

MINUTES FOR THE MEETING
JUDICIARY COMMITTEE
MONTANA STATE
HOUSE OF REPRESENTATIVES

March 30, 1985

An executive session of the Judiciary Committee was called to order by Chairman Tom Hannah on Saturday, March 30, 1985 at 7:00 a.m. in Room 312-3 of the State Capitol.

ROLL CALL: All members were present with the exception of Rep. Brown who was previously excused.

ACTION ON SENATE BILL NO. 116: Rep. O'Hara moved that SB 116 BE CONCUURED IN. Rep. Cobb seconded the motion. Rep. O'Hara further moved that the amendments previously adopted to SB 116 be stricken from the bill. Rep. Cobb seconded the motion. Rep. Gould said he would like to keep longevity in the bill so that qualified people in the county attorney offices could be retained. Rep. O'Hara agreed with Rep. Gould and added that the committee as a whole must see value in it, but he would rather make the bill more palatable and get it out of committee than to kill the bill.

Rep. Gould made a substitute motion to leave the amendments on the bill as is. Rep. Addy seconded the motion, and it was further discussed.

It was Rep. Hannah's opinion that the bill will face trouble with all of the amendments. The question was called on the substitute motion and it carried 11-5. (See roll call vote.)

Rep. O'Hara further moved that SB 116 BE CONCURRED IN AS AMENDED. The motion was seconded.

Rep. Hannah pointed out that there is still an equal protection problem with taking municipal courts out of the bill. He feels that municipal courts need to be included in the bill. It is unconstitutional to require some courts to levy fines while others are not required to do so. Rep. Hannah further moved to put the municipal courts back in the bill, and it was seconded by Rep. Gould. The motion carried on a voice vote with Rep. Darko dissenting. Rep. O'Hara moved that to amend page 2, by adding a new subparagraph (4) which would read:

"(4) The total of the charge imposed by this section and any fine assessed may not exceed the maximum fine authorized by law for the offense."

Rep. Keyser seconded the motion, and it carried unanimously.

Rep. O'Hara moved that SB 116 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Hammond. It was noted that all amendments previously adopted are included in the bill.

Rep. Eudaily is concerned about using the base pay for longevity plus the cost of living assessments. Rep. Hannah pointed out that there would not be time to get a fiscal note for the bill. But he would have a legislative researcher investigate the impact and have the information available before the bill gets to the House floor. The question was called, and the BE CONCURRED IN AS AMENDED motion carried 10-6. (See roll call vote.) Rep. O'Hara volunteered to carry the bill.

RECONSIDERATION OF SENATE BILL NO. 376: Rep. Gould moved to untable SB 376. The motion was seconded by Rep. Miles. Rep. Addy presented amendments for the bill which would not allow treatment or medication on an involuntary basis through the in-patient commitment procedure. Under the proposed amendment, two professional people must examine the person before it is a court-made rule. Rep. Hannah said the bill extends the ability to control, but he further realizes there may be problems in this area.

The question was called on the motion to take SB 376 off the table, and it carried 10-7. (See roll call vote.)

The meeting was adjourned at 8:04 a.m. upon the call of the chair.

* * * * *

Chairman Hannah called an executive session to order at 1:30 p.m..

ROLL CALL: All members were present with the exception of Reps. Brown, Darko, Keyser and Poff who had previously been excused.

Rep. O'Hara feels that SB 376 is in jeopardy the way it remains. Rep. Addy moved to adopt the proposed amendments. A copy of his amendments were marked Exhibit A and attached hereto. Rep. Addy explained the reasons for the amendments. Under these procedures, someone cannot be committed to in-patient, and they can't be required to take forced medication. It prescribes a level of treatment that a person will be evaluated by at least two professional people. They will go into court and testify according to the standards in the bill and if those two professional people agree, then the Court will require that the person undergo treatment for a period not to exceed 30 days. If anything more

stringent than out-patient treatment without forced medication is required, they will have to go through the entire commitment procedure.

Rep. Eudaily said that it seems that by leaving "any person" in the bill, we are certainly leaving it open to a lot of interpretation. In response, Rep. Hannah said that it is the duty of the county attorney to find out if there is any merit to the charges brought against that person.

Rep. Hannah said he cannot support the bill even with the proposed amendments. He said we are setting a standard to address a real problem. The testimony showed that there is a problem in dealing with these seriously mentally ill people; but if we put that standard on them, it also applies to all those people that are less mentally affected who then become subject to abuse under this bill.

A copy of Daphne B. Jones' testimony was submitted at this time. She was present at the executive session hearing. (Exhibit B)

The question was called on the motion to adopt the amendments. The motion carried on a voice vote.

Rep. Addy further moved that SB 376 BE CONCURRED IN AS AMENDED. The motion was seconded by Rep. Eudaily and a roll call vote revealed a split vote. Therefore, the bill was sent out of committee WITHOUT RECOMMENDATION AS AMENDED. Rep. Addy will carry the bill on the floor.

ADJOURN: There being no further business, the meeting adjourned at 1:45 p.m..


TOM HANNAH, Chairman

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

EXECUTIVE SESSION -- 7:00 a.m.

Date 3/30/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)			✓
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko	✓		
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser	✓		
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff	✓		
Paul Rapp-Svrcek			

DAILY ROLL CALL

HOUSE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985

EXECUTIVE SESSION -- 1:30 p.m.

Date 3/30/85

NAME	PRESENT	ABSENT	EXCUSED
Tom Hannah (Chairman)	✓		
Dave Brown (Vice Chairman)			✓
Kelly Addy	✓		
Toni Bergene	✓		
John Cobb	✓		
Paula Darko		✓	
Ralph Eudaily	✓		
Budd Gould	✓		
Edward Grady	✓		
Joe Hammond	✓		
Kerry Keyser			✓
Kurt Krueger	✓		
John Mercer	✓		
Joan Miles	✓		
John Montayne	✓		
Jesse O'Hara	✓		
Bing Poff			✓
Paul Rapp-Svrcek	✓		

STANDING COMMITTEE REPORT

Page 1 of 4

March 30 19 95

MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 116

Third reading copy (Blue)
color

REVISING PAY STRUCTURE FOR PROSECUTING ATTORNEYS AND PROVIDING FUNDING

Respectfully report as follows: That Senate Bill No. 116

be amended as follows:

1. Title, line 6.

Following: "ATTORNEYS;"

Insert: "REVISING THE PAY STRUCTURE FOR PROSECUTING ATTORNEYS;"

2. Title, line 12.

Following: "DEPUTIES;"

Insert: "PROVIDING LONGEVITY PAY FOR COUNTY ATTORNEYS AND THEIR DEPUTIES;"

3. Title, line 14.

Following: "27-4-2102;"

Strike: "AND"

Insert: "AND"

DO PASSAY

CONTINUED

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4. Title, line 15.
Following: "7-4-2503."
Insert: "AND 7-4-2505."

5. Page 1, line 20.
Following: "attorneys"
Strike: "AND"
Insert: ","

6. Page 1, line 24.
Following: "deputies"
Insert: ", and providing longevity pay for county attorneys and their deputies"

7. Page 2, following line 25.
Insert: "(4) The total of the charge imposed by this section and any fine assessed may not exceed the maximum fine authorized by law for the offense."
Re-number: subsequent subsections.

8. Page 3, line 3.
Following: "treasurer."
Strike: remainder of subsection (5) in its entirety.
Insert: "On or before the 10th day of each month, the local government finance officer or treasurer shall remit to the state treasurer for deposit to the state general fund \$10 for each misdemeanor case and the greater of \$20 or 10% of the fine levied in each felony case. A local government may retain up to 10% of the funds remitted to the state treasurer to cover only the costs of administering this section."

9. Page 4, line 1.
Following: "7-4-2503-(3)-(d)."
Insert: "Such salaries include the longevity increases provided by 7-4-2503 (3) (d)."

10. Page 6, line 7.
Following: "COUNTY OF THE"
Insert: "first,"

Following: "SECOND"
Insert: ","

11. Page 6, line 8.
Strike: "have" twice

12. Page 6, line 9.
Following: "attorney."
Insert: "A county attorney who is a part-time official for a county of the fourth, fifth, sixth, or seventh class is entitled to receive an annual salary equal to 50% of the annual salary of a full-time county attorney."

CONTINUED

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13. Page 7, following line 32.

Insert: "(d) (i) After completing 4 years of service as county attorney or deputy county attorney, each part-time county attorney or deputy county attorney is entitled to an increase in salary of \$1,000 on the anniversary date of his employment as county attorney or deputy county attorney. After completing 5 years of service as county attorney or deputy county attorney, each part-time county attorney or deputy county attorney is entitled to an additional increase in salary of \$1,500 on the anniversary date of his employment. After completing 6 years of service as county attorney or deputy county attorney and for each year of service thereafter up to completion of the 11th year of service, each part-time county attorney or deputy county attorney is entitled to an additional annual increase in salary of \$500.

(ii) If a part-time county attorney has formerly served as deputy county attorney, his years of service as deputy must be included in the calculation of the longevity increase provided in this subsection (3)(d).

(iii) The years of service as a county attorney or deputy county attorney accumulated prior to [the effective date of this act] must be included in the calculation of the longevity increase."

14. Page 8, following line 9.

Insert: "Section 4. Section 7-4-2505, WCA, is amended to read:

"7-4-2505. Amount of compensation for deputies and assistants. (1) Subject to subsection (2), the boards of county commissioners in the several counties in the state shall have the power to fix the compensation allowed any deputy or assistant of the following officers:

- (a) clerk and recorder;
- (b) clerk of the district court;
- (c) treasurer;
- (d) assessor;
- (e) county attorney;
- (f) auditor.

(2) (a) The salary of a deputy or an assistant listed in subsection (1), excluding longevity payments provided in 7-4-2503(3)(d), may not be more than 90% of the salary of the officer under whom such deputy or assistant is serving.

(b) Where any deputy or assistant is employed for a period of less than 1 year, the compensation of such deputy or assistant shall be for the time so employed, provided the rate of such compensation shall not be in excess of the rates now provided by law for similar deputies and assistants except as provided herein.

(c) Deputy assessors' salaries shall be the same as paid the deputy clerk and recorder."

Remember: subsequent sections.

CONTINUED

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15. Page 9. following line 10.

Insert: NEW SECTION. Section 6. Unseverability. It is the intent of this legislature that each part of this act is essentially dependent upon every other part and if one part is held unconstitutional or invalid, all other parts are invalid."

AND AS AMENDED,
BE CONCURRED IN

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 30, 1985

BILL NO. SB 116

TIME 7:45 a.m.

NAME	AYE	NAY
Kelly Addy		✓
Toni Bergene	✓	
John Cobb		✓
Paula Darko		✓
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond	✓	
Kerry Keyser		
Kurt Krueger	✓	
John Mercer	✓	
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara	✓	
Bing Poff		✓
Paul Rapp-Svrcek		
Dave Brown (Vice Chairman)	✓	
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Gould made a substitute motion to leave the amendments
previously adopted on the bill. The motion was seconded by Rep.
Addy, and it carried 11-5.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 30, 1985 BILL NO. SB 116 TIME 8:00 a.m.

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene		✓
John Cobb	✓	
Paula Darko	✓	✓
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady	✓	
Joe Hammond	✓	
Kerry Keyser		✓
Kurt Krueger	✓	
John Mercer		✓
Joan Miles	✓	
John Montayne	✓	
Jesse O'Hara	✓	
Bing Poff		✓
Paul Rapp-Svrcek		
Dave Brown (Vice Chairman)		✓
Tom Hannah (Chairman)		

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. O'Hara moved that SB 116 BE CONCURRED IN AS AMENDED.

The motion was seconded by Rep. Hammond and caried 10-6.

STANDING COMMITTEE REPORT

March 30

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MR. Speaker:

We, your committee on Judiciary

having had under consideration Senate Bill No. 376

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COMMITTEE FOR OUTPATIENT TREATMENT

Respectfully report as follows: That Senate Bill No. 376
be amended as follows:

1. Title, line 5.
Following: "HEALTH"
Insert: "OUTPATIENT"
2. Title, line 10.
Following: "53-21-121"
Strike: ", "
Insert: "through"
3. Page 3, line 13.
Strike: "DANGER"
Insert: "injury"

DO PASS

(continued)

page 2 of 4
SB 376

4. Page 7, line 15.

Following: "person"

Strike: "A RELATIVE" through "GUARDIAN" on line 17

Insert: "any person"

5. Page 9, following line 18.

Insert: "Section 5, Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment -- filing of --
initial hearing on. (1) The petition shall be filed with
the clerk of court who shall immediately notify the judge.

(2)(a) If a judge is available, he shall consider the
petition, and if he finds no probable cause, it shall be
dismissed.

(b)(i) If the judge finds probable cause, counsel shall
be immediately appointed for the respondent, and the
respondent shall be brought forthwith before the court with
his counsel. The respondent shall be advised of his
constitutional rights, his rights under this part, and the
substantive effect of the petition. The respondent may at
this appearance object to the finding of probable cause for
filing the petition.

(ii) The judge shall:

(A) appoint a one professional person in a proceeding
under 53-21-121(1)(a) or two professional persons in a
proceeding under 53-21-121(1)(b) and 1

(B) appoint a friend of respondent; and

(C) set a date and time for the hearing on the petition,
which may not exceed 5 days, including weekends and
holidays, unless the fifth day falls upon a weekend or
holiday and unless additional time is requested on behalf
of the respondent.

(iii) The desires of the respondent shall be taken into
consideration in the appointment of the friend of
respondent and in the confirmation of the appointment of
the attorney.

(3) If a judge is not available in the county, the clerk
shall notify a resident judge by telephone and read the
petition to him. If the judge finds no probable cause, the
petition shall be dismissed. If the judge finds probable
cause, he shall cause the clerk to issue an order
appointing counsel and a one professional person in a
proceeding under 53-21-121(1)(a) or two professional
persons in a proceeding under 53-21-121(1)(b) and setting a
date and time for the hearing on the petition, which may
not exceed 5 days, including weekends and holidays, unless

(continued)

the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order shall also direct that the respondent be brought forthwith before a justice of the peace with his counsel to be advised of his constitutional rights, his rights under this part, and the contents of the clerk's order, as well as to furnish him with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present."

ReNUMBER subsequent sections.

6. Page 9, line 24.

Following: "person"

Insert: "or persons as required by 53-21-122,"

7. Page 10, line 1.

Following: "person"

Insert: "or persons"

8. Page 10, line 2.

Strike: "his"

Insert: "their"

9. Page 10, line 3.

Strike: "his examination"

Insert: "their examinations"

10. Page 10, line 5.

Following: "(2)"

Strike: "The"

Insert: "In a proceeding under 53-21-121(1)(a), the"

11. Page 10, following line 15.

Insert: "(3) In a proceeding under 53-21-121(1)(b), the following action shall be taken, based on the professional persons' findings:

(a) If they both recommend dismissal, they shall additionally notify counsel and the petition shall be dismissed. However, the county attorney may, upon good cause shown, request the court to order two, but no more than two, additional examinations, of no more than 4 hours'

(continued)

duration each, to be given by different professional persons.

(b) If at least one professional person finds that commitment proceedings should continue, the hearing shall be held as scheduled."

Renumber: subsequent subsections

12. Page 11, line 13.

Following: "person"

Insert: "or persons"

13. Page 11, line 19.

Following: "report of"

Strike: "the"

Insert: "each"

14. Page 11, line 25.

Following: "person"

Insert: "or persons"

15. Page 14, line 3.

Following: "treatment."

Strike: "The court" through "medication." on line 11.

16. Page 14, line 12.

Following: "treatment"

Strike: "in the" through "Springs" on line 13.

Insert: "or forcible administration of medication"

17. Page 18, line 18.

Following: "respondent"

Insert: "for a period not to exceed 30 days"

AND AS AMENDED,
WITHOUT RECOMMENDATION

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 30, 1985

BILL NO. SB 376

TIME 1:45 p.m

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	
John Cobb		✓
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser		
Kurt Krueger		✓
John Mercer		✓
Joan Miles	✓	
John Montayne		✓
Jesse O'Hara		✓
Bing Poff		
Paul Rapp-Svrcek	✓	
Dave Brown (Vice Chairman)		✓
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Addy moved that SB 376 BE CONCURRED IN AS AMENDED.

The motion was seconded by Rep. Eudaily. Due to a tie vote,

SB 376 left the committee WITHOUT RECOMMENDATION, AS AMENDED.

ROLL CALL VOTE

HOUSE COMMITTEE JUDICIARY

DATE March 30, 1985

BILL NO. SB 376

TIME 8:04

NAME	AYE	NAY
Kelly Addy	✓	
Toni Bergene	✓	
John Cobb	✓	
Paula Darko	✓	
Ralph Eudaily	✓	
Budd Gould	✓	
Edward Grady		✓
Joe Hammond	✓	
Kerry Keyser	✓	
Kurt Krueger		✓
John Mercer		✓
Joan Miles	✓	
John Montayne		✓
Jesse O'Hara	✓	
Bing Poff		✓
Paul Rapp-Svrcek		
Dave Brown (Vice Chairman)		✓
Tom Hannah (Chairman)		✓

Marcene Lynn
Secretary

Tom Hannah
Chairman

Motion: Rep. Gould moved to take SB 376 off the table. The motion
was seconded by Rep. Miles and carried 10-7.

Proposed Amendments to SB 376

1. Title, line 5
Following: "HEALTH"
Insert: "OUTPATIENT"

2. Title, line 10
Following: "53-21-121"
Strike: ", "
Insert: "through"

3. Page 3, line 13
Strike: "DANGER"
Insert: "injury"

4. Page 7, line 15
Following: "~~person~~"
Strike: "A RELATIVE" through "GUARDIAN" on line 17
Insert: "any person"

5. Page 9, following line 18
Insert: Section 5, Section 53-21-122, MCA is amended to read:

53-21-122. Petition for commitment -- filing of --
initial hearing on. (1) The petition shall be filed with
the clerk of court who shall immediately notify the judge.

(2)(a) If a judge is available, he shall consider the
petition, and if he finds no probable cause, it shall be
dismissed.

(b)(i) If the judge finds probable cause, counsel
shall be immediately appointed for the respondent, and the
respondent shall be brought forthwith before the court with
his counsel. The respondent shall be advised of his
constitutional rights, his rights under this part, and the
substantive effect of the petition. The respondent may at
this appearance object to the finding of probable cause for
filing the petition.

(ii) The judge shall:

(A) appoint a one professional person in a proceeding under
53-21-121(1)(a) or two professional persons in a proceeding
under 53-21-121(1)(b) and ;

(B) appoint a friend of respondent; and

(C) set a date and time for the hearing on the petition,
which may not exceed 5 days, including weekends and
holidays, unless the fifth day falls upon a weekend or
holiday and unless additional time is requested on behalf
of the respondent.

(iii) The desires of the respondent shall be taken
into consideration in the appointment of the friend of
respondent and in the confirmation of the appointment of
the attorney.

(3) If a judge is not available in the county, the clerk
shall notify a resident judge by telephone and read the
petition to him. If the judge finds no probable cause, the

petition shall be dismissed. If the judge finds probable because, he shall cause the clerk to issue an order appointing counsel and a one professional person in a proceeding under 53-21-121(1)(a) or two professional persons in a proceeding under 53-21-121(1)(b) and setting a date and time for the hearing on the petition, which may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order shall also direct that the respondent be brought forthwith before a justice of the peace with his counsel to be advised of his constitutional rights, his rights under this part, and the contents of the clerk's order, as well as to furnish him with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present.

Renumber subsequent sections.

6. Page 9, line 24

Following: "person"

Insert: "or persons as required by 53-21-122,"

7. Page 10, line 1

Following: "person"

Insert: "or persons"

8. Page 10, line 2

Strike: "his"

Insert: "their"

9. Page 10, line 3

Strike: "his examination"

Insert: "their examinations"

10. Page 10, line 5

Following: "(2)"

Strike: "The"

Insert: "In a proceeding under 53-21-121(1)(a), the

11. Page 10, following line 15

Insert: (3) In a proceeding under 53-21-121(1)(b), the following action shall be taken, based on the professional persons' findings:

(a) If they both recommend dismissal, they shall additionally notify counsel, and the respondent, if he has been detained, shall be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to

order two, but no more than two, additional examinations, of no more than 4 hours' duration each, to be given by different professional persons.

(b) If at least one professional person finds that commitment proceedings should continue, the hearing shall be held as scheduled.

Renumber subsequent subsections.

12. Page 11, line 13.

Following: "person"

Insert: "or persons"

13. Page 11, line 19

Following: "person"

Insert: "or persons"

14. Page 11, line 20

Strike: "person's"

Insert: "persons'"

15. Page 11, line 25.

Following: "person"

Insert: "or persons"

16. Page 14, line 8

Following: "treatment."

Strike: "The court" through "medication." on line 11.

17. Page 14, line 12.

Following: "treatment"

Strike: "in the" through "Springs" on line 13.

Insert: "or involuntary medication"

18. Page 18, line 18.

Following: "respondent"

Insert: "for a period not to exceed 30 days"

eg:HIS:amend

WITNESS STATEMENT

NAME Daphne Bugbee Jones BILL NO. SB 376
ADDRESS 524 Evan Kelly Road Missoula DATE March 30
WHOM DO YOU REPRESENT? myself
SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I am the mother of a seriously mentally disturbed daughter. She has two small children who have suffered considerably because of her illness. My daughter is difficult (she was in Warm Springs all last summer) angry and delusional. She refuses to take medication or cooperate with authorities. For me, SB 376 is a god send — as it will be for her children —

Thank you,

Daphne B. Jones