

MINUTES

MONTANA SENATE  
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By Senator Tom Hager, on March 8, 1989, at  
1:00 p.m., Room 410, State Capitol

ROLL CALL

Members Present: Senators Tom Hager, Chairman; Tom  
Rasmussen, Vice-chairman; J. D. Lynch, Matt Himsl,  
Bill Norman, Harry H. McLane, Bob Pipinich

Members Excused: None

Members Absent: None

Staff Present: Tom Gomez, Legislative Council  
Dorothy Quinn, Committee Secretary

Announcements/Discussion: None

HEARING ON HOUSE BILL 216

Presentation and Opening Statement by Sponsor:

Representative Norm Wallin, House District #78, stated  
that he was presenting House Bill 216 which is an act  
to change the audit period of the Montana Health  
Facility Authority from an annual audit to a biennial  
audit. In 1983 the Montana Health Facility authority  
was established with the intent that not-for-profit  
institutions could apply for and qualify for loans  
through the bonding of the Montana Health Facility.

List of Testifying Proponents and What Group they Represent:

Jerry Hoover, Administrator, Health Facility Authority

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Jerry Hoover stated he was appearing on behalf of the Health  
Facility Authority and was available to answer any  
questions that the committee might have in regard to HB  
216. The activity of the Health Facility Authority,

as audited, is regarding its operational budget only. In meetings with the Legislative auditor's office and the Governor's office it was agreed that a biennial audit would suffice to assure that the rules and regulations of the state were being met in regard to the operations and it would save approximately \$2,000 each year. Bonding requirements do not require an annual audit.

Questions From Committee Members: None

Closing by Sponsor: Representative Wallin stated he hoped the committee would act favorably on House Bill 216.

#### DISPOSITION OF HOUSE BILL 216

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator McLane made the motion that HOUSE BILL 216 BE CONCURRED IN. Senators in favor, 6; opposed, 0. MOTION PASSED UNANIMOUSLY.

Senator McLane will carry the bill.

#### HEARING ON HOUSE BILL 192

Presentation and Opening Statement by Sponsor: Ken Rice, Representative from House District #43, stated he is sponsor of HB 192. By way of background, the Department of Health, through the Occupational Health Bureau, is charged with regulating all sources of ionized radiation. This is important for the protection of citizens in making sure they are not exposed to high doses of radiation. The problem addressed in this bill is that the Department does not have the authority to impose any civil sanctions on the violators who do not meet state radiation control standards. It does have the authority to ask a local county attorney to prosecute under criminal laws, but that requires much time and effort to prepare for a county attorney who may, or may not prosecute. This bill would allow the Department to enter a court with its own counsel in a civil proceeding and ask the court for civil penalties. This authority to levy civil penalties is similar to the authority of other bureaus in the Department of Health. As the statute is reviewed, it indicates the penalty is \$5,000 per day, with each day being a new offense, so it is a substantial penalty but he stated it is less than some other penalties on the books for civil violations. The

Department has a good relationship with business, and in 90% of the cases there is no problem with administering regulations in this regard, but to regulate a small minority this authority is needed.

List of Testifying Proponents and What Group they Represent:

Adrian Howe, Department of Health and Environmental Sciences

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Adrian Howe, Chief of the Occupational Health Bureau, DHES, stated that the purpose of HB 192 is to grant authority to the Department of Health and Environmental Sciences to seek injunctions and civil penalties for violation of the statutes concerning sources of ionizing radiation and rules or orders issued pursuant to them. He read and presented his written testimony to the committee (Exhibit #1).

Questions From Committee Members:

Senator Himsl asked if the Occupational Health Bureau has authority involving other rules and why is the area of ionization being singled out. Mr. Howe stated that their statutory authority for radiation is within a radiation control law and that particular section does not include statutory authority to impose penalties.

Senator Pipinich asked if this bill would affect people or corporations who have other major sources of radiation. Mr. Howe stated it could; however, currently the emphasis within the radiation program is on x-ray sources. Some of those radioactive material sources are currently controlled by another agency. They have the statutory authority to regulate some but do not since the programs are under funded.

Senator Hager asked for an example of people who would be affected by this bill. Mr. Howe stated that they could be doctors' offices, chiropractors' offices, hospitals, a few nursing homes, veterinarians, and also some industrial x-ray sources. However, he added that most would not be affected since they are very concerned about how their equipment operates. He stated that in 20 years experience with those facilities they have never imposed a criminal penalty. He stated they do

have one case that has been pending for over a year. Most of the facilities will come into compliance.

Senator Hager asked if this bill was law, could it be expected that things would move faster on the case he cited. Mr. Howe stated that would probably be true, and added that it is not the Department's intent to actually assess a penalty. Their goal is to obtain compliance with the regulations.

Closing by Sponsor: Representative Rice stated this bill was introduced at the request of the Department of Health. It was originally approved by the Schwinden administration and was subsequently re-approved by the Stephens administration. He advised the representatives of the Hospital Association had no objection to the bill. He believes the county attorney offices have more urgent matters to deal with and they need a vehicle to go into court to enforce the laws passed regarding the sources of radiation.

#### DISPOSITION OF HOUSE BILL 192

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch moved that HOUSE BILL 192 BE CONCURRED IN. Senators in favor, 7; opposed, 0. MOTION PASSED UNANIMOUSLY.

Senator Rasmussen will carry the bill.

#### HEARING ON HOUSE BILL 229

Presentation and Opening Statement by Sponsor: In the absence of sponsor Dan Harrington, House District #68, Senator J. D. Lynch, Senate District #34, advised that this was a straightforward bill authorizing school districts to issue and sell obligations for the purpose of financing the cost of removing asbestos and other hazardous materials. It is his understanding the cost is quite high and this bill will allow them to issue those obligations to cover the costs.

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 Himsl asked what is the nature of this bill. Senator Lynch stated there is a presently a limitation on the amount that can be bonded. This would give the authority to go above the normal limitations.

Closing by Sponsor: Chairman Hager announced that a request was received from Representative Harrington that House Bill 229 be tabled.

DISPOSITION OF HOUSE BILL 229

Discussion: None

Amendments and Votes: None

Recommendation and Vote: Senator Lynch moved that HOUSE BILL 229 BE TABLED AT THE REQUEST OF THE SPONSOR. Senators in favor, 7; opposed, 0.

HEARING ON HOUSE BILL 102

Presentation and Opening Statement by Sponsor: Kelly Addy, Representative of House District #94, advised that HB 102 deals with a procedure that a regional mental health center must go through in order to have rate changes approved or effected for the people that it serves. The South Central Montana Regional Mental Health Center serves the Billings area and Yellowstone County. They have had an increase in demand for their services from the private sector. It has become vital to that community to have a mental health facility available. As their costs increase, as their work load changes in shape and in size, they want to have the ability to change their rates so that they are compensated for their efforts. At present, Montana law provides that any change in rate proposed by the mental health centers must be approved by the Department of Institutions, which approval can take a considerable period of time. Mental health centers would like to have the authority to change their rates if they do not have impact on federal laws or eligibility for reimbursement by the federal government. In response to a House concern that federal funds might be jeopardized, an amendment was agreed to which requires the Department to act within 30 days upon a request for a change in the fee schedule. Rep. Addy believes it is a question of local control and does not impact

the Department of Institutions. He requested the committee to reconsider the House amendment.

John Nesbo, Executive Director of the South Central  
Montana Regional Community Mental Health Center  
Dr. Donald Harr, Medical Director, South Central  
Montana Regional Mental Health Center  
Steve Waldron, Mental Health Association

List of Testifying Opponents and What Group They Represent:

Nick Rotering, Attorney, Department of Institutions

Testimony:

John Nesbo, stated he stands in support of HB 102 in its original form as introduced by Rep. Kelly Addy. He read and presented to the committee copies of his written testimony. (Exhibit #2). He requested the committee remove the amendment from HB 102, and recommended a do pass in its original form.

Dr. Don Harr stated he is representing the personnel that have to do with the clinical functions and purpose of the mental health center. He stated he reinforces what Mr. Nesbo has presented. He added that it is important to recognize that as a non-profit organization, it is necessary that they abide by whatever limit of fees that will keep them in the non-profit area according to what their auditors present to them. In order for them to continue to function as private not-for-profit corporations, it is important that they be allowed to determine what is appropriate for each individual center around the state. He hopes that those who function in this area can be trusted to do that accordingly, and thereby concur with the original form of the bill and allow its passage in that light.

Steve Waldron stated that HB 102 changes some language on Page 1, line 24. The other section of the bill has already been alluded to. Removing this section giving the Department authority to approve fees set by the Board of Directors of the mental health center in no way affects the Department's ability to have contracts with the centers or to set reimbursement rates with the centers. By the same token they do not believe the Department of Institutions should have authority over fee schedules of non-profit corporations.

Nick Rotering, Legal Counsel for the Department of Institutions, stated he wished to make it clear he is not opposing the bill. It was his understanding that

the agreement was worked out and the amendment was added to clarify. If the amendment is removed, he suggested that it be made clear in the bill that what is being addressed is the state's involvement relative to what the centers do as far as a private case situation. He stated he can understand the concerns about fee increases which relate to private payment. He stated they like the present form of the bill.

Questions from the Committee:

Senator Norman asked if a hospital can bill one person more than another. Mr. Rotering stated that when a patient is Medicaid-eligible you cannot bill that person more than the established rate.

Senator Norman and Mr. Rotering discussed various aspects of eligibility and fees relating to Medicaid and Medicare patients and private patients.

Senator Himsl inquired as to the number of mental health corporations this would involve. Rep. Addy advised the number was 5.

Senator Himsl asked if the negotiation between the Department and the corporation includes two things: (1) number of units of service, and (2) fee per unit. Rep. Addy answered affirmatively and added if the public contribution per unit goes down, the center either has to curtail services or raise the fees to the private sector.

John Nesbo, in response to questioning by Senator Himsl, clarified differences in payments by insurance, third party, private and government supported payments. He also explained the category of "financial aid", which is based on ability to pay.

Closing by Sponsor: Representative Kelly Addy, sponsor of HB 102, closed without further comments.

Chairman Hager stated further action on HB 102 would be taken on Friday, March 10, 1989.

HEARING ON HOUSE BILL 197

Presentation and Opening Statement by Sponsor: Kelly Addy, Representative of House District #94, stated that he was the sponsor of HB 197 which simply sets up a procedure for voluntary admission of minors to mental health facilities. If a minor is over 16, they can give their own consent as long as a physician or

professional person has found that they are mentally ill or seriously mentally ill and that is the least restrictive requirement at this time. The application has to be in writing; the person, by making written application again, can be released within five days. It gives professionals an opportunity to make sure the individual is ready to go back into the community. The bill provides that any such voluntary commitment expires at the end of six months.

List of Testifying Proponents and What Group They Represent:

Leslie Taylor, Department of Family Services  
Kelly Moore, Board of Visitors  
Mary Gallagher, Staff Attorney for the Mental Health  
Protection and Advocacy Program, Board of Visitors  
Pat Melby, Rivendell of Billings and Butte

List of Testifying Opponents and What Group They Represent:

None

Testimony:

Leslie Taylor, Department of Family Services, stated that the Department requested this bill to clarify the procedures for the voluntary admission of minors to mental health facilities. The current law specifies that youths 16 years of age or older can consent to admission to a mental health facility, but fails to specify procedures for the voluntary admission of youths under the age of 16. She read and presented her written testimony to the committee (Exhibit #3).

Kelly Moore, Director of the Board of Visitors, stated that institutionalization for anyone, particularly children, is quite traumatic. They are separated from their family, friends and school support. The procedures and standards for admitting young people to institutions, particularly mental institutions, must provide safeguards to protect their rights. She stated they have three minor amendments to propose (Exhibit #5), and recommended passage of HB 197 with the amendments.

Mary Gallagher, stated she is a staff attorney for the Mental Health Protection and Advocacy Program under the Board of Visitors. Through that Program she receives referrals regarding the commitment of youth throughout the state. She stated she believes this bill eliminates current due process protections and goes below minimum constitutional standards in doing so. She believes the amendments set out in Exhibit #5 would



help cure these problems. She requested the committee seriously consider the amendments or vote against the bill. She read and presented her written testimony to the committee (Exhibit #5).

Pat Melby, representing Rivendell of Billings and Butte, stated this bill is basically a result of some meetings between Leslie Taylor of Department of Family Services and Mary Gallagher of the Board of Visitors and himself. He believes the amendments are necessary, and encouraged a do pass as amended.

Questions From Committee Members:

Senator Hager asked Representative Addy if he was aware of the amendments. Rep. Addy stated he had a chance to review them and he had no problem with them.

Senator Himsl asked for clarification of Amendment #2. Rep. Addy clarified the language.

Closing by Sponsor: Representative Addy thanked the Board of Visitors for their amendments.

DISPOSITION OF HOUSE BILL 197

Discussion: Chairman Hager announced that no action would be taken on HB 197 to allow time for the amendments to be reviewed.

Amendments and Votes: None

Recommendation and Vote: None

ADJOURNMENT

Adjournment At: 2:25 p.m.

  
\_\_\_\_\_  
SENATOR TOM HAGER, Chairman

TH/dq

Senmindq.308

ROLL CALL

PUBLIC HEALTH

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 3/8/89

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NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Hager	X		
Sen. Tom Rasmussen	X		
Sen. Lynch	X		
Sen. Himsel	X		
Sen. Norman	X		
Sen. McLane	X		
Sen. Pivnich	X		

Each day attach to minutes.

**SENATE STANDING COMMITTEE REPORT**

March 8, 1989

**MR. PRESIDENT:**

We, your committee on Public Health, Welfare, and Safety, having had under consideration HB 216 (third reading copy -- blue), respectfully report that HB 216 be concurred in.

Sponsor: Wallin (McLane)

**BE CONCURRED IN**

Signed: \_\_\_\_\_

*Tom Hager*  
THOMAS O. HAGER, Chairman

4/10/89  
3/9/89  
8:20  
a.m.

SENATE STANDING COMMITTEE REPORT

March 8, 1989

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety, having had under consideration HB 192 (third reading copy -- blue), respectfully report that HB 192 be concurred in.

Sponsor: Rice (Rasmussen)

BE CONCURRED IN

Signed: \_\_\_\_\_

*Tom Hager*  
Thomas O. Hager / Chairman

W.C. 89  
319120  
8.2.89

SENATE HEALTH & WELFARE

EXHIBIT NO. # 1

DATE 3/5/89

BILL NO. 192-

DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES

TESTIMONY

on

HOUSE BILL NO.192

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW COLLECTION OF CIVIL PENALTY FOR A VIOLATION OF THE STATUTES CONCERNING SOURCES OF IONIZING RADIATION AND RULES OR ORDERS ISSUED PURSUANT TO THEM; AND ALLOWING A VIOLATION OF THE STATUTES RELATING TO SOURCES OF IONIZING RADIATION AND RULES OR ORDERS ISSUED PURSUANT TO THEM TO BE ENJOINED."

The purpose of HB 192 is to grant authority to the Department of Health and Environmental Sciences to seek injunctions and civil penalties for violation of the statutes concerning sources of ionizing radiation and rules or orders issued pursuant to them.

Currently, the radiation control law allows for only criminal penalties for a violation. When a non-compliance is located, a report is sent to the violator requesting completion of corrective action within 30 days. If corrective action is not completed in this time frame, another compliance request is sent requiring completion of corrective action within 10 days. At this point in the procedure, if no corrective action notice has been received, a courtesy phone call is made to the facility owner asking their intentions regarding the non-compliance. If additional time is required by the facility, such is granted. Occasionally, a facility will indicate that it has no intention of complying. If this is the case, the Department is required to request that the county attorney file criminal charges. Generally, most county attorney's criminal case

loads are such that the Department request receives a low priority. This procedure is administratively cumbersome and costly. As is outlined, the Department procedure is quite lengthy and any further delays in obtaining compliance only prolong a potentially severe public health problem.

HB 192 would serve to enhance the compliance actions available to the Department by stream-lining the process, reducing staff time for follow-up on county attorney's actions, and protecting the public health and safety in a more timely manner.

It is the Department's intent, in most instances of non-compliance, to waive or defer civil penalties. Since the Department's goal is compliance for health and safety reasons, generally civil penalties will only be sought if the violator refuses to meet compliance.

In summary, the current mechanism of enforcement by seeking criminal penalties is expensive, requires a great deal of staff time, is cumbersome, and slow. The slowness of this system is not conducive to protection of the public health and safety. The statutory authority sought in HB 192 would serve to enhance the regulatory efforts of the department by streamlining the system, reducing staff time required for followup over long periods of time, being more cost effective, and protecting the public health and safety in a more timely manner.

The Department urges the committee's favorable consideration of HB 192.

SENATE PUBLIC HEALTH COMMITTEE

RE: HB102

March 8, 1989

SENATE HEALTH & WELFARE

EXHIBIT NO. # 2

DATE 3/8/89

BILL NO. HB 102

Mr. Chairman, Members of the Committee:

For the record, I am John Nesbo, Executive Director of the South Central Montana Regional Community Mental Health Center, which is headquartered in Billings. I stand in support of HB102 in its original form as introduced in the House by Representative Kelly Addy.

The intent of this legislation is to remove an unnecessary time-consuming regulatory step by the Department of Institutions from the everyday operation of a private, non-profit corporation. In this very law, page 2, section 2, subsection 2, it states "these non-profit corporations shall not be considered agencies of the Department or the State of Montana, etc."

In section 2 on page 3, it continues to define the board composition, establishing their duties of planning, budgets, financial participation of counties, and receipt and administration of all monies to carry out the purposes of a Community Mental Health Center.

The original bill draft intended to remove from Section 2, subsection 6, page 5 the language "with the approval of the Department". We feel this regulation by the Department of Institutions over the business operation of a private, non-profit corporation is inappropriate in state law.

The fees established by the Governing Board for the operation of

the Center are based on the cost of providing services. The Department of Institutions contracts with us to provide a certain number of units of service for the state, based on a set fee for each unit of service, with a maximum dollar amount from the Department of Institutions per year. The Medicaid funding to our Center is based on Medicaid's own fee for a unit of service to Medicaid eligible clients.

Every year we provide many more services than the Department of Institutions contracts for, especially in our outpatient division. In this same section of law, 53-21-206, it states "The services of the Department and of the incorporated regional mental health center are available without discrimination on the basis of race, color, creed, religion, or ability to pay. In the Center's efforts to comply with this law, attempts are made to produce other revenue to subsidize the needed services that are not provided for by the Department of Institutions. The Department does not pay the full cost of many of the services they contract for.

If the Mental Health Center is willing to provide the additional mental health services to the citizens of Montana without sufficient state revenues, charge a fee based on cost, and internally subsidize our other services, then we should not be hampered by the Department having veto power over the business decisions of a private, non-profit corporation.

Our setting of fees based on cost of service is the only way we have of generating revenue to continue to provide services not fully covered by the Department, or not covered at all.



The fee we set does not affect the Department, as they establish what they will pay for each unit of service and how many units they will buy. It does not affect Medicaid as they establish the fee they will pay for services. It does not affect the clients who have limited resources because they pay for service on ability to pay, which is determined by income, family size, and expenses, and not on a percentage of our fee.

It only affects those who can pay full fee, those who have insurance coverage or other revenue sources that allow a client to be able to pay full fee. There is no logical reason the Department of Institutions or any other state department should have fee setting power over a private, non-profit Board of Directors.

In fact, in the marketplace, cost of service and supply and demand will regulate fees and that in itself is enough regulating authority.

With your permission Mr. Chairman, I would like to give an example:

The Department of Institutions' contract for FY89 was presented to us in June of 1988. The fees paid by the Department of Institutions were already set by the Department. The negotiation was minimal in regard to numbers of units of service in various categories. We were informed at that time that the total amount of our contract would be \$938,678.63 as opposed to \$1,086,682.00 in FY88, a revenue deficit to our Center of \$148,004.00. We were also informed that because the fees per unit of service paid by the Department of Institutions were being reduced, we would be

able to provide more units of service for less money. That is a logic I fail to understand. In our discussions at that time, I said we would probably have to increase our fees to the private sector in order to offset the shortfall from the State. They replied, "we probably won't approve an increase because it would look as if our reduction to your Center caused this increase."

Our business office reviewed our revenue and expenses and recommended an increase in our Center's fee schedule for our licensed counselors and psychiatrists. We presented this information to our Governing Board at the June meeting and they approved the new schedule. I then submitted a letter of our Board's action to the Department for approval. Several weeks went by and we heard nothing. I finally asked our attorney to intervene and then the Department replied with approval. This is an unnecessary, time-consuming process that costs us further revenue losses because we could not implement the necessary increase until into our third month of the fiscal year.

Mr. Chairman, I request that your committee remove the amendment from HB102 and recommend a do pass in its original form. Thank you.

## DEPARTMENT OF FAMILY SERVICES

EXHIBIT NO. 13DATE 3/8/89BILL NO. #197 (406) 444-5900

STAN STEPHENS, GOVERNOR

## STATE OF MONTANA

P.O. BOX 8005  
HELENA, MONTANA 59604

TESTIMONY IN SUPPORT OF HB 197  
AN ACT REVISING THE PROCEDURE FOR THE VOLUNTARY  
COMMITMENT OF MINORS TO A MENTAL HEALTH FACILITY

Submitted by Leslie Taylor  
Legal Counsel for the Department of Family Services

The Department of Family Services requested this bill to clarify the procedures for the voluntary admission of minors to mental health facilities. The current law specifies that youths 16 years of age or older can consent to admission to a mental health facility, but fails to specify procedures for the voluntary admission of youths under the age of 16.

A 1979 U.S. Supreme Court decision, Parham v. J.R., 422 U.S. 2493, ruled that a youth facing admission to a psychiatric hospital is entitled to due process even when his parents or guardian seek the admission on his behalf. The Court ruled that "[t]he risk of error inherent in the parental decision to have a child institutionalized for mental health care is sufficiently great that some kind of inquiry should be made by a 'neutral factfinder' to determine whether the statutory requirements for admission are satisfied." The Court found that the factfinder need not be "law trained or a judicial or administrative officer" and upheld the Georgia system which allowed the admitting psychiatrist to act as the "neutral factfinder." The Court applied the same requirements when the state sought to admit a child who is a ward of the state.

The Department has legal custody of a number of children who are in need of in-patient psychiatric treatment. Because of the ambiguity of the existing law and the Parham decision, the Department's policy has been to request the county attorney to file an involuntary commitment petition before placing children under the age of 16 in the Rivendell or Shodair psychiatric units. However, there have been situations where the youth did not meet the strict definition of seriously mentally ill (i.e. "danger to self or others"), but was in need of in-patient psychiatric treatment. Some mental health professionals felt uncomfortable labelling a child as "seriously mentally ill" just to obtain the treatment they felt was necessary.

The Department met with the attorneys representing Rivendell and the Board of Visitors to come up with a method for voluntary commitment which would facilitate commitment of those youths needing in-patient psychiatric care in a manner which was

consistent with the Parham case. HB 197 is the result of those discussions.

The bill clarifies that the parent, guardian or other person legally responsible for a minor may commit the youth to a mental health facility, other than a state institution, if a "professional person" certifies that the minor is mentally ill or seriously mentally ill and placement in the mental health facility is the least restrictive environment available for treatment. The certification must be submitted to the facility along with the written consent of the parent, guardian or person legally responsible for the youth and the consent of the youth if he is over the age of 16.

The facility may not accept a youth unless the certification and consents are submitted and the facility must keep records to document compliance with the requirements of the law. If the youth fails to join in the consent of his parents, an involuntary proceeding must be initiated before the youth can be committed.

This bill provides a workable system for the voluntary admission of youths needing in-patient psychiatric treatment while meeting the constitutional requirements for due process. The bill also clarifies the Department's authority to place youths who are under the Department's legal custody in mental health facilities. By developing a streamlined procedure which meets the constitutional requirements, the work of the department social workers, county attorneys and the courts can be simplified and children can receive needed treatment. For these reasons, the Department of Family Services asks you to give HB 197 your favorable consideration.

SENATE HEALTH & WELFARE

EXHIBIT NO. # 4

DATE 3/8/89

BILL NO. HB 197

PROPOSED AMENDMENTS  
TO HOUSE BILL 197

1. In 4(a)

On Pg. 2, Line 19

after "16 years of age" add "and the minor under 16 years of age."

2. In 6(a)(i)

On Pg. 3, Line 9

delete "if he is 16 years of age or older"

3. Proposed New Subsection

For 53-21-112

The admission form shall inform the minor of the right to contact an advocacy service, attorney, agency or person of choice to independently discuss the potential admission or discharge. Provisions shall be made by the facility for access to such contacts.

OFFICE OF THE GOVERNOR  
MENTAL DISABILITIES BOARD OF VISITORS  
LEGAL SERVICES PROGRAM

SENATE HEALTH & WELFARE

EXHIBIT NO. #5

DATE 3/8/89

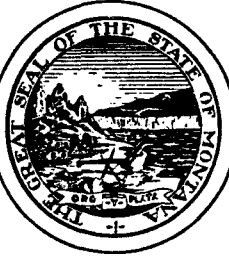
BILL NO. HB 197 P.O. BOX 177

TED SCHWINDEN, GOVERNOR

STATE OF MONTANA

(406) 693-7035

WARM SPRINGS, MONTANA 59756



TESTIMONY OF MARY GALLAGHER  
ON HOUSE BILL 197  
BEFORE THE SENATE PUBLIC HEALTH COMMITTEE  
ON MARCH 8, 1989.

Mr. Chairman, Members of the Committee, my name is Mary Gallagher and I am a staff attorney for the Mental Health Protection and Advocacy Program under the Board of Visitors. Through that Program I receive referrals regarding the commitment of youth throughout the State.

I am here to testify against this bill because I see three main problems with it. But first I would like to preface my remarks by saying this: The primary concern of any voluntary commitment statute for minors should be to provide a way for minors to voluntarily receive needed mental health services and to avoid - at the same time - any unnecessary hospitalization of a minor who does not really need to be institutionalized. Other states have noted sky-rocketing admission rates of minors to facilities. As more private for-profit youth treatment facilities spring up in our state, we must be concerned that competing facilities may "create a need" for their services by persuading parents that their child needs inpatient treatment when in fact a less restrictive treatment arrangement may be all that is needed.

The first main problem I see with this bill is that it unnecessarily reduces some of the current statutory due process protections for minors under 16 years of age. The current law on voluntary commitment of a minor involves the consent of the parents, the child and the facility. The current law acknowledges the need for the consent of these parties at the initial admission stage and it provides for these parties to have a voice when the minor seeks to be released from the institution. This bill takes away the right of a minor under 16 years of age to be heard once that minor is inside the facility.

Tied in with this is a second concern. This bill does not adequately address the potentially coercive nature of a so-called voluntary placement. A coercive placement, even if it is called voluntary, is-by most any standard-less than therapeutic. Statutory access to an advocate or other person could help a minor to independently assess his situation and understand his rights.

The third concern with this bill is that it was hastily drafted, which makes it difficult to follow, confusing to read and, most importantly, internally inconsistent. I would urge the drafters to return to the drawing board and come up with a clear, more internally-consistent bill which takes into account the rights of a minor under 16 years of age and adheres to U.S. Supreme Court caselaw under Parham v. J.R., 99 S. Ct. 2493 (1979), regarding standards for voluntary and involuntary commitment of minors.

In summary, I believe this bill eliminates current due process protections and goes below minimum constitutional standards in doing so. Below I have included three amendments which I think would help cure these problems and I hope you will seriously consider them or vote against this bill. Thank you.

PROPOSED AMENDMENTS  
TO HOUSE BILL 197

1. In 4(a)

On Pg. 2, Line 19

after "16 years of age" add "and the minor under 16 years of age."

2. In 6(a)(i)

On Pg. 3, Line 9

delete "if he is 16 years of age or older"

3. Proposed New Subsection

For 53-21-112

The admission form shall inform the minor of the right to contact an advocacy service, attorney, agency or person of choice to independently discuss the potential admission or discharge. Provisions shall be made by the facility for access to such contacts.

Public HEALTH

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
John G. Nesbo	Mental Health	HB-102	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Charlitta A. Stout	Mental Health	HB102	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Don Harr	Mental Health	HB102	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Flint Mielts	Carroll College <sup>Nursing</sup> student	HB395	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Steve Walker	Mental Health	HB102	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Leslie Taylor	Dept of Family Services	HB197	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Adrian Howe	DHE S	HB192	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Max Colander	BOV	HB197		
Kelly Moore	BOV	HB197		
Ray Hoover	Health Facility Authority	HB16		
Pat Melby	Rivendell of Pillsbury & Bank	HB197	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<del>John Nesbo</del>				



ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 3-8-89 Bill No. 216 Time \_\_\_\_\_

NAME	YES	NO
Sen. Tom Hager	X	
Sen. Tom Rasmussen	X	
Sen. Lynch	-	
Sen. Matt Himsel	X	
Sen. Bill Norman	X	
Sen. Harry McLane	X	
Sen. Bob Pipinich	X	

Dorothy Quinn  
Secretary

Sen. Tom Hager  
Chairman

Motion: Senator Mc Lane 6-0-0  
moved that HB 216  
concur in In favor 6,  
opposed 0

Mc Lane will carry

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 3/8/89 Bill No. 192 Time \_\_\_\_\_

NAME	YES	NO
Sen. Tom Hager	X	
Sen. Tom Rasmussen	X	
Sen. Lynch	X	
Sen. Matt Himsl	X	
Sen. Bill Norman	X	
Sen. Harry McLane	X	
Sen. Bob Pipinich	X	

Secretary Dorothy Quinn Chairman Sen. Tom Hager

Motion: Sen. Lynch moved that HB 192 BE CONCURRED IN

7-0

1987 *Rasmussen*

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH

Date 3/8/89 0 Bill No. 229 Time 1:20

NAME	YES	NO
Sen. Tom Hager	X	
Sen. Tom Rasmussen	X	
Sen. Lynch	X	
Sen. Matt Himsel	X	
Sen. Bill Norman	X	
Sen. Harry McLane	X	
Sen. Bob Pipinich	X	

Dorothy Quinn  
Secretary

Sen. Tom Hager  
Chairman

Motion: Motion by Sen. Lynch  
to table HB 229  
at the request of the 7-0  
sponsor.