MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on January 9, 2003 at 8:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:
Sen. Duane Grimes, Chairman (R)
Sen. Dan McGee, Vice Chairman (R)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: Sen. Jeff Mangan (D)

Members Absent: None.

Staff Present: Judy Keintz, Committee Secretary
Valencia Lane, Legislative Branch

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

Committee Business Summary:
Hearing(s) & Date(s) Posted: SB 15, 1/3/2003; SB 55, 1/3/2003; SB 68, 1/3/2003
Executive Action: SB 55; SB 20; SB 13; SB 19 SB 56

HEARING ON SB 55

Sponsor: **SEN. BOB KEENAN, SD 38, BIGFORK**

Proponents: **Dan Anderson, Administrator of the Addictive and Mental Disorders Division, Department of Human Health and Human Services**

Al Davis, Montana Mental Health Association
Beta Lovitt, Montana Psychiatric Association
Mike Barrett

Opponents: **None.**

Opening Statement by Sponsor:

SEN. BOB KEENAN, SD 38, BIGFORK, introduced SB 55 which revises community commitment law. The statute gives the courts the authority to involuntarily commit persons to community services rather than the state hospital. During the 2001 Session, changes were made to allow a community commitment for a period of up to six months. An involuntary commitment to the Montana State Hospital can be no greater than three months. The HJR 1 Public Mental Health Services Study Committee was concerned that the statute did not adequately delineate the circumstances for a longer commitment to a less restrictive setting. This bill establishes criteria for such a determination.

Proponents' Testimony:

Dan Anderson, Administrator of the Addictive and Mental Disorders Division, Department of Human Health and Human Services, stated that their agency becomes involved in mental health commitments in two ways. If the person is committed to the state hospital, they provide hospital level care. If the person is committed to the community-based option, in many cases they pay for that care through the Medicaid program. The current law is set up for a three month commitment while the community-based commitment is for six months. Senate Bill 55 states that the commitment is three months either at the state hospital or in a community-based placement, but in certain situations where there is a history that indicates a longer community commitment is necessary, this would be possible.

Al Davis, Montana Mental Health Association, rose in support of SB 55. He offered an amendment on page l, line 27, following the word "facility" they would like to add "within the previous twelve months". This line would read: "involuntarily committed for inpatient treatment in a mental health facility within the previous twelve months and the court determines that the". The current language would allow an admission made several years previously to a facility would be taken into account in making this determination.

Beta Lovitt, Montana Psychiatric Association, rose in support of SB 55. The doctors feel that this is another measure that will

help keep people out of in-patient treatment. This bill is in the interest of consumers.

Mike Barrett stated that he experienced mental illness in 1972. He has a degree in psychology. Common sense advice is significantly neglected. He is on welfare and lives with his mother. His father was a teacher. He is very certain that 100 percent rehabilitation is possible.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

CHAIRMAN DUANE GRIMES asked **SEN. KEENAN** to address the proposed amendment. **SEN. KEENAN** remarked that he talked to **Mr. Anderson** and it would be a little more difficult to have twelve months, but they do not have a problem with the amendment.

CHAIRMAN GRIMES referred to page 1, lines 25-29, of the bill and asked for further clarification of the language. **Susan Fox, Research Analyst for Legislative Services**, stated that there are restrictions in that a person who has previously been involuntarily committed or a person who has voluntarily committed himself to the state hospital or any mental health facility for treatment in the past, would not qualify under this language. The person would need to be involuntarily committed for in-patient treatment in a mental health facility so that restricts the situation to people who had had a higher level of mental illness in the past. The court determines that the admission of evidence is relevant to the criteria predictability. Section 53-21-126 (1)(d) determines that if this is the only criterion that brings the person to the court to be committed for a mental health commitment, they need to meet the required items set out. In Section 53-21-190 it states that the fact that you have been committed in the past cannot be used against you unless it is relevant to that case and time. If all these things are in place, a six month commitment is justified at the lesser restrictive environment. This allows the individual to stay in the community with their mental health provider and continue the support system that will allow the individual to come back to mental health more quickly. This may take a longer period of time than the more restrictive environment of the state hospital.

CHAIRMAN GRIMES summarized the issue by stating that if the respondent had a previous condition that required them to seek evaluation and treatment, either voluntarily or involuntarily, at a mental health facility, then they would be candidates for the longer treatment if case management or the other items existed. **Ms. Fox** added that a mental health facility can include out-

patient treatment. They made it clear that the individual had to have been involuntarily committed for in-patient treatment in a mental health facility previously. A high standard had to be met initially. Under Section 53-21-126 it sets out the four conditions the court looks at to see if the person needs to be committed to the state hospital. If the other criterion is met, the person can go straight to the state hospital for up to three months. A community commitment would need to be for six months. Now there are three choices. One choice is state hospital for three months if the higher level is met. If the conditions in 126(1)(d) are met, there are two choices of a three month commitment in the community or a six month commitment if the other conditions were in place. With the amendment, the person would need to have been involuntarily committed to an in-patient treatment in a mental health facility within the past twelve months.

CHAIRMAN GRIMES wanted to address the persons who have voluntarily sought treatment and faced many difficulties. He questioned how these persons would be affected. **Ms. Fox** stated that they could have the same community commitment, but only for a three month period.

CHAIRMAN GRIMES asked **Mr. Anderson** for his view on the amendment. **Mr. Anderson** stated that the amendment was okay. It narrows the individuals who can be subject to the six month community commitment. One clarification he would like to make is when the clock starts for the twelve month period. A person can be committed to the state hospital, recommitted, and then recommitted again. The second commitment is for a twelve month period. A person recommitted on January lst, might be discharged on December 31st. A week later he may have a serious problem in the community. He would want that person to be subject to the longer commitment as well. He would not want to measure the twelve months back to when he was committed but rather the twelve months back to when he was discharged from involuntary in-patient commitment. He had spoken to **Mr. Davis** and this seemed to be okay with him.

SEN. DAN MCGEE asked why a twelve month time element was critical to the bill. **Mr. Davis** stated that there needs to be a time limit or this could go back to childhood in commitment activity that took place at that time or the opinion that someone who is found to be mentally ill can be cured, stabilized, and functioning satisfactorily for a long period of time before this action might arise. We shouldn't be going back years to allow the individual to enter into the commitment process.

SEN. MCGEE remarked that the language on page 27 stated "and the court determines that the admission of evidence of the previous involuntary commitment is relevant to the criterion of predictability,". He questioned why this wasn't enough of a safeguard rather than placing a numerical time value in the language. **Mr. Davis** maintained that there needed to be a limitation on time. This would add clarification for the court and it would also narrow the focus on the number of individuals that could qualify for this admission.

Closing by Sponsor:

SEN. KEENAN closed on SB 55.

{Tape: 1; Side: B}

HEARING ON 15

Sponsor: **SEN. O'NEIL, SD 42, FLATHEAD COUNTY**

Proponents: **Mike Barrett**

Opponents: **John Connor, Chief Criminal Counsel for the Attorney General's Office and Supervisor of the Special Prosecutions Unit**

Opening Statement by Sponsor:

SEN. O'NEIL, SD 42, FLATHEAD COUNTY, introduced SB 15, a bill that would allow the court to commute a death penalty. Presently the court has at least two options in a murder case, a person can be sentenced to death or to life in prison. This bill would allow the court to sentence the person to death and commute it to a life in prison. This bill would prevent a prison riot. It gives more respect to the law. The appeal process takes up to 20 years before the individual is executed.

Proponents' Testimony:

Mike Barrett stated that he experienced mental illness in 1972. He has a degree in psychology. Common sense advice is significantly neglected. He is on welfare and lives with his mother. His father was a teacher. He is very certain that 100 percent rehabilitation is possible.

Opponents' Testimony:

John Connor, Chief Criminal Counsel for the Attorney General's Office and Supervisor of the Special Prosecutions Unit, raised a concern in that death penalty litigation is a very complicated and long established system of law. Altering the statutes generates a tremendous amount of litigation. If this bill were to pass, it appears the defendant would be put to death because of the commission of the second felony. He or she receives the death penalty on the first felony, but it is deferred until commission of the second felony. This could be seen as a mandatory death penalty, which is unconstitutional.

Questions from Committee Members and Responses:

SEN. MIKE WHEAT asked whether **Mr. Connor** was referring to the appellate process in his comments. **Mr. Connor** noted that the process went beyond appeal. Once a death sentence is imposed the defendant received an automatic right of appeal to the Montana Supreme Court. This can be followed by a Writ of Certiorari to the U.S. Supreme Court, petition for post conviction relief, an appeal to the Supreme Court, another potential Writ of Certiorari, a Writ of Habeas Corpus in federal court, appealing to the Federal Circuit Court, and again to the Montana Supreme Court.

SEN. WHEAT questioned whether another state had a statute similar to the one proposed in SB 15. **Mr. Connor** was not aware of any.

SEN. WHEAT asked for more information about the mandatory death penalty being found unconstitutional by the U.S. Supreme Court. **Mr. Connor** explained that this was the death penalty structure before the current law existed. In the case involving Bernard Fitzpatrick, the death penalty was overturned in Montana as being unconstitutional because it had a mandatory provision. This was upheld on appeal to U.S. Supreme Court.

SEN. GARY PERRY asked if suspense would be more appropriate than commuting. **Mr. Connor** did not see how this would work in a practical concept. There are many procedural steps which have to be taken before imposing the death penalty. At the point of imposing the death penalty the court must conduct a separate sentencing hearing and there is a large amount of evidence presented to establish the aggravating factors that are listed in the statute. Mitigating factors also need to be considered. Findings and conclusions can be 80 pages long. The death penalty would need to be imposed before it could be suspended.

CHAIRMAN GRIMES asked for further explanation of the second felony being the cause of the execution. **SEN. O'NEIL** claimed that when the original court sentenced the defendant to death, the aggravating and mitigating factors would be addressed. The commuting or suspense would be a favor to the defendant. Felonies are serious crimes.

CHAIRMAN GRIMES raised a concern over the litigation that could ensue. Capital punishment involves complicated and extensive case law. **SEN. O'NEIL** could not see how there could be any more litigation. After a defendant has been sentenced to death, they have gone through all the litigation. He doesn't see how the litigation could become any worse.

SEN. GERALD PEASE asked if there would be any inmates who would fall under the criteria in this bill. **Mike Mahoney, Warden of the Montana State Prison,** remarked that he appreciated the letter of intent in trying to promote good conduct among members of the inmate population. Currently there are six inmates awaiting the order of the court in capital punishment cases. Four of the six inmates are there for committing crimes after they were incarcerated. He believed this would muddy the waters from a legal standpoint. The individual would not be concerned about the order of the court being carried out unless they committed a new crime. That would order another set of appeals.

SEN. BRENT CROMLEY remarked that on page 1, line 17, the language stated "a court imposing sentence may also sentence the defendant". He questioned whether there would be any standards that the sentencing judge would use in determining whether or not to use this provision. **SEN. O'NEIL** stated that he did not have any standards in mind.

SEN. PERRY asked for clarification regarding four of the six inmates awaiting the death sentence in regard to crimes while incarcerated. **Mr. Mahoney** confirmed that crimes which were committed while incarcerated were part of the reason they had received the sentence they have. **Mr. Connor** explained that there are six persons on death row at the current time. One inmate is there because he pled guilty to having committed a double homicide. One inmate is there for having committed two or three homicides. The other four inmates are there because they committed homicide in prison after having been convicted of homicide outside the prison.

{Tape: 2; Side: A}

Closing by Sponsor:

SEN. O'NEIL stated that he believed death penalty judges made political decisions based upon their personal beliefs about the death penalty. If this bill is passed and there is an appeal to one of these judges who believes in the death penalty, there should be no problem winning the appeal. If the judge believes in this law, he might pass on appeal because it will make it less likely that fewer people will be sentenced to the death penalty in the future.

HEARING ON 68

Sponsor: **SEN. BRENT CROMLEY, SD 9, Billings**

Proponents: **John Connor, Chief Criminal Counsel for the Attorney General's Office and Supervisor of the Special Prosecutions Unit**

Opponents: **None**

Opening Statement by Sponsor:

SEN. BRENT CROMLEY, SD 9, Billings, presented SB 68. This is not a capital punishment bill. Montana has capital punishment as do 37 other states. This is a rule of law bill in order to bring the Montana statute in line with current U.S. Supreme Court decisions and federal law. The death penalty is well guarded under the Constitution by the U.S. Supreme Court. On June 24, 2002, in Ring v. Arizona, the U.S. Supreme Court held that defendants are entitled to a jury determination of any fact on which the legislature conditions an increase in their maximum punishment. In that case, the Supreme Court held that the Arizona statute, which provided that the trial judge in a capital case determine the presence or absence of aggravating circumstances, in order to impose the death penalty, violated the Sixth Amendment of the U.S. Constitution.

The case invalidated the death penalty statutes in five states which include Colorado, Idaho, Arizona, Montana, and Nebraska. In Montana, the conviction is rendered by the jury but the decision and the implementation of the aggravating circumstances is rendered by the judge. This is not permissible under the Sixth Amendment according to Ring v. Arizona

Proponents' Testimony:

John Connor, Chief Criminal Counsel for the Attorney General's Office and Supervisor of the Special Prosecutions Unit, claimed

that this bill was brought at the request of the Department of Justice. It is intended to address a change in the law relating to death penalty that has been decided by the U.S. Supreme Court. In the last Legislative Session, 46-1-401 was passed to address what the U.S. Supreme Court had decided in Apprendi v. New Jersey.

In this case, the U. S. Supreme Court decided that a defendant has a Fifth and Sixth Amendment right to a jury trial on any fact that increases the penalty for a crime beyond that which is prescribed by the statutory maximum. Apprendi decided that those enhancing factors had to be decided by a jury or by the court if the defendant waived a jury trial or were admitted to by the defendant if he were to plead guilty. Ring v. Arizona says that Apprendi is applicable to the aggravating factors in the death penalty situation. The only time this is not the case is if there has been a prior conviction that is used to enhance penalty. If there is a second or third felony and the penalty is being enhanced under statute because of the second or third felony, Apprendi decided that this did not have to be an enhancing factor to be yet again decided by a jury because a jury had already decided it. In response to Ring, amendments have been proposed to 46-1-401 and to the applicable death penalty statutes in SB 68, **EXHIBIT(jus04a01)**. The problem appears on page 2 of the bill, line 3. After the term "offense", the insertion should read "except for an aggravating circumstance described in subsection (4)". In (4) page 2, line 6, the deletion of the term "incarceration" and the term "not" would be removed so the terms would remain as they were originally. This is consistent with both Apprendi and Ring. Proving enhancing acts for prior convictions would complicate and prolong the trial process.

This bill does not propose to change the structure of the system where the court considers the mitigating factors and then weighs the mitigating factors against the aggravating factors for purposes of deciding whether the mitigating factors substantially outweigh the aggravating factors. The judge would be the entity that imposes a death penalty, but the judge does not decide the aggravating factors except for the one of prior homicide conviction.

Opponents' Testimony: None.

Questions from Committee Members and Responses:

SEN. O'NEIL remarked that the amendment would hold that if a person was incarcerated, the jury would not need to hear the facts of his prior convictions. The judge can determine that by

himself. If the person were to be executed, that is not the same as incarceration and therefore the jury would need to hear the prior convictions. **Mr. Connor** maintained that the jury or the court has already decided the prior conviction beyond a reasonable doubt. The aggravating circumstances that the statute describes under part 3 are that the offense was deliberate homicide and committed by an offender while in official detention, by an offender who had committed the homicide by means of torture, or by lying in wait or ambush as part of a scheme or operation which if completed would result in the death of more than one person. These sorts of things the jury does need to find beyond a reasonable doubt under Ring v. Arizona and under the terms of SB 15.

SEN. O'NEIL stated that if the person were to be executed this does not seem to apply. By reinserting the word "incarceration" it appears that if someone has been convicted of murder the judge can note the prior offenses. If the defendant is to be executed rather than incarcerated, the jury will need to note the prior convictions. **SEN. MCGEE** noted that this seems to be limited to only incarceration penalties. **Mr. Connor** stated that line 5 refers to one or more prior convictions. This only has application to convictions. **SEN. MCGEE** added that the language stated "to enhance the incarceration penalty for a charged defense". He asked for further clarification if this was not an incarceration penalty and in fact a death sentence. **Mr. Connor** remarked that the term could be stricken for consistency.

CHAIRMAN GRIMES referred to page one and questioned whether the knowing and pleading guilty implied that they knew that penalty enhancement would occur. **Mr. Connor** affirmed that it did.

Closing by Sponsor:

SEN. CROMLEY closed on SB 68.

{Tape: 2; Side: B}

EXECUTIVE ACTION ON SB 13

Motion: SEN. MCGEE moved **SB 13 DO PASS.**

Discussion:

Motion: SEN. O'NEIL moved to amend SB 13.

Discussion:

Ms. Lane spoke to **Mr. Petesch** about this amendment and they believe the title is drafted so narrowly that the amendment would be outside the scope of the title.

CHAIRMAN GRIMES noted that the amendment could be dealt with conceptually but that would be out of order on this bill.

SEN. O'NEIL explained that his amendment would address the situation where people would be allowed to pull off the highway and legally park before the alcohol from their digestive system reaches their blood stream to the point it severely impairs their driving. He wants to encourage people to pull over and park their vehicle rather than discourage them from doing so.

SEN. MCGEE noted that he would vote in favor of the bill because of the lifesaving implications. He is not voting for this bill because of any federal mandate or jeopardy of federal highway funds.

SEN. PERRY encouraged the Committee to vote for this bill. This has nothing to do with federal highway funds. It is a matter of doing what is right for the citizens of Montana.

SEN. WHEAT added that the legislative body needs to send a message, not only to the citizens of this state, but to this country that we will no longer tolerate drinking and driving which kills people on our highways.

SEN. AUBYN CURTISS agreed with the sentiments addressed.

Ms. Lane remarked that on page 5, line 11, there was a concern in regard to the percent sign.

SEN. CROMLEY remarked that the statute has been in error in the past and this will correct the error. The percentage sign should not have been included.

SEN. MCGEE reiterated that this has been in error all this time. It should read "0.16" as a quantitative amount not just a percent.

SEN. O'NEIL maintained that he was voting against the bill and the reason for doing so was because this bill is discouraging people from getting off the road. It is making it illegal for them to pull over and take a nap if they are getting drowsy after having a beer. It will make the highways more dangerous.

SEN. MCGEE claimed the bill is about not driving when you have had something to drink.

SEN. WHEAT contended that this bill is trying to encourage people to be responsible.

SEN. O'NEIL added that another reason he was voting against the bill was that it was a federal mandate to the State of Montana.

CHAIRMAN GRIMES stated that it had been sufficiently proven that at .08 people become significantly impaired and they should not be behind the wheel at that point. The federal funding issue is an added incentive to pass this legislation.

Vote: The motion carried with **SEN. O'NEIL voting no (8-1).**

{Tape: 3; Side: A}

EXECUTIVE ACTION ON SB 20

Motion: SEN. CROMLEY moved **SB 20 DO PASS.**

Discussion:

CHAIRMAN GRIMES remarked that this bill allowed court reporters to be exempt from the procurement act in which the competitive bidding process is not necessary for items in excess of $5,000.

SEN. WHEAT agreed and added that this is simply a housekeeping bill.

Vote: The motion **carried unanimously (9-0).**

EXECUTIVE ACTION ON SB 19

Motion: SEN. MCGEE moved that **SB 19 DO PASS.**

Discussion:

CHAIRMAN GRIMES noted that this bill was also a housekeeping measure and any concerns were covered by the understanding that this includes sections moved from another code and covered in classification and personnel policies.

Vote: The motion **carried unanimously (9-0).**

EXECUTIVE ACTION ON SB 18

Motion: SEN. MCGEE moved **SB 18 DO PASS.**

Discussion:

CHAIRMAN GRIMES asked **Chief Justice Karla Gray** to address the fiscal note. **Chief Justice Gray** stated that the fiscal note has been requested. Her view is that there is no fiscal impact.

CHAIRMAN GRIMES noted that **SEN. MANGAN** had raised a concern that Section 41-5-111, MCA, was being repealed. He pointed out that some of the repealed language is included on page 4, line 9. He had further noted that the other part of 41-5-111 was not reduplicated in the bill. Information has been received that those costs are discussed in 41-5-1503 and are identified as county costs.

Ms. Lane explained that **SEN. MANGAN's** concern was that the language being repealed and brought into page 4 dropped the words "treatment costs". **Beth McLaughlin, Montana Supreme Court** has provided information which noted that treatment is paid for with placement dollars JDIP funds, 41-5-130. The Youth Court Act provides that the county pays for treatment in the event the JDIP funds run out.

CHAIRMAN GRIMES noted that by passing this legislation, the Judiciary Committee agrees in principle that these functions should be judiciary costs and that other functions should not. The Finance Committee will address the legislation dealing with executive costs versus county costs. This legislation holds that costs association with health care, law enforcement, public safety, and prosecutorial services would be executive branch expenses and the judicial branch is responsible for costs associated with things directly related to the court. The **Montana Association of Counties (MACO)** raised a concern about the language on page 5 in regard to transportation issues. Those questions were answered in the hearing that this is the way transportation costs are being handled currently.

SEN. MCGEE stated that he will be voting in favor of this measure. He recognizes the issue of costs for both the county and the judiciary. We cannot quantify the number of crimes, victims, perpetrators of crimes, or decisions of the court in regard to inquiries or investigations that may be necessary. In all those undetermined quantities, there are other associated costs including transportation that are left to the counties. No one knows the quantities. The courts can require whatever they choose to require. The costs associated with meeting the requirements fall to the counties. There is a huge issue of undefined entities and quantities. He is in support of the bill because it begins to identify areas of responsibility. We may need to look at supplemental funding for some of these issues.

SEN. WHEAT remarked that **SEN. MANGAN** had left his notes with him. He is satisfied with the issue of costs. **SEN. WHEAT** further stated that he understands that this is the best effort by the Court in its responsibility of determining who will bear the costs involved. The assumption issue is highly complicated. This bill is a reasonable, good-faith effort attempting to draw a line of demarcation between the costs.

SEN. CURTISS raised a concern about voting for this bill without a ballpark figure of the fiscal impact to the counties.

CHAIRMAN GRIMES believed this bill would not have any impact on the counties although subsequent bills may.

SEN. PERRY shared the concerns in regard to the fiscal impact. After having heard both sides of the issue, he has concluded that future creative thinking will be needed to solve problems for the counties and the district courts.

SEN. O'NEIL maintained he had a real concern about voting for his bill without the fiscal note. He requested action on the bill be delayed until the fiscal note was available.

CHAIRMAN GRIMES remarked that this was a reasonable request.

Chief Justice Gray stated that she understood the concern. Staff from the Governor's Office and her staff are working on the fiscal note on this bill. She could not guarantee there would be no fiscal impacts.

SEN. MCGEE withdrew the DO PASS motion on SB 18.

{Tape: 3; Side: B}

EXECUTIVE ACTION ON SB 56

Motion: **SEN. WHEAT** moved that **SB 56 DO PASS**.

Discussion:

SEN. WHEAT claimed that he had concerns in regard to the time running when the person was ready to be discharged. However, since these people are being watched 24 hours a day, if they pose any kind of danger to themselves or others the persons at the facility will probably bring a civil proceeding to have the person recommitted. Taking the longest maximum sentence they could receive would be longest they could be confined under this legislation. If the people who are holding that patient

determine that the person still has the problem, they will be able to start a civil proceeding to keep them in the institution.

Motion: **SEN. O'NEIL** moved **SB 56 BE AMENDED.**

Discussion:

SEN. O'NEIL explained that on page 1, line 20, the language would read "If there is more than one offense charged, the maximum sentence is limited to the longest sentence for the offense charged with the longest possible sentence." The current language does not clarify between concurrent and consecutive sentences.

SEN. WHEAT suggested the language read "the maximum sentence is limited to the longest sentence from" he would strike the word "all" and replace it with "any of the".

SEN. CROMLEY remarked that this could be limited to the longest sentence from the most serious charged offense.

CHAIRMAN GRIMES noted that the most serious offense may not necessarily have the longest sentence.

SEN. WHEAT maintained that the judge should be allowed to look at the statute and select the charged offense that has the maximum penalty.

SEN. MCGEE stated that the term "any" would allow the judge to choose from any of the charged offenses.

Ms. Lane questioned using the term "serious". She added that **Greg Petesch, Legislative Services,** had stated in the hearing that this could be changed to read "the longest sentence for any of the offenses charged". This would be inserted on page 1, line 21, strike "all charged offenses" and insert "any of the offenses charged".

SEN. CURTISS raised a concern that the maximum sentence could be based on plea bargaining.

SEN. WHEAT responded that this legislation deals with someone who has been found not guilty. A jury has made this determination. The plea negotiation that occurs in a criminal case is different prior to going to trial. Someone charged with homicide may negotiate before trial and receive a lower sentence than they might receive if convicted by the jury.

Substitute Motion/Vote: **SEN. WHEAT** made a substitute motion that **SB 56 BE TABLED. Substitute motion carried unanimously.**

EXECUTIVE ACTION ON SB 55

Motion: **SEN. MCGEE** moved that **SB 55 DO PASS.**

Discussion:

SEN. MCGEE supported the bill without the amendment language that was offered by **Mr. Davis** of the **Mental Health Association.** He is not satisfied that limiting a consideration of a previous commitment within the last twelve months is all that needs to be considered.

SEN. CROMLEY also agreed that the amendment was not needed.

SEN. WHEAT remarked that he also did not believe the amendment was necessary. He has faith in district court judges exercising their discretion in making the necessary decision.

SEN. O'NEIL suggested amending the bill on page 1, line 26, after the words "state hospital" he would strike the words "if ..." to the end of line 29. If someone is being committed to the state hospital for three months, but this person could be placed in community placement. He questioned why we want to do this only for persons who have previously been committed to the state hospital?

{Tape: 4; Side: A}

SEN. WHEAT remarked that striking the language would take away the criteria that the court will need to rely upon to give an enhanced commitment. The previous section uses three months. This section goes to six months. Six months can only be given if the court makes this determination about the person's predictability.

Vote: Motion **SB 55 carried 8-0.**

ADJOURNMENT

Adjournment: 11:15 A.M.

_____
SEN. DUANE GRIMES, Chairman

_____
JUDY KEINTZ, Secretary

DG/JK

EXHIBIT(jus04aad)