

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BOB CLARK**, on January 11, 1995, at
8:05 AM

ROLL CALL

Members Present:

Rep. Robert C. Clark, Chairman (R)
Rep. Shiell Anderson, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Ellen Bergman (R)
Rep. Bill Carey (D)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Daniel W. McGee (R)
Rep. Brad Molnar (R)
Rep. Debbie Shea (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)
Rep. Cliff Trexler (R)

Members Excused: Rep. William Boharski

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Joanne Gunderson, Committee Secretary

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

Committee Business Summary:

Hearing: HB 84, HB 108
Executive Action: HB 71, Tabled

HEARING ON HB 84Opening Statement by Sponsor:*{Tape: 1; Side: A}*

REP. ROBERT R. STORY, JR., HD 24, presented HB 84 to the committee. The purpose of this bill is to clarify the authority of the director of the Department of Corrections and Human Services regarding placement of a mentally ill person who has been convicted of a crime to an appropriate institution.

Proponents' Testimony:

Dan Anderson, Director, Mental Health Division, Department of Corrections and Human Services, said that currently they have 10 individuals who have been sentenced under this statute who have been found guilty of a crime, but because of the issue of mental illness at the time of commission of the crime, the judge has sentenced them to the custody of the director for placement in an institution. The intent of this legislation is to clarify that the director has the authority to make a judgment based upon the information he has available through correctional professionals and mental health professionals who work for the department for initial placement and later transfer the person to another institution as the needs of the person change.

Carl Keener, MD, Medical Director, Montana State Hospital, presented written testimony in support of HB 84. EXHIBIT 1

Opponents' Testimony:

Andree LaRosa, Montana Advocacy Program, said they are going on record in opposition but would be in support of it with some changes. The primary concern is that it allows the director the discretion to transfer people from a correctional facility to a mental health facility or back again. They have concerns relating to the constitutional right of due process under the bill as it is written. EXHIBIT 2 clarifies their position.

Questions From Committee Members and Responses:

REP. SHIELL ANDERSON asked Dr. Keenar to respond to Ms. Larosa's concerns about unfettered discretion placed in the hands of the director.

Dr. Keenar said he believed these people are sentenced to the department and that there are provisions already in place for transfers that protect an individual from transfer between the state prison and the hospital.

REP. DEB KOTTEL asked if the person who is sentenced under Title 46, Chapter 18 becomes mentally ill in the prison could not be transferred to the mental hospital without a civil commitment hearing.

Mr. Anderson said that a person being sentenced normally to the prison who then becomes mentally ill may be transferred in three ways to the state hospital: 1) The director has the authority for 10-day emergency transfer, 2) the person may come voluntarily, and 3) the person may come through civil commitment.

REP. KOTTEL asked if this then applies to those sentenced under Title 46-14-311 MCA.

Mr. Anderson answered, "Yes."

REP. KOTTEL asked if there are internal policies specifying a hearing prior to the decision of the director to remove that person from the mental health institution back to a correctional facility or if it was solely up to the director's discretion.

Mr. Anderson said that currently, because in their opinion, it is not clear what the director's authority is, they do not have a procedure.

REP. KOTTEL asked if, once the person is transferred back to the prison and the prison psychiatrist deems it necessary to transfer the person back to the mental hospital, there is a treatment team or some hearing or due process in governing that decision.

Mr. Anderson said that currently the prison staff and the mental hospital staff consult to determine whether it is an appropriate transfer.

{Tape: 1; Side: A; Approx. Counter: 18.7}

REP. KOTTEL asked if a prisoner could be sent to the mental hospital under the provisions of this bill by the prison warden as a way to punish that prisoner's negative behavior.

Mr. Anderson said that could only happen as part of a conspiracy of fairly large dimensions between the warden and the mental health professionals at the state hospital.

REP. KOTTEL asked if that means there is a procedural safeguard, in that the director of the prison would need the consent of the mental health professionals for such a transfer to the mental health institution and vice versa.

Mr. Anderson said the mental health staff and the correctional staff reach agreement and then the director will authorize transfer. It has happened that the prison staff and mental hospital staff disagree; then they have a conference and the director weighs the evidence and makes a decision.

REP. LOREN SOFT asked who determines whether these persons should be placed in the state hospital rather than the prison system.

Mr. Anderson said that often the judge goes beyond the language in the statute and specifies the Montana State Hospital, and generally then they comply with the order. But the statute is not completely clear that the director has the complete discretion to designate placement in a correctional or mental health facility.

REP. SOFT asked if the judge seeks the input from the mental health professionals or the director before he makes that decision.

Mr. Anderson said, "Not to my knowledge." He said there may be consultation with the probation system in terms of presentence investigation.

REP. SOFT asked what the intervening mechanism would be to ensure the input from mental health professionals in the placement decision.

Mr. Anderson said it would make the most practical sense to make that evaluation at the state hospital.

REP. SOFT stated that even though the bill is written placing the authority with the director, he believed that the decision to make the transfer is done by the professional team treatment in the location.

Mr. Anderson said that they have a great deal of input, but it really should go to the director for the ultimate decision. It would be hard to imagine a situation where the director would ignore the consensus of the state hospital and the prison staffs.

{Tape: 1; Side: A; Approx. Counter: 28.6}

REP. LINDA MC CULLOCH asked what would keep someone from recommending a transfer to the prison because of economic factors.

Dr. Keenar stated that no one would be transferred without strong, documented evidence that the person either did not have a mental illness or had repeatedly refused attempts at treatment for mental illness.

REP. MC CULLOCH asked then if this would be governed by a recommendation from the treatment team.

Dr. Keenar said this would first be a decision by the treatment team wherever the individual is being treated and then be discussed with the prison, through the medical director and the director of the department with a recommendation of the medical director of the state hospital.

REP. MC CULLOCH asked **Ms. Larosa** to reiterate the changes she had testified would make the bill acceptable.

Ms. Larosa referred to her written testimony to clarify their position. She believes these changes will ensure due process to the individual before they are transferred, still enables the department to accomplish that transfer and meets the constitutional requirement. **EXHIBIT 2**

REP. MC CULLOCH asked if this means that every time a person is to be transferred between the facilities, a court hearing would be necessary.

Ms. Larosa answered that it would take a court hearing for transfer into a correctional facility. At the outset that person would be placed in a mental health facility and not directly to the prison. They believe that is appropriate since the court would have heard the evidence which found the person guilty by reason of a mental illness, disease or defect.

{Tape: 1; Side: A; Approx. Counter: 32.3}

REP. LIZ SMITH asked how this grew out of internal procedures of the Montana State Hospital working toward accreditation standards established because of a law suit charging a wrongful blending of criminals with the mentally ill.

Dr. Keenar replied that these people in the hospital cannot be mixed with civil commitments now.

REP. SMITH cited the need for a psychiatrist at the prison to meet the needs of the growing population of the mentally ill at that facility. She asked if this gives clarity as to placement.

Dr. Keenar said this facilitates the process for getting treatment for an inmate who may need treatment who has already been sentenced as guilty, but who was mentally ill at the time of the offense.

REP. SOFT asked if **Mr. Anderson** would concur with the amendments proposed by **Ms. Larosa**.

Mr. Anderson said that it would change nearly entirely what they are trying to accomplish. They believe it is appropriate to give the director the authority to transfer without the necessity of going back to the court each time.

REP. SOFT agreed it would substantially change the bill, but questions the total authority in the hands of the director. He asked if they would be open to changing the wording to reflect that a client could be placed in an appropriate facility for custody, care and treatment and then the inclusion of wording that a treatment team could transfer based on their evaluation.

Mr. Anderson asked if he understood that the director would still be in the process, but his decision would be based on the evaluation by appropriate professionals. He said he had no problem with that.

CHAIRMAN CLARK relinquished the chair to **VICE CHAIR ANDERSON**.

REP. JOAN HURDLE asked that if the professional team gives input while the director makes the ultimate decision currently, what is the necessity of this bill.

Mr. Anderson answered that they are not currently clear about the authority to transfer these individuals between institutions. But there are other situations in which the treatment teams can make a determination about an appropriate transfer.

REP. HURDLE asked for specifics of the membership of such a professional treatment team.

Mr. Anderson said it would consist of a psychiatrist, a psychologist, a social worker, a registered nurse, and a member of the rehabilitation staff. They would also try to have a member of the direct care staff present.

REP. HURDLE asked if this is a written recommendation and determination.

Mr. Anderson said the treatment plan consists of the written record as well as progress notes.

REP. HURDLE asked if there is a sign-off on that written record for each member of the team.

Dr. Keenar said that each member should sign off on the treatment plan.

CHAIRMAN CLARK resumed the chair.

CHAIRMAN CLARK asked for the average length of time it takes to get a court order to have a person transferred.

Dr. Keenar said it can happen fairly quickly if there is no objection. However, he cited an example where there have been objections and it has taken so long the sentence is near expiration and the patient has not received any treatment.

CHAIRMAN CLARK asked if this bill would give the authority to transfer the person to the prison rather than to discharge the patient.

Dr. Keenar said that this bill would have given the director the authority on their recommendation to transfer to him to the prison at the point where he refused treatment. As they have waited for the right to treat him, his mental condition has

deteriorated and at that point, they would not transfer him to the prison, but would rather go for guardianship and treatment. Under normal conditions, it would give the authority to transfer to the prison at the point of refusal of treatment and upon release from the prison would be under stricter supervision than upon release from the hospital. In this specific case, this would not be the case, but this is an example of how it would work in most cases.

REP. SOFT asked **Mr. Anderson** if he would be open to working with him on the amendments.

Mr. Anderson said he would.

REP. STORY closed recommending the committee approve the bill.

CHAIRMAN CLARK closed the hearing on HB 84.

{Tape: 1; Side: A; Approx. Counter: 47.4}

HEARING ON HB 108

Opening Statement by Sponsor:

REP. JOHN COBB, HD 50, feels that HB 108 basically requires persons who have been convicted of a dangerous drug misdemeanor to attend a dangerous drug information course in the same way that those convicted of DUI must take an information course as well as possible treatment.

Proponents' Testimony:

Darryl Bruno, Administrator, Alcohol and Drug Abuse Division, said that this bill is supported by the Department of Corrections and Human Services, Alcohol and Drug Division as the agency responsible under 53-24-208 MCA for approving facilities eligible to provide the court school. They are also the agency responsible for providing the counselors who would do the assessment evaluation. They also develop the standards for the DUI court school now. They believe the program could easily be merged with the current curriculum with very minimal cost. They believe the court school should be self-supporting like the DUI course is supported now.

Pat Melby, Rimrock Foundation, Billings, spoke in support of this bill. They believe they can offer this course at minimal expense.

Kathy McGowan, Chemical Dependency Programs of Montana, said the organization is comprised of inpatient and outpatient chemically dependent persons. These members were polled and they believe the present programs can be easily adapted to include this program and they do support this bill.

Opponents' Testimony:

None.

{Tape: 1; Side: a; Approx. Counter: 54.5}

Questions From Committee Members and Responses:

REP. BRAD MOLNAR asked if there are enough court schools in the state to accommodate people who live in small or more remote communities.

Mr. Bruno said that there are services available in virtually every county in the state that would accommodate these people.

REP. ANDERSON agreed that this program should be self-funding. He asked if language could be included to alert the court that they may impose this requirement of the defendant. If not, he wanted a fiscal note for what this would cost the state.

REP. COBB read a statement that said there would be no fiscal impact of this bill and that a person convicted of a dangerous drug offense would be responsible for the cost of the informational course. Under the provisions of this bill, the person is liable for their own bill. He also stated that there are 54 treatment centers certified to provide this course.

REP. ELLEN BERGMAN asked if the person shows that they cannot pay, who would pay.

Mr. Bruno said that the DUI court school is self-supporting so most do pay. Those who are not able to pay are billed and it is collected through judgment of the court. If they are indigent, the program absorbs the cost which is passed on to other offenders.

REP. MC CULLOCH asked if there is currently a program for the more remote areas.

REP. COBB said he would provide a list of the 54 facilities.

REP. MC CULLOCH asked if these were close enough to avoid an overnight stay.

Mr. Bruno said the rules require the sessions be held in successive weeks, but they do make exceptions in rural counties where services are difficult to access one-day court schools.

REP. SOFT asked is there is any kind of community work program for those who are unable to pay.

Mr. Bruno said he was not aware of any.

Closing by Sponsor:

{Tape: 1; Side: A; Approx. Counter: 61.9}

REP. COBB closed by stating the rule dealing with being declared indigent and have someone else pay for the court school. He believes that this bill will help people who might be deterred from risking the conviction because of influence to avoid the requirement of going once a week to take the courses.

CHAIRMAN CLARK closed the hearing on HB 108.

{Tape: 1; Side: B}

EXECUTIVE ACTION ON HB 71

Motion: REP. ANDERSON MOVED HB 71 DO PASS.

Discussion: REP. MOLNAR asked that copies of an amendment he requested to be drafted be distributed. EXHIBIT 3

Motion: REP. MOLNAR MOVED FOR ADOPTION OF THE AMENDMENT.

Discussion: REP. MOLNAR stated that this amendment states punitive damages would not be split as in the DeBruycker bill, but rather it would all go to the state. It is his personal opinion that punitive measures turn the court system into a lottery system. They are done for the purpose of financial gain for the attorney. He believes that the person has already lost his case and the victim has already made whole by the court. If punitive damages are also sought, he believes it should be on a pro bono basis.

CHAIRMAN CLARK stated he would have an amendment that would address that later on.

REP. HURDLE stated she thought this amendment would act as a disincentive to this kind of thing.

{Tape: 1; Side: B; Approx. Counter: 5.7}

REP. KOTTEL strongly believes that punitive damages have a role in our society. She could not recall any testimony or evidence that punitive damages have been out of line in Montana. She believes this becomes a 100% tax to the injured party as well as a tax to the attorney in terms of their time. She disagreed with REP. MOLNAR'S belief that the victim had already been justly and fully compensated. She asked the committee not to attempt to do a revenue-generating bill for the state with language that will ensure no punitive damages will be awarded in this state.

REP. SOFT wanted to go on record that he supports the amendment 100%.

CHAIRMAN CLARK asked **REP. KOTTEL** to elaborate on her example showing the difference between cases where punitive damages are allowed.

REP. KOTTEL stated that generally, under Montana law, punitive damages are not allowed in civil damage dispute cases or in contract dispute cases. They are allowed in intentional tort cases and when there is gross negligence. She stated that punitive damages are brought against corporations which do not serve jail time. She cited the baby food case as support for her point of view.

{Tape: 1; Side: B; Approx. Counter: 14.9}

REP. DUANE GRIMES asked **REP. MOLNAR** for clarification of the amendment changing the amount to be given to the state at 100% and that it does not allow for attorney fees to be taken out of the punitive award.

REP. MOLNAR said that was correct.

REP. GRIMES asked if **REP. MOLNAR** had talked to the sponsor of the bill about this substantial change.

REP. MOLNAR replied that he had not; however, he said **REP. DEBRUYCKER** had stated in testimony that he didn't care what the percentage mix was.

REP. GRIMES wanted to know if **REP. MOLNAR** had considered any other percentages and had he considered prorating attorney's fees so that attorney's costs could be compensated.

REP. MOLNAR said he had considered others and did not go with them because it went contrary to what he is trying to accomplish. He is trying to accomplish a chilling effect on the lottery system of the courts. He is not saying that the process of punitives cannot be used to accomplish a social end, but it should be done for the pure reason without compensation.

{Tape: 1; Side: B; Approx. Counter: 18.0}

REP. ANDERSON stated a side effect of punitive damages is that the money has to go somewhere. This amendment will effectively do away with punitive damages. He feels that punitive damages should be kept where appropriate.

CHAIRMAN CLARK asked if **REP. MOLNAR** would modify his amendment to allow the plaintiff to receive a portion of the punitive damages that are awarded.

REP. MOLNAR said that he would if that was the only way to get this through for the purpose of moving toward tort reform. The argument brought speaks to the reason for the amendment in his opinion.

CHAIRMAN CLARK said there was a call for the question.

Vote: Roll call vote was taken. Motion failed 12 - 6 on roll call vote. **EXHIBIT 4**

CHAIRMAN CLARK proposed an amendment for HB 71.

John MacMaster read the amendment, page 3, line 9, strike the words "the Board of Regents for distribution to the university system" and insert the following words, "to a state special revenue fund to be used by the Supreme Court to computerize and automate the district courts and courts of limited jurisdiction." On page 1, line 7, strike "UNIVERSITY SYSTEM" and insert "SUPREME COURT". He said that **CHAIRMAN CLARK** was adding to this amendment the part of the **MOLNAR** amendment that provides that the attorney cannot charge or be paid on any part of the punitive damages this being numbers 2, 3, and 9 of the **MOLNAR** amendment. The rest of the **MOLNAR** amendment would be out.

{Tape: 1; Side: B; Approx. Counter: 26.6}

CHAIRMAN CLARK requested that for purposes of discussion this proposal is bifurcated and he **MOVED FOR HIS FIRST AMENDMENT**.

Discussion: **REP. GRIMES** asked for the rationale for using the funds for the court system.

CHAIRMAN CLARK relinquished the chair to **REP. ANDERSON** for the purposes of discussion and action on his motion. He stated that this is proposed as a funding source for the automated court system. He believes it is a user-type fee item.

REP. DANIEL MC GEE wanted to know how attorney's fees are determined in a civil case.

REP. KOTTEL said that the most standard method is contingent fee contract. Usually it is one third.

REP. DEBBIE SHEA asked for clarification of the computerized system this would fund.

CHAIRMAN CLARK described the current inadequate system.

REP. DIANA WYATT asked about the use of these funds once the system is on line.

CHAIRMAN CLARK responded that this would be in a special revenue account which would mean the Supreme Court would still have to come to the legislature for release of the funds, so if any money is left can be used at the discretion of the legislature.

REP. WYATT asked to strike "to automate" and from that point on. She asked as a follow-up of **Mr. MacMaster** if we are to use the Codes to specify specifically how the funds are to be used.

Mr. MacMaster replied that if it is designated to the Supreme Court without the qualifying wording, it could be used however they wanted to use it as long as it is appropriated at every session of the legislature. Specifying the use of funds is common practice in drafting Montana law.

CHAIRMAN CLARK clarified that the term is "automated court system" not "to automate the court system."

{Tape: 1; Side: B; Approx. Counter: 37.4}

REP. BILL CAREY asked if this puts the Court in a potential conflict of interest position.

Mr. MacMaster said he has heard that that will be argued. Punitive damages are not always awarded by a judge, but by a jury in most cases.

REP. CAREY asked if at the appeal level the Court would rule whether those punitive damages were sufficient and if this would bring a question of conflict of interest.

Mr. MacMaster is sure it will be argued, but felt that it would not be a common issue.

REP. GRIMES asked if there were problems allocating this to the general fund and since it is not a stable revenue source, how this would be accumulated.

CHAIRMAN CLARK felt that specific funding was more effective use of this money. He wants it earmarked but not without scrutiny of the legislature.

REP. GRIMES asked if this creates a new program and if it would have to go to the Appropriations Committee and generate quite a bit of discussion.

CHAIRMAN CLARK answered that Appropriations would distribute the funds. The Supreme Court would have to justify the amount they are trying to get from this account.

REP. MOLNAR asked if it is a program that already exists.

CHAIRMAN CLARK replied that that is true, the program exists.

REP. CHRIS AHNER asked about the allocation of percentages.

CHAIRMAN CLARK said that 60% of the punitive damages would go to the state, 80% of that 60% would go to this program, and 20% would go to **REP. DEBRUYCKER'S** original proposal for the School for the Deaf and Blind.

Vote: The amendment passed by a voice vote.

Motion: CHAIRMAN CLARK MOVED HIS SECOND AMENDMENT WHICH WOULD DENY ATTORNEY FEES ON THE PUNITIVE DAMAGES BUT ALLOW THE PLAINTIFF TO RECOVER 40% OF THE PUNITIVE DAMAGE AWARD WITH NO ATTORNEY FEES.

REP. MC GEE asked why no attorney fees would come out of the 40%.

CHAIRMAN CLARK said that he echoed REP. MOLNAR'S reasoning that it is simply a financial enhancement for attorneys.

REP. SOFT stated that the attorney's fees are still awarded in compensatory damages.

REP. GRIMES asked if this means since the state would not be awarding the attorney fees, that the client and the attorney could privately agree to compensation. Would this then shift the pressure to the plaintiff to decide the amount of payment?

CHAIRMAN CLARK stated that line 9 on REP. MOLNAR'S amendment states that attorney's fees may not be charged. In his opinion, what the plaintiff does with their money after settlement is their business.

Mr. MacMaster said that under the amendment, attorneys may not charge for punitive damages. If the plaintiff wins, he can legally give part to the attorney, but the attorney cannot contract to do so.

REP. KOTTEL restated her opinion about the effect of passage of this bill. Further she suggested that there are better ways to produce revenue for the state and finally that no lawyer awards punitive damages, rather the jury makes that decision.

REP. GRIMES asked CHAIRMAN CLARK if this approach is the same as the Oregon model, or if there is any precedent for this choice of the split.

CHAIRMAN CLARK cited states that have similar legislation.

REP. KOTTEL stated that to her knowledge, no state restricts lawyers from receiving revenue from punitive damages.

REP. MOLNAR stated his opinion that if attorney's fees are excluded, courts will be freed up. He believes that when the money is left in, it becomes a predatory measure rather than a punitive measure.

REP. KOTTEL disagreed with this point of view. Further, she asked if it had been established how many frivolous cases had been tried in the state. She felt that the number was too small to be considered in evaluating the effect of clogging the court system.

REP. CAREY wants to see a chilling effect on the corporations who act irresponsibly toward the public and that removing attorney fees would not accomplish this.

REP. WYATT asked if, without objection, members of the audience could testify regarding the number of cases in Montana.

John Alke stated he had no precise data to answer this question.

{Tape: 2; Side: A}

Russell Hill stated that a compilation through the publication, MONTANA LAW WEEK, from the period August 1988 through June 1994 showed 235 cases which were punitive but they have not completed the study. Their impression is that punitives are at issues about 10 times a year in the entire state.

REP. SOFT wondered about putting a limit on the fees that would be awarded in the punitive damage portion of the judgment.

REP. MC GEE sees a rationale behind attorneys being paid for what they do. He suggested that the standard contingency can come out of the 40% award instead of out of the total award.

REP. MC CULLOCH asked if in the original bill the attorney fees came off the top of the total punitive award or out of the plaintiff's percentage.

REP. ANDERSON answered that it comes out of the total award.

REP. MOLNAR discussed the chilling effect on society because of the entire litigant mentality that exists and he believes this is the opportunity to make a difference.

REP. CLIFF TREXLER urged that the committee dispose of the amendment and get back to the original question of where the money goes.

John MacMaster stated that the intent of the amendment is to contain items numbered 2, 3, and 9 of the original printed Molnar amendment. The effect would be that with respect to punitive damages, an attorney can't be paid a fee once punitives are awarded.

REP. ANDERSON called for a roll call vote on the amendment as stated above.

Vote: Amendment FAILED by a roll call vote of 14-4. EXHIBIT 5

CHAIRMAN CLARK asked if there were any other amendments to HB 71.

Motion: REP. SMITH MOVED FOR AN AMENDMENT TO SUNSET SPECIFICATION OF FUNDING OF THREE YEARS FROM OCTOBER 1, 1995, AFTER WHICH THE MONEY WILL REVERT TO THE GENERAL FUND.

REP. KOTTEL suggesting modifying the amendment to be sunsetted on a year when the legislature meets.

REP. SMITH agreed to modify the amendment to read two years instead of three.

Mr. MacMaster suggested an amendment to the bill which could change page 3, line 10 to provide that the money goes into a specific 20% state revenue fund to be used by the School of the Deaf and Blind. This would provide for sunsetting the full 60% that has been designated for special funds.

Motion: **REP. SMITH MOVED THAT THE 60% BE REVIEWED IN TWO YEARS.**

REP. MC CULLOCH wondered if two years would be sufficient time.

REP. SOFT asked if "review" means the same as "sunset."

Mr. MacMaster said that this part of the bill would only be in effect for the two years beginning October 1, 1995. At the end of that time, the money would go to the general fund unless the legislature extends the sunset by amendment.

REP. SOFT recommended extending the time in the amendment to four years instead of two.

REP. WYATT reinforced that by recommending a substitute amendment by striking two years and adding four years.

Vote: Motion to amend by adding a four-year sunset clause to the portion of the bill relating to distribution of the funds **PASSED** by a show of hands vote.

Motion: **MC GEE MOVED TO AMEND THE BILL BY ADDING THE WORDS, "ATTORNEYS' FEES MAY ONLY BE CHARGED, PAID OR COLLECTED FOR WORK DONE OR COSTS ACCRUED TO OBTAIN PUNITIVE DAMAGES TO THE PLAINTIFF'S PORTION OF THE AWARD."**

Discussion: **REP. AUBYN CURTISS** spoke in support of the amendment.

Vote: Motion to adopt the amendment carried 10 - 8.

{Tape: 2; Side: A; Approx. Counter: 28.2}

Mr. MacMaster asked if the amendments contemplate whether the attorney's fees can be charged for the work done to collect the whole 100% and then only collect it out of the plaintiff's 40%; or can attorney's fees be charged for 40% of what is collected and that fee collected out of the plaintiff's 40%.

REP. MC GEE replied that the portion the attorney can charge against is the plaintiff's 40%.

Motion: REP. GRIMES MOVED TO ACCEPT THE CLEAN UP AMENDMENT AS PROPOSED BY MR. MAC MASTER WHICH IS ON PAGE 3, LINE 10, AFTER 20% TO, CLARIFY IT BY SAYING, "A STATE SPECIAL REVENUE FUND TO BE USED BY....."

Vote: Motion to adopt this amendment carried 17 - 1, REP. WYATT voting no.

Motion: A MOTION WAS MADE DO PASS AS AMENDED.

Discussion: REP. ANDERSON discussed his reasons for voting against the bill and stated that he plans to move to table the bill after discussion. In summary, he agrees that this becomes a lottery effect for the state and sets up a conflict of interest for the Supreme Court and its credibility will come into question in the future.

{Tape: 2; Side: A; Approx. Counter: 32.9}

REP. GRIMES concurred with both Mr. Alke's and REP. ANDERSON'S remarks.

CHAIRMAN CLARK disagreed with both REPS. GRIMES AND ANDERSON. He cited the states' experience with similar systems to support his point of view. He believes it would rather be a necessary first step toward Tort law reform.

MOTION: REP. ANDERSON MOVED TO TABLE.

Vote: The motion to table passed by a roll call vote of 10 - 8.
EXHIBIT 6

CHAIRMAN CLARK said that Executive Action would be taken on House Bills 82, 83, and 26 on the following day.

MOTION: REP. MC GEE MOVED TO ADJOURN.

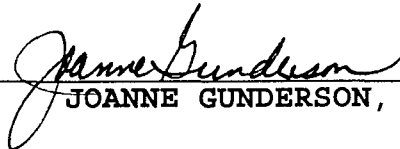
{Comments: These minutes are complete on two 90-minute tapes.}

ADJOURNMENT

Adjournment: 11:05 AM



BOB CLARK, Chairman



JOANNE GUNDERSON, Secretary

BC/jg

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 1/11/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Boharski			✓
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓ <i>late</i>	✓	
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

TESTIMONY ON HB 84

by Carl Keener, M.D., Medical Director, Montana State Hospital

House Bill No. 84 would allow the Director of Corrections and Human Services to transfer individuals sentenced as guilty but mentally ill to the most appropriate setting. Individuals who might need transfer fall into three main groups.

1. Those who were misdiagnosed initially or recovered quickly from any mental illness soon after being placed at the hospital.
2. Those who have a mental illness but refuse to cooperate with treatment.
3. Those who do not respond to any treatment, such as certain personality disorders and delusional disorder.

For example, one individual comes to mind who was sentenced under this act who soon after admission showed no signs of mental illness. Not only did symptoms of any mental illness disappear, but the patient interfered with the treatment of other patients by suggesting they not participate in therapy, not take medication, or not cooperate with the treatment program. Such individuals also tend to intimidate, exploit, and victimize seriously mentally ill patients with whom they are placed. For example, one individual with no visible means of support constantly has money. Our only explanation is that he is exploiting other patients by outwitting them. Such activities by these individuals interfere with the treatment of the seriously mentally ill, and in those cases where it recreates victimization can actually make the patient worse. One such individual had secured a \$10,000 loan from a patient until staff learned of the act and prohibited completion of the illicit financial arrangement.

Perhaps most important is the fact that such individuals, when ready for discharge from the hospital, are not accepted by the mental health centers because they have no identifiable mental illness. The mental health center correctly asks what they can do for them as there is nothing to treat. It often is more helpful to the individual, and serves the interest of society better, if that person can be transferred to the prison and released from the prison through appropriate programs of supervision and accountability.

It is counter-productive to keep someone who is guilty but mentally ill in the State Hospital when such individual then refuses treatment which might help him in not reoffending. Some such individuals would be more appropriately transferred to the prison. I might add that this is also less expensive for the state.

There are a small number of mental conditions for which there is no treatment to date, or which are resistant to known treatment. Perhaps the best example of this would be some personality disorders where the individual has firmly entrenched personality traits of manipulation, lying, exploitation, and a total insensitivity to the needs and welfare of others. In some situations such calloused individuals would be more appropriate for a prison setting.

The bill also provides for convicted inmates who are or become mentally ill to be quickly transferred to the State Hospital for appropriate treatment of their mental illness.

Overall, I feel the provisions of House Bill No. 84 best serve both the defendant and society in managing individuals who present criminal and antisocial behavior.

EXHIBIT 2
DATE 1/11/95
HB 84

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

January 11, 1995

Representative Bob Clark, Chairperson
House Judiciary Committee
State Capitol
Helena, Montana 59620

Re: HB 84

Mr. Chairman and Members of the Committee:

For the record, my name is Andree Larose and I am a staff attorney for the Montana Advocacy Program. Montana Advocacy Program is a non-profit organization which advocates the rights of individuals with disabilities. We are here to testify in opposition to HB 84, as it is currently worded. With some changes, which I will describe, we would be in support of the bill.

1. We oppose the grant of unfettered discretion to the department to transfer inmates between correctional facilities and mental health facilities. HB 84, as proposed, raises constitutional questions. One U.S. Supreme Court decision has held that a state cannot transfer an inmate to a mental health facility without the person's consent or without following the civil commitment process.

2. We would support the adoption of HB 84 with certain amendments. We propose to delete the department's option of placing a defendant found guilty by reason of mental disease or defect in a correctional facility at the outset. Instead, the statute should allow the commitment of the individual to the department for placement in an appropriate mental health facility. After all, this is a person who has already been found, after an extensive judicial proceeding, to suffer from a mental disease or defect. If there is a need to transfer a criminally committed patient to the correctional facility, we propose that such a transfer be made by the court, utilizing the procedures outlined in subsection 3 for the release of a defendant who no longer suffers from a mental disease or defect.

3. We propose that Section 46-14-312, MCA, as proposed by the department, be amended as follows:

46-14-312. Sentence to be imposed. (1) *remains the same.*

(2) If the court finds that the defendant at the time of the commission of the offense suffered

from a mental disease or defect as described in 46-14-311, any mandatory minimum sentence prescribed by law for the offense need not apply and the court shall sentence the defendant to be committed to the custody of the director of the department of corrections and human services to be placed in an appropriate (~~delete "correctional or"~~) mental health facility (~~delete "institution"~~) for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). (~~Delete "The director may subsequently transfer the defendant to another correctional or mental health institution that will better serve the defendant's custody, care, and treatment needs."~~) The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) Either the director or a defendant whose sentence has been imposed under subsection (2) may petition the sentencing court for review of the sentence or transfer to a correctional facility, if the professional person certifies that:

(a) *the remainder of this statute remains the same.*

We urge you to vote amend this bill in a manner which I have suggested. Thank you for your time.

Sincerely,

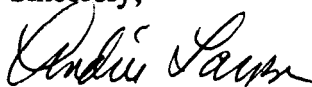

Andree Larose

EXHIBIT 3
DATE 1/11/95
HB 71

Amendments to House Bill No. 71
First Reading Copy

Requested by Rep. Molnar
For the Committee on the Judiciary

Prepared by John MacMaster
January 9, 1995

1. Title, line 5.

Strike: "60"

Insert: "100"

2. Title, line 11.

Following: "PROVISIONS;"

Insert: "PROHIBITING ATTORNEY FEES FROM BEING CHARGED, PAID, OR
COLLECTED FOR OBTAINING PUNITIVE DAMAGES;"

3. Page 1, line 17.

Following: "state"

Insert: "-- attorney fees"

4. Page 3, line 4.

Following: "judgment,"

Insert: "all"

5. Page 3, lines 4 through 7.

Strike: "are payable" on line 4 through "(ii) 60%" on line 7

Insert: "that are awarded must be paid"

6. Page 3, line 9.

Strike: "(A)"

Insert: "(i)"

7. Page 3, line 10.

Strike: "(B)"

Insert: "(ii)"

8. Page 3, lines 23 and 28.

Strike: "60%"

Insert: "100%"

9. Page 4, line 2.

Insert: "(10) Attorney fees may not be charged, paid, or
collected for work done or costs accrued to obtain punitive
damages."

HOUSE OF REPRESENTATIVES

ROLL CALL VOTE

Judiciary Committee

EXHIBIT 4
DATE 1/11/95
HB 71

DATE 1/11/95 BILL NO. 71 NUMBER M. Amend

MOTION: ADOPTION OF AMENDMENT TO HB 71 see EXHIBIT 3
Amendment proposed by REP. MOLNAR

NAME	AYE	NO
Rep. Bob Clark, Chairman		✓
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner		✓
Rep. Ellen Bergman	✓	
Rep. Bill Boharski		
Rep. Bill Carey		✓
Rep. Aubyn Curtiss	✓	
Rep. Duane Grimes		✓
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee	✓	
Rep. Brad Molnar	✓	
Rep. Debbie Shea		✓
Rep. Liz Smith	✓	
Rep. Loren Soft	✓	
Rep. Bill Tash		✓
Rep. Cliff Trexler		✓

HOUSE OF REPRESENTATIVES

EXHIBIT 5DATE 1/11/95HB 71

ROLL CALL VOTE

Judiciary Committee

DATE 1/11/95 BILL NO. 71 NUMBER C. Amend.MOTION: TO AMEND BY ELIMINATING PAYMENT OF ATTORNEY FEES
OUT OF PUNITIVE DAMAGES AWARDS.

NAME	AYE	NO
Rep. Bob Clark, Chairman	✓	
Rep. Shiell Anderson, Vice Chairman, Majority		✓
Rep. Diana Wyatt, Vice Chairman, Minority		✓
Rep. Chris Ahner		✓
Rep. Ellen Bergman		✓
Rep. Bill Boharski		
Rep. Bill Carey		✓
Rep. Aubyn Curtiss		✓
Rep. Duane Grimes		✓
Rep. Joan Hurdle		✓
Rep. Deb Kottel		✓
Rep. Linda McCulloch		✓
Rep. Daniel McGee		✓
Rep. Brad Molnar	✓	
Rep. Debbie Shea		✓
Rep. Liz Smith		✓
Rep. Loren Soft	✓	
Rep. Bill Tash	✓	
Rep. Cliff Trexler		✓

HOUSE OF REPRESENTATIVES

EXHIBIT 6
DATE 1/11/95
HB 71

ROLL CALL VOTE

Judiciary Committee

DATE 1/11/95 BILL NO. 71 NUMBER _____

MOTION: Table as Amended

NAME	AYE	NO
Rep. Bob Clark, Chairman		✓
Rep. Shiell Anderson, Vice Chairman, Majority	✓	
Rep. Diana Wyatt, Vice Chairman, Minority	✓	
Rep. Chris Ahner		✓
Rep. Ellen Bergman		✓
Rep. Bill Boharski		
Rep. Bill Carey	✓	
Rep. Aubyn Curtiss		✓
Rep. Duane Grimes	✓	
Rep. Joan Hurdle	✓	
Rep. Deb Kottel	✓	
Rep. Linda McCulloch	✓	
Rep. Daniel McGee		✓
Rep. Brad Molnar		✓
Rep. Debbie Shea	✓	
Rep. Liz Smith		✓
Rep. Loren Soft		✓
Rep. Bill Tash	✓	
Rep. Cliff Trexler	✓	

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Judiciary

~~SEN~~ COMMITTEE

DATE 1/11/95

BILL NO. HB 108

SPONSOR(S) Rep Cobb

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Pat Melby	Rimrock Foundation	✓	
Kathy McGowan	Chem. Dep. Prog of mt	✓	
Mary McGuire	mt Clinical Mental Health Counselors Ass'n		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

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CS-14

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Judiciary COMMITTEE DATE 1/11/95

BILL NO. HB 84 SPONSOR(S) Rep STORY

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Carl L. Keener MD	Montana State Hosp	✓	
Dan Anderson	MH Division	✓	
Charles R. Brooks	Yellowstone Ct.		
Audrie Haroz		✓	✓
Mary			

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

wp:visbcom.man

CS-14