MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 20, 1985

The thirty-fifth meeting of the Senate Judiciary Committee was called to order at 10:08 a.m. on February 20, 1985, by Chairman Joe Mazurek in Room 325 of the Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF SB 375: Senator Thomas E. Towe, sponsor of the bill, said that these three bills that are to be heard today come about through a great deal of effort on the part of a number of individuals. Senator Towe said there has been great concern that the seriously mentally ill, which is the only type of person that can be committed involuntarily to Warm Springs, that we are so rigid that there are some people who aren't adequately taken care of. The words "must be a threat" or "must pose an imminent danger", require very high standards and it is very difficult. If someone is not inclined to harm anyone or harm themselves, they probably cannot be committed to Warm Springs. That's Constitutional. These three bills try to reach that category of person who may not meet that very high standard of danger to themselves or someone else or imminent threat to danger, and yet nevertheless need help and could use it if we could force them to have it. The issue is whether we should ever force anyone to take treatment if they aren't going to harm anyone else. What we have proposed to do is to attack the problem from three areas. First, in SB 375, which encourages a use of a probationary period following release from Warm Springs. Senator Towe said 50% of these people following release for one reason or another have come into trouble and had to be committed again. We are hoping with this bill to address some 50% of the problem. Secondly, in 376, we are proposing to create a new standard, a new category, a person who needs treatment but is not seriously mentally ill. We are requesting that that person not be committed to Warm Springs, but may be required to submit to treatment for 30 days or a possible extension for another 30 days. That one is probably the most controversial of the three bills. Third, we are proposing to address the person who really has a property problem. They wouldn't hurt anyone, but they may have a substantial impact on his or her property. Where no-one is willing to come forward to act as a conservator, we are proposing to make the public administrator the conservator in those situations. That's the essence of the three bills. Senator Towe then told the committee about the people who worked on the three bills. This bill refers to the probationary period after leaving Warm Springs. This is the person who has already been found seriously mentally ill. Judge Bennett

said there is no Constitutional problem when you have someone already adjudicated as seriously mentally ill and you want to continue the jursidiction over that person. Senator Towe said the present law is not adequate, and that's what this bill does. He then went into detail on the bill. He said that section 2 refers to rehospitalization, and that's a key factor in this. He said it states in the law that in order to rehospitalize him, you have to find out he is violating the terms of his release and he is liable to harm others. Senator Towe said what is the advantage, you might as well start up and find him seriously mentally ill all over again. That's what we are trying to avoid in this bill. Senator Towe then explained this thoroughly to the committee by reading from existing law. Senator Towe said no committment can last for more than a year. He said suppose he is on the 11th month and they wish to release him, they would only have jurisdiction over him for one more month according to the present law. We wanted to set something up so that they would be encouraged to release him, but that they wouldn't lose the other commitments when that one month expires. And that, he said, is what section 5 attempts to do. We are allowing them in section 5 to renew the conditions for another year, only it is first of all for six months and then a year. In no event, can there be an extension of these conditions for more than three years. Senator Towe explained that that allowed them more control over this individual when he leaves Warm Springs and that's the whole purpose of this bill.

PROPONENTS: Jim Schwind, Helena, supports this bill because he thinks it does a better job. He said he was one of the more prosperous mental patients around town and he has more experience to talk about involuntary commitment. He told the committee about his three voluntary commitments.

Dr. Donald L. Harr, Psychiatrist, Billings Mental Health Service, supports this bill. He felt it was vitally important that there be the means for rehospitalization for continued treatment before they reach a severe state. Dr. Harr felt that there was certainly no push to return them to the hospital if there was any way to continue treating them on an out-patient basis. Dr. Harr pointed out in section 3 that there was an additional hearing.

James Dorr Johnson supports this bill. He said this is the culmination of ten years of work. He told how this legislation will affect people's lives. Mr. Johnson told about one of his peers being against the bills because he is more civil liberties oriented. However, he thinks these bills are proper. He told about having a patient that he worked very hard with and how

he got him to the point of being an outpatient in a halfway house, and how well he was doing. Mr. Johnson said that now his patient was living on the streets of Butte because they no longer had any jurisdiction over him, and that it would only be a matter of time before he was back.

Nancy Adams, Clinical Social Worker for Mental Health Services in Helena, and she runs Montana House, one of the six larger programs for the seriously mentally ill in Montana. She wants to reinforce what Jim Johnson has just stated. She told the committee that she could cite many cases where if they did have a conditional release that could be extended, they would have fewer tragedies than they are having right now in the community. She is in support of SB375. She entered a package of letters and forms (Exhibit 1) plus transcripts of two complete meetings. This package refers to SB375, SB376, and SB414.

Cliff Murphy, Mental Health Association of Montana, supports this bill. Mr. Murphy entered written testimony attached hereto marked Exhibit 2.

Laurie Risdahl, Missoula, supports this bill. Mr. Risdahl said that he had studied this bill and he feels that the interests of the patients are very well guarded. Mr. Risdahl told about his son who has been in and out of mental institutions for the last 15 years. He told about the many times when they knew he needed help, but they could not get anyone to help him because he had not committed acts that made him a danger to himself or anyone else. He hoped this bill would cover that instance. However, he supports this bill in all other respects.

Donna Heffington, Deputy County Attorney, Yellowstone County, supports this bill. Ms. Heffington feels that the current law does not extend far enough to help people who need help. She said most of the people that she ran across were people with past histories of mental health problems and commitments, and had been conditionally released. She said that in addition to proving that they had violated the terms of their conditional release, they also had to prove that these people were dangerous before a revocation could occur. She said this was hard to do before they had deteriorated to the point where they became a danger, and from there it was a long way back to outpatient status.

Kelly Morse, Director of Mental Disabilities Board of Visitors, supports this bill. Ms. Morrison reiterated what has been stated before regarding rehospitalization of patients. She told the committee that this bill is a compromise between advocates and mental health providers and she strongly supports this bill for people who need additional treatment.

Dr. John Lynn, Psychologist, Mental Health Center, Missoula, supports this bill. He is responsible for helping people that have been released. He said the most frustrating thing is to see them come out of Warm Springs well and know that they can only treat them for six months and then the patient will go off their medication and predictably end up back in Warm Springs.

OPPONENTS: None

QUESTIONS OF THE COMMITTEE: Senator Crippen asked Senator Towe if when a person is first committed they have to define that dangerous standard. As I understand it, that standard is there. Is that correct? Senator Towe said absolutely. Senator Crippen said and under the present law, you can be confined for one year? Senator Towe answered for three months, then six months, then one year, and then a year, and a year. Senator Crippen, and during that time, you have to go back and show.. Senator Towe said that's correct. It is the same procedure as is provided here in section 5 for renewal of the conditions. It is a procedure in which the petition has to be submitted to the court, and a hearing is not held unless it is requested, but you have to submit this to various other persons, so his attorney and others can come in and demand a hearing. It is not an automatic hearing. Senator Crippen said that page 9 subsection 6 appeared to provide for further extensions beyond that three year period. Senator Towe replied that it does not. He said that he has read it through several times and he believes it is correct. He referred him to page 7 where it states that it cannot last longer than three years. Senator Towe said that you could extend a year at a time until you hit the three year limit.

CLOSING STATEMENT: None

CONSIDERATION OF SB 376: Senator Thomas Towe is the sponsor of this bill. He said this bill is the most substantive of the three bills, perhaps the most controversial, and although he has always had reservations about this, as the committee worked it out, he thinks it is a good bill. This bill addresses the same problem in a different way. This bill provides for a new criteria of or category of persons. The first page just cleans up the language. Significant part starts on page 3. Senator Towe explained that this described a person in need of treatment. A person in need of treatment is a person who (a) suffers from a mental disease; (b) has been deprived by reason of his mental disabilities of the capacity to function without major disruption. Now, disruption is somewhat vague, but I think most people will understand that we mean disruption, such as someone who comes

tearing into a building, rips the pictures off the walls and throws the furniture all over and does that kind of thing obviously causes a major disruption. But notice, there is no harm to himself or others, that's not a part of this description. (c) As a result of his mental disorder is unable to understand his need for treatment and to give or withhold informed consent to the treatment; and (d) if his mental disorder is untreated, will predictably suffer further serious deterioration in his mental condition. Now, it does not say he will become severely mentally disabled, but that he will deteriorate and that can be established by his past medical history. Senator Towe said that's the most important part of this bill. Senator Towe then went on to describe and read the rest of the bill section by section to the committee. Under this bill Senator Towe said, Warm Springs commitment is not a possibility. He said that the county that the cost of the proceedings shall be paid by the county that had initial proceedings. In other words, if he is from Billings and is released to Helena and the original proceedings were in Billings, they would have to pay for the proceedings. Senator Towe said that he needed to make some amendments. On the top of page 19, the language in that first top paragraph, lines 1 through 7 should all be restored to the way it was before. Language should be returned to original language and that makes it clear that you can only have 30 day extension and that was the intent. A couple of other questions, Dr. Harr proposes in line 6 where we refer to persons who are not a danger that we make that even clearer and say who do not present an imminent threat of danger. On page 7, lines 18 and 19, Dr. Harr points out that the words "for inpatient" treatment should not be included at that point since the request may be for something else, such as outpatient treatment. Page 12, line 22 strike the words "inpatient commitment." We just want proceedings at that point. Page 14, this amendment is not supported completely by the committee, it is a suggestion of Dr. Harr and on line 5, the proposal is to strike "course of" and insert "setting for." Page 14, lines 11 and 12, there was much discussion over the words "the person may not be required to pay for court ordered treatment." We discussed this long and hard and he leaves it to the committee. He said if the people don't pay for it, the county is going to have to pay for it, and then you are going to have people up here protesting it. The last one is on page 14, lines 17 and 18 where it says "professional person" maybe it should read "facility."

PROPONENTS: Venus Bardanouve supports this bill. Ms. Bardanouve entered written testimony attached hereto marked Exhibit 3.

Jim Johnson supports this bill. Mr. Johnson told them that after nine years he's still in Warm Springs. He said that legislators and taxpayers have financed his being there during this period of time. Mr. Johnson told about a friend of his who needed help and without this bill couldn't get it. He agreed with all of the amendments but two. One having to do with course of treatment, page 14 line 5, because of his friend and the problems he had with his medication. Mr. Johnson also thinks that it is awful that people should have to take these medications and lose their freedoms and have to pay.

Janey Norheim supports this bill. Mrs. Norheim entered written testimony attached hereto marked Exhibit 4. She pleaded with the committee to pass this bill.

Dr. Donald L. Harr, Psychiatrist, Mental Health Center in Billings, is in favor of this legislation. He said that this legislation accomplishes something that he has been trying to accomplish for a long time. Dr. Harr said that he is mainly interested in the individual and his rights and he thinks this legislation covers both. He explained his reasoning for wanting page 14, lines 4-5 changed. He said that he did not think the courts should recommend treatment. He felt that was best left up to people who had the professional training to do so. Dr. Harr said that this legislation would allow these people to receive treatment before their conditions deteriorate to such a severe degree.

Curt Chisholm, Deputy Director of the Department of Institutions, the Department does not oppose this bill. Mr. Chisholm said the language on page 14, line 14, is controversial with them. It does cause them a great deal of concern. He suggested they strike that provisional out of the bill. He told them about their delicately balanced budget and revenue projection for '86-'87 biennium relative to mental health centers. He thinks they should be given the authority to charge for these fees for people who can afford to pay.

Cliff Murphy, Mental Health Association, and we support this bill.

Donna Heffington, Deputy County Attorney, Yellowstone County, concurs with Dr. Harr. She told about the many people they have had to turn away because the people they are seeking help for do not fall within the definitions of the law. Ms. Heffington believes that people's rights are very well protected.

Nancy Adams, Mental Health Services, Inc., Helena, is in strong support of this bill. Ms. Adams believes that with the care facilities that we have now, this legislation is timely. She

feels that people can now be treated in their communities without having to be hospitalized under this bill. Ms. Adams supports the amendments suggested by Senator Towe and Dr. Harr.

John Lynn, Western Montana Mental Health Center in Missoula, said that he supports this bill. He also supports what Mr. Chisholm said about charging for those services. He told the committee about their care facilities. (Exhibit 5)

Dr. Donald L. Harr said that he knew this was going to become a controversial issue over payment for services. He said that people who are going there voluntarily should have to pay, but people who are being treated there involuntarily should be publicly paid for, because if they are faced with those bills, they are not going to get better as quickly.

Laura Risdahl, Missoula, member of Parents, Friends and Relatives, a support and advocacy group called A New Beginning, and I would like to say that A New Beginning supports SB375 and SB376. We are very happy with Senator Towe.

OPPONENTS: Tom Posey, Billings, opposes this bill. Mr. Posey entered written testimony attached hereto marked Exhibit 6.

Susan Cottingham, Montana Chapter of American Civil Liberties Union, rose reluctantly in opposition to the bill. She said the ACLU is opposed to involuntary commitment. She believes this bill eliminates an important protection or important definition and that is the definition of imminent danger, and I believe one of the proponents did testify that in her family they had a problem identifying imminent danger and I believe that's one of the areas we should look at. However I do think this is a significant departure because you are talking of committing someone who does not pose an imminent danger. She told the committee about the movie Francis.

QUESTIONS OF THE COMMITTEE: Senator Pinsonault asked Mr. Posey to answer yes or no to this question, he said that the proceedings can be brought by the county attorney, and Senator Pinsonault asked if this were changed to read that it was brought only by the immediate family, would that help. Mr. Posey replied that it would be more palatable, but it wouldn't solve the problem of forced medication.

The hearings on SB 375 and SB 376 are closed.

CONSIDERATION OF SB 414: Senator Thomas Towe is the sponsor of this bill. Senator Towe said SB 414 is the smallest in the package.

Senator Towe said the concern is that person who needs help in managing their property when no-one is willing to come forward and act as conservator. The books already have adequate laws for conservators or guardians, if you will, of people's property. But what happens when no-one is willing to do that? In many instances close relatives are not willing to do that for a number of reasons, and in some instances there may not be any close relatives. What this bill does is state that whenever a professional person has reason to believe that this person is in need of a conservator for effective management of his property and the person has no other person to step forward and do this, they must notify the public administrator. There is a public administrator in every county. The public administrator must then file a petition for appointment. That's the bill. Senator Towe said the rest of the language deals with appointment of a conservator and adds on page 4 a list of the persons in order of priority to be appointed. On the last page, it lists payments. May not exceed 2½% of the payments or $100 whichever is less. If the public administrator does not want to do this, it presents a problem, because this bill requires the public administrator to do this. He may not feel that there is enough money involved to make it worth his time. We are not sure how to answer that, we just wanted to present that to the committee.

PROPONENTS: Jim Johnson, Montana Legal Services Association, said that subsection h, page 4, corporations set up for this purpose is a good way to handle this. He also thought having the public administrator handle this is a good idea. He also thought the fees were appropriate.

Bob Raundal, conservator for two hospitalized patients, said that on behalf of the Mental Health Association he thinks this bill is a good idea. He figured out the fee on these two patients and one of them gets $272 per month and that amounts to $3,324, and if you take 2½% of that, that's $83.10, which would be $6.93 per month, so I'm a little skeptical about whether the 2½% is enough.

Cliff Murphy, Mental Health Association, said that the association is also in favor of this bill. He has talked to Mr. Raundal about the matter of the fee, and they have considered forming a nonprofit corporation to handle a certain class of patient. With only $7.00 per month or whatever, if you had 300 people, you still could not carry on any type of project under this. He said the Mental Health Association wanted the fee kept down, but a nonprofit corporation trying to maintain even a part-time staff person to handle this, would have a problem, so this might have to be looked at.

OPPONENTS: None.

QUESTIONS OF THE COMMITTEE: None.

CLOSING STATEMENT: None.

The hearing on SB 414 is closed.

CONSIDERATION OF SB 411: Senator Thomas Towe is the sponsor of this bill. Senator Towe said this was the Department of Institutions' bill and it had nothing to do with the other three bills. He said that this bill had to do with the youth treatment center that has now been established as authorized in the last legislative session. We passed very restrictive legislation last time saying that the only people that could be treated at that facility would have to be seriously mentally ill patients, and the concern is that we may have been a little too restrictive. It could be that we will have an institution there that has nobody but maybe 3 or 4 or 5 people. As you can see in the bill, we do intend to open it up to court evaluation, not to exceed 60 days, for the sole purpose of advising the court as to whether the youth is seriously mentally ill. No-one can be sent to Warm Springs unless it is pursuant to a criminal conviction (Senator Towe was talking about youths). He said the court cannot commit someone for more than 60 days unless the youth is seriously mentally ill as defined in the codes, and they may then keep them until they turn 21. Senator Towe said originally the law said no-one under the age of 12 could be sent to the youth treatment center, and this bill would change that to read that anyone under the age of 18 may be sent to the center. However, individuals under the age of 12 may be committed pursuant to rules promulgated by the Department of Institutions.

PROPONENTS: Curt Chisholm, Deputy Director for Department of Institutions, supports this bill. Mr. Chisholm felt that they did not do a very good job last session of defining how you get in and out of this treatment cener. He felt they did not tie in two acts very well, one being the Youth Treatment Act and the other one being the Mental Health Commitment Act. This allows the youth court to use that facility for purposes of mental evaluation, and it allows for commitment on a long-term basis by the court. Mr. Chisholm went on to explain the bill to the committee. He entered a small amendment attached hereto marked Exhibit 7. He explained this amendment to the committee.

Kelly Morse supports Mr. Chisholm's amendment. She said the only concern she has is on page 3 (4) and concerns putting the

youth back into Montana State Hospital at Warm Springs. She said they would be put in the forensic unit and that that is not a very pleasant place for anyone, let alone youths. However, she said, we do not have a solution for this problem yet.

Cliff Murphy, Mental Health Association, is neither a proponent nor an opponent. Mr. Murphy has a concern regarding committing children under the age of 12 without segregation. It appears the building has been built without the means of separation. They would have the same concerns about those sent there under criminal law for evaluation.

Jim Jensen representing himself, said that Mr. Menahan had told him that this center was designed to possibly not accommodate a wide variety of youth and it probably ought to be restricted to the people going in there in the most narrow way. Mr. Jensen went to Billings to see the facility and he told the committee that this was a maximum security facility. He felt the legislature should be careful before they expand the number of youth, either by age or category, to that facility, because it is a lock-up maximum security, and it is not a pleasant facility. Mr. Jensen felt that maybe this facility should be looked into further.

Laura Risdahl, Missoula, said she agrees with the bill in general, but she thinks they are all forgetting about human needs. She feels they have built another jail and that this wasn't needed. She asked many rhetorical questions such as if they ever get to go outside. Ms. Risdahl felt that these people are sick and should not fall under the Department of Institutions. She felt these people need help and should not be locked up.

OPPONENTS: None.

QUESTIONS OF THE COMMITTEE: Senator Pinsonault asked Ms. Risdahl if she had visited the facility. Ms. Risdahl said no.

CLOSING STATEMENT: Senator Towe asked that Curt Chisholm be allowed to close. Mr. Chisholm said that he could explain to the people who expressed concerns about the austere facility that they are about to open, that it does meet JCH creditation standards for psychiatric care and will be so licensed by the Department of Health. Mr. Chisholm said that some of the concrete beds and concrete desks are there for a purpose, so consequently it doesn't look as nice as he would like it to look. He said they ran short of money so had to give up floor coverings and appropriate paintings. Mr. Chisholm said the facility can be locked, but the individual doors will not be locked. In other words, the children won't be locked in their rooms. He said they do have four isolation cells where someone could be locked up if the need arose. He said the

children will be monitored by professionals 24 hours per day. He said the children will get to have recreation out in the yard right there in downtown Billings, and that it will be handled similar to what Warm Springs is. He said many professionals helped in the design of the building.

The hearing on SB 411 is closed.

FURTHER CONSIDERATION ON SB 28: Marcia Rundle asked the committee to reconsider the action it took on Wednesday. Ms. Rundle said she was very surprised at the turn the hearing took. Ms. Rundle would like the committee to reconsider the amendment known as the Chambers amendment. She said that she is not speaking on behalf of the Montana Reserved Water Rights Compact Commission, but that she has the support of every member she has talked to. Ms. Rundle entered written testimony which is attached hereto marked Exhibit 8. The Compact Commission prefers that it leave the statutory process created by SB 76 as it is. Ms. Rundle believes the Attorney General's office is not opposed to leaving the statute as it is. She said it is ambiguous the way it is. She felt her special objections cannot be made in the water courts. The challenge of due process should not be made by allowing substantive matters to be changed in the water court. Only the courts can decide that. Ms. Rundle believes neither the "for informational purposes" or the Reid Chambers' amendment should be adopted.

Clay Smith, Attorney General's office, had no objection to the statute remaining as it is. The amendment was to address the concerns raised by the tribes. On Friday, he forwarded to Reid Chambers the Attorney General's proposed amendments thereto and they discussed them at length regarding the proposed changes to the statute. He felt Reid Chambers was uncomfortable with his own language. However, he can't state that they have agreed to any new provisions.

Senator Mazurek said that he had spoken with Cal Wilson of the Northern Cheyenne Tribes, and that Mr. Wilson is actively involved in regulations put in by the legislative process. He said he could not understand why anyone would go along with the Chambers amendment because of the due process issue. Senator Mazurek asked what is your reaction if we leave the existing language as it is and what would be the tribe's reaction? Senator Yellowtail replied that he is not a lawyer. However, he thinks that may be the safe thing to do. He felt it would be better for the committee to leave the situation as it is rather than to do something that is questionable. He doesn't feel they should have hearings after the hearing. Senator Mazurek said that they are trying to balance a lot of interests and they have a lot at stake. Senator Towe said that the part of the Chambers amendment he is concerned about are on the gray bill. Senator Towe suggested adding after

compact on line 15 "on the basis of procedural errors is". Marcia said she has a problem with the concept of relieving prople from the terms of the compact. Senator Mazurek said that when they hold a second hearing, they want to go through with a bill that does not upset the apple cart. It extends the commission and does not include provisions to which both sides don't agree. If we do that, we leave open the question of what happens to the compact in the preliminary decree. The tribes will argue this one without the compact. The commission will argue the same thing, and the Attorney General's office would argue otherwise. Senator Mazurek said that this is such a critical issue and is so delicate politically that we should leave things as they are. He said their premise will be that they are not going to change the law unless there is agreement on all sides so they will not give unfair advantage to anyone.

Senator Towe made a motion to reconsider their action in recommending SB 28 do pass as amended. With Senator Crippen voting no, the rest of the committee voted aye, so the motion was adopted.

Senator Yellowtail moved to strike the Chambers' amendment. With Senator Crippen voting no, the rest of the committee voted aye, so the motion was adopted.

Senator Towe moved that SB 28 do pass as amended. With Senator Crippen voting no, and the rest of the committee voting aye, SENATE BILL 28 DO PASS AS AMENDED.

The meeting was adjourned at 12:27 p.m.

SENATOR JOE MAZUREK, CHAIRMAN

ROLL CALL

SENATE JUDICIARY COMMITTEE

49th LEGISLATIVE SESSION -- 1985 Date 022085

NAME	PRESENT	ABSENT	EXCUSED
Senator Chet Blaylock	X		
Senator Bob Brown	X		
Senator Bruce D. Crippen	X		
Senator Jack Galt	X		
Senator R. J. "Dick" Pinsoneault	X		
Senator James Shaw	X		
Senator Thomas E. Towe	X		
Senator William P. Yellowtail, Jr.	X		
Vice Chairman Senator M. K. "Kermit" Daniels	X		
Chairman Senator Joe Mazurek	X		

DATE February 20, 1985

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Francis Bardanouve	self	376	✓	
Nancy Norheim	self	" "		
Bernard Norheim	self	" "	✓	
David Briggs	Mental Health Center	376, 375	✓	
Cliff Murphy	Mental Health Assn of MT	375, 376, 411, 414	✓	
James Peter Johnson	Mont Legal Services	375, 376/411		
		411	✓	
Tom Posey	Self	376		✓
Dianne Donnelly	Mont Assoc of Counties	411		
Robert J. Slomski	self	376, 375, 414		
F. L. Risdahl	Self	375, 376	✓	
Laurie M. Risdahl	self	375, 376	✓	
Linda T. Salmonsson	self	375, 376	✓	411 ✓
Susan Cottingham	Mt Chpt ACLU			✓
Nancy Adams	Mental Health Serv	375, 376, 414		
Donald L. Harr	Mental Health Center	375, 376, 414	✓	
John Lynn	Mental Health Center	375, 376, 414	✓	
Bob Raundal	Conservator For Mental Health Assn	414	✓	
Jim Schwind	Self	375	✓	

(Please leave prepared statement with Secretary)

Submit to Senate Judiciary re

SB 375
376
414

(1) two complete transcriptions from the Sept 5th & Nov 28 State-wide meetings discussing needed changes in present commitment laws + need for conservatorships.

(2) Original Question sent to 208 professional involved w/seriously mentally ill & final report

(3) 26 letters from Parents of mentally ill adults and misc. professionals expressing concerns

(4) Committee list appointed by Montana Council of Regional Mental Health Boards, Inc.

Nancy Adams
24 E. 6th St
Helena
443-1048
443-0194

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

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Judge Robert Boyd
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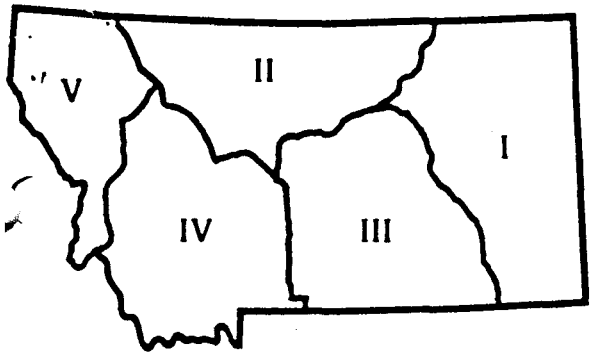
SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414



Montana Council of Regional Mental Health Boards, Inc.

October 29, 1984

Dear Citizen:

The public meeting with Senator Towe, concerning Montana's Commitment Law held in Helena on September 5, 1984, was very well attended by concerned citizens. It was decided at that time, to hold another meeting with Senator Towe since time did not permit in depth discussion of the many issues raised. This meeting will be held at the State Capitol Building, Room 104, at 1:30 pm., on November 28, 1984.

The meeting on September 5th was a follow-up to a survey sent to 208 people; including psychiatrists, county attorneys, district judges, sheriffs, adult protective services, mental health professionals, consumer representatives and other people directly involved in the process of committing seriously mentally ill adults to Montana State Hospital, Warm Springs. The survey indicated dissatisfaction with the "seriously mentally ill" definition, "imminent threat" clause, and a desire for a "gravely disabled" clause.

Comments focused on the frustrations and fears of professionals and parents in "committing" an adult before too much personal and community harm is done, and wanting some leverage to protect the "non-compliant" mentally ill adult once he or she is released from the state hospital.

If you cannot attend this meeting but wish to submit written comments, mail them to Nancy Adams, 422 North Main, Helena, Montana 59601, and they will be presented at the meeting.

Sincerely,

John Nesbo
Chairman

JN/kkr
33/605

REGION I — EASTERN
819 Main Street
iles City MT 59301
32-0234)

REGION II — NORTH CENTRAL
2307 Eleventh Avenue South
Great Falls, MT 59403
(727-2991)

REGION III — SOUTH CENTRAL
1245 North 29th Street
Billings MT 59101
(252-5658)

REGION IV — SOUTHWEST
801 North Last Chance Gulch
Helena MT 59601
(442-0310)

REGION V — WESTERN
Fort Missoula T-12
Missoula MT 59801
(543-5177)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

COMMITMENT LAW QUESTIONNAIRE

RESPONDENTS COMMENTS

Attached are positive and negative comments written by the various respondents to the Montana State Commitment Law Questionnaire circulated by the Montana Council of Regional Mental Health Boards, Inc.

Of the 208 statewide mailout to psychiatrists, county attorneys, district judges, sheriffs, adult protective services, community mental health professionals, and other people directly involved with the commitment process, there was a total of 138 returns.

As indicated on the returns, the first three questions elicited the greatest responses recommending change; whereas, the last two questions received less comment.

* * * * * * *

Question #1: Do you feel the "seriously mentally ill" definition needs revision? (53-21-102(14) & 53-21-126(4), MCA)

67% responded yes.

Question #2: Do you feel the "imminent threat" clause is too restrictive and needs to be redefined? (53-21-126(2), MCA)

74% responded yes.

Question #3: Do you feel our law needs a "gravely disabled" clause such as the State of Washington or other states have to protect people who cannot function independently in the community and are manifesting severe deterioration in routine functioning because of a serious mental impairment?

84% responded yes.

Question #4: Many states have shorter and more graduated "commitment" periods. Because of increasing availability of other treatment facilities in the state, sometimes it may be more practical and beneficial to the person to be involuntarily committed for only a 14 day period to a local psychiatric unit, and in that time they may reconstitute. Do you feel our commitment periods should be changed?

52% responded yes.

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Question #5: Do you feel it would be of more value to funnel all "voluntary admissions," emergency detentions and civil involuntary admissions to Montana State Hospital through a "Community Mental Health Center" screening process?

38% responded yes.

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Psychiatrists, adult protective services workers and mental health professionals were each in the 90th percentile on wanting a "gravely disabled" clause legislated, and were also in the highest percentile in recommending redefinition of the "imminent threat" clause.

* * * * * * *

Following are some of the comments from the various respondents.

Question #1 - "Seriously Mentally Ill" definition

EXCERPT FROM REPORT OF THE COMMITTEE ON MENTAL HEALTH, 37th INTERIM MEETING, MONTANA PSYCHIATRIC ASSOCIATION, APRIL 6-7, 1984: "Of special concern to the committee at this time is the present status of the state mental health civil commitment statute. As it stands now, people may be involuntarily committed to a hospital for psychiatric treatment if, by reason of mental illness, they represent an imminent danger to themselves or others. Many persons, frequently those afflicted with manic disorders, are terribly destructive of property and financial resources, and yet are difficult, if not impossible, to temporarily commit for treatment under the present statute. This takes an incalculable toll on the financial and emotional well-being of families and loved ones of those so afflicted. The Montana Psychiatric Association has decided to at least explore the possibility that present commitment law can be broadened to include those destructive of property and financial resources. This might include the introduction of legislation in the next session of the legislature to amend the present law. The Montana Psychiatric Association seeks the support of the Montana Medical Association in this matter."

Should include some provision for competency to decide for or against treatment.

People not meeting the definition of seriously mentally ill; such as, accutely manic patients, often inflict considerable emotional hardship on their families during such times and they may lose family, job or savings. If they do eventually manifest behavior that would make them commitable or can be persuaded to enter treatment voluntarily, often their hospitalization and treatment are a great deal more expensive and prolonged because they have gone weeks or months in an accutely psychotic state before allowing proper medical care.

"Deprived . . . of ability to protect his . . . health" (section of the law) needs expansion to include losses of judgment in severe psychosis.

Should more clearly emphasize the deprivation of ability to protect one's life or health. The requirement of showing physical injury fails to take into account those cases involving inability to handle day-to-day affairs.

The term "mental disorder" needs to be clarified as to what it includes. Could a chronic sex offender be classified as seriously mentally ill under the present definition?

Definition should reflect shift from emphasis on injury to ability to function in society.

Too restrictive -- people ask why do we have to wait until something happens to someone before proceedings can take place?

Present definition has not carried problems.

It appears too easy to determine such illness as a result of attempted suicide.

The Supreme Court has too strongly limited the application to the present law.

It should incorporate as part of its definition something similar to the "gravely disabled" clause.

Eliminate requirement of an injury or threat thereof; substitute the psychiatric testimony that the mental illness requires confinement to treat effectively.

I feel very strongly that this (revision of definition) is long overdue.

This presently precludes prewriting treatment to many who are treatable but non-violent.

It is too restrictive to have any practical meaning and generally makes a farce of the whole Mental Disease section.

We need to simplify, rewrite and reorganize the entire law.

I don't feel they have to be harmful to themselves or others to be classified (as seriously mentally ill).

See 53-21-129, MCA. These section should be more compatible.

"In danger to themselves or others" isn't working.

Should go beyond physical injury -- include harassment of others.

It is too restrictive. By the time physical harm occurs, it is often life-threatening. It is then too late.

Not all who need treatment are seriously mentally ill.

In our area, "seriously mentally ill" in implementation means only suicide attempts or homocide attempts. It doesn't seem to apply to other serious behaviors.

I have seen cases where a person may be both mentally ill and senile, but because of the senility, wasn't commitable. I would think the senility factor combined with mental illness could create a serious mental illness that may be more appropriately treated in a mental health facility rather than a geriatric setting.

"Senile" needs to be replaced -- this word has no medical meaning. Consider "dementia" as a base for commitment.

If interpreted to the letter, it leaves some very seriously mentally ill people in jeopardy.

It presently implies only the institutional population.

The "seriously mentally ill" definition should include a category for those who are incapable of caring for themselves because of emotional problems.

Physical injury is too limited; implies wait until drastic, when some clients need protection before that.

"Protect his life or health" allows severe deterioration before treatment is given.

This has been no problem for me -- as long as serious depression is defined as mentally ill and as long as ordinary people who are just mean, nasty and brutal are not defined as mentally ill.

Injury should include psychological, not only physical.

When the Montana law was passed, it was in accordance with the U.S. Supreme Court decision. It still is.

The present definition is as clear and concise a definition as you could have.

It should be limited to people who have committed crimes.

Question #2 - "Imminent threat" clause

"Professional person" should be changed to "Mental Health Professional."

How about replacing "imminent threat" with "substantial likelihood" or "probability" or some such wording?

Suggest instead "a potential threat to others because of active serious mental illness."

Person may be a significant suicide or assault risk without provable imminency.

Needs redefinition to clearly explain what "unable to care for self" means.

Substantially verified verbal threats need inclusion in addition to "overt acts."

Quite often the patient's own statements and acts lead their family members and friends to believe that they are considering self-inflicted injury or injury to others, and these acts should be admissible as evidence upon which to base a commitment.

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Not necessarily too restrictive, but should have different focus than injury or threat of injury.

What is "imminent" to one person is not to another. Does "imminent" mean that a person must be holding an ax over another's head, or that there is a strong likelihood he will harm another?

"Overt act" requirement goes too far.

"Overt act" needs to be defined to include verbal threats.

A person can be totally disoriented and unable to make rational decisions, yet still not fit under the imminent threat clause.

By the time it's "imminent," it's often too late.

It presents real proof problems in the courtroom and is too vague.

The required act may also have involved a life-threatening situation. Prevention should be the theme in this act, not overt acts.

It is the worst part of the present law.

It places those in the helping profession in a position of playing a waiting game before action can be taken.

A mentally ill person should be able to get help before becoming an "imminent threat."

This clause seems to be ignored and most cases require proof of something that already happened.

Prevents timely intervention and people fall through the cracks.

What of people who cannot take care of themselves without assistance?

Past history needs to be taken into account.

"Imminent" is very hard to define in regard to how dangerous an individual is to self and others.

"Imminent" seems to apply to "within the next few minutes."

Include "reasonable certainty."

"Gravely disabled" would be better -- some clients need only meds to balance out again.

Needs to be broadened to include statements made as to intention and means to carry out such intentions.

Is a "threat" to harm somebody or themselves considered an "overt act?" If not, we're all in big trouble.

Change the burden of proof from "beyond a reasonable doubt" to a "preponderance of the evidence."

The basic problem here is who can predict when a person will become violent or a threat to self or others? No psychiatrist can. No psychologist can. No one can.

"Imminent threat" has been interpreted to be verbal threats and people have been committed on that basis.

"Threat of danger to self or others" would make this clause less restrictive.

Many feel "imminent threat" is too lenient and should be limited to actual harm.

The clause should not even be included. A person should be a criminal before commitment.

At least "substantial mental deterioration" should be included.

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Question #3 - "Gravely Disabled" clause

Very much needed. We need to revise the law in the direction of recognizing illness and dependency which can be helped by treatment. Mental illness is not primarily of concern to the State because of the threat to others. It is of concern because of the dependency, incapacity and loss of judgment it causes.

Especially for the elderly.

Most definite gap in present law.

I think present law requires people to deteriorate too far before intervention is allowed.

No. I think this area is covered by the statutes on incapacity.

Not without defining "mental disorder," which would have to be done like 53-21-102(14), MCA, or an equivalent.

Many people in this category who will not properly feed themselves or take medication.

I would think guardianship proceedings would suffice.

If this would help us deal with the "revolving door" type of patient.

"Gravely disabled" could encompass quadrapalegic, polio victims, etc.

Definitely needed. We now have no mechanism for treatment when individual refuses but is not an imminent threat.

Yes, but somehow without tampering the right of choice lifestyle.

Washington State clause fills gap which currently exists in our statute, especially part "b" of 71.05.020.

Having worked five years in Spokane, Washington, I know this (Washington State clause for "gravely disabled") to be superior law.

Being deprived of their ability to "protect life or health" is being used for this purpose already. I personally have had no difficulty with the status quo, but have heard of others who have.

At present, these patients are being poorly dealt with under the "imminent threat" clause.

This applies to many chronically mentally ill and would be helpful in getting help for these people.

Many of these kinds of persons are unable to exercise powers of choice and responsibility; they are in need of treatment, often against their will.

Needs to be very specifically defined.

One would need to define the level of independent functioning.

Only if law for commitment standard is not revised.

We have neglected to legally protect those who cannot make rational decisions for help.

People who need treatment but are not dangerous should be forced into treatment.

Would meet the needs of the majority of cases far better.

I belive the first three items must of necessity be the result of a trade off between treatment realities and civil rights realities. The resulting difficulties from either point of view may be the price we pay for valuing each.

I understand on reliable authority that this clause has caused many problems and much unfair treatment in California.

Definition should clearly state that condition is the result of a serious mental disorder.

It would probably be unconstitutional in Montana.

We need to go slowly, or we may be back where we were seven years ago with many people in Montana State Hospital.

Question #4 - Graduated Commitment periods

The 90 day commitment can be to any facility, even outpatient, and can be terminated whenever appropriate by medical discharge.

Yes, shorter commitment periods may be all that's necessary. Also, local intensive treatment is always preferrable where possible.

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A treating psychiatrist can under the present law discharge a patient before the 90 day limit.

The current commitment periods are maximums, not minimums.

It should be longer -- not shorter.

Yes, but only if other facilities are available.

More discretion vested in county attorneys and court to prolong commitment unilaterally.

I believe some cases could be handled in this manner, especially those that merely require occasional stabilization on some psychotropic medication.

The commitment time should be flexible to conform with anticipated minimum treatment.

They should be made for 30 days.

I'm not sure how that would affect the rural areas of the state where there are no such services. It is usually my experience that people have been released before they are ready to live independently vs. finding that a commitment was too long.

Sometimes longer periods are needed to stabilize a person.

Yes. Especially if a gravely disabled clause is incorporated in the law.

No. Two weeks is usually not long enough for a good evaluation and treatment program.

The law should hinge on availability.

Medical guardianship for some would solve the problem -- could be in local community.

Yes, our present system fosters the revolving door syndrome and is not taking into account those people who reconstitute in a short period of time.

What's wrong with the 72 hours? Not everyone needs 14 days. I think the law could be reworded, but see no point in doing so until or unless other facilities are actually in place and prepared to take people who cannot pay.

Commitment to local inpatient psychiatric hospital would help greatly.

Other treatment facilities are simply not available in most rural areas of the state.

Recommend selected commitment to alternative placement.

How would hospitals handle additional clients unable to pay?

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Question #5 - Funneling voluntary admissions, emergency detentions, and civil involuntary admissions to Montana State Hospital through CMHC's screening process.

There was evidence of legal problems and conflicts in requiring such admissions to be made through the community mental health centers' screening process. In addition, the question seems to be misunderstood. It needs to be redefined with examples given as to how such a screening process would work. In some states, the "screening process" takes place via an informal telephone process, and does not require a complicated method.

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DATE 022085
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MONTANA STATE COMMITMENT LAW QUESTIONNAIRE

FINAL REPORT - July 31, 1984

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 02-2085
BILL NO. SBs 375, 376, 414

	PSYCHIATRISTS			COUNTY ATTORNEYS			DISTRICT JUDGES			SHERIFFS			ADULT PROTECTIVE SERVICES			COMMUNITY MENTAL HEALTH PROFESSIONALS			MENTAL HEALTH ASSOCIATION AND OTHERS			TOTAL		
	YES	NO	?	YES	NO	?	YES	NO	?	YES	NO	?	YES	NO	?	YES	NO	?	YES	NO	?	YES	NO	?
I Do you feel the "seriously mentally ill" definition needs revision? (MCA 53-21-102(14) & MCA 53-21-126(4)	10	4	0	17	8	1	7	5	0	9	3	0	7	3	1	39	13	4	3	3	1	92	39	7
	71%	29%	0	65%	30%	5%	58%	42%	0	75%	25%	0	64%	26%	10%	70%	23%	7%	43%	43%	14%	67%	28%	5%
II Do you feel the "imminent threat" clause is too restrictive and needs to be redefined? (MCA 53-21-126(2)	11	3	0	17	7	2	7	5	0	9	3	0	9	1	1	46	9	1	3	4	0	102	32	4
	79%	21%	0	65%	27%	9%	58%	42%	0	75%	25%	0	80%	10%	10%	82%	16%	2%	43%	57%	0	74%	23%	3%
III Do you feel our law needs a "gravely disabled" clause such as the State of Washington or other states have to protect people who cannot function independently in the community and are manifesting severe deterioration in routine functioning because of a serious mental impairment?	13	0	1	19	6	1	10	2	0	10	2	0	10	1	0	52	2	2	1	4	2	115	17	6
	93%	0	7%	73%	23%	4%	83%	17%	0	83%	17%	0	90%	10%	0%	92%	4%	4%	14%	57%	29%	84%	12%	4%
IV Many states have shorter and more graduated "commitment" periods. Because of increasing availability of other treatment facilities in the state, sometimes it may be more practical and beneficial to the person to be involuntarily committed for only a "14" day period to a local psychiatric unit, and in that time period they may reconstitute. Do you feel our commitment periods should be changed?	6	8	0	16	10	0	6	6	0	7	3	2	7	2	2	26	26	4	4	1	2	72	56	10
	43%	57%	0	62%	38%	0	50%	50%	0	58%	25%	17%	64%	18%	18%	46%	46%	8%	57%	14%	29%	52%	41%	7%
V Do you feel it would be of more value to funnel all "voluntary admissions," emergency detentions, and civil involuntaries to Montana State Hospital through a "Community Mental Health Center" screening process?	3	11	0	13	10	3	4	5	3	4	8	0	3	6	2	21	30	5	4	1	2	52	71	15
	21%	79%	0	50%	38%	12%	33%	42%	25%	33%	67%	0	27%	55%	18%	37%	54%	9%	57%	14%	29%	38%	51%	11%
	31 mailouts 14 returns			56 mailouts 26 returns			32 mailouts 12 returns			56 mailouts 12 returns			24 mailouts 11 returns			56 returns			9 mailouts 7 returns			208 mailouts *82 returns *Excludes 56 MHC Professionals		

S2/55,55A,56,56A 57,57A
7/31/84

December 13, 1984

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

Senator Tom Towe & The
Commitment Law Committee
c/o Nancy Adams
422 North Main
Helena, Montana 59601

ITTEE

Dear Committee:

I'm sorry I cannot attend the committee meeting in Billings, but hope to convey my on-going interest and suggestions in the form of this letter.

With regard to the three priority areas established in the November 28 Helena meeting, I have the following comments:

1. Defining a "person in need of treatment" seems to be a difficult and unnecessary task. If the "gravely disabled" clause of the current law were clearly spelled out and written directly in the law, there would be no need for an intermediate half-step. The language of the Montana Supreme Court in the R.T. decision could be used to clarify the meaning of gravely disabled.

2. During the first "commitment law" meeting in Helena on September 5, Judge Bennet made some interesting statements regarding the commitment process. While he did not support any liberalization in this law, I understood him to say that the issue of follow-up in the community should not be difficult once the individual had been adjudicated. Judge Bennet seemed to be saying that a judge could order on-going medication in the community after discharge from the hospital. I would certainly like to see this explored and clearly stated in the law since medication compliance in the community is the critical issue with the chronic "revolving door" patient.

   While the six month conditional release is helpful in requiring treatment for that period, patients often discontinue their medication as soon as the conditional release expires. If this period could be extended based on the individual's history and

225 West Front Street • Missoula, Montana 59802 • (406) 728-0239
A program of Western Montana Regional Community Mental Health Center

likelihood of decompensating, rather than waiting until the decompensation occurs and the strict criteria for the "seriously mentally ill" definition are met, rehospitalization could be greatly reduced.

3. I certainly appreciate the need for mechanisms to provide conservators for those individuals unable to handle their own funds and recommend study of the models operational in California and Massechusetts.

I hope these suggestions will be considered and again express my interest in the work of this committee.

Sincerely,

John Lynn

John Lynn
Regional Aftercare Coordinator
Region V

JL:ly

cc: Dr. Jay Palmatier
Clinical Director
Region V

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
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SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

November 18, 1984

Nancy Adams
422 North Main
Helena, Mt. 59601

Just a year ago I had my wife committed to Warm Springs for treatment of a paranoid, schizophrenic condition that was rapidly becoming worse. Making that decision was one of the most agonizing I've ever had to make, but after urging by my doctor, and several interviews with the mental health people in Kalispell, I finally signed the papers. I was sssured that she would be treated with the utmost consideration, and though she would have to be jailed pending the hearing, she would have a comfortable place and be well treated.

To begin with the two deputies who picked her up while I was gone, weren't considerate enough to have her take some night clothes and a jacket. Instead they thrust her into the car dressed just as she was in slacks and short sleeved blouse.

I was totally unprepared for the deploriable conditons I found when I went to see her the next day. I was angered, shocked and so thoroughly disgusted that I actually felt sick.

She was housed in a dingy cell that offered no privacy, a toilet that wasn't working, no reasonable lavatory facility, and for a bed, a barren bench suspended from the wall that can best be described as a torture rack, especially for an older patient suffering with arthritis. It was like something out of the dark ages. These patients are not criminals and should not be treated as such. They need our help and sympathy, not humiliating degradaton and torture.

I was told at the interviews that she would be confined only a couple of days during which time the hearing would be held. But one delay after nother stretched that out for over a week. The damage done to the patient is incalculableShe is now bitter and resentful and shuns contact with people. Certainly had I had the least inkling of what she would be subjected to I never would have committed her.

Flathead Regional Hospital has a safe room but it is not used because a guard must be posted. For the life of me I cannot see why this is not done. Certainly it would cost, but isn't the welfare, health and human dignity of the patients worth it? It seems we can find money for all manner of other things. In this enlightened age how can these miserable conditions be allowed to go on and on? How can we be so uncaring and calloused?

About ten days after she was committed I got a letter from her and was surprised by the clarity. She seemed her old self. Warm Springs whould have released her then, at least on a trial basis. All she needed was to get back on the drug she had stopped taking. They did let her come home for the Christmas holiday period. I found her completely well and moved to have her released. I found that they were determined to keep her the full three months. Only when I declared that I would not pay anymore did they release her. Since we own our property and have a modest reserve, I was not eligible for reduced rate. The two months cost me over seven thousand dollars, none covered by Blue Cross, also something I do not understand.

This was an expense that cut deeply into our reserve. I could not afford much more such expense without endangering all that we worked a lifetime for.

I'm grateful that my wife has thoroughly recovered, and pray that she stays on her medication and continues in good mental health.

Frank E. Uhlir

Frank E. Uhlir
Box 157
Martin City, Mt.
59926

Phone 387-5357

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

Denzil R. Young
P. O. Box 620
BAKER, MONTANA - 59313
FALLON COUNTY ATTORNEY
AREA CODE 406
TELEPHONE NO. 778-2406

November 7 1984

John Nesbo, Chairman
Montana Counsel of Regional
Mental Health Boards, Inc.
P.O. Box 3048
Great Falls, Montana 59403

Dear Mr. Nesbo:

Thank you for your October 29 letter. Something needs to be done to make the commitment laws workable. I think 99% of the District Judges in the State, when the Towe Bill passed, simply stated categorically that they would never commit anyone under that law. It was an impossible piece of legislation.

Of course, the Judges couldn't carry through on this attitude. Things simply have to be done when people are gravely mentally ill. But in a situation where I have recently committed a middle aged woman, while she was obviously in a terribly mentally ill state, I am sure it required a long leap for the psychologist to evaluate her as being a threat to herself or to someone else. She refused to cooperate in an evaluation, ergo the psychologist (professional person) simply had to go on other evidence, other people's statements as to her antics, and the Judge then wanted to commit her for indepth evaluation but Warm Springs refused to treat her unless she was committed for "treatment". And so the Judge did what had to be done and committed her for such treatment. This in spite of the fact that she had never had her commitment hearing. But the attorney for the Dept. of Institutions assured me that this is what has been done in other jurisdictions, the probable cause hearing, in the absence of cooperation by the mentally ill person, was simply converted to a commitment hearing.

Only Probable Cause hearing

But this damned law requires the professional person to stick his neck out, then requires the Judge to stick his neck out, and defense counsel of course is always subject the same criticism and possible malpractice accusation or liability, as are the others, because of the terribly unworkable state of the law as a result of Senator Towe's Bill. In my opinion this bill requires everybody to stick

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his neck out and face possible jeopardy in order to get help to the person who needs help.

Obviously, from your October 29 letter, this has been the tenor of the comment from the professionals, parents, county attorneys, judges etc. I want to add my feather-weight to this volume of testimony against the Towe Bill.

I would like to be able to attend the November 28 meeting, but at present am scheduled to attend a National District Attorneys Association meeting in San Antonio, Texas over that time frame so will be unable to attend.

Very truly yours,

DRY/ih

Denzil R. Young
Attorney at Law

P.S.: I might add that the last person we sent to Warm Springs because it was difficult to contrive threats against herself or anyone else from her warped mentality, is now under going treatment. However, the staff at Warm Springs is critical of us for having waited so long to get her there. They say she is so deeply paranoid that they don't know if they will ever be able to bring her back out of this mental state.

Well, this is one of the problems with the Towe law. We have to wait so long before we can make a viable case to commit someone that the damage done them by such a wait may well be irreparable. This woman has been for years suffering from serious mental illness, however to make out a case under which she could be committed, we had to wait for years until she got so sick that now perhaps she will never be restored to normal. Simply further proof of the work that needs to be done on this commitment bill.

DRY

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

Hill County Welfare Dept.

406/265-4348

321 Fourth Street
Havre, Montana 59501

November 21, 1984

Nancy Adams
422 N. Main
Helena, MT 59601

RE: John Nesbo - Chairman Montana Council of Regional
Mental Health Boards Letter of 10-29-84

Dear Nancy:

As an adult protective service worker, I wish to comment on the issues mentioned in the letter dated 10-29-84.

I agree with the people who complained about too strict a definition for committment. Many mentally ill people are very dysfunctional and act in appropriately but not a danger to themselves or others. They are often known as the town "pests" or "screwballs" which is degrading both to them, and their families. We here in the Welfare Department are frequently asked, "Can't you do something about this person?" Then they relate some incident or series of incidents. Since many do not recognize themselves as having a problem they frequently don't take the medications prescribed and which often keep them functioning in a reasonable manner. The longer they're off the medicine, the worse they get and are often hospitalized to be put back on an even keel and the cycle repeats itself. If they could be committed until therapy, counseling and medications get them functioning in a reasonable, acceptable manner, everyone would be better off. BUT, they also need a consistent follow-up program by the local Mental Health facilities to see if they are taking their medications properly, taking care of themselves, and surroundings brought into some suitable activity or job. I feel the recidivism rate is high because of poor or no follow-up.

There should be more mental health Group Homes or semi-independent living arrangements with supervision. They are often asked to move from whatever living arrangement they are in because of their behavior or unacceptable habits. You eventually run out of places to refer them to. Families find it difficult to have them in their home and they come to us to find them a place with all the resulting problems that go with independent living by people unable to cope.

SENATE JUDICIARY COMMITTEE
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DATE 022085
BILL NO. SBs 375, 376, 414

I also feel there should be more public information disseminated on the effects of nutrition on mentally ill individuals. There have been many studies, tests, and breakthroughs in this field. They have proven how the chemical breakdown of various foodstuffs affect the brain and nervous system either adversly or beneficially. Perhaps the medical profession could use some brushups in this area also.

To recap, I realize an individuals' rights have to be protected, but the law has leaned too far in that direction, often to the detriment of the patient, families, friends, and the general public. We don't want to warehouse these people in an institution but make concerted efforts to use the latest treatment modalties and supervision where indicated so they can once again become useful or at least acceptable members of society.

Sincerely,

HILL COUNTY DEPT.
OF PUBLIC WELFARE

(Miss) Nancy Neibauer, Director

Dorothy Flint sp

Dorothy Flint
Social Worker II

DF/sp

CC: Ron Smith

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

Mrs. David L. Jann
303 Edgewood Dr.
Kalispell, Mt. 59901
Nove. 24, 1984

Nancy Adams
422 North Main
Helena Mont. 59601

To Whom It May Concern

The present committment laws in Montana are inadaquate as many seriously ill and chronic mental patients are being untreated and abandoned People who cannot function independently and show severe detioration in routine functioning because of serious mental impairment should have the right to be treated. Presently both mental health and the law appear helpless unless the person is proved suicidal or homicidal. Furthermore after care is virtually non existant and our mentally ill either follow an endless "revolving door " or "fall through the cracks", which result in their living in the streets, being victims of the unscrupulous, and a burden to their families, society and themselves. For these reasons a "gravely disabled " clause should be added to our laws and enforced.

This does not mean that in any way that a person should be wrongfully institutionalized or deprived of his rights because the law as it stands, requires each individual case to be reviewed.

Yours sincerely,

Mrs. David L. Jann

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375,376,414

3420 Airport Rd.

Kalispell, Mt. 59901

Nov. 24,1984

Nancy Adams
422 North Main
Helena Mont. 59601

Dear Mrs. Adams,

I feel that the present committment laws in Montana are inadaquate to treat the seriously mentally ill who cannot function and suffer from severe detioration. A gravely disabled clause should be added because:-

I have a close relative who is mentally ill and refuses treatment. My cousin has lost family, home, job and lives in a dive like bum. Sick people should be treated.

Yours sincerely

Ber Bernonne

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375,376,414

3420 Airport Rd.

Kal. 59901 Nov.24

To Nancy Adams
422 North Main
Helena ,Mont. 59601

Dear Mrs. Adams,

I feel that Montana Committment Laws should have an addittional clause, similar to that of Washington so that the mentally ill who are seriously disabled also have the right to be treated for their terrible ailment, instead of having to wait for the time when they are homicidal or suicidal. When a person is so deranged and ill as to be unable to care for themselves, make decisions, are in dire straits they are gravely disabled and need treatment. Not jail, not the streets, not some hole to hide in but tender, loving care. Now that mental hospitals have been reformed and there are so many new medications even for the most severely disturbed let them be made available to those most in need. Furthermore,after patients are treated they should be have suitable after care and not be left to their own resources and the inevitable round of madness and hospital or jail.

This does not mean that any one should be imprisoned or wrongfully sentenced to any institution or that society should return to the era of the snake pit.

Sincerely Yours,

Georche Campbell

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 374, 414

Lucy and Bob Roberts
2815 Duncan Dr.
Missoula, MT. 59802

Nov. 24, 1984

Nancy Adams
422 North Main
Helena Mont. 59601

Dear Mrs. Adams,

I feel that the present committment laws in Montana are inadaquate to treat the seriously mentally ill Who cannot function and suffer from severe detioration. A gravely disabled clause should be added because:-

Psychiatric help should be provided for persons who manifest severe deterioration in routine functioning evidenced by··· repeated and escalating loss of cognitive or volitional control over their actions and are not receiving such care as is essential for their health and safety.

Yours sincerely

Lucy M. Roberts

Lucy M. Roberts

Copy to:
Mr. Bob Ream
State Representative
M 5950 Wildcat Drive
Missoula, Mt. 59802.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

1420 4th St W
Kalispell, Mt 59901
Nov. 20, 1984

Nancy Adams
422 North Main
Helena Mont. 59601

To Whom It May Concern

The present committment laws in Montana are inadaquate as many seriously ill and chronic mental patients are being untreated and abandoned People who cannot function independently and show severe detioration in routine functioning because of serious mental impairment should have the right to be treated. Presently both mental health and the law appear helpless unless the person is proved suicidal or homicidal. Furthermore after care is virtually non existant and our mentally ill either follow an endless "revolving door " or "fall through the cracks", which result in their living in the streets, being victims of the unscrupulous, and a burden to their families, society and themselves. For these reasons a "gravely disabled " clause should be added to our laws and enforced.

This does not mean that in any way that a person should be wrongfully institutionalized or deprived of his rights because the law as it stands, requires each individual case to be reviewed.

Yours sincerely

Jo Nadeau

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

Lorraine Burdrock
6710 Hawaii Kai Dr.
Honolulu, HI 96825

Nancy Adams
422 North Main
Helena Mont. 59601

To Whom It May Concern

The present committment laws in Montana are inadaquate as many seriously ill and chronic mental patients are being untreated and abandoned People who cannot function independently and show severe detioration in routine functioning because of serious mental impairment should have the right to be treated. Presently both mental health and the law appear helpless unless the person is proved suicidal or homicidal. Furthermore after care is virtually non existant and our mentally ill either follow an endless "revolving door " or "fall through the cracks", which result in their living in the streets, being victims of the unscrupulous, and a burden to their families, society and themselves. For these reasons a "gravely disabled " clause should be added to our laws and enforced.

This does not mean that in any way that a person should be wrongfully institutionalized or deprived of his rights because the law as it stands, requires each individual case to be reviewed.

Yours sincerely
Lorraine Burdrock

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375,376,414

1321 S. Fifth
Bozeman, MT. 59715
Nov. 20, 1984

Nancy Adams
422 North Main
Helena Mont. 59601

To Whom It May Concern

The present committment laws in Montana are inadaquate as many seriously ill and chronic mental patients are being untreated and abandoned People who cannot function independently and show severe detioration in routine functioning because of serious mental impairment should have the right to be treated. Presently both mental health and the law appear helpless unless the person is proved suicidal or homicidal. Furthermore after care is virtually non existant and our mentally ill either follow an endless "revolving door " or "fall through the cracks", which result in their living in the streets, being victims of the unscrupulous, and a burden to their families, society and themselves. For these reasons a "gravely disabled " clause should be added to our laws and enforced.

This does not mean that in any way that a person should be wrongfully institutionalized or deprived of his rights because the law as it stands, requires each individual case to be reviewed.

Yours sincerely

Doren Bucklock

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

December 20, 1984
3116 Dyer
Las Cruces, N.M. 88001

Nancy Adams
422 North Main
Helena Mont. 59601

To Whom It May Concern

The present committment laws in Montana are inadaquate as many seriously ill and chronic mental patients are being untreated and abandoned People who cannot function independently and show severe detioration in routine functioning because of serious mental impairment should have the right to be treated. Presently both mental health and the law appear helpless unless the person is proved suicidal or homicidal. Furthermore after care is virtually non existant and our mentally ill either follow an endless "revolving door " or "fall through the cracks", which result in their living in the streets, being victims of the unscrupulous, and a burden to their families, society and themselves. For these reasons a "gravely disabled " clause should be added to our laws and enforced.

This does not mean that in any way that a person should be wrongfully institutionalized or deprived of his rights because the law as it stands, requires each individual case to be reviewed.

Yours sincerely
Ed + Rose Mooney

My mother sends this letter with my permission.

SENATE JUDICIARY COMMITTEE
EXH'B'T NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

RAVALLI COUNTY
DEPARTMENT OF PUBLIC WELFARE
COURTHOUSE BOX 5020
HAMILTON, MONTANA
59840
363-1944

November 14, 1984

Nancy Adams
422 North Main St.
Helena, Montana 59601

Re: Public Meeting on Montana Commitment Law

Dear Nancy,

I am writing in response to John Nesbo's recent letter on the Commitment Law. I understand that you will present written opinions at the coming meeting to be held on November 28th.

I agree very much with the results of the Montana Survey which voiced the need for a "gravely disabled" clause. Not only do communities suffer from the damage a mentally ill person creates before they are "committable", but the ill client suffers unnecessarily also. In several cases in Ravalli County, we end up playing a "waiting game" where various professionals working with the client must wait for a suicide attempt or an assault on another person before the client is committed, even for an evaluation. This is destructive to the client most of all, and in my opinion, is negligent on the part of the "system" which is trying to protect everyone's rights.

Please permit me to go further and describe the frustrations we encounter after a client is finally determined to be "seriously mentally ill" and is committed:

The client goes to St. Patrick's Hospital or Warm Springs, where they are evaluated and usually are put on psychotropic medications. The client becomes acclimated to the structure of the hospital and his/her behavior becomes manageable. The client is then often released back into the community with no advance notice and the client arrives with no place to live, no income, etc. In many cases the client never starts Mental Health counseling and no outreach is done because the Mental Health Center can't "force" services on people. Usually within a month the client stops taking their medication and before long, begins having behavior problems. We then begin waiting for the problems to escalate to the point where commitment can again occur.

I wonder why Montana can't have a "gravely disabled" clause, where a person can be forced to cooperate with treatment before the suicide attempt or the assault occurs. I also wonder why clients can't be released from Warm Springs upon a contingentcy plan where they must work with Mental Health, or Welfare, or Public Health; regarding self care and compliance with treatment plans. It seems more cruel to me to release a person who has a chronic mental disease from the security of the institution, into a community with no support structure that has the power to make sure a person can care for themselves.

We have the power to establish treatment plans for parents who are unable to care for their children. However, we can't seem to establish the same protection for a person who is too sick to care for his or her self.

Thank you.

Sincerely,

Mary Rowe

Mary Rowe
Social Worker II

MR/ll

Carole A. Graham,
County Director II

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

EIGHTEENTH JUDICIAL DISTRICT

JOSEPH B. GARY
DISTRICT JUDGE

LAURIE HILL
COURT REPORTER

November 2, 1984

Ms. Nancy Adams
422 North Main
Helena, Montana 59601

Dear Ms. Adams:

I am in receipt of a letter from Mr. Nesbor, Chairman of the Montana Council of Regional Mental Health Boards, Inc., concerning Montana's committment laws on the mentally ill. I would like to make some comments and observations.

I was a Deputy County Attorney under the old law that only required the certificate of two physicians, neither of which had to be a psychiatrist or psychologist. Frankly, it was a very easy way to send someone to a mental institution. At the order of a District Judge who dod not worry about constitutional law, we attempted to commit a woman who had not even been served with a summons. Being a young attorney without much experience, I was willing to follow the judge's orders, but I had a secretary who knew more constitutional law than I did and she refused to type up the papers. Therefore, we were saved from grievous error by the intelligence of our secretary.

I have been a judge now for almost six years, and I feel that the present law is a great improvement, and guarantees constitutional safeguards that were very missing in the previous law. I have interpreted 53-21-126, MCA, by reason of subparagraph 4(b), that the findings do not have to show self-inflicted injury, injuries to others, or the immenience thereof, before committment, and that if I found that the mental illness has "deprived a person afflicted of the ability to protect his life or health" that this is sufficient for a committment. I therefore believe we do not need a weakening of the safeguards that are now in existence.

SENATE JUDICIARY COMMITTEE
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PHONE: (406) 587-0505 • 615 So. 16th • LAW & JUSTICE CENTER • BOZEMAN, MONTANA 59715

With regard to modifications of the law for releasing patients, this should in my opinion, be handled by the professionals in that field. However, I would reiterate that I do not feel we should consider tampering with the requirements for committment.

Very truly yours,

Joseph B. Gary
District Judge

JBG:sa

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBS 375, 376, 414

INTERNAL MEDICINE
F. J. ALLAIRE, M.D.
D. E. ANDERSON, M.D.
R. D. BLEVINS, M.D.
PULMONARY DISEASE
G. A. BUFFINGTON, M.D.
NEPHROLOGY
S. J. EFFERTZ, M.D.
RHEUMATOLOGY
J. D. EIDSON, M.D.
K. A. GUTER, M.D.
ONCOLOGY
W. H. LABUNETZ, M.D.
NEUROLOGY—EEG
T. J. LENZ, M.D.
W. N. MILLER, M.D.
GASTROENTEROLOGY
W. N. PERSON, M.D.
T. W. ROSENBAUM, M.D.
NEPHROLOGY
J. D. WATSON, M.D.
CARDIOLOGY

OBSTETRICS AND GYNECOLOGY
R. E. ASMUSSEN, M.D.
P. L. BURLEIGH, M.D.
F. J. HANDWERK, M.D.
R. L. MCCLURE, M.D.
G. K. PHILLIPS, M.D.

PEDIATRICS
J. W. BRINKLEY, M.D.
N. E. CHESTNUTT, M.D.
J. A. CURTIS, M.D.
J. M. EICHNER, M.D.
J. R. HALSETH, M.D.
T. E. HARPER, M.D.
J. P. HINZ, M.D.

PSYCHIATRY
D. E. ENGSTROM, M D.

PSYCHOLOGY
E. E. SHUBAT, PH. D.

SURGERY
W. P. HORST, M.D.
UROLOGY
R. E. LAURITZEN, M.D.
GENERAL AND VASCULAR
J. E. MUNGAS, M D.
VASCULAR SURGERY
L. M. TAYLOR, M.D.
GENERAL AND THORACIC
W. C. VASHAW, M.D.
GENERAL AND VASCULAR

ADMINISTRATION
W. D. TAYLOR
M. D. MISSIMER

GREAT FALLS CLINIC
P. O. BOX 5012
1220 CENTRAL AVENUE
GREAT FALLS, MONTANA 59403
PHONE (406) 454-2171

November 1, 1984

Ms. Nancy Adams
422 North Main
Helena, MT 59601

Dear Ms. Adams:

I received the letter from Mr. John Nesbo of the Montana Council of Regional Mental Health Boards, Inc., regarding the commitment law hearing on November 28, 1984.

I regret that previous obligations prevent me from attending.

From the experience that I have had in my practice of psychiatry, I see a crying need for modification of the present commitment law to allow commitment of people who may not be of imminent danger to themselves or to others but whose behavior is so disturbed as to cause serious disruption of their own and their family's lives.

A case vignette will serve to illustrate the type of patient I have in mind.

A gentleman has been a patient of mine for several years and suffers from bipolar illness (manic depressive disorder). When he is depressed, he is very eager to accept treatment. However, when he is manic he stops keeping his appointments and no longer takes medication.

His family has learned to recognize the onset of his manic episodes and recently his wife prevailed on me to have him admitted to the hospital. Her descriptions of his behavior were completely consistent with a diagnosis of mania. He absolutely refused to accept hospitalization and the county attorney's office would not accept a petition for a commitment hearing because of the lack of probable cause.

Subsequently, while in the throes of his manic attack, this man became involved in several business dealings that resulted in a very significant unrecoverable loss of his financial assets. His behavior in public was of great embarrassment to both his family and to his many friends.

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He was stopped by a peace officer for going a few miles an hour over the speed limit. Typical of manics, he became very angry and drove off at high speed. He ultimately stopped for a roadblock and was jailed. However, there was a high-speed chase lasting thirty or forty miles before he was finally stopped during which he placed his own life, as well as the lives of several of Montana's citizens, at great risk. Of course, this was not with destructive intent but because of impaired judgment.

It was only after several weeks, and with the intercession of an attorney who happens to be his close personal friend, that he finally accepted a voluntary admission to the psychiatric unit of the local hospital where his mania promptly responded to medication. Had he been hospitalized against his will, under a more reasonable commitment statute than we have now, his illness would have been shortened by several weeks, and he and his family would have been saved untold embarrassment and financial loss. Once this man's behavior reverts to normal, he has full memory of his behavior during the manic episodes, and this causes him serious and long-lasting embarrassment.

Another vignette (humorous, but sad) concerns a late-middle-aged woman who, in the throes of a full-blown manic attack, began parading in the nude on the lanai of her apartment house. In this situation, she was proclaiming "the word of God." She refused to accept hospitalization and was not committable under the present statutes. Her mania ultimately subsided but not until after she had created considerable notoriety for herself and subsequent deep embarrassment.

Because many of these anecdotes have some measure of humor in them, it is difficult for disinterested people to realize the tremendous amount of suffering that patients' families and friends go through while the patient is so mentally disturbed. Also, the aftermath can be disastrous both in financial terms and because of the long-lasting deep embarrassment that the memory of their irrational behavior creates.

I appreciate the opportunity to share my views with the public meeting.

Sincerely,

DEPARTMENT OF PSYCHIATRY AND PSYCHOLOGY

Donald E. Engstrom, M.D., F.A.P.A.
Board-Certified Psychiatrist

DEE:pl

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

Blue And White Motel, Inc.

KALISPELL, MONTANA 59901

P.O. BOX 249
TELEPHONE 755-4311

ON U.S. HIGHWAY NO. 2
EAST ON MAIN STREET

Nov.21,1984

Dear Mrs. Adams,

I write to you because I may not be able to attend the hearing in Helena, besides writing clarifies thought.

Both my mother and my daughter are schizophrenic. My mother has been totally restored to sanity, she is still on medication and was committed for all of her bouts with this dreadful disease. My daughter has still to be treated, she is Kalispell's pet lunatic. Todays laws do not permit her to be committed unless she is homicidal or suicidal.

In recent years, laws have been written to protect civil rights. But is legislation being being blind to common sense and human welfare? Do we have to swing from one extreme to the other? When a person is seriously ill and unable to make rational judgements what is our responisbility to him? The law states that in Montana (MCA 53-21-102(14)Seriously mentally ill means suffering from a mental disorder which has resulted in self inflicted injury or injury to others or the imminent threat therof or which has deprived the person afflicted of the ability to protect his life or health. For this purpose injury means physical injury.) The last part of this law is either ignored, interpretted with great variations. So that, in practice, the seriously mentally ill are untreated unless gross damage to self or others is an accomplished fact. It is not working.

Prior to 1975, when the Supreme Court decided on the "right to liberty" for mental patients in O"Connor vs Donaldson the criteria was illness. Today behavior is the yardstick. There may be unanimous agreement by professionals and family that the person is mentally ill but everyone waits for the patient to "hit bottom", to ask for help, to tangle with the law. The horror stories are endless, desperate expedients are tried to circumvent committment laws as interpretted in various areas. The police practice "mercy bookings", lawyers try guardianship, families spend countless dollars. Laws are so complicated now, that they make tax laws appear simple. Professionals are afraid of being sued, the police feel that it is not their job to be psychiatric workers and despise mental health. There are no rewards in committing a person for treatment. Only a beleagured close relative has love enough to keep on battling for treatment.

The present law in Montana is in desperate need of clarification and uniformed application. In their present form, even the most humane judge does not even get a chance to adjudge who needs treatment,

SENATE JUDICIARY COMMITTEE
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Blue And White Motel, Inc.

KALISPELL, MONTANA 59901

P.O. BOX 249
TELEPHONE 755-4311

ON U.S. HIGHWAY NO. 2
EAST ON MAIN STREET

Family members have been told it is of no use to try or the patient has been discahrged from hospital and is on that merry-go-round. Or as in Kalispell, they know that the only way this is possible is by having their loved one thrown into jail.

Surely a patient has the right to be treated so that he can have life liberty and happiness. We need a disability clause such as Washington has.

Most mentally ill people are victims, they are not dangerous, they are very, very sick. They do not need jail, streets, garbage cans, or some hole to hide in. They need treatment, follow up procedures after hospital.

I wonder what statistice are available on the number of repeaters at Warm Springs who re-enter because they have stopped treatment? How many "voluntary " patients who have discharged themselves without completing or taking any kind of treatment? How many book in and out of hospitals in the state? the U.S.A? How much of our prisons are filled with the mentally ill? Prison is cheaper, the streets cheapest for the sick. How many mentally ill end up in prison because of our inability to have them treated? An AMI member had herson discharged from hospital after 72 hours, come home and kill his father.

A seriously disabled clause in no way means that the individuals rights are taken away or the judicial process negated. There are safeguards such as set out in 53- 21-125,53-21-126 and 53-21-127. I would not want to see my daughter or mother in an institution for life, or brutally treated in any mental hospital. But neither do I want to see her a street person living off garbage bins and being brutally treated by the viscious. Or hidden in some den listening to voices, uncared for and abandoned.

Many illnesses such as Hansen's disease or cholera force people to treatment. Why is mental illness the only disease where grieviously ill are committed to jail; where the withdrawal of family support is considered therapeutic and failure of treatment is the fault of the patient.

In this day and age moreis known about this illness than ever before, treatment is available. In the name of God, let us use the wonderful tools that we have.

Sincerely yours,

M. Storli

Winnifred Storli
(Member of FLAME affiliate of NAMI

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

2300 1st Ave. No. Great Falls, MT 59401 Nov. 26, 1984

Nancy Adams
422 North Main
Helena, MT 59601

Att: Montana Council of Reginal Health Boards Inc.

Dear Ms Adams:

Both my Brother Ed Gemar and I had intended to be at the meeting on Wednesday November 28th 1984, however I am recovering from some rather strange "body aching" flu as I understand that he too has the same symptoms, therefore I am not at all sure whether either one of us will be in condition to attend.

We have a brother Lloyd who is a very serious schizophrenic who has been in and out of Warm springs twice and the Veterans Hospital in Sheridan, Wyoming. He appears to me to have a "dual" personality whereby his actions are extremely annoying to many people especially in cafes and restaurants etc. He was recently incarcerated in the Great Falls City Jail after tresspassing on business property after he was asked to leave. One of these employees there has also witness his repeated and ritualistic passage through the alleyway by her house and sometimes stopping for periods in a rather "spooky" manner which has caused considerable apprehension and discomfort and frustration to her whole family.

He conducts simular activities to selected others in this Great Falls community including the local Mental Health caseworker who had visited him (Lloyd Gemar) often in his usual rounds of contacts with mental patients. This worker, a year ago quit his job here and moved his family to Denver. I personally believe that this was a direct result of the spooky behavior on the part of our brother Lloyd as I had talked with the case worker several times myself and he had informed me that Lloyds' activity was definitely spooking and worrying his wife and this same caseworker further informed me that in his opinion our brother Lloyd was not mentally fit to be on his own and I have to agree wholeheartedly as I have been living in the same house with him for approximately two years, hoping to in some way get through to him and perhaps help him in some way. But at this point in time that seems utterly hopeless as he seems to be deteriorating in some rather mysterious ways. He drinks literally "gallons" of coffee a day and smokes his pipe incessantly. However when he was confined to the city jail for five days he was allowed only a cup of coffee per day and NO smoking AT ALL. When he arrived home after being released he was more normal than at any time within those past two years. For about 24 hours he was relatively quite, made sense when he spoke and generally conducted himself in a rational manner. I would hazard a guess that for that short period he was at least 90% normal in his behavior until he started going back out to "coffee up" as before. And for that short 24 hour period he told me that he had no desire to smoke.

The above described behavior suggests to me as I had previously concluded that he definitely needs a regimented invironment such as one would experience in a military camp where one cannot indulge in every weekness of mind and spirit as he presently does. Whenever one can ever get him to do anything such as shoveling the sidewalks, he then has periods of near normalcy right afterward. He definitely likes his little world, leaning on ALL the crutches that he can muster and preying on ALL the sympathies from everyone and anyone. Previous medicinals tendered him by the mental health doctors caused him to vomit nearly daily after eating a meal. About a year ago he quit taking this medicine and I can absolutely see NO difference in behavior insofar as his mental capacities are concerned. He is rather LESS violent than previously but his verbiage is becomming increasingly disconnected and meaningless. The reasons that I am offering these details is to clearly establish that the solution to these dilemmas is NOT just better methods of confinement, but including a "whole NEW look" at the remedies to these conditions. My personal experience with doctors is about on a par with the recent expression by Supreme Court Justice Warren Burger about the legal profession, that being that 50% of them don't know what they are doing. Many of us believe THAT to be about 45% to damned LOW. Therefore the doctors have no edge on solving these problems. Perhaps it is time for those of us "close to the sources" have our views heard. ONE of the "primary" reasons that my brother will not admit himself is because of his fear of these "worthless" drugs and the possibility of electric "shock" treatments.

SENATE JUDICIARY COMMITTEE
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BILL NO. SBS 375, 374, 414

Those of us who have had military training camp experience know "full well" that after ANY day of strenous physical activity where the body is so tired with ones' ass litterally dragging the ground that there is absolutely NO ROOM for anything but a desire for rest and quite sleep with NO mental games of ANY sort.

I will stand behind my suggestion 1000% as a recommended "cure" for a shizophrenic. They love to have others do their bidding and "cow tow" to them and the more attention they receive the more they seek and the less they acknowledge previous courtesies. The John Hinkley case fully bears this out along with other case histories. Many times the best medicines are the simplest and most readily available ones.

While the immediate business at hand by the Montana Council is to find more adequate means to confine such people, we are NOT going to solve the overall problem by easier methods, or confinement. On the issue of confinement, I would suggest (after THREE weeks of utter frustration from ALL avenues legal, medical and judicial) that a provision be established by the legislature to permit the tendering of a minimum of SIX or possibly TWELVE persons to submit affidavits of testimony AND including witnesses and/or substantiated examples of harassments, erratic behavior, and otherwise untoward behavior by any individual "repeatedly" AND including the "professional" doctor or doctors qualified in the particular discipline, opinion AND further including the individuals "previous" history as ALL qualifying segments of a "FAIR" way to evaluate the situation as to confinement into a mental or disciplinary institution.

Certainly NO ONE should be institutionalized without "proper" evaluation. But to restrict such an act to the threats or actual acts of physical violence is to put out the storm warning AFTER the storm.

ANYBODY that drinks "gallons" of coffee each day is certainly going to become a mental case if he or she is not one already. THAT is ONE "very simple fact". When an individual has not the personal discipline or common sense to act accordingly, then someone else MUST do it for them. One can do absolutely NOTHING under the present system. It is very honorable to take drastic measures to assure that NO ONE gets confined to an institution at the whims or vindications of others. But it is equally dishonorable to allow innocent people to be subject repeatedly to harassments and other totally noxious behavior by those who have absolutely NO RIGHT to infringe their erratic behavior on others.

In the case of our brother Lloyd, it is totally impossible to reason with him under his presnt condition. However as I have stated earlier in this letter after his FIVE days confinement in the city jail without coffee and smokes I was able to carry on a "completely normal" conversation with him about ANY subject. At present THAT is absolutely impossible. An acquaintance of mine recently went to the Mayo Clinic because of some cronic disorder. after complete examination and study he was told to stop drinking so damned much coffee. THAT advice cost him a couple of thousand dollars. Most often in todays' society one cannot find the trees while standing in the forest.

THERE HAS GOT TO BE SOME "TEETH" put into methods to confine deranged persons but NOT to deprive them of their "normal" rights and liberties by whimsical intent.

AND ALSO and EQUALLY IMPORTANT is HOW they are handled AND TREATED AFTER confinements and "follow up" disciplinary "clout" to assure their continued health AFTER release.

I KNOW as does my brother Ed AND other members of this Gemar family that we combined could "easily" get the signed and sworn affidavits of at least TWELVE persons attesting to the continued, repeated, erratic and questionable behavior constituting harassments to innocent people. I recently witnessed this myself while seated in a local cafe during which my brother Lloyd entered and broke out into one of his many "shouting matches" in a public place. I KNOW that he has been asked to leave a number of local cafes and/or coffee shops and fast food outlets. It takes quite a bit to embarrass me but the above incident succeeded in THAT and I know of only ONE person in that cafe who may have known that he was my brother and that was the fellow with me that day.

Sincerily, G.Paul Gemar

In order to arrive at a sound solution to ANY problem, one has to have a thorough knowledge of THAT problem.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

R 1 Box 30
Chinook, Mont
59523
Dec. 10, 1984

Ms. Nancy Adams Chairman
Montana House
422 N. Last Chance Gulch

Dear Ms. Adams,

We knew Marlon was having mental problems, long befor he was diagnosed as suffering from Paranoid Schizophrena.

By the Fall of 82, Marlon begin to have very erratic behavior. He would sometimes disappear for days, or go in to vicient rages. Always he seemed very depressed. We could not get him to talk to us.

Our oldest son Monty, came home to see if he could find out what Marlons problem was. Marlon, did open up ot Monty.

Marlon, was hearing " voices". He thought we were reading his mind. That we were trying to control him. We could talk to him, no matter where he was. People in cars, going down the highway..talked to him, so he stayed a long way behind them. People every where were trying to control him.

Monty, was able to persuade Marlon to enter the Great Falls Deaconess hospital. He was there a couple of weeks and seemed to be doing well. He was released at the end of two weeks.

He returned home and was there three days and tried to commit suicide. Thank God, he failed. He did however perforate his eardrum and shot holes in the ceilling and the window. The hand gun, a 44 magnum gave me the shivers Pure ugly!!!

Marlon, spent a couple weeks in the hospital in G.F. He seemed to be doing better, how ever he wouldn't come out of his room very often.

Because we wanted a second opinion on Marlon, Ben, my husband, took Marlon to the Mayo Clinic. They simply affirmed G.F. Deaconess findings.

In the mean time, we had removed Marlons arsonal of guns and hid the where we thought he would never find them. I wanted to dump them in the river, but the law says I can't do that.

Marlon, saw Dr Engstrom on a regular bases. Marlon seemed to be doing very well. By the latter part of Feb., Dr. Engstrom said we could give Marlon back his guns. When I didn't want to, he reminded me that Marlon could get a gun any time. So with great reluctance we returned his guns.

Marlon remained fairly stable untill the first part of April. He was helping his father move equipment and suddenly he veered to the side and wiped out the cattle guard. Ben, was following behind on a nother tractor. When Ben caught up with Marlon, he yelled at his Dad, Why did you tell me to move over?" Voices are starting to control him again.

4/23/83

Marlon, came in in a rage..useing foul language every step of the way. Went down to the basement and found a baseball bat. He went out side yelling threats a who ever was " playing mind games" (as Marlon puts it) with him.

We thought we knew who he might have in mind and called the man. Just his wife was home. Marlon had driven around the house several times shouting things. The wife went to a motel and ask us to call the police...which we did. Then put in a very long night waiting. The police never did find him. The next day he was as calm as you please. This dual personality is some thing else!!

Marlons, behavior was very erratic for about a month. We could not get him to go to the hospital, or take any medicne.

5/ 15 / 83

Marlon, came in useing very foul language..demanding we buy him a trailer house. He said the voices were to bad in his house. His father told him if he talked that way he wouldn't get any thing

Box 205 Kila
Mont.59920
Aug.25,1984

Dear Mz. Adams,

I am the mother of a mentally ill vetran. My son refuses treatment and is on a military pension. He refuses to go for any medical treatment. Since he has been at home with this problem our entire family has been affected. His father has a serious heart condition which gets worse, I have high blood pressure and his sister has had nervous collapse and we cannot do anything about this because the law says he cannot be committed unless he kills someone or himself or tries to.

He hears voices which tell him not to do things and that he is being poisened and people are after him. He feels and sees attackers. Two weeks ago the sherrif wanted to pick him up on a complaint but nothing is done. Vetrans hospitals state that he can only come in voluntarily. Yet because of his illness he will not be treated. The family doctor says he can even have a tumor and urgently needs hospital and diagnosis. He wants help but is too scared to do it on his own because of his voices and parania.

I have been to mental health, the vetrans, V.A. lawyer, sherrif and am now trying to contact the County Attorney. My son is a great hunter and familiar with arms, if he goes on like this he can very well become dangerous. He is getting worse, he has been seriously ill for four years. His life is ruined as is ours. Soon we will give up all hope and either be forced to kicking him out or getting sick ourselves.

The laws are not working. The vetrans adminstrator says there are so many like my son. Why should these young lives be wasted? Is this how we treat young men who served their country. Our laws need to be changed so that seriously ill mental patients can be treated when they are quite unable to make decisions for themselves.

A suffering mother.

Mrs. Floyd Luke)

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375,374,414

Copy

Dear Nancy, Thanks for all your efforts. I'm enclosing a letter from Mrs. Lake, whose son has just been committed to jail. Thought it worth sending to you. Sincerely Winfield Stark. 12/6/84

640 Conrad Drive,
Kalispell
Montama 59901
Nov. 3,1984

Honored Sir,

We the members of FLAME (Families Lovingly Allied for Mental Education , affiliate of the National Alliance for the Mentally Ill) are most grateful for the efforts made by Senator Towe to scrutinize and find some solutions surrounding the laws and present problems affecting the mentally ill. We ar edelighted to hear that a committee has been formed under Nancy Adams chairmanship to study these problems. We hope that a member of this committee be a close relative or a fully recovered mentally ill ex-patient. We feel that the we are directly involved and have the greatest personal experience in this terrible disease and its aftermath.

Thank you again Senator Towe for your great humanitarian spirit.

Yours very sincerely,

(Members of FLAME)

Winnie Stark
Pa Stark
Eve Beaurovne

Eileen F. LaBelle
Eileen Mosbarger
Delbert Gilchrist
Hilda E Allen
Hildegard Krause
Bryce J. Senter
Ruth E Senter
Patricia M. Jam
Agnes Jacobson
David L. Jam
Russell J LaBelle
Henry A Jacobson
Rick Lake
Floyd Lake

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

3637 Eighth Avenue South
Great Falls, Montana
November 27, 1984

Dear Sir:

My plans were to attend your meeting but I'm unable to do so.

I'm the oldest sister to Lloyd Geman in Great Falls, Montana. He has been in Hot Springs, twice and Sheridan Veterans' Hospital in Wyoming, twice. He has been mentally ill since about 1974. Each time, we had to get the law to help us as he will not go on his own. He is a World War two veteran, is the reason that he has been in this hospital.

Right now, he is bad again and he will not see a doctor or enter a hospital on his own. We, the family of Lloyd, tried our best with the help of a Social Worker, to try to get him to enter the hospital, about a couple of weeks ago, but with no luck.

Lloyd needs medical help and we the family have been trying but the present law, isn't much help to us. Definitely something has to be done as he threatened to commit suicide and also threatened personal harm.

Mental Health Services in Great Falls have been a great help to us but they too ~~can only go so far.~~

There certainly needs to be a more satisfaction with the "seriously mentally ill" definition, "Imminent threat" clause and a desire for a "gravely disabled" clause.

Very sorry that I couldn't attend as this is a great worry of ours with our youngest brother, Lloyd.

Hoping that a change will be made to help out our mentally ill as well as everyone else from bodily harm.

Most Sincerely,

Helen M. Treblesch

Helen M. Geman Treblesch

hmgt

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

Mrs. David R. Jann
303 Edgewood Dr.
Kalispell, Mt. 59901
Nov. 24, 1984

Nancy Adams
422 North Main
Helena Mont. 59601

To Whom It May Concern

The present committment laws in Montana are inadaquate as many seriously ill and chronic mental patients are being untreated and abandoned People who cannot function independently and show severe detioration in routine functioning because of serious mental impairment should have the right to be treated. Presently both mental health and the law appear helpless unless the person is proved suicidal or homicidal. Furthermore after care is virtually non existant and our mentally ill either follow an endless "revolving door " or "fall through the cracks", which result in their living in the streets, being victims of the unscrupulous, and a burden to their families, society and themselves. For these reasons a "gravely disabled " clause should be added to our laws and enforced.

This does not mean that in any way that a person should be wrongfully institutionalized or deprived of his rights because the law as it stands, requires each individual case to be reviewed.

Yours sincerely,

Mrs. David R. Jann

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

BLUE AND WHITE MOTEL
KALISPELL
MONT. 59901

To Nancy Adams
422 North Main
Helena ,Mont. 59601

Dear Mrs. Adams,

I feel that Montana Committment Laws should have an addittional clause, similar to that of Washington so that the mentally ill who are seriously disabled also have the right to be treated for their terrible ailment, instead of having to wait for the time when they are homicidal or suicidal. When a person is so deranged and ill as to be unable to care for themselves, make decisions, are in dire straits they are gravely disabled and need treatment. Not jail, not the streets, not some hole to hide in but tender, loving care. Now that mental hospitals have been reformed and there are so many new medications even for the most severely disturbed let them be made available to those most in need. Furthermore,after patients are treated they should be have suitable after care and not be left to their own resources and the inevitable round of madness and hospital or jail.

This does not mean that any one should be imprisoned or wrongfully sentenced to any institution or that society should return to the era of the snake pit.

Sincerely Yours,

H. Wardahl.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375,376,414

Plan 83-84

To Nancy Adams
422 North Main
Helena ,Mont. 59601

Dear Mrs. Adams,

I feel that Montana Committment Laws should have an addittional clause, similar to that of Washington so that the mentally ill who are seriously disabled also have the right to be treated for their terrible ailment, instead of having to wait for the time when they are homicidal or suicidal. When a person is so deranged and ill as to be unable to care for themselves, make decisions, are in dire straits they are gravely disabled and need treatment. Not jail, not the streets, not some hole to hide in but tender, loving care. Now that mental hospitals have been reformed and there are so many new medications even for the most severely disturbed let them be made available to those most in need. Furthermore,after patients are treated they should be have suitable after care and not be left to their own resources and the inevitable round of madness and hospital or jail.

This does not mean that any one should be imprisoned or wrongfully sentenced to any institution or that society should return to the era of the snake pit.

Sincerely Yours,

Mary B. MacDonald
1004- 8th Ave East
Kalispell Mont.
59901

Donald M. Hoeller
7-7th Ave West
Kalispell Montana
59901

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

3420 Airport Rd
Kalispell
Mont. 59901

Nancy Adams
422 North Main
Helena Mont. 59601

To Whom It May Concern

The present committment laws should have a gravely disabled clause added to them so that the seriously ill and chronic mental patient can have the right to be treated. This would also include after care and does not in any way impinge on individual rights or the safeguards against long term institulalization already in the Montana and Federal laws.

Therefore a "gravely disabled"clause should be added because:-

That most people who have a "serious mental condition" are not able to function on their own with out help

Yours truly,

Gwenn Stockl

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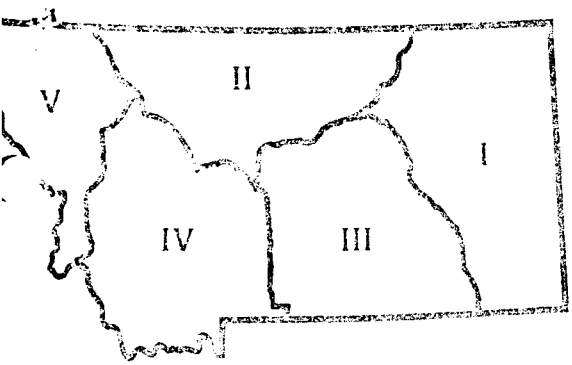

Montana Council of Regional Mental Health Boards, Inc.

MONTANA COMMITMENT LAW PUBLIC MEETING - NOVEMBER 28, 1984, 1:40 p.m.

Moderated by: Harold Gerke, Board Member, Mental Health Center, Billings

Mental Health Center Staff:

Dick Hruska, Golden Triangle Community MHC, Great Falls
Linda Hatch, Golden Triangle Community MHC, Great Falls
David Briggs, Mental Health Services, Inc., Helena
Bill Wood, Mental Health Center, Billings
Nancy Adams, Mental Health Services, Inc., Helena
Don Harr, M.D., Psychiatrist, Mental Health Center, Billings
Jim Jensen, Eastern Montana Mental Health Center, Miles City
Robert Weber, Golden Triangle Community MHC, Great Falls

State of Montana:

Tom Towe, State Senator, Billings, chief sponsor of the original commitment bill.
Ray Lappin, Montana State Hospital, Warm Springs
Tom Sellars, Montana State Hospital, Warm Springs
Ron Weaver, Montana State Hospital, Warm Springs
Jim Deming, Montana State Hospital, Warm Springs
Dan Anderson, MH & Residential Serv. Div., Dept. of Institutions, Helena
Kelly Moorse, Board of Visitors
Barbara Bartell, S.R.S.

K4/1A

EGION I — EASTERN
19 Main Street
les City MT 59301
0234)

REGION II — NORTH CENTRAL
2307 Eleventh Avenue South
Great Falls, MT 59403
(727-2991)

REGION III — SOUTH CENTRAL
1245 North 29th Street
Billings MT 59101
(252-5658)

REGION IV — SOUTHWEST
801 North Last Chance Gulch
Helena MT 59601
(442-0310)

REGION V — WESTERN
Fort Missoula T-12
Missoula MT 59801
(543-5177)

MONTANA COMMITMENT LAW PUBLIC MEETING
November 28, 1984

Others Present:

Donna Heffington, Deputy Yellowstone County Attorney, Billings
Cliff Murphy, Legislative Chairperson, Mental Health Association of Montana, Billings
Jim Johnson, Montana Legal Services, Butte
Larry Epstein, Glacier County D.A., Cut Bank
John Spencer, Deputy Sheriff, Madison County (psychology major), Virginia City
John France, Sheriff, Madison County, Virginia City
Joe Connell, Lewis & Clark Co. Human Services, Helena
Les Morin, Lewis & Clark Co. Human Services, Helena
Lorriann Murphy, Lewis & Clark Co. Human Services, Helena
Mike Caplis, Lewis & Clark Co. Human Services, Helena
Mary Blount, Cascade Co. Mental Health Association, AMI, Great Falls
Jeanne Porter, Alliance for the Mentally Ill, Helena
Shirley Renders, Alliance for the Mentally Ill, MHC Board, Helena
Joy McGrath, Mental Health Association of Montana, Helena
John McCrea, Helena Industries, Helena

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K4/18

Mr. Gerke called the meeting to order at approximately 1:40 p.m. He indicated that due to severe weather conditions in the western part of the state, several people from that area would not be able to attend. Mr. Gerke indicated that Nancy Adams would present some written testimony and letters which had been received. Mr. Gerke explained that this would be an informal, open meeting and he would like each individual to state what is on their mind; however, due to the time, there would have to be some limits placed on the length of presentations. At this time, each individual present at the meeting introduced himself.

Mr. Gerke asked Nancy Adams to present the written testimony and letters she had received.

NANCY ADAMS: "Before I briefly summarize some of these letters that people wrote in that couldn't attend the meeting, I just want to comment. Those of you who weren't at the first meeting, concerns focused around exploring the need for a 'gravely disabled' clause, redefinition of the 'imminent threat' of the seriously mentally ill clause, and also some questions about the need for perhaps adjudicating follow-up after discharge from Warm Springs and perhaps looking at guardianships or conservatorships. So, many of these letters are in response to some of the testimony that came out of the first meeting. I received eight original letters. I also received approximately thirty-five letters that came mainly out of the Kalispell/ Missoula area that were form letters. The form letter mainly focused on the need for a 'gravely disabled' clause. What I will do is submit to the secretary, so she can put it in the records, the names of the people that signed the form letter. Briefly, the original letters that were sent in; the first one was from a Frank E. Uhlir. He wrote a letter, giving examples why he was concerned that emergency detention procedure, this is in the Flathead area, was extremely cruel. And he gave a very personal example in the letter. The next letter was from a Fallon County Attorney by the name of Denzil Young. He elaborated on how frustrated he was with the workability of the present commitment law. The third letter was from a social worker at Hill County Welfare Department in Havre. Her name is Dorothy Flint. She was extremely concerned and again gave many examples that there was a need for a "gravely disabled" clause, need for more consistent follow-up programs, group homes, and leverage to help non-compliant medication people to take meds and remain in treatment. The fourth letter was from another social worker from Hamilton, Montana. Her name was Mary Rowe. She gave various examples as to why she felt there was an extreme need for a 'gravely disabled' clause. The fifth one was from a district judge, Joseph B. Gary, from Bozeman, Montana. He wants no changes in the present law. Regarding modifications for releasing patients, he recommended that professionals should handle this. He didn't elaborate how. The next one was from a psychiatrist, Dr. Engstrom, from Great Falls. He elaborated and gave examples on the need for modification of the present law to allow the commitment of people who may not be in an imminent danger to themselves or to others, but whose behavior causes serious disruption on their own lives and their family's lives. The last was the letter in detail explaining the frustration and the need for a 'seriously gravely disabled' clause, and that was from Winnifred Storli. She is associated

with FLAME, an affiliate of the National Alliance for the Mentally Ill. And that, in brief, is the summary. These letters will, I don't know where they'll go, but I guess they could be included in the testimony, but that would be an awful lot to copy. So, we'll make that decision later."

HAROLD GERKE: "Well, thank you, Nancy. That pretty well covers all the items that you explained in the first place. And we do have the letters here and we'll keep them along with other testimony that we have that can be included int he record. Now, let's open for discussion. Where do you want to start? Who wants to start? Senator Towe?"

SENATOR TOWE: "Harold, I wonder if it might be helpful to focus this afternoon just to make a couple of preliminary comments to kind of review some of the tentative conclusions that we made at the last time. And then ask people particularly to focus on that or add to it if they think necessary. But I think that might be helpful. What I got out of the last meeting was that there was some general consensus on two areas, and possibly a fair amount of support for a third. The general consensus on the first area is, I think, pretty much unanimous. And that is there should be a public person who is and can be responsible as a conservator. Much like the public administrator is available for appointment for the administration of any estate of any person who doesn't have other relatives or friends to take on that responsibility, there ought to be a public conservator who is available and able to take on the responsibility of managing the property and the estate of any person who is mentally ill or mentally retarded. And the idea is that in some cases there is no relative or no obvious person, and generally there is a hesitancy of a friend to become deeply involved, and then consequently it often times goes without any real person to watch over the property problems and the estate problems. This might be property that they have or have inherited. More often than not, it is property that comes from Social Security Administration or Medicaid, Medicare, or something like that. But that's, I think, the first thing that there was generally broad support for--a public administrator would be available for appointment by the court. His job would be to be accessible and available for that type of appointment."

SENATORE TOWE (continued): "Second, I believe there was generally broad support for the concept that we need more follow-up once an individual has been adjudicated as seriously mentally ill and therefore committable to Warm Springs, or to the State Hospital. Once they have been committed and have already been determined to be a danger to themselves or others, tho definition of seriously mentally ill, there is no reason why the jurisdiction of the state over that individual could not continue beyond the time that they are actually released. And this, the general thought was, may well serve almost fifty percent of the problems that have been raised. Because almost half of the pesrons, and maybe even more than half, that cause a problem at the present time have, at a previous time, been adjudicated seriously mentally ill and have, at a previous time, been in the State Hospital. The approach that could be taken here, and I think this is the kind of indication we need from witnesses today, is that perhaps we could have a follow-up--and I may be stealing a little bit of Donna Heffington's comments because we talked about this in Yellowstone County along with Don Harr the other day--perhaps we could have say a year, a year and a half retention of jurisdiction; that the conditions of release might,

In writing, be somewhat comparable to a parole status at the present time, or probation status. And that in fact one of those conditions might be continuing to take medicine or might be to report to a mental health center on a periodic basis. And that for violation of that term or condition, they could be returned to Warm Springs, or returned to the State Hospital without a readjudication of the question of serious mental illness, in other words of danger to themselves or others. That probably doesn't solve the whole problem, because there probably is still a requirement, a legal and perhaps constitutional requirement, that if someone has been released for six or seven months, at that point they would have to have some redetermination of their condition. Perhaps a definition somewhat akin to the incapacitated person or incompetent person at the present time might fit, and that would be less onerous than danger to oneself and others. So, I would be most interested in comments on that."

SENATOR TOWE (Continued): "The third item is an item that I don't think there was general consensus on, but I think that there was general support to proceed at least to discuss it further. That is a new category, a brand new category, with a brand new definition. An area which we would call 'a person in need of treatment'. A person who is need of treatment is probably going to have to be defined as a person similar to the incompetency definition; who is unable, because of a mental illness, to understand their own need for treatment. By definition, they cannot intelligently make a decision or choice as to whether they should or should not have treatment. And the idea here would be a very limited restriction, a very limited requirement that the individual submit to treatment in any setting other than the Warm Springs State Hospital. In other words, this could not be and could not be allowed to develop into a substitute for commitment. It would be only in need for treatment. There is a difference here; the difference is that in this case you do not have to prove danger to oneself or others. That is a very significant factor. It is, however, perhaps justified on the temporary basis, if it were limited to say fifteen days, thirty days, maybe forty-five days--no more, there is perhaps some possibility that it would pass constitutional muster. A person who is found to be in need of treatment and because of their incompetency, in other words because of their mental disorder, is not able to intelligently make a decision about treatment, it may be that such a person could be restrained in a treatment setting for that very limited period of time provided it is not in the State Hospital. I guess I would ask again for comments on that. And then I would ask for comments on any other thing that is not covered by these three that anyone thinks needs further discussion and perhaps amendment to the present law."

DONNA HEFFINGTON: "I would agree with you that there is an overlap in the second and third categories, and that in so far as supervision would be required on an extended basis after release from the State Hospital following commitment for being treated for mental illness, that there could be another category slightly less demanding of the seriously mentally ill category. But it would be necessary to define that. And once you define it, you get into the same question of whether the person has to be

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seriously mentally ill to be under some sort of coerced treatment, something they may not want. And it was my understanding that part of what we discussed last Friday in the County Attorney's Office was that this new category which might be developed would apply to people who were being supervised from their release from the State Hospital, but would also apply to people who may not have been committed yet and who eventually may have to be committed simply because the physical facilities that are available for treatment may not exist in any place other than Warm Springs. I did not understand that there was an agreement that the treatment could not take place in Warm Springs, and I think that probably is going to be the focus of an argument because Billings has several mental health facilities. And I'm sure that there are other areas in the state that have them too, but possibly not as many, and certainly the smaller towns not as many and some not any facilities for treating people who need help. The facilities we have in Billings are limited in their ability to require a person to take treatment. The group homes, the cooperatives, the mental health centers, you can't force people to come in. You can't make them take the drugs that they are prescribed and that they need. When you have a person who is in the process of deteriorating and the mental health professionals who have evaluated him can say he will predictably and progressively deteriorate to the point where he becomes seriously mentally ill. When you have somebody like that who is need, and you're dealing also with the person's right to treatment, when he needs help and cannot recognize it. So, that's something that the requirement can't be carried out in the local facilities. Warm Springs may be the only one that can handle this. The second question is if you catch a person and require him to take treatment when he is in this degenerating, deteriorating condition, catch him and require him to take treatment before it becomes serious mental illness, the need for treatment is much, much shorter. And any burden that would be placed on the State Hospital by admitting greater numbers of people will be, to a large extent and possibly completely, alleviated by the length of time, a much shorter length of time. My feeling is that the State Hospital, if we develop another category under which a person can be involuntarily treated, the State Hospital is probably the only facility capable of carrying out these required treatments, medications, whatever it takes to get the person stabilized, but with a shorter period of time."

JIM JOHNSON: "I can see that we have numbers of issues to join in this situation because there is much that I have to disagree with Donna about. I think as well as the clear civil liberties issues that are involved, Mr. Sellars is comparatively quickly going to tell you that he doesn't have space for the kind of people that we're talking about in opening the definition in the way you propose to open it. That's clearly why we thought that persons in need of treatment would be a definition that would be for people being treated somehow in the community. And I think that that means that the hospitals would have to accept, and they'll have to (INAUDIBLE) But it would be important that the hospitals accept some people that they don't accept now. It would also be important that the mental health centers accept some people that they don't accept now. And I think in the long run it's much more important to create some kinds of community settings that do detain people for short periods of time, which is the sort

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of thing that I was talking about, rather than sending people far away to the mental hospital and taking them away from their families and putting them in places where treatment will no longer be possible if these kinds of or these numbers of people are taken into the hospital or sent there involuntarily. It seems to me that in the category we're talking about with regard to periods of time longer than the commitment, the second category, that we have right now the conditional release provisions that can be used. And one of the places that that falls down, one of the places where that's not being used to the extent that it should be used, there are people having to be released from the State Hospital because they are no longer appropriate to the State Hospital, but the mental health centers will not serve them. And we have that group of people in there, and under the law--the mental health centers' are non-profit corporations, though they get large amounts of public money--they were able to step aside from being ordered to take people that they don't wish to take. And they may have to give up in that situation a little bit of that in order to be able to make this particular system work and to pick up some of those people in the community that we're missing right now."

DON HARR: "Jim Johnson, I'm going to have to disagree with you."

JIM JOHNSON: "You've done that on a number of occasions."

DON HARR: "Yes, and I'm going to do it again. Because the implications of some of the things you are saying, that the mental health centers will not accept certain people, gets back to what Donna Heffington was pointing out, that recently in her conversations there, that there are some people whose illnesses prevent us from being able to take care of them. And to say that we will not accept them, as though it were some arbitrary decision, just because we don't want to and want to exercise our autonomy; I think it is not only inaccurate, but it's a very unfair statement to be making. I don't think we should be making decisions based on that."

JIM JOHNSON: "My friends on the hospital side don't say that this is an issue. But, as you know, I'm not known for walking around issues; I'm known for dealing with them. And I think it is comparatively accurate--not meaning to offend my friends in the mental health centers--but I think it is a comparatively accurate statement in my experience."

DON HARR: "I'm not talking about your offending them. I'm just asking that you be accurate. Because I happen to work in one of the mental health centers--I can't speak for the other four regions--but I know as far as our Center is concerned, we accept a number of people that we even have doubts about being able to handle, and that is quite often borne out of the necessity of our returning them to the Montana State Hospital sooner than we would really like to do. So, I don't think that some of those implications are valid. While I am speaking, I would like to raise another question. One of the concerns--and I can appreciate the concerns that the people at the Montana State Hospital have as far as space because they are limited by what the Legislature and therefore by what the people of the state of Montana will allow them to have, not only as far as bed space, but

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as far as the number of the qualified personnel, which is a concern. So that we can say either we have to arrange our statute so we will not overload Montana State Hospital, therefore leaving out a number of people who need treatment if they can't be treated on a local basis, as Donna Heffington accurately pointed out; then the only other facility that would be available would be the Montana State Hospital. And if they can't be treated there because of lack of space and lack of personnel, it seems to me that the logical conclusion is there are a number of people who need treatment that aren't going to get treatment. And if we set the law up on that basis, I think we're ignoring the needs of a certain number of people. So, perhaps the answer is if there are people who do need treatment and meet the reasonable statutory requirements making them available to treatment, we either have to decide if we're going to somehow furnish adequate treatment facilities or else we're going to have to leave them out in the cold so they don't get the treatment. That's a rather basic decision that's going to have to be made. I would hate to have us make the decision based on the fact that we don't have adequate facilities, so therefore we have to set the statute up to limit the number of people who can get treatment."

DAVE BRIGGS: "I have to echo Don Harr's comments, particularly with regard to Jim's use of the word "refuse". As far as I'm aware, my mental health center has never refused a patient service, whether they come from Warm Springs or wherever. There are occasions when we make every attempt to reach out to patients who are discharged from Warm Springs or who we feel are in need of service, and the patients tell us to, you know, take a hike or whatever, then we have no choice but to leave them alone. That is their civil rights if they tell us to go away. And there are a lot of people whom we encounter who have been discharged from the hospital or who we view as in need of treatment that, in effect, tell us to go away. They don't want anything to do with us. And those are the patients, I think, to some degree we're talking about, who could without question make use of the facilities that we have, the resources, and the staff, and the treatment we could offer that I think would save a lot of time, a lot of agony, a lot of stress, a lot of resources, if we could reach them then as opposed to waiting until they deteriorate to the point where they would have to go through the system and so forth and so on. But I guess I'm a little resentful of the view that we refuse treatment to patients. We never have and never will. I just think that's very important to be part of the record."

JIM JOHNSON: "I'm sorry that you feel that way . . ." (INAUDIBLE)

DON HARR: "The suggestion has been made that there might be a class of persons who are being released from Warm Springs who need further help, and it is not within the capabilities of the centers to be of much assistance to those. Is that the case? I think that is the suggestion that that is the case. Is it the case? Do those who are releasing people from Warm Springs and those who are in the centers agree that there is, can you come to some agreement as to whether there is this class of patients who you can't appropriately serve in the mental health centers maybe because there aren't residential situations there, and yet they are no longer appropriate

In Warm Springs."

TOM SELLARS: "There are some that are no longer appropriate at Montana State Hospital, whether or not the center can deal with it. I think that there are a couple of points that I need to make. Hearing Don and Jim talk about my facility, both of whom are right. I have some ambivalence regarding the concept of the person in need of treatment or gravely disabled or whatever tag you put on him. Yes, I think there is a category of individuals that need some help from some standpoint. My concern, however, is directed mostly at that facility at Warm Springs. There is a concept in this state that Warm Springs is an endless source of beds, has an endless source of staff to take care of patients. Nothing could be further from the truth. We have severe limitations in terms of space and even greater limitations in terms of staff. And if we may well find in the next biennium that we have even less staff to take care of patients. So, I want to dispell the concept that there will be room at the inn if things stay just the same, because I certainly would not guarantee that. Secondly, there is an axiom in health care administration which is that beds generate demand. And they certainly do. So, I cannot say, Ms. Heffington, that your statement that we would wind up with fewer patients is wrong. I would have to say to you in my professional opinion that would not be the case. If we don't get one patient from your area, we'll get two patients from some other area. So, that's a concern to me. I can also say that, based upon documented information which I maintain, the trend of the Warm Springs facility has been on the increase since 1980. It is on the increase this month as opposed to this month last year. And so without any kinds of change in terms of the commitment law, my projection has to be in forecasting that we're going to have more patients next year at this time than we have right now, proportionately. The Children's Unit is going to move, so I'll make that statement proportionately. So, the issue of staff and the issue of facilities is paramount and an extremely important one to us. And I guess the bottom line with my comment would be that if you were to ask me with my present staffing and my present facility, would I be able to accept more patients based upon a liberalization of the commitment law at the State Hospital, I'd have to hedge because I see no forecast as to what that might mean in terms of numbers of patients. But I can tell you that I would be extremely concerned that I could do it based upon nothing more than the population trend increase that I am projecting under the current commitment law. And that does not reflect concerns that I have regarding possible impact of additional patients coming to the facility based on the new Medicare DRG payment, where upon community hospitals that may have cared for a patient for a short period of time in the community and not send them to us will see financially it is in their best interest to get them to us immediately. So, I'd have to say staff is a genuine concern to me and one that would have to really be examined."

DONNA HEFFINGTON: "I would like to respond to part of that. I didn't say and I don't believe that the number of people admitted would be reduced by creating a new category under which a short-term involuntary commitment would be required. What I said was that if a person is treated before he becomes so disabled that long-term treatment is required, the total time required by a number of people for treatment would be less." (INAUDIBLE)

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DONNA HEFFINGTON: "I would like to ask for some feedback from mental health professionals about the effect on treatment time by catching people and treating them early before they deteriorate. In a case, what we were talking about, where the deterioration is progressively predictable and a doctor can say that the person will reach a point where he must be committed as seriously mentally ill. What effect would it have to catch somebody early? How much shorter is the time before stabilization occurs? I've been doing a lot of committing, but I'm not . . ." (INAUDIBLE)

NANCY ADAMS: "One comment, just observing here in the Helena area in the last year since we've had two admitting psychiatirsts at St. Pete's, we've now been able to get a number of chronically mentally ill people in on a volunteer basis to St. Pete's, and they might stay as short as three or four days for medication stabilization, to the max of perhaps three weeks. These people, in the past, we would have had to watch deteriorate because they would not want to go voluntarily to Warm Springs, and then we'd have to have them committed. So, this just for the Helena area has drastically cut down the referral process to Warm Springs and has cut down the length of the time of treatment. Because they would have been so incapacitated at the time that they finally would have been forced to go to Warm Springs where much more repair time takes place once they're placed there."

DONNA HEFFINGTON: "If we were to create a category which would allow persons to be treated involuntarily at a certain point in this predictable deterioration, setting aside for the moment what facility would be used, it would be an involuntary matter and would have to be a created category, assume that these people refuse treatment and fall under involuntary commitment--wherever they are put--they were treated, they received their medications; what comparison is there then in terms of treatment time with the people who have deteriorated to the point that they must be involuntarily committed?"

HAROLD GERKE: "Any of you back there that feel you might have an answer, get your hand in the air."

RON WEAVER: "One who has been involved with the historical development of Tom Towe's bill, I was working here when it came out the first time, we were inundated and we didn't know where we were, and it took us three reorganizations and I don't know what all to get ourselves established to handle what exists at the present time. I know that our chronicity of the patients that we receive at the present time is the highest we've ever had. The chronicity--the patients who are long-term, chronically mentally ill type--are greater now than ever before. That is one of the reasons why we are having trouble with our bed space, because of the numbers of chronically mentally type. I think the mental health centers may be doing a very good job indeed with the acute person who hasn't reached the stage where they actually need confinement; therefore, that type may not be coming in. But I think the provisions of whatever you decide to do in this bill had better be seen as what is able and capable. Because Warm Springs has been fighting a terrible battle in trying to maintain bed spaces and take care of the chronically mentally ill, have enough staff to satisfy the needs of

these people who do come, and if we don't make provisions through our bills and legislative bodies to take care of this, we're going to be into more serious problems than we have at the present time. And, as Mr. Sellars said, we have enough problems with what we have now, let alone trying to deal with another kind of chronic patient, which is what you're talking about."

DONNA HEFFINGTON: "The problem is that it isn't another type of chronic patient; it's the same chronic patient, only you get him later when you have to keep him longer."

RON WEAVER: "I hate to tell you this, but we still have some of them there."

DONNA HEFFINGTON: "I'm sure you do, but the fact is that probably most of the people that we deal with through Yellowstone County--I don't know how it is in the other counties--but most of the people that we deal with are people who could have been caught earlier, and they are chronics. And when we send them to Warm Springs, it's for a ninety-day commitment that probably could have been much, much shorter if they had been caught earlier. Many of them are the same people; that's my point. And your bed space might be freed up if they could be caught earlier."

JIM JOHNSON: "In Nancy's example, she pointed out that when you have a facility that will take them, and when you have the staff that you can treat people with, then you can bring people around more quickly. I wonder if this doesn't speak on a pilot program basis to talking about some small, secure state-owned facilities. Eight or ten people in the community, like Billings, Helena, or a major area where people could be sent for a period of time until they could stabilize. We would have, somehow, to try to break away from the idea of strictly medical bounds, but where nurses or other medical staff could be there to give the medications and secure on a 24-hour basis so that they wouldn't be leaving there. If we were catching people on the basis of that in need of treatment definition and putting them in small facilities such as that in the community, maybe we would be catching them right there at home and keeping them in the community before they have to go to the State Hospital."

JOHN McCREA: "I want to follow up on that, too. One of the concerns I have is I don't know if this group is aware of all the creative approaches that are done in the different communities with the social workers and your educators and your parents and independent living--that's an issue. I guess the bucks that are saved on free time and issues that people spend just trying to deal with a particular client to keep him out of Warm Springs and to keep him out of mental health centers. I look at both ends, I mean I've got people that I've sent to Warm Springs and we couldn't get them in because they're overloaded. I've had people I've sent to mental health centers, and I can't get them in there because they are saying it will be two weeks down the road before they can be seen. We have more difficult cases to deal with. And, so then you have to start thinking, well, you either let them stand on the side here and get to the point where then

they'll go to Warm Springs. You know, where the person meets the guidelines where they can be referred to Warm Springs or go to mental health. I can do that. But the point being that there's a big gap in the middle that is being done every day here. I mean, it's been done in every community. I don't see any focus or attention to be placed on to keep these people there, and there are a lot of resources not being used, or not being recognized or not being looked at, as your primary concerns that would resolve some of those problems."

SENATOR TOWE: "What resources?"

JOHN McCREA: "Well, the resources I can name you, I can give you many examples. Just this week we have a client that can pull together Nancy Adams from the Montana House; we pulled together a counselor from Helena Industries; we pulled together social workers here; and we organized a game plan to get this person, who is more familiar with those people and can deal with those people, to stay in the community, who is more cooperative in working with those people--doing this, rather than sending the person on to the mental health center, referring them there to someone they don't recognize and that they're unsure of and afraid of because they are experiencing mental illness. That's just one example. The people that I have to work with, creative resources, are the educators in this community, the parents in this community; I work with the Board of Visitors; I work with parents; I work with social workers--every resource we have available to the community we have to utilize in order to keep these people here. And that seems to be, to me, the most constructive, cost-effective approach that has been worked out. The local chapter of the Mental Health Association is a good resource. As is West-Mont Services. Those services seem to be a really effective tool. Because the money is not there, the resources are not there outside to go ahead and make those referrals. I realize that the Mental Health Center is overloaded. We've had to use, I've used private therapists, private psychologists, who have gone beyond their point of not charging their full fees. They recognize the problem, that these clients can't pay fifty-five bucks an hour to go and see them. For example, we have group sessions going on with eight people that are in my program that potentially some of them would end up in the Mental Health Center or would end up in Warm Springs. They meet twice a month. That psychologist charges five bucks a shot to deal with their problems. And that's one example that keeps them out of the Mental Health Center and keeps them out of Warm Springs, because they've learned to deal on this basis. The Mental Health Association has a lot of good resources. Montana House is another option in this community that works with the different agencies in providing as consistent of a service as you can get without having the gap. I've gone down on a Friday night and had a client that had to have a signed release on, take them down to the Hope Unit or assist in taking them to Warm Springs, and all the dollars involved there versus what we've done in order to create a more preventive approach in the community, you can't top it. So, that's an issue of major concern."

DON HARR: "Mr. Chairman, I think we are trying to talk about two subjects at the same time, although they definitely are related and intermingle as far as availability or lack of availability of facilities, which include

staff along with facilities, of course, and the statute. They do interact on each other; there's no question about it. And I am, all of us are fully aware of the need for more adequate facilities. I think we do have to keep some focus on the statute or we can be here all day. I think that Senator Towe and other legislators are very much aware that we are facing a crunch as far as facilities are concerned. But I do think there is a basic question: are we going to determine a proper statute based on the amount of facilities available, or are we going to determine the proper statute based upon what is best for patients in accordance with the law."

SENATOR TOWE: "I still would kind of like to bring us back to the question that was raised earlier, and I don't think we fully addressed it. Jim, you said that you thought that there were some patients at Warm Springs who could possibly be released from Warm Springs if there were the capability and willingness to handle them at the local mental health centers. And I think that it was rejoined by several people, Mr. Briggs and others, who said that they do receive everyone that is requested, provided there may be some they can't really do a very good job with. Can you explain specifically what kind of a person could be released to mental health centers that no longer needs to be in Warm Springs at the present time?"

JIM JOHNSON: "I don't know that I can specifically do that. I have to stand on my reputation for truth and honesty that people are offered for release from Warm Springs because the hospital feels that they are ready to be released, and that they are not picked up by the mental health centers on the other side because the mental health centers don't have an obligation under law because the non-profit corporation picked that up. Perhaps the people at the hospital can describe those people for you better than I."

SENATOR TOWE: "Alright, that's the next point, to ask them. But first, before we do that, are you saying that they are not picked up because they don't want to pick them up, because they don't think they have the capacity to pick them up, or because they can't do anything once they are picked up? Do you know?"

JIM JOHNSON: "Because I think they don't want to deal with them back in the community. That would be the best way that I would, with that discreet group of people. You see, now I've got everybody on edge. They're trying to say that those people don't exist, but I've been doing this for nine years and I know that those people do exist."

SENATOR TOWE: "Okay. Can I ask a question. I want to follow up then. Dr. Harr, you raised the question, and maybe this is where we're getting in; you raised the question of whether or not there are some people that are returned from Warm Springs that the local mental health centers just are not physically or otherwise capable of handling. Is that what you're talking about?"

DR. HARR: "That is exactly correct. We never refused to accept a patient because we didn't want to accept a patient. I have been associated with the mental health activity in Billings for more years than some of them

have been in practice around here. And I am not aware of any time that there has been some arbitrary decision to refuse to accept someone just because we didn't want them there. It has always been based on our doubts of our capacity, our capability of being able to take care of them."

SENATOR TOWE: "Okay, be specific. What can't you do?"

DR. HARR: "We cannot handle someone who refuses to have anything to do with us. Once they have been released from the Montana State Hospital and they get back into the local community and they refuse to participate. We have taken a few individuals into the group homes and have them walk out within two or three days because we have no way of keeping them in treatment. We have had some that we've been able to convince to stay in the group homes but who refuse to participate in treatment, and therefore we can't keep them in the group homes."

SENATOR TOWE: "Okay, that's one category."

JIM JOHNSON: "And I agree that that's part of the thing that's going on."

SENATOR TOWE: "But I think the law can address that, and I have a suggestion for you on that point; I want to see if it will work. But first are there any other persons besides those who refuse to participate or refuse to have anything to do with the mental health centers?"

DR. HARR: "There are a few individuals who have been, there are a few examples of individuals who have been in and out of the Montana State Hospital and in and out of the mental health centers' treatment programs, and that we know that they do get stabilized when they're at the Montana State Hospital, and that as soon as they leave the stability and leave the structure of the Montana State Hospital and come back to the community, that they just do not handle it. They are not able to adapt themselves. They present a very good--not very good--but they present an adequate picture of stabilization so that the people at the Montana State Hospital have no basis for keeping there any longer. And we know from experience as soon as they get back into the community, they destabilize, they decompensate to the point that something has to be done. And then we get into the revolving door syndrome. People at the State Hospital are angry with us because we keep sending them back, and we keep wondering why they don't keep them. But we know why they don't--because legally they can't. And they don't have room."

KELLY MOORSE: "Just to expound on what Jim Johnson was saying about some of the people that I've had experience with that were not accepted into the communities, specifically into the mental health centers' programs, were those people who appear to need a level of supervision that some of the mental health centers do not even acknowledge. Specifically in that category would be the high-functioning DD people for whom there is some question whether or not they would benefit from the mental health programs, but for whom we can get no DD services. Some mental health centers have been more accepting of that population than others. They're a group that

fall between the cracks that often don't get services. Depending on the individual, some have worked out very well in group homes, or, excuse me, in state program settings to receive the services from mental health centers. Others, depending on the individual, would not be appropriate for the program. I think also under the level of supervision falls somewhat similar to what Dr. Harr was saying, the chronic person who has been in and out of Warm Springs, comes back to the community, and unless specifically taken to the day treatment program, wouldn't show up. They may be willing to have the mental health worker come to their home, receive those kinds of services, but that puts a really excessive burden on mental health centers to expect that their staff and mental health workers to all just be going out to the individuals' low-income setting, apartment setting, or wherever they're living."

SENATOR TOWE: "But that's still cheaper than another bed in Warm Springs."

KELLY MOORSE: "Exactly. But we have had mental health centers refuse to do that, refuse to take a person back or provide services because of that very situation."

RAY LAPPIN: "I'm from the Pre-Release Unit at Warm Springs. A clear-cut example of when Billings, for example, refused to take a patient from Warm Springs. I think some of the patients that may fall into a category that are difficult to place are sex offender individuals. We get those individuals at Warm Springs. We do not have a specific treatment program for them, nor do the communities, like Billings or others. And there are some borderline individuals with borderline diagnoses and some anti-social features that are severely difficult to handle in a community setting. I don't know of a lot of clear-cut examples. But that is one area in which a patient at Warm Springs would be refused in the community."

DICK HRUSKA: "Three things. First of all, I'm not aware of anyone being refused service in Region II. There is one condition under which we will refuse services to an individual, and that is if he has the ability to pay for services and refuses to do it. And that goes back to the old statute, and it is the only permissible thing that I'm aware of where someone can be refused services. Secondly, to address Kelly's concern, we have two nurses of which a large part of their day is spent administering medications and making home visits to people who largely would not come in to our day treatment program. So, there are programs in the community to deal with that. Thirdly, I think Jim should be able to describe specific instances of people who have been refused services in the community, the type of client, rather than have a statement made besmirching us all."

JIM JOHNSON: "No, it's not intended to do that. Two of the categories that Don described are some of those major categories. Where, the hospital on one side says that the person is doing so well that they should be in the community, and the mental health center on the other side says they can't take them because their experience isn't good with that. And I think that if you talk about, that's why it seems to me the possibility of having small state-owned facilities to help people who are either just on the edge

of leaving the community and getting them back on medications, and on the other hand having the facility that someone could order people to go to who are coming out of the State Hospital. But you can't order people to go to hospitals. Hospitals don't have to accept people. You can't order people to go to mental health centers; mental health centers don't have to take people under the provisions of the conditional release. And, it is necessary then, I guess, that the facility be a state-owned, small facility that could take care of those kinds of people."

SENATOR TOWE: "Just a minute. Let me interrupt for just a minute. Because I don't think that necessarily follows, Jim. Isn't it possible that one could say as a condition for release, much as we do for a condition of parole at the present time in the criminal field, that they must find someone responsible, who is willing to be responsible, to accept that responsibility as a condition. Once that has been determined, then they are released. In other words, the pre-release activities at Warm Springs will involve making the contact with the mental health centers, checking to see if the facilities are available, checking to see if they will accept the responsibility of making sure that this person if he doesn't show up, that they make a home visit, or whatever. And then with that condition, with that acceptance, then make the conditional release. Now, I don't know whether we need more authority on the statutes to do it, but it seems clear that that ought to be an alternative available to us."

JIM JOHNSON: "It is available. What isn't, what stops that is that the facility in the community is a mental health center. And under the statute, the mental health center has the right to refuse those people if they want to refuse those people. And then the people don't have any place to go, even though the hospital doesn't think they need to be there."

SENATOR TOWE: I guess I'm not terribly worried about that because what I'm hearing is that most of the mental health centers are going to make every effort to try and accomodate that situation anyway. So I doubt if there are very many people who are going to be absolutely refused when, in fact, they could be handled. Unless there's a financial problem. If there's a financial problem, then we need to address that."

HAROLD GERKE: "Well, I'm sure that enters into it. But before we go any further, we haven't heard from the Adult Protective Service people. There are some of them here, and also from the law enforcement people. We'd like to hear from a cross-section of everyone."

TOM SELLARS: "I guess the point that I would be concerned with is where would the back-up be? There is no person in the community to make such arrangements, as you suggested, if the centers won't . . ." (INAUDIBLE)

SENATOR TOWE: "I'm not as concerned about that. It may develop to be a concern, and it may be a financial problem, but from what I'm hearing from the mental health centers, they're making every effort to try and accomodate anybody and everybody that applies. And I just can't believe that they're going to, on a routine basis, start refusing to accept people which

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your folks at Warm Springs say are ready for this kind of a setting and can be handled in this kind of a setting. I think a more important area that we need to address, and I'd be most interested in hearing comments on that, and that is do we need some authority to make sure that what Dave Briggs mentioned doesn't happen, what Don Harr mentioned doesn't happen, and that is that we release them to the community and they absolutely refuse to take part under any circumstances in any treatment of any kind that the mental health center offers. I propose that we handle that matter by simply saying that there is, just as in the parole situation in criminal cases, that there is a condition for release, and if they violate the condition, they can be returned to Warm Springs involuntarily without having to go through a major proof of seriously mentally ill. Maybe that won't work."

JIM DEMING: "I think that's a good idea. Many of our commitments have an element in them based upon mental status examinations that suggest pre-release type conditions. That individual would be referred to Mr. Lappin, and he and his group would meet with mental health people and contact them and discuss the possible implications in the community of this person's behavior and the ways in which that can be combatted. We then go into court, in district court, and we make the comment that this patient is to be committed to Montana State Hospital for a period not to exceed one year, conditional release immediately based upon these conditions. So, within the mechanism of current law, we do have that authority and have been able to exercise it--point number one. Point number two--I think it's a real shame that in every meeting that we have like this, we find ourselves in adversarial positions. We find ourselves saying, 'Hey, we're the good guys; you're the bad guys. We, the State Hospital, cure everybody and get them out, and you mess them up.' Or, 'You guys out there mess them up and give them back to us, and we straighten them out again.' The facts of the case are that we actually have a very surprisingly cooperative organization out there. And that, in fact, while I can give Dr. Harr a specific example where he personally refused a patient, and others, the number of patients that they take far exceeds our expectations. Many of the people are borderline at best as they leave Warm Springs. And the mental health centers say, 'We'll give it a shot; we'll give it a try.' And those are the kinds of things, I think, that this committee has to hear. Those are the kinds of things you have to understand that are going on out here. Third point--it's my judgment that we have those things in place to get those probation status situations, but if it was more clear, if the law was more clearly defined, it would give us more teeth, and in that case I think we would be trying to catch a few more of those people who fall between the cracks."

TOM SELLARS: "Well, just coming back to what was said in terms of the concerns about the treatment when they get back into the community, I think we should equally then be concerned about those same problems that we have. Because we have that patient that is admitted, will not participate in treatment, will not take medication. I mean, it's the same nine yards."

SENATOR TOWE: "And what do you do?"

TOM SELLARS: "We have the choice of either going to court and getting an order to force treatment, or we don't give it. And in many instances, we

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don't give it. The person is sitting there."

DONNA HEFFINGTON: "It seems to me that we're talking about the same thing. The question is whether and at what point we have the right to force people to accept treatment that don't want to accept treatment. Part of the problem with the conditional release is that the statute, 53-21-183(3), states that before a person whose conditional release can be sent back, they must be a substantial danger to themselves or they must fail to meet the terms, but because of this they must also be a substantial danger. So, we're talking about the same problem. Is there a point short of seriously mentally ill at which we can require people to accept treatment. Whether they're people who've just been released from Warm Springs, or whether they're people who are out deteriorating now to the point that they're going to have to be full-blown seriously mentally ill before they're committed. When do we start doing something? When do we have the right? When do we have the obligation? It seems to me it's the same question. Whether it's a conditional release or whether it's somebody who has come back from Warm Springs, in which case we're going to have to create some legislation that provides for follow-up, or whether it's somebody who is predictably and progressively in need of help. At what point do we do more than we are doing now? And that's the legislation that we need to decide on."

RON WEAVER: "What she's saying is correct, but I think it involves both the involuntary and the voluntary, which is coming into play here. Many of these patients on the voluntary basis can refuse to accept any treatment whatsoever. We get what we call a handcuff voluntary. They're in trouble with the law, and the county attorney says, 'Hey, you go to Warm Springs on this voluntary, and we won't do any more and we'll drop charges and everything.' The poor sheriff, he has to bring the guy down there in handcuffs and toss him in, and he may be a wild man or whatever. He stays one day or two days, and he signs a petition requesting to be released from our facility, and then we have to call Dr. Harr and say, 'Hey, I got this crazy guy here who wants to come back,' and he says, 'Please don't send him back!' It's not that he's refusing him; he just doesn't know any more what to do with him than we do. So, we have ourselves in an admission or a process of commitment that sounds like we're trying to solve here, which the laws, some of it is available. But I think getting them to Warm Springs for treatment, the ones who really need it, through an involuntary process is very important. And that needs to be looked at very seriously. Rather than going to a judge who says, 'Hey, the guy's really not a danger to himself or to others; he's not an imminent threat,' but he doesn't know what he's doing. He's washing windows that aren't there. In other words, we don't have a handle on our process of commitment well enough, whether it's statutory or whether it's just the need for the patient. And I think that's where some of these problems have to be dealt with."

JIM JOHNSON: "What we are agreeing on is that we would be in favor of an 'In need of treatment' definition as long as the concept would be limited to people who would be treated in the community. So they could be caught early and treated in the community. I don't think, when you begin to

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lessen, as you would, the requirements with regard to in need of treatment from where we are with seriously mentally ill, I don't think that you can, under the existing law, commit people to the State Hospital under that definition. It would be to show the people who are incompetent and that they would get treatment, they were in need of treatment, but that it was to be done within the community."

SENATOR TOWE: "Can we focus on that issue for a moment?"

JOHN SPENCER: "I just wanted to kind of give a little support to what he was stating on the side of law enforcement. To start out with, we have very close contact with people that are both acute chronic and anti-social personalities. And the latter the most. And I think possibly I've worked considerable years in the work in dealing with mental people, and I've found that in committing a person, I think it is a necessity to establish some format where we could, in our profession, have a 72-hour hold of involuntary commitment if we determined the person is in need of that. And put in some place, we don't particularly, or we'd go back to facilities, but put in some place that during that 72 hours, a doctor takes a look at that person and determines a need at that time during that 72-hour period. This affords the fact that the person is taken away from injuring himself and society, and these situations occur frequently. In our situation, we don't have the environment, the only environment we have to put them in there is a pink room in a jail, which is sometimes frowned upon. And I think personally that we're close enough to Warm Springs that we can, if we're lucky sometimes to maybe get the paperwork done and get the person over there. And I also feel that there is a considerable escalation of people having these problems. And I'm not a person to state what is the cause of all of this, but the hospital has already testified that they have an escalation of their patient load there. And we see a lot of people with a lot of problems that we'd like to make do something about, but we can't do anything about it until they create some violent situation. But I honestly feel that the Warm Springs Hospital, this gentleman did have a point, I think, that in one state I know they have a county hospital to have what they call a Short Doyle Clinic in the state of California, where it acts as a filtering system for the patients that we take in there. And at that time, they are checked out and are either petitioned into court and taken to a state hospital, or they are released to local mental health centers under counseling services, or they're turned out on the street--one of the three. But it affords, it's like a checking station. We're talking about facilities again, but if we could have a filtering area to filter these patients out, I think it would be a help."

JIM JOHNSON: "If that were possible, say in relationship to Madison County or one place in the area where that could be done and have that purpose, it also would take off from the State Hospital having to try to do some of those things for you which they're not equipped to do because they're not here now."

SENATOR TOWE: "Well, I just wanted to focus on, there's two issues that I'd like to have people address because I'd like more guidance on them.

First of all, do we agree, is there generally a consensus that we need to have some more teeth in the statute with regard to the follow-up following release from Warm Springs. I think Jim Deming made the comment that it would be nice to have more teeth. And, if so, then let's talk about the question that Donna raises, which I think is one we have to address at this point. And that is do we, can we go ahead and say the individual can be returned to Warm Springs for violation of the terms of the condition only. And that's a lot different than returned only if you can re-establish that the individual is seriously mentally ill. I think Donna is saying that we may not legally and constitutionally be able to return someone. I'm not sure that that's right, but I think we need to discuss that."

HAROLD GERKE: "Well, maybe before we do that, we could answer, I might ask this group to answer the first part of your question. And that is do you feel that the law should be strengthened up on the release from Warm Springs? How many of you would support this? Let's see some hands."

(The record shows that a majority of those present raised their hands.)

SENATOR TOWE: "Is there anybody that feels strongly that that's not the right way to go?"

JIM DEMING: "I think you need to tighten up on your primary admission facility."

HAROLD GERKE: "We're going to get to some of the rest of it as we go along. Maybe we're going backwards, but we're going to try to cover all of it yet this afternoon if we can, but I think we need to get some of the things resovled as we go along. Because it's my intention, subject to your approval here, at the end of this to reduce this whole thing down to probably a small task force, sort of a committee that will finally, if there is legislation, that we're going to need the minutes and we're going to need to know what we're agreed on, that they can work out and work with Senator Towe and others that are involved in it."

SENATOR TOWE: "Then the next question that I'd please like to have people address, and that's not to exclude other things later on, but please address it at this point. Do we have to have something more than a mere determination that they violated the terms of the condition to return the individual to Warm Springs? Under the statutes we do, but we can change the statute. The question is do we have a constitutional problem? Do we have a practical problem in changing the statute?"

DAN ANDERSON: "I certainly wouldn't know whether we had a constitutional problem, but if the condition of the release were to send an individual to the mental health center once a week or something like that, if a person were to violate that and was sent to the State Hospital only for that violation, then it seems like the State Hospital becomes for that patient a correctional facility. The State Hospital has said, 'This person isn't in need of our treatment,' but he is being returned there because he simply was not keeping appointments. And I think that's a problem in terms of

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what the State Hospital is for."

SENATOR TOWE: "So what would you suggest?"

DAN ANDERSON: "Well, I think there has to be some sign of deterioration in his condition in addition to his not complying."

SENATOR TOWE: "Good point."

DONNA HEFFINGTON: "If the statute were changed to include, as it does now, finding that the person is dangerous to himself or others, but also enlarged to include finding that the person is--it wouldn't matter what terminology used--gravely disabled or in need of treatment or whatever, then would have a basis for sending them down in terms of their own needs. Could I take one minute here to talk about the Donaldson case. When I read the paper on the last meeting, it seemed to me that most people were concerned that Donaldson said you cannot send someone to a mental health facility who is not dangerous. And I went through the case, and what the court says, and very specifically says, we need not decide whether, when, or by what procedures a mentally ill person may be confined by the state on any of the (INAUDIBLE), which under contemporary statutes (INAUDIBLE) justify involuntary confinement on such a person. Whether it's to prevent injury to the public, to ensure his own safety, or to alleviate or cure his illness, they said we don't have to decide that. In the Donaldson case, the court says it's a very narrow decision, this person was not dangerous and he was confined without treatment. He was held in custodial confinement. And what the court said and what they decided was that the state cannot constitutionally confine without treatment a non-dangerous individual. Donaldson is not saying that you can't hold a non-dangerous individual. It's saying you can't hold him without treatment. And if there is a provision for sending back--sticking to this conditional release question--if it were changed to allow for sending back for treatment somebody whose condition had deteriorated because of his failure to follow the conditions of his release, then return to the State Hospital for further treatment would not be inconsistent with the Donaldson case, as I read Donaldson."

JIM JOHNSON: "I agree with that. But I do think that you're going to have to have either an administrative hearing or a judicial hearing to make it work and be constitutional, and that's what the law . . . " (INAUDIBLE)

RON WEAVER: "I agree with Dan, and I think what Ms. Heffington was saying here is correct. I think the civil rights of the individual must be maintained. And in the process, as Jim Deming said here earlier, we already have a system for a conditional release. Prior to the ninety days or the six months or whatever be the situation, the law already provides for us to go back into a setting with a Judge, ask for another commitment, say six months or a year, whichever, and as part of that make it a conditional release into the community. Which means this person is already on a conditional release, which already has built in the requirements of his commitment as it exists at the present time. You don't have to worry about

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whether you violated his rights or what you've done once you have him out there under that situation. So, therefore, I think you don't need to change the situation of putting a person out into the community. The problem is you should commit him in such a manner that we can give him the treatment to start with. And, therefore, you need to have the ninety-day involuntary commitment placed there so you can treat him, and then develop your conditional release from that point. So, the commitment to the facility is your primary target, not what's going to happen when he leaves. We're going to rely on the mental health center to do their job because we can put him on that conditional release. But if we can't get him in there to treat him, no matter what the situation is, then you're going to be in fault most of the time, because that person is not ever going to get treatment."

RAY LAPPIN: "I guess a real concern I have is the issue of seriously mentally ill and danger of self and others. I think that becomes the real issue at most court hearings for a commitment. And I think we need something else in there, gravely disabled or whatever. We have the mechanism for conditional releases, but when we come down to commitment of Warm Springs anymore, it's whether they've tried to kill somebody, whether they've beat up somebody in the last week or two. That isn't always happening, but we've got some real, in my opinion, seriously ill people--crazy people, whatever you want to call them--leaving Warm Springs who are actively hallucinating, who probably can't take care of themselves, but they haven't tried to commit suicide, they haven't tried to commit homicide, and as a result of that, I think we've got a lot of mentally ill people leaving Warm Springs that we need something else in the commitment besides seriously mentally ill and danger to themselves and others. I think the issue of dangerousness becomes a real issue in committing to Warm Springs. And I assume they're becoming an issue in the community also."

HAROLD GERKE: "That's kind of where we came in at, the first time. We need definitions on seriously mentally ill, imminent threat, gravely disabled. All of those things sound different under different circumstances to different people. How are you going to do that? How are you going to really put a description on it? That's what we're going to try to do here before we're through."

SENATOR TOWE: "Harold, before we proceed on that, that's really opening another subject and I'd like to close up on this subject. Is there generally a consensus that what we need is some more teeth in the release statutes that will in fact allow us, without any question, to bring back after a hearing of some sort a person who has been in Warm Springs on an involuntary and is released on a conditional release for violating his conditions, provided they add the further proof at the hearing that he is suffering from a mental illness and there is evidence of deterioration because he is not complying with the conditions? Is that generally acceptable?"

HAROLD GERKE: "Do we have acceptance on that? Is there any opposition to that? Can we see how many are in acceptance of this?"

(The record shows that a majority of those present indicated their acceptance of this matter.)

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SENATOR TOWE: "And I think that covers a big area. Then the second question--and we might get to what Ray is talking about and what Ron is talking about in this, but maybe not, so hold your concerns if we don't--but the next question is really the one that Donna has raised from the very beginning, and I'd really like to focus on that. And that is a new definition, a new category, a person who is not seriously mentally ill, but a person who is in need of treatment, and need of treatment would be defined in much the same way as the incompetent person is defined at the present time. That is essentially someone who is suffering from a mental illness or disorder to such an extent that they are unable to determine themselves the question of their need for treatment and, as a result of that, need treatment. Now, that's essentially the type of thing we're talking about as a definition. Question--is there room for a definition like that? Does that make sense? And the next follow-up question from that is once we decide and adjudicate a person as being in need of treatment, what can we do with him? Should we limit it to only residential treatment, or should we open it up for treatment at Warm Springs?"

(UNIDENTIFIED): "Not speaking for the State Hospital, but my concern, my first recommendation would be that we limit that. The function of the State Hospital appears to be more and more specific in terms of the chronicity, the dangerousness, those issues. It would be my recommendation that you consider limiting adjudication to community centers."

LARRY EPSTEIN: "Speaking as one who has done several, several commitments, I would like to throw my weight in with Ray with regard to the definition of seriously mentally ill. And I think that gets to what Senator Towe has raised at this point. That the definition is narrow enough that everytime we get into a commitment proceeding, an involuntary type of commitment, we end up discussing dangerousness. And what we get in our office are families saying, 'Look, this person isn't taking medication; she's moved out of the house and into the back yard; she's cooking on a barbeque in the winter; she doesn't pay her bills for her heat; her lights are turned off; she can't take care of herself.' And those people, unless you can make an argument to the court and to a jury, as is set up in Montana--and that's something else I would like to (INAUDIBLE)--those people don't fall within a dangerous definition, unless you can argue to a court that failure to take care of day-to-day necessities in a climate like Montana, are not dangerous to themselves. You can argue that failure to pay the heat bills and the water bills makes it dangerous in terms of health. And we've had to do that. I think that we need to address the problems of the person who is gravely disabled and can't watch out for their day-to-day affairs, whether it's by another definition of seriously mentally ill or by just a change in the definition of seriously mentally ill."

JIM JOHNSON: "The last part of that definition says, 'unable to take care of life and health'. That definition says, 'injuries to self or others or imminent threat therein or inability to take care of life and health.' So, those people that you're talking about would be covered under this definition. I think we would be most ill-advised to go to the definition of gravely disabled because that would give us another definition. And if

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you read some of the case logs in the state of Montana, gravely disabled has been interpreted and was interpreted--in the case that mental health professionals are most critical of the case of R.T.--gravely disabled was given the same definition in Arizona as seriously mentally ill was given in the state of Montana. It was used in that case of R.T. here in the state of Montana to depict that. So I think what we have to do is have people sit down and read the definition, and when it says unable to take care of life and health, then get away from the dangerousness issue and deal with unable to take care of life and health. Because it's right there to be dealt with."

DON HARR: "In answer to that, I would like to point out that the current interpretation by the courts, as indicated by the Supreme Court in the state, is that one can only make that determination if there is already an indication of physical damage to the individual. In other words, you have to wait until the individual has already demonstrated a physical decompensation before you can indicate that they are unable to take care of themselves properly. You can't just show that the individual is sufficiently ill. The example that he gave of the individual who has not paid their light bill or their gas bill, and all their heat, light, and everything else has been turned off, you can't say that they're unable to take care of themselves until they stay out there and freeze their feet or their hands or their nose or their ears, or whatever it is that freezes first. You have to wait until the damage has already been done. You can't say that because this person is so mentally ill, they've already demonstrated their incapacity to take care of themself. And I think our definition in the statute has to be sufficiently inclusive to make it clear that you're not just talking about something that was done after the fact."

LARRY EPSTEIN: "That's exactly what the families are saying. That's exactly what the families of these people are saying."

DON HARR: "The way it is now, the Supreme Court, and therefore the district courts, are in a position of defining it and interpreting it in such a way that we can't do anything with these."

JOE CONNELL: "I'd like to propose that the committee consider the personal need of treatment to some extent. The Senator mentioned treatment in terms of what is available in the community. If it needs to be considered in terms of (INAUDIBLE). The thought and support of State Hospital people in terms of strengthening their release. From my perspective, what we experience in Lewis and Clark County is people returning from Warm Springs that we may or may not have been involved with as Adult Protective Services staff. If we have, we consult very quickly with the people at the local center and attempt to do everything we can to provide the necessary services. Where the problem lies is where that in a hostile individual who is refusing service, the critical thing to me seems to be looking at a law that includes something in the form of a person in need of treatment. Number one, to effectively do a good evaluation first on the local scene. And number two, to treat in as short a period of time as is necessary with medications and/or counseling, whether it's outpatient or inpatient in a

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local hospital. I'd like to see the committee pursue that first. And, second, really take a good look at the post-release."

JIM JOHNSON: "This case that Don was talking about, they interpreted inability to take care of life and health. My point that I was trying to make with you was that that was taken from a case that had to do with gravely disabled. And they were also talking about present grave disability. And that seems to be one of the great things that is concerning people. We were talking about inability to take care of life and health; you have to be able to show something that is seriously a problem at the present."

SENATOR TOWE: "Excuse me, let me just briefly interrupt. Jim, to clarify that a little bit, what Don was saying is that you have to prove an already existing physical deterioration. Do you agree with that; that that is what the Supreme Court is requiring?"

JIM JOHNSON: "Well, in the case of R.T., he was able to stay in the residence hotel, he was able to go to meals and so forth, even though he thought from time to time--and this is the case I was talking about--he thought from time to time that people were poisoning his food and things like that. They said that there was not a present inability to take care of life and health. But the reality of that is that he was in the hospital more than ninety days before the Supreme Court determined that ninety days before he didn't need to be there. And that's part, as a reality, that the judges are willing to make decisions on these cases and call the close cases. You can't get into the Supreme Court for a decision until ninety days, you know, past that. I wouldn't think that they would arrogate such power that they would not do that sensitively. The reality is that they are going to be challenged if they do that."

JIM JENSEN: "I, first of all, would like to agree with Jim. I don't think the problems between the mental health centers and the State Hospital is that great. I think we do have a very good working relationship. I think we do try to support each other. If we're going to try to have more treatment in the community, and we're going to change the statute of that, I would like to remind the committee that Warm Springs is not the only place that has limited facilities and staff and limited monetary resources to take care of these people. If we're going to put them in the community, then we're going to have to have additional resources also. If we're going to put them into Warm Springs State Hospital, they are going to have to have additional resources. In either case, wherever you put them, there is going to have to be some additional resources provided for treatment."

HAROLD GERKE: "I think if you remember in our first meeting the preponderance of testimony we had was right on this subject that we're talking about now. We had some people, and there are families here that were involved, as this gentleman back there said, they have people in their family that they just can't, nobody wants to handle them. They just bounce from pillar to post, and go to Warm Springs and come back again. But when they're all done, nobody takes care of them and they can't take care of

themselves either. That, I think you'll find if you read the transcript from the last meeting, was a preponderance. Now, what we're going to do about it, I don't know."

(Five-minute recess.)
(Meeting reconvened.)

HAROLD GERKE: "While we're waiting for Senator Towe, I know he had a question he wanted to raise, while we're waiting for him, is there anything else anybody would like to bring up?"

(UNIDENTIFIED): "I'd just like to follow-up on my previous statement (INAUDIBLE) in terms of the local mental health centers. I came back to our office a year and a half ago. And at that time, prior to that time I had been there for five years in the 70's, and I recall the centers having outreach staff, including psychiatric nurses, that were able to approach a number of these clients and do quite an effective job of maintaining them in the community. After returning a year and a half ago to my job, I discovered that they lost those staff. Anything that the committee considers with regard to something in the form of a person in need of treatment statute is going to need to be concerned with the question can the centers then provide the outreach."

HAROLD GERKE: "Quite a lot of what we're talking about, of course, will revert back to whether there's money enough. I guess that's a problem we'll discuss next hearing, but not here tonight. We're going to try to wind this meeting up by not later than 4:30 p.m. if we can. We don't want to cut anybody short, but we do need to get done by that time. So, is there anything else to be discussed before Senator Towe is ready?"

NANCY ADAMS: "There's something that Tom brought up earlier, something that was discussed, that I need clarification on. He mentioned the need for a conservatorship/payee. And since Adult Protective Services are here and some smaller counties are represented, I'd like to find out if we already have a system like that in place. Senator Towe didn't get into a definition of the difference between a conservatorship, guardianship, and payee. For example, Adult Protective Services, how many people right now roughly that are chronically mentally ill would you estimate here have payeeships for?"

(UNIDENTIFIED): "Two or three."

HAROLD GERKE: "Senator Towe is ready now, and I know he wanted to get a consensus here. So, I'd like to turn it over to him right now please. So, let's go ahead with that while we're on that subject."

SENATOR TOWE: "Thank you. Forgive me for being late. Is there consensus that we need and should draft a bill that carves out a new category with a new definition. For purposes of discussion, we'll call it a person in need of treatment, as opposed to a person who is seriously mentally ill. And

the definition, and I'm going to borrow from Donna's, which I think she's already done some good work on, the definition would read something like this: A person who is in need of treatment is a person who is suffering from a chronic mental disorder which has resulted in significant deterioration of an individual's cognitive or volitional functions and, which if not treated or controlled by medication or treatment, will predictably result in that individual's becoming seriously mentally ill within the meaning of this law."

JIM DEMING: "Medication is actually a form of treatment."

SENATOR TOWE: "Okay, so we can just simply say controlled by treatment?"

JIM DEMING: "See, the problem that you have, Tom, is that if you don't make that specific, there will be those that say treatment means put them in a structured setting and provide for their basic needs. Their psychotic thought process (INAUDIBLE) stabilized on medication. So, we want to include both treatment and medications."

DONNA HEFFINGTON: "We could say something to the effect of treatment which may include medication." (INAUDIBLE)

SENATOR TOWE: "Let's take the two items one at a time. First of all, is there generally a consensus that we ought to proceed on this basis, at least for the purpose of drafting the bill?"

JIM JOHNSON: "It seems to me that it's not as simple as that. If with regards to the first part of that, . . ." (INAUDIBLE)

SENATOR TOWE: "Okay, which means suffering from a chronic mental disorder, which has resulted in a significant deterioration of an individual's cognitive or volitional functions."

JIM JOHNSON: "Wouldn't it be easier to replace that with 'who is incompetent'?"

SENATOR TOWE: "Good question. First of all, before we get to that, Jim, can we ask again, is there consensus that this is the right approach? We'll get to the specifics of the definition in a minute."

CLIFF MURPHY: "A question on information. Is this a question of the definition of a severely emotionally disturbed or of an emotionally ill, seriously mentally ill, or is of mentally ill? Now, the definition you're quoting is of the seriously mentally ill. On the previous page the definition of mental disorder is defined. But, it seems to me you're dealing with a class now that you, you want to include a class whom you do not think of as seriously mentally ill? Is that correct?"

SENATOR TOWE: "That's correct. This is something less than seriously mentally ill as presently defined. But, as the second part of the definition states, 'will, if not subjected to treatment, including medication, will predictably result in becoming seriously mentally ill.'"

CLIFF MURPHY: "So, would it be a replacement of the mental disorder?"

SENATOR TOWE: "No."

CLIFF MURPHY: "Adding a new definition?"

SENATOR TOWE: "Yes."

CLIFF MURPHY: "Adding a new definition of mentally ill?"

SENATOR TOWE: "No, of a person in need of treatment. It would be a new category. So the question first of all is does it make sense to proceed with a new category, with a new definition--we'll get to the precise details of the definition and precisely what happens--but first of all the concept, the new definition and new category. Good idea?"

HAROLD GERKE: "Everybody?"

(The record shows that all those present were in agreement with this concept.)

SENATOR TOWE: "Okay. First of all, let's go to the definition. The definition that we're talking about here really has two parts. First, 'a person suffering from a chronic mental disorder, as already defined--mental disorder is already defined in the statute--which has resulted in significant deterioration of an individual's cognitive or volitional functions.' Okay, that's the first half. The second half of the definition . . ."

CLIFF MURPHY: "That's not under the mental disorder."

SENATOR TOWE: "No. It has to be a person who is suffering from a mental disorder. How is mental disorder defined?"

CLIFF MURPHY: "'Any organic mental or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.'"

SENATOR TOWE: "Okay. It has to be that plus being chronic and plus having significantly deteriorated an individual's cognitive or volitional functions. That's the first part. The second part is 'and which if not treated or controlled by treatment, which may include medication, will predictably result in that individual's becoming seriously mentally ill within the meaning of this part.' That's the second part. Now, Jim, you raised a question about whether the incompetency concept needs to be injected."

JIM JOHNSON: "Well, what I wondered was would judges be able to understand incompetence instead of using all that phraseology. Would never come to any definition of what that phraseology means in ten years, cognitive volition and so on and so on. And it seems to me for this particular situation, incompetence would be appropriate because it's something that the judge has some sense of. He may not have much sense of all these

other things unless he relies on a professional. He may need to rely on a professional. Incompetence has a longer legal history and a simpler history for people to understand. What it's also doing then is drawing the line with regard to constitutionality. Most cases that have to do with the right to refuse treatment. When you talk about the right to refuse treatment, the right to refuse medication, then you talk about finding incompetence plus other things."

SENATOR TOWE: "Are you suggesting injection of the incompetency definition as a third item of our definition, our new definition, or as a replacement of the definition?"

JIM JOHNSON: "A replacement for a lot of that cognitive phraseology. If I had that definition in front of me, I'd be able to tell if incompetency could take the place of it."

HAROLD GERKE: "Isn't incompetency a pretty broad term?"

DONNA HEFFINGTON: "I have to apologize to Senator Towe for that. He had suggested that I try to paraphrase in the definition part of the incompetency. And I think it's a good idea. I didn't get around to it as of this time. Part of the reason also is that nothing is (INAUDIBLE) defined in the mentally ill title." (INAUDIBLE)

JIM JOHNSON: "My point is there are phrases from that that could be used to simplify what is here, which has never been interpreted and which no one quite understands. And that there are words that have more common and simpler meanings."

HAROLD GERKE: "You don't object to using incompetence then?"

DONNA HEFFINGTON: "No."

DON HARR: "I think Senator Towe and I have discussed this in the past about the utilization of the word incompetence as such. Incompetence, by definition as it currently stands, puts the person in the position that if they do retain a sufficient degree of counseling, then they have to go back through a competency hearing, don't they?"

SENATOR TOWE: "That's a valid point. But what we're talking about is a new category of person that would not be related to the present existing law and the repercussions of that determination in the existing law at all."

DON HARR: "If you use the word incompetency, would that tend to confuse the issue? You could take words out of the definition and utilize that as a definition, but if you actually put the term incompetence in there, isn't that going to be legally confusing?"

SENATOR TOWE: "I think that what we need to do is we need to add the words presently in the incompetency definition, maybe even using the word

'Incompetency', but add to it the words 'mental disorder', so we know we're talking about something different than what the old concept is."

JIM JOHNSON: "It's incompetence in the definition and not as a key word, like 'in need of treatment', so it's understood then that incompetence is a tragic sort of thing. What you're talking about is when you have to restore people to capacity under the old law of ten years or so ago. This would not create that."

TOM SELLARS: "Well, I think Jim was just addressing the point. The question I want to ask is are you talking about a legal decree being issued that says 'a person is incompetent'; or is that being used in a more general term if it were substituted in there?"

SENATOR TOWE: "No. What we're talking about is a legal decree that says the person is in need of treatment. Now, we're going to talk in a minute about exactly what that means. It does, in effect, mean that we can require that he submit to treatment. We don't know for sure where yet; we're still going to talk about that. But we're going to require it. It's going to be an involuntary treatment. But the decree will say, 'This individual has judicially been determined to be a person in need of treatment.' It has nothing further than what we then say that means. And we'll get to that next. It's a brand new category."

RON WEAVER: "If you use the word incompetency, you're going to end up with some problems. Because either the doctor is going to say, 'I'm not going to make a decision whether this guy is competent or not'. And you're really boiling down to, like you said here, leave out the word incompetent and you're going to be far better off in dealing with this type because if he is in need of treatment, you've already done it. You don't have to say incompetence. That incompetence scares people to death."

JIM JOHNSON: "I'm persuaded. But I think all that phraseology . . . "

HAROLD GERKE: "Just a minute, please. We've got someone else with their hand raised here."

JIM DEMING: "I agree with Ron Weaver in that comment. And that is the simpler you can keep the phraseology, the easier for all of us. Incompetent is a bad word. I would make the recommendation that something be used, something all of us can agree on."

JIM JOHNSON: "What I was trying to do was to simplify it. It's obvious that this doesn't simplify it. So, what we have instead is our phrases that we absolutely don't understand."

HAROLD GERKE: "I think what we could do, and I'm no authority on this, but I think we could probably use some of the words that incompetent might be described as, but not use the word incompetence itself. Then you can probably get by with it. But if you start using incompetence, that covers a world of things."

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SENATOR TOWE: "Well, I'm still just a little bit confused. Can I ask, maybe I'd better direct it to Jim, at this point what do you think we should do as far as the definition? Should we include some language, lift it from the incompetency definition to add to this?"

JIM JOHNSON: "What I'd like to do is simplify the language that we're using in the definition. I'm persuaded that we're not going to make it simpler by putting 'incompetent' in there. But the phrases there don't mean anything to anybody. And I'd like to be able to, as it doesn't in and hasn't in the commitment law for the last ten years. But if we can't simplify it, we can't simplify it. We can try. Obviously, incompetence is not going to help."

HAROLD GERKE: "We can do it some way. It may not come out the way we would hope it would."

SENATOR TOWE: "Anybody else have any further suggestions? If you don't, I'll do it myself."

HAROLD GERKE: "Well, we're going to appoint a committee a little bit later, and that committee is going to be made up of people who are listening to this conversation. And I think they can boil it down to what we really want and something that will fit well. We'll take one more on this particular item, and then we've got to go on to some others because we're running out of time."

SHIRLEY RENDERS: "This lady said something about 'the ability to understand'. Would that take care of it?"

DONNA HEFFINGTON: "Sure, that could be added, something about 'the ability to understand'."

HAROLD GERKE: "Is that all right with everyone here, then, that we will leave it up to the committee to finalize it?"

SENATOR TOWE: "A couple of other things. First of all, I have avoided going into the question of the use of the words 'gravely disabled', and I've done that for two or three reasons. But I want to make sure that there is generally agreement that we shouldn't try and inject that term into the statute. The reason it wasn't injected into the statute in the first instance is that there has been another state's abuse of that. In California, for example, when they changed their mental commitment law, they used 'gravely disabled' after a very good law, much like Montana's, and then all of a sudden everybody, virtually everybody was brought in under 'gravely disabled'. And if we do that, we have that great risk. Secondly, 'gravely disabled' probably raises some difficulty among other legislators, although I can only speak for myself. But my guess is that by injecting that term, we may have a more difficult time passing the legislation. And for that reason I have suggested we just steer clear of that terminology. Am I correct in making that assumption?"

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HAROLD GERKE: "How do you feel about that?" Okay, I guess. Go ahead."

SENATOR TOWE: "The next question I need to ask with regard to this new category, . . . "

DON HARR: "On that same line, in using the term 'gravely disabled', I think it would need some clarification of this second or the last portion of the seriously mentally ill definition. It does cover something that is very valid there. The trouble is the way it's been interpreted is a person already has to be showing signs, they have to show physical evidence that they're not able to take care of themselves. Instead of of it being a matter of being able to clearly recognize that they can't take care of themselves, because whatever they have already demonstrated in behavior (INAUDIBLE) after already having the physical disability, it's like locking the barn door after the horse gets loose."

RON WEAVER: "Doesn't it stand on its own, based on the fact that this is a person in need of treatment? That you're already establishing that the person has a mental disorder which is the basis of having that section."

SENATOR TOWE: "Okay. We might be talking about two different subjects. And I'm going to ask Donna, maybe you'd want to hold of on this for just a moment. What I'd like to focus on now, with the Chair's permission, is that new category that we're carving out for special recognition. And that is the individual who is in need of treatment. We may after we get done talking about that want to come back and talk about the definition of seriously mentally ill, which is a different subject."

DON HARR: "Well, you mentioned the term 'gravely disabled'."

SENATOR TOWE: "Well, I just wanted to make sure that we didn't want to put that in this definition. Another question we've got to raise is where should the individual be committed, for how long should the commitment last, and probably we're going to have to say something about cost, although I'm not sure we'll ever get into it on that one. But let's at least talk about where the individual should be committed."

(UNIDENTIFIED): "I think, Tom, the first consideration is going to have to include something that has to do with inpatient and outpatient, and not necessarily to a hospital."

SENATOR TOWE: "Okay. Now there is already in the statute, it's my understanding, and I would hope that we would simply say, 'All of the procedural safeguards existing for seriously mentally ill shall apply'. And one of the things which I think we want to definitely make apply is the requirement that once one is adjudicated as seriously mentally ill, and now we'll apply it to this case, that they must have the individual placed in the least restrictive environment as possible for the situation. And that's already there, and I think we can pick that up and make sure that that covers this situation. But we do need to address the other question, which I think has been raised and I think it's a legitimate one, as a

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rather temporary, less than full commitment category, do we want to restrict commitment to places other than the Warm Springs State Hospital. I think that's the issue, and I sense that there is a lot of disagreement on that. Donna, did you want to say something about that?"

DONNA HEFFINGTON: "Well, first of all, the existing procedure requires that this commitment as well as (INAUDIBLE)
and if a person is refusing treatment in the community and there are no facilities within that community to require treatment . . . (INAUDIBLE) that a person be placed in the least restrictive environment under the circumstances. And it may be that until community facilities are funded and created, Warm Springs may be the necessary place."

JIM JOHNSON: "The reality then is that we've merely loosened up the commitment law. We've started out to do something that was progressive and innovative, and we've ended up loosening up the commitment law."

RON WEAVER: "I tend to disagree with that because I think if you're going to come up with this kind of thing, you're going to have to deal with the first aspects of mental illness to start with. You're going to have to tighten your definition, you're type of commitment, and so forth, in order to carry this out in the end. You can't loosen up the bottom and have everything coming in through the top. I mean, it's all going to fall apart. So you have to tighten up your prerequisites for making an involuntary kind of situation to get the person in there, and therefore the end product of it will be that--when he says you're loosening it up--then you will have already created the requirements or the restrictions for this person before he got there."

SENATOR TOWE: "So what are you saying? Are you saying he should or should not be committed to Warm Springs under this category?"

RON WEAVER: "I'm saying if you tighten up your requirements for the people who come to Warm Springs--in other words, say they're all involuntary, no voluntaries, just involuntary admissions--then you can save the persons you return from that and you're not going to overload the hospital system. But if you're going to say that anybody and everybody can come in, and then make this conditional release on the involuntaries so they can come back, you're going to raise the (INAUDIBLE) from 53% to 65%."

TOM SELLARS: "I would have to say, speaking for the hospital, that we would want Montana State Hospital, Warm Springs campus, excluded."

DAN ANDERSON: "I think we're talking about what I think we're talking about. I came in a little late. You know, we've heard the mental health center people and the State Hospital people say that this change is likely to increase the number of people who will be committed to Warm Springs. I think the committee should look carefully at, if that's the case, somewhere there needs to be more services. I think the committee needs to be very careful of this because if we throw it open and we say, 'This commitment can be made to any mental health facility,' my guess is that it would be to

Warm Springs, and down the road we would need more staff and more buildings at Warm Springs to service the population. And that will be the choice that is made at this point. But if say, 'No, we will exclude Warm Springs,' then it could well be that down the road we will see the need for additional kinds of community services. And then we will have prevented even further down the road some big deinstitutionalization will get those people that now we don't think need to be there back out. So, I think it's really important to exclude Warm Springs from this."

JIM JOHNSON: "Mr. Spencer was talking about in California the Short Doyle facilities that take care of people on a short-term basis. If we did this in Warm Springs, they would have to create another whole facility to treat people on a short-term basis because their intake facility isn't for that purpose. Their intake facility is for getting people ready for other parts of the hospital. We will then have taken people out of the community and put them into Warm Springs, taken them away from their homes just to go to Warm Springs for treatment, and that's not the correct course."

DICK HRUSKA: "I hear the intent of the change is to preclude admissions to Warm Springs under the current law, which are only possible when a person becomes seriously mentally ill, and to treat them in the community short of that, and it looks to me like admissions to Warm Springs would actually decline . . ." (INAUDIBLE)

DONNA HEFFINGTON: "I think we could look at it from the short-term point of view until local facilities are upgraded." (INAUDIBLE) ". . . since the people cannot have treatment at Warm Springs if it is excluded." (INAUDIBLE)

DICK HRUSKA: "One of the things I heard in the last meeting is that many clients will refuse to take their medications. If there were something in the statute as far as medications are concerned, perhaps that would be a major stabilizer for treatment rather than having them go bonkers and then have to eventually be sent on to Warm Springs." (INAUDIBLE)

SHIRLEY RENDERS: "We were talking about the least restrictive. To me, the least restrictive is using the community resources rather than Warm Springs. And, in order to do that, a client has to go from one community to the other. If they're from Dillon, they have to go to the hospital in Butte for psychiatric treatment there. I don't see any problem with using those."

TOM SELLARS: "Being reasonably acquainted with human nature and more than reasonably acquainted with finance, I would venture to say that if Warm Springs was designated as an area for these individuals to come to, you would never see the community facilities developed. It wouldn't be a question of until we can develop them; they simply would never be developed."

HAROLD GERKE: "I think tonight we're getting a consensus here that we'd better not monkey with this then? Is that right? We may be getting into deeper water than we think we are, it sounds to me like."

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JIM DEMING: "We are specializing at Warm Springs more and more in terms of the seriously disabled individual; the individual that is imminently and/or immediately dangerous, individuals that are impossible to handle in the community. It is our recommendation that you allow us to specialize, that you allow us to do the job with those individuals that you cannot possibly deal with. That in exchange for that then, the community has to take responsibility for this population and use the teeth that would be provided to it to get the medications to these patients."

HAROLD GERKE: "For the persons in need of treatment? To place them in the community?"

JIM DEMING: "We're saying we would not change our admission, in my judgment, at all because you have not changed in essence the criteria upon which a patient comes to Warm Springs. As an example, you have a patient in your community who is not seriously disabled, not seriously mentally ill, who is mentally disabled to the extent that he needs service. You can still sign a voluntary to come to Warm Springs. Do you see what I'm saying? This gives the community teeth to prevent some admissions."

JIM JOHNSON: "During the time that you were in the legislature, from time to time the legislature built into appropriations the kinds of things that they wanted to see (INAUDIBLE) with regard to the monies that went to the Department of Institutions for the mental health centers. And this is where incentives could be built in by appropriation to bring staff and facilities along the mental health centers to enable this kind of program."

HAROLD GERKE: "Oh, sure, there's a number of, that's where it is; they can put the teeth into it, when you get down to the money. I'll agree with that. But there are other things, too, that could take place. This is probably not appropriate to bring up here. One of them is that you can't get into Warm Springs on a voluntary basis. It has to be involuntary. There has to be a hearing someplace through mental health or someplace before they can get in there. That keeps them in the community. If there are more, if their needs are better taken care of in the community, then of course, but nobody wants to do that."

DONNA HEFFINGTON: "It would also create a lot of legal fiction in the communities."

HAROLD GERKE: "Well, like I said, I'd don't think anybody would want to do it. But that would be one of the ways to do it. And there are other ways that we can devise . . . (INAUDIBLE) . . . the Appropriations Committee (INAUDIBLE). I think we ought to not do that."

SENATOR TOWE: "Mr. Chairman, just to wrap up on this question, I take it that there's a lot of support for the idea that we should exclude Warm Springs. And I think that the two people I want to ask if they're comfortable with that is Don Harr and Donna Heffington."

DON HARR: "My only concern has been that there may be some people that, say in Ekalaka, or somewhere like that, or other places where they're along

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way from treatment facilities that it's going to exclude them; otherwise, I'm willing to accept it that way. I'd much rather have it in as you have it now than not to have it at all. It's a start."

SENATOR TOWE: "And I think that's where we are. Because I think practically speaking that if we include Warm Springs, the fears that Jim has raised are going to have a substantial impact on whether we can get the bill passed."

DON HARR: "I think one thing you had mentioned, Senator, that will help to alleviate the problem is to make it possible for local enforcement agencies to help ensure that the person goes in for treatment. If they refuse to go in and get their Prolixin Decanoate every two weeks or as scheduled, then some way there should be some teeth in it to make sure that they come and get it. So that it can be enforced."

SENATOR TOWE: "Yes. I haven't, maybe we should talk that out and get some feeling on that."

DON HARR: "I think we should ask the people from the sheriff's office."

SENATOR TOWE: "How do we respond to, remember now, we've got a little bit of a highbred situation, if in fact we say a person who is found by a court to be in need of treatment, what do we do? We can't commit him to a mental health center because they don't have a bed. We can't commit him to, you know, do we say, do we commit him to the sheriff's office to make sure that the sheriff sees that he gets the treatment? Do we appoint a guardian to make sure that that person, a conservator or a guardian, to make sure that person reports and if he isn't and doesn't, then that guardian can go get the sheriff to help him out? How do we physically do it? We've got to provide something in the statute."

JIM DEMING: "What is the possibility of setting up a system wherein a certified professional, a mental health professional person, is designated as the individual responsible for developing an individualized treatment package for that patient. In other words, that would be, that system is already in place."

SENATOR TOWE: "The mental health center director, for instance, or someone else? What do the rest of you from mental health feel about this?"

DONNA HEFFINGTON: "That would be fine for a treatment program."
(INAUDIBLE)

SENATOR TOWE: "No, what Jim is saying, I think, is that then if the individual doesn't follow that plan, that that individual could call the sheriff and make sure that he gets into treatment. He'll have an order."

CLIFF MURPHY: "Where would you send them then, Deer Lodge, if they didn't comply or come through?"

SENATOR TOWE: "No, no. We wouldn't send them there. We're saying that if in fact, someone--I think we are, tell me if I'm wrong--if we designate in

Yellowstone County, for instance, designate Dr. Harr as the individual who is responsible for drawing up the plan, and he does in fact propose a plan, or maybe it will be the mental health center or the director of the mental health center. The plan is drawn up, the individual then is asked to comply with it, the first time he fails to show up, then the individual who is designated, Dr. Harr or the mental health center or whatever is designated, can with the order of the court go to the sheriff and say, 'This person didn't show up, can you see that he comes in?'"

JIM JOHNSON: "Since we are dealing with people who are mentally ill, as we deal with juveniles and we enable people in the juvenile system who are less than sheriffs to enforce some kind of order, can't we give that authority to someone else than to give it to other law enforcement persons?"

SENATOR TOWE: "Okay. What's your suggestion? Who?"

JIM JOHNSON: "We're getting down to detail now, and I think we need to take a little bit of time to think about that. I think that's something to leave open for a little while. But I would rather not have law enforcement people have to go out for that."

SENATOR TOWE: "Well, I would hope that the way it would work, and I think you raised a very good point, I would hope that the way it would work is that the mental health center, for instance if Dick is designated or somebody from his staff is designated as the person responsible, the first thing he is going to do is he's going to go find somebody on his staff to go out and check, like the nurses who make the home visits, to go out and check to see what is going on and why it is that the person didn't come in. And only if he has tried that three or four or five times and the nurse can't physically get the person to put their coat on and come in for the required treatment at the mental health center, it's only when all else fails that he will then resort to, as a last resort, law enforcement people to make sure it's enforced. And I would hope that that would work as a matter of course anyway. But maybe you're right; maybe we need to get involved with that."

JIM JOHNSON: "I just, last New Year's I was with a very capable and sensitive person from the police department in Butte who came to helped persuade a friend not to jump out of a window. And he did a very fine job. He dealt with it very carefully. But I would hate to put law enforcement people in that situation unless it's absolutely necessary."

(UNIDENTIFIED): "How about private practitioners and private hospitals?"

SENATOR TOWE: "The way we would handle that, I think, is simply say the mental health center or a mental health professional. And a mental health professional is already designated in this area right now, so that would include some private people."

JIM JOHNSON: "If the private practitioners wanted to take that kind of responsibility in those kind of cases, the court would certainly be willing

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to do that, if they'll approve it. Since the mental health centers have some more public money, they have some more public responsibility to do those things than do private practitioners."

SENATOR TOWE: "The last item that I have on this matter is how long? Twenty-one days? Fourteen days? Thirty days? Forty-five days? Sixty days? I think the concept is that there's a limit; this is a temporary; this is a very limited situation in need of treatment."

HAROLD GERKE: "Not more than."

NANCY ADAMS: "At the last meeting, it was suggested by a psychiatrist that three weeks is the average length of time for a person in need of treatment to have them stabilized through treatment and medication."

DON HARR: "The chronically ill individual who is refusing treatment, it's going to take longer than that to stabilize. Twenty-one days wouldn't be long in enough in many cases."

HAROLD GERKE: "What would you suggest?"

DON HARR: "I'd say forty-five would be appropriate."

HAROLD GERKE: "We could say not more than forty-five days."

CLIFF MURPHY: "Is there a question being raised as to whether the section on conditional release would apply under this situation also, and how much?"

SENATOR TOWE: "No. That's completely separate from this."

CLIFF MURPHY: "It's not needed?"

SENATOR TOWE: "Well, no, we will do the conditional release also. But this is a separate issue."

CLIFF MURPHY: "No, but I meant would the conditional release be needed under this? Because at the end of forty-five days, your court order is gone and the person goes off that medication right away, then what are you going to do with him?"

SENATOR TOWE: "You'd have to go through another procedure and prove that he meets this definition again."

CLIFF MURPHY: "Well, is there a point about raising the conditional release then? The use of the conditional release under this program, as well as under the other."

JIM DEMING: "I think that's an excellent point. Because if the person is oppositional in the first place, forty-five days later he is not going to change his opposition to treatment most likely. And so a continuation, a

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mechanism whereby that clinical person in the community can say, 'Okay, now, we really appreciate how well you're doing. Here are less stringent conditions for your next forty-five days.'"

SENATOR TOWE: "Well, I guess I'm a little sensitive to the length of time. Forty-five days is a great deal of time for someone who feels that they are being put upon unjustly or improperly. And hopefully that's, you know, the decisions are going to be made because of his mental disorder that he needs treatment, he'd better have it. But maybe . . ."

(UNIDENTIFIED): "This is largely on an outpatient basis."

SENATOR TOWE: "Hopefully it's largely on an outpatient basis, but not necessarily. This could well end up as commitment to Two-North at Deaconess."

JIM JOHNSON: "No, it couldn't because the statute specifically says that the hospitals don't have to take people unless they want to. If they were willing to have people come into their facility, it could be inpatient for that period of time. But the economics of Two-North doesn't allow people to be committed there for that period of time unless you or I are going to pay for it."

HAROLD GERKRE: "I said not more than forty-five days."

JIM DEMING: "There has to be a mechanism for ongoing treatment. No chronic mentally ill individual is going to reconstitute from serious mental illness in forty-five days."

SENATOR TOWE: "How about thirty plus thirty? Thirty days, and it can be extended for thirty days upon, you know, you can go to court and extend it for another thirty days."

HAROLD GERKE: "That sounds reasonable."

DON HARR: "I would say that that would be very appropriate because if the patient recognizes that that is there and that it can be utilized, and if they're not willing to accept it after that second thirty days, they're going to have to go back to another thirty days plus thirty days; that's going to have a very definite impact. Because if the individual is well enough to be out in the community, they're well enough to recognize that this means business. This means that they need to stay in treatment so they can stay in the community. They are given the opportunity; they can make their own decisions whether or not they want to continue with the treatment. The way it is now, there is no way to say they have to continue with treatment. They just go ahead and get sick, then they have to go back through the whole commitment proceedings. So I think that that would work."

SENATOR TOWE: "Thirty plus thirty?"

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DON HARR: "Yes. I think that would be appropriate."

SENATOR TOWE: "Does everybody generally agree on that?"

TOM SELLARS: "The concept I think is fine. I would give consideration, though, to making it forty-five plus forty-five or forty-five plus thirty."

HAROLD GERKE: "Let's leave it thirty plus thirty for now and we'll discuss it further."

SENATOR TOWE: "I'm more comfortable with it that way. The only other thing we haven't discussed is cost. Who pays for that? And unless somebody has some really good ideas, I'm not . . ."

HAROLD GERKE: "I don't think we're prepared for that tonight. I think we'd have to recess until after dinner if we're going to get into that."

DON HARR: "There is one more serious issue that we bypassed there. That is in regard to new patients that are very seriously in need of help. As we were talking about before, having the thirty-day conservatorships, to include individuals such as those who have a manic disorder of some type, that don't fit the seriously mentally ill definition, and yet they are totally disruptive to themselves, their own lives, their families' lives, and all. We talked about that before."

SENATOR TOWE: "Let me see if we're on sync here. What we're talking about, we've already accomplished the consensus of two different kinds of things we want to do. Number one--we want to put some teeth in the statute to authorize conditional releases from Warm Springs. Now, that's a separate item. Second, and completely divorced and separate from that is the new category of persons in need of treatment, and that would be both those who have been committed to Warm Springs in the past and are no longer under the conditional, and also brand new people. So I think that covers what you're talking about. Doesn't it?"

DON HARR: (INAUDIBLE) " . . . In regards to those who are chronically ill?"

JIM JOHNSON: "No, not necessarily. I would think that, I'd have to look at the definition better, but I think it would take new or chronic people who are in the community."

SENATOR TOWE: "We do have the word 'chronic', and what you're saying is maybe we shouldn't use the word 'chronic'?

DON HARR: "If you'll apply this to the new patients in that condition, then that's fine."

SENATOR TOWE: "The only two other things that I'd like to have people address is first of all a conservatorship, and I think Nancy started in on that; and, secondly, once we get these three items, is there anything else

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that people really think ought to be brought up, such as a change in the definition of seriously mentally ill?"

HAROLD GERKE: "Well, let's take the conservator first. Now, we've had that discussion before, and I think we've got a pretty good understanding on that."

NANCY ADAMS: "No, that's what I wanted to bring up. I don't think there is an understanding."

HAROLD GERKE: "Before you leave, I can see that there are some that have other plans, so I'm going to interrupt and make some appointments here on this committee. There may be others that we should have thought of but didn't, and I think we've got a pretty representative committee if they will all serve. I want Nancy Adams as chairman because she has done a lot of work on this, and we need somebody that can keep all the papers together and keep it running smoothly. Donna Heffington, Dr. Don Harr, Senator Towe, Tom Sellars, Bob Slonsky, John Lynn, Cheryl Ikeda. And then we have some others that we'd like to have to work with the committee in an advisory or a critique capacity. These would be Jim Johnson, Kelly Moorse, Dr. Ron Hughes, Jim Jensen, Cliff Murphy, Jerry Hoover, Judge Robert Boyd, Judge Gordon Bennett, Francis Bardanouve, and Winifred Storli. So, they don't have to feel that they have to meet with the committee, but whatever work the committee does will be offered to them for review. So that is your committee. If there is anybody that I mentioned that can't serve or won't, we'd like to hear it. Otherwise, that will be your task force to bring this all together into some law, some amendment, whatever."

JIM JOHNSON: "If I would show up to those meetings, would I have a vote?"

HAROLD GERKE: "Not under this, no. You'd be in the critique capacity."

SENATOR TOWE: "I would ask that you might consider having Jim move into the committee capacity."

HAROLD GERKE: "I don't have any problem with that."

JIM JOHNSON: "I would like Kelly Moorse to also be on that committee."

NANCY ADAMS: "She can't do it, due to her schedule."

SENATOR TOWE: "Let's list those names please. Nancy Adams, Donna Heffington, Don Harr, myself, Tom Sellars, Bob Slonski, John Lynn, Cheryl Ikeda."

HAROLD GERKE: "Now, let's proceed with where we were."

NANCY ADAMS: "I still think there might be some lack of clarification on the conservatorship/payee problem. At the first meeting a number of the consumer representatives especially were concerned and gave a number of examples where in their different countites they could not find a payee.

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The way I define payee is someone who controls their immediate needs and makes sure that their basic needs are met under the definition of the Social Security Act when they have to have a payeeship. Now, conservatorship is defined under various defnitions depending on the state. In California, for example, a conservatorship there is almost like a guardianship. They have the control to put people back in the hospital, is my understanding. I don't want to get into that. But the question raised, and I need clarification, you state here in Helena you only have three."

(UNIDENTIFIED): (INAUDIBLE)

NANCY ADAMS: "I see. Now, we're a big county and our mental health center is taking on the responsibility of helping them. Because it helps speed the treatment when we become their payee. But I understand the smaller counties, like for example your county in Virginia City, Madison, and other outlying counties, it was my understanding that the welfare agencies when this role was forced upon them. I need clarification there. Is that right?"

UNIDENTIFIED): "Actually the state, the Department prefers that social workers not become payees."

NANCY ADAMS: "So, there is no law at this time in Montana that says if a person is deprived of their ability to manage their own funds, if they are physically or mentally disabled, the welfare or protective services does not have to pick up on that."

JIM JOHNSON: "They can. There is permissive legislation there, but there is no mandatory legislation. I take it that you generally don't want that kind of responsibility, so I guess that many of the counties . . . " (INAUDIBLE)

NANCY ADAMS: "Okay, then I guess the committee needs to address that problem."

SENATOR TOWE: "Okay. The proposal is, and this is from starting where we were last time and some of the things we talked about last time, some of the things that Don Harr and Donna Heffington and Harold and I talked about last Friday, and some other ideas I think that others indicated. The proposal is that we have a public person, perhaps even utilizing the existing public administrator in each county--there is a public administrator who is elected by the people to handle the estates of persons who have no relatives or other readily identifiable person to handle the probate of their estate in court. And perhaps that kind of a person, either that person or some other person, at the discretion of the court, be designated in each county to handle the conservatorship, or payee for Social Security purposes, or any other thing that a conservatorship generally does, for those individuals where there is not readily available a relative or friend who chooses to be appointed as conservator. The reason for it is we don't want to supplant if there is obviously a relative who wants the job, then that's fine. But often times there is no relative, no obvious friend, or

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there is a relative who doesn't particularly want the responsibility. And I think there was discussion last time that there is really a need for the designation in every county of a person which can be called upon to do that job, who has a legal obligation to do that job in the event that there isn't another person available."

JIM JOHNSON: "How difficult would it be to draft such an item?"

SENATOR TOWE: "It's easy to draft. The problem is getting it passed. And the reason for the problem of getting it passed is who is going to pay for it and where is the money going to come from. And in some instances there will be some funds available generated by the estate of the individual. But that's probably going to be rare. And I don't know whether Social Security allows for any portion."

NANCY ADAMS: "I guess in other states, and maybe someone can tell me what percentage, in Butte we had a couple that hired attorneys and they took a certain percentage of their disability check."

SENATOR TOWE: "And that was permissible?"

JIM JOHNSON: "I think that you have that just slightly--I think that they hired them to get the disability and they were entitled to a fee as a result of getting the disability."

DICK HRUSKA: "That is true. If an attorney appeals a case to the administrative law judge, then he is entitled to up to twenty-five percent. As far as the Social Security Administration is concerned, no funds are available for payees; they have a very limited budget."

SENATOR TOWE: "Somebody's going to have to pay. If we require somebody, who is designated by the court to do this job, somebody is going to have to pay for it."

DICK HRUSKA: "I think we're losing sight of the issue that was raised in the last meeting. Those people from Kalispell were concerned about people who were not in treatment, and therefore they had no control. But for people who are in treatment, although it's a little bit of an imposition for the mental health worker to act as payee, but it's no real burden."

SENATOR TOWE: "In other words, you're saying that the burden can be, the problem can be solved if we make it available for those persons who have estates out of which they can charge a fee and those that have property."

JIM JENSEN: (INAUDIBLE) . . . "require a person to receive treatment. They can't be treated, so we can't deal with them. If we've got a law that says that they have to be treated or they're in need of treatment."

NANCY ADAMS: "There is that issue that Jim is talking about. There is the other issue of the families that we're talking about. And another issue that hasn't been mentioned yet. A lot of people don't need to be treated

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when there is a concerned person that's handling their funds because then they get their basic needs met, which means they get their medication paid for, which they might be willing to take. So, there are many areas and I think the committee could maybe, there are states that are doing this under different ways that we have yet to look at."

JIM JOHNSON: "Part of it, there is a possibility of a conflict of interest where nursing homes, people like that, are willing to serve as representatives or payees and go around as conservators, but then they also decide how much money they get out of that."

HAROLD GERKE: "Well, I think there are some who really aren't under treatment, won't be under treatment, and probably don't need treatment, but they need to have somebody help them manage their funds and help them manage their affairs. And how you're going to do that, I don't know."

DICK HRUSKA: "I think I was hearing from those in Kalispell was that if we address the problem of someone who you can't get into treatment and he blows his check on the second day of the month and then have to go a whole month; I think they were interested more in us addressing getting them into treatment."

HAROLD GERKE: "Well, if we've got that, if it's got teeth enough to get them into treatment, then the rest of it will take care of itself."

SENATOR TOWE: "I'm suspicious that it won't solve all these problems. I think that there is a need there that we still need to address. And I think it might relieve tensions all over. Part of the things that I was hearing from these folks was that they didn't want to be conservator for some of these people."

HAROLD GERKE: "No, not themselves. They wanted somebody else."

SENATOR TOWE: "They want someone else to have that responsibility."

(UNIDENTIFIED): "If there was a public administrator for a person who is indigent, why should it not fall back on the state or the county?"

SENATOR TOWE: "No one can argue with that, except for the fact that anytime you talk about imposing a cost of one dollar or more on the counties, the bill probably has an almost zero chance of passing in this session of legislature."

(UNIDENTIFIED): "Well, the court can order the county to pay."

HAROLD GERKE: "Yes, but they're not going to do that."

SENATOR TOWE: "One perhaps could argue, and maybe that's a point, that we ought to consider. One could argue that there are two possibilities. One that there may be that the individual has property of their own; they may have assets of their own that could be used in payment in part or all of

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the cost, which hopefully would be a very nominal amount. Secondly, it possibly could be argued that if you could handle this kind of a procedure, if you could find someone who would be the conservator and would handle this and would look after these people, there may not be quite as much of a need to follow up into a more severe treatment situation, like a person in need of treatment or a voluntary or anything else, and thereby save money in the long run. Is that a possibility?"

SHIRLEY RENDERS: "It seems to me that the person who is conservator is going to be a very important person to this mentally ill party. Money is a very important thing to everybody, especially to somebody who doesn't have much. So I think it has to be not just anyone, but it would have to be someone who has training in that field to be conservator for someone who is mentally ill."

HAROLD GERKE: "Well, we're getting in a far field here now. I don't know, but we're out of time. What do you want to do with it? Do you want to leave it in the hands of the committee?"

SENATOR TOWE: "Well, I think we should. I would like to go ahead and proceed. Is there general consensus that other than the problem of how to pay for it, that it's a good idea?"

(The record shows that the general consensus was that it is a good idea.)

SENATOR TOWE: "Well, let's proceed then and see if we can't get something going on this."

HAROLD GERKE: "Do you have anything else?"

SENATOR TOWE: "No, unless somebody wants to talk about the definition of seriously mentally ill. I heard some comments on that."

HAROLD GERKE: "Anyone else? Do you want to take time to talk about seriously mentally ill, or do you want to leave that to the committee?"

JIM JOHNSON: "I think the consensus is that people don't want to change 'seriously mentally ill'."

HAROLD GERKE: "Okay. Are you sure there is nothing else? Thank you very much for coming. The committee will set up a time to meet then."

(A meeting was scheduled for Saturday, December 15, 1984, at 10:00 a.m. at Senator Towe's office in Billings.)

The meeting concluded at 4:40 p.m.

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MONTANA COMMITTMENT LAW PUBLIC MEETING - September 5, 1984, 7:00 p.m.

Moderated by: Harold Gerke, Board member, Mental Health Center, Billings
Secretary: Carol Zaharko, Personnel Officer, Mental Health Services, Inc., Helena

Mental Health Center staff

Jay Palmatier, Western Montana Mental Health Center, Missoula
John Lynn, Western Montana Mental Health Center/River House, Missoula
Dean Gregg, Mental Health Services, Inc., Helena
Greg Barisich, Mental Health Services, Inc., Helena
Jim Scott, Mental Health Services, Inc., Helena
Lynne Scott, Montana House/Mental Health Services, Inc., Helena
Jim Jensen, Eastern Montana Mental Health Center, Miles City
Dick Hruska, Golden Triangle Mental Health Center, Great Falls
Nancy Adams, Montana House/Mental Health Services, Inc., Helena
Dennis Crawford, Mental Health Services, Inc., Helena
David Briggs, Mental Health Services, Inc., Helena
George Cloutier, Mental Health Services, Inc., Helena

Judges/Attorneys

Gordon Bennett, District Court Judge, Helena
Mark Sakkappa, Montana Legal Services
Tom Honzel, Lewis & Clark County Attorney's Office, Helena
Robert Slomski, Missoula County Attorney's Office, Missoula
Neil Haight, Montana Legal Services, Helena
Bob Raundal, Montana Legal Services, Helena

State of Montana

Jerry Hoover, Mental Health & Residential Services Division, Department of Institutions
Dan Anderson, Mental Health & Residential Services Division, Department of Institutions
Tom Sellars, Montana State Hospital
Kelly Moorse, Montana Disabilities Board of Visitors

Miscellaneous

Bob & Lucy Roberts, "A New Beginning" (parent support group), Missoula
Winifred Storli, FLAME (affiliate of NAMI), Kalispell
B. Beaurone, FLAME, Kalispell
Eileen LaBelle, FLAME, Columbia Falls
Joy McGrath, Montana Mental Health Association
Cliff Murphy, Montana Mental Health Association
Tom Towe, Senator, Billings

Adjudicate follow-ups
conservatorships/payees
Medication
expand involvement private defender
Include R7?

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Mr. Gerke called the meeting to order, explaining that there were no formal ground rules. He noted that the Montana Council of Regional Mental Health Boards, Inc., conducted a survey of psychiatrists, county attorneys, judges, mental health center staff, adult protective services staff, and others directly involved in the committment process, to determine if changes to the current committment law were desired.

According to the results of the survey, there is definite interest in changing the committment law. The purpose of this evening's meeting is to begin discussion of possible changes.

Mr. Gerke expressed his appreciation to those who have worked so hard on this survey, and thanked everyone for attending the meeting. He noted there will probably be future meetings on this subject.

Mr. Gerke introduced Senator Tom Towe, the author of the current committment law.

Following is a transcript of the comments made by people attending the meeting:

Lucy Roberts: "These are my personal feelings. I don't want to implicate anyone else. But, as a mother quite tried, I feel this is my thought. Behavior modification is a myth. Skinner was dealing with animals, not humans. Some social workers I've had some dealings with have to realize that these individuals are _____. I mean, you can have your regulations stipulated for orderly people, the others say, 'so what'. They just don't take it, and unfortunately you have to get to their way of thinking sometimes. They have a one-track mind. And, if we have to have them in the community, which is a better way than being in the hospital and also less expensive, we have to educate the community to receive them. We have problems with our son who was harassed by neighbors. Of course, his behavior was such that it was quite understandable. But, yet, he has to live in the community. Ordinary citizens just don't understand mental illness. They say, 'Oh, they are rebellious. They have to learn. When he comes down enough, he'll get up.' They don't. We have to be firm with them, yes. But we have to have regulations because they are just not the same as the ordinary public. Another thing that I strongly feel, and I had a tremendous deal yesterday, is the payee dilemma. I had to apply to be payee for my son, and of course, everything went to heck yesterday. I went to Social Security and resigned, and this morning I again signed a declaration to be payee because no one wants to be payee for these people. They have their checks. Many times they don't use them the way they have to be used -- they lack food (my son hasn't paid his power bill for 4 months) and how do you deal with it? I went to the County Attorney in Missoula, and he told me it is the responsibility of the family. And right it is. There is a continuous, continuous friction. He says, 'Oh, you are my mother, and you want to keep me under your strings.' all the time. It is that no one else will do it. Yes, an elderly person can do it, but no one wants to take it. So it falls on us. There should be legislation that says counties have an official (the same as in California) that takes care of these peoples' paychecks, doles money out, sees what bills they have. The family -- it's not that I don't want to do it, but the friction is continuous, continuous, continuous, and I don't know how long I can go on."

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Nancy Adams: "This often falls under the jurisdiction of Adult Protective Services if they're not plugged into the mental health system and the mental health system does not have designated payees. Several of our regions do; for example, Montana House in Helena, we are payees for the folks who are involved in the program and agree to that. The Adult Protective Services in any county also usually has a social worker assigned to take over this role."

Lucy Roberts: "There is nobody in Missoula. I went to Legal Services, I went everywhere. I think Mr.Slomski here is the one who told me it is the responsibility of the family."

Don Harr: "In reference to the question, is your son under an involuntary commitment?"

Lucy Roberts: "No."

Don Harr: "And that's why I am concerned that this perhaps indicates a serious problem that does exist with the current definition of 'seriously mentally ill', where many individuals who do have a serious mental disorder and are unable to adequately care for themselves do not quite fall under the definition of seriously mentally ill as it now stands. It is for that reason that not only myself personally, but being that I also represent the Montana Psychiatric Association, the psychiatrists in general are concerned that there are many individuals in the state who do have serious mental illnesses who do not fall under the definition of seriously mentally ill, and yet they are not adequately able to care for themselves, and do need to be under adequate treatment. Therefore, it would be to their benefit if they could be under involuntary commitment, when they themselves cannot recognize it. I am aware that what Senator Towe is going to tell us is that there is a statement in the statute that allows for a mental health guardianship to be appointed, but I know our experience in Yellowstone County has been -- and I do not know what the experience of other counties has been -- that this is extremely difficult -- not quite impossible, but extremely difficult -- to acquire. It's much more feasible if one can have an involuntary commitment, which will allow for such problems as this lady has presented, to be brought under more adequate medical supervision.

Winifred Storli: Last year, my husband and I went to the courts because my daughter is an adult. She is not suicidal, she is not homocidal, so there was no way we could -- well, she didn't think she needed treatment, and there was no way anybody could persuade her to do it. We did go through the courts and got guardianship and were made conservators. She's lost her job, she's lost her husband, she's lost a child, she's lost a home -- she's kind of the 'pet lunatic' in Kalispell. She does all sorts of wierd things, and wanders around the streets. When we got guardianship, we got conservatorship, and we took her to very expensive hospitals where they kept her but they wouldn't treat her because she refused treatment. So all it was was a holding tank -- at $400 a day. Now I'm told -- this is why my niece is here, because she was made instantly aware of the problem -- she's been trying to handle my daughter -- that she has to 'hit bottom.' I don't know what bottom is. Does it mean that she has to have her hands cut off, or mean that she has to be raped? What does it mean? I can't understand why people let her be tortured like this. She's a very sick person."

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Mark Sakkappa: "Were you able to get your daughter into any group homes?"

Winifred Storli: "She was in a group home. She went out of it."

Mark Sakkappa: "She left the group home?"

Winifred Storli: "Um-hmm. I mean, its around and around and around. I mean, there's nothing."

Tom Towe: "What is that you want for her? What do you think she should have?"

Winifred Storli: "I think she needs hospitalization and I think she needs thorazine (?), she needs to be treated as a schizophrenic."

Tom Towe: "But now if she were committed to a hospital, would that make any difference? Would she still refuse the treatment? Or are you saying that they should force it upon her?"

Winifred Storli: "Well, I think there should be enough contingencies that she has to take it, that she shouldn't be allowed to just walk in and walk out, which is what's been happening."

Tom Towe: "Is she likely to cause any danger or injury to herself or anyone else?"

Winifred Storli: "No."

Tom Towe: "Constitutionally, how can we commit her then?"

Lucy Roberts: "You can't! That's why the law is as it is."

Winifred Storli: "It's such a ridiculous law."

Lucy Roberts: "We watch them damage themselves and we can't do anything."

Bob Roberts: "I'm the husband of my wife who goes through hell. I tell you. You get to a point where you can't take it anymore. And that's it. This 'bottoming out' is a lot of hogwash. They never bottom out. They'll exist where you'll die. You've got to be with these people to understand what it's all about. Nobody understands them more than the parents, really."

Winifred Storli: "Yeah, I mean it's like you know somebody runs out in the snow and gets their toes frostbitten, and isn't even aware of it, and that's not endangering their life. I've been told, 'Well, she's a cripple -- that ain't gonna kill her.'"

Lucy Roberts: "They're very clever -- very clever."

Winifred Storli: "They're not retarded."

Bob Roberts: "They know they've got to do something -- shoot somebody -- murder somebody or rob somebody -- before they're committed. And they play on this."

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John Lynn: "I'm aware of both the son and daughter who are being discussed here, and I think that it refers to a certain class or subclass of the population we are trying to serve that essentially refuses treatment, does not recognize the need for treatment, and is not so seriously mentally ill that they are a threat to themselves or others. They are, however, generally they play havoc in the community with law enforcement and with mental health services, as well. But the balance, it seems to me, that we need to strike is between civil rights and essentially forcing treatment. How we can achieve that strikes me as the critical question."

Harold Gerke: "It says 'not harm to anyone else.' It seems to me that they do harm their parents here in some way or another -- at least mentally, and probably even physically before its over with, without just hitting them over the head with an ax handle. They are somewhat abused it seems to me like. How do you handle that?"

Eileen LaBelle: (submitted a written letter)

Mark Sakkappa: "Our present committment law does provide for committment of people who aren't able to protect their life and health. I'm not sure what Dr. Harr is getting at when he says there are people out there who aren't able to care for themselves. If there are people who are unable to care for themselves, they do fall under the definition of seriously mentally ill."

Don Harr: "The interpretation that has been placed on the statute is that, first of all, there has to be a significant impairment to their physical health, as well as danger to life, and this does not allow for the more -- you might say -- minor conditions that arise as a result of this, where the threat to the individual's overall security. As the one lady mentioned here, the concern is is her daughter to be allowed to roam around until some incorrigable individual decides to take advantage of her and rape her, just because she does not have the capacity to medically protect herself. Until something happens to her under that circumstance, there is no way to say that she presents a condition that is a danger or threat to her life and health, because she's been eating, she hasn't lost weight, she has not gone off yet and frostbitten her toes and lost several of them. Something like that hasn't happened. But there is an imminent threat that this is going to happen, just because of the inability of the individual to adequately care for herself. And yet under the current interpretation of the statute, there is no way to show that. And the person does not qualify for involuntary commitment. I've been through dozens of these, attempting to get people help, and it just can't be done."

Mark Sakkappa: "That isn't really a correct interpretation of the R.T. decision and the case law about this that's been developed in Montana. If the person is unable to protect their life or health, they're going to be able to be committed. What the R.T. decision is saying is that if the person has not yet reached the point or deteriorated to the point where he is unable to care for himself, they're not committable. And that is in line with the constitutional decisions of the U.S. Supreme Court. That's in line with the Donaldson decision of the U.S. Supreme Court and the Adamson vs. Texas. I don't think revisions to the statutes to try to get at these people before they're in such a state that they are unable to care for themselves will survive."

Winifred Storli: Washington State, Texas and North Carolina have made additions or amendments to their laws about "gravely disabled.

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Mark Sakkappa: "You could use the term 'gravely disabled' in place of 'seriously mentally ill', but you're still not going to get around the R.T. decision or this decision by the Supreme Court by doing that.

Winifred Storli: "Yeah, but, surely don't you feel as a private person that -- you've read the "Homeless in America" and that 50% of our sick people -- don't you feel that the young people, and even the old because the population is growing -- surely they need to be cared for."

Mark Sakkappa: "I think we do that, but not involuntarily."

Winifred Storli: "Well, how else do you care for somebody who's running around getting their toes frostbitten off?"

Mark Sakkappa: "If they're unable to care for themselves, if they're standing . .

Jay Palmatier: "From a certain perspective, I think one of the things we are debating is of course how to interpret the law. Of course, I wasn't around to write the law or anything, but I'm wondering along these lines: we're talking about a very restrictive definition the way the law is written. There are other sections of the law which seem to expand it, and some people may interpret it that way. What might be helpful, and this group seems to be saying is that we need to get these other "gravely disabled" (whatever that means) is the direction we want to move in. Perhaps the law could be amended to allow what was initially intended to be clear, so that there is less problems in different judicial districts. People who seem to be commitable because they are out in the snow in bare feet sometimes seem to get committed in one judicial district and the same thing would be immediately thrown out of court in another district. Perhaps a change in the law to make clear what we're talking about in terms of 'gravely disabled' without actually changing the intent of the law would be more consistent with the intent of the law. It is my understanding that the 'gravely disabled' idea is in the present law."

Tom Towe: I was the one who wrote the existing law, and was principally responsible for passing it. I wish you folks had heard some of the stories I heard prior to this law, where one county attorney told me that he could have anybody in his county committed to Warm Springs. It didn't matter if they were mentally ill or not, that's irrelevant, because the law was so loosely written that anybody could be. And I wish you could have heard some of the parents that came to me and told me about the tragedy of their son who was in Warm Springs and they couldn't get him out, and there was nothing wrong with him. And then I wish you had heard of the experiment in California where there really were some questions raised because some college students got themselves voluntarily committed and couldn't get out, and there was nothing wrong with them. And there were some real serious problems there. The law in California was changed before our law was. One of the provisions that was retained was the definition of 'gravely disabled.' When the California law changed so that they had to have some physical harm to themselves or others, everybody in California was committed under the term 'gravely disabled.' They didn't use the rest of the law anymore, because everybody was using that part of the law. So there seems to be a tremendous potential for bringing people in who may not want to be treated or committed, and that has to be guarded against as well. Now that doesn't mean there isn't some common ground,and I think you folks have raised a very legitimate question. As Don Harr knows, we've been talking about this for a long time. The problem is further complicated by the Donaldson decision of the U.S. Supreme Court.

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Towe (cont'd): "The Dondaldson decision in effect says that just like you cannot commit someone to prison or to jail for no reason, you can't commit someone to a state hospital for no reason. You've got to show that they're going to harm someone. And so far, the law has said mental difficulties to the parents or guardians or someone else isn't enough, or inconvenience isn't enough. And I surely understand that there's a lot of cases of a lot of serious inconvenience. I don't know what the answer is, but I think we have to establish some sort of a middle ground that we can accept that is not open to abuse like we had before. Or at the same time, will in fact do something. That's why my earlier question to you of 'what do you want?' What do you want for your son or daughter who has a mental disease and themselves do not want treatment? Do you want them to be sent over to Warm Springs to live out the rest of their days? Do you want them to have some outpatient treatment? Do you want them to be forced to take medicine? I think that's the first question that has to be addressed, and then what is best for them. And then how do we make sure that if we can do it for someone who we would probably acknowledge does have a need for medical care and aren't themselves able to recognize they need medical care and that if they did receive medical care could be substantially improved, how do we guarantee that only those persons and not someone else is put into that situation? Those are the questions. Now, after outlining that, I do want to point out that there is a possibility of another approach that I'd really like to explore and have some comments on. The Yellowstone County Attorney's office has been working on this problem with Don (Harr) and I suspect Don is probably more responsible for it than anyone else. But working with Don and Donna Heffington, they have come up with some suggestions, and I want to throw those out (for discussion). I've handed out a couple extra copies that I had. I think that there may be some merit. Here is the proposal: leave definition of 'seriously mentally ill' alone -- don't monkey with that -- leave that process just the way it is. Instead, let's create a new category -- a category which she calls 'a person who is in need of treatment or medication as a result of a mental disorder.' And that is defined as meaning someone who suffers from a mental disorder which has resulted in significant deterioration of an individual's cognitive or volitional functions, and which if not treated, will predictably result in that individual's becoming seriously mentally ill within the meaning of the existing statute. The idea there is to categorize a preventive area -- someone who is likely to slip into the 'seriously mentally ill' definition--hasn't yet done so because they're not yet a danger to themselves or others--but may become such, and can't themselves recognize need for treatment or medical care. That person, perhaps if it's proved that they fall into that definition could be subjected to a mental health facility for treatment or medication for a period of days -- a very short period of time in terms of a commitment. That's the general concept. Some of the suggestions already that have been raised indicate that it may make a lot of sense. Perhaps, however, we need to exclude the State Hospital at Warm Springs as an acceptable mental health facility. In other words, this is not a commitment kind of situation, but a treatment for a few days kind of situation, which is inconsistent with what happens at Warm Springs by and large, or Warm Springs probably wouldn't be interested in handling that. That's one possibility. There are a number of other problems,and I'll go into those in a minutes. But that's a thought -- a suggestion. Comments?"

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Lucy Roberts: My son was committed about four times, and I have come to these conclusions. I have talked to other parents, too. The medication can be supplied any where. What I found that the hospital did was discipline -- a regulated life. My son, my daughter-in-law, probably others have turned day to night. At Warm Springs or in a hospital, they get help, they work, take medication, rest. They seem to be people who cannot regulate themselves. All the benefit of the hospital, in my opinion, was this regulated life. They are people who just have no self-discipline.

Winifred Storli: That's true. The moment they're faced with stress, it sends them totally off. All these social security things and all these hearings and so forth stirs them up all the time. They need a regular routine

Tom Towe: Let me ask two questions. First of all, is this something that you want for your son or daughter for a temporary period of time? Is there prospects for recovery where they will not need this discipline? Is this a permanent situation you want forever and ever?

Lucy Roberts: Oh, no. When he was in Warm Springs for six months -- Warm Springs is very expensive, I realize that, to the state. Sometimes it is stupid to spend all that money. But, after a period of three months (the last time it was six months), he had I would say 18 months or two years where, taking everything into account, he was more or less on a level line. It seemed to last that long, and then gradually deteriorated again. It seems like they need a periodical "retreat" that they settle themselves -- their feelings, their mind, whatever.

Tom Towe: But he doesn't want to go back to Warm Springs on his own?

Lucy Roberts: Oh, no. He might commit himself tomorrow and leave two days later. It's an expense for everybody.

Winifred Storli: The one's that work best in Kalispell is when they have committed some crime, so called. And the -- I'm sure Judge Bennett would bear with me -- the court says, well, you have to go to Lamplighter House or the T-House, or whatever, and you've got to do this for so much time, and that work's really well. I know, because prison just sends our people, well you know, it makes them really psychotic. But if they have some kind of a behavior modification, they last for the longest time and they do really well.

Tom Towe: Well, then the second question is: is the need really for something as a follow up after they get out of Warm Springs, and not so much that we need to put more people in Warm Springs, but need more follow up when they get out?

Winifred Storli: Yes, both.

Tom Towe: Are there sufficient facilities such as halfway houses or other programs that they can handle?

Greg Barisich: Did that question need to be asked?

Tom Towe: You think its so obvious that it didn't need to be asked?

Greg Barisich: Yes, absolutely. I'd like to comment on a comment you made about California laws and also some of the people found in state hospitals.

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Barisich (cont'd): I think while its interesting and curious to make those kinds of observations, its also important to point out that those kinds of incidents are very, very isolated. As an individual who has worked in a state hospital in California, by and large the far majority of individuals in the state hospital absolutely belong there -- 90% or better. The newspapers and the media will really get ahold of a story of a person who can't speak the language or is from another culture, or when a mistake has been made, a commitment was inappropriate, or there weren't people who really knew this individual, but that happens within any system. It happens in jails. That happens when a person is sentenced for a crime that they didn't commit. I think its not really that much of a concern. We're talking about committing people who have a serious mental illness because of commitment laws in the state of California that ~~axe~~ define individuals being gravely disabled, but yet aren't an imminent threat to either be suicidal or homocidal. It's not "ok" to be really, really crazy in the State of California to where you may jeapordize yourself, possibly the future, like these parents have so specifically stated, in cases I've seen not only in the State of California, but here. These kinds of individuals fall through the cracks in the State of Montana. For instance, I'll give you a case: as a crisis therapist in the mental health center here in town, I'll get a call from the police department, saying "we just picked up an individual who has been lying in the street and claims the demons are eating their leg up. Would you please come down and evaluate them?" Well, they're not suicidal, they're not homocidal, and they've got $55 in their pocket.

Tom Towe: Greg, that is not the test -- whether they are suicidal or homocidal. The question is whether they would be a danger to themselves or others.

Greg Barisich: They're not in danger, technically. What I'm trying to say is they're not going to die. The police officers look at me and say, "Well?" and I say "Well, well what?" I mean, under the law, the way that I understand it, they have to cut this individual loose -- let him go back wandering the streets. And this person is obviously suffering from severe delusions and hallucinations, had a very severe psychiatric disorder, barely knew where he was or who he was, and the delusion was significant enough to where he thought the anti-Christ was after him, making such statements as this. One of the problems I think that comes is is a person who has a severe mental illness like that capable of making a competent decision about what is best for them in terms of whether they should be in a treatment facility or not? Sometimes we talk about civil rights, thinking an individual should be able to choose whether they want to live (if you will) a crazy life style. Are they competent to really make that decision when they're suffering from that kind of an illness? And as a crisis therapist who is confronted with that on a regular basis, that puts me in a real predicament under Montana laws, the way they're written.

(Harold Gerke reviewed the results of the survey.)

Mark Sakkappa: I'm having trouble with the questionnaire itself. Were any public defenders notified? I've talked to some about the questionnaire, and they had never heard of it.

Harold Gerke: We didn't have any specific mailing list. We tried to send it to everybody we knew, and we didn't eliminate anybody purposely. We sent it to defenders, to county attorneys, to judges, to individuals. Every county got one. We tried to cover, and if we missed you, we're sorry. But we tried to cover everybody that we could find a name for.

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Bob Slomski: I'm with the Missoula County Attorney's office. For the past four years, I've handled a very large number of these cases. Situations as you've heard from these parents today, I deal with every week. That's one kind of situation; there are other situations I'm concerned about. Now, I think basically our law works pretty well, but we're going to need to make some modifications. And as Senator Towe and the gentleman from Legal Services stated, what people need to realize who are not lawyers is that the U.S. Supreme Court has pretty much said that a person's state can't deprive a non-dangerous individual who is capable of surviving on his own or with the help of family and friends of his liberty. So, there are limits to what you can do in the way of people who are mentally ill, but not posing a danger of homocide or suicide and are unable to take care of themselves. But I think our statutes go lots further toward protecting civil rights than the U.S. Constitution requires. And I think that what this does in certain cases is provide a lot of people who are not dangerous immediately perhaps as our statute says, who need help, it deprives them of that treatment, and it also perhaps subjects some people (the public -- as a county attorney I'm interested in protecting the citizens from someone who is potentially dangerous -- although the person may not be immediately dangerous -- the person may be threatening, the person may have a history of threats, perhaps the person may be packing a gun, but that person may not have pulled that gun out and pointed it at someone). Every week I have parents come to me -- yesterday I got back after two weeks vacation-- and our police officers came to me with an individual who had in the past had discharged firearms who had talked about committing suicide but had never really harmed anyone--and that's another kind of situation we've got to deal with. I don't know that I have any definite solutions, but I do think that Senator Towe's idea of some kind of middle ground -- there's obviously going to be some constitutional limits on how far you can stretch that. If a person is deteriorating in condition such that it is affecting their cognitive and volitial functioning, they are very likely to become "seriously mentally ill", then I think that if we can come up with a middle ground that will meet the O'Connell vs. Donaldson test, that's what we ought to be doing. And I think that you're going to have to limit that kind of commitment in its duration. You're going to have to limit the kinds of things you can do to the person. For instance, I would suspect that under that kind of commitment you would not be able to have custodial situation such as at Warm Springs or even at another custodial institution such as a local hospital. Possibly, you wouldn't be able to under that kind of situation to force the person to take medication if he didn't want to, but you could attempt to stabilize the individual and perhaps bring them around. What we often see is, out of all the commitment petitions I file -- at least one a month, a lot of the times 2, 3 or 4 a month -- very few of them go for hearing. Most of the time, they get the individual in the hospital pending a hearing, we ask the judge for a detention order to detain and treat the person, and then by the time the hearing rolls around, the person has been treated and comes around -- they're back on their medication or they're better. And ultimately, in 2/3rd's or 3/4th's of the cases, the person never ends up being committed for a long-term to the hospital. So we've got something that works, but I think that its a very good idea in that situation and also in a situation where a person has been committed to the State Hospital. Right now we've got a black and white -- they're seriously mentally ill, you can commit them and totally deprive them of their liberty, or they're not and you can't do anything. If we created a middle ground for people who are also released from Warm Springs when Warm Springs doesn't feel they can justify asking a court to recommit for more time because they don't meet the criteria, yet its perhaps the only thing keeping that person from deteriorating is the fact that they're taking anti-psychotic medication, and there is a past history of several occasions where the person has been discharged from the hospital and gone off the medication and immediately gone back. Right now we have to wait for

Slomski (cont'd): them to hit bottom. We have to wait for them to be a real danger to themselves or hurting other people. Perhaps a middle ground could cover a discharge situation also. I think its a good idea to be pursued, because these problems come up all the time. And the people involved are hurt, the community wastes a tremendous amount of law enforcement effort and expense, and the people don't get the treatment they need.

Tom Towe: Bob, what you've suggested confirms what we were talking about a little earlier, and that is that perhaps the follow-up part is as important as anything. And that seems like wouldn't be covered -- if in fact the Donaldson test has been met initially -- then I think the State has the constitutional right to continue supervision for a longer period of time if that kind of a follow-up is necessary, and maybe that is one of the areas we ought to be looking at.

(flip tape)

Bob Slomski: . . . that's essentially what "gravely disabled" is. But its not all that clear even after the Supreme Court has interpreted it; and although the R.T. decision does give us a little more body, perhaps the statute of "unable to protect his life and health" could be expanded to give us a little more guidance because it is very unclear. It's a lot clearer with the R.T. decision -- perhaps that could become statutory language or something similar.

Tom Towe: Why do you need to put that in the statute if the Supreme Court has already said testimony before the trial court does not clearly and convincingly establish that at the time of the hearing respondent is unable to protect his life or health and that is insufficient as a matter of law? That's pretty clear from that R.T. decision, I thought.

Mark Sakkappa: I think the R.T. decision also specifies just what elements are necessary too to find if a person is unable to protect life or health. It specifies in that decision if you have to find that they are unable to provide adequate clothing, adequate shelter, and adequate food. So it is fairly well defined right in that decision. I think you're probably right that maybe its going to be expanded further by the court.

Bob Slomski: Why put it in the statute? Because when you look up a thing, its right there in black and white. Its a lot easier than reading up on the case law.

Mark Sakkappa: Its the same thing with the threats you've mentioned. The Supreme Court has said that a threat is enough to find a person has made an overt act to to endanger the life of another. All you need to prove is that the person has threatened to kill someone.

Dean Gregg: I have several comments on all sorts of different things that have been said tonight. First of all, the problem I've run into in several different places, both in this state and other places, I think the judicial system -- the different judges are interpreting the law differently in different counties. That's one thing that you run into. I've seen things more or less lenient, depending on where I'm working. As a person who, similar to Greg here, frequently is up at the jail or out at the hospital at 3 o'clock in the morning evaluating somebody, deciding whether or not we should commit them. The problems I have run into is that I have never ever been given a satisfactory definition of "imminent", as in "imminent danger." Is this person going to be dangerous within the next few minutes? Maybe later this evening, but not right now; maybe not tonight, but tomorrow? What is imminent?

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Gregg (cont'd): My reaction to -- I'm not familiar with the R.T. thing that you're discussing -- but if it has defined "ability to protect life and health", us psychologists and psychchiatrists would sure like to see it, because that's another thing that we run into in making these decisions is a person living in a dumpster, for instance, or a person who sleeps in their car -- is their health endangered? I have my opinion. Are they in danger, or could someone come back and say, "well, they ain't starving to death." They're surviving, they're still alive. So, obviously they are able to protect their health. You know, that's the type of stuff we have to make decisions on all the time, and I really feel that we're not getting much guidance. That's why I'm here -- I would like just even if you don't change the law, I would like the terms to be defined better.

Greg Barisich: I would like to know what the intent of the law was to deal with these cases. As a person who goes and makes these decisions, I've scratched my head numerous times, asking what do they really want me to do? It's nice to sit and make the laws, and its nice to sit in the courtroom and nice cozy places, but at 3 a.m., and I've got to make these decisions, I've got to be concerned with whether or not this person may do some dastardly deed to themselves or somebody else. There have been times I've had to do that with very, very sparce evidence. That's not easy. I agree with Dr. Gregg in that I would like more definitions, and I would like to know whether or not Legislature feels there should be more definition, and if they do, what should it be?

Tom Towe: First of all, the situation I was describing earlier was something that had happened in California about 15 years ago, not now, so that situations change. The Donaldson decision has had an enormous impact throughout the whole country, including in the State of Montana, along with our commitment law. As to what we are talking about, I'm just absolutely tickled that we've got people like you who are intelligent and can make informed decisions, even though we may not have given as much guidance as we perhaps can, and we'll work on that. But, I'm so glad that you're making those kinds of decisions, as compared to the situation we used to have. I have very vivid memory of a commitment procedure I took part in under the old law where the worst that could happen, worst evidence that was presented was a medical doctor who had absolutely no training whatsoever in mental disease of any kind, simply came in and listened to the testimony of the man's wife, brother, and minister, all of whom said "Well, he's got a problem, and I think Warm Springs could help him." And that was all. Now that we don't have anymore. I'm pleased that we don't have that -- and I think everybody here is pleased that we don't have that. That doesn't mean that the system we've got is perfect -- we're still working on it and I'm delighted that we have meetings like this where we can further refine it.

OK, to answer your specific question, what about the definition? And, again, Jim Johnson gave me this R.T. decision this morning, and I've been reading through it. One of the provisions or statements made by Justice Morrison in this decision is fairly clear. This is the question of the person who is unable to ~~care for himself~~ protect his life or health. He (Justice Morrison) says in effect it means "a condition in which a person is unable to provide for his basic personal needs for food, clothing and shelter as a result of a mental disorder." If he can't provide for it because he doesn't have the money, that's not what we're talking about. If he can't provide it for some other reason, that's different. But because of a mental disorder he is unable to provide the food, clothing and shelter, that's sufficient. So the individual that you spoke of who is lying in the middle of the street convinced that the devil is eating up his legs -- if he is because of his mental disorder unable to provide for shelter, that meets the definition. Now, it may be

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Towe (cont'd): that different judges in different areas will have a different interpretation -- that's the way the law develops. I'm not unhappy about that situation. You may find that one judge is going to be more lenient than another -- fine that's the way the system works. If its that big a problem, maybe what Bob (Slomski) says is right. Maybe we ought to put that kind of language in the statute. I don't see any harm in that kind of thing.

The question of "imminent threat" -- I remember stewing over that problem at great length when we wrote that. We were trying to come up with something that would allow someone to be committed if there really was a predictible possibility or probability that they would do somebody injury, themselves or others, without saying the only person you can commit is someone who's already done something. So we added the words "imminent threat." I know that's a difficult one to interpret. If you've got a good definition or think that the courts' definitions presently in effect are inadequate, let's take a look at it. That certainly is open to further elaboration, and might be helpful to the whole system.

Lucy Roberts: When you ask about somebody being able to feed themselves, I wonder if instant oatmeal all day is a proper health food. Like I've been told time and time again, "let him go -- don't do anything -- he'll hit bottom." But I'm his mother. And I see him starve. And I go to the grocery store and get a bag of groceries. Of course they manage.

Harold Gerke: They manage you.

Kelley Moorse: I'd like to comment on just another aspect on what I see happening. And this is certainly not to negate what some of the professionals and families are sharing in terms of their experiences. But we have situations at Warm Springs, and I'm sure that Mr. Sellars and the staff from the Department of Institutions can also address this, where people come on emergency detentions under the claim that they are seriously mentally ill, and the hospital receives no order, and those people stay on the intake unit for much longer periods of time than is legally fair to them. There were two situations that just happened in the last month where by the time their case gets to court, they could be detained at the hospital for another three months. In essence, they are there the 90 days plus another month. So we have kind of a reverse situation of people who are a danger to themselves or others, they end up in the hospital, and the hospital doesn't get any kind of an order, and the patient is the one that suffers.

Tom Sellars: These are detention orders, not emergency detentions.

Mark Sakkappa: They come in originally under emergency detention, and then they file a detention order, and this is still called "priority trial. Generally, the public defender is usually so busy in the county that he continues the case week after week.

Don Harr: As I've been listening to the comments, I'm hearing several things such as the pendulum effect that always occurs with we human beings and elsewhere in nature, where we've gone from the one extreme that Senator Towe described was present when I first came into the state that did have atrocious effects on many occasions where people were -- and I would have to say -- incarcerated in the hospital without adequate reason because they were not adequately evaluated or protected over to the pendulum going to the other extreme where we have become so much more concerned about so-called "civil rights" as compared to what we in the treating professions look upon as a "right to treatment." There has to be a balance between the two, and I think this is what we're trying to do tonight -- to get the pendulum back to the center where its much more functional, both from the stand-

Harr (cont'd): point of affording adequate protection of individual civil rights, which certainly needs to be done, but at the same time to allow people to have a right to treatment when they are not competent to make those decisions for themselves. I do not think its impossible for us to get closer to that. We'll never reach perfection because being human, there is no way we can manage that. We can get a lot closer than we are right now. Another misconception that I would like to bring up as I've heard a number of people use the word "danger". I do not recall any place in the statute where it uses the word danger or dangerous. It uses threat. I think that is a much more clarifying term than for us to interject the term "danger" as interchangable with threat, because "threat" is a much more usable term in determining if somebody needs treatment. I just throw that in because I heard that being said several times. I do think that the two items which we are recommending to be added to the current statute, and the idea as Senator Towe said to leave the definition of "seriously mentally ill" as it is, he read you the first paragraph that would be the recommended addition, but there's a second paragraph that is a relative of that, and that is "in need of medication as a result of of a mental disorder", means suffering from a chronic mental disorder which can be controlled by medication, but which, because of the individuals failure to accept prescribed medication, has resulted in a significant deterioration of his cognitive and volitional functions, and which, if not controlled by medication and treatment, will predictibly result in that individual's becoming seriously mentally ill within the meaning of this part. And by "predictibly", it's explained a little later: the essence of this is based upon the individual's previous medical history. If they have gone through illness which has required their treatment and which has brought them to the point of being seriously mentally ill in the past, and experience has demonstrated that if they do not follow up with medication as has been indicated to be successful, then they will again deteriorate and go back into the same state. This would allow us to have a certain degree of control over the follow-up. This was mentioned a while ago as to what can be done in regard to follow-up. That's why that section was put in there, because of the necessity of having an opportunity to keep people under treatment when that's the only way they're going to be able to remain out of the hospital and function in society one way or another . The description as was written by Donna Heffington a little further on indicates that as far as they're being committed to a mental health facility, it was not for the 90 day period, as was indicated for the seriously mentally ill definition, but for some shorter period of time which has not been actually determined. But, as was pointed out by the gentleman from Missoula (Slomski), many individuals who can be brought back into the hospital, put back on their treatment, they don't require over maybe a week, two weeks or three weeks in order to back to where they are able to get back in the community again.

Just to throw in a little side issue, in order to be able to accomplish this, it means that the State needs to recognize the necessity of more group homes and mental health center co-op homes in which these people can live under a certain degree of supervision and continued assistance in local communities. Without an adequate supply of those homes, we are then faced with individuals getting more ill and requiring hospitalization, whereas otherwise it could be avoided.

(applause)

Dean Gregg: I'd just like to react to the general proposal about possibly inserting a new clause (?) about people who could benefit from treatment but who don't want it. Basically my reaction to this whole concept is favorable, although you need to do a lot of work on what I would call the nuts and bolts issue -- how are you going to enforce compliance?

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Gregg (cont'd): A person comes into the mental health center or a local doctor, and they say "the judge has now ruled you have to take these pills. Here they are. I'll see you next week." In other words, there is a big area where the system could break down. What are you going to do about that? Does that mean that you would then also have to insert something to the effect that a person would have to go to some sort of inpatient facility for X amount of time?

People keep saying that we're not talking about people who are dangerous. I just asked Nancy (Adams) to give me the definition of the law. I just want to read it and react, or give you my impression: "Seriously mentally ill is defined as suffering from a mental disorder which has resulted in self-inflicted injury or injury to others, or the imminent threat thereof. So the person has already injured themselves or another person, or they are threatening to injure themselves or another person. And to me, the word "dangerous" is interchangable with that. We typcially when we're discussing with people whether or not to commit somebody, we're saying "well, is the person dangerous?" or "the person's not dangerous." And the reason we're using the word dangerous is because of the word "injury". The person has had to have injured themselves or someone else, and that sure sounds dangerous to me. And that's where the word keeps coming from.

Tom Towe: Could I ask -- I would really like at some point to focus more on the two items I think of constructive proposals that are coming out of this. I'd like to get more response from more people who are here first of all to the proposal that Don Harr and Donna Heffington have proposed, and that is the one that requires a second category and third category -- "in need of treatment as a result of a mental disorder" and "in need of medication as a result of a mental disorder." I might point out, and Don didn't mention, but it's in here very clearly that the commitment is to a mental health facility -- by the way that does not necessarily mean an inpatient facility -- it may be an outpatient facility under the present definition of mental health facility -- for a period of not more than _____ days or until his condition stabilizes, whichever comes sooner. I called Donna and asked her what in the world did you mean by that blank? And she said, "well, I put in 14 days, and then somebody said that's not enough, so I put in 20. And then I sent it through my boss, Harold Hanser, and he said 'take it out and let somebody else put the days in'." But the idea I think is quite clearly to have two to three weeks at a maximum -- and maybe that's too much. What I'd like to ask is for some of the rest of you people who are dealing in this field -- and I don't -- everyday for comments on that.

Greg Barisich: I think it might be interesting to hear from the psychiatrists as to what they think the appropriate time limit for the stabilization on medication.

George Cloutier: Am I right in understanding that the "90 days" means you have to stay 90 days?

Tom Towe: No, that is absolutely not true. It says "not more than 90 days", but the maximum tends to be the minimum in many laws.

George Cloutier: I would agree that some flexibility is appropriate in many instances. I'd like also to comment that one of my personal concerns are the people who fall through the cracks, such as the manic patient and certain kinds of paranoid patients who cause all kinds of hazards to their families and themselves, and who a lot of times just by a strict interpretation, we really can't do anything with them -- and that's a little scary.

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Tom Towe: Can you address the proposal that's being made -- the proposal to carve out a new category for those who are in need of medication and treatment because of a mental disorder that predictably is leading to the seriously mentally ill situation, and for that person, we would have the ability to have them committed to a (mental health) facility -- inpatient or outpatient -- for not more than so many days.

George Cloutier: Yeah, that would make sense to me.

Tom Towe: How many days?

Dean Gregg: Somebody was wanting -- the question basically was how long does it take to stabilize?

Greg Barisich: How long would you want to see a client stabilized on medication before you feel like you can cut him loose and back on the streets again?

George Cloutier: Ok, three weeks would be ample.

Don Harr: That happens to be the exact time I was thinking. I don't think two weeks is sufficient, because there are many individuals who may require some readjustment on medication over the first week in order to determine which medication, first of all, and then secondly, as to the proper dosages. And so it could well require three weeks. I don't think in most instances that it's going to require an entire month, so I would recommend the three week period as being a reasonable compromise.

Kelley Moorse: I have a concern with the length of time and also "until the person's condition is stabilized" in terms of a rights issue. Who's making the determination of when the condition has been stabilized? And are you proposing that they would go for a hearing, so that they would have legal protection as well?

Tom Towe: Jim Johnson raised that question too. And I think that's a somatics one. I'm sure that what Donna meant was the blank number of days -- say 20 or 21 days -- , or until the condition is stabilized, whichever comes sooner, so that if in fact the doctor in charge is satisifed the condition is stabilized -- much as the situation is at the present time -- the doctor in charge at Warm Springs can release the patient at any time.

Kelley Moorse: And if the patient isn't stabilized after that time?

Tom Towe: After 21 days? The 21 days is the maximum -- that's it. If at that point -- then we have some other questions. There genuinely are a lot of problems that we need to discuss in this thing. One of the questions is -- alright, can you go right back in and do it again? if you don't think that the 21 days is enough. And how many times can you go ahead and continue to do that? Should there be a limit on that? That's something the proposal doesn't address -- I think it probably needs to be addressed, or I think there's some danger that we would find more and more people who are simply on a 21 day commitment of this nature year in and year out. That isn't what we really have in mind at all.

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Kelley Moorse: You also just raised the point -- I'm assuming that this doesn't include Warm Springs then?

Tom Towe: Ok. That's a question that I'd like to have other people address, and perhaps Tom Sellars would like to speak to. But I think that probably, realistically, number 1 because I think it's only right that we do that for fear number one that we would end up with too easy a way to get into the State Hospital, and number two (the Intake Unit isn't equipped to handle that many people), But also because I think if we exclude Warm Springs, we have a better chance of getting the thing passed. And that's a consideration as well.

Bob Slomski: I think the lady that just spoke, the question that raised in my mind is are we talking about a temporary, short-term commitment without a hearing, or are we talking about a second category which would be akin to the criminal law concept that the lesser in clue to the defense (?) -- well, you're not seriously mentally ill, but you are in need of treatment or medication, and so its after a hearing?

Tom Towe: There would have to be a judicial determination that this definition applies, just as at the present time the seriously mentally ill definition applies.

Bob Slomski: I would think that that is the way to do it.

Jay Palmatier: I want to comment on a couple of things. To take a different tact on the 21 days point of view. I work on an inpatient facility at St. Pat's hospital in Missoula, and my feeling is somewhat different. What I'd like to see is -- I'm entirely in favor of the concept of this "in need of medication or treatment" -- I think we have to be very careful about how we define that, however, and do we need to make a distinction between medication or treatment? That's a different issue. I'd rather see us very stringently apply this "restrictive environment setting" test to this kind of a thing.

Tom Towe: My understanding is that the "least restrictive" language in the statutes already would also apply to this.

Jay Palmatier: In that case, I don't see a real necessity for excluding Warm Springs or any other place. Because then you're taking a look at the person, and you're saying "what is the best treatment setting for this person?" So that the 21 days or whatever you want to spend might be outpatient, might be having the person come in every day. So I don't see the necessity since you're going to be making that decision, to exclude Warm Springs. The other reason I don't want to exclude Warm Springs necessarily is that I'm concerned that as I look around the state, there are no psychiatric hospitals in the Miles City region -- there are no psychiatrists in that region -- who's going to provide the treatment? As I look around Region V, there's one psychiatric facility -- there's another psychiatric facility which is the Kalispell jail (essentially the way it functions) and that's horrible. But nevertheless, we exclude Warm Springs, and there may not be another setting for the person who needs inpatient -- where do you send them? Where do they go? Someone lives in Kalispell and you need to get them hospitalized -- someone lives in Glendive, where do they go? That's one of the reasons I wouldn't exclude Warm Springs. Essentially the other thing that I want to say is that I would like to see us go the other direction and put a maximum of 90 days one-time commitment under this section, and treat them for 21 days if that's what it takes in a hospital, and if we think that they're stable and will continue voluntarily in their treatment, fine; otherwise, let's continue the treatment outpatient for that 90 days, and if we can't stabilize them at

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Palmatier (cont'd): that point, then I think we should let them have to develop into a "seriously mentally ill" under the present law.

Tom Sellars: Well, if you're talking about a 14-21 day time period for a community-based program or outpatient type program, I can tend to support that time frame. Unlike Jay, I do not feel that it is appropriate for an inpatient setting at Montana State Hospital Warm Springs campus. The current commitment law provides for 90 days -- there is nothing in that law that says if the patient stabilizes at the end of five days, ten days, 21 days, the patient can't be discharged. And in fact, they are. The other thing that I would caution is to take into consideration the impact of any change in the law as it is going to pertain to increased admissions to the State Hospital. I can document for anyone who is interested that the State Hospital's daily average population reached the bottom point in 1980 -- 314, and it has progressed each and every year since then -- 316 in 1981, 332 in 1982, 341 in 1983, and 8 months worth of this year - 345. So, you are talking about a "bricks and mortar" issue as well. If you impact the commitment codes so that you're going to increase admissions to the facility, one cannot overlook the fact that you've got to have a bed to put them in.

Nancy Adams: Another question is who's going to pay for this -- when we admit to smaller hospitals? That was never answered. I don't know what that's going to do when the legislature asks that question. Because, I think it's an excellent thing and it needs to be done, but who is going to pay for it when we commit more people for three weeks to St. Pete's hospital here in Helena, Montana -- who's going to pick up the cost?

Tom Towe: Incidentally, that is question #2 that I have written on here -- who pays for it? If we do carve out a new category -- "one who is in need of treatment or medication" does that mean that we the State has to pick up the tab? And I think that's what they are contemplating. Fine. But then we've got another follow-up question: that is, how do you prevent (presumably you'd want to prevent) persons who are presently going to an involuntary outpatient or inpatient at a regional facility situation on a voluntary basis now, but the county recognizes that in fact if they can only persuade them to go through this proceeding, then the State will have to pick up the tab. How many presently voluntary ones will end up in this system simply because of the money involved? I think that's a real risk and a real danger that has to be looked into. It's a practical matter. And I guess maybe I should just follow-up one step further: if it was possible -- if it was possible to have what I think is best, I guess I would like to answer all of those questions by saying, "yes the State has an obligation" number one. And number two, the State has an obligation not just to provide beds in Warm Springs but that the State probably has an obligation to have regional centers from which the court in Kalispell could make a commitment--not to Warm Springs, which is a rather permanent situation as we look at it now--but to a much more temporary facility like the one in Missoula. Or the person in Plentywood may be able to be committed to -- I don't know if Billings is close enough to make sense or not -- but the idea is that you'd have a regional center in each area. And I think the State has an obligation to help provide those beds. As a practical matter, however, that's probably a pipe dream because I don't see how financially the State's ever going to pick up that kind of a tab. But I think it probably is a State responsibility.

Winifred Storli: Senator, we just came from Kalispell, and they were breaking ground for the new psychiatric unit, so hopefully the county jail isn't going to be the county hospital anymore. But, this problem is really of great concern to

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Storli (cont'd): us that even people who are going to be incarcerated in the jail for observation for a few days -- who's going to pay for them? We have this new psychiatric unit with trained staff and everything who will observe them and say right away where should they go -- Veterans Hospital or Warm Springs or whatever. Welfare patients, and even the people at the T-House right now -- who's going to pay for them?

Tom Towe: Flathead County, undoubtedly, is in for a surprise when they find out that as soon as that facility is constructed, they're going to have an enormously increased bill for taking care of Medicaid patients. That's the way it works in Yellowstone County.

Dick Hruska: On the subject of payment, I just heard Tom Sellars say that the population has risen from 315 to 345, and if you take that difference and multiply it by the cost of keeping them in the hospital -- what we're really talking about here is a substantial amount of money. If you reduce the population at the State Hospital, a substantial amount of money could be made available for the community= based centers.

Mark Sakkappa: I was going to comment on the general proposal. I think it's a smart idea to look at making additions to the statute, rather than messing with the definition of "seriously mentally ill", so I think the approach is good to add new clauses. But I still have trouble with both of them. What it looks like to me basically is what you're trying to do is get around the R.T. decision by incorporating this new clause. I think what we're still going to have to deal with is the Donaldson decision -- whether we can get people into Warm Springs before they actually do present some sort of threat or before they are unable to care for themselves.

Tom Towe: You're probably more familiar than anyone else -- you and Bob certainly -- with the implications of the Donaldson decision on a definition of this nature -- what do you think, what do you think we need to do? I mean, can we make some limitations that we haven't yet talked about that might make it more constitutionally acceptable? What do we need to do to make this definition fit/ pass muster in the Supreme Court?

Mark Sakkappa: I think I'd have to go back to Donaldson and look at it again. I'm not sure if you can do anything less than the statutes do now. Before I outright reject this, too, I think I probably should look at Donaldson again.

Bob Slomski: I skim read this decision before I came tonight. I don't think I can give you a really thoroughly reasoned answer right now. But, I think that our statute is more restrictive than Donaldson, and I think that Donaldson was 1972, and this is 1984 -- the complexion of the U.S. Supreme Court has changed.

Tom Towe: It was 1973. The Donaldson decision came out a month after the Governor signed this law.

Bob Slomski: And, also, we've got the Montana Supreme Court, which is another potential constitutional block. But the Donaldson decision talks about non-dangerous individuals. One thing it doesn't address is "imminent danger". I don't think imminent threat of danger is required by Donaldson -- I'm not quite sure, but I think there's leeway under this, but not too much.

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Tom Towe: Well, aren't we more expansive than the Donaldson decision by including (as Dr. Harr pointed out), we can do it on the basis of a threat -- an imminent threat albeit -- but we don't actually have to show injury, like Donaldson suggests we have to.

Bob Slomski: Well, Donaldson speaks in terms of dangerousness, but there's no injury. Although, it didn't say he never hurt anybody. I can't give you a real good answer right now, but I think that "imminent" can certainly be relaxed to some extent.

Bob Roberts: I'm not in a position to criticize, but without a doubt what we came here for in the first place is I think more concern with the families than with what we're going to try to do. . . . (change tape) . . . try and get a payee or conservator to control the monies paid to these people. By doing that we won't have so many people probably going to Warm Springs.

Tom Towe: Why do you say that? Why would getting a conservator keep people from going to Warm Springs?

Bob Roberts: Because these people, once they get the money, they blow it the first two days. Then they're broke. So what do they do? They go down to the 7-11 with a toy pistol -- and he ends up in Warm Springs or somewhere like that. It's possible. The control of the money is a big thing with these people. But they don't know how to handle this money. They just don't know. My boy -- we've stuck with him for how many years? -- 14 years. That's a long time.

Tom Towe: Then what you're saying is that we should appoint, we should have a county person, kind of like a public administrator, who is willing to come in and act as conservator?

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Bob Roberts: Yes. They have this in California

Tom Towe: Now we do have a procedure where a conservator can be appointed if you go through court. But you're saying that you can't find an individual who's willing to do it?

Bob Roberts: No. They fight shy of it because the word "mental."

Lucy Roberts: Besides, it is a responsibility -- I understood that there is some legislation about it. But it is a position somebody has to be elected to, and nobody is around for it.

Mark Sakkappa: As I remember, there is a statute in the commitment law that when they're released from the hospital, the county is required to provide them with any emergency funds. I think the reality is that they haven't been doing that, although they're required to.

Bob Roberts: I think that's good follow-up -- they should be controlled one way or another. I don't know how you're going to do it, but it should be controlled.

Jerry Hoover: I'd just like to mention one thing, Harold. I guess something I haven't heard mentioned tonight. I like the proposal out of the Yellowstone County Attorney's office. I like that idea , but there is another reason for my liking that intervening step, as I see it. For two reasons: one is since the passage of the mental health commitment law, the capability of Montana to provide services to that particular population we're talking about has greatly enhanced over the

Hoover (cont'd): years. In other words, there are more psychiatrists in the state, the mental health centers have certainly improved their capabilities to serve this population, the advancement in the treatment of these people has been great. That's one of the reasons -- there are more private practitioners in the state than there were in the 60's. That's one reason to look at this again (the commitment law). I think if we had discussed this ten years ago, I'm not sure we had the capabilities to handle this then. Now I think we do. The second thing I like about it is the intervention step: they may not have to be placed in an inpatient setting at Montana State Hospital. It might be short-term in a psychiatric hospital in Kalispell or Missoula or Billings -- which I like. I like the philosophy of that treatment closer to home. I like the philosophy of treatment in a setting that they might be more familiar with. I like the philosophy of not having the peer contagion that they might have in the large psychiatric hospitals. Those are some of the reasons that I like so far the proposal you've been talking about, in addition to some of the other things I've heard.

John Lynn: I also like the suggestion of the new category "in need of treatment or medication". I have a question: if someone were committed for 21 days, either as an outpatient or to an inpatient facility, assuming they have a history -- as many of these people do -- of going off medication when they're out of the treatment facility -- is there some clause, would there be some contingency that would then allow us to continue monitoring and essentially requiring medication compliance?

Tom Towe: I think the implication is that if the attending physician who is in charge once the commitment is signed after the hearing, determines that the individual is not taking his medication as an outpatient, the option available to him is to put him into an inpatient facility so that they would. Now the question that is probably unanswered is can you up the level -- you're going from what the court has determined as the least restrictive situation to a higher restrictive situation without going back through a hearing. It could be that the order could be framed in such a way that the least restrictive environment would be the inpatient facility, unless the doctor is satisfied that he is taking his medication.

John Lynn: Schizophrenia is a chronic illness -- it isn't going to go away after 21 days. And if the individual discontinues medication after 21 days, the problem is going to be back. You were talking about the State requiring beds or someone paying for the hospitalization. In Region V, for example, we have 30 group home beds, and in nine cases out of ten, I think that we in the group homes could accomodate cases like this, with an order to medicate. So that they wouldn't necessarily need inpatient hospitalization. Those beds, in many cases, are already available -- not enough -- but there are beds available.

Tom Towe: How are you going to enforce it? Now you're . . . at the present time, if someone comes to you on a voluntary basis, do you force them to take medication?

John Lynn: No.

Tom Towe: Ok, now suppose you had a court order that they can be forced. How are you going to do it?

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John Lynn: Well, that would depend on the way the law was written obviously. There would have to be some contingency or backup if they're not going to take medication as an outpatient in a voluntary basis, then obviously they would have to go to an inpatient facility.

Tom Towe: So the backup is the threat of increasing the restrictiveness?

John Lynn: That's right. Well, but that's realistically the way it is now very often. We want to treat in the least restrictive setting, and we're legally required to do so, if possible. If they're not going to follow through with medication, and if they're going to be in this situation . . .

Tom Sellars: Not taking medication is indeed a problem -- it's a problem in the Hospital itself. The other factor that is a problem that hasn't been mentioned is stop taking the medication and start drinking.

Tom Towe: Tom, how do you handle it? I mean, obviously, the court order says they are committed to Warm Springs.

Tom Sellars: If the court order does not say "and treat", we cannot force them. We have to go back to the court and get an order that says "and to treat."

Tom Towe: Ok, suppose the order says "and to treat", and the guy says, "I don't care what you do -- I'm not going to take it." What do you do?

Tom Sellars: Generally, you can talk the person into taking it.

Tom Towe: I mean, there is no higher restrictive environment, so you're stuck.

Tom Sellars: You can go to intramuscular medications, long-acting medications -- if a person won't take a pill, you give him a shot.

Jay Palmatier: In fact, in those conditions when they refuse and we have them in a transitional home, group home, we have them in a day treatment facility, maybe they're getting a little psychotherapy, what have you, and they're refusing to take medication, and they're deteriorating, in that case, the least restrictive environment is the inpatient facility. They are unmanageable and will deteriorate, in the sense of what we've just been talking about.

Tom Towe: Ok, but now question: Tom says if they won't take a pill, you give them a shot. Why can't you (group homes, etc.) do that?

Jay Palmatier: I think its just a practical matter that sometimes -- well, there's a couple of factors -- who's going to give the shot? Most mental health centers don't have R.N.'s who can do that always on staff, but we could resolve that. At least an R.N. has to do that, or a physician has to order the medication.

Tom Towe: Suppose that's done.

Jay Palmatier: We could do that up to a point. The second thing though is that sometimes these folks very basically we say we're going to give you your shot, and they say "you and what other army?" So then you're faced with having to restrain them to give them their medication. And that's something hospitals are generally prepared for in terms of their physical plant and their and staffing, and group homes are not. Absolutely not. And I don't think we want them to be. We'd be building little Warm Springs all over the state, and we don't want to do that.

Bob Slomski: One thing that does bother me about this "middle ground" we're talking about ("in need of medication or treatment") is that medication. Forcing people who are allegedly mentally ill to take medication is what they do to dissidents in the Soviet Union. And I'd be very nervous appearing in front of Judge Bennett, saying this person is dangerous, and we want to force him to take this anti-psychotic medication. I mean, that is as much an intrusion into your personal liberty or more than locking you up in custody. So, I don't know if the middle ground could under Donaldson include that.

Tom Towe: Ok, wait a minute, could I interrupt you at this point, because I recognize that point. I think that may be answered -- tell me if you think it is -- when it goes on to say that "as a result of a mental disorder, the individual's cognitive or volitional functions have deteriorated, which if not treated, will predictably result in that individual's becoming seriously mentally ill", so you've got to have a whole bunch of tests there. You've got to have a mental disorder, you've got to have deterioration of cognitive or volitional functioning, and you've got to have a situation which predictably (whatever that word means) will result in the individual's becoming "seriously mentally ill" under the old definition if you don't do something about it. So you really have a lot of protections there.

Bob Slomski: I think that's getting it, you know, about as tight as you can get it, maybe a little tighter, but still I'm nervous about the end result is that you don't have a person who is dangerous right now. And that's the other thing the R.T. decision says is that the person has to be/unable/to protect his life and health at that time. (deprived of the ability)? And in the decision "at that time" is underlined. Not in the future. So I would be very nervous about forcing medication.

Mark Sakkappa: After I addressed the first clause, I didn't get a chance to address the second one. The way it's worded, it sounds to me like you're trying to get a . . . forcing medications if the person is in fact incompetent. And I think what Bob is raising, the problems that Bob's raising are real, we don't really realize the seriousness of the intrusion -- what's happened when you have to actually force a medication on a person. While you might be able to do it legally when they are incompetent, we'd have to first of all figure out why we're singling out this portion of the population. Normally you won't force medication on a person if they're not seriously mentally ill, and then use that medication unless its life saving treatment. That's just normal court law. But beyond that, when they are actually forcing treatment on these people in Warm Springs -- I know you're aware of one case that's been referred to you where it actually took four aides in Warm Springs to literally jump on top of a guy and punch him and beat him down to the ground to shoot him up with the medication. And in another incident, he got a broken or bruised rib, refusing to take medication. And I think you're going to be forcing that same situation on group homes.

Tom Towe: Let me follow-up with a question, or a comment. I think it's appropriate here, because I visited with Jim Johnson, who I have a lot of respect for. He made that very point. He said that probably what we really are talking about is competency. And if we put into the language "incompetent", we have a better chance of clearing the Donaldson hurdle. In other words, if we would say instead of this language about deteriorating the individuals cognitive or volitional functioning, we would put in there that the individual is determined to be incompetent.

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Mark Sakkappa: I think that's probably true, but the point that Bob is raising is also real that we're facing a very severe moral problem, whether you want to do this to people just because they're mentally ill. We don't do it to anyone else.

Kelley Moorse: In connection with what Bob & Mark were saying, I think you should refer to other case law in terms of the right to refuse medication issue to see if that offers some clarification. The other comment that I would have in terms of the competency issue that might bring some middle ground to recognized legal definitions and medical definitions that would make it a little bit easier for the professionals who are faced with having to make determinations, as well as the judges and other -- just a legal rights issues that might offer a middle ground.

Don Harr: I wanted to explain that these two paragraphs that we are recommending here as somewhat of a compromise do not say anything about forcing medication on people. We've managed to get off the track there and assume that they are talking about forcing medication. There's nothing in those that says anything about forcing medication. I think what we will have to do is determine what the subsequent care/treatment would be if the individual is hospitalized because they are refusing treatment, and therefore they are going to deteriorate according to their previous medical history. And if in the hospital, they do refuse it, then we have to have some other direction to go. And on that basis, I do not think we can exclude the Montana State Hospital as a facility that can handle somebody in this circumstance. I think we might add another section, or make it possible to get into this area of competency to determine whether somebody (perhaps the court) can decide if this individual's condition is going to need medication. But there is nothing in either of these two paragraphs that stipulates that anybody is forced to take medication.

Tom Towe: Don, look on Page 2, C, where it (the court order) says "and requesting that the person be committed to a mental health facility for supervision of medication and treatment for a period of not more than _____ days." Probably that is intended by that statement.

Harold Gerke: This has been a very interesting discussion. We haven't gotten through all of our questions that were on the questionnaire, but it's getting late -- it's after 9:00 -- and if any of you, I'll give you one more chance if you have any other pertinent questions or a suggestion you'd like to make, I would like to have you do that now.

John Lynn: Once again, I want to reiterate that in my opinion very often in cases like this, hospitalization may not be necessary. Medication, however, is in my opinion the critical issue. And the question of whether or not medication can be required in the community is going to be the thing in my opinion one of the major things that will keep people out of the State Hospital.

Harold Gerke: I think we're down to where we can if you want to ask some questions Tom or summarize the whole thing. I think it's been very important and an interesting meeting, and it probably isn't the last one that we'll have like this because of the extreme interest. And I don't think we have complete agreement on everything yet, but I think we're getting toward something that will work. We're away from the 1960's and 1970's -- we're in 1984 now. Maybe something different should be looked at.

Dean Gregg: I'd like to make an observation on one of the recent comments, and then I'd like to comment on or just throw out a question that doesn't necessarily

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Gregg (cont'd): have to be answered tonight. On Question 5 (on the questionnaire) about voluntary screenings by CMHC's -- I don't think we should delude ourselves here about this medication issue. I think in the vast majority of cases that would come up under this new division -- the vast majority -- 90% -- that the treatment of choice is going to end up being chemotherapy. I just don't see any way around it. And I think all the comments about civil rights and whether or not we should be jamming pills and medication down peoples' throats I think are legitimate questions that need to be looked at. On the last one -- question 5 -- "Should voluntary commitments be funneled through CMHC's?" Let me give you an example of what happens at our CMHC: a person comes in and says to me, "I want to go to Warm Springs." And I say, "Why?" And they say, "Well, I don't have anyplace to live, I'm living in a car, I don't have any food, I'm getting depressed about it." And maybe I'll say, "Well, gee, I don't really know whether or not that's an appropriate reason to go to Warm Springs"(I'd be more tactful with the client, but generally its the idea). And then the person implies or will just flat out say to me, "Well, if you won't approve me going to Warm Springs, I'll just do something crazy enough that you'll have to send me." Or, "I'll commit suicide if you don't send me." That puts me in a difficult position, because I know full well that this is not an appropriate admission to Warm Springs, and yet if I don't act on it and send them down there, they may actually do something. later that night, or tomorrow when I have to send them down there because they have done something.

Tom Towe: People really want to go that bad?

(Affirmative answers from many people in the audience.)

Dean Gregg: I would be interested in hearing what Mr. Sellars has to say about that. You know, I just don't know what to do in situations like that, because I don't want to stick Warm Springs with people like this. Got any suggestions?

Tom Sellars: I recognize the position that you're in. There are certain buzz words, and there are certain people who consider Warm Springs "home." And if not "home", certainly a haven for a short period of time. And they can put a mental health professional in a very awkward situation by using those buzz words. Then there's the liability factor on their part, because even if it is only a manipulative effort to demonstrate that "hey, I really mean it", somebody in just trying to show that might well do themselves in or cause serious bodily harm. But yes, he has a legitimate concer. There's another concern at our end, which is that constitutes an inappropriate admission, and there is a portion in the statute which in effect says that ~~in~~ no person shall be denied the right to admit themselves to the hospital. There is a problem just in that wording.

Harold Gerke: Do you think that that law on voluntary admissions needs to be strengthened so that they'd have to go through some procedure?

Tom Sellars: 57% of the admissions to Montana State Hospital-Warm Springs Campus from January 1 to June 30, 1984, were voluntary admissions. That number is not inconsistent with the rate that we've been running for the last 18 months.

Harold Gerke: Is there some way that you can think of that would restrict that so that they would have to go through a hearing of some kind or some other test, rather than to just say, "well, I'm going to commit suicide if you don't send me." Is there some field there that could be explored?

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Bob Roberts: As you said before, you don't control them, they control you.

Harold Gerke: Well, as I said, I'd like to . . .

George Cloutier: Perhaps to end on a lighter note -- I've just come back from a tour of psychiatric facilities in the Soviet Union. And in their nomenclature they have another category called "sluggish schizophrenia" -- that's how it translates out. It includes just about anything you'd need for any purpose -- it really allows for a great deal of flexibility. I hope we don't get to that point.

Tom Towe: There's one person I haven't heard from tonight. I have great respect for him, and unless he prefers not to, I'd really like to hear his comments; particularly about the proposal we made. Judge Bennett--?

Gordon Bennett: I just made my comments -- I agree with Dr. Cloutier. And that's where you're headed. When you're hacking away at the basis for restricting peoples' liberty, you're (start) leaving the door wide open for heavy-handed judges -- beware of the judges -- leave the statutes very high for them. Make it tough. I think, many years ago when you were up in my office writing this law, that you did a good job. There was some talk by Dr. Harr about the pendulum. The pendulum has worked into this system pretty well. . . It isn't as tough today as it was before . . . What I want to do is put in a strong word, however, for holding the line on the -- I came here to support this program, and I think I am going to appear in opposition to it. The reason is is that I am becoming more enthusiastic about the language we now have as I've been sitting here. I think the word "imminent" is a very good word. But you have to go before a judge and demonstrate before you restrict this person's liberty that he's in trouble or somebody else is in trouble imminently. That language that came out of the Yellowstone County Attorney's office sets up the darndest bunch of wickets for the judge to try to get through than you could ever imagine. We'll be redefining that thing for the next 25 years. It's a little like Duke Crowley revising the criminal law -- we haven't caught up with it yet. We have something -- I don't want to sound too reactionary -- but we have a good statute that most judges understand, that Warm Springs understands I think, and its workable. It sets a high standard. I agree with the deputy atty from Missoula . . . it's very imminently possible that we're heading that way in this country now. I look on this as an attempted limitation on liberty. I think it's unnecessary, incidentally. What gives us a lot of trouble is what you folks were talking about here before are our repeaters -- the fellas that come back -- the fellas that aren't taking their lithium chloride -- that won't. My solution would be to beef up the Board of Visitors. The Board of Visitors are concerned with how they get in there. I think the Board of Visitors ought to be concerned on the other side of the gate -- how they get out of there. I think once you've adjudicated a person as mentally ill, that ought to give you authority to follow them back into the community and make sure they take their medication. There has been an adjudication. And there should be a better follow up between Warm Springs and the community mental health centers to enforce the medication requirements. A goodly proportion of the people who come through the courts have been there before -- they're simply not taking their medication. I don't think that takes any great change in the law -- I think it means beefing up the mental health centers for greater capability for following up, and giving them authority under law once somebody is adjudicated to require the medication until the requirements are repealed by Warm Springs or by the court.

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Winifred Storli: May I ask the Judge one question? Would that also mean a hospital like St. Pat's or not necessarily Warm Springs, but a psychiatric unit somebody goes to?

Gordon Bennett: You mean after they're released?

Winifred Storli: Yes, after they are released.

Gordon Bennett: They haven't been taking their medication?

Winifred Storli: Right. They have been at St. Pat's or some hospital and they're doing well, and then they quit.

Gordon Bennett: I think once you've got them adjudicated mentally ill, there should be the capability to put them back in the hospital if they haven't been taking their medication. It's the business of the court to adjudicate, and not to make the medical prescription. Once they're adjudicated as "mentally ill", then there should be the authority to follow up and make sure that they get the treatment, but not start prescribing ~~the treatment before you decide~~ there is "imminent danger."

Greg Barisich: I think us trying to get some serious closure tonight is really inappropriate, and I think we should specifically plan another meeting, not just hope to have one. I think there are a lot of areas, and there are some areas here we haven't even addressed tonight. So, I would like to plan something, rather than hope for another meeting.

Harold Gerke: I was going to suggest that before we finish here, but Tom said he had several questions he wanted to ask, and I didn't want to cut him off because if there is any legislation, we're going to have to depend on him because he's here with all the knowledge to help us with it.

Tom Towe: Can I ask Judge Bennett, then, just one question. I take it what you're saying Judge is that we don't at this time need that intermediate step? And are you saying that those persons who we cannot prove dangerous/imminent threat to injury, we really shouldn't concern ourselves with? How do we answer that?

Gordon Bennett: We should concern ourselves with them as a community, and we should get to them through the community mental health centers, through the social services that we have in the community, church services, we should persuade them.

??: They won't go.

Gordon Bennett: If they won't go, then leave them alone until there is imminent danger.

Greg Barisich: Let them walk the streets?

Gordon Bennett: Sure. But if they're walking the streets when its 40^{0} below, you fellows come in and tell me there's imminent danger, and we send him over to Warm Springs.

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Tom Towe: The other question I wanted to ask then is I think Bob Roberts made the comment, and I'd like to hear other persons thoughts on it -- that what we really need is an easier conservator situation. In other words, the naming of an individual who is responsible in each county -- does that make sense?

(Affirmative responses from a number of individuals in the audience.)

Mark Sakkappa: What makes more sense is -- they do need the money when they get out of there -- but I'm not sure you need much more than our conservator statutes have now. But you need some way to force SRS in the counties to actually provide the money for these people -- to give it to them right away so that they don't have to wait two months or three months before it actually comes.

Lucy Roberts: We are not really talking about that -- we are talking about those who are on disabilities. Like our son is on Social Security disability also as many more. And they don't use this money properly. And they end up _____, and they may cause mayhem. We could prevent a lot of problems by having this regulated.

Harold Gerke: Well, I think that's a good point, Tom.

Bob Roberts: Control of finances is essential. The whole basis of these schizophrenics is because they want money -- they'll beg, they'll do anything. And how can you hit the rock bottom without money?

Winifred Storli: Even vets who are on the $200 a month, they can't handle it. It just goes, or somebody takes it from them.

Harold Gerke: Well, I appreciate the interest that's been demonstrated here tonight. I don't like to cut the meeting off, but I don't like to let it run too long either. I think we've pretty well covered the subject, and some of it two or three times. We have two or three items that I think we can at least start to do some work on. But as someone said here, I think we need another meeting at least. When do you want another meeting? I think we've got enough information and enough discussion here for each of you to take home and think about so that we can come back in another month or six weeks and maybe finalize some kind of action that we're going to take -- at least in the field of conservator, if nothing else.

Dean Gregg: Is the legislature seriously considering changing the laws?

Harold Gerke: They won't consider changing anything unless its proposed to them. And if we think we have something serious, logical and reasonable to propose, then certainly they're going to consider it. But I don't think you'll find them looking for anything to do. That'll have to come from here.

Tom Towe: I can answer that on my behalf -- as the original author of the bill, I feel some responsibility to continue looking at it. If in fact, and you know I guess as far as my own vote is concerned (and that's only 1 of 150 votes), but I suspect because I am the original author that it may have some influence on what some of the other legislators might do. But I would be very interested in working on something -- if it makes sense. I want to make sure that it makes sense. And that's why I've been asking questions more than anything else tonight. I think Judge Bennett makes a very valid point, I think that Don Harr makes a valid point, and I don't feel comfortable at this point -- although I think we need to do some more thinking about it.

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Towe (cont'd): With regard to the second item -- I've got three items written down -- the attorney's proposal is one of them -- the second one is the follow-up authority, and I tend to think that that makes a lot of sense. It could be that a lot of the problems could be worked out. And I think that Judge Bennett is exactly right -- once there's been an adjudication, we have the authority--the Donaldson case does not present any impediment--to take action at that point. And if we need to put something in the statutes to ensure greater follow-up, let's do it.

Harold Gerke: And a facility to follow-up with.

Tom Towe: What I'd like to know is -- I'm not in the field, I'm not the mental health professional -- you folks are. I'd like to have you folks come up with some ideas. Maybe Tom (Sellars) could come up with some ideas, maybe Dick, or Dave or some of the people who are in charge of the mental health centers can come up with some ideas of the kinds of things that we ought to have in the statute with regard to follow up, if that's necessary in the statute. Maybe all we need to do is make a determination to do it under the existing laws. At least that's something I think needs to be worked on further. And the third item that I've written down is a proposal that I'd like to see carried forward further is the idea of the conservatorship. And I think there what we're really talking about is, as Bob Roberts said, and I think he's probably put his finger on it, and I say that because of the experience we've had with the guardianship laws in the past. We came up with that as a solution once before. We passed the legislation, and nothing's happened. The County Attorneys tell me that the reason nothing's happened is the County Attorneys don't want to take the burden on of finding a conservator, and there isn't a ready identifiable person there, and perhaps the thing that we need is to set up a system -- and I don't know how that system could be created -- to identify in each county someone who would be willing to take on that task. Maybe that's not the right idea. I'd like to hear some more on that.

Cliff Murphy: I haven't looked at the law. There is a person in the room who is a conservator of an incompetent person. We in the Mental Health Association I think initially had some responsibility in this regard. There's a possibility of many persons being served by conservatency. And the question is risen, how could a corporation set up to handle this, hire a minimal staff and serve as conservator for persons, how would they be paid? And I guess there's nothing in the law that. Now if the court orders could give a certain percentage of that income that could be allowed to go to that, then that would be a way of financing. That might be a possibility -- I just don't know. Whereas, if you're going to put it in each county -- having to appoint somebody who is going to be a conservator -- are they going to take it seriously? They've already got their duties, or the counties are not going to come up with funds for it. We have the one group presently that Kelley Moorse represents with minimal staff concerned with the persons who are in institutions. This is a broader category of those who cannot handle their own money. I gather that there is to be a hearing in court before the month is over where this question will be raised.

Harold Gerke: That may give us some answers then.

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Lucy Roberts: Our son, when we lived in California, was under an involuntary conservatorship. I wrote down to the conservator, and I have all the "dope" on how it was set up in California, and that is for each county. There is a conservator in each county as public guardian and they not only handle money of mental patients, but also people educated as (?). (They'll send a copy to Tom Towe).

It was decided that another meeting would be held in October. A date will be selected, and everyone notified.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 1
DATE 022085
BILL NO. SBs 375, 376, 414

NAME Murphy Cliff BILL NO. 375, 376 414, 411

ADDRESS 1301 Rimrock Rd Blgs, MT 59102 DATE 2/20/85

WHOM DO YOU REPRESENT Mental Health Assoc of MT

SUPPORT ✓ OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

The MHAM supports SB 375. 376 & 414. The Association has concern about SB 411 since it questions the placing of children under 12 with adolescents and the housing ~~incarceration~~ of those committed for evaluation under correction laws with mental health patients. However, it is recognized that the evaluations will be of those presumed to be mentally ill.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 2
DATE 022085
BILL NO. SBs 375, 376, 411, 414

NAME Venus Bandanouve BILL NO. 376

ADDRESS Harlem, MT DATE 2/20/85

WHOM DO YOU REPRESENT Self

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

We have seen injustices to mentally ill patient & society when patient (adult) would unwisely leave hospital treatment too soon. We would like to see this dimension changed to involuntary commitment when advised in best interest of patient.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 022085
BILL NO. SB 375

NAME Jerry Jordison BILL NO. 376

ADDRESS BX 1186 of 30 Chinook 59523 DATE 2/20/95

WHOM DO YOU REPRESENT Self

SUPPORT L- OPPOSE AMEND

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

Thank you for the step forward in this very dark area of our society. Any one having lived with a person who is mentally ill, as set forth in bill 376 - knows how badly these changes are needed!

SENATE JUDICIARY COMMITTEE
EXH'BIT NO. 4
DATE 022085
BILL NO. SB 376

NAME John Lynn BILL NO. SB 376

ADDRESS 225 W Front St, Missoula DATE 2.20.85

WHOM DO YOU REPRESENT Western Montana Mental Health

SUPPORT ✓ OPPOSE AMEND ✓

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

While I generally support this bill, I am strongly opposed to clause in the definition of "person in need ---" which states that the "individual, as a result of his mental disorder is unable to understand his need for treatment and to give or withhold informed consent to the treatment."

How does one prove an inability to give or withhold informed consent? What is the procedure?

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 5
DATE 022085
BILL NO. SB 376

NAME THOMAS M. POSEY BILL NO. 376

ADDRESS 18 WHEATLAND, BILLINGS, MT. DATE 2-20-85

WHOM DO YOU REPRESENT SELF

SUPPORT _____ OPPOSE ✓ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 6
DATE 022085
BILL NO. SB 376

TESTIMONY TO SENATE JUDICIARY COMMITTEE

SUBMITTED BY THOMAS M. POSEY

My purpose before you today is to speak against Senate Bill 376, an act providing for involuntary commitment in the local community. I was a member of the committee that drafted this bill and will admit that this pending legislation was concieved to answer a possible need and by a very well meaning group of people. The instrument, as it is now before you, however falls far short of answering the need and creates so many areas for gross abuse and the loss of civil liberities that I have no choice but to be in total opposition to its passage.

We now have a very fair and humane commitment law in the State of Montana, based on the long established principle of imminent danger to self or others. Senate Bill 376 removes the necessity of proving imminent danger and replaces it with criteria that can be based on something as tenuous as hearsay.

In order to fall under the provisions of this bill certain conditions must be met. The first criteria is that a person has been mentally ill. This then separates out from the rest of society those of us who have been mentally ill and who have been treated for same and places us in jeoprady for having a condition that was most decidedly not of our own choosing. It also identifies us as being different and a class of less stature than our peers.

The second criteria is that the person in question has been deprieved of the capacity to function without major disruption to person or property. Thus any hearing held under this bill becomes nothing less than a sanity hearing but does not provide all of the safeguards that exist under the sanity provisions of Montana law.

The third criteria is that as a result of this mental condition

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the person is unable to understand the need for treatment, again without the safeguard of a sanity or competency hearing.

Fourth, that the person, without treatment, will become predictably worse. During the arguments that took place at the drafting of this bill Dr. Donald Harr, a psychiatrist, a member of the committee, and a prime mover behind this bill, stated that predictably would be impossible to establish as we are dealing with a condition of the most complex of all organs in the most complex of all species, the brain of a human being. There is no way to establish the predictably of another human being regardless of whether he is supposedly suffering a mental illness or not. This section goes on to say that predictability may be established by the patient's medical history. That word may becomes very permissive and could be interpreted to mean that predictability might also be established by the phases of the moon or the color of the person's eyes.

What this breaks down to is that any person who has been treated for a mental illness whether by institutionalization or outpatient therapy can be taken into a court of law and forced to defend their sanity. And who may do this? Under Section 4 of this bill the county attorney may upon the request of any person file a petition with the court for forced treatment. That's right. Anyone and for any reason may force us into a court of law to defend our sanity. Most of us have never been to court as we sought treatment on a voluntary basis. We have no court record but under the provisions of Senate Bill 376 we can be taken into court without having committed any crime or unsocial act, other than being treated for a mental illness, forced to hire an attorney for our defense, undergo the humilitation of a sanity hearing, and have created a record which becomes a matter of public record. Why? Simply because we have been treated for a medical condition.

Would you presume to do the same to a person who had been treated for cancer or heart disease?

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While all of these facts are sufficient to cause me great concern they are only the tip of the iceberg. The bill further provides that the patient if found in need of treatment can be committed to a local facility for court ordered treatment for 30 days with provisions for extension of this treatment. Under Section 9 this treatment may include and I quote "The treatment plan may include prescription by a physician of reasonable and appropriate medication that is consistent with accepted medical standards". The existing commitment law deals with this by saying "The patients have a right to be free from unnecessary or excessive medication". And this is referring to someone who is in imminent danger to themselves or others. By passing Senate Bill 376 you are saying that a person, who is not a danger to themselves or others, but who is believed to be in need of treatment can be medicated against their will for a period of thirty days. Before I go further let me address the issue of who is going to pay for all of this. The bill states that the patient cannot be charged for court ordered treatment but Senator Towe during the drafting of this bill stated that the patient's insurance company might be held liable for the cost, as is now the practice at the State Mental Hospital. Many of us who have received treatment for a mental illness have never turned these charges into our insurance company as we do not want to be put on the nation wide watch list which insurance companies maintain. Here again for no other reason than having been mentally ill we can be forced into something which is against our will and desire.

Now back to forced medication. Senators we are not talking about treating someone with aspirin. We are talking about medications of extreme power and with major side effects. Side effects that can and do include permanent brain damage, physical disabilities, and even death. Drugs which are so new that all of the possible side effects are not even known. In my own case I have twice been taken off a medication because of disasterous side effects that even the doctor was not aware of at the time I was first put on them. One hundred percent of all medication used in the

treatment of mental disorders cause less than desirable side effects and you are going to be considering legislation that will permit these drugs to be given against a person's will and without informed consent. During the drafting of this bill I asked the Director of Warm Springs State Hospital what their policy was in regards to forced medication of persons committed under the provisions of imminent dnager. His reply was that forced medication was only used in cases of immediate threat to life and then only in consultation with a second doctor. This bill does not even require consultation with another doctor only that it is consistent with accepted medical standards. Who is to set those standards when the administration of medication for a mental disorder is so different with each individual that only the most minimal of standards can be established. Still we are going to permit any doctor in a community environment and not in a hospital setting to force medicate on the presumption that someone might become predictably worse. Who would ever think of legislation that would force a person suffering from high blood pressure to take medication against their will even though predictability can be established far easier than in the case of a mental disorder.

While I am in no way accusing anyone of thinking of such action I can only submit that it would be possible under this law for persons to be treated who we deem odd in our communities simply because they have seen a counselor.

We now come to the question of liability should someone be force treated under this bill and suffer brain damage, physical impairment, or death. Under the tenents of informed consent it is necessary to prove that a doctor did not inform the patient of side effects and that he was negligent in not doing so. This is not the case under Senate Bill 376 as it is presumed that the patient cannot understand informed consent or has withheld the same. If this is the case how could they ever prove negligence? More germane to the point is the question, does the State of Montana accept liability in this case? In preparing for this

committee meeting I asked five attorneys licensed to practice in the State of Montana to answer this question. In all five instances their reply was that they felt a very strong case could be made for the State being liable. This was a question that was also raised in the committee that drafted this bill and which was never answered. Thus it is a real possibility that if this bill is passed the State of Montana could become liable for millions of dolars in damage claims and is underwriting the medical practice of virtually every doctor in the state.

In closing let me say that I feel the ramifications of this legislation are so henious as to defy imagination. Senators, for the reasons I have outlined I submit that this bill is, simply stated, a bad bill. I can only recommend that Senate Bill 376 be defeated.

Amendments to Senate Bill 411, Introduced Bill

Page 5, Line 23
After the words: are committed pursuant to 53-21-505 or 41-5-523.
Insert: The center is a mental health facility as defined in 53-21-102(6).

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 7
DATE 022085
BILL NO. SB 411

February 19, 1985

Senate Judiciary Committee
Montana State Capitol
Helena, Montana 59620

Gentlemen:

The Montana Reserved Water Rights Compact Commission and the negotiations process were created by Senate Bill 76 as an alternative to litigation of federal reserved rights in state court. This compromise was perceived to be in the best interests of the state, the federal agencies, and the Indian Tribes of Montana. I am concerned about the potential effect of the proposed amendments on the negotiations process. In my opinion, opening the compacts to objection in the water court as to the substantive provisions that have been agreed upon after long and difficult negotiations will substantially diminish the value of the process as an alternative to litigation.

The goal of all parties is to provide finality to the negotiations process without violating the due process rights of citizens and without jeopardizing the state adjudications process.

If a state water user raises a due process challenge to the terms of a compact, his action is one against the state for compensation. The proposed amendments would meet that challenge by providing that a water user could object to the substantive provisions of a compact in the water court. I do not believe that this is necessary. The U.S. Supreme Court has affirmed that sovereigns can bind their citizens to the terms of compacts apportioning water. It is the legislative act of ratification which binds the citizens of the state and the tribe; therefore, it is within the legislative process that due process must be provided.

The state has jurisdiction to adjudicate federal reserved water rights under the McCarran Amdndment only if we have an adequate general stream adjudication process. Assuming that the Montana Supreme Court finds, in the case now pending, that the SB 76 process is an adequate general stream adjudication, our concern is that new amendments do not jeopardize that adequacy. A state water user will very likely not be challenging the adequacy of the process to adjudicate federal reserved water rights; presumably, he will be arguing a perceived effect of the compact on his own water rights. But assuming that at some point the issue is raised as to whether the process is a general stream adjudication, under the McCarran Amendment, when every water user cannot challenge the federal rights in the water court, then a court will have to determine whether the process is inadequate because those rights were determined through a compact process rather than through litigation. That decision also rests, it seems to me, on the power of the state and the tribe or the United States

SENATE JUDICIARY COMMITTEE
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to bind their citizens to the terms of a negotiated compact and to settle pending litigation through compromise.

As a practical matter, if the proposed amendment is adopted, I expect that attorneys would advise clients to challenge compacts in the preliminary decree hearings, just to be on the safe side. Assuming that the objections would be to the quantification of federal rights in the compact, the resulting deliberations could be as technically complex, lengthy, and expensive as litigation on the issue in the first instance. Moreover, because quantification agreed upon in a compact will be based in part on mutual concessions on other issues, challenges and modifications in the water court will necessarily undermine other provisions. This prospect, in my opinion, greatly reduces the viability of the negotiations process as an alternative to litigation.

Respectfully submitted,

Marcia B. Rundle

Marcia Beebe Rundle
Attorney

MBR;jf

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 8
DATE 022085
BILL NO. SB 28

STANDING COMMITTEE REPORT

February 20 19 85

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration SENATE BILL No. 23

first reading copy (white color)

EXTENDING RES. WATER RIGHTS COMPACT COMM AND CHANGES IN WATER ADJUDICATION.

Respectfully report as follows: That SENATE BILL No. 28

be amended as follows:

1. Title, lines 8 through 10.
Following: "NECESSARY;" on line 8
Strike: remainder of line 8 through "UNCHANGED" on line 10
Insert: "PROVIDING AN ALTERNATE STATEMENT OF CLAIM FOR RESERVED RIGHTS NOT YET PUT TO USE; SPECIFYING THE INFORMATION RELATING TO RESERVED RIGHTS TO BE INCLUDED "

2. Title, line 12.
Following: "COMMISSION;"
Insert: "REQUIRING THE COMMISSION TO MAKE STATUS REPORTS TO THE WATER JUDGE;"

3. Title, line 13.
Following: "85-2-217,"
Insert: "85-2-224,"
Following: "85-2-234,"
Strike: "AND"
Following: "85-2-702,"
Insert: "AND 85-2-704,"

XXXXXX

XXXXXXXXXX

Senator Joe Mazurek Chairman.

4. Page 2, line 14.
Following: line 13
Insert: "Section 2. Section 85-2-224, MCA, is amended to read:

85-2-224. Statement of claim. (1) The statement of claim for each right arising under the laws of the state and for each right reserved under the laws of the United states which has been actually put to use shall include substantially the following:

(a) the name and mailing address of the claimant;

(b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;

(c) the quantities of water and times of use claimed;

(d) the legal description, with reasonable certainty, of the point or points of diversion and places of use of waters;

(e) the purpose of use, including, if for irrigation, the number of acres irrigated;

(f) the approximate dates of first putting water to beneficial use for the various amounts and times claimed in subsection (c); and

(g) the sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief.

(2) The Any claimant filing a statement of claim under subsection (1) shall submit maps, plats, aerial photographs, decrees, or pertinent portions thereof, or other evidence in support of his claim. All maps, plats, or aerial photographs should show as nearly as possible to scale the point of diversion, place of use, place of storage, and other pertinent conveyance facilities.

(3) Any statement of claim for rights reserved under the laws of the United States which have not yet been put to use shall include substantially the following:

(a) the name and mailing address of the claimant;

(b) the name of the watercourse or water source from which the right to divert or make use of water is claimed, if available;

(c) the quantities of water claimed;

CONTINUED

(d) the priority date claimed;

(e) the laws of the United States on which the claim is based; and

(f) the sworn statement that the claim set forth is true and correct to the best of claimant's knowledge and belief."

Renumber: subsection sections

5. Page 3, lines 16 and 17.
Following: "decree" on line 16
Strike: "remainder of line 16 through "purposes," on line 17

6. Page 3, lines 19 and 20.
Following: "agency" on line 19
Strike: remainder of line 19 through "congress" on line 20

7. Page 4, lines 14 and 15.
Following: "decree" on line 14
Strike: remainder of line 14 through "alteration" on line 15

8. Page 4, line 22.
Following: "1973"
Insert: ", and of any federal agency or Indian tribe possessing water rights arising under federal law, required by 85-2-702 to file claims"

9. Page 4, line 25.
Following: "person"
Insert: ", federal agency, and Indian tribe"

10. Page 5, line 3.
Following: "right"
Insert: "arising under the laws of the state of Montana"

CONTINUED

11. Page 5, line 19.
Following: line 18
Insert: (6) For each person, tribe, or federal agency possessing water rights arising under the laws of the United States, the final decree shall state:

(a) the name and mailing address of the holder of the right;

(b) the source or sources of water included in the right;

(c) the quantity of water included in the right;

(d) the date of priority of the right;

(e) the purpose for which the water included in the right is currently used, if at all;

(f) the place of use and a description of the land, if any, to which the right is appurtenant;

(g) the place and means of diversion, if any; and

(h) any other information necessary to fully define the nature and extent of the right, including the terms of any compacts negotiated and ratified under 85-2-702."

12. Page 6, line 15.
Following: "Montana"
Strike: ","
Insert: "and"

13. Page 6, lines 16 and 17.
Following: "body" on line 16
Strike: remainder of line 16 through "authority" on line 17

14. Page 6, line 18.
Following: "its"
Strike: "approval"
Insert: "ratification"

15. Page 6, line 19.
Following: "tribe"
Strike: "or federal agency"

16. Page 6, lines 20 and 21.
Following: "decree"
Strike: remainder of line 20 through "purposes" on line 21

CONTINUED

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17. Page 6, line 23.
Following: "decree"
Strike: "without alteration"

18. Page 6, line 24.
Following: "tribe"
Strike: "or federal agency"

19. Page 6, line 25.
Following: "all"
Strike: "federal and"

20. Page 7, line 6.
Following: line 5
Insert: Section 6. Section 85-2-704, MCA, is amended to read:

85-2-704. Termination of negotiations. (1) The commission or any other party to the negotiations negotiating tribe or federal agency may terminate negotiations by providing notice to all parties 30 days in advance of the termination date. On the termination date, the suspension of the application of part 2 provided for in 85-2-217 shall also terminate. The tribe or federal agency shall file all of its claims for reserved rights within 60 days 6 months of the termination of negotiations.

(2) Once negotiations have been terminated pursuant to subsection 910, they may be reopened only by mutual agreement of the parties.

NEW SECTION. Section 7. Status reports to chief water judge. (1) The Montana reserved water rights compact commission must submit to the chief water judge, appointed pursuant to 3-7-221, a report on the status of its negotiations on July 1, 1985, and every 6 months thereafter.

(2) Each report must state which Indian tribes and federal agencies are engaged in negotiations, whether any negotiations with Indian tribes or federal agencies have been terminated, and the progress of negotiations on a tribe-by-tribe and agency-by-agency basis. The report must be made available to the public."
Renumber: subsection section

AND AS AMENDED

DO PASS

Senator Joe Mazurek, Chairman

CLERICAL

Date: 2/21

Senate Bill 28

Time: 8:20 pm

In accordance with Joint Rule 3-7(b) the following clerical errors may be corrected:

Senate Standing Committee Report

Amendment #20

in (2) ... "pursuant to subsection (1),"

2:20 p.m.

2/22/85

Sponsor

MER

Secretary of Senate
or
Chief Clerk

Legislative Council