

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN BRENT R. CROMLEY**, on March 7, 2005 at 3:12 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Brent R. Cromley, Chairman (D)
Sen. John Esp (R)
Sen. Duane Grimes (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. John Cobb (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: HB 313, 3/3/2005; HB 215, 3/3/2005;
HB 254, 3/3/2005
Executive Action: HB 254; HB 215; HB 313

HEARING ON HB 313**Opening Statement by Sponsor:**

REP. JON SESSO (D), HD 76, opened the hearing on **HB 313**, Extend contract period for prerelease centers.

REP. SESSO told the Committee the bill only extends the time-frame wherein a prerelease center can contract with the Department of Corrections from 10 years to 20 years. The purpose is to give the five community prerelease centers more assurance when contracting with the State. This will be an asset when these centers need to work with banks on funding, as they will be able to obtain lower interest rates on longer loans.

Proponents' Testimony:

Rhonda Schaffer, Fiscal Bureau Chief, Department of Corrections, supported the bill since it allows prerelease centers better options in carrying out terms of their contracts.

Michelle Barstad, Executive Director, Montana Facility Finance Authority, said they have issued bonds for the five prerelease centers. They structured it for the ten year term. Financial institutions were told these are for a minimum of eight years but will extend out to ten years. This change is needed to preserve the bonds, which are outstanding, and in issuing future bonds in the upcoming Legislative session.

Sheryl Olson, Department of Administration, which administers the Montana program determining how long contracts can run, rose in support of the amendment.

Sue Wilkins, Executive Director, Missoula Correctional Services, a nonprofit corporation that contracts with the State of Montana for the Department of Corrections. They provide 112 beds through this program. When building their new building, they arranged funding through **Ms. Barstad's** department. They signed a 20-year note, in 1998, based on contract language. This has now been questioned. She said it is important this bill is passed so they can contract for the time period and satisfy the bond holders.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 16.7}

Mike Ruppert, CEO, Boyd Andrews Services, Helena, urged a do pass on the bill. The bonds have allowed them to build their facility and expand it once. They are in the process of adding another wing and will be going back for additional bonds.

J. D. Lynch, Community Corrections Counseling Service, Butte,
rose in support.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. GRIMES asked **Mr. Lynch** about the original contracts. **Mr. Lynch** responded that, in Butte situations, they have not had to go beyond the ten years. It is easier for the lenders if you can show you have a 20 year contract. This is often a common standard for a time frame. **SEN. GRIMES** asked **Ms. Schaffer** what happens if circumstances change in the 20 year contract. **Ms. Schaffer** told him the contracts have a clause for renegotiation. **REP. SESSO** said the question about the contract was asked on the House floor. These are standard contracts. They all have due care and consideration clauses if either the provider or the State find reason to terminate the agreement. Amendments are prepared, in the original contract, for the provider that extend the term an additional time over and over again. This is an economic matter. If you can go out to 20 years, the provider gets a better rate and, with this rate, they can pass the savings on to the State. **SEN. GRIMES** thought this would lock us in to a facility for the contract period. **REP. SESSO** told him, to the extent the provider performs under the contract all the provisions, they would be locked in for the 20 years. If the provider does not perform, the contract may be terminated for cause, as stipulated.

SEN. CROMLEY wanted to know how the contract could be terminated. **Mr. Ruppert** told him either party can terminate for adequate reason. **SEN. CROMLEY** wanted a copy of the contract.

SEN. GRIMES said once one establishes a contract for 20 years, it locks us in to that prerelease center for a longer period of time. He wondered why originally it was a ten-year period. **Mr. Williams** told him regarding the ten year contract, they were dealing with the health facility finance authorities. They wanted to go out longer on the contract to take advantage of better interest rates at that time. The financial institutions say if there is a longer contract time, they are more willing to give a better interest rate to the State. There is an escape clause in the contracts. Section 13 of the contract has a termination of default.

SEN. GRIMES pointed out that there wasn't an effective date on the bill so it will go into effect in October. **REP. SESSO** said October would be fine, but it could be earlier.

Closing by Sponsor:

REP. SESSO closed by saying that the prerelease centers have to have support. Whatever the Legislature can do to keep their rates down and assist them in their financing is in the overall interest of corrections in our State. This will make a difference to them in their ability for financing. He urged a do pass.

SEN. LEWIS will carry the bill on the Senate floor.

HEARING ON HB 215

{Tape: 1; Side: A; Approx. Time Counter: 16.7 - 37}

Opening Statement by Sponsor:

REP. MARY CAFERRO (D), HD 80, opened the hearing on **HB 215**,
Revise reference to developmental disabilities council.

REP. CAFERRO read testimony from **Marty Tuttle, Chief Legal Council, Montana Department of Commerce**, explaining the history of the bill and the reason for the bill.

EXHIBIT (phs50a01)

Proponents' Testimony:

Marty Tuttle, Chief Legal Council, MT Dept. of Commerce, thanked **REP. CAFERRO** for bringing the bill forward. It is a name change bill enabling the Governor to appoint members to the entity providing disability functions within the State. It acknowledges entering into a nonprofit corporation, established in law in 2003.

{Tape: 1; Side: A; Approx. Time Counter: 37 - 42.3}

Deborah Swingley, Executive Director, Montana Council of Developmental Disabilities, federally mandated and funded through public law 106-402 and has 29 members. In 2003 the Council took the form of a nonprofit corporation. As a nonprofit corporation, the Council still has a State agency, which is the Department of Commerce.

{Tape: 1; Side: A; Approx. Time Counter: 42.3 - 44.7}

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. CROMLEY asked **Mr. Tuttle** the acronyms for the Council. **Mr. Tuttle** told him DDPAC, Developmental Disabilities Planning and Advisory Council is the former name and MCDD, Montana Council on Developmental Disabilities is the new one.

Closing by Sponsor:

REP. CAFERRO, said the bill simply changes the current name of the Council, in statute, keeping things consistent so the Governor can appoint positions to the appropriate Council.

SEN. PEASE will carry the bill on the Senate floor.

HEARING ON HB 254

{Tape: 1; Side: A; Approx. Time Counter: 44.7 - 46.3}

Opening Statement by Sponsor:

REP. CHRISTOPHER HARRIS (D), HD 66, opened the hearing on **HB 254**, Civil penalty for not writing legible prescriptions.

SEN. HARRIS told the Committee the bill addresses illegible handwriting of prescriptions. This has been a problem for pharmacists and will alleviate problems with improper dispensation of medications. A few other states have addressed this problem. By eliminating illegible prescriptions, the Legislature will eliminate a whole category of potential malpractice law suits, he added.

Proponents' Testimony:

REP. DON ROBERTS, HD 56, BILLINGS supported the bill, saying it is important in helping the misreading of practitioner-produced prescriptions. The Wall Street Journal recently had an article on how many drugs were very similar. A pharmacist should not have to try deciphering handwriting, and make a decision whether a prescription is for oxycycoline, an antibiotic, or oxycontin, a narcotic. Another problem is that poorly written prescriptions are more likely to be forged.

Peter Wolfgram, Pharmacist, handed out copies of some prescriptions he has received. He said the bill is about patient safety. If he is not sure about the prescription, he will not dispense it until he can contact the practitioner prescribing it. If it is late, on a Friday, he may be unable to contact anyone until Monday, therefore the patient is inconvenienced. Zytac, Zertac, Zantac and Zanac all look similar and are difficult to decipher when scribbled. He urged support of the bill.

EXHIBIT (phs50a02)

Pat Melby, Montana Medical Association, said, with the amendments he worked out with **REP. HARRIS**, in the House, this is a good bill and he supports it.

Jim Smith, Montana Pharmacy Association, said they worked with **REP. HARRIS, Mr. Wolfgram, and Mr. Melby** on the amendments for **HB 254**. It is a good bill which he hoped would go on to the Senate floor. This problem doesn't happen frequently, but when it does happen, it could become a huge problem. There is the person, with a very sick child, who may have to wait from Friday night to Monday morning. If the pharmacist makes an error and dispenses the wrong drug, this is also a huge problem.

Opponents' Testimony: None.

Informational Testimony: None.

Questions from Committee Members and Responses:

SEN. GRIMES asked **REP. HARRIS** if practitioners were going to electronic prescriptions. **Mr. Wolfgram** replied that they are progressing to that, but there are still a lot of written prescriptions.

{Tape: 1; Side: A; Approx. Time Counter: 46.3 - 60}

SEN. GRIMES wanted an opinion of the doctors in the AMA regarding the bill. **Mr. Melby** couldn't speak for all of them but their mission is to improve the quality of medical care. They support measures to improve legibility of prescriptions. The penalties are not harsh. If there are several illegible prescriptions, the Board of Medical Examiners will take action.

SEN. CROMLEY wanted to know who can file the complaint. **Mr. Melby** told him the pharmacist, patient or anybody in the chain of the prescription. **SEN. CROMLEY** asked if he really thought the pharmacist would file a complaint. **Mr. Melby** answered, after

listening to **Mr. Wolfgram**, yes. The pharmacist would be fed up with it and forward it on to the Board.

SEN. WILLIAMS questioned how signatures on electronic prescriptions are verified. **REP. ROBERTS** replied he checks the signature before it goes out. He added that 95% of the prescriptions sent out of his office are electronic. Risk management from insurance companies are starting to address legibility in prescriptions. **SEN. WILLIAMS** asked if he was concerned with forgeries on electronic prescriptions. **REP. ROBERTS** said the pharmacist has a better idea of realizing forgeries if there is a well written prescription.

Closing by Sponsor:

REP. HARRIS closed by saying this is an important piece of legislation. The pharmacists would certainly try to work out problems without running to the Board. However, their services are to the patient, to provide what the patient needs. This is what the bill addresses.

EXECUTIVE ACTION ON HB 254

{Tape: 1; Side: B; Approx. Time Counter: 0 - 21.6}

Motion: **SEN. ESP** moved that HB 254 BE CONCURRED IN.

Discussion: **SEN. ESP** said the difference between **SEN. CROMLEY'S** comparison with legal practice and lawsuits is this is for the public's safety. One of the leading causes of death and injury, in the medical field, is illegible prescriptions. Several states have mandated electronic prescriptions for that reason. They have found they have saved more money than it costs in catching prescription errors, conflicting prescriptions of drugs not supposed to be used together, fraud, and doctor shopping for drugs like oxycontin. Anything that can be done, that impacts people's lives, should be done.

SEN. O'NEIL didn't understand why the Board couldn't deal with this when a person complains to the Board. **Mr. Melby** said the importance of the bill is language specifically saying that the Board may take any action and impose any sanction, already allowed by statute, for disciplinary action. He thought, because a patient was unhappy with an illegible prescription, they could complain to the Board. This would be better than the Board just doing this itself.

SEN. CROMLEY asked if there should be a new fiscal note. **REP. HARRIS** said it is a minor offense and may well fall below the amount of money involved. In many cases these boards are funded by their members.

Mr. Niss pointed out that the title should conform to the amendment in the House. Article 5, section 11, says that the body of the bill must be actively reflected in the title, subject to constitutional challenge. The title is clearly wrong because all it speaks to, on the second line, is drugs and dosage.

{Tape: 1; Side: B; Approx. Time Counter: 21.6 - 28.2}

Motion/Vote: **SEN. ESP** moved **A CONCEPTUAL AMENDMENT TO CONFORM THE TITLE TO THE BODY OF THE BILL**. Motion passed unanimously by voice vote.

Motion/Vote: **SEN. ESP** moved that **HB 254 BE CONCURRED IN AS AMENDED**. Motion carried 8-1 by voice vote with **SEN. CROMLEY** voting no. **SEN. GRIMES** and **SEN. COBB** voted aye by proxy.

SEN. WEINBERG will carry the bill on the Senate floor.

{Tape: 1; Side: B; Approx. Time Counter: 28.2 - 29.3}

EXECUTIVE ACTION ON HB 215

Motion/Vote: **SEN. WILLIAMS** moved that **HB 215 BE CONCURRED IN**. Motion carried unanimously by voice vote. **SEN. GRIMES** and **SEN. COBB** voted aye by proxy.

SEN. PEASE will carry the bill on the Senate floor.

EXECUTIVE ACTION ON HB 313

{Tape: 1; Side: B; Approx. Time Counter: 29.3 - 31.2}

Motion/Vote: **SEN. WILLIAMS** moved that **HB 313 BE CONCURRED IN**. Motion carried 8-1 by voice vote with **SEN. ESP** voting no. **SEN. GRIMES** and **COBB** voted aye by proxy.

SEN. LEWIS will carry the bill on the Senate floor.

{Tape: 1; Side: B; Approx. Time Counter: 31.2 - 33.5}

ADJOURNMENT

Adjournment: 4:55 P.M.

SEN. BRENT R. CROMLEY, Chairman

RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

EXHIBIT ([phs50aad0.PDF](#))