

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
March 25, 1977

The meeting of this committee was called to order on the above date by Senator Turnage, Chairman, at 9:40 a.m. in Room 442 of the State Capitol Building.

ROLL CALL:

All members of the committee were present except Senators Regan and Roberts who were excused to attend other meetings.

WITNESSES PRESENT TO TESTIFY:

Rep. Meloy - District 29, Helena  
Larry Ellison - office of the Governor  
Mr. R. Meek - Probation Officers Assn.  
Rep. Gary Kimble - Missoula  
Capt. Tooley - Montana Highway Patrol  
Tom Honzel - County Attorneys Assn.  
Rep. Gould - Missoula

CONSIDERATION OF HOUSE BILL 654:

Rep. Meloy of District 29 in Helena, sponsor of the bill, said that, under the youth court act, a youth under supervision cannot technically be placed in one of the present correctional facilities. A few are kept at those facilities, but they should not be there for detention purposes. There are some at those institutions for 45-day evaluations when a court feels a youth should be evaluated because of the crime he has committed or because of a status offense. Early last fall the Legislative Council was asked to do a study of any problems existing at Pine Hills because of complaints of parents who had children kept there. A very thorough study was done and a report made back to the Legislative Council in late January, 1977. Some of the things they found were that the youths are kept in Custer Lodge at Pine Hills which has about 25 beds in an open room. Serious offenders and those just held for evaluation are kept together in this lodge and some of the youths were beaten by others. There is no specific attention given to this lodge. Pine Hills does not have a medical doctor or a psychiatrist. It does have a few nurses. He asked to have this bill amended to make it clear that the 45-day evaluation youths not be evaluated at Pine Hills or Mountain View in Helena. The House Judiciary Committee felt that there are facilities in the communities that were already there which could do these evaluations. Rep. Scully does not send any youths to Pine Hills from Bozeman because he can get the evaluation done faster in Bozeman. Some communities won't do that. There is federal funding available for a pilot program and we would just improve present facilities and not build a new place. He said that the evaluations of delinquent youths could not be done in Pine Hills or Mountain View if this bill is passed.

The first proponent to testify was Larry Elison of the Governor's office who said that he did the investigation of the Pine Hills school. He told the committee that funding is going to be difficult to arrange and the fiscal note could be used to obtain federal funding provided we plan to have a pilot project. He gave the committee a copy of his report on Pine Hills. (See Exhibit 1) He said that juveniles are locked in at both Pine Hills and Mountain View, but they can run away from Mountain View. He felt it would be better to keep those youths in the local lockup for 3 days to evaluate them than to send them to Custer Lodge at Pine Hills for a 45-day evaluation, although he does not like to see "kids" locked up even for 3 days in jail and likes less to see them in Custer Lodge for 45 days.

The next proponent was Mr. R. Meek who represents the Probation Officers Assn. and is a probation officer in Helena. He said that he agrees with the bill because the institutions are in bad shape. It has been mentioned at this hearing that we could use the local mental health facilities, but they are presently complaining because we are overloading them with evaluations now. Many of the children they send to the institutions are habitual truants. Some of these institutions have schooling, but some continually turn them down because the types of children we send are runaways. If there is money for this bill, Mr. Meek suggested that the legislature have present facilities upgraded. He said that the Helena office very seldom sends children to Pine Hills or Mountain View except when they need security facilities.

#### CONSIDERATION OF HOUSE BILL 243:

Rep. Gary Kimble of Missoula, sponsor of the bill, told the committee he introduced this bill because it would help in some instances where people are out of work and go on welfare and then find a job but need a car for transportation. This would allow the court to issue a permit so that the person who has been sentenced on a DWI charge can drive to work.

Capt. Tooley of the Montana Highway Patrol testified as an opponent of this bill. He said that he does not object to the principle behind the bill, but he does object to the method of providing it which he feels that the patrol would have problems with. When the revocation time ends, the person is to provide eligibility information for 3 years. The Montana Highway Patrol have amendments which they will propose for HB 251 which, they feel, would solve this problem.

#### CONSIDERATION OF HOUSE BILL 251:

Tom Honzel who represents the County Attorneys Assn. explained this bill to the committee for the sponsor. He said that by introducing this bill they hope to solve the problem of the DWI person who needs a vehicle for transportation to go to work or to school, etc.. Under the present law there is a jail sentence and fine, and the person loses his license for 30 days for the first conviction.

When they are convicted they tell the judge that they need the car and that they have an alcohol problem and some judges defer the sentence with the provision that the person take treatment. He said that he does not believe that the justices of peace have this privilege. He thinks that HB 251 is a better solution to the problem than HB 243. The House felt it was important to add lines 1 through 4 on page 4 and lines 19 through 22. The important parts of the bill are subsections (3) and (4). In subsection (4) the court may, in its discretion, suspend sentence upon the condition that the driver must successfully complete the school prescribed in this bill. Since the law has decriminalized drinking offenses, they are asking for a law which will give them something to work with.

Capt. Tooley of the Montana Highway Patrol submitted amendments to the bill and said that he is afraid the patrol would have too many penalty forms if not amended. (See Exhibit 2) He explained the proposed amendments and what they would accomplish. The second amendment would make a substantive change in the bill. They need some insurance protection for the people who are going to drink and drive. The patrol's operation would not be so complicated if they could understand the instructions and the person could get insurance. At this time, Capt. Tooley gave the committee a copy of the bill as it would read with the amendments incorporated in it. (See Exhibit 3)

Rep. Gould told the committee that HB 355 should be coming to the Senate Finance & Claims Committee the early part of next week or to the Judiciary Committee, and he asked that they be all considered together as a package.

Rep. Kimble told the committee he did not oppose nor was he in favor of HB 251 -- that it was just a matter of what the committee wants.

Tom Honzel said that they think the schooling (the alcohol treatment program) is the key thing in this bill. Basically Capt. Tooley's amendments would do away with that, and he thinks the patrol amendments should be expanded a little.

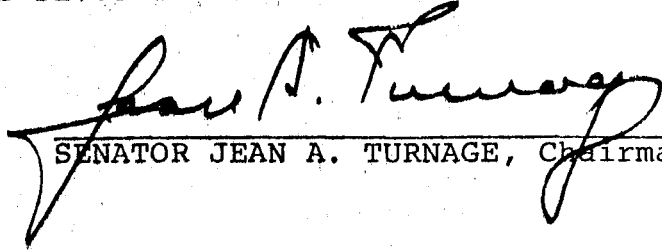
#### CONSIDERATION OF HOUSE BILL 356:

Rep. Gould of District 98 in Missoula, sponsor of the bill, said that this would do away with the deferred imposition of sentence in a DWI offense. He feels that it is a very necessary bill.

Capt. Tooley of the Montana Highway Patrol, a proponent of the bill, said the best thing that can be said for this bill is the offense of DWI. They have had occasions where the deferred imposition has been imposed and they feel that, if this package of bills goes through, there would be no need to defer and it would be advantageous to have this bill. He said that HB 356 goes hand in hand with HB 355 and 251 -- even without HB 251, and that intoxication does include both alcohol or drugs.

After questions by committee members, the hearing was closed.

There being no further business before the committee at this time, the committee adjourned at 11:00 a.m..

  
SENATOR JEAN A. TURNAGE, Chairman

COMMITTEE

Date 5-25-77

[illegible]

(G. 1)  
45 day institution

REPORT ON PINE HILLS SCHOOL

Prepared for  
GOVERNOR THOMAS L. JUDGE

by  
Dr. Lawrence M. Ellison  
Legal Counsel to the Governor

- 1.) A result of three days at the school.
- 2.) A review of most of the available written policies.
- 3.) A perusal of available records maintained by the institution.
- 4.) Interview with students, cottage parents, maintenance and security personnel, medical personnel, clinical workers and teachers, recreational directors and administrators.
- 5.) Visits with the Warm Springs Children Unit, with Mountain View, with Swan River, with private juvenile homes, and other available juvenile servaces. Interviews with experts - both in state and out of state - with parents and interested persons who have had exposure to Pine Hills in some fashion and with ex-employees.
- 6.) Checked educational and experience qualifications of the people working at Pine Hills.

Why the investigations?

- 1.) State was sued to close Boulder.
- 2.) Governor's office received some complaints about Pine Hills.
- 3.) Know additional legal action will be taken against the various units of the Department of Institutions - at least one is now in progress. These suits may be commenced by any of the following:
  - a.) Children - parents - relatives;
  - b.) Civil Rights Division of Justice Department;

## PINE HILLS, PROBLEMS AND ALTERNATIVES

Considerable discussion about the problems at Pine Hills have led to many proposals for juvenile detention programs. In an effort to make some order out of all of this we have tried to list below the problems and alternative solutions:

### I. Evaluation Program

#### A. Problem

1. Pine Hills School continues to receive youth in need of supervision (YINS), who should not be placed in the institutional setting.
2. Pine Hills lacks the professional staff to properly evaluate juvenile delinquents.

#### B. Alternative Solutions

##### 1. Improper commitments for evaluation

- a. Legislation to tighten the law on commitment of YINS, (legislation has been proposed by Meloy). Amend legislation to require all evaluations be committed to the Department of Institutions for appropriate referral,
- b. Carry out education program with district judges,
- c. Provide funds for one additional community evaluation program for YINS who need secure environment, under aftercare, (\$396,670),  
  
(This amount could probably be reduced with the use of federal funds)
- d. Provide all evaluation funding to Institutions central office to purchase evaluations in the least restrictive environment.

*Henry P. Baker (E. 2)*

It is respectfully suggested that House Bill ~~251~~ be amended as follows:

1. Amend page 1, line 11 of the title, striking the word man - datory and page 1, line 12 by adding "s" to the words "school" and "program".
2. Amend page 3, lines 21 through 24 by striking all of the underlined material.
3. Amend page 4, lines 1 through 4 by striking all of the underlined material and amend lines 6 through 9 by striking all of the underlined material and amend page 4, lines 14, 15, and 16 by striking all of the underlined material and amend page 4, line 19 through 22 by striking the underlined material.
4. Amend page 5, line 3 by striking the word "the" and substituting "a" and page 5, line 3 by adding, after the word "school", the words "approved by the court" and amend page 5, line 3 after the word "program", by adding the words "approved by the Department of Institutions." and amend page 5, line 4 by striking the words "ordered by the court".
5. Amend page 8 and 9 by striking the underlined material on lines 20 through 25 page 8, and 1 through 3 on page 9 and amend page 8, line 20 by adding, after the words "so convicted" ", and may recommend that the division issue a restricted probationary license in lieu of the suspension required in section 31-149B, provided that the individual attends a school or program if such school or program is available. The division shall issue such restricted probationary license unless the person is not entitled to a Montana operator's or chauffeur's license."
6. Amend page 9, line 19 after "31-155," by adding "31-184.1," and by inserting "and" before the figures "53-430" and by striking on line 20, the words and figures "and 32-2142,".
7. Amend page 10, line 16 by striking the word "or" after the word "suspend".
8. Amend page 20, line 17 by striking the word "revoke" and on line 18 strike the words "not more than" and on line 22 by striking the words "suspend or".



HOUSE BILL NO. 251

INTRODUCED BY HARPER, SCULLY, DUSSAULT, SHELDEN, KEYSER

BY REQUEST OF ASSOCIATION OF COUNTY ATTORNEYS

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE AN ALTERNATIVE TO IMPRISONMENT FOR PERSONS CONVICTED OF DRIVING WHILE UNDER THE INFLUENCE OF ALCOHOL OR DRUGS; TO PROVIDE FOR SUSPENSION OR REVOCATION OF DRIVING PRIVILEGES; TO CLARIFY THAT HABITUAL USERS WHO DRIVE ARE NOT SUBJECT TO CRIMINAL PENALTIES UNLESS THEY ARE UNDER THE INFLUENCE WHEN THEY DRIVE; TO PROVIDE FOR MANDATORY DRIVER IMPROVEMENT SCHOOLS AND ALCOHOL TREATMENT PROGRAMS. TO PROVIDE FOR SUSPENDED EXECUTION OF SENTENCE CONDITIONED UPON COUNSELING OR TREATMENT; ~~AND TO PROVIDE A PENALTY FOR DRIVING DURING A PERIOD OF SUSPENSION OR REVOCATION OF DRIVING PRIVILEGES,~~ AMENDING SECTIONS 31-145, 31-146, 31-149, AND 32-2142, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 32-2142, R.C.M. 1947, is amended to read as follows:

"32-2142. Persons under the influence of ~~intoxicating-liquor~~ alcohol or of drugs. ~~(a)-It-is-unlawful-and-punishable-as-provided-in-paragraph-(d)-of-this-section-for-any-person-who-is-under-the-influence-of-intoxicating-liquor-to-drive-or-be-in-actual-physical-control-of-any-motor-vehicle-upon-the-highways-of-this-state.~~

~~(b)~~ (1) In any criminal prosecution for a violation of paragraph ~~(a)~~ subsection (2) of this section relating to driving a vehicle while under the influence of ~~intoxicating-liquor~~ alcohol, the amount

VISITOR'S REGISTER

Noted Bill A6

(Please leave prepared statement with Secretary)