

MINUTES OF THE APPROPRIATIONS COMMITTEE  
HOUSE OF REPRESENTATIVES  
State Capitol, Room 225

March 17, 1977

Chairman Francis Bardanouve called the meeting to order at 7:05 P.M. Roll call was taken and a quorum was present; roll call attached. Also present were Dave Lewis of the Office of Budget and Program Planning, and John LaFaver, Legislative Fiscal Analyst.

House Bill 355: To provide driver rehabilitation program in the Department of Justice. Representative B. Gould, District 98, sponsor of the bill explained that the bill deals with DWI and driver improvement training. The bill has been heard in the Judiciary Committee, and has passed second reading in the House. Rep. Gould introduced Captain Tooley, Montana Highway Patrol, to explain the bill further.

Opponents:

Captain Tooley, MHP, explained the bill was designed to reestablish a driver rehabilitation program in the state, giving general authority to the Department of Justice to rehabilitate or train people whose licenses are subject to suspension as a result of a violation of traffic laws. This program would establish the possibility of recovery of such license, which is not possible under current law. If the bill passes, a person in violation could attend and successfully complete the driver rehab course, and hope to recover his license.

The fiscal note costs are for training and materials. Some training would be required by the Highway Patrol. The bill further sets up an advisory council; the Dept. of Justice is to direct the program and establish guidelines. \$5,000 would be needed for council's expenses; total first year costs of the program are \$94,000.

Beyond the indicated costs, the bill establishes that the Department of Justice may charge a fee; \$16.00 is proposed, to defray costs of the program. The feeling is that the persons receiving the training should pay the cost through this fee system.

No opponents.

Questions:

Rep. Moore asked why the initial cost in the first year is greater than second year costs; Capt. Tooley replied that first year costs include training costs of people to administer the program.

Rep. Hansen asked if the fee could be lower - is the intent that persons using the program pay their own way? Capt. Tooley replied yes, that is the proposal. Rep. Gunderson inquired what other causes besides DWI result in suspension or revocation of a license; they are many and varied, Capt. Tooley responded. Rep. Wood asked who determines under this bill when a driver's license would be reinstated; Capt. Tooley explained that guidelines would have to be set up; either the court or the council would handle that function. Rep. South asked

regarding the funding; if the program is funded with general funds, would general funds be reimbursed from the fees collected? Capt. Tooley explained that the funding would probably have to go through the general fund; a revolving fund would not be satisfactory because it is difficult to anticipate what will be generated and money is needed to start the program.

In closing, Rep. Gould stated he had proposed this same legislation two years ago; this session he asked the Highway Patrol six months ago to come up with the best bill they could to try to rehabilitate people with poor driver attitudes or drinking problems. This bill is the result of that request, and has received a great deal of thought in preparation.

There being no further discussion, hearing closed on H.B. 355.

House Bill 350: Create Department of Aging within executive branch of state government. Rep. Gary Kimble, District 94, sponsor, presented written testimony as follows:

1. Summary: H.B. 350
2. Justification
3. Fiscal Impact of H.B. 350

Copies of each are attached.

Opponents:

Patrick Melby, Director, SRS, stated it "breaks his heart" to oppose a bill that appears to be a panacea for all the problems of the aging, but this bill will further fragment services to the aging and other people as well, rather than consolidate services. Speaking to the fiscal note, he stated this bill will spend the \$2 million asked for in H.B. 272 for administration.

Mr. Melby mentioned various problems in the legislation as he sees it. The suggestion that SRS should be able to designate a social worker to work only with the aging is a problem. In large counties this would be possible; in small counties, they have only "40% of one social worker now." The bill transfers other types of services that SRS now provides. Problems are created by section 3, subsection (3) which transfers protective services for the aged; the bill definition of "disabled adult" as a person 18 years of age or over in section 7, subsection (3) would fragment services. In transferring foster homes for the aged, SRS would have to establish licensing functions. The transfer in section 4, subsection (3) of all federal programs administered by state government such as medical assistance, visual services, and many others creates administrative difficulties.

Mr. Melby concluded he did not wish to belabor this, but he believes

the bill fragments generic services already being handled across Montana to people of all ages, and it would be fiscally imprudent to establish this agency.

Representative Kimble stated that fiscal irresponsibility is not correct; services are already fragmented. The fiscal impact is explained in the fiscal note, which shows four sources of additional expense. Creation of a new department creates new expenses in personnel, payroll, accounting, etc. The amounts needed for direct services in the fiscal note were addressed. Part-time personnel and reducing SRS employees on the county level is an answer to these objections. County funds availability for this program were addressed. Are the increased costs justified in light of better services provided to the elderly is the real question, Rep. Kimble stated, not just the fiscal impact. Rep. Kimble asked that the committee review the assumptions of the fiscal note very carefully.

No proponets.

Questions:

Representative Marks asked Rep. Kimble what degree of concurrence he has with this fiscal note. Rep. Kimble replied there is a difference of opinion in whether full-time employees would have to be hired, or part-time; "I have some concurrence with the fiscal note, but also considerable disagreement," Rep. Kimble stated. In reply to questions from Rep. Marks as to number of employees and the fiscal note of \$2.2 million, Rep. Kimble replied if you are providing the same service level you would have need for some part-time employees; the cost would be great if you hire full-time employees to do part-time work. As to the fiscal note, he believes it would be somewhat less than \$2.2 million. He does not think the administrative costs of reorganizing would be as great as indicated; you don't need a new building if you are doing the same service, he concluded.

Rep. Moore mentioned that disabled adults 18 or older are included in the bill - why? Rep. Kimble explained that doesn't have to be done. Services for the aged are scattered now and they have no clear advocate with the government. This bill will provide that; the aged would have a way of providing in-put. Rep. Halvorson asked if any new services are provided, and was told this is a reorganization of existing services. Rep. Gerke asked about transfers of the budget; would this reduce the SRS budget by a like amount; Rep. Kimble replied that it would.

The Chairman asked Mr. Melby concerning federal moneys in many of SRS's aging programs; would there be difficulty in transferring money from your department to the aging department? Mr. Melby replied there would be; SRS is the sole designated agent for receiving many

federal funds, such as Title 19, 4A, 4B & Title 20 funds. But the new agency could be the designee for these funds after this contracting period is over, Rep. Kimble stated. Mr. Melby mentioned that the legislature designates a single, sole agency for receipt of these funds, and SRS has that designation now.

The Chairman asked concerning a program within Warm Springs; would you administer a program there? Rep. Kimble replied that would probably be on a contracted basis. The Chairman said he could see problems with a department of aging and the department of institutions both handling these programs at Warm Springs.

There being no further discussion or questions, hearing closed on H.B. 350.

House Bill 261: Require mandatory minimum prison sentences for certain violent and drug-related crimse... Representative J. Ramirez, District 64, sponsor explained the reason for this bill is at this time we do not have a system of criminal sentencing; we have a non-system. Judges have complete discretion in sentencing; there are no guidelines and few limitations. Judges can impose sentence ranging from 1 day to the maximum established by law, or they can defer sentencing or grant suspended sentencing. Many sentences do not result in incarcerations. How much discretion should be delegated to the judges is the question. There is a disparity in sentences imposed now. There are two problems he would like to mention with the system now: (1) the disparity of sentencing procedures is unfair; people who have committed similar crimes are treated differently, and this creates bitterness. (2) You don't have a deterrent affect; people feel they have a chance to beat the system. This type legislation was originally proposed at the federal level by President Ford, Rep. Ramierz stated, and was introduced in the Senate by Senator Kennedy; H.B. 261 is patterned after that legislation.

The Chairman interjected that the committee supports the principal of the bill; however, this committee is more concerned with the cost.

Rep. Ramirez then addressed the fiscal note, stating he feels it is inaccurate in calling for an expenditure of \$240,000; this assumes everyone convicted would receive mandatory sentences. There are 4-5 mitigating circumstances in the bill; not all would go to prison. Rep. Ramirez stated he can't estimate the percentage of people falling within the 5 exceptions; perhaps 25-50%. The fiscal note was prepared with the supposition that there would be no exceptions to the mandatory sentences. In conclusion, Rep. Ramirez stated the public wants this type of legislation, and it should have a high priority.

#### Proponents:

Mr. Tom Honzel, County Attorneys Association, spoke as a proponent, agreeing that the cost would not be quite as high as set out in the fiscal note for the reasons stated above, and also mentioning that many criminals now being sentenced are going to prison anyway and this is not adding a great number; further, a two year sentence is not unreasonable.

Opponents:

Richard Hunt, Missoula Hellgate High School, explained he has been listening to the presentation of the bill, and that he had participated in debate on this subject; He had discussed plea bargaining with a number of people who are involved in that method, as opposed to trials. 95% of criminal offenders enter a guilty plea because of the lesser sentence granted as a result of plea bargaining, he stated. Eliminating plea bargaining would increase the case load of the courts tremendously. Prisons are overcrowded now, he concluded.

In closing, Rep. Ramierz stated that plea bargaining is entirely different subject than that covered by this bill. The parole system is not affected by this legislation and considerable discretion is still allowed to the judges in matters of sentencing. What we need and what this legislation will provide are guidelines for more uniform standards for sentencing, Rep. Ramirez concluded.

Questions:

Rep. South asked if the outcome of a trial might be affected, if the offender was known by the jury to be a family man and the jury was aware that if convicted, he would serve a mandatory sentence. Rep. Ramirez replied that there are discretionary circumstances, but this bill addresses only those convicted of inflicting serious bodily injury; society has to draw some rules somewhere and a person committing this type of crime is going to have to pay a penalty. It is very common that those on trial try to fool the judge and present a bad picture of their circumstances to play on the sympathy of the judge.

Rep. Bradley stated she is not so worried about the fiscal note as the timing. If this goes into effect in July, how can the state set up a plan to implement the program by that date? Rep. Ramierz agreed that could be a problem; he would not object to a one year delay on the effective date. He further stated he would like to see the use of the old prison facility. It is important to get the program going; whatever facilities are available would be satisfactory to him.

Rep. Halvorson stated that judges have expressed concern about doubling the present prison population. Rep. Gunderson asked if the people are willing to pay taxes to support the additional persons in the prisons. Rep. Ramirez replied that there is lots of favorable reaction to the program; 88% of those in his district who had been surveyed were in favor of the concept.

Rep. South commented on the 75 people mentioned in the fiscal note; is the intent of this bill to put these people behind bars because they would be inclined to commit another crime within two years? Rep. Ramirez replied that is one of the concerns; also knowing this would be done would be a deterrent to crime.

Rep. Bradley commented that the fiscal note doesn't address the cost of new facilities and was told that paragraph 5 of the fiscal note says additional spaces could be provided; also additional facilities may be required. Rep. Ramirez stated he is not sure what the capacity is of the new or old prison, and the need for additional facilities should be considered. The Chairmen agreed that space is a real problem. Rep. Bradley said we could probably find the \$500,000 for the program; the problem is where will there be room for the additional prisoners a year from July.

Rep. Gerke said it is a matter of how much money you would have to spend. \$250,000 would not take care of additional prisoners today if you are talking about Deer Lodge. 300 can be put in the new prison; 200 in the old prison at a minimal amount of expense. The old prison will hold 500, but if you put it back at that use you will have a monumental expense. That is not practical at the moment, he added. Rep. Ramirez stated he did not think the old prison is unuseable just because the new prison is available. You have to have this bill before you get the additional facilities; before the public will respond to the need for facilities.

Rep. Gunderson noted that basically you are putting in a two year minimum sentence; would 3-5 years be better? Rep. Ramierz stated he is a realist; he does not believe we should be tough for the sake of being tough. We would have to look at the experience after the program is enacted and see how it is working. It will take a long time to turn around the philosophy built around the justice system. Speaking further on facilities, Rep. Ramirez concluded that the additional people this will put in the prison system is hard to predict; lots of people sentenced to prison now have not done serious bodily injury, which is the crime this legislation addresses.

There being no further discussion or questions, hearing closed on HB 261.

The Chairman explained that as no witnesses were present to testify on House Bill 672 scheduled for hearing this evening, we would pass consideration on this bill and reschedule the hearing at another time.

The meeting adjourned at 8:25 P.M.

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FRANCIS BARDANOUVE, Chairman