

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bruce Crippen, on March 7, 1989,
at 10:00 a.m. in Room 325.

ROLL CALL

Members Present: Chairman Bruce Crippen, V. Chairman Al
Bishop, Senators Tom Beck, Bob Brown, John Harp, Mike
Halligan, Loren Jenkins, Joe Mazurek and R. J.
Pinsoneault

Members Excused: Senator Bill Yellowtail

Members Absent: None

Staff Present: Staff Attorney Valencia Lane and Committee
Secretary Rosemary Jacoby

Announcements/Discussion: None

HEARING ON HOUSE BILL 127

Presentation and Opening Statement by Sponsor:

Representative Jessica Stickney of Miles City, District
26, opened the hearing. She said the bill had been
requested by the Department of Family Services. The
bill's prime purpose is to eliminate the 19- and 20-
year-olds from the Pine Hills and Mountain View
Schools. Those individuals are a disruptive influence
in the schools and the program does not address their
needs as much as the younger students, she said

List of Testifying Proponents and What Group they Represent:

Bill Unger, Department of Family Services

List of Testifying Opponents and What Group They Represent:

Nick Rotering, Department of Institutions

Testimony:

Bill Unger appeared as a proponent and entered written testimony into the record. (See Exhibit 1.)

Nick Rotering said that, while he didn't support or oppose the bill, he wanted to call attention to some pertinent facts. He said there were risks to the impact on the population of Montana State Prison. In January when the bill was introduced, there were approximately 60 individuals in the juvenile facilities who could have been sent to Montana State Prison had the law had been in effect two years ago. The department was concerned about the 16- or 17-year-old who commits a serious offense. Right now, the judge or prosecutor would have the option to consider keeping him in the youth court system because they feel confident that those individuals would be better off in youth institutions. By lowering the age as this bill does, he said, he felt that these youths would end up in the state prison.

Questions From Committee Members: Senator Beck asked if most serious youth crimes weren't tried in adult court. Mr. Rotering said he wasn't entirely sure. He felt the really serious offenses like rape or homicide would be put into the adult system. But aggravated assault offenders could be transferred to the juvenile system, he told the committee.

Senator Jenkins asked why the youth court was pulled out of the bill. Rep. Stickney said that was because the youth court and probation officers felt they would like to have the ability to hang onto the offenders until age 21 for the purpose of restitution.

Senator Halligan asked about mixing populations. He agreed it was not good to mix the 13-year-old with the 19- or 20-year-old, but also felt it was wrong mixing the 19-year-old with the 40-year-old population. Leslie Taylor said that generally the age of 18 was considered adult.

Closing by Sponsor: Rep. Stickney said that institutional programs and financing will be experiencing problems in either the youth institutions or in the prison. She thought the programs at the youth institutions addressed the younger people much better than the older. Or, she felt, a program would have to be developed for the older youths at Pine Hills and Mountain View. She closed.

DISPOSITION OF HOUSE BILL 127

Discussion: Senator Mazurek said he had been told by Dan Russell that one of the bills heard today would have a substantial fiscal impact. Senator Crippen commented that Nick Rotering had said it would move 66 persons into the prison.

Senator Bishop wondered if there was a difference in cost as far as keeping offenders in prison or in Pine Hills. Leslie Taylor said it was cheaper to keep them in prison, as there were added expenses of educational programs in the youth centers.

Senator Crippen asked how many youths would go to prison from Pine Hills if the bill were enacted. Leslie Taylor didn't know.

Senator Halligan wondered if mixing the ages wouldn't come under federal scrutiny.

Senator Beck agreed with the bill and felt it was needed to separate the older youths from the younger ones.

Senator Jenkins thought maybe the knowledge that these kids could end up in prison might make them behave.

Amendments and Votes: None

Recommendation and Vote: Senator Harp MOVED that HB 127 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 152

Presentation and Opening Statement by Sponsor:

Representative Kelly Addy of Billings, District 94, opened the hearing. He said the bill was at the request of the Department of Family Services to review youth court mental commitment.

List of Testifying Proponents and What Group they Represent:

Leslie Taylor, Attorney for the Department of Family Services

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Leslie Taylor said the bill would allow the Youth Court to commit a youth found to be seriously mentally ill to a mental health facility, such as Rivendell or Shodair Hospitals. She presented written testimony to the committee (Exhibit 2). She also presented copies of the codes relating to "Treatment of the Seriously Mentally Ill." (Exhibit 2, page 2)

Questions From Committee Members: Senator Crippen asked if the Department of Institutions had any problems with the bill. Mr. Rotering said no. He saw no risk that it would adversely affect Montana State Hospital.

Closing by Sponsor: Representative Addy closed the hearing.

DISPOSITION OF HOUSE BILL 152

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Pinsoneault MOVED that House Bill 152 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 295

Presentation and Opening Statement by Sponsor:

Representative Kelly Addy of Billings, District 94, said the bill was an attempt to clarify the law. If a person was in an accident or was involved in litigation arising from an accident, there is a need for documents which best state how the accident occurred, he said. Frequently, the reports are filled out by an officer at the scene of the accident. Subsection (2) at the top of page 2 says you can get a copy of the officer's report and notes without obtaining a court order. However, in Billings, the city attorney has been cautious and conservative in interpreting the statute and has required a court order for allowing the copying of these documents. All this act does is to give assurance that the information can be released to the parties involved without a court order. It will save the parties a \$60 filing fee, he said.

List of Testifying Proponents and What Group they Represent:

Allen Chronister, State Bar of Montana

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Allen Chronister appeared in support of the bill. He distributed copies of a suggested amendment to the bill. (Exhibit 3) The amendments suggested that there was other language that could be corrected in 61-7-114. The problems related to language about reports not being admissible in civil actions. That has lead to unnecessary and fruitless motions, arguments, briefs, civil actions regarding disclosure or discovery of highway accident reports and whether or not they could be used in trial. He felt they should be allowed as they are the best and often the only sources of information available.

Questions From Committee Members: None

Closing by Sponsor: Representative Addy closed.

DISPOSITION OF HOUSE BILL 295

Discussion: Action on the bill was postponed to a future meeting.

HEARING ON HOUSE BILL 310

Presentation and Opening Statement by Sponsor:

Representative Ted Schye of Glasgow, District 18, opened the hearing saying it had been requested by the county attorney of Glasgow. He said the bill would revise the youth court act petition filing time and hearing provisions. He said that law enforcement has 24 hours to keep a youth before charging him. Sometimes the judges aren't in town as they have to travel a lot, he said, and the next closest judge is in

Wolf Point. He said that a judge must be present to establish probable cause. A ruling from the Attorney General stated that the 24-hour requirement would have to be changed or abided by. He explained the bill, saying that it also changed the petition time from 5 to 7 workdays.

List of Testifying Proponents and What Group they Represent:

John Connor, Prosecutors Services Bureau and several county attorneys who operate in small jurisdictions

List of Testifying Opponents and What Group They Represent:

None

Neutral: Wallace Jewell, Montana Magistrates Association

Testimony:

John Connor said that there are requirements that probable cause must be made before the petition can be filed. The problem is that it has to be done while the youth is incarcerated within 5 working days of his arrest or the action has to be dismissed. In jurisdictions where the judge is only available once a week, it could be impossible to come within the statutory period of time, he said. That is the reason for one change the bill makes, he told the committee. In another provision of the bill, the justice of the peace, a municipal judge or a city court judge will be allowed to make a probable cause determination rather than the district court judge in smaller jurisdictions where judges aren't readily available. He felt the bill would have limited application, but felt it should be passed.

Wallace Jewell said he appeared saying the magistrates could hold probable cause hearings and issue arrest and search warrants. He said they had no particular objection though they weren't searching for things to do.

Questions From Committee Members: Senator Jenkins asked if the bill was only to hold a juvenile for more than 24 hours. Mr. Connor said yes.

Senator Crippen asked how many times and under what circumstances would a justice of peace or city judge keep records. Wally Jewell said that small claims required a record. Senator Crippen asked if record keeping might be a

problem with this bill, since they are not "courts of record." Mr. Connor said it was not discussed in the House, but he saw no problem in making records. It is often done where a reason is provided, such as a homicide case.

Senator Pinsoneault said "of no record" was not really correct. For DUI or other things, standard forms are used providing some record.

Closing by Sponsor: Representative Schye closed the hearing.

DISPOSITION OF HOUSE BILL 310

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Jenkins MOVED that House Bill 310 BE CONCURRED IN. The MOTION CARRIED UNANIMOUSLY.

HEARING ON HOUSE BILL 386

Presentation and Opening Statement by Sponsor:

Representative Roger Knapp of Hysham, House District 27, said House Bill 386 was an act dividing liability for taxes on personal property sold under the bankruptcy laws. It will add a Section 4 to the code and was requested by a constituent from his area. He said that property (farm machinery) owned on January 1 by his constituent, might be sold in a bankruptcy sale in the Spring and yet the tax bill for the property comes in November. The constituent thought that the person buying the machinery should pay half of the tax bill as he has had the use of the machinery during the growing season.

List of Testifying Proponents and What Group they Represent:

None

List of Testifying Opponents and What Group They Represent:

None

Testimony: None

Questions From Committee Members: Senator Beck asked if the judge would require the taxes to be paid in a bankruptcy. Senator Crippen thought the taxes would be prorated.

Senator Pinsoneault asked if the state wasn't pre-empted by the federal government in collecting taxes. Rep. Knapp said he didn't know, that it hadn't come up in the drafting or in the House hearing. He said the only people who discussed the bill were from the Department of Revenue who requested that a notice be sent.

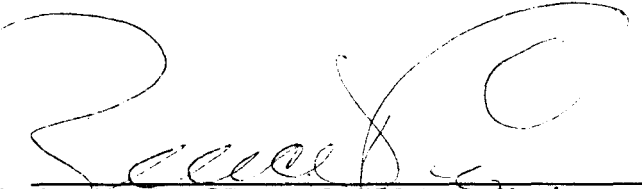
Senator Mazurek asked why the notice would be limited to the treasurer from the trustee. Rep. Knapp didn't know.

Closing by Sponsor: Rep. Knapp closed the hearing.

Action on the bill was postponed to a further meeting. Senator Crippen asked Valencia to call John Grant and do more research on the bill.

ADJOURNMENT

Adjournment At: 11:00 a.m.



SENATOR BRUCE D. CRIPPEN, Chairman

BDC/rj

minrj.307

ROLL CALL

JUDICIARY

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3-7-89

NAME	PRESENT	ABSENT	EXCUSED
SENATOR CRIPPEN	✓		
SENATOR BECK	✓		
SENATOR BISHOP	✓		
SENATOR BROWN	✓		
SENATOR HALLIGAN	✓		
SENATOR HARP	✓		
SENATOR JENKINS	✓		
SENATOR MAZUREK	✓		
SENATOR PINSONEAULT	✓		
SENATOR YELLOWTAIL			✓

Each day attach to minutes.

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CHAPTER 10. THE BOUNDARY VALUE PROBLEM

1. The boundary value problem for the Laplace equation in the upper half-plane is

$$\Delta u = 0 \text{ in } \mathbb{R}^2_+, \quad u = f \text{ on } \mathbb{R}^1.$$

2. The boundary value problem for the Laplace equation in the unit disk is

$$\Delta u = 0 \text{ in } D, \quad u = f \text{ on } \partial D.$$

3. The boundary value problem for the Laplace equation in the annulus is

$$\Delta u = 0 \text{ in } A, \quad u = f_1 \text{ on } \partial A_1, \quad u = f_2 \text{ on } \partial A_2.$$

4. The boundary value problem for the Laplace equation in the spherical cap is

$$\Delta u = 0 \text{ in } \mathbb{R}^3_+, \quad u = f \text{ on } \mathbb{R}^2, \quad u = 0 \text{ on } \partial \mathbb{R}^3_+.$$

5. The boundary value problem for the Laplace equation in the spherical cap is

$$\Delta u = 0 \text{ in } D, \quad u = f \text{ on } \partial D, \quad u = 0 \text{ on } \partial D.$$

6. The boundary value problem for the Laplace equation in the spherical cap is

$$\Delta u = 0 \text{ in } D, \quad u = f \text{ on } \partial D, \quad u = 0 \text{ on } \partial D.$$

7. The boundary value problem for the Laplace equation in the spherical cap is

$$\Delta u = 0 \text{ in } D, \quad u = f \text{ on } \partial D, \quad u = 0 \text{ on } \partial D.$$

8. The boundary value problem for the Laplace equation in the spherical cap is

$$\Delta u = 0 \text{ in } D, \quad u = f \text{ on } \partial D, \quad u = 0 \text{ on } \partial D.$$

9. The boundary value problem for the Laplace equation in the spherical cap is

$$\Delta u = 0 \text{ in } D, \quad u = f \text{ on } \partial D, \quad u = 0 \text{ on } \partial D.$$

STATE OF TEXAS - COUNTY OF DALLAS

IN WITNESS WHEREOF, I have hereunto set my hand and seal of office at Dallas, Texas, this 1st day of March, 1964.

1964

MOUNTAIN VIEW SCHOOL



TED SCHWINDEN, GOVERNOR

2260 SIERRA ROAD EAST

STATE OF MONTANA

(406) 458 9016

HELENA, MONTANA 59601

March 7, 1989

TESTIMONY IN SUPPORT OF HB 127

Submitted by Bill Unger
 Superintendent of Mountain View School

The Department of Family Services requested this bill to lower the maximum age of youths who may be committed to the Department from 21 to 19. The bill's primary objective is to eliminate the 19 and 20 year olds from the populations of Pine Hills and Mountain View Schools.

Pine Hills and Mountain View can receive youth as young as 10 years old, with the majority falling between the ages of 13 and 18. Experience has shown that 19 and 20 years olds are too mature and sophisticated to mix appropriately with the younger residents.

The education and treatment programs at the two correctional facilities are geared toward the 13 to 18 year old population. Since the primary emphasis is on high school and pre-vocational curricula, it is difficult for the 19 and 20 year olds to fit into or benefit from the treatment programs.

ex. # 1 pg 2
3/7/89
HB 127

The 50th Legislature lowered the age at which a youth may be transferred to adult court to age 12. Most youths charged with serious crimes are transferred to adult court and will receive an adult sentence, if convicted.

Under 53-30-212(3), the Departments of Family Services and Institutions can allow a youth sentenced as an adult to serve the first years of the sentence in a youth correctional facility. Young offenders tried and convicted in adult court may now be sent to Pine Hills or Mountain View Schools until they reach age 21. They are then transferred from the youth correctional facility to an adult facility, such as Montana State Prison, Swan River Youth Forest Camp, or a halfway house, depending on their sentence and the decision of the Department of Institutions or Parole Board. Under HB 127, this transfer to an adult facility would take place at age 19, rather than 21.

HB 127 will bring the Youth Court Act in line with the existing age of majority and will allow the Department to focus its programs on youth, rather than young adults. The Department asks that you give HB 127 your favorable consideration.

DEPARTMENT OF FAMILY SERVICES

STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

TESTIMONY IN SUPPORT OF HB 152
 REVISING THE YOUTH COURT ACT TO ALLOW
 MENTAL HEALTH COMMITMENT OF YOUTH

P.O. BOX 8005
 HELENA, MONTANA 59604

Submitted by Leslie Taylor

Legal Counsel for the Department of Family Services

The Department of Family Services is requesting this bill to allow the Youth Court to commit a youth found to be seriously mentally ill to a mental health facility.

Frequently, a youth charged with offenses under the Youth Court Act is found to be in need of psychiatric treatment. However, a recent Attorney General's opinion (40 A.G. Op. 59, January 29, 1988) held that the Youth Court could not commit these youths to mental health facilities without following the mental health commitment statutes. As a result of this opinion, county attorneys file a separate involuntary commitment action when a youth before the Youth Court is believed to be in need of placement in a mental health facility. This bill will allow the Youth Court to order a mental health commitment of a youth in need of supervision or a delinquent youth, without requiring the filing of a separate mental health petition.

The bill incorporates by reference the procedures of the mental health commitment statutes to assure the due process protection of the youth and specifically authorizes the Youth Court to commit the youth to a mental health facility. The youth must be found to be seriously mentally ill and must be provided with legal counsel as well as the other procedural protections afforded in mental health commitment proceedings. The language was patterned after the statutory procedures in place when the Montana Youth Treatment Center was operating.

The bill also clarifies that, upon release from the mental health facility, the youth shall be returned to the Youth Court for such further disposition as may be necessary. This will address the problem of youths being released from psychiatric treatment with no agency responsible for their supervision in the community. There is no "aftercare" program for the private mental health facilities. Therefore, youths completing their treatment under a mental health commitment are released without the requirement of further supervision. This bill will give the court the opportunity to require further supervision by youth probation or commitment to the Department of Family Services if the youth is in need of placement in other than his family home.

HB 152 will provide a more streamlined method for the Youth Court to address the needs of youths in need of psychiatric treatment and will provide adequate protection of the youth's rights. On behalf of the department, I urge you to give HB 152 your favorable consideration.

Ex. § 3, p. 2

Chapter Cross-References

Treatment of mentally ill — Montana state hospital. 53-6-301.

FOR HB 152

Part 1**Treatment of the Seriously Mentally Ill****Part Cross-References**

Incompetent persons — capacity as party, Rule 17(c), M.R.Civ.P. (see Title 25, ch. 20).

Liability of person of unsound mind for own torts. 27-1-711.

When person entitled to bring action is under a disability, 27-2-401.

Ground for invalidity of marriage, 40-1-401.

Public Administrator as conservator when no other appropriate person, 72-5-415.

53-21-101. Purpose. The purpose of this part is to:

(1) secure for each person who may be seriously mentally ill or suffering from a mental disorder such care and treatment as will be suited to the need of the person and to insure that such care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) accomplish this goal whenever possible in a community-based setting;

(3) accomplish this goal in an institutionalized setting only when restrictive alternatives are unavailable or inadequate and only when a person is so mentally ill as to require institutionalized care; and

(4) assure that due process of law is accorded any person coming under the provisions of this part.

History: En. 38-1301 by Sec. 1, Ch. 466, L. 1975; amd. Sec. 1, Ch. 546, L. 1977; R.C.M. 1947 38-1301.

53-21-102. (Temporary) Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Friend of respondent" means any person willing and able to assist a mentally ill person, a person alleged to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

Ex. #2 pg 3

(6) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. No correctional institution or facility or jail is a mental health facility within the meaning of this part.

(8) "Mentally ill" means suffering from a mental disorder which has not resulted in self-inflicted injury or injury to others or the imminent threat thereof but which:

(a) has resulted in behavior that creates serious difficulty in protecting the person's life or health even with the available assistance of family, friends, or others;

(b) is treatable, with a reasonable prospect of success and consistent with the least restrictive course of treatment as provided in 53-21-127(3), at or through the facility to which the person is to be committed;

(c) has deprived the person of the capacity to make an informed decision concerning treatment;

(d) has resulted in the person's refusing or being unable to consent to voluntary admission for treatment; and

(e) poses a significant risk of the person's becoming seriously mentally ill, within the meaning of this section, or will, if untreated, predictably result in further serious deterioration in the mental condition of the person. Predictability may be established by the patient's medical history.

(9) "Next of kin" shall include but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(10) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(11) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(12) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be mentally ill or seriously mentally ill.

(15) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health. For this purpose, injury means physical injury. No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic or is mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition

Ex. 2 PS 4

(16) "State hospital" means the Montana state hospital. (*Terminates July 1, 1989—sec. 18, Ch. 376, L. 1987.*)

53-21-102. (Effective July 1, 1989) Definitions. As used in this part, the following definitions apply:

(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(2) "Court" means any district court of the state of Montana.

(3) "Department" means the department of institutions provided for in Title 2, chapter 15, part 23.

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

(5) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(6) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. No correctional institution or facility or jail is a mental health facility within the meaning of this part.

(7) "Next of kin" shall include but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(8) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

(9) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

(10) "Professional person" means:

(a) a medical doctor; or

(b) a person who has been certified, as provided for in 53-21-106, by the department.

(11) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

(12) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously mentally ill.

(13) "Friend of respondent" means any person willing and able to assist a seriously mentally ill person or person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

(14) "Seriously mentally ill" means suffering from a mental disorder which

(5) The board may assist any patient at a mental health facility in resolving any grievance he may have concerning his commitment or his course of treatment in the facility.

(6) The board shall employ and be responsible for full-time legal counsel at the state hospital, whose responsibility shall be to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine his files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the professional person in charge of the facility and the director of the department, and if appropriate, after waiting a reasonable time for a response from such professional person, the board may notify the next of kin or guardian of any patient involved, the friend of respondent appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor and shall report to each session of the legislature concerning the status of the mental health facilities and treatment programs which it has inspected.

History: En. 38-1330 by Sec. 30, Ch. 466, L. 1975; amd. Sec. 16, Ch. 546, L. 1977; R.C.M. 1947, 38-1330(2) thru (9); amd. Sec. 14, Ch. 547, L. 1979.

Cross-References

Denial of legal rights, 53-20-141.

Procedural rights, 53-20-112.

53-21-105. Certification of professional persons required. No person may act in a professional capacity as provided for in this part unless he is a professional person as defined in 53-21-102.

History: En. Sec. 2, Ch. 578, L. 1983.

53-21-106. (Temporary) Certification of professional persons. (1) The department shall certify professional persons as defined in 53-21-102(12)(b) for the purpose of this part.

(2) The department, with reference to recognized national standards in the field of mental health, shall adopt standards and rules governing the certification of professional persons.

(3) The rules for certification must address but are not limited to:

(a) the type of education that an individual has received, including degrees;

(b) the type of experience or training received by the individual;

(c) continuing education, training, instruction, and work experience necessary to maintain certification;

(d) an examination instrument to be used to determine an individual's proficiency and understanding of mental health laws, diagnosis, and treatment procedures;

(e) the procedure for categorical certification qualifying the level of professional authority and responsibility of an individual; and

(f) specific procedures for certification, recertification, and revocation of certification. (Terminates July 1, 1989—sec. 18, Ch. 376, L. 1987.)

ex #2 PS 6

department may seek reimbursement. If no one else is available to transport him, the sheriff shall transport the person.

History: En. 38-1303 by Sec. 3, Ch. 466, L. 1975; amd. Sec. 3, Ch. 546, L. 1977; R.C.M. 1947, 38-1303(4), (5).

53-21-114. Notice of rights to be given. (1) Whenever a person is involuntarily detained or is examined pursuant to 53-21-121 through 53-21-126, the person shall at the time of detention or examination be informed of his constitutional rights and his rights under this part. Within 3 days of such detention or examination, he must also be informed in writing by the county attorney of such rights.

(2) Every respondent subject to an order for short-term treatment or long-term care and treatment shall be advised in writing of his right to appeal the order by the court at the conclusion of any hearing the result of which such an order may be entered.

History: (1)En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; Sec. 38-1304, R.C.M. 1947; (2)En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; Sec. 38-1304, R.C.M. 1947; R.C.M. 1947, 38-1304(part), 38-1309(4); amd. Sec. 1, Ch. 522, L. 1983.

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

53-21-115. (Temporary) Procedural rights. In addition to any other rights which may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has the following rights:

- (1) the right to notice reasonably in advance of any hearing or other court proceeding concerning him;
- (2) the right to know, in advance of any hearing, the names and addresses of any witnesses who will testify in support of the petition;
- (3) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning him;
- (4) the right in any hearing to cross-examine witnesses;
- (5) the right to be represented by counsel;
- (6) the right to remain silent;
- (7) the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;
- (8) the right to view and copy all petitions on file with the court concerning him;
- (9) the right to be examined by a professional person of his choice when such professional person is willing and reasonably available;
- (10) the right to be dressed in his own clothes at any hearing held pursuant to this part; and
- (11) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing held pursuant to this part. (*Terminates July 1, 1989—sec. 18, Ch. 376, L. 1987.*)

53-21-115. (Effective July 1, 1989) Procedural rights. In addition to any other rights which may be guaranteed by the constitution of the United

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States and of this state, by the laws of this state, or by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has the following rights:

- (1) the right to notice reasonably in advance of any hearing or other court proceeding concerning him;
- (2) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning him;
- (3) the right in any hearing to cross-examine witnesses;
- (4) the right to be represented by counsel;
- (5) the right to remain silent;
- (6) the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;
- (7) the right to view and copy all petitions on file with the court concerning him;
- (8) the right to be examined by a professional person of his choice when such professional person is willing and reasonably available;
- (9) the right to be dressed in his own clothes at any hearing held pursuant to this part; and
- (10) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing held pursuant to this part.

History: En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(4); amd. Sec. 5, Ch. 547, L. 1979; amd. Sec. 3, Ch. 376, L. 1987.

Compiler's Comments

1987 Amendment: Inserted (2).

Cross-References

Due process of law, Art. II, sec. 17, Mont. Const.

53-21-116. (Temporary) Right to be present at hearing or trial — appointment of counsel. The person alleged to be mentally ill or seriously mentally ill has the right to be present at any hearing or trial. If he has no attorney, the judge shall appoint one to represent him at either the hearing or the trial, or both, who shall be compensated from the public funds of the county where the respondent resides. (*Terminates July 1, 1989—sec. 18, Ch. 376, L. 1987.*)

53-21-116. (Effective July 1, 1989) Right to be present at hearing or trial — appointment of counsel. The person alleged to be seriously mentally ill has the right to be present at any hearing or trial. If he has no attorney, the judge shall appoint one to represent him at either the hearing or the trial, or both, who shall be compensated from the public funds of the county where the respondent resides.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 4, Ch. 376, L. 1987.

Compiler's Comments

1987 Amendment: In first sentence inserted "mentally ill or".

53-21-117. Right to representation by own attorney. The respondent or the friend of respondent appointed by the court may secure an attorney of his own choice and at his own expense to represent the respondent.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 14, Ch. 547, L. 1979.

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53-21-118. Right to examination by professional person of own choosing. (1) The respondent, his attorney, or the friend of respondent appointed by the court may secure a professional person of his own choice to examine the respondent and to testify at the hearing before the court or jury as to the results of his examination.

(2) If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons and if the respondent joins in the request for the examination, the court shall appoint a professional person other than the professional person requesting the commitment to perform the examination. Whenever possible, the court shall allow the respondent a reasonable choice of an available professional person qualified to perform the requested examination who will be compensated from the public funds of the county where the respondent resides.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 14, Ch. 547, L. 1979.

53-21-119. Waiver of rights. (1) A person may waive his rights, or if the person is not capable of making an intentional and knowing decision, these rights may be waived by his counsel and friend of respondent acting together if a record is made of the reasons for the waiver. The right to counsel may not be waived. The right to treatment provided for in this part may not be waived.

(2) The right of the respondent to be physically present at a hearing may also be waived by his attorney and the friend of respondent with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) the presence of the respondent at the hearing would be likely to seriously adversely affect his mental condition; and

(b) an alternative location for the hearing in surroundings familiar to the respondent would not prevent such adverse effects on his mental condition.

(3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, his rights may be waived by the mutual consent of his counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest between a minor and his parents or guardian, the court shall appoint a guardian ad litem for him.

History: En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(part); amd. Secs. 6, 14, Ch. 547, L. 1979.

53-21-120. (Temporary) Detention to be in least restrictive environment — preference for mental health facility — court relief — prehearing detention of mentally ill person prohibited. (1) A person detained pursuant to this part shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part shall be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be made to return him to trial. Such trial must be held within 30

SENATE JUDICIARY
EXHIBIT NO. 3
DATE 3-7-89
BILL NO. HB 295

To: House Judiciary Committee

From: Allen Chronister
State Bar of Montana

Re: HB 295

The State Bar supports the concept of HB 295 and suggests the following amendments:

1. On page 2, line 14, following the word "administrator" insert "or by any party to a civil action arising from the accident."
2. On page 2, lines 15 through 23 should be removed from their present location as subsection (3) to 61-7-114 and inserted following the current language of Section 61-7-109(1).

Montana Magistrates Association

7 March 1989

Testimony offered ^{TO} ~~in support of~~ HB310, a bill for an act entitled: "An act revising the Montana Youth Court Act; changing the time in which a petition charging a youth held in detetion must be filed from 5 working days to 7 working days; allowing hearings to determine probable cause to detain a youth for more than 24 hours to be held by a justice of the peace, a municipal or city judge, or magistrate; providing that records of hearings must be made either by a court reporter or by a tape recording."

Given by Wallace A. Jewell on behalf of the Montana Magistrates Association representing the judges of courts of limited jurisdiction of Montana.

~~We encourage the Senate Judiciary Committee to concur with the House and recommend passage of #310.~~ The courts of limited jurisdiction now hold probable cause hearings when issuing a search warrant. They hold probable cause hearings when issuing an arrest warrant. They hold probable cause hearings when holding a peliminary examination. Although none of the courts of limited jurisdiction necessarily need anything more to do, the courts of limited jurisdiction are qualified to hold probable cause hearings.

If this legislation is passed and becomes law, at the next semiannual training session conducted by the Supreme Court in May in Missoula, classes will be conducted for the limited jurisdiction judges that explain to them the intricacies of the Youth Court Act. When the bill goes into effect July 1, 1989, the courts of limited jurisdiction will be ready.

Again, ~~we~~ ~~urge~~ ~~your~~ ~~concurrance.~~

Wallace A Jewell

VISITORS' REGISTER

Judiciary COMMITTEE

BILL NO. ~~HB 312~~ DATE March 7, 1989

SPONSOR _____

Bill #

	NAME (please print)	RESIDENCE	SUPPORT	OPPOSE
HB/27	Bill UNGER	DEPT. FAMILY Helena, MT Services	✓	
HB310	John Connor	DEPT of Justice MT County Atty ASSN	✓	
HB310	WALLY JEWELL	MT MAGIS. ASSOC	✓	
HB386	Roger Knapp	H.O # 27	✓	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.