MINUTES

MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN BRENT R. CROMLEY,** on January 10, 2005 at 3:00 P.M., in Room 350 Capitol.

ROLL CALL

Members Present:
Sen. Brent R. Cromley, Chairman (D)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Trudi Schmidt (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: Sen. Duane Grimes (R)

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Rita Tenneson, Committee Secretary

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

Committee Business Summary:
Hearing & Date Posted: SB 52, 1/4/2005; SB 60, 1/4/2005; SB 86, 1/4/2005; SB 94, 1/4/2005
Executive Action: SB 6; SB 33

HEARING ON SB 52

Opening Statement by Sponsor:

SEN. KEENAN, SD 5, BIGFORK, opened the hearing on SB 52, Preadmission screening authority for state hospital. **SEN. KEENAN** explained that the bill attempts to put some guidelines around admission to the State Hospital. He questioned the definition of "professional person" in the bill. In 5321-102 it defines professional person, which is a higher threshold than a mental health professional. This defines a medical doctor and an advanced practice registered nurse.

EXHIBIT(phs06a01)

Proponents' Testimony:

Joyce DeCunzo, Administrator, Addictive and Mental Disorders Division, Department of Public Health and Human Services (DPHHS), pointed out that the Montana State Hospital at Warm Springs is the only acute inpatient state-run facility in the State. They have seen a dramatic increase in the numbers of admissions to the State Hospital within the last two years.

EXHIBIT(phs06a02)

Ed Amberg, Director, Montana State Hospital at Warm Springs has worked at the State Hospital 26 years. He said the bill doesn't "spring" people out; it is a bill to enhance the coordination of care between the community and the hospital. The most common time for admissions to the hospital is between 4 P.M. and 8 P.M. on Friday afternoon, a difficult time to obtain lab services or a proper assessment and work-up of the patient before they come into the hospital.

EXHIBIT(phs06a03)

{Tape: 1; Side: A; Approx. Time Counter: 0 - 10.1}

Donald Harr, Montana Psychiatric Association, is a partially retired psychiatrist from Billings who has been in contact with the State system of mental for many years. He told the committee the psychiatrists in the State are concerned about availability of the Montana State Hospital at Warm Springs. It is a necessary component of the overall psychiatric care for patients with mental disorders in the state. He added that the Hospital needs to have it's staff as available as possible for working with the individuals who are there for longer term treatment. He thought this bill had been presented because of that concern.

{Tape: 1; Side: A; Approx. Time Counter: 10.1 - 13.3}

Anita Roesmann, Attorney, Montana Advocacy Program, supports the bill because of the long distances their clients must travel from home to be detained at the State Hospital either for emergency evaluations or while civil commitment proceedings are in progress. It is profoundly traumatic and disruptive.

{Tape: 1; Side: A; Approx. Time Counter: 13.3 - 16.3}

Opponents' Testimony:

Leo Gallagher, Lewis and Clark County Attorney, Montana Association of Counties (MACo) Board of Directors, serves as the liaison between these two entities. He echoed views on the needs for treatment of the mentally ill in this state. The system is not working now. They do not have adequate crisis intervention options for them at the local level. Friday nights and weekends, generally in the middle of the night, somebody is in crisis and needs treatment.

{Tape: 1; Side: A; Approx. Time Counter: 16.3 - 25.6}

Doug Kaercher, First Vice President, MACo. They are opposed to this bill and, until they get adequate funding at the local level to deal with these patients, the counties will have to stand opposed. They will work with whomever in trying to get a resolution on this bill.

Jim Cashell, Gallatin County Sheriff, President, Montana Sheriffs and Peace Officers Association, found it difficult to stand in opposition to the bill. Within the bill where it says the peace officer may take a person into custody and provide for the treatment of the person, they are not qualified, do not have the time, resources, money, or the training.

{Tape: 1; Side: B; Approx. Time Counter: 0.1 - 1.6}

Kurt Chisholm, National Alliance for the Mentally Ill, reluctantly opposed the bill because there isn't a good system in the state and someone will fall through the cracks and be denied the opportunity for an inpatient episode of treatment because of the prohibitions in this piece of legislation. He suggested that section 2, regarding the Department of Public Health, should not be remanded to facilitate but be ordered to make sure that every community in the state develops inpatient crisis intervention programs in facilities. If those things are in place they would not be troubled with this piece of legislation.

{Tape: 1; Side: B; Approx. Time Counter: 1.6 - 4.9}

Informational Testimony:

Joan Daly, Montana State Hospital at Warm Springs, said they have a 32-bed inpatient secured unit. Two years ago they shut down 11 beds to make it a 32-bed unit because of the exorbitant costs of running the facility. They have served 26 counties from their area through the commitment to the State Hospital and currently their beds are full 90-95% of the time. Their concern is that they do not have crisis authority in the community available for the numbers of patients they are seeing.

Questions from Committee Members and Responses:

SEN. COBB asked **Ms. DeCunzo** in section 2 what kind of money they are talking about regarding crisis facilities. **Ms. DeCunzo** answered they are working on the figure. Their hope is to be able to develop at least one secure crisis stabilization facility in one community in the coming biennium. In their budget request they would be looking at changing the way money is used in order to accomplish this. It has to be a partnership between the Department and the communities. There is not enough state money to totally fund these facilities. A lot of people have an interest in keeping people in their own communities, particularly on the county level. Their intent this spring is to look at crisis facilities and develop a funding mechanism. Bozeman has done a wonderful job and they are on their way for funding from several different places. The Department would like to partner with them and figure out how to pay for some of the care. She did not have a figure today but will be working on that.

{Tape: 1; Side: B; Approx. Time Counter: 4.9 - 7.9}

SEN. COBB asked **Ms. DeCunzo** if we should loose the licensing of Warm Springs because we are over the limit, what kind of money are we looking at regarding the general fund estimate. **Ms. DeCunzo** answered it depends on the year in terms of revenue they get from Medicaid and Medicare, but it may potentially range from potentially $3 to $4 million.

SEN. O'NEIL asked **SEN. KEENAN** if there will be rules added qualifying who goes to the State Hospital, then why can't the professional people independently make that determination. **SEN. KEENAN** didn't understand the question. **SEN. O'NEIL** pointed out that section 1 subsection 5 spells out rules specifying the criteria for appropriate emergency detention. He wondered why the professional person couldn't decide when a person goes to the state hospital or not - what was the purpose for this. **SEN.**

KEENAN referred the question to **Mr. Amberg. Mr. Amberg** said rules tend to be rather general. There is a need to talk about a specific case. A lot of other illnesses have symptoms that are similar to psychiatric illnesses. It is important that healthcare providers have information about laboratory results. If the person is a diabetic and having an insulation reaction, they wouldn't have that information. Several times a year a patient comes in and immediately must be transferred to a local hospital because of a medical condition which wasn't assessed properly.

{Tape: 1; Side: B; Approx. Time Counter: 7 - 9.7}

SEN. O'NEIL asked, regarding rules developed under subsection 5, if the professional person should be able to make those determinations as to whether they need to go to the hospital or if they have diabetic problems. **Mr. Amberg** replied that if he was the subject being transferred, he would want to make sure the healthcare providers understand his specific case and what that next facility can do. Communication saves a lot of time in the process. They need to know information such as current medications and drug and alcohol usage. He said it was very important it be done expeditiously. Communication needs to happen between the community professional to their hospital.

{Tape: 1; Side: B; Approx. Time Counter: 9.7 - 13}

SEN. KEENAN told **SEN. O'NEIL** he heard about situations where people are in psychiatric crisis who also have kidney failure, a broken back, or broken leg. Montana State Hospital is not equipped to handle those kinds of emergencies. People on I-90 see Montana State Hospital, pull up, and bring people into the hospital. The key word is communication. This person might be in a psychiatric crisis, but also have other life-threatening health related issues, and they need to go somewhere else.

SEN. O'NEIL asked if it would be possible to amend the bill to say this would apply in counties that do have an inpatient facility available. **SEN. KEENAN** answered that yes, it would be possible. **SEN. O'NEIL** asked if that would be acceptable. **SEN. KEENAN** referred the question to the Department. **Mr. Amberg** replied there is a real need to work in southwest Montana to develop those alternatives. That is where most of these emergency detentions come from. As long as they continue to do business the same way, they never will develop an alternative. Acute care services in this area are being subsidized by the rest of the state.

{Tape: 1; Side: B; Approx. Time Counter: 13 - 16}

SEN. O'NEIL asked if counties in southwest Montana did not have inpatient facilities. **Mr. Amberg** replied that Butte, the largest city, doesn't have an in-patient psychiatric facility. They do have a crisis house and some crisis therapists on call 24 hours a day, but they don't have an in-patient facility. There is an in-patient facility in Missoula, Kalispell, Great Falls and Billings and small programs in Havre and Glendive, but the rest of Montana is without in-patient services.

SEN. O'NEIL wanted to know if the crisis house in Butte would qualify as an in-patient facility for the bill's purposes. **Mr. Amberg** said they were really two different things. The crisis facility that exists is a lower level of care. It's in a rambling house and there are health care standards involved. People talk about the need to lock a person in a secure room. Butte is affected by the same Medicare and Medicaid rules, and that is a decision that has to be made very carefully and managed by on-sight medical personnel, not somebody some distance away. It is important for Montana but it is not a matter of adding a couple of staff or a little bit more funding. These are very specialty healthcare programs and should be administered in a hospital.

SEN. O'NEIL asked if the bill would make the counties out of compliance. **Mr. Amberg** didn't think it would make these counties out of compliance with anything.

SEN. O'NEIL questioned what would happen with the patients who needed to be put into in-patient facilities because they can't go to the state hospital because there are no inpatient facilities available in Butte. **Mr. Amberg** told **SEN. O'NEIL** the bill was very clear on that. They label it inappropriate and take them anyway.

{Tape: 1; Side: B; Approx. Time Counter: 16 - 20.3}

SEN. ESP asked about section 4, subsection 2 regarding what the peace officer will do and how he envisioned the peace officer providing for the treatment of persons. **Mr. Amberg** replied he would be concerned about that section and it may be something the committee would like to discuss. If the bill is passed as it is written, it would really continue with what happens now. The law enforcement officer would take the person into custody upon the recommendation of the mental health professional and be working with them to get the person into treatment. If there is a better way to phrase it, then it should be in the bill.

SEN. ESP felt the peace officer has a little more responsibility here than he may have had before and he was not sure this was intended. He thought it would be hard to provide treatment for

somebody if there was no place to take them for treatment. **Mr. Amberg** replied that his department would be open for an amendment to make it more clear. The intent of this legislation is not to put a greater burden on law enforcement personnel.

{Tape: 1; Side: B; Approx. Time Counter: 20.3 - 27}

SEN. ESP asked **Ms. DeCunzo**, referring to the subsection in section 4, whether the Department intended to make it mandatory that the counties provide for detention of people law enforcement have in custody. **Ms. DeCunzo** said the Department was trying to make the statute clearer but apparently failed. They were not trying to make counties do something not already in the statute outside of the requirement that the mental health professional would have to have a conversation with the state hospital, and would have to certify to the court and others that the conversation had taken place. The Department would be open to reworking the language.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 0.4}

SEN. ESP said page 3 line 23 seemed to him to be the crux of how they are going to take care of this, regarding shall do it, may not do it. If the committee should pass this, the county would have to have some kind of plan. **Ms. DeCunzo** replied they would definitely be open to reworking this with an amendment.

SEN. WILLIAMS asked **Ms. DeCunzo** about availability and capacity. **Ms. DeCunzo** said there are crisis services around the state. Missoula has a mobile crisis team. The Gilder House in Butte is one of the facilities people can go in crisis. The issue is they do not have a secure crisis stabilization service. Once a person appears before the court, as a danger to himself or others, it has to be a secure placement in order to have a detention. There are places a person can go if the individual chooses to stay there that might work. She will get the data for **SEN. WILLIAMS.**

SEN. WILLIAMS asked how there could be assurance there would be a facility for people in crisis. **Ms. DeCunzo** replied she didn't know how they could make that assurance.

{Tape: 2; Side: A; Approx. Time Counter: 0.4 - 4.9}

SEN. ESP inquired about what was going on in Yellowstone County and if they did a lot of emergency detentions at Deaconess. **Ms. Daly** answered that they put them through the commitment hospital where they are transferred as a courtesy.

SEN. ESP asked if they got Medicaid reimbursement or any reimbursement with the county. **Ms. Daly's** reply was they had contact with the county but if they do have Medicaid, Medicare or health insurance, that is part of how they are reimbursed. They are subsidizing costs.

Closing by Sponsor:

SEN. KEENAN could see problem solutions. He said the bill mainly calls for communication. He thought counties, municipalities and the state should cooperate rather than argue about who is going to pay for it. The **Mental Health Oversight Advisory Council** might be a good place to start the conversation in Section 2 for bringing people into the conversation with the other people mentioned. The confusion about section 4 subsection 2, looks as if the new language replaced custody with what used to be detained, and treated replaced with provide for. They are not asking for the peace officer to provide the treatment but to provide for access to the treatment. He felt that can be cleaned up as well.

HEARING ON SB 60

Opening Statement by Sponsor:

SEN. JOHN ESP, SD 31, BIG TIMBER, opened the hearing on **SB 60,** Revise limitation on critical access hospital beds.

The bill was at the request of the Department of Public Health. This bill ensures that Montana law will comply with federal law as it pertains to critical access hospitals.

Proponents' Testimony:

Mary Dalton, Administrator Quality Assurance Division, said that in November of 2003, the laws for critical access hospitals were changed on the federal level. There are 40 critical access hospitals in the state of Montana. The majority of their hospitals have converted. They have gone from 58 beds to 25 beds.

EXHIBIT(phs06a04)

{Tape: 2; Side: A; Approx. Time Counter: 4.9 - 14}

John Flink, Montana Hospital Association (MHA) spoke in favor of the bill.

EXHIBIT(phs06a05)

EXHIBIT(phs06a06)

Shane H Roberts, Chief Executive Officer St. Luke Community Healthcare Network spoke in favor of the bill.

EXHIBIT(phs06a07)

John M Bartos, Chief Executive Officer, Marcus Daly Memorial Hospital, Hamilton spoke in favor of the bill.

EXHIBIT(phs06a08)

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses: None.

Closing by Sponsor:

SEN. ESP referred to federal codes and closed.

HEARING ON SB 86

Opening Statement by Sponsor:

SEN. FRANK SMITH, SD 16, POPLAR, opened the hearing on **SB 86**, Montana definitions for Indian Child Welfare Act.

The bill clarifies the law for expert witness and and identifies the clarification of Indian tribes. The bill doesn't change anything, it only clarifies some things that were left out. **SEN. SMITH** submitted an amendment.

EXHIBIT(phs06a09)

{Tape: 2; Side: A; Approx. Time Counter: 14 - 17.5}

Proponents' Testimony:

Shirley Brown, Administrator, Child and Family Services Division, said the bill was at the request of the Division. The **Indian Child Welfare Act (ICWA)** is federal legislation with which the state must comply. **ICWA** establishes procedural safeguards that must be followed if the child is subjected to the child/abuse proceeding in state district court.

EXHIBIT(phs06a10)

Kathy Deserly, private consultant, who worked 24 years in the field of Indian child welfare, told the committee the area of expert witness is one of the most problematic areas of the law. It requires the ability to identify who the experts are and to have them available for the case.

{Tape: 2; Side: B; Approx. Time Counter: 24 - 27}

Jani McCall, Executive Director, Montana Children's Initiative Provider Association, said they completed a high-cost survey of kids in the system with money though the Board of Crime Control and Juvenile Justice Council for the State of Montana. These kids were in the custody of Child and Family Services Division. They had been out of homes and care for over six months at the cost of over $6000 per month and some ranging higher than this. In data they received involving 42 percent of high cost care kids, 24 out of 59 were Native American.

{Tape: 2; Side: B; Approx. Time Counter: 0.0 - 1.4}

Jean Bear Crane, Attorney, Co-tribes also handles the Tribes' child cases. She pointed out that an important aspect is expanding the definition of Indian to include those persons who are also members of the Little Shaw.

{Tape: 2; Side: B; Approx. Time Counter: 1.4 - 4}

Informational Testimony:

John Metropoulos, Attorney, has worked with Indian law since 1988, said he was concerned about the workings of the bill. He thought the bill might leave individual Indian children in a position where they get less protection from the State of Montana than children who are not Indian children.

{Tape: 2; Side: B; Approx. Time Counter: 4 - 10.8}

Questions from Committee Members and Responses:

SEN. SCHMIDT asked **Ms. Brown** if she would comment on **Mr. Metropoulos's** statement regarding Indian children getting less protection. **Ms. Brown** responded that the reason for the Indian Child Welfare Act initially was that states had very large proportions of Indian children in care versus non-Indian children. 41, Chapter 3, sets a higher standard for the governing needed to place a child in foster care. The Indian Child Welfare Act is Federal law. The Department has to comply and there is a little bit of difference between how they address an Indian child versus a non-Indian child.

SEN. ESP asked **David Niss, Legislative Services**, if professional person has only one meaning in Montana Codes. **Mr Niss** answered no.

{Tape: 2; Side: B; Approx. Time Counter: 10.8 - 13.9}

SEN. CROMLEY asked **Ms Brown** to take a look at sub section C and get back to the committee on some alternate language. He thought it vague as the word "whom" should not be there. It should be "for whose profession". **Ms Brown** replied that the definition was out of the Bureau of Indian Affairs guidelines on the interpretation. The additional language is out of Montana Supreme Court cases on how the court interpreted that particular category. **SEN. CROMLEY** answered that he would like to see the language from the Supreme Court case.

Closing by Sponsor:

SEN. SMITH said he took the bill to the federal building where they had a hearing with 30 some **ICWA** workers throughout the state, in addition to attorneys. They found this acceptable to them.

HEARING ON SB 94

Opening Statement by Sponsor:

SEN. CROMLEY, SD 25, opened the hearing on **SB 94,** Revise service of process in child protective services cases.

He explained that the bill will correct the situation which has made it difficult to serve papers in the process of child abuse cases. There is always personal service at the beginning of the petition. The amendments set forth in **SB 94** refer to service for the person and subsequent contact with the person.

Proponents' Testimony:

Shirley Brown, Division Administrator, Child and Family Services Division, pointed out the two major provisions. These were at the request of attorneys who are now representing the Department in abuse and neglect cases.

EXHIBIT(phs06a11)

{Tape: 3; Side: A; Approx. Time Counter: 0 - 2.1}

Jani McCall, Montana Children's Initiative Providers Association spoke in support of the bill.

{Tape: 3; Side: A; Approx. Time Counter: 2.1 - 2.6}

Jim Connor, Chief Counsel, Attorney General's Office, said one of his responsibilities is the supervision of the Special Prosecutions Unit, which provides trial and prosecution assistance though the county attorney's offices throughout the State. He asked for a do pass recommendation on the bill.

{Tape: 3; Side: A; Approx. Time Counter: 2.6 - 3.4}

Jim Smith, Montana County Attorneys Association, spoke in support of the bill. He said a better way to approach the publishing problem was through a local newspaper within the State of Montana where friends or relatives are more likely to see it and take action.

Opponents Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. ESP asked **SEN. CROMLEY** if, on page 2, line 22, where it changes "must" to "may", would one read that to mean that it was not mandatory. **SEN. CROMLEY** couldn't respond as there may be other provisions in the statute to acquire that service.

SEN. ESP asked **SEN. CROMLEY** if it were his intentions that they must do one or the other of the provisions. **SEN. CROMLEY** answered that they must be delivered or attempt to be delivered.
{Tape: 3; Side: A; Approx. Time Counter: 3.4 - 5.8}

SEN. WILLIAMS asked **Ms. Brown** if she would like to comment on their interpretation. **Ms. Brown** replied they used "may" because there is a whole list of things. The Department and the court can't proceed unless there is service. They want to be sure there are more options than certified mail. The courts won't proceed unless there is evidence of service.

SEN. ESP asked **Ms. Brown** if it would clearer with "must" serve one of those three people by one of these three ways. **Ms. Brown** thought a practicing attorney rather than a non-practicing attorney could answer that better. **Mr. Connor** told **SEN. ESP** his instruction of "may" was the same as Ms Brown. It is there because of the options that are allowed. He didn't have a

problem making it clearer by saying it "must" be done in one of the following ways.

Closing by Sponsor:

SEN. CROMLEY closed saying it might be worth looking at that. This may have been done by the drafter of the bill.

VICE CHAIR, SEN. SCHMIDT, who chaired the committee during **SEN. CROMLEY'S** bill presentation, told the committee they would be moving to Room 317A for future meetings.

{Tape: 3; Side: A; Approx. Time Counter: 5.8 - 10.1}

SEN. CROMLEY asked the committee to review **SB 6** and **SB 33** regarding executive action.

EXECUTIVE ACTION ON SB6

Motion/Vote: SEN. ESP moved that SB 6 DO PASS. Motion carried unanimously. SEN. WEINBERG voted aye by proxy.

EXECUTIVE ACTION ON SB 33

Motion/Vote: SEN. O'NEIL moved that SB 33 DO PASS. Motion carried unanimously. SEN. WEINBERG voted aye by proxy.

ADJOURNMENT

Adjournment: 5:30 P.M.

SEN. BRENT R. CROMLEY, Chairman

RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

EXHIBIT(phs06aad0.PDF)