

MINUTES OF MEETING  
SENATE JUDICIARY COMMITTEE  
January 25, 1979

The fifteenth meeting of the Senate Judiciary Committee was called to order at 10:01 a.m. by Chairman Lensink in room 331 on the above date.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 152:

Senator Thomas. District 20 - Great Falls, gave an explanation of this bill which is an act to revise the procedure for hearing and appeal when a youthful offender is alleged to have violated his aftercare treatment. He introduced Mr. Larry Zanto, director of the Department of Institutions. He also introduced Dan Russel, who worked on the bill and Nick Rotering, attorney for the Department of Institutions.

Mr. Rotering offered a statement in support of this bill. He stated that they had a study of youth on aftercare and after the study they came up with the proposals to make it workable.

Mr. Jeremiah Johnson, president of the Montana Probation Officers Association gave a statement in support of this bill. He stated that it was an acute problem of youth who are in serious violation of the law and then getting them back to the institutions.

Mr. Tom Honzel, representing the Montana County Attorneys Association, explained the problems involved with youth who are brought up for a violation and who are not local residents of Lewis & Clark County and they are not familiar with their situations here. He stated that they were concerned with page 3, line 9, and the word "shall" as this makes it mandatory. With this change, they would support the changes in the aftercare program.

There were no further proponents and no opponents.

Senator Thomas closed by stating that they found a number of problems with the youth act and a number of sections that could be tightened up. He also stated that they were open to any suggestions and amendments.

Senator Galt said that the final approval still rests with the department and wondered why should we go to all that expense if the department is going to make the final decision.

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Senator Towe answered that the hearing is for the protection of the child and if the determination is that the allegation is true, then it goes back to the department.

Senator Towe questioned on page 1, lines 18 and 19, in connection with the county where the youth is residing, what exactly do they mean by residing - do they mean where the parents or the youth reside or do they mean where the youth is in jail? Mr. Rotering answered that this means in jail; or if in aftercare if he is in Lake County, that is where he is residing.

Senator Towe questioned why the language on lines 20 and 21 on page 2 were changed as he felt that was a considerable difference in the old language.

Senator Towe questioned on page 4, lines 20 through 24, as to why they are taking out the 72-hour requirement.

Mr. Dan Russell from the Department of Institutions asked him to refer back to Section 1 whereby it states that the youth shall be granted a hearing within 10 days. He states that the problem is that we only have three days to hold a hearing and try to amass evidence and that this is just not workable. There is a clause of extending this for five days but the youth and the attorney must agree to this and the youth will hardly ever agree.

Senator Van Valkenburg questioned on page 2, line 25 the deletion of the opportunity to have a record of the hearing.

Mr. Russell explained that some district judges did not like to use a tape recorder. It could be changed to "records could be taken by the judgment of the hearings officer". He felt there would be no problem with that.

Senator Van Valkenburg questioned the provision that says the youth will be held in an institution pending the outcome of an appeal. He wondered if they would object to an amendment stating that the youth could remain in the community pending the appeal.

Mr. Russell said that this creates quite a problem for us. Oftentimes, we are talking about violent crimes and very serious crimes and we feel that the institution is the best solution for him.

Senator Turnage questioned lines 15, 16 and 17 on page 3 and wondered if there was not always some "mitigating" circumstances.

Mr. Russell explained that this was a recommendation from their legal intern and would be open to suggestion on this.

There being no further questions, the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 88:

Representative Waldron gave an explanation of this bill which is an act to provide for grandparent visitation rights with grandchildren under certain circumstances. He stated that this would only apply when the visitation rights are in the best interest of the child.

There were no further proponents and no opponents.

Senator Towe questioned if the only time that this would apply would be in a divorce situation and Representative Waldron said that it also includes a death.

Senator Van Valkenburg questioned what other states have this and Representative Waldron said New York does and a few others.

There being no further questions, the hearing on this bill closed.

CONSIDERATION OF SENATE BILL 153:

Senator Story explained this bill which revises and clarifies the laws relating to administrative rulemaking to define "person: to include agencies; to create a revolving fund for paying the expenses of publication of administrative rules of Montana and the register". He offered an amendment to page 4, line 14 and 15 to strike "other than an agency" and on page 18, line 3, following "copy" insert "of a declaratory ruling".

Mr. Leonard Larson, from the Secretary of State's office, stated that his main concern is the revolving fund.

Mr. Bob Pyfer from the Legislative Council said he did not write this bill, but went over the inclusion of agency in the definition of person.

Mr. John Bobinski from the state personnel division stated that he was concerned about the definition of person to include agency.

Mr. Doyle Saxby, from the Department of Institutions, questioned page 3 when an agency action determines a contract and wondered what they meant by contract. He stated that contract use to be nebulous and with all the purchasing they have in their department he felt that the matter needed to be clarified.

There were no further proponents and no opponents.

Mr. Larson and Mr. Doyle explained for the committee some of the problems involved in the revolving fund.

Senator Turnage moved that the bill be amended on page 4, line 1 by striking "other than an agency". The motion carried unanimously.

Senator Turnage moved that on page 18, line 3, following "copy" the words "of a declaratory ruling" be inserted. The motion carried unanimously.

Senator Towe questioned why should the administrative code commission have the authority to become involved in court cases. Senator Turnage found the need for it in at least one case.

Senator Brown said he really supported this amendment. He felt the administrative rulemaking committee should have the right to sue. He said that we are asking the third branch of government to be a referee.

Senator Lensink stated that we will not act on this bill, but will take some time to think about it. The hearing on this bill closed.

CONSIDERATION OF HOUSE BILL 96:

Representative Thoft gave an explanation of this bill, which is an act to prohibit misrepresentation of age in procuring liquor.

Mr. Leon Messerly, administrator of the liquor division, gave a statement in favor of this bill.

Mr. Bill Harrington, from the Investigation and Enforcement Bureau, gave a statement in support of this bill, stating that this puts the burden of proof back on the individual instead of the business.

There were no opponents to this bill.

Ms. Joan Mayer, attorney for the Legislative Council asked if they intended this to include beer. She gave a definition of liquor and a definition of alcoholic beverages.

Senator Towe moved that on page 1, line 14, we amend the bill by striking the words, "intoxicating liquor" and insert in lieu thereof "alcoholic beverages" and also amend the title accordingly. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 96:

Senator Turnage moved that this bill be concurred in as amended. The motion carried unanimously.

There being no further business, the meeting was adjourned at 11:20 a.m.

*Everett Lensink*  
SENATOR EVERETT R. LENSINK, Chairman  
Senate Judiciary Committee

Date 4-25-79

## ROLL CALL

JUDICIARY COMMITTEE

46th LEGISLATIVE SESSION - 1979

Each Day Attach to Minutes.

Plan, Design & Maintain the following

**SENATE**

## Judiciary

## COMMITTEE

BILL

VISITORS' REGISTER

DATE

~~4/25/29~~

Please note bill no.

The following is a description of the specific changes for amending the existing statute which are being proposed in Senate Bill 152:

Page 1, Lines 14 & 15

This amendment clarifies that the Aftercare Counselor is the agent that will formally file the allegations. The Bureau of Aftercare is the designated agency for Aftercare services within the Department of Institutions and this clarifies who shall take action on the allegations made against a youth.

Page 1, Lines 17 & 19

The present language requires that the hearing be held "at or near the site of the alleged violation". Geographically this has presented a problem within the State of Montana and moreso with offenses that occur in other states. The proposed addition designates that the hearing may also be heard in the county where the youth resides.

Page 1 & 2, Lines 23, 24, 25 & 1

This language was omitted because the same provisions are incorporated on Page 2, Lines 6-11.

Page 2, Lines 11-13

The proposed amendment allows the Department flexibility to initiate a different treatment plan because of the realization that return to an institution may not always be the best alternative. Additional treatment in another program or setting may be the necessary and preferred course of action recommended by the hearings officer, prosecution or defense.

Page 2, Lines 20 & 21

This designates that the referee shall subpoena the witnesses. The previous language indicated that "either party shall have the power to issue subpoenas to witnesses." Either party still has the power to request that subpoenas be issued, but must do so through one central, mutually recognized authority.

Page 3, Lines 2-4

This language simply clarifies that the referee will provide information relative to the hearing and his final decision.

Page 9, Lines 9-10

There are presently no provisions for the county attorneys to act in behalf of the state in these procedures. Although most county attorneys have acted in this capacity, as a courtesy to the Department, it was recommended by several of them that this provision be included to provide for their help statutorily and as a protective measure for themselves and the state.

Page 3, Lines 13-17

This is an amendment which cleans up confusing and unnecessary language while maintaining that "mitigating circumstances" will be taken into consideration if they exist.

Page 3, Lines 17-22

This amendment attempts to clearly delineate the responsibilities of the referee and the Department, relative to the final disposition of the case.

Page 3, Line 23

Normally, adverse decisions based upon factual findings are not appealable by the prosecution or charging party in this case.

Page 4, Line 23-25

This amendment is self-explanatory and provides for a written transcript upon notice of appeal.

Page 4, Lines 12-24

This language provides that the detention of youth pending a hearing and the referee's written decision will be in accordance with the same provisions set forth in the Montana Youth Court Act for all other delinquent youth.

The time limits previously in effect were so restrictive that the Department, hearings officer, defense attorneys, law enforcement and county attorneys were often unable to compile the necessary evidence and prepare their case for the hearing in the allotted time. Page 1, Lines 18-22 of the proposed amendments provide that the hearing must be held within "ten days after notice has been served or the youth is detained, whichever is earlier."

Page 4, Line 25  
Page 5, Lines 1-3

This amendment makes the provision that the youth shall remain in the institution to which he has been returned while he awaits the outcome of an appeal.

There was previously no language in the statute which provided for the place that the youth would reside pending appeal or the outcome thereof.

PROPOSED AMENDMENT TO SB-153 (introduced or white copy of the bill)

1. Page 4, line 14<sup>and</sup> 15.

Strike: "other than an agency"

Proposed amendment to SB 153

1. Page 18, line 3.

Following: "copy"

Insert: "of a declaratory ruling"

# STANDING COMMITTEE REPORT

January 26, 1979

MR. President:

## Judiciary

We, your committee on .....

House

having had under consideration ..... House ..... Bill No. 96

Respectfully report as follows: That ..... House ..... Bill No. 96

in the third reading bill, be amended as follows:

1. Title, Line 6.

Following: "PROCURING"

Strike: "LIQUOR"

Insert: "ALCOHOLIC BEVERAGES"

2. Page 1, line 14.

Following: "of"

Strike: "intoxicating liquor"

Insert: "alcoholic beverages"

And, as so amended, BE CONCURRED IN  
DORRASSK

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