

JUDICIARY COMMITTEE

March 15, 1977

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully at 8:00 a.m. in room 436 of the Capitol Building, Helena, Montana on Tuesday, March 15. All members were present except Representatives Colburn, Conroy and Roth.

Scheduled for hearing were Senate Bills 413 and 419.

SENATE BILL #413:

SENATOR TOWE, DISTRICT #34:

This bill is a clean-up bill. It is to revise and clarify the laws relating to the commitment of mentally ill persons and to amend those sections dealing with this area. We do have the support of all of the groups working with this problem and have been working with them. The county attorneys association is in support, also. There is pretty much general agreement. He went on to discuss section 3, subsection (2) on page 5 and the top of page 6. One of the requests that we received was that we should not limit voluntary admission. At this point any qualified person can make the certification. He discussed the system of transporting and the cost of this. He also mentioned that they were changing the procedure concerning minors. We are saying that a minor can be committed for up to one year. He can take advantage of the measure that says he can be released within 5 days.

The Senator presented a copy of the proposed amendment, on page 7, line 20, and page 8, line 10, concerning the waiver of rights. We changed that, the waiver may be made by counsel or the responsible person acting together. The right to counsel may not be waived and the right to treatment can not be waived. There are also some changes on page 9, regarding the minor. We are taking away the complicated procedure for consent. The court shall appoint a guardian, if it is necessary to look out for the minors interests.

On page 11, concerning the procedure, in some cases it might be hard to make this work. First of all, someone must complain to the county attorney. The county attorney draws up the papers and files with the clerk of court. If there is a judge, then it goes on from there. If there is no judge, the clerk of court calls in to the nearest judge and then the judge is read the petition on the phone. Counsel is then appointed. The person is advised of his rights and then the 4 hour examination is conducted. From that point on other hearings can be waived. He presented proposed amendments to the committee.

On page 16, line 22, page 17, lines 23, 24 & 25, and on page 18. As he went through the amendments he explained each of them in detail.

He then went on to continue with the indoctrination, at that point if detention is ordered there is an immediate right to a detention hearing. This hearing has to be within 5 days of the original hearing. This will take the place of the old 72 hour treatment. On page 20,

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the standard of proof, there are some changes. He discussed the imminent threat of self-inflicted injury. On page 24, he discussed the post-trial disposition hearing. He commented that on page 28, the emergency situation was pretty much unchanged.

He went on to explain the authorization to transport a patient, on page 31. On page 40, the amount of time would be changed from 5 days to 10 days, and there is now required a 2nd examination within 30 days. On page 45, section 16, there are some changes in the board. We want to add language, as to who may be a member. We ought to change that to exclude universities. The name should be the board of visitors, instead of the board of institutions. He also said, there would be one full-time legal counsel at Warm Springs.

ROBERT KELLER, ATTORNEY AND FORMER DISTRICT JUDGE:

While I was on the bench I was very concerned with this, 377. I was charged with making this bill function. We met for over 8 hours and hashed over the bill, the possibilities and what could be done. We came up with these amendments. You have an initial appearance and a hearing within 5 days. He went on to talk about the facilities. He suggested two amendments, which follow: On page 45, line 23, following "state", insert wording excluding state colleges or universities. Also, another amendment, page 48, section 8, line 12, following: "and" insert "the director of the department of institutions". This is a transitional thing so that we can utilize what we do have.

DR. BLOUKE, DEPARTMENT OF INSTITUTIONS:

We have had an opportunity to review the bill and are in favor of it.

JOAN UDA, BUDGET AND PROGRAM PLANNING:

Working for the governors office I have reviewed the bill and have been involved in the process. It does represent a compromise. It is a bill we can live with and for that reason we do support it. I do have some reservations about the definition on page 2. It redefines the mental health facility. I register some concern about this. That does limit what a mental health facility can be. It has no legal effect, but it possibly will have some practical effect. On page 6, line 2 through 5, concerning voluntary admission, a voluntary commitment, ought to be a voluntary commitment. I am not convinced there is a real need for the 10 days. She went on to talk about the language might not be clear. I do think it might improve the workability, however.

CHAD SMITH, MONTANA HOSPITAL ASSOCIATION:

We are satisfied, that as written, we can live with it. I do want to emphasize the need for the amendments, on page 3 and page 11, line 7, the definition of the mental health facility. These are two very important amendments to this bill and it will make this bill workable. He went on to talk about how to control a person if the need arises.

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JAMES JOHNSON, MONTANA LEGAL SERVICES:

I represent many of the patients at Warm Springs State Hospital. He discussed various mental disorders. I would suggest that on line 19, page 4, you add some words, and on page 26 and 27 you insert the language that was lost. You can't tell what is meant. He discussed what might happen to a patient. I have to oppose the hospital amendments. You are asking for more persons to be maimed in jail and for more suicides. He discussed the high rate of suicides among mental patients.

JAMES LARSON, MONTANA HOSPITAL ASSOCIATION:

I would like to address briefly the hospital amendments. The violent patients are the ones that cause the problems. They are usually put in a security room, they may be sedated and put in restraints. If we don't have these amendments the hospital might be subject to court action.

SUZANN WEILAND, COUNTY ATTORNEYS:

I attended the meeting that lasted forever. On behalf of the County Attorneys Association I would like to propose some amendments. She mentioned what has to be done right now if a person tries to commit suicide. There are counties where there are no district judges. This amendment would take care of it by it going before the Justice of the Peace. As this now reads it seems to me, we have to release the patient. I have a few other suggested amendments. She presented a copy to the committee (attached). She went on and enumerated the amendments and commented that 5 days should be changed to 8 days.

PAT BOEDECKER, LEWIS & CLARK MENTAL HEALTH ADVISORY BOARD:

I am speaking for the person who might become mentally ill in Montana. On page 3, section 3 and page 11, section 4 of the hospital amendments I want to discuss the effect of them. She went through the amendments and pointed out her objections. I trust the committee will study these amendments thoroughly. She presented a copy of her testimony to the committee. (attached).

JIM LARSON:

I oppose Senate Bill #419. He went on and talked of the court appointed guardian and that a person could be signed into Warm Springs on that authority. He felt the bill denied them their rights. It denies them equal protection under the commitment law. I vigorously oppose the addition of the county attorney as a person who might be able to sign a commitment petition.

CHAIRMAN SCULLY:

Are you reading the same bill I am. I don't see all of this in that bill.

The meeting had to be adjourned at 9:30 because of the crush of other committees, and would be continued the following morning at 8:00 a.m.

