MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on January 27, 2003 at 10:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

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 & Date Posted: HB 29, 1/23/2003; SB 238, 1/23/2003
Executive Action:

HEARING ON HB 29

Sponsor: **REP. ALAN OLSON, HD 8, ROUNDUP**

Proponents: **Corbit Harrington, Deputy County Attorney for Yellowstone County**

Opponents: **None**

Opening Statement by Sponsor:

REP. ALAN OLSON, HD 8, ROUNDUP, introduced HB 29. He stated the bill had a small amendment added in the House Judiciary Committee. The first change was found in Section 1, line 14. A sentencing court may order a reduction of the incarceration period to actually be served under a sentence but may not reduce the length of the sentence. The boot camp portion of this is on page 2, line 8. Before an inmate is sent to the boot camp, he would need to contact the county attorney's office for consultation. This requires the consent of the county attorney. This legislation will give the county attorneys a chance to be a part of the process and to ensure that the persons going through the boot camp program belong there.

Proponents' Testimony:

Corbit Harrington, Deputy County Attorney for Yellowstone County, remarked that this bill addressed the time of supervision while allowing rewards for offenders who comply with boot camp and deserve rewards to receive less or no incarceration time. It also mandates the Department of Corrections to seek the advice of the prosecutor's office. The prosecutor's office knows the offenders best. The impetus of this bill came from a defendant in Yellowstone County by the name of Kyle Young. Mr. Young shot a man in the stomach. He held an elderly woman and her invalid husband kidnaped in their own home. He stole his brother's identity and obtained credit cards by forging his signature. He also committed a variety of misdemeanor acts including DUIs. The recommendation of the county attorney's office for a joint sentencing was 40 years with 20 years suspended. He received 40 years with 23 years suspended and was allowed to partake in the boot camp program. The Yellowstone County Attorney's Office is firmly behind the boot camp program. They do have concerns about violent offenders who are allowed in the program. Mr. Young was allowed in the program and passed with a D- average.

Mr. Young was brought before the court and was resentenced to ten years suspended. He would serve no additional time in prison and would not be supervised. Within three weeks, Mr. Young violated

the terms of his condition on three separate occasions. He put people at risk and drank alcohol. At that point, the maximum sentence the court could impose was a ten year prison sentence because his overall sentence had been reduced to ten years suspended. He was ultimately sentenced to ten years suspended for shooting a man, holding an elderly women kidnaped, and for stealing his brother's identity. This bill would have allowed the court to reduce the sentence to 40 years suspended. When the violation occurred, he could have been sentenced to 40 years in prison or a more appropriate sentence similar to the first one he had received. This bill will allow for the offenders to be pulled back who are not suitable to be in the community. It will allow them to be sentenced appropriately. The bill still provides for the opportunity to reward offenders who comply and have a life changing experience in the boot camp program.

Opponents' Testimony: None

Questions from Committee Members and Responses:

CHAIRMAN DUANE GRIMES asked **Diana Koch, Chief Legal Counsel for the Department of Corrections,** to address the issue. Ms. Koch stated that the Department does not object to the bill. She asked the Committee to take cognizance of HB 222 which the Department is proposing. The Department is proposing that at the time of sentencing, a district court judge should be able to tell the defendant that if they pass the boot camp program, it will not be necessary for them to return to court for a sentence reduction. The rest of the incarceration sentence is automatically suspended. For inappropriate defendants, the court can decide whether the defendant should be recommended to go to the boot camp program. If the defendant passes the boot camp program, they must return to the court for a sentence reduction and the sentence reduction can only be that the sentence of incarceration is suspended. The concepts in both bills are similar.

CHAIRMAN GRIMES asked for further clarification regarding the interaction of the two bills. **Ms. Koch** stated in regard to HB 29, Sections 1 and 2 would remain the same. A section would be added that the Department is bringing in HB 222. She requested a coordination instruction in both bills. The length of sentence would not change under either concept. The Department's bill would state that the sentencing judge, at the time of sentencing, could say the defendant would not need to return to the court for a sentence reduction. Section 1 of HB 29 would take effect as soon as the individual passed the boot camp program.

SEN. MIKE WHEAT asked whether, at the time of sentencing, the county attorney had an opportunity to make a recommendation as to whether boot camp would be appropriate for the person being sentenced. **Mr. Harrington** affirmed the county attorney would have the opportunity to make a recommendation as to whether or not the defendant is suitable for boot camp. The court ultimately decides the sentence. The acceptance of the defendant into the boot camp program is a determination made by the Department of Corrections. This bill will allow the Department to consider a more in-depth analysis as to whether the prosecutor's office believes the defendant is appropriate for this program. The problem is there is no mandated consideration by which the Department is required to seek the advice and consent of the prosecutor. There is no formal procedure in place.

SEN. WHEAT asked whether the judge would place a recommendation from the prosecutor into the sentencing document. **Mr. Harrington** stated that generally he would not do so. If there is a joint understanding between the defense attorney and the prosecutors office that the boot camp program would be recommended, this would be issued by the court. The court is not mandated to even consider this option. His concern is the recidivism rates for violent offenders. Originally the bill was drafted to require the consent of the prosecuting attorney's office. There were concerns that this would not pass. The House Judiciary Committee also had some concerns this would provide too much power/influence to the prosecuting attorney's office. In it's present form, the bill provides that the Department is mandated to consider the wishes of the county attorney's office. For the safety of the community as well as liability issues, this is still an important part of the bill. It forces the Department to consider the recommendations of the prosecutor, who knows violent offenders better than anyone else, before making recommendations to allow this person into the boot camp program.

SEN. WHEAT questioned the process. How would the information be transmitted to the Department? **Mr. Harrington** noted that it would be necessary for the information to be in writing. When the Department is considering someone for the boot camp program, they will request the advice of the county attorney's office or the prosecuting body and the prosecutors would submit a written response as to whether they believe the person is appropriate for the boot camp program. The response should contain the reasons why or why not the person would be appropriate.

SEN. WHEAT made a suggestion that on page 2, line 9, the word "written" be inserted before "recommendation". He questioned whether this would change the intent of the bill. **Mr. Harrington**

did not believe it would change the intent but did raise a concern about having amendments from both houses.

SEN. WHEAT expressed a concern for the person who was denied admission to the boot camp. They should have the right to know the recommendation of the prosecutor. **Mr. Harrington** agreed that this was a valid point.

SEN. JERRY O'NEIL asked if the Department needed to ask for an additional written recommendation if a request was already in the file. **Mr. Harrington** explained there may be a joint recommendation made by both the defense and prosecutor. The written consent would verify the plea agreement. This could be used to satisfy a written recommendation requirement.

SEN. O'NEIL asked whether a prisoner, who was denied admittance to the boot camp program, could claim that he was denied due process because the department did not consider the recommendations of the county attorney. **Mr. Harrington** affirmed this was possible. Once the law was in place, it would be necessary to follow the procedures to comply with the law.

SEN. O'NEIL questioned whether this would be handled by administrative rule or whether the language should be placed in the statute. **Mr. Harrington** noted that administrative rule would govern the details involved. **Ms. Lane** noted the language stated that the program is discretionary.

SEN. BRENT CROMLEY asked whether the boot camp program was for a certain period of time. **Mr. Harrington** explained that the program runs for 90 days. After 45 days, there is a preliminary opinion drafted by the persons supervising the program. The participant is graded as to his accomplishments or failures. There is a final recommendation prepared after 90 days by the same individuals as to whether or not the participant passed or failed. In the case of Mr. Young who was looking at a 40 year prison sentence and serving 20 years, the entire incarceration could be erased by his participation in a 90 day program.

SEN. CROMLEY summarized that in the past a person could be sentenced for three years; but, if this person passed boot camp, the balance of the sentence could be suspended. **Mr. Harrington** affirmed that to be the case and also the overall supervision period could be reduced. In the case of Mr. Young, the overall supervision period was reduced from 40 years to 10 years. This bill would freeze the overall supervision program. The defendant would be responsible to the department.

SEN. CROMLEY further noted it was his understanding that under the bill, the judge could not suspend the balance of the sentence after serving in the boot camp but the person may be on probation for the balance of the term. **Mr. Harrington** affirmed that the judge could suspend all time. In the case of Mr. Young, he would receive a sentence of 40 years suspended but the 40 years would still be hanging over his head. When he reoffends, he could be sentenced to prison for 40 years. This is an accountability bill. If the person reoffends, he can be held accountable to the original sentence.

{Tape: 1; Side: B}

CHAIRMAN GRIMES raised a concern about providing disincentives for full utilization of the boot camp program. **Ms. Koch** explained that it has been the department's opinion that the judges would use only the incarceration term. Four years ago, the department proposed an amendment to the boot camp bill from an implementation standpoint. Some judges seem to still be creative with the sentence reductions after successful completion of the boot camp program. Instead of just suspending the rest of the sentence, they started reducing the entire sentence. This bill is a good bill. It states that the person can get out of serving the entire incarceration sentence if they go through the boot camp program and finish successfully. The person will then be able to serve the rest of the sentence on probation in the community. This is quite a bonus. In the case of Mr. Young, he would have been able to spend 20 years in the community on probation.

Closing by Sponsor:

REP. OLSON maintained that the boot camp program is a good program. Completion of the boot camp program does not mean the sentence is satisfied. The county attorneys need to have input. He would not have a problem with an amendment qualifying that this input be in writing. This is common sense legislation.

HEARING ON SB 238

Sponsor: **SEN. JEFF MANGAN, SD 23, GREAT FALLS**

Proponents: **Audrey Allums, State Juvenile Justice Specialist for the Board of Crime Control**
Jani McCall, Montana Children's Initiative
Marko Lucich, Youth Justice Council
Al Davis, Montana Mental Health Association
Beth Brenneman, ACLU of Montana

Opponents: **None**

Opening Statement by Sponsor:

SEN. JEFF MANGAN, SD 23, GREAT FALLS AND BLACK EAGLE, stated that SB 238 was brought on the behalf of the Montana Youth Justice Council. He provided several handouts: draft response to Vivian C. Hickman, Office of Juvenile Justice and Delinquency Prevention, **EXHIBIT(jus17a01)**, Youth Court Act statutes, **EXHIBIT(jus17a02)**,and Federal Regulations, **EXHIBIT(jus17a03)**. The Council is appointed by the Governor and serves on behalf of the Governor to oversee the juvenile justice programs in the state and also to keep the state in compliance with the federal statutes. The bill was suggested by the Montana Board of Crime Control and it passed the Council unanimously. The bill seeks to amend a finding in the most recent federal audit that status offenders cannot be in secure detention unless a valid court order is in place.

Finding 4 in the draft response to Vivian C. Hickman, Office of Juvenile Justice and Delinquency, addresses the issue involved. Federal laws and rules do not allow a youth who has committed a status offense, in Montana this would be a youth in need of intervention, to be held in secure detention. One exemption is to use the valid court order process. If the youth violates this order, he or she can be held in juvenile detention. In Montana, over 90 percent of the time, the informal process of a consent adjustment is used when working with status offenders. A consent adjustment is an informal process in which there is no hearing before a court. The probation officer works out an agreement with the family. Upon completion of the agreement, the youth would not be charged formally. Since 95 to 98 percent of our status offenders use the consent adjustment process, a valid court order does not exist that the youth would be violating. Our current statutes do not allow for that valid court order exemption for securely detaining status offenders.

After a youth has violated a court order, our petition process would allow seven days for the hearing to take place. Federal statute only allows for 72 hours. There have only been a handful of status offenders held securely in a detention center. The Board of Crime Control has come up with three options to remedy the situation. One option was to eliminate consent adjustments. Every youth in need of intervention would then need to go through a formal process. The consent adjustment works very well. The second option was to amend the statute of delinquent youth to include a youth in need of intervention who violated a valid court order. The petition process would also need to be changed from seven days to 72 hours. This was not a very good option

because 95 to 98 percent of the youth in need of intervention cases are handled informally through the consent adjustment process. The same issue would remain. The third option was to clearly state in our statute that status offenders cannot be held in secure detention. This is contained in SB 238. Current statute defines a delinquent youth and this can be found in the bill on page 1, line 30, through page 2, line 5. This holds that a youth in need of intervention can be upgraded to a delinquent youth if he violated a condition of probation. Probation can be a sanction under the consent adjustment process. However, no hearing has taken place. This legislation would delete a youth in need of intervention. A youth in need of intervention then could not be upgraded to a delinquent youth.

Currently Montana Code does not allow the secure detention of youth in need of intervention or status offenders. Under 41-5-345, a youth alleged to be a youth in need of intervention may not be placed in a jail, secure detention facility, or correctional facility. Senate Bill 238 will solve the problem with federal requirements, clarify existing law, and allow us to keep the consent adjustment in place. We have two choices. We can make a policy decision that we will not securely detain our status offenders. There would only be a handful in the state each year. The other choice is to completely rewrite the Youth Court Act to include the valid court order process. There are federal funds in jeopardy. This bill has the support of almost everyone in the juvenile justice field.

Proponents' Testimony:

Audrey Allums, State Juvenile Justice Specialist for the Board of Crime Control, stated that the legislation is designed to provide clarification within the Youth Court Act. It assures Montana will maintain compliance with the Juvenile Justice and Delinquency Prevention Act, reflect current procedure when dealing with youth in need of intervention and eliminate the possibility that youth can be bootstrapped and upgraded into juvenile delinquents as youth in need of intervention. The Chairman of the Youth Justice Council, Steve Rice, lives in Miles City and was unable to attend this hearing. This legislation was reviewed by the Youth Justice Council and approved unanimously.

Including a youth in need of intervention who has violated any condition of probation would upgrade a status offender to a juvenile delinquent who could then be held in a secure setting. Problems exist with this situation. Section 45-5-345 does not allow for status offenders to be held in a secure setting. There is precedence that we do not follow such formal procedures. Section 41-5-1431 states that the Youth Court may make any judgement of disposition that could have been in the original

case. If a child is a status offender in a formal procedure and violates probation, it would be necessary to go to the original offense, the status offense, and the child could not be held securely.

A compliance audit was completed by the Office of Juvenile Justice and Delinquency Prevention. It recommends a change to the state law. The audit pointed out that many of these youth are using consent adjustment and consent decrees on informal proceedings. A status offender who is then held for violation of probation, would not have been provided with a formal procedure. If Montana were found out of compliance with the Juvenile Justice and Delinquency Prevention Act, a financial penalty would be applied to our juvenile justice block grants until the state returned to compliance. Montana has a very successful Native American liaison program in Billings between the Billings area and the Crow Reservation for children who are transient between the two areas. Assessment and diversion programs are provided across the state. Community-based restorative justice programs are provided that hold youth accountable while helping them become productive members of the community. There is also an extensive Minors in Possession Program on the Northern Cheyenne Reservation that has been very successful.

She has contacted a number of the chief probation officers in the state and found that none of them were using this definition to upgrade status offenders. They all believed it was very detrimental to youth.

Jani McCall, Montana Children's Initiative, claimed that the status offenders identified in this bill to be excluded from secure detention is appropriate. These kids should be served in appropriate community-based services. The Youth Justice Council supports this concept and has restorative justice as a primary mission and goal for youth. The Department of Corrections uses programs that allow early release for individuals due to budget issues. She stated that data recently provided by the Youth Justice Council and the Montana Board of Crime Control indicates that in l997 almost 18,000 status offenses occurred in the state. In 200l, that number was a little over 14,000. This indicates that the interventions taking place for status offenders is working.

Marko Lucich, Youth Justice Council, rose in support of SB 238 on behalf of the youth of Montana. This bill is 15 years late. In the l980s, if a youth violated the terms of probation, they would become a delinquent youth and be placed at Pine Hills Correctional Facility. Many times the youth who are youth in need of intervention are running away from something. A recent youth in need of intervention petition that was filed involved a

girl who was pregnant and bipolar. Even if she violated the terms of her probation, she did not belong in a detention setting. She went to the appropriate facility which was the Florence Crittenton Home and was handled very appropriately.

{Tape: 2; Side: A}

Al Davis, Montana Mental Health Association, stated they are particularly interested in any bills dealing with the Youth Court Act. The National Mental Health Association reports that 73 percent of children admitted to youth correctional facilities are experiencing a mental health problem. Half of these children have had mental health treatment prior to admittance to juvenile justice facilities. It is reported that 60 percent of all children that end up in secure detention programs are experiencing mental health problems. There is a window of approximately three years to make the right choices when dealing with children coming into the system. This includes the youth who are twelve to fifteen year of age.

In 1995, the Center for the Study of Youth Policy, looked at 419 children in the system in the State of Montana. They determined that secure care and lock up was being over utilized in Montana. Their research suggested that one in three children really were a threat to themselves or others. Approximately 25 percent were identified as needing some community interaction, but should have been dealt with through the system available from their homes. Almost half were at a level for appropriate community alternative. When youth are in a secure detention facility, there is always something going on and it is like a 24 hour-a-day cops TV series. These youth don't have to do anything. They do not need to be responsible. They do not have to get dressed, clean their clothes or do dishes. They do not need to think. Someone will tell them when to get up and when to go somewhere. This is a pretty easy existence. Once youth get into the deep end of the system, it is difficult for them to get out.

Status offenders should not be locked up. It increases the potential risk at the front end of the continuum. It is a risk well worth taking.

Beth Brenneman, ACLU of Montana, rose in support of SB 238.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. O'NEIL posed the scenario of a youth who ran away from home. If the court decided that the youth needed to report to the

juvenile probation officer on a regular basis and he or she failed to do so, what compliance measures could be taken under the terms of this bill. **SEN. MANGAN** explained that currently under a consent adjustment a youth can be placed on probation. This legislation will not change that situation. **Mr. Lucich** noted when they meet with the youth at the beginning stages, they try to find out what is happening in the youth's home and life. If they do not report, he may go to their home to see what issues may be involved as well as to see the home environment. They will look into counseling, if that is deemed appropriate. There are community service programs. A youth in need of intervention is a youth who commits an offense which, if they were an adult, would not be an offense against them. This involves running away, curfew, and truancy. There are alternative schools. It is important to deal with both the youth and his or her family. A youth he is dealing with in his community was running away from home but the reason was because she was being sexually abused by her father. This youth may run away two or three times before they can find out the reason for running away. It is so important to deal with what is troubling the youth and to deal with those issues. Locking up youth is not the cure all.

SEN. CROMLEY asked **Ms. Allums** if a status offender who is a minor would be a youth in need of intervention. **Ms. Allums** affirmed that in Montana the definition of a youth in need of intervention is a status offender. This involves a minor who commits an act that only because of their age makes it illegal for them.

SEN. CROMLEY asked what the process would be for violation of a procedure by such a youth. **Ms. Allums** stated that an informal proceeding would involve the consent adjustment or consent decree. This is an agreement with the youth and the youth's family that they will seek an assessment and do certain things. The probation officer will usually provide graduated sanctions within the agreement. None of the probation officers she spoke to placed the youth in a secure facility.

SEN. CROMLEY believed that under current law it would not be possible to place the youth in detention. **Ms. Allums** explained that a youth in need of intervention who has committed a violation of their probation could be bootstrapped to the juvenile delinquent status and then they could be held securely. We do not allow status offenders to be held.

SEN. WHEAT questioned the situation involved with a status offender who is 13 years old and both the youth and the parents do not want to cooperate. How is this situation handled? **Ms. Allums** stated it is her understanding that this would involve a small amount of the youth. There is the opportunity to provide

graduated sanctions before secure detention that would provide the ability to reach that youth. The law should be changed to cover the needs of the youth.

SEN. WHEAT asked for further explanation of graduated intervention. **Ms. Allums** stated that recently spoke with a probation officer from Jefferson County who told her the first thing he does is to make sure the youth has an assessment and that they and their family follow the terms of their assessment. The next step would be community service options as well as non-secure options which include electronic monitoring, intensive supervision, alternative schools, etc. A program in Hardin wanted to reduce the truancy of their offenders by ten percent. With one truancy officer this quarter, their truancy is down 60 percent in that school system.

SEN. GERALD PEASE asked for further information regarding the programs involving the Crow and Northern Cheyenne Reservations. **Ms. Allums** stated at this time there is one block grant called the Title II formula and fifty percent of the funds are provided to Native American programs. The Billings program has hired someone to be a Native American liaison for those transient youth who may have offended in Billings but go back to the Crow Reservation. The youth know the available resources and what needs to be done to address their problems. The Boys and Girls Club works with the Northern Cheyenne Reservation. They have set up a program for youth who have multiple minors in possession. The program involves a mentor and provides alternative activities. They are being held accountable and also being a productive member of society. On the Rocky Boy Reservation there were 300 youth under case management and only two case managers for oversight. The funding provided through juvenile justice funds provided two more case managers so those youth could receive more supervision.

{Tape: 2; Side: B}

SEN. PEASE asked whether any federal funds were attached to this legislation. **SEN. MANGAN** clarified that our laws need to comply with federal laws. The Juvenile Justice Program recently had a federal audit. The auditors toured the entire state. A finding was if we have status offenders in secure detention, we do not have a valid court order process that meets the federal requirements. If this is not changed by legislation, the funds will be jeopardized.

CHAIRMAN GRIMES questioned whether there are youth who really are delinquent but the court has chosen to treat them as youth in need of intervention. If they violated probation, they may need

to be bootstrapped but this legislation would prevent this from occurring. **Mr. Lucich** stated that one rule is that this goes back to the original charge. If they violate their consent adjustment, this could be a violation with a delinquent offense.

Closing by Sponsor:

SEN. MANGAN clarified that the state does not routinely place status offenders in secure facilities. Five or ten cases would fall under this situation. Probation officers do not like to elevate youth from status offense to delinquent offense. The original offense may be a delinquent offense but is worked with as a youth in need of intervention. If there is a violation, this would go back to the original offense. Passing SB 238 is a simple way to take care of the dilemma in regard to a valid court order process. One out of seventy cases goes in as a formal hearing for a youth in need of intervention.

ADJOURNMENT

Adjournment: 11:25 A.M.

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SEN. DUANE GRIMES, Chairman

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JUDY KEINTZ, Secretary

DG/JK

EXHIBIT(jus17aad)