

**SENATE JOURNAL
60TH LEGISLATURE
SEVENTEENTH LEGISLATIVE DAY**

Helena, Montana
January 25, 2007

Senate Chambers
State Capitol

Senate convened at 1 p.m. President Cooney presiding. Invocation by Father Jerry Lowney. Pledge of Allegiance to the Flag.

Roll Call: Senators Cobb, Hansen, and Peace excused. Quorum present.

Yeas: Bales, Barkus, Black, Brown, Brueggeman, Cocchiarella, Curtiss, Elliott, Essmann, Gallus, Gillan, Harrington, Hawks, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, Perry, Peterson, Ryan, Schmidt, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.

Total 41

Nays: Balyeat, Esp, Gebhardt, Jackson, O'Neil, Shockley.

Total 6

Absent or not voting: None.

Total 0

Excused: Cobb, Hansen, Pease.

Total 3

REPORTS OF STANDING COMMITTEES

HIGHWAYS AND TRANSPORTATION (Pease, Chairman):

1/25/2007

SB 251, do pass. Report adopted.

JUDICIARY (Laslovich, Chairman):

1/25/2007

SB 125, introduced bill, be amended as follows:

1. Title, line 9.

Strike: "PROVIDING SENTENCING ALTERNATIVES;"

2. Title, line 10 through line 12.

Following: "CIRCUMSTANCES;" on line 10

Strike: remainder of line 10 through "SERVICES;" on line 12

3. Title, line 12.

Strike: "3-5-901, 46-14-202,"

4. Title, line 13.

Following: "AND"

Strike: "46-14-312,"

Insert: "53-21-127,"

5. Page 1, line 17 through page 4, line 22.

Strike: section 1 through section 2 in their entirety

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Renumber: subsequent sections

6. Page 7, line 9 through line 20.

Following: "medication." on line 9

Strike: remainder of line 9 through "administered." on line 20

7. Page 7, line 21.

Strike: "(c)"

Insert: "(b)"

8. Page 8, line 29 through line 30.

Following: "medication" on line 29

Strike: remainder of line 29 through "treatment" on line 30

Insert: "facilitates effective treatment and, considering less intrusive alternatives, is necessary to protect the safety of the defendant or others"

9. Page 10, line 13 through line 14.

Following: "medication" on line 13

Strike: remainder of line 13 through "treatment" on line 14

Insert: "facilitates effective treatment and, considering less intrusive alternatives, is necessary to protect the safety of the defendant or others"

10. Page 10, line 20 through page 13, line 2.

Strike: section 6 in its entirety

11. Page 13, line 3.

Following: line 2

Insert: "**Section 4.** Section 53-21-127, MCA, is amended to read:

"53-21-127. Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not suffering from a mental disorder or does not require commitment within the meaning of this part, the respondent must be discharged and the petition dismissed.

(2) If it is determined that the respondent is suffering from a mental disorder and requires commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent.

(3) At the conclusion of the disposition hearing and pursuant to the provisions in subsection (7), the court shall:

(a) subject to the provisions of 53-21-193, commit the respondent to the state hospital or to a behavioral health inpatient facility for a period of not more than 3 months;

(b) commit the respondent to a community facility or program or to any appropriate course of treatment, which may include housing or residential requirements or conditions as provided in 53-21-149, for a period of:

(i) not more than 3 months; or

(ii) not more than 6 months in order to provide the respondent with a less restrictive commitment in the community rather than a more restrictive placement in the state hospital if a respondent has been previously involuntarily committed for inpatient treatment in a mental health facility and the court determines that the admission of evidence of the previous involuntary commitment is relevant to the criterion of predictability, as provided in 53-21-126(1)(d), and outweighs the prejudicial effect of its admission, as provided in 53-21-190; or

(c) commit the respondent to the Montana mental health nursing care center for a period of not more than 3 months if the following conditions are met:

(i) the respondent meets the admission criteria of the center as described in 53-21-411 and established in

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administrative rules of the department; and

(ii) the superintendent of the center has issued a written authorization specifying a date and time for admission.

(4) Except as provided in subsection (3)(b)(ii), a treatment ordered pursuant to this section may not affect the respondent's custody or course of treatment for a period of more than 3 months.

(5) In determining which of the alternatives in subsection (3) to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

(6) The court may authorize the chief medical officer of a facility or a physician designated by the court to administer appropriate medication involuntarily if the court finds that involuntary medication ~~is necessary to protect the respondent or the public or to facilitate effective treatment~~ facilitates effective treatment and, considering less intrusive alternatives, is necessary to protect the safety of the patient or others. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by the court approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.

(7) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require commitment only to a community facility or program or an appropriate course of treatment, as provided in subsection (3)(b), and may not require commitment at the state hospital, a behavioral health inpatient facility, or the Montana mental health nursing care center.

(8) In ordering commitment pursuant to this section, the court shall make the following findings of fact:

(a) a detailed statement of the facts upon which the court found the respondent to be suffering from a mental disorder and requiring commitment;

(b) the alternatives for treatment that were considered;

(c) the alternatives available for treatment of the respondent;

(d) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

(e) the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;

(f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives;

(g) if the order commits the respondent to the Montana mental health nursing care center, a finding that the respondent meets the admission criteria of the center and that the superintendent of the center has issued a written authorization specifying a date and time for admission; and

(h) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives.""

And, as amended, do pass. Report adopted.

SB 143, introduced bill, be amended as follows:

1. Page 4, line 22.

Following: "sailboat"

Insert: "underway"

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2. Page 7, line 10 through line 12.

Following: "or other drug" on line 10

Strike: remainder of line 10 through "sailboat" on line 12

3. Page 9, line 2 through line 3.

Strike: subsection (iii) in its entirety

Renumber: subsequent subsections

And, as amended, do pass. Report adopted.

SB 227, introduced bill, be amended as follows:

1. Page 4, line 3.

Following: "business."

Insert: "Any levy on state funds is subordinate to the department of revenue's right of offset for delinquent taxes or other debt as provided in 15-30-149, 15-30-310, 15-31-404, 15-36-315, 15-39-106, 15-39-109, 15-68-516, 15-70-110, 15-72-113, Title 17, chapter 4, and 39-51-1307."

And, as amended, do pass. Report adopted.

SB 228, introduced bill, be amended as follows:

1. Title, line 4.

Following: "IN"

Strike: "THE"

Insert: "A"

2. Title, line 5.

Following: "REHABILITATION"

Strike: "AND IMPROVEMENT"

3. Title, line 6 through line 7.

Following: "OFFENSES" on line 6

Strike: remainder of line 6 through "PARTICIPATION" on line 7

Insert: "; ALLOWING A JUDGE TO ORDER AN OFFENDER TO PARTICIPATE"

4. Title, line 7.

Following: "IN"

Strike: "THE"

Insert: "A"

Following: "REHABILITATION"

Strike: "AND IMPROVEMENT"

5. Title, line 8.

Following: "IN"

Strike: "THE"

Insert: "A"

6. Title, line 9.

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Following: "REHABILITATION"
Strike: "AND IMPROVEMENT"
Following: "SECTIONS"
Strike: "61-2-302,"

7. Page 1, line 14 through page 3, line 5.
Strike: section 1 in its entirety
Renumber: subsequent sections

8. Page 3, line 27.
Following: "(6)"
Strike: "A"
Insert: "Unless otherwise provided by law, a"
Following: "for"
Strike: "the first"
Insert: "any"
Following: "misdemeanor"
Insert: "or traffic"

9. Page 3, line 28.
Following: "an offender"
Strike: ", conditioned upon the offender's participation"
Insert: ". The judge may order the offender to participate"
Following: "in"
Strike: "the"
Insert: "a"
Following: "rehabilitation"
Strike: "and improvement"

10. Page 3, line 29.
Following: line 28
Strike: "established under 61-2-302"
Insert: "approved by the department under 61-5-219"

11. Page 4, line 30.
Strike: "4"
Insert: "3"

12. Page 6, line 6 through line 7.
Following: "if the" on line 6
Strike: "person" on line 6 through "61-2-302" on line 7
Insert: "department receives a certificate from a driver rehabilitation program approved under 61-5-219 certifying that the person successfully completed the program. The certificate must be submitted no later than 30 days after the day on which the program was completed"

13. Page 6, line 8 through line 9.
Following: "period" on line 8
Strike: remainder of line 8 through "period" on line 9

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14. Page 6, line 15.
Following: "section"
Strike: "4(1)(m)"
Insert: "3(1)(m)"

15. Page 6, line 21.
Strike: "4"
Insert: "3"

16. Page 6, line 22.
Strike: "4"
Insert: "3"

And, as amended, do pass. Report adopted.

SB 282, do pass. Report adopted.

MESSAGES FROM THE OTHER HOUSE

House bill passed and transmitted to the Senate for concurrence:	1/25/2007
HB 28 , introduced by Hilbert	
House bill passed and transmitted to the Senate for concurrence:	1/25/2007
HB 81 , introduced by Hamilton	
House bill passed and transmitted to the Senate for concurrence:	1/25/2007
HB 102 , introduced by Jacobson	
House bill passed and transmitted to the Senate for concurrence:	1/25/2007
HB 115 , introduced by Cohenour	
House bill passed and transmitted to the Senate for concurrence:	1/25/2007
HB 129 , introduced by Gallik	
House bill passed and transmitted to the Senate for concurrence:	1/25/2007
HB 153 , introduced by Jacobson	
House joint resolution passed and transmitted to the Senate for concurrence:	1/25/2007
HJR 7 , introduced by Ward	
House joint resolution passed and transmitted to the Senate for concurrence:	1/25/2007
HJR 9 , introduced by K. Peterson	

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MOTIONS

SEN. KIM GILLAN, SD 24, BILLINGS moved SB 340 be moved from Judiciary Committee to State Administration Committee. Motion carried.

FIRST READING AND COMMITMENT OF BILLS

The following Senate bills were introduced, read first time, and referred to committees:

SB 344, introduced by Essmann, referred to Business, Labor, and Economic Affairs.
SB 345, introduced by Hawks, referred to Local Government.
SB 346, introduced by Shockley, referred to Judiciary.
SB 347, introduced by Shockley, referred to Judiciary.
SB 348, introduced by Gallus, referred to Judiciary.
SB 349, introduced by Ryan, referred to Local Government.
SB 350, introduced by Perry, referred to Judiciary.
SB 351, introduced by Perry, referred to Local Government.
SB 352, introduced by Perry, referred to State Administration.
SB 353, introduced by Laible, referred to Taxation.
SB 354, introduced by Lind, referred to Public Health, Welfare and Safety.
SB 355, introduced by Wanzenried, Henry, Raser, Larson, Branae, Grinde, Cocchiarella, McAlpin, Kitzenberg, Bixby, J. Tropila, Jopek, Juneau, Squires, Jayne, Williams, Keane, Bergren, Wilmer, Cohenour, Phillips, Sands, Ankney, Noonan, McAlpin, Jacobson, Villa, Becker, McChesney, Perry referred to Business, Labor, and Economic Affairs.

The following House bills were introduced, read first time, and referred to committees:

HB 28, introduced by Hilbert, referred to Judiciary.
HB 81, introduced by Hamilton, referred to State Administration.
HB 102, introduced by Jacobson, referred to Local Government.
HB 115, introduced by Cohenour, referred to Fish and Game.
HB 129, introduced by Gallik, referred to State Administration.
HB 153, introduced by Jacobson, referred to State Administration.

The following House joint resolutions were introduced, read first time, and referred to committees:

HJR 7, introduced by Ward, referred to State Administration.
HJR 9, introduced by K. Peterson, referred to Judiciary.

**SECOND READING OF BILLS
(COMMITTEE OF THE WHOLE)**

Senator Williams moved the Senate resolve itself into a Committee of the Whole for consideration of business on second reading. Motion carried. Senator Brown in the chair.

Mr. President: We, your Committee of the Whole, having had under consideration business on second reading, recommend as follows:

HB 1 - Senator Schmidt moved **HB 1** be concurred in. Motion carried with Senator O'Neil, Balyeat voting nay.

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SB 54 - Senator Cocchiarella moved **SB 54** do pass. Motion carried unanimously.

SB 115 - Senator Jent moved **SB 115** do pass for the day. Motion carried unanimously.

SB 158 - Senator Cocchiarella moved **SB 158** do pass. Motion carried with Senator O'Neil voting nay.

SB 146 - Senator Shockley moved **SB 146** do pass. Motion carried unanimously.

SB 42 - Senator Brueggeman moved **SB 42** do pass. Motion carried as follows:

Yeas: Bales, Barkus, Black, Brown, Brueggeman, Cocchiarella, Curtiss, Elliott, Essmann, Gallus, Gillan, Harrington, Hawks, Jackson, Jent, Juneau, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, Moss, Murphy, Perry, Peterson, Ryan, Schmidt, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.

Total 40

Nays: Balyeat, Esp, Gebhardt, Kaufmann, McGee, O'Neil, Shockley.

Total 7

Absent or not voting: None.

Total 0

Excused: Cobb, Hansen, Pease.

Total 3

Senator Williams moved the committee rise and report. Motion carried. Committee arose. Senate resumed. President Cooney in the chair. Chairman Brown moved the Committee of the Whole report be adopted. Report adopted unanimously.

THIRD READING OF BILLS

The following bills having been read three several times, title and history agreed to, were disposed of in the following manner:

SB 45 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, O'Neil, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.

Total 48

Nays: None.

Total 0

Absent or not voting: None.

Total 0

Excused: Hansen, Pease.

Total 2

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SB 95 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, O'Neil, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 48

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Hansen, Pease.
Total 2

SB 65 passed as follows:

Yeas: Bales, Balyeat, Barkus, Black, Brown, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Esp, Essmann, Gallus, Gebhardt, Gillan, Harrington, Hawks, Jackson, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lewis, Lind, McGee, Moss, Murphy, O'Neil, Perry, Peterson, Ryan, Schmidt, Shockley, Smith, Squires, Stapleton, Steinbeisser, Story, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 48

Nays: None.
Total 0

Absent or not voting: None.
Total 0

Excused: Hansen, Pease.
Total 2

SB 137 passed as follows:

Yeas: Bales, Balyeat, Black, Brueggeman, Cobb, Cocchiarella, Curtiss, Elliott, Essmann, Gallus, Gebhardt, Gillan, Harrington, Hawks, Jent, Juneau, Kaufmann, Kitzenberg, Laible, Larson, Laslovich, Lind, Moss, Murphy, Ryan, Schmidt, Shockley, Smith, Squires, Tash, J.Tropila, M.Tropila, Wanzenried, Weinberg, Williams, Mr. President.
Total 36

Nays: Barkus, Brown, Esp, Jackson, Lewis, McGee, O'Neil, Perry, Peterson, Stapleton, Steinbeisser, Story.
Total 12

Absent or not voting: None.
Total 0

Excused: Hansen, Pease.

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Total 2

SB 15 passed as follows:

Yeas: Bales, Barkus, Black, Brueggeman, Cobb, Curtiss, Elliott, Esp, Essmann, Gebhardt, Gillan, Hawks, Jackson, Jent, Kitzenberg, Laible, Larson, Laslovich, Lewis, McGee, Murphy, Perry, Peterson, Ryan, Schmidt, Shockley, Squires, Stapleton, Steinbeisser, Tash, J.Tropila, M.Tropila, Weinberg, Mr. President.

Total 34

Nays: Balyeat, Brown, Cocchiarella, Gallus, Harrington, Juneau, Kaufmann, Lind, Moss, O'Neil, Smith, Story, Wanzenried, Williams.

Total 14

Absent or not voting: None.

Total 0

Excused: Hansen, Pease.

Total 2

ANNOUNCEMENTS

Committee meetings were announced by the committee chairs.

Majority Leader Williams moved that the Senate adjourn until 1 p.m., Friday, January 26, 2007. Motion carried.

Senate adjourned at 1:57 p.m.

JOHN MUDD
Secretary of the Senate

MIKE COONEY
President of the Senate