

MONTANA STATE SENATE
JUDICIARY COMMITTEE
MINUTES OF THE MEETING

February 19, 1987

The thirty-second meeting of the Senate Judiciary Committee was called to order at 10:00 a.m. on February 19, 1987 by the chairman, Senator Joe Mazurek, in Room 325 of the state Capitol.

ROLL CALL: All committee members were present.

CONSIDERATION OF SENATE BILL 356: Senator Allen Kolstad Senate District 7, presented the bill to the committee. (Exhibit 1)

PROPONENTS: Charles Graveley, Montana Coroner's Association, supported the bill. He said the only law right now that has any provision for coroners, is the coroner must be elected. He said the bill makes a prospective coroner have a few more qualifications. He said the Coroners Association chose the age of 23 as the starting age to run for county coroner because a person would be more mature about death. He said the bill removes a requirement that the justice of the peace act as coroner when the coroner is out of town. He said the justice's of peace like the bill and agree with it. He explained all the amended sections and new section of the bill. (See exhibit 1) He felt in section 4, page 4, line 15, there is an error in the drafting, and the words "held in an odd number year" should be struck. He felt the sentence was confusing.

Mickey Nelson, Montana Coroners Association, said the coroners are not the most trained people in the world for their job. He said all other county jobs have some training and education program set up for them. He felt the age of 23 is an average age for a college graduate. He said it might make a college graduate think more about going into the business. He said coroners deal with professional people, and he felt because of this, coroners need training in medical terms. He said the bill would apply to the coroners appointed in the next two years.

Bernard McCarthy, Magistrates Association, supported the bill. (see witness sheet)

OPPONENTS: There were none.

DISCUSSION ON SENATE BILL 356: Senator Mazurek questioned if there are any other places in the law where the legislature delegates the course approval requirement to an association of elected officials as opposed to some elected official office. Mr. Nelson said he didn't know.

Senator Blaylock asked if the coroners felt this expanded their powers. Mr. Graveley said the coroners would have no problem with some agency besides themselves approving courses for the coroners to take in their training.

Senator Mazurek asked Mr. Bernie McCarthy if the justices of the peace have some training. Mr. McCarthy said they do.

Mr. Graveley closed for Senator Kolstad.

CONSIDERATION OF SENATE BILL 361: Senator Halligan, Missoula, presented SB 361, which is by request of the Board of Crime Control and revises the Youth Court Act. He also presented a statement of intent with the bill. (Exhibit 2)

PROPONENTS: John Mattson, SRS, said the problem with services to emotionally distrubed kids is the SRS department is paying only for residential treatment. He said currently a 12 year old child that can't be in a public school because of mental problems is putting parents into an extreme debt so the child can go and obtain services in a facility in another state. He felt the parents shouldn't have to go to another state to get services.

Joy McGrath, Mental Health Association, stated on pages 8 and 9 of the bill, the definition of distrubed youth is stated. She felt the definition could be more clear on line 23 of page 8. She felt it should say on line 23 after "identifiable", "mental health problem diagnosed by a nationally recognized classification system, such as the Diagnostic and Statistical Manual (DSM3)". She felt this language would clarify things. She mentioned there are quite a few agencies that deal with mental health of children and there will always be problems with who has the power to do what. She gave the committee some information on children that need mental health services. (Exhibit 3)

Steve Waldron, Mental Health Centers, stated the bill is a good bill because it defines what a mentally disturbed child is. He said there are several boys in Pine Hills School that need mental health care and shouldn't be at the school. He commented the school has a budget for 180 boys and 240 are there right now. He also said the Mountain View School for Girls has a budget for 33 girls, and 60 are there. He said the adolescent treatment program in Helena just got started and it is just for mentally disturbed kids. He said the state is not dealing with emotionally disturbed kids as much as the state should.

Steve Nelson, Board of Crime Control, said years ago, all kids were thrown into delinquent centers, but the government agency tried to get rid of some of their liability problems, so they started to decrease kids in these centers. He said the government is just trying to shirk its responsibility. He said because of this, a child doesn't get help until the child is at a danger point. He said if Family Service legislature goes through, it will help have one single agency dealing with these kids.

OPPONENTS: There were none.

DISCUSSION ON SENATE BILL 361: Senator Beck asked if the family service legislation passing or not passing would effect this bill. Senator Halligan answered no, because local communities make the decisions on this bill.

Senator Pinsonneault asked why there wasn't a fiscal note. Mr. Nelson said there was a fiscal note that was prepared for about \$70,000, but the note was returned to the agencies.

Senator Crippen questioned if Senator Halligan's bill wanted local communities to make recommendations.

Joy McGrath said another bill calls for community recommendation. She said this bill deals with the access of services to a community.

Mary Blake, SRS, said the family service bill has the community recommendation for where children should be placed. She said this bill sets up another committee for emotionally disturbed children.

Senator Crippen felt the two bills would coordinate these communities. Mary Blake said over a period of time, it can begin to absorb interagency planning, which is what this bill is intended to do.

Senator Mazurek said this is one of the major problem areas in family services. He said he has talked to public school officials who feel they have no way of dealing with mentally distrubed kids and they do cause problems.

Senator Mazurek asked Ms. McGrath why the bill limits the decision to psychologists and not the court, on whether a child is distrubed. Ms. McGrath said the committees will follow the mental disturbed definition in this bill. Senator Mazurek thought it should be decided by the judge.

Senator Halligan closed the hearing on Senate Bill 361.

EXECUTIVE ACTION

ACTION ON SENATE BILL 356: Senator Mazurek said the State Medical Examiner is under the Dept. of Justice, so we maybe should strike "state medical examiner" and insert "attorney general". Senator Blaylock moved to strike "state medical examiner" and insert "attorney general". The motion carried. Senator Galt moved on page 4, line 15, strike "held in an odd number year". The motion carried.

Senator Galt moved the bill DO PASS AS AMENDED. The motion carried.

ACTION ON SENATE BILL 137: Several gentlemen asked if they could present more information on SB 137, which was taken from the Table on February 18. Senator Yellowtail said the committee is waiting on HB 740, which deals with this bill. He also explained the amendments the committee adopted yesterday. (Exhibit 4) Senator Yellowtail said the reason we didn't pass the bill yesterday was the committee is waiting for HB 740, which is an accounting bill.

Jim Haynes, Magistrates Assn., explained HB 740 splits up the fines and sends them to the accounts. He said SB 137 is a new account that would have to be inserted in HB 740. He said if SB 137 is passed, the percentage in HB 740 will have to be changed. Mr. Haynes said the cash flow of fines that should go to the state are not getting there from the county. He felt SB 137 will just add to the complication.

Senator Crippen felt the committee couldn't wait for the

House bill. Senator Yellowtail moved the amended bill DO PASS AS AMENDED. Senator Halligan felt the bill will hit the innocent violator. He said there has to be a better way of doing this. The motion FAILED on a tie vote. (See roll call vote sheet)

ACTION ON SENATE BILL 139: Valencia Lane gave amendments to the committee. (Exhibit 5) Senator Galt moved the amendments. The motion carried. Senator Brown moved the bill DO PASS AS AMENDED. The motion Carried.

ACTION ON SENATE BILL 77: Senator Pinsoneault said the bill gives aggravated circumstances for the judge to use in a decision on the death penalty. He said he just added the death of a rescuer in a kidnapping to the list. Senator Pinsoneault moved the bill DO PASS.

Senator Crippen asked how broad does the term "rescuer" go. Senator Pinsoneault felt the term was well understood and that a defendant is the one that has to cause the death of a rescuer. Senator Crippen asked what the bill does with an unauthorized search party and one dies because he fell off a rock while searching. Senator Pinsoneault felt it was to far-fetched an idea to use in this bill.

Senator Bishop said the death has to be part of the act of rescuing.

Senator Halligan moved the death has to occur as a direct action of the rescue. The motion carried. (See Standing Committee Report)

Senator Pinsoneault moved the bill DO PASS AS AMENDED. The motion carried with Senators Mazurek, Crippen and Blaylock voting no.

ACTION ON SENATE BILL 338: Mr. John Fitzpatrick gave the committee amendments. (Exhibit 6) He explained the amendments and how they are a procedure to use in drug testing. The committee studied the amendments. Mr. Fitzpatrick explained some drugs leave the system in 4 days, so samples are usually current. He said that is why many people take a separate drug test weeks later, because they know with certain kinds of drugs, the chemical leaves the body quickly.

Judiciary Committee
February 19, 1987
Page 6

Senator Yellowtail asked what happens to the employee after the first and second test. Senator Mazurek said that issue is not involved in this bill. He said it is in their personnel policy.

The committee decided to wait on action on the bill.

ADJOURNMENT: The meeting adjourned at 12:00 noon.



SENATOR JOE MAZUREK, Chairman

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ROLL CALL

Judiciary

COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date FEB. 19

NAME	PRESENT	ABSENT	EXCUSED
<u>Senator Joe Mazurek, Chairman</u>	X		
<u>Senator Bruce Crippen, Vice Chairman</u>	X		
<u>Senator Tom Beck</u>	X		
<u>Senator Al Bishop</u>	X		
<u>Senator Chet Blaylock</u>	X		
<u>Senator Bob Brown</u>	X		
<u>Senator Jack Galt</u>	X		
<u>Senator Mike Halligan</u>	X		
<u>Senator Dick Pinsoneault</u>	X		
<u>Senator Bill Yellowtail</u>	X		

Each day attach to minutes.

DATE (Feb. 19th)

COMMITTEE ON Judiciary

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Opp
Steve Nelson	Bd Crime Court	361	X	
Bernard F. McCarthy	MT. MAGISTRATES	137/550	350	137
Charles Dravelly	Mt Coronis Assn	SB 356	X	
M.F. "Mick" Nelson, Comm	MT Comm Mt Assn.	SB 356		
Jim McGrath	Mental Health Assn Inc	SB 361	X	

(Please leave prepared statement with Secretary)

NAME: BERNARD F. MCCARTHY DATE: 2/19/87

ADDRESS: 228 BROADWAY LEWIS & CLARK CO. CLASE

PHONE: 413-1010 EXT 802

REPRESENTING WHOM? LT. Magistrates Assn.

APPEARING ON WHICH PROPOSAL: SB 356

DO YOU: SUPPORT? AMEND? OPPOSE?

COMMENTS: support that portion of the bill
that will remove the requirement that
the Justices of the Peace become sitting
counsel in the Counsel's absence

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

SUMMARY OF SB356 (KOLSTAD)

(Prepared by Senate Judiciary Committee staff)

SB356 amends the law relating to county coroners. The bill specifies qualifications for the office of county coroner and mandates educational requirements for coroners and deputy coroners. Apparently under current law, there are no special qualification or educational requirements for county coroners.

Section 1. NEW. Sets qualifications: must be 23 years or older and have a high school degree or equivalency. Must take oath of office and complete basic coroner course of study or equivalent or do so at next offering or forfeit office.

Section 2. Amend 7-4-2902. Allows use of a coroner or qualified deputy coroner from another county if the coroner is absent or unable to attend to his duties or office is vacant or coroner cannot be disqualified for various reasons from working on a case -- salary to be paid by requesting county.

Section 3. Amend 7-4-2901. Establishes requirements of deputy coroner. Must be 23 or older, have high school degree or equivalent and take oath of office, within reasonable time after appointment take basic coroner course of study, and take advanced education as required in section 4.

Section 4. NEW. Coroner education and continuing education. State medical examiner to conduct coroner education at expense of state medical examiner's office (Note: requires Fiscal Note). County to pay salary and expenses of coroner attending course. Course to be a 40-hour course of study after each general election held in odd-numbered years. State medical examiner also to conduct a 16-hour advanced coroner course annually. Each coroner and each deputy coroner must satisfactorily complete advanced coroner course, or equivalent, at least every 2 years or forfeit office.

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disturbed youth and a youth in need of services. Bill, the chairman of the youth assessment committee shall immediately notify the chairman of the service planning committee and provide that committee with a report containing the basis for referral.

It is also the intent of this legislation to provide for a service planning committee with the authority to establish a case plan for each youth determined by the youth assessment committee or the youth court to be a youth in need of services.

The department of social and rehabilitation services shall adopt rules governing:

- (1) the establishment of department support services for the service planning committee;
- (2) the allocation of resources to the service planning committee for purchase of services;
- (3) the responsibilities of the service planning committee, including time of convening and terminating the committee, and establishment and contents of a case plan and designation of the agency responsible for providing case management.

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50th Legislature

STATEMENT OF INTENT

SB Bill No. 361

A statement of intent is required for this bill because it grants authority to the department of social and rehabilitation services to establish the rules for provision of services to youth in need of services through the youth assessment committee and the service planning committee.

It is the intent of this legislation to provide the youth assessment committee with the authority to establish the eligibility for services of any youth whom the committee determines to be a youth in need of services. The committee is to be utilized in cases where services are being sought voluntarily and is provided as an alternative to the adjudicatory process.

In order to implement this bill, the department of social and rehabilitation services shall adopt rules governing:

- (1) the establishment of department support services for the youth assessment committee;
- (2) the responsibility of the youth assessment committee to determine the eligibility of a youth to receive services by:
 - a. conducting or referring to existing evaluations to determine if the youth is emotionally disturbed as defined in 41-5-103;
 - b. assessing if the youth is underserved through the information provided by the referring caseworker, the youth, and the youth's parents or representatives of the parent. A youth is underserved if inadequate progress is being made in the areas of the youth's identified impairment despite treatment.

If the youth is not determined to be underserved, the youth will be referred to an appropriate agency with a recommendation that he does not meet the criteria.

If the youth does meet the definitions of an emotionally

Many mentally ill children untreated

WASHINGTON (AP) — At least 7.5 million children in the United States may need treatment for mental health problems, yet the majority never get the proper help, a congressional research unit says.

And if untreated, mental health problems could lead the children to later, more serious troubles in school or with the law, the Office of Technology Assessment found.

"Mental health problems are a source of suffering for children, difficulties for their families and great loss for society," the office said in a report released Wednesday. "Though such problems are sometimes tragic, an even greater tragedy may be that we currently know more about how to prevent and treat children's mental health problems than is reflected in the care available."

Family support and prevention programs in schools have been found to help.

The office, which provides Congress with scientific and technical information, prepared the report on mental health services for children at the request of Sens. Daniel K. Inouye, D-Hawaii, and Mark O. Hatfield, R-Ore., members of the Senate Appropriations Committee.

The office concluded that, in general, mental health services for children are helpful, although it could not determine what programs are best for particular children with particular problems.

The office also found that although there are shortages in all forms of mental health care for youths under age 18, community-based services and coordination of services seem to most need improvement.

"Available epidemiologic data indicate that at least 12 percent, or 7.5 million, of the nation's approximately 63 million children suffer from emotional or other problems that warrant mental health treatment — and that figure may be as high as 15 percent, or 9.5 million children," the report said.

Of those in need, 70 percent to 80 percent may not be getting the proper services, the report said.

The causes of mental disorders generally are not known, the report said. But some factors pose major risks for children's mental health, the office said, among them poverty, mental illness or alcoholism in parents, a teen-age parent, maltreatment, premature birth and parental divorce.

"These factors rarely occur in isolation and frequently interact with other aspects of a children's family, educational and social environment," the report said. And although the factors don't necessarily result in mental problems, "they can cause maladjustment and place a child at risk for later and potentially more serious problems."

The office said it could not determine exactly why children don't receive needed mental health care. Some children, it said, may not receive services because of the stigma attached to having a mental disorder. Others may not get the services because the services aren't available in their communities or because their families cannot afford the help.

MENTAL HEALTH ASSOCIATION OF MONTANA

555 Fuller Avenue
Helena, MT 59601
442-4276

Amendments to SB 137, white copy:

1. Title, line 5.
Following: "CHARGE"
Strike: "TO SUPPORT THE LAW ENFORCEMENT ACADEMY"
2. Title, lines 6 through 10.
Following: "CONVICTED OF" on line 6
Strike: the remainder of line 6 through "APPROPRIATION" on line 10
Insert: "CERTAIN OFFENSES"
3. Title, line 10.
Strike: "SECTIONS"
Insert: "SECTION"
4. Title, line 11.
Following: line 10
Strike: "17-7-502, 44-10-202,"
Following: "46-18-236,"
Strike: "AND 61-8-718,"
5. Page 2, line 1.
Following: "misdemeanor"
Strike: "or"
Insert: "set forth in Title 45, for any"
6. Page 2, lines 1 through 6.
Following: "charge,"
Strike: the remainder of line 1 through "(1)(b)" on line 6
Insert: "and for any conviction for violation of 61-7-103, 61-8-301 through 61-8-303, 61-8-401, 61-8-406, or 61-11-213"
7. Page 4, lines 4 and 5.
Following: "in the" on line 4
Strike: the remainder of line 4 through "[section 5]" on line 5
Insert: "motor vehicle account in the state special revenue fund"
8. Page 4, line 6 through page 9, line 13.
Strike: sections 2 through 5 in their entirety
Re-number: subsequent section
9. Page 9, lines 18 through 20.
Strike: section 7 in its entirety

sb137amd

PROPOSED AMENDMENTS TO SB139, SECOND READING COPY (YELLOW):

1. Page 3, line 17.

Following: "from"

Strike: "participating"

Insert: "the risks inherent"

2. Page 3, line 18.

Following: "snowmobiling"

Strike: "by virtue of his participation"

3. Page 4, line 9.

Following: line 8

Insert: "(3) The provisions of this section do not affect a products liability cause of action based upon the design or manufacture of snowmobile equipment or products or safety equipment used incidental to the operation of a snowmobile."

[THE WAY THE SECTION WOULD READ IF ABOVE AMENDMENTS ADOPTED:

"(1) A snowmobiler assumes the risk and all legal responsibility for death or injury to himself or other persons or property that results from the risks inherent in the sport of snowmobiling. The assumption of risk includes but is not limited to death or injury caused by the following: . . . (Remainder of section the same with the addition of new subsection (3) above).

(3) The provisions of this section do not affect a products liability cause of action based upon the design or manufacture of snowmobile equipment or products or safety equipment used incidental to the operation of a snowmobile."]

Proposed Amendment to SB 338

1. Strike line 17 and line 5 on pages 1 and 2.
2. Insert in place thereof, the following:

Drug Testing Procedure. Employers shall adopt a written drug testing procedure prior to testing job applicants or current employees for the presence of mood altering drugs. The procedure shall include provision for:

- a. Collection of specimens of body fluids in a manner that minimizes invasion of personal privacy while insuring the integrity of the collection process.
- b. Collection of a quantity of specimen sufficient to insure the administration of several tests.
- c. Collection, storage, and transportation of specimen in tamper proof containers and adoption of chain-of-custody documentation procedures identifying how the specimen was handled and tested.
- d. Verification of drug test results by two or more different testing procedures before judging a drug test positive.
- e. Opportunity for the tested person to review drug test results and, at the employers expense, to obtain a confirmatory test by an independent laboratory, and to explain the results of all tests.
- f. Measures to insure the confidentiality of drug test results except as required by a court of law.
- g. Providing a copy of the employer's drug testing procedure to a person prior to their being tested.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date FEB. 19th 1987 Bill No. SB 338 Time _____

NAME	YES	NO
Senator Joe Mazurek, Chairman	X	
Senator Bruce Crippen, Vice Chairman	X	
*Senator Tom Beck	X	
Senator Al Bishop	X	
Senator Chet Blaylock	X	X
Senator Bob Brown		X
Senator Jack Galt	X	
Senator Mike Halligan		X
Senator Dick Pineseault	X	
Senator Bill Yellowtail		X

Mary T. Huber
Secretary

Chairman

Motion: Amendments by Fitzpatrick on SB 338.

ROLL CALL VOTE

SENATE COMMITTEE JUDICIARY

Date Feb. 19 1987 Bill No. SB 137 Time _____

NAME	YES	NO
Senator Joe Mazurek, Chairman		X
Senator Bruce Crippen, Vice Chairman	X	
*Senator Tom Beck		X
Senator Al Bishop	X	
Senator Chet Blaylock		X
Senator Bob Brown	X	
Senator Jack Galt	X	
Senator Mike Halligan		X
Senator Dick Pinsoneault		X
Senator Bill Yellowtail	X	

Mary Y. Huber
Secretary

Chairman

Motion: SB 137 DO PASS AS AMENDED.
Motion failed.

STANDING COMMITTEE REPORT

February 19

87

19.....

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on.....

having had under consideration..... SENATE BILL No. 77

first reading copy (white)
color

Death penalty cases -- aggravating circumstances -- death of rescuer.

Respectfully report as follows: That..... SENATE BILL No. 77

BE AMENDED AS FOLLOWS:

1. Title, line 5.

Following: "DEATH"

Insert: "BY DIRECT ACTION OF THE DEFENDANT"

2. Page 2, line 7.

Following: "or"

Insert: "the death by direct action of the defendant"

AND AS AMENDED

~~AND AS AMENDED~~

~~DO PASS~~

DO PASS

~~DO NOT PASS~~

.....
Senator Mazurek

Chairman.

STANDING COMMITTEE REPORT

February 19

1987

19.....

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on.....

SENATE BILL

139

having had under consideration..... No.....

first ~~reading~~ copy (white)
color

Restrict snowmobile area operators' liability.

SENATE BILL

139

Respectfully report as follows: That..... No.....

1. Page 3, line 17.

Following: "from"

Strike: "participating"

Insert: "the risks inherent"

2. Page 3, line 18.

Following: "snowmobiling"

Strike: "by virtue of his participation"

3. Page 4, line 9.

Following: line 8

Insert: "(3) The provisions of this section do not affect a products liability cause of action based upon the design or manufacture of snowmobile equipment or products or safety equipment used incidental to the operation of a snowmobile."

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AND AS AMENDED

DO PASS

~~DO NOT PASS~~

.....
Senator Mazurek

Chairman.

STANDING COMMITTEE REPORT

February 20

87

19.....

MR. PRESIDENT

SENATE JUDICIARY

We, your committee on.....

SENATE BILL

No. 356

having had under consideration.....

first reading copy (white)
color

Establish minimum officeholding and training requirements for coroners.

Respectfully report as follows: That.....

SENATE BILL

No. 356

BE AMENDED AS FOLLOWS:

1. Page 2, line 3.
Following: "the"
Strike: "Montana coroner's association"
Insert: "attorney general"
2. Page 4, line 7.
Following: "the"
Strike: "state medical examiner"
Insert: "attorney general"
3. Page 4, line 9.
Following: line 8
Strike: "state medical examiner"
Insert: "attorney general"
4. Page 4, line 13.
Following: "The"
Strike: "state medical examiner"
Insert: "attorney general"

~~XXXXXX~~

~~XXXXXXXXXX~~

CONTINUED

.....
Senator Mazurek

.....
Chairman.

5. Page 4, line 15.

Following: "election"

Strike: "held in an odd-numbered year"

6. Page 4, lines 16 and 17.

Following: "the" on line 16

Strike: the remainder of line 16 through "association" on line 17

Insert: "attorney general"

7. Page 4, line 18.

Following: "The"

Strike: "state medical examiner"

Insert: "attorney general"

8. Page 4, line 21.

Following: "The"

Strike: "state medical examiner"

Insert: "attorney general"

9. Page 4, line 25.

Following: line 24

Strike: "Montana coroner's association"

Insert: "attorney general"

AS AS AMENDED
DO PASS