MINUTES

MONTANA SENATE
58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DUANE GRIMES**, on March 10, 2003 at 10:00 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. Jeff Mangan (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Mike Wheat (D)

Members Excused: None.

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 & Date Posted: HB 210, HB 212, HB 214, 2/25/2003
Executive Action: HB 156, HB 210, HB 161

HEARING ON HB 210

Sponsor: **REP. JIM SHOCKLEY, HD 61, VICTOR**

Proponents: **Ali Bovingdon, Assistant Attorney General, Department of Justice**

Opponents: **None**

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, VICTOR, introduced HB 210. He explained the bill tries to conform the statutes to the law. If a person pleads guilty in a court of limited jurisdiction and then later maintains that the plea was not entered into voluntarily and the city court judge disagreed, there would be no appeal for the ruling. The Supreme Court held there is an appeal process available, whether it is in statute or not. This bill provides the mechanism for that appeal.

Proponents' Testimony: **Ali Bovingdon, Assistant Attorney General, Department of Justice,** rose in support of HB 210.

Opponents' Testimony: None

Questions from Committee Members and Responses:

SEN. DAN MCGEE referred to page 1, line 28 of the bill and questioned the wording "denial of the motion". **REP. SHOCKLEY** explained the situation wherein a defendant plead guilty and then later decided he did not do so voluntarily. When he declared to the judge the plea he made was not voluntary, this would be the motion. The defendant has a time frame of 90 days to say that his plea was not voluntary. This is a motion to the Justice of the Peace (JP). Once the JP responds, the defendant has ten days to appeal the ruling on his motion to the district court.

SEN. MCGEE found the new language to be confusing. **REP. SHOCKLEY** conceded the language was confusing and may need to be clarified.

CHAIRMAN DUANE GRIMES noted this would affect appeals from courts of limited jurisdiction. He questioned the appeal process in district court cases. **REP. SHOCKLEY** pointed out that if a person plead not guilty and had been convicted, there could be a new trial at district court, a trial de novo. After this trial, he would have the right to appeal the decision to the Supreme Court.

SEN. MIKE WHEAT maintained that on page 2, line 17, the bill contained a clear reference to denial of a motion to withdraw a

plea. For clarification purposes, he suggested the same reference be made on page 1. **REP. SHOCKLEY** agreed to the clarification as long as the concept of the 90 day time frame was preserved. Also, following the ruling of the JP, there would be ten days to appeal to the district court.

SEN. JERRY O'NEIL questioned whether, under this bill, the defendant would be provided an attorney. **REP. SHOCKLEY** explained if there was a chance of incarceration at the lower court level, the defendant would have the right to an attorney.

Closing by Sponsor:

REP. SHOCKLEY closed on HB 210.

HEARING ON HB 212

Sponsor: **REP. JIM SHOCKLEY, HD 61, VICTOR**

Proponents: **None**

Opponents: **None**

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, VICTOR, introduced HB 212. He explained that in a previous legislative session legislation passed which indicated a super majority was necessary for a punitive damage award. The Supreme Court held that to be unconstitutional and this bill would change the language back to its original form.

Proponents' Testimony: **None**

Opponents' Testimony: **None**

Questions from Committee Members and Responses:

SEN. MCGEE asked the basis for the Court's determination that the legislation was unconstitutional in regard to a super majority. **REP. SHOCKLEY** maintained the Court believed the Constitution requires that in the case of a civil matter a majority, not a super majority, would prevail. If the Legislature wanted to change this language to a super majority, it would be necessary to amend the Constitution.

SEN. MCGEE pointed out that sometimes courts are wrong. The establishment of a policy is the purview of the Legislature, not the Court. He raised a concern about legislation being written

to change the law to conform to a court decision. **REP. SHOCKLEY** noted that, in his opinion, the Court has made an error. Under the current system, their error is the law. It is a disservice to everyone not to be able to read the statutes and realize current law. If an attorney tried to get a super majority in this instance, the judge would deny it based upon a court decision. This could be contested, if the statutes were not changed.

SEN. MCGEE pointed out Article II, Section 20, of the Constitution stated that in all civil actions two-thirds of the jury may render a verdict and a verdict so rendered shall have the same force and effect as if all had concurred therein. He questioned whether the award of punitive damages was dependent on a two-thirds majority vote. **REP. SHOCKLEY** noted that a two-thirds vote would carry the day on any issue except punitive damages. The Supreme Court held because the Constitution states two-thirds, this could not be unanimous. In his earlier testimony he used the term "super majority" but he should have used the term "unanimous".

SEN. GARY PERRY asked what the federal law was in regard to punitive damages. **REP. SHOCKLEY** was not aware of the federal law. He does not practice law in this area.

Closing by Sponsor:

REP. SHOCKLEY closed on HB 212.

HEARING ON HB 214

Sponsor: **REP. JIM SHOCKLEY, HD 61, VICTOR**

Proponents: **Al Smith, Montana Trial Lawyers Association**

Opponents: **Greg Van Horssen, State Farm Insurance Company**
Jon Metropoulos, Farmers Insurance Company and the National Association of Independent Insurers

Opening Statement by Sponsor:

REP. JIM SHOCKLEY, HD 61, VICTOR, introduced HB 214. He explained the bill would cause the statutes to conform to a Supreme Court Opinion. In the case of Crissafulli v. Bass, the Court adopted the standard in the Restatement of Torts, 2d (sp) in regard to parental liability. Montana has not adopted a standard of parental liability. The Restatement is a learned treatise and contains the majority and minority rule on any issue. In a concurring opinion, Justice Rice suggested the word

"supervision" would be more appropriate than the word "control". Based upon the real world, parents do not control their children, they supervise them. The parent is liable, if he knows or has reason to know the necessity to control the child, and has the ability to control the child. An example would be for a parent to observe a 14 year-old son staggering and then get into the family vehicle and drive off. If an accident occurred, the parent obviously knew the necessity to control the child, and had the opportunity to control the child. Conversely a 16 year-old may ask for the car keys and may be sober at the time. The child then drives downtown, consumes a fifth of whiskey, and then has the accident. In this instance the parent did not have the opportunity nor did he know the necessity to control the actions of his child.

Proponents' Testimony:

Al Smith, Montana Trial Lawyers Association, pointed out that the bill will put into code the responsibility of parents. If a child is building pipe bombs in the home, the parents may not actually know what the child is doing but it is their property and they should know what is going on under their roof. This is a reasonable bill which places into statute what the Court has already held to be common law.

Opponents' Testimony:

Greg Van Horssen, State Farm Insurance Company, claimed the bill created a broader net than anticipated. The standard in the Restatement is the default in circumstances where a jurisdiction has not placed a law on the books to address the issue. The Legislature is not required to adopt that as the standard. In the Crissafulli case, the majority opinion was written by Justice Trieweiler. In this case a young son was at an auction with his father who was employed at the auction. The little boy was riding his bicycle across the auction grounds and ran into someone. The question was raised as to whether the parent could be held responsible for the injuries which occurred. Justice Trieweiler stated that in the absence of any legislative policy to the contrary, the Court would adopt Section 316, Restatement, 2d of Torts, 1965, as a reasonable expression of a parent's duty.

Under the current bill, if one of his son's was involved in a traffic accident, as a parent he could be held liable for the injuries sustained. With respect to his three children, he knows that he has the opportunity and the ability to control them. Whether he is able to physically do so, is another matter given

the fact that he has three children and one set of eyes. This standard will create liability when it is not anticipated.

Justice Rice's dissent in the Crissafulli decision questions when a parent should have a reason to know that he or she has the ability to control the child. When older children are running around the neighborhood or teenagers are heading downtown in their own car, most parents would claim that the control they have over their children is non-existent. He adopted the standard set out by Justice Trieweiler in J.L. v. Keinenberger. The Justices would limit the application of parental liability under Section 316 to those situations where the parent was aware of the particular dangerous propensity which caused the harm complained of. **Mr. Van Horssen** provided an amendment, **EXHIBIT(jus50a01)**. This would change the standard to creating parental liability when the parent knows that the child has previously demonstrated a particular dangerous propensity that represents a unreasonable risk of harm to others or knows that the child is about to undertake a particularly dangerous activity which presents an unreasonable risk of harm to others and the parent fails to protect others from the child's dangerous propensity or activity by reasonably supervising the child.

Jon Metropoulos, Farmers Insurance Company and the National Association of Independent Insurers, noted that the bill, as drafted, is a strict liability bill. It requires parents to accept liability in any case where they could control their children. The U. S. Supreme Court has held that it will be the final arbitrar of what is constitutional and what is not constitutional. Matters that do not concern a constitutional issue can be decided by the legislature. The Supreme Court adopted a strict liability standard in the Crissafulli case.

Questions from Committee Members and Responses:

SEN. WHEAT asked **Mr. Van Horssen** how his amendments were viewed by the House Judiciary Committee. **Mr. Van Horssen** admitted the amendments were not well received by the Committee. The only amendment by the Committee was to change the word "supervised" back to the word "control".

SEN. WHEAT noted the current bill would be taken verbatim from the Restatement of Torts, 2d. **Mr. Van Horssen** affirmed this to be his understanding.

SEN. WHEAT questioned how many other states had adopted Restatement of Torts, Section 316. **Mr. Van Horssen** did not have that information but noted it would be the fallback standard in

the event a legislative statement to the contrary had not been made.

SEN. WHEAT asked the sponsor for further information in regard to the amendments discussed in the House Judiciary Committee. **REP. SHOCKLEY** explained following the presentation of **Mr. Van Horssen's** amendments to the Committee, the bill was sent to a subcommittee. The subcommittee decided to go back to the Restatement. He believed there was an advantage to staying with the Restatement because the law in this area has been developed.

SEN. O'NEIL noted the Restatement had been updated in 2001. He questioned whether the language remained the same in the updated version. **REP. SHOCKLEY** was not aware that the Restatement had been updated. He added that he would look into the matter and report back to the Committee.

SEN. MCGEE remarked if the courts established all the policies, there would be no need for the Legislature to exist. He claimed the bill would take the court's decision and render it into statute. **REP. SHOCKLEY** agreed. He maintained that the average citizen should be able to research the statute and find the law without having to go to a law library to research the law in Montana Reports.

SEN. MCGEE asked why the Court determined it was necessary to establish a legal principle and a policy when the Legislature has not determined that a particular policy is necessary or in place. He further questioned why the Legislature would write a statute to conform to a policy established by the Court where the Court does not have a right to establish policy. **REP. SHOCKLEY** claimed the Court did the right thing. The Legislature had failed to act in this area and it was necessary for the Court to fill the void. A case needed to be decided and a standard was necessary. The Legislature may change the standard determined by the Court.

SEN. MCGEE questioned the Court's right to establish policy. If they cannot act on a case, the case is thrown out. **REP. SHOCKLEY** maintained that when a case was presented to the Court and there was a void, the Court has an obligation to provide a rule.

{Tape: 2; Side: A}

CHAIRMAN GRIMES contended that the Court would need to address the reasonableness issue. **REP. SHOCKLEY** did not believe this involved a strict liability statute because the language states that the parent knows or has reason to know that he has the ability to control the child and that he knows or should know the necessity to act and has the opportunity to act.

CHAIRMAN GRIMES questioned the parent's responsibility for a child who injures someone, but does not have a propensity to act in this manner. **REP. SHOCKLEY** noted paragraph one is disjunctive. There are two ways for the parent to be responsible: 1) He knows the child has previously demonstrated a particularly dangerous propensity and was about to engage in a similar activity; or 2) He knows the child is about to take a particularly dangerous activity that he had never taken before and this creates the unreasonable risk of harm to others. **Mr. Van Horssen** maintained the bill provided for parental liability if the parent knows or has reason to know of the ability to control and knows or should know of the necessity and opportunity to control the child. This raises the concern of strict liability. Parents always know of their ability to control their children. Also, parents always know of the necessity and opportunity to control their child.

SEN. O'NEIL referred to **Mr. Van Horssen's** amendment and suggested on line one following the word "knows" language be inserted to state "or has reason to know". The same change would be made on line 2. **Mr. Van Horssen** contended the issue was the parent would be held responsible for what their child has done. A parent needs to be concerned about the gray area when someone believes a parent should have known their child would do something. He cautioned the Committee to be very careful when setting the standard so liability was not created when a parent is doing their level best to keep an eye on their children and something terrible happens as a result of the child's misconduct.

SEN. O'NEIL questioned how this would apply when the parents were divorced with one parent out of the home and one parent is alleging that the other parent is not adequately supervising the child. **Mr. Van Horssen** believed that under either bill the parent who was outside of the home would have a small chance of being held liable.

CHAIRMAN GRIMES raised a concern about the amendment making it necessary for a parent to know their child's particular dangerous propensity. **Mr. Van Horssen** maintained the objective was to make sure that before a parent is made liable for the misconduct of their child, the parent either knew that this child had a dangerous propensity or knows that the child is about to undertake a dangerous activity. The parent has an ability to form in their mind an opinion that this is a dangerous situation and something needs to be done to prevent the child from harming others.

CHAIRMAN GRIMES asked for an explanation of the situation under the bill and the bill with the amendment given the case at hand.

Mr. Van Horssen believed both versions would create liability. Under the broad net of HB 214, an argument could be made that the parent knew they could control the child and the parent had the opportunity and knew of the necessity to control that child. Under the amended version, there would also be liability. The parent knew that the child was about to undertake a particularly dangerous activity that presented an unreasonable risk and failed to take measures to stop that. His concern was the case wherein the parent did not know and did not have reason to know that the child would do something.

SEN. JEFF MANGAN summarized under the amendment, a parent would need to wait for the propensity to occur prior to having to supervise their child. **Mr. Van Horssen** disagreed. He noted there were two considerations in the first amendment. The first consideration involves knowledge of a propensity. The second consideration is the parent's knowledge that the child is about to undertake a particularly dangerous activity. Either one of the considerations coupled with the parent's failure to supervise will create liability. There is no need for a history.

SEN. MANGAN claimed there was a large gap under the amendment parents could use to remove themselves from "supervision". They could use the "I-didn't-know" defense. In the Crissafilli case the parent could say that the boy never ran into an auctioneer before so why could they expect him to run into one the day of the accident. He believed parents have a responsibility to supervise their children knowing that there are a number of things they could do and, as parents, responsibility needs to be taken for the child.

Mr. Van Horssen maintained parents do need to be responsible for their children. In the case involved and on that particular day, the parent should have known the child was tearing around the auction ground. The parent should have seen what the child was doing. Where was the parent? **SEN. MANGAN** maintained that using the same logic, it was the parent's responsibility to supervise their child by taking them to that event without anyone having to tell them that the child was riding a bike dangerously. This was an inherent responsibility because the parent took the child with them to the auction. The hole in the amendment is that it allows parents to get away from their responsibility to supervise, no matter what the situation.

Mr. Van Horssen pointed out the amendment addresses the situation where, in spite of all the recognized responsibilities of a parent, if a child does something the parent did not anticipate and had no reason to understand was a possibility of occurring,

this would be an accident and there would be a question of parental liability.

SEN. MCGEE asked how the policy or current court practices would change if this bill did not pass. **REP. SHOCKLEY** explained the bill is simply the Restatement and this is what the court used. If the bill was not passed, nothing would change but it would be more difficult to find the law addressing this issue. If **Mr. Van Horssen's** suggested amendment was adopted, there would be a change in the law.

CHAIRMAN GRIMES asked whether, under the bill, the parents would be liable civilly or criminally? **REP. SHOCKLEY** maintained the bill would only relate to civil liability.

Closing by Sponsor:

REP. SHOCKLEY pointed out that adopting the new section as currently drafted would have several advantages. The first is that it is settled law in other jurisdictions. If **Mr. Van Horssen's** amendment is adopted, this will be new territory. He believed the bill would then lead to more litigation. The only complaint Justice Rice had in his concurring opinion was that he believed the word "supervised" was a more modern and reasonable way to describe the relationship between child and parent. He believed the amendment would actually broaden the liability of the parent for the acts of the child because of the provision "knows that the child has previously demonstrated a particular dangerous propensity that presents an unreasonable risk of harm to others." If the amendment is passed and a child had a record of driving while intoxicated and the father did not see the child get into the car while the child was drinking, but had allowed the child to use the car, the parent would be responsible. The parent knew the child had a propensity to drink and drive. If the child was sober when he or she left home and then become intoxicated and caused an accident, the parent would be on the hook. He suggested the Committee adopt the Restatement of Torts as it exists in most of the states.

In regard to HB 210, **REP. SHOCKLEY** suggested on line 28, page 1, he would strike the words "denial of the motion" and insert "entry of the plea".

{Tape: 2; Side: B}

EXECUTIVE ACTION ON HB 156

Motion: **SEN. MANGAN** moved that **HB 256 BE CONCURRED IN.**

Substitute Motion: **SEN. MANGAN** moved that **HB 156 BE AMENDED, HB 015601.avl, EXHIBIT(jus50a02).**

Discussion:

Ms. Lane explained **REP. MATTHEWS** asked for the amendments. On line 26, he wanted to make it clear that the language included a licensed clinical professional counselor or a licensed clinical social worker. There are three levels of social workers and he wanted this limited to those who are called licensed clinical social workers. This would read: "A psychiatrist or psychologist licensed by the state or a licensed clinical professional counselor or a licensed clinical social worker."

Vote: The motion carried unanimously.

Motion: **SEN. MANGAN** moved that **HB 156 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. O'NEIL stated that a youth who had committed four misdemeanors in the prior 12 months, would present a danger to the public.

CHAIRMAN GRIMES pointed out that four shoplifting misdemeanors would not be a danger to the public. He further questioned the word "and" on line 27. If a youth committed four misdemeanors, it may be necessary to have the youth sent to Pine Hills. **Ms. Lane** maintained the word "and" was conjunctive while the word "or" would be disjunctive. If the word was changed to "and", the section would be made broader and this would change the intent of the bill.

SEN. WHEAT recalled a youth who represents a serious danger to the public will probably be one who is charged with a felony. He added that the sponsor, who works at Pine Hills, made it clear to the Committee the intent of the bill was to keep the youth out of Pine Hills who commit numerous petty crimes that amount to misdemeanors but they do not belong with the population at Pine Hills. That population includes youth who have committed serious crimes and do constitute a very real danger to society.

SEN. MCGEE questioned whether a fifth misdemeanor in a 12 month period could result in the youth being sent to Pine Hills. **SEN. WHEAT** believed this could take place with the fourth misdemeanor.

SEN. MCGEE noted that, as a policy of the state, there are youth who offend routinely and regularly and it is necessary the state have a hammer to address this situation.

Ms. Lane pointed out the language should state four or more misdemeanors to be technically correct.

Substitute Motion: **SEN. O'NEIL** moved that **HB 156 BE AMENDED.**

Discussion:

SEN. O'NEIL explained on line 27, he would strike the word "recommends" and insert the words "has not precluded".

CHAIRMAN GRIMES maintained there may be times where the judge would want to commit the youth because of the nature of the misdemeanors or other circumstances but a psychiatrist would be reluctant to recommend placement. In the hearing, **REP. MATTHEWS** clarified they are used to proceeding in this manner.

SEN. MANGAN pointed out the current youth placement committee process includes that a mental health professional serve on the committee. Currently, it is necessary for the mental health professional to sign off in regard to placement. Safeguards are in place.

SEN. BRENT CROMLEY understood the current law provides a youth cannot be placed in the state facility unless recommended by a mental health professional and the court makes a determination that the youth is a danger to public safety. Apparently there are 10 to 12 youth who fall under this criteria committed to Pine Hills on an annual basis. The concern is that some of these youth should not be going to Pine Hills. This appeared to be an arbitrary way to cut back on the number of youths being placed in the state facility. Maybe they should not be going there at all.

Vote: The motion failed with O'NEIL and CROMLEY voting aye.

Ms. Lane recommended the language on line 24 state "or more" after "misdemeanors". She is assuming the language was meant to state at least four misdemeanors. The word "four" on line 25 should be changed. She recommended combining (i) and (ii). This would read: "The youth committed four or more misdemeanors in the prior 12 months and none of the prior misdemeanors was committed within 24 hours of any of the others;".

Motion: **CHAIRMAN GRIMES** moved that **HB 156 BE AMENDED** to address the recommendation of **Ms. Lane.**

Discussion:

SEN. CROMLEY had a problem with the change. It would read that the person may have eight, twelve, or more misdemeanors but as long as two of them were within 24 hours, the youth would no longer come under the section and could not be committed.

CHAIRMAN GRIMES withdrew the motion.

CHAIRMAN GRIMES recommended adding the words "or more" after the word "misdemeanors" on line 24. The word "four" would be stricken on line 25. **Ms. Lane** believed the intent of (ii) on line 25 is that any misdemeanors that occur on one rampage should be counted as one misdemeanor and not as separate misdemeanors.

Motion: **SEN. CROMLEY** moved that **HB 156 BE AMENDED.**

Discussion:

SEN. CROMLEY recommended striking (ii). He did not believe there should be a reason to avoid the commitment if two of the misdemeanors were within 24 hours. The recommendation of a professional would still be required and there would need to be a determination that the youth be a danger to the public.

Ms. Lane questioned whether the same concept could be conveyed on line 24 with use of the word "separate" or "unconnected".

SEN. MCGEE would not like to see 37 misdemeanors perpetrated by one individual in a 24-hour period to be considered as one misdemeanor. A youth with a case of spray paint could damage all the parked cars along various streets. He believed this should involve individual offenses.

SEN. PERRY agreed that (i) and (ii) appear to be arbitrary. There is no precedence to state the youth committed four misdemeanors in the prior 12 months. The words "four months" and "twelve months" are arbitrary. He suggested addressing line 28 which stated: "The youth will present a danger to the public." Line 26 has been qualified to state a psychiatrist, psychologist, etc., will make the recommendation. He wondered whether a more serious charge could have been plea bargained to a misdemeanor. If the psychiatrist or psychologist determined that with one incident this person would constitute a danger to the public, lines 24 and 25 were problematic for him.

SEN. MANGAN pointed out the original bill would have eliminated misdemeanor youth being placed at Pine Hills. The House Judiciary Committee plea bargained this down to the language on

lines 21-29. The Committee worked with the Department of Corrections, The Juvenile Probation Officers Association, and others. The juvenile probation officers still wanted the ability to place the youth in Pine Hills or Riverside if the youth only had misdemeanors. The parties worked on this bill extensively. He opposed the amendment on behalf of the sponsor. If a youth has committed a felony, he or she needs to be charged with a felony and not plea bargain in hopes that everything will be okay. Youth do not want to stay in Pine Hills for any length of time. It is a hard core juvenile prison.

CHAIRMAN GRIMES did not believe the bill would be weakened by striking line 24 and 25. There would be concern that counselors may recommend more youth be placed in Pine Hills but the youth would still need to present a danger to the public.

SEN. MANGAN reiterated that the original intent of the bill was that one misdemeanor youth being sent to Pine Hills was too many. The current bill has criteria to lessen those numbers. If a youth is truly committing a felony, he or she needs to be charged with a felony. A youth could easily pick up three or four misdemeanors by shoplifting from Target, not giving a correct name, etc.

SEN. PERRY contended the language would be less restrictive by removing lines 24 and 25. If the four conditions exist the youth would be placed in Pine Hills. If there are 37 misdemeanors but no danger to the public, why would the youth be committed to Pine Hills. The key item is whether or not the youth will present a danger to the public.

SEN. WHEAT explained line 28 is existing law which is found between lines 17 and 20 as well as lines 26 and 27. The bill attempts to define the misdemeanor category so that there will not be as many youth committed to Pine Hills unless all the other elements are present. The intent is to weed out those who should not be placed with the dangerous population at Pine Hills.

SEN. O'NEIL believed the language on line 25 stated if a youth committed two misdemeanors within 24 hours of each, no matter how many other misdemeanors he commits, he cannot be sent to Pine Hills.

SEN. CROMLEY explained the amendment would strike line 25. Also, line 24 would read: ""(i) the youth committed four or more unrelated misdemeanors in the prior 12 months;".

Vote: Motion carried with MANGAN voting no.

Motion: **SEN. MANGAN** moved that **HB 156 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. MCGEE noted a youth could commit four or more unrelated misdemeanors. If the youth had an entire backseat of ice balls and proceeded to throw them through various windows, because the misdemeanors are related, he would be precluded from going to Pine Hills.

SEN. CROMLEY agreed that could be a possible defense.

Substitute Motion: **SEN. MCGEE** moved that **HB 156 BE AMENDED.**

Discussion:

SEN. MCGEE would amend line 24 by striking the word "unrelated". The language would state the youth committed four or more misdemeanors in the prior 12 months.

SEN. MANGAN raised a concern that the word "unrelated" could also be assumed to refer to four different misdemeanors as well. **Ms. Lane** agreed and noted that a better word could be found to incorporate the concept.

Vote: The motion carried unanimously.

SEN. O'NEIL questioned whether anyone who could recommend the youth be placed at Pine Hills, was being eliminated in the language of the bill.

SEN. MANGAN noted the standard practice has been the four professionals who are listed specifically in the House amendments.

SEN. PERRY suggested an amendment. Line 28 states the youth will present a danger to the public if the youth is not placed in a state youth correctional facility. Line 26 and 27 determine who has evaluated the youth and recommended placement. However, it has not been determined who would determine whether or not the youth would present a danger to the public. He suggested line 27 read: "has evaluated the youth and has determined that the youth will present a danger to the public if the youth is not placed in a state youth correctional facility;".

SEN. WHEAT pointed out that decision was made by the court after the court heard all the evidence in regard to crimes committed as well as the evaluation of the mental health provider.

SEN. MCGEE questioned whether line 28 should include the language, "and the court determines".

Substitute Motion: **SEN. PERRY** moved that **HB 156 BE AMENDED** to incorporate the wording "and the court finds that".

Substitute Motion: **SEN. O'NEIL** moved that **HB 156 BE AMENDED** by striking the language following the word "public" on line 28 and 29. This would read: "and the court finds the youth presents a danger to the public".

Ms. Lane reminded the Committee to look at line 19 to mirror the existing language.

SEN. O'NEIL withdrew his amendment.

Vote: The motion carried unanimously.

Substitute Motion: **SEN. O'NEIL** moved that **HB 156 BE AMENDED** by striking the language following the word "public" on line 28 and 29. This would read: "and the court finds the youth presents a danger to the public".

Ms. Lane explained the language on line 27 would read: "and the court finds that the youth presents a danger to the public."

Vote: The motion failed with O'NEIL voting aye.

Motion/Vote: **SEN. MANGAN** moved that **HB 156 BE CONCURRED IN AS AMENDED. The motion carried unanimously.**

EXECUTIVE ACTION ON HB 210

Motion: **SEN. MCGEE** moved that **HB 210 BE CONCURRED IN.**

Substitute Motion: **SEN. MCGEE** moved that **HB 210 BE AMENDED, HB021001.avl, EXHIBIT(jus50a03).**

Discussion:

SEN. MCGEE explained that on line 27, following the word "voluntarily", language be inserted to read: "may move to withdraw the plea. If the motion to withdraw is denied, the defendant".

Vote: **The motion carried unanimously.**

Motion/Vote: **SEN. MCGEE** moved that **HB 210 BE CONCURRED IN AS AMENDED. The motion carried unanimously.**

EXECUTIVE ACTION ON HB 161

Motion: **SEN. MCGEE** moved that **HB 161 BE CONCURRED IN.**
Discussion:

SEN. WHEAT noted that page 1 of the bill required a waiver of a right to a hearing with the advice of an attorney. Page 2, line 17, contains language that states: "the youth signs a waiver of hearing". It further acknowledges that the youth has violated the terms of the youth's parole agreement.

Substitute Motion/Vote: **SEN. MCGEE** moved that **HB 161 BE AMENDED, HB016101.avl, EXHIBIT(jus50a04). The motion carried unanimously.**

Motion: **SEN. MCGEE** moved that **HB 161 BE CONCURRED IN AS AMENDED.**

Discussion:

SEN. O'NEIL questioned whether line 16, page 1, needed to be amended to be the same as the language on page 2.

Ms. Lane pointed out that existing law on line 27 (3) says the youth, upon advice of an attorney, may waive the right to a hearing. This is the same language that went into (1) on line 16.

SEN. MCGEE withdrew his motion.

ADJOURNMENT

Adjournment: 12:30 A.M.

_____
SEN. DUANE GRIMES, Chairman

_____
JUDY KEINTZ, Secretary

DG/JK

EXHIBIT(jus50aad)