using and selling drugs in school. He added that **Mr. McGrath** stated that this bill is not needed because this information is currently available to the school districts. He asked the school superintendents present whether they are receiving this information. **Mr. McMillan** explained that this would depend upon the county, school district and/or jurisdiction involved. The amount of information varies widely. More information is being made available. The teams he has worked with arbitrarily chose the students they believe are important to discuss. The infrequency of meetings by teams can be a very large problem. Very few schools can afford resource officers that can be the connection between the teams and the school

district. Currently, there is a good exchange of information but not nearly the kind of flow of information this bill addresses.

SEN. HOLDEN remarked that the probation officer who testified earlier stated that school districts would be inundated with information if this bill were to pass. **Mr. McMillan** understood that they would only be given information related with drugs and violence related activities. The flow of information regarding a broken window is not what this bill addresses. He trusts that school districts would not have 1900 drug related incidents in a year.

SEN. HOLDEN commented that Dawson County has one high school and the distance to the next high school would be approximately 50 miles. He questioned whether these students would be out on the streets without the opportunity for an education. **Mr. McMillan** responded that in the three school districts where he has served as a school superintendent, he has yet to serve with a board whose first interest was not to try to provide a second or third chance for students in trouble. However, in the instance of severe offenses such as violence, weapons, or drugs, this would involve choices being made by the students and there are consequences involved that go beyond the individual. The other students need to be protected. Two weeks ago, they had an expulsion due to the possession of a weapon. The board regretted to have to take the action, but this needed to be done. He has also seen this board take students who have been expelled from Billings and give them a chance. Parameters and guidelines are clearer explained and the student is told that they will not get a second chance.

CHAIRMAN GROSFIELD maintained that expulsion for a weapon involves an entirely different statute. School boards are required to have a policy of expulsion for weapons. A drug offense would be different. The philosophy of the youth court act is to give the youth a second chance in hopes that he or she may turn around. **Mr. McMillan** agreed. He added that this is why the information is necessary. A school board has the right to expel a student for a drug offense. The first inclination should be serving the troubled student. Sometimes a district does not have the facility or resources to serve a particular student.

SEN. HOLDEN questioned whether the word "reasonable" could be changed to "probable" on page 2, line 11. **REP. MOLNAR** stated that if a youth admits to selling drugs to a juvenile probation officer and goes ahead with an informal consent decree, he doesn't know whether that is reasonable or probable but the juvenile probation officer knows this and it will not be adjudicated. This information needs to be shared.

CHAIRMAN GROSFIELD remarked that the youth court would still sign off on this. The bill would include the opinion of the juvenile probation officer as well as the petition. It would make more sense to address only what is being signed off on by the youth court. **REP. MOLNAR** insisted that there is no similarity between the adult and the youth court systems. The juvenile probation officer can ignore information. **Ms. Mariska** has written a letter which stated that 50% of the cases that went to the county attorney's office, never came out. How can there be adjudication under these circumstances?

CHAIRMAN GROSFIELD asked how interdisciplinary teams were set up. **Mr. Gates** explained that the county attorney set up the teams. He did not know which counties had inter disciplinary teams.

CHAIRMAN GROSFIELD remarked that interdisciplinary teams would be discussing private matters. He questioned how this worked under the open meeting laws. **Mr. Gates** explained that the small team meetings would not be open meetings.

CHAIRMAN GROSFIELD remarked that juvenile probation officers having to produce a finding was a strange concept. He could understand a court coming up with a finding. **Mr. Melton** stated that civil licensing litigation relies on investigations which do have findings. Police reports have a recommendation at the bottom of the report. This does not include a judicial finding. They are asked to draw conclusions based upon the investigation. Without findings, an investigation is useless.

CHAIRMAN GROSFIELD added that on page 2, line 14, the language stated that the youth court shall notify the school. On page 2, line 30, it states that the school district may disclose back to the court. He asked the reason for the dichotomy. **Mr. Melton** responded that this amendment was added in the House. Under current federal law not only are school districts limited in the information they can provide, they are actually prohibited from sharing information regarding student records of youth who have violated the law. The only way this information can be shared is if there is a state statute which allows for this to be done.

{Tape : 2; Side : B; Approx. Time Counter : 11.13}

Closing by Sponsor:

REP. MOLNAR summarized that a county the size of Gallatin County meets formally every other month. They decide whether the school should be given the information. The school should know the students who are coming before they arrive. Expulsion, due process and school administration is already covered by law.

There must be due process. The bill addresses those involved in illegal drug use and distribution as well as criminal activity. If there is one troublemaker in a classroom, he starts to draft to other good students. If there are two troublemakers, they reenforce each other. He further remarked that the teachers involved in the Jonesboro massacre stated that if they had only known, they could have watched that youth. They didn't even know he was in treatment.

{Tape : 2; Side : B; Approx. Time Counter : 11.25}

SENATORS GRIMES and **DOHERTY** were excused from the meeting.

EXECUTIVE ACTION ON HB 176

Motion/Vote: **SEN. HOLDEN** moved that **HB 176 BE CONCURRED IN. Motion carried unanimously -7-0.**

EXECUTIVE ACTION ON HB 116

SEN. BARTLETT explained that the amendments she requested, HB011601.avl, **EXHIBIT(jus49a10)**, made clear that an offender sentenced to the treatment facility who was capable of paying for the treatment was required to pay the same.

Ms. Lane added that the second amendment addressed placement.

SEN. BARTLETT explained that currently if the offender is placed in a prerelease or a boot camp, the Department of Corrections may place the offender in another facility or program. The fourth offense DUI requires them to be under supervision in a facility for at least six months.

Motion/Vote: **SEN. BARTLETT** moved that **HB 116 BE AMENDED. Motion carried unanimously -7-0.**

Motion: **SEN. HALLIGAN** moved that **HB 116 BE AMENDED - HB011602.avl, EXHIBIT(jus49a11).**

Discussion:

SEN. HALLIGAN stated that he discussed this bill with **SEN. VAN VALKENBURG** who was involved with this bill several years ago. He believed the original intent was that at least the first six months of the fourth DUI offense sentence was not suspended. This is currently being interpreted that if the offender receives

a one year sentence, none of this can be suspended. The amendment states that the first six months cannot be suspended.

Vote: Motion **carried unanimously - 7-0.**

Motion/Vote: **SEN. HALLIGAN** moved that **HB 116 BE CONCURRED IN AS AMENDED. Motion carried unanimously - 7-0.**

ADJOURNMENT

Adjournment: 11:40 A.M.

_____
SEN. LORENTS GROSFIELD, Chairman

_____
JUDY KEINTZ, Secretary

LG/JK

EXHIBIT(jus49aad)