MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LOREN L. SOFT**, on February 4, 1995, at 11:30 a.m.

ROLL CALL

Members Present:
Rep. Ellen Bergman (R)
Rep. Bill Carey (D)
Rep. Loren L. Soft (R)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Patti Borneman, Subcommittee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Working session to continue review of HB 41, HB 60, HB 94, HB 117, HB 150.

Chairman's Introduction: **CHAIRMAN LOREN L. SOFT** explained the purpose of the Judiciary Subcommittee, meeting for the second time to discuss a number of house bills to clarify language.

HB 41

Tape 1 of 2, Side A

CHAIRMAN SOFT said that compromise language has been reached on HB 41 and asked **John MacMaster** to comment on the amendment. **Mr. MacMaster** passed out copies of the amendment and pointed out the sections that were changed. **EXHIBIT 1**

HB 60

CHAIRMAN SOFT was satisfied with the work done on HB 41 and asked that they now discuss HB 60. He asked **Dan Anderson, Department of Family Services** to talk about these amendments. He said that **Mr. John MacMaster** drafted the amendments, formerly known as the

Kasten amendments, and at this point they are satisfied with them.

Andree Larose, Montana Advocacy Program (MAP), said that the amendments she drafted reflect the department's need to identify a specific treatment program for persons under age 18 who are involuntarily committed. She said they were concerned about young people having to go through youth court and attempted to keep it within the civil commitment statute and to address the issue of public funds and when they are required, for instance, under the MRM Program (Managed Resources of Montana). The amendments say that public funds can only be expended under programs that the state already has for paying for juvenile mental health services. In addition, the amendments say that "no parent would be required to relinquish legal custody in order to force a child to involuntary get the mental health treatment that they need." She said the state would still have the authority to obtain custody of kids under existing law in cases of abuse, neglect, delinquent youth in need of supervision. She said they were concerned about the seriously mentally ill youth having access to services, including case management; rather than just a probation officer managing the case. She said her changes are underlined. **EXHIBIT 2**

Mr. Anderson explained the Department's stand on the bill. He said he was concerned that it may create a "new avenue to publicly-funded mental health services" and is not sure their budget can handle it. He gave examples of cases where this law may increase caseload and impact their budget in a way they cannot predict or control.

Ms. Larose said that the bill would not create a new process but would add a qualifier on when public funds could be spent. She said she wouldn't mind the sentence being deleted from the amendment, but said they're trying to keep the "status quo where serious mental illness for kids who aren't already being adjudicated through the youth court system has a separate process for receiving those services involuntarily."

Dan Hemion, Mental Health Association of Montana said that the concern they have is that the Youth Court Act would be changed.

CHAIRMAN SOFT responded with information about the Youth Court Act. He said "whole scale revision" will take some time and perhaps "some pieces of it will come into play now," but substantial revision will not occur this session.

Beda Lovitt, Department of Corrections and Human Services (DCHS) asked about the bill "just taking us back to where we are now."

CHAIRMAN SOFT said that they are at an "impasse" on this bill and will need to take advisement to the committee and discuss at that time during executive action.

Mr. MacMaster commented on the amendments and asked if the new section referred to Title 53 or Title 41?

Ms. Larose said it was Title 53.

Mr. MacMaster discussed current law regarding minors and voluntary and involuntary commitment procedures. He read from the statute and referred to the Melby amendments in which the parent wants the involuntary commitment of their child and no state money can be used in this case. "This is totally a private thing between the parents and the kid; the state isn't involved." He said that the Melby amendments take care of involuntary admission as approved by the Department of Corrections. He read from page 5 of the amendments: "No parent shall be required to relinquish legal custody of his or her child to the state of Montana or if the child is receiving mental health services under this department." He said that if this goes into the Youth Court Act, he doesn't know why, because he said "that's the whole point of the Youth Court Act." He said the Youth Court can order a mentally ill youth to be placed in treatment. He said these amendments will not let the Youth Court judge decide to place the youth in an appropriate place.

Ms. Larose said that he was reading it wrong and that the amendment would go into Title 53, and said she is proposing two separate procedures: 1) where there's a seriously mentally ill youth who has not committed offenses and other that civil procedures there could either be a parent who could afford to pay for private treatment and not relinquish custody, or there's a parent who cannot afford but still is not required to relinquish custody "because that kid's not a criminal," and can still use the civil commitment process.

Mr. MacMaster said that under Title 53 "that would be what is called involuntary commitment proceeding, then, wouldn't it? Where the parent has to get the county attorney to file a petition in court alleging the youth seriously mentally ill, and that's already provided for. If the court agrees, the court is going to commit the youth, and if that's what you want, custody ends. ... The parent can't have it both ways. They can't use the state system and the county attorney, the court, to have a youth committed because they think he needs to be committed, and then turn around and say, yeah, but I don't want to lose custody. Once he's committed, custody's lost." He said that the county attorney needs to be able to commit the child whether or not the parent agrees.

Mr. Anderson said that was the case with adults, but wondered if that was the case with children.

Mr. MacMaster discussed what custody means in terms of where the child is living.

Ms. Larose said that the parent relinquishes "physical custody, but I don't think they've relinquished all their rights to make decisions and participate in their kid's treatment, if there needs to be consent to an aversive procedure, or if the parent decides at a certain point that discharge is appropriate." She said the issue is to force treatment, not to remove parental rights.

REP. ELLEN BERGMAN asked **Ms. Larose** if she's an advocate for the child or the parents or both.

Ms. Larose replied that they are an advocate for the child.

REP. BERGMAN said that it sounded like she was speaking for the parents.

Ms. Larose answered that they usually represent the child through the parents. She said her goal is to arrive at a law that works for the whole family, and is not "taking the parents' role or position here."

Ms. Lovitt mentioned the role of the parent as guardian in an involuntary commitment and compares the difference between adult and minor involuntary commitment. Just the fact of being underage impacts the "capacity" of the patient to make decisions.

CHAIRMAN SOFT described situations when parents continue to be actively involved in their children's treatment. He said that in the facility where he works, they don't want to accept the child unless the parent is going to be involved in that process. He wondered if parental rights and involvement might not be covered some other way.

Ms. Lovitt asked if parents were involved during the time when there were only state-run institutions in terms of involuntary commitment. She asked how this was treated in the past.

Mr. Anderson said that he thought there was an attempt to involve the parents in treatment.

CHAIRMAN SOFT said that in the early years the attitude was "parents stay out of it, you're bad people," and now they encourage parental participation and believe that treatment can only work with their involvement.

Mr. Anderson said that most of the kids who came to Warm Springs came through the Youth Court Act.

Ms. Larose asked about what's happening now with a statute that allows for involuntary commitment of kids under 18, if the parents are involved and what their rights are.

Mr. Anderson said it's very infrequent and that there are parents who are very involved and are encouraged by the state, regardless

of custody status; to where everyone agrees it's best that the parents are not involved.

Mr. MacMaster reads from statute that addresses custody and where that leaves parental rights and involvement. He said that the law doesn't take parental rights away in the event of loss of custody, "non-custodial rights" such as the right to control the child's property, etc. He said the law considers only mental health treatment.

Ms. Larose said they could change the phrase "legal custody" to "parental rights," and still get the same idea. She said that the principle they are trying to emphasize is that rather than eliminate involuntary commitment for minors, the department is proposing two choices: 1) if the family can pay for it, they go through the civil commitment, and 2) if the family cannot pay for it, the child goes through the Youth Court Act, becomes criminalized, and the state assumes custody in order for the child to receive treatment. She said the process is different for those who can afford it and those who can't.

REP. BILL CAREY asked **Mr. Anderson** to respond to this.

Mr. Anderson replied that it is "not the department's position to criminalize the child and the only time the state needs to step in is when the child is out of the control of the parents ... and that leads us to the Youth Court Act, which we do not agree is a criminalization." He said that when public funds are involved, they need to have the ability for state agencies to utilize the services of the Youth Court Act.

REP. CAREY said that perhaps the Youth Court Act doesn't actually criminalize the child, but "it does put them under a criminal act ... if somebody's got the money, then they don't have to come under a criminal act in order to get help."

Mr. Anderson said that the law calls it "youth in need of supervision which is defined as a child who is out of the control of his parents." He disagrees that it makes it a criminal situation.

Ms. Moorse asked if kids having to go through Youth Court end up having probation officers. She said that is part of their issue.

Tape 1 - Side B

Mr. MacMaster explains the law that pertains to criminal offenses and said that the Youth Court Act would not require a conviction, and said that the youth is not charged with a crime, but "is left to have committed an act which if it had been committed by an adult, would be a crime."

REP. CAREY asked if he understood that this is the "administrative means by which a youth could be involuntarily committed and get help."

Mr. MacMaster agreed.

Ms. Larose said she still believed that the "stigma" would be there for the child. She said there is a stereotype of "troublemaker" of kids who have been through Youth Court Act. She said it also relates to how out-of-control parents are defined. She said it's also important to address the child's need to have case management services, not just a probation officer. She said there seemed to be a different standard for people with money and people without, and thinks the commitment procedure should be the same for all.

REP. BERGMAN said "thank god for the ones that can pay. I mean, don't penalize them."

Mr. MacMaster said that the amendment they are discussing is "beyond the purpose of the bill." He described the original purpose of the bill and reads from it. He said the amendment would change the "already current written law."

CHAIRMAN SOFT said "I think we're still at an impasse."

Ms. Larose said she doesn't see how her amendment changes the current law, since it allows for commitment through the civil commitment process and allows for placement in a mental health facility through the Youth Court process.

Mr. MacMaster said he wasn't referring to the amendment, but the statements about youth being criminalized by this process. He reiterated that if they think the bill is going to be allowing mentally ill youth to be institutionalized under the Youth Court Act, that is erroneous because the law is already in place.

Ms. Larose again stated her concern that this current law has two categories: "It allows it for the kids who are already adjudicated as a youth in need of supervision or a delinquent youth. What this is doing, what they're proposal is, is to eliminate the option of civil commitment and to require that all youth, except for those who parents can pay, that all youth, in order to get treatment of that serious mental illness, have to be adjudicated as a youth in need of supervision. Before that, that wasn't the case, it was only those who had other behaviors that already got him into that youth court system, or they were already out of control, and then if, through that process they were diagnosed with having a serious mental illness, then that would be an option, but what this does, is it forces all those kids who, they're only behavior may be refusing to go get treatment for a suicidal tendency, and then they will have to go through that, the refusal of treatment will become the means by which they'll be identified as a youth in need of supervision and

they'll have to go through that process to get treatment from the state."

Mr. MacMaster said he agreed with her, but that the amendments were not what they were talking about, but Section 1 of the bill instead. He said to strike Section 1 of the bill to reflect her concerns.

Ms. Larose said "That would be a second position of ours." She agreed that this would address their concerns.

David Hemion, Mental Health Association of Montana stated that his concern is with the process and doesn't like the issue of whether or not a child's family has the ability to pay, saying it appears "classist," and **REP. CAREY** agreed.

Mr. Anderson stated that, in reference to stigmas, he wondered if being declared seriously mentally ill by the state was not as bad as having to go through Youth Court. He said it's unfortunate and being ill should not be a stigma, but guessed that people would rather go with the stigma of Youth Court.

CHAIRMAN SOFT said that the issues seemed unresolvable at this point and the full Judiciary Committee would consider it.

REP. BERGMAN asked for clarification of the issues.

CHAIRMAN SOFT explained what they had been discussing.

REP. BERGMAN wondered what was so wrong about the kids having to go through Youth Court.

Ms. Larose explained that the system would assign them a probation officer, "so a kid who's suicidal will be supervised by a probation officer rather than a mental health professional or case manager. The whole system is designed for a different type of kid than a mentally ill kid.

REP. BERGMAN asked if they were wondering how the seriously mentally ill kid would get treatment through the courts without going through probation, etc.

Ms. Larose didn't understand her question.

REP. BERGMAN said she only understood that "you're trying to protect somebody who needs help and you don't like the labels that have to put on them in order to go through the court system in order to get the help. Where, somebody else who has the money to pay for their own treatment, doesn't get the labels. Is that what you're saying?"

Ms. Larose said that was part of it and that there is a classist issue, but she said their main concern is that this child is "being forced through a system that isn't designed to provide

mental health services. It's designed to supervise kids who violate criminal and delinquent statutes."

REP. BERGMAN asked if that wasn't usually involved.

Ms. Larose said she didn't think so. She said the interpretation was that refusing to get treatment, for instance to Rivendell, "equals out of control, equals behavior that's a violation of the law" and she disagrees with that interpretation.

REP. BERGMAN asked what else she would call it.

Ms. Larose replied, "Refusal to get treatment."

REP. BERGMAN said that probably involved criminal activity and thought the child probably got into trouble somehow.

Ms. Larose said that was the "mis-perception that we're most greatly concerned about and I think that doing it through the Youth Court Act will just foster that perception that you have that I think is in error."

CHAIRMAN SOFT asked **Mr. Anderson** what involvement MRM will have in the process.

Mr. Anderson said that in discussion with MRM, "these kids would be eligible by definition for MRM services." He discussed the personnel that would be involved with the process.

CHAIRMAN SOFT asked if MRM would fund treatment for these kids.

Mr. Anderson said yes.

CHAIRMAN SOFT then said they probably wouldn't take on these kids without case management and that while a probation officer would "be in the background," the MRM system would provide case management in those cases.

REP. CAREY asked if they couldn't "funnel everybody through the Act and then have an order saying that the people who could pay for it would go and get mental health treatment, but still have a probation officer in the secondary role." He wondered if that was possible.

Ms. Lovitt said that was part of the amendment, to remove the requirement of having to go through Youth Court.

REP. CAREY explained how he envisioned it happening if everyone went through Youth Court.

Mr. Anderson said part of his concern regarding the ability to pay, "to be honest with you, as a public agency we're not much concerned at all whether you can pay, ... but for the people who do require some public financing, part of what we like about the

way this is set up, is it does involved DFS in making placement and so we're hopefully spending the public money as wisely as possible."

CHAIRMAN SOFT said they would consider this information at the full committee meeting.

HB 93

Ms. Moorse said that this bill addresses the concerns about mentally ill people being housed in the same unit, at Warm Springs, as convicted felons. She said they suggested language that people receiving sex offender treatment must be housed in a living area that is physically separate from those who are receiving treatment.

CHAIRMAN SOFT said that they are talking about the forensic unit at the state hospital and the fact that they only have one building, and while there's separation, they're still in one building.

Mr. Anderson said that in concept they agree with separation of these groups, but to put in "statute that sort of absolute prohibition made us sufficiently nervous not to concur with it." He said that they worked with the Board of Visitors, who came up with the final language for the amendment which they ended up not agreeing with. He described the facilities and said he thought it was more humane to put an out-of-control patient in the kind of confinement at the hospital rather than in a single room in restraints. He said sometimes it might be necessary to "put a civil patient down there." He drew a diagram of the area in the building and described proposal as reflected in the bill.

Ms. Lovitt said they are still in separate rooms.

Ms. Moorse said that they were concerned mostly with their security.

Mr. Anderson said that they believe this program is needed and if a certain kind of protection needs to be written into the bill, "then so be it." He said it was more important for DFS to have the ability to treat these particular patients.

REP. CAREY asked if a statement of intent could be written to cover the legislative intent.

Ms. Moorse said they could think about it.

Mr. MacMaster clarified what the issue was; that of separating mentally ill patients from inmates and **Ms. Larose** agreed. He said that the problem exists right now at the hospital and asked if they were being housed together.

Ms. Lovitt said that was not the case. She said the distinction was criminal vs civil commitments. **Ms. Larose** said their concern was to house these two groups separately.

CHAIRMAN SOFT agreed with **Ms. Lovitt** that they should put this in the statement of intent.

HB 84

Ms. Moorse said they believe initial placement should be from the court to a mental health facility rather than to a correctional facility and said they didn't want to spend a lot of time of this, but felt it was important to address this issue. She said if they are first sent to the prison, it may delay some treatment that would be beneficial to the patient.

Ms. Larose said that transfers from the hospital to the prison would still be possible after initial assessment of the treatment needs of the patient.

CHAIRMAN SOFT said he recalled that they discussed deleting "correctional" from the bill and replacing it with "appropriate facility."

Tape 2, Side A

Discussion continued on the wording for this bill.

Mr. Anderson said that in most cases they've been sent to Warm Springs, but said they could foresee a situation where they might have a person who is a special security risk and might want to sent to prison, then send a mental health professional to evaluate this person in a more secure environment than the hospital.

CHAIRMAN SOFT said there was considerable discussion in the committee about this bill. He said that the language provides for the most appropriate option.

Mr. MacMaster elaborated on the wording of the amendment. He said if the words "correctional" or "mental health facility" are taken out, there is a problem unless they stipulate that the person was convicted for a criminal offense but is mentally ill. He said that this is handled by case law and described what the state must do if a person is found mentally ill. He continued describing case law that says people who are "civilly committed" have a right not to be threatened by heinous criminals who may be in the same hospital." He said their rights are taken into account by current law. **EXHIBIT 3**

Ms. Lovitt said that imprisonment is only done when it's absolutely necessary, after assessments are made by professionals.

CHAIRMAN SOFT said they've made good progress on the amendments and will take them as they are to the full committee.

HB 117

CHAIRMAN SOFT said they would discuss this bill and HB 150.

Ms. Moorse said the only issue they were concerned with had to do with two recent Montana Supreme Court cases "in which the Supreme Court said that the statutes don't provide for forced medication during the assessment period, while they were at the state hospital and their determination for their fitness to proceed is being determined. This bill does address the statutory concerns that was raised by one of those cases, specifically out of Missoula, the Valensky case." She said the bill doesn't address constitutional issues that were raised by a case in 1992 "that it's impermissible, after the finding of overriding justification and determination of medical appropriateness." They reviewed written materials pertaining to this bill. **EXHIBIT 4**

CHAIRMAN SOFT said that the new wording would be considered in addition to the current amendment and **Mr. MacMaster** agreed.

HB 150

CHAIRMAN SOFT introduced people who would discuss their concerns with this bill. **Al Davis, administrator of the Corrections Division of the Department of Family Services,** said there were several items they wished to modify in the bill to improve the system. He said they had to do with the youth court process occurring pre-disposition. He described the importance of clarifying this process and defining the representation of those involved. He also said they felt that the placement committee should be involved throughout treatment to provide continued consultation and input. He then read the amendments and discussed the changes. **EXHIBIT 5**

CHAIRMAN SOFT said that the committee discussed providing for a parent and a provider serving on the placement committee, and **Mr. MacMaster** noted that. **Mr. Davis** indicated that it should not be mandatory because there would be cases when it would not appropriate for a parent to be involved. The public defender should also be included. Someone suggested "parent and guardian" and "service provider" be used.

CHAIRMAN SOFT asked if placement reviews occurring semi-annually was something they were considering for this bill. **Mr. Davis** said that was fine and **Mr. MacMaster** noted where this was on the bill.

CHAIRMAN SOFT wrapped up the meeting.

ADJOURNMENT

Adjournment: 1:00 p.m. approximately.

Loren Soft

REP. LOREN SOFT, Chairman

P. Borneman

PATTI BORNEMAN, Secretary

LS/pb

HOUSE OF REPRESENTATIVES

Judiciary Subcommittee

ROLL CALL DATE 2/4/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Loren Soft, Chairman	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Carey	✓		

EXHIBIT 1
DATE 2/4/95
HB 41

Amendments to House Bill No. 41
First Reading Copy

Requested by House Judiciary Subcommittee on Mental Health Bills
For the Committee on the Judiciary

Prepared by John MacMaster
February 1, 1995

1. Title, lines 5 through 9.
Following: ""AN ACT"
Strike: lines 5 through 9 in their entirety
Insert: "PROVIDING A PROCEDURE BY WHICH MEDICATION MAY BE INVOLUNTARILY ADMINISTERED TO A PATIENT AT A MENTAL HEALTH FACILITY; PROVIDING PROTECTIONS FOR THE PATIENT; PROVIDING FOR AN ANNUAL REPORT TO THE GOVERNOR; AND AMENDING SECTIONS 53-21-104 AND 53-21-127, MCA.""

2. Page 1, line 13 through page 23, line 24.
Strike: everything following the enacting clause
Insert: "**Section 1.** Section 53-21-104, MCA, is amended to read:

"**53-21-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research involving persons admitted to a mental health facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education, and welfare. An experimental research project involving persons admitted to a mental health facility affected by this part may not be commenced unless it is approved by the mental disabilities board of visitors.

(3) The board shall at least annually inspect every mental health facility which is providing treatment and evaluation to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

(4) The board shall annually insure that a treatment plan exists and is being implemented for each patient admitted or committed to a mental health facility under this part. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(5) The board may assist any patient at a mental health

facility in resolving any grievance the patient may have concerning the patient's commitment or 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 is 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 the patient's 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 the 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 concerning:

(a) the status of the mental health facilities and treatment programs which it has inspected; and

(b) medications involuntarily administered to patients in mental health facilities and the effectiveness of the review procedure required by 53-21-127(2) in protecting patients from unnecessary or excessive medication."

{X*Internal References to 53-21-104: 53-21-166*}

Section 2. Section 53-21-127, MCA, is amended to read:

"**53-21-127. (Temporary) Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not mentally ill or seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed.

(2) (a) If it is determined in a proceeding under 53-21-121(1)(a) that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court may authorize the chief medical officer of a facility to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration, and if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the same committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the facts upon which it found involuntary medication to be necessary.

(3) If it is determined in a proceeding under 53-21-121(1)(b) that the respondent is mentally ill within the meaning of this part, the court shall order that he receive treatment for a period of no more than 30 days. The court shall choose the least restrictive course of treatment reasonably available to the respondent. The court must make a separate finding, setting forth the reason therefor if the order includes a requirement of inpatient treatment or involuntary medication. The court may not order inpatient treatment in the Montana state hospital at Warm Springs under this subsection (3). The respondent may not be required to pay for court-ordered treatment unless he is financially able.

(4) Before ordering any treatment for a respondent found to be mentally ill under subsection (3), the court shall make findings of fact that treatment appropriate to the needs of the respondent is available. The court shall also indicate on the order the name of the facility that is to be responsible for the management and supervision of the respondent's treatment. No person may use physical force to administer medication. A court

may use any legal means to enforce an order to take medication, including immediate detention not to exceed 72 hours, until the mentally ill person can be returned to the court. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-127. (Effective July 1, 1997) Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed.

(2) (a) If it is determined that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court may authorize the chief medical officer of a facility to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration, and if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the same committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The court shall

EXHIBIT 1
DATE 2-4-95
HB 41

enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the facts upon which it found involuntary medication to be necessary.""

{*xInternal References to 53-21-127:*

41-5-523	*53-21-102*	*53-21-128*	*53-21-128*
53-21-128	*53-21-128*	*53-21-128*	*53-21-128*
53-21-128	*53-21-128*	*53-21-135*	*53-21-181*
53-21-195	*53-21-195*	*53-21-197*	*53-21-197*
53-21-198	*53-21-198*	*53-21-198*	*53-21-412*}

EXHIBIT 2
DATE 2/4/95
HB 60

MONTANA ADVOCACY PROGRAM, Inc.

316 North Park, Room 211
P.O. Box 1680
Helena, Montana 59624

(406)444-3889
1-800-245-4743
(VOICE - TDD)
Fax #: (406)444-0261

To: Dan Anderson, DCHS
From: Andree Larose
Date: February 1, 1995

Subject: HB 60, Youth Commitment

Proposed Amendments to HB 60

Page 4 of HB 60. Following line 15. Add new section.
Section 3. **Involuntary commitment of persons under the age of 18.** A person under the age of 18 determined by the court to be seriously mentally ill may be ordered to receive treatment appropriate to the child's mental health needs consistent with the disposition alternatives available under 53-21-127. Public funds may be expended for the costs of placement and treatment only pursuant to established criteria of programs authorized by the state for the provision of mental health services to persons under the age of 18. No parent shall be required to relinquish legal custody of his or her child to the state of Montana in order for the child to receive mental health services provided under this part. Nothing in this section affects the state's authority to obtain custody of children under the provisions of Title 41.

Page 2 of amendments to HB 60, propose that Section 41-5-523(1)(b)(iii) read as follows:

(iii) in the case of a youth in need of supervision or a delinquent youth who is determined by the court to be seriously mentally ill, as defined in 53-21-102, based on the testimony of a professional person, as defined in 53-21-102, the youth is entitled to all the rights provided for adults under 53-21-114 through 53-21-119. A seriously mentally ill youth committed to the department under this section must receive treatment appropriate to the youth's mental health needs consistent with the disposition alternatives available under 53-21-127 and other mental health services consistent with those provided to seriously mentally ill youth pursuant to section 3*(new section above)*, including case management services. A youth may not be committed to a state youth correctional facility. A youth determined by the court to be seriously mentally ill after placement by the department in a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives under 53-21-127.

cc: Al Smith & Kelly Moorse, BOV
David Hemion, Mental Health Association
Pat Melby
Beda Lovitt, DCHS
Hank Hudson, Ann Gilkey, Shirley Brown, DFS
Candy Wimmer, Board of Crime Control

For subcomm ~ not edited

EXHIBIT 3
DATE 2/4/95
HB 84

Amendments to House Bill No. 84
First Reading Copy

Requested by Rep. Soft's Subcommittee
For the Committee on the Judiciary

Prepared by John MacMaster
January 30, 1995

1. Page 1, line 19.
Following: "placed"
Insert: ", after consideration of the recommendations of the professionals providing treatment to the defendant,"

2. Page 1, line 20.
Strike: "institution"
Insert: "facility"

3. Page 1, line 22.
Following: "may"
Insert: ", after considering the recommendations of the professionals providing treatment to the defendant,"
Strike: "institution"
Insert: "facility"

EXHIBIT 4
DATE 2/4/95
HB 117

To: John MacMaster, Legislative Council

From: Al Smith, Legal Services, Board of Visitors

Re: Proposed language to House Bill No. 117

This legislation was introduced in response to the recent Vilensky and Curtis cases, in which the Montana Supreme Court said the statutes did not provide for forced medications during the assessment of capacity to proceed to trial. Our concern is that this will address the statutory concerns raised by Vilensky, but it does not address the constitutional concerns that the Montana Court declined to address. Those issues are raised by the Riggins v. Nevada case, a 1992 U.S. Supreme court case. A copy of the pertinent page is attached.

DCHS wants to proceed without the following proposal.

In order to assure that those constitutional issues are addressed, and therefore to avoid appeals such as Vilensky, we would propose the following:

New Section
Insert following new subsection (b) at line 30 of page 1.

"Section 46-14-221 (2)(b)"

"(i) A defendant who is the subject of a petition for an order under this part has a right to a hearing prior to the entry of any order requiring compliance with the individualized treatment plan.

The court shall enter into the record a detailed statement of facts upon which it made its order. The court shall make specific findings that the state has proved an overriding justification for the order and that the treatment being ordered is medically appropriate."

EXHIBIT 5
DATE 2/4/95
HB 150

Amendments to HB 150

1. Page 1, line 20.
Following: "41-5-523"
Strike: "."
Insert: ", except that the committee may not substitute its judgement for that of a superintendent of a youth correctional facility regarding discharge of a youth from a state youth correctional facility."

2. Page 1, line 24.
Following: "~~a representative~~"
Insert: "two"

3. Page 1, line 27.
Strike: "a"
Insert: "either the chief"
Following: "officer"
Insert: "or the youth's probation officer"

4. Page 2, lines 17 through 20.
Strike: "<u>, except that the youth placement committee may not substitute its judgement for that of the superintendent of a state youth correctional facility who has the responsibility for decisions regarding the discharge of a youth from a state youth correctional facility.</u>"

5. Page 3, lines 6-7.
Following: "<u>shall</u>"
Strike: "<u>recommend another appropriate placement for the youth for consideration by the committee.</u>"
Insert: "be responsible for determining an appropriate placement for the youth."

6. Page 3, lines 15-16.
Strike: "<u>The youth placement committee shall submit a copy of the final recommendation for placement of the youth to the appropriate youth court.</u>"
Insert: "The youth court shall be notified of the final approved placement for the youth."