

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN BRENT R. CROMLEY**, on January 12, 2005
at 3:00 P.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Brent R. Cromley, Chairman (D)
Sen. John Cobb (R)
Sen. John Esp (R)
Sen. Duane Grimes (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Trudi Schmidt (D)
Sen. Dan Weinberg (D)
Sen. Carol Williams (D)

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Branch
Rita Tenneson, Committee Secretary

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

Committee Business Summary:

Hearing & Date Posted: SB 121, 1/6/2005; SB 101, 1/6/2005;
SB 119, 1/6/2005
Executive Action: None.

SENATOR CROMLEY reminded committee members to get amendments to **David Niss, Legislative Counsel**, for bills so the committee could discuss them on January 19. He asked members who have bills downstairs waiting to be introduced to pick them up.

HEARING ON SB 121

Opening Statement by Sponsor:

SEN. KEENAN SD 5, opened the hearing on SB 121, Revise laws governing state hospital charges for criminally convicted. Current statute prohibits the Department from billing a resident or financially responsible person for care provided under any provision of a criminal statute. This bill attempts to recover some of the costs of care in criminal or forensic cases when that person has a forensic admission to the State Hospital.

Proponents' Testimony: **Ed Amberg, Director of State Hospital, Warm Springs**, did not know the reason for prohibition against collecting reimbursement from forensic patients. He said it is time to change the law and collect the same way they do from patients under civil commitment.

EXHIBIT (phs08a01)

Opponents: None.

Informational Witnesses: None.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 6.1}

Questions from Committee Members and Responses:

SENATOR WEINBERG asked **Mr. Amberg** if the people they are suggesting pay for these services willingly receiving these services. **Mr. Amberg** replied that, in most cases, yes, they do.

Closing by Sponsor:

Senator Keenan closed.

{Tape: 1; Side: A; Approx. Time Counter: 6.1 - 8.1}

HEARING ON SB 101**Opening Statement by Sponsor:**

SEN. SCHMIDT, SD 11, opened the hearing on SB 101, Require registration of youth residential therapeutic programs. She said it is a proactive bill to protect youth. The bill addresses unregulated care by mandating a program to register in this biennium and that licensor standards be developed for presentation to the 2007 legislature.

{Tape: 1; Side: A; Approx. Time Counter: 8.1 - 11}

Proponents' Testimony:

Mary Dalton, Administrator Quality Assurance Division, Department of Public Health and Human Services (DPHHS), informed the committee that there are currently 36 providers in Montana. Therapeutic group homes have expanded dramatically in the last 15 years.

[EXHIBIT \(phs08a02\)](#)

[EXHIBIT \(phs08a03\)](#)

{Tape: 1; Side: A; Approx. Time Counter: 11 - 21.4}

Madeline Quinlan, Office of Public Instruction (OPI), representing **Linda McCulloch**, rose in support of SB 101. Provisions in the bill for registering residential therapeutic schools and programs will provide the central information they need regarding the types of programs and services offered. Youth in these programs are often in crisis prior to entering programs and parents are struggling with where to place the child and how to deal with their behavioral issues. The Department gets requests regarding these programs and services. It would help them to be able to refer the parents if there were registry and license-ships. Montana is one of the only western states that does not have licensing requirements for residential therapeutic schools or programs.

[EXHIBIT \(phs08a04\)](#)

{Tape: 1; Side A 21.4 to Side: B; Approx. Time Counter: 0 - 0.4}

Amy Carlson, Governor's Budget Office, representing budget administration on the bill. They believe the process is a first step in the care of the children. They are open to **OPI's**

suggestions and open to looking at **OPI's** other bill which addresses this same issue. They support the concept.

{Tape: 1; Side: B; Approx. Time Counter: 0.4 - 1.2}

Janie McCall, Montana Childrens Initiative Providers Association, in support of the bill. This bill provides the opportunity to start the process for kids, who are not registered, coming into the State into programs. Monitoring and quality provided by the state for providers is important.

{Tape: 1; Side: B; Approx. Time Counter: 1.2 - 2.2}

Opponents' Testimony:

Lance Melton, Executive Director, Montana School Boards Association, presented **Eric Feaver's** testimony in concurrence with **OPI** in terms of removal of sections 1 and 2 from the bill. He thought the bill, as is, deprives students the right to access public education in the State of Montana. Regarding the disabilities of students within the programs, he said they were covered under the **Individuals with Disabilities Education Act**, which is a federal act that requires that school districts provide a free, appropriate public education in the least restrictive environment possible. He felt sections 1 and 2 discriminated against students with disabilities.

EXHIBIT (phs08a05)

{Tape: 1; Side: B; Approx. Time Counter: 2.2 - 5.4}

SENATOR JIM ELLIOTT, SD 7, TROUT CREEK, did not have difficulty with the concept of the bill. The programs in Sanders County work with groups of extremely violent children and turn them into calm, peaceful, and happy citizens, which he felt is evidence of the success of the programs. He noted that early last spring, then Director of the Department Bill Gray contacted him and Representative Paul Clark, to discuss "program schools". At that meeting Director Gray suggested a study committee. In the summer of that year, 50 people were present at a meeting in Thompson Falls, most from program schools, to discuss the concept of the program. At that time, they did not think they had to worry about a regulation bill. However, they did discuss registration. He said there is a bill being written which they anticipate Representative Clark will introduce in the House that will address many of these issues.

{Tape: 1; Side: B; Approx. Time Counter: 5.4 - 12.5}

Darrell Rud, Executive Director, School Administrators of Montana, also objected to how a and b is handled in the bill. He has met students from the Spring Creek School near Thompson Falls, and was impressed how the public school in Thompson Falls has interacted with those students in a positive way and vice versa. He thought the Thompson Falls schools and the other eleven school districts, which are connecting with these students from out of state, are mutually beneficial to each other.

{Tape: 1; Side: B; Approx. Time Counter: 12.5 - 14.5}

Jerry Pauli, Superintendent of Schools, Thompson Falls, said there are twelve group homes enrolled in public schools. Fifty-eight nonresident students, out of 220, attend their high schools. He also objected to the a and b part of the bill.

[EXHIBIT \(phs08a06\)](#)

[EXHIBIT \(phs08a07\)](#)

{Tape: 1 side B 14.5 through {Tape: 2; Side: A; Approx. Time Counter: 0 - 0.6}

John Santa, clinical psychologist and co-owner of **Montana Academy**, Testified they have 80 students on a self-contained campus with eight certified teachers for high school curriculum; six PHDs, and two MDs. These are difficult kids from all over the country. They have only had two from Montana. It is a private-paid situation. The parents choose the Academy, visit, and look at what they have to offer. These students had failed in the environment, failed school, and had no future. They are not treated as sick kids. They can grow up in a safe environment. He is not opposed to proper regulations, but is nervous about regulations imposed upon them by people who do not know what they are doing. He suggested separating the a and b parts as a whole separate issue or postponing the bill until the committee sees the other alternatives coming from Representative Clark's bill.

{Tape: 2; Side: A; Approx. Time Counter: 0.6 - 5}

Penny Green, owner of **Exploration Program**, Trout Creek strongly supports registration as a first step toward licensure, but opposes the bill as is. She asked the committee not to rush through the process of this bill, but to look at other alternatives.

{Tape: 2; Side: A; Approx. Time Counter: 5 - 9.2}

Mickey Manning, Principal, Clint Creek Academy, spoke to the committee as a parent, giving her daughter as an example, to the accreditation of these programs. The program provided her and her husband with education regarding her daughter's welfare and education. As an educator, she is amazed at the program and how successfully it works. She asked the committee to consider the other bill which involves the people based in the program.

{Tape: 2; Side: A; Approx. Time Counter: 9.2 - 13.4}

Patrick McKinna, an educator from Meagher county school that has 75 students, testified their students come from all around the world. Parents do research before sending students there and are directly involved in the entire process when a student is enrolled. His concern with SB 101 is a matter of participation in the licensure. He recommended looking at Representative Paul Clark's bill before taking action on SB 101.

{Tape: 2; Side: A; Approx. Time Counter: 13.4 - 19}

Informational Testimony:

Representative Paul Clark, District 13, Trout Creek, Director of Galena Ridge, worked with various programs and developed Galena Ridge in 1992. He had a problem with SB 101 regarding licensure. He is working on another bill which will be coming up in the next week or ten days.

{Tape: 2; Side: A; Approx. Time Counter: 19 - 21.9}

Questions from Committee Members and Responses:

SENATOR ESP asked **Mr. Santa** how he would propose changing the bill so his concerns, regarding developing regulations, would be included in the process. **Mr. Santa** replied that the alternative bill would create boards to include solid representation from the program, much like the boards that regulate psychology. They would need to report to a government agency.

{Tape: 2; Side: A; Approx. Time Counter: 21.9 - 24.6}

SENATOR GRIMES asked **Mr. McKinna**, regarding the purpose of the bill laid out by the Department, if problems in the program a couple of years ago was a concern of his. **Mr. McKinna** replied that it was one of the driving forces for licensure. He said it would then involve the Better Business Bureau where people could check. **SENATOR GRIMES** asked if there was discussion about this prior to the Department's meetings. **Mr. Santa** answered, yes.

They do want protection and to be recognized as reputable schools and programs.

SENATOR GRIMES asked how they had reputable organizations putting together their own proposal and presenting some of that in a surprise bill. He asked how the transition occurred and where it occurred. **Mary Dalton** replied she was not aware of the proposal for the bill. At the public meetings, she said, they talked about what people would like to have. This organization differs from the others regarding accreditation. It is not a professional organization and licensing and accreditation standards differ. **SENATOR GRIMES** asked what some of the things were that are included and excluded in the Department's bill. Regarding the example given of the group home, does the Department's bill on page 11, apply to that or not. The term does not include a youth-care facility. He asked for a brief explanation of a youth care facility under 52-2. Was it like the Yellowstone Treatment Center. **Mary Dalton** said, no. Those facilities are already licensed. **SENATOR GRIMES** asked about religious state organizations not currently licensed. **Mary Dalton** said the language was written broadly and can include religious-based homes that are advertising. **SENATOR GRIMES** asked about summer camps. **Mary Dalton** answered that if it was a recreational camp it was not included. If it is an outdoor procedural health program, a wilderness camp that advertises, and it will provide supervision with these kinds of needs, it would be included in this bill.

{Tape: 2; Side: B; Approx. Time Counter: 0 - 6.5}

SENATOR ESP asked **Roy Camp, Bureau Chief, Licensing Board, Dept. of Health and Human Services**, regarding the two approaches between the two bills--one including a board--what was his experience. **Mr. Camp's** experience was that a Board regulates the profession and describes professional obligation. Licensing, from his point of view, establishes minimum requirements facilities would have to meet in order to be embossed in state law for license-ship. These gentlemen do not develop those types of information. It involves a great deal of provider and public input.

{Tape: 2; Side: B; Approx. Time Counter: 6.5 - 8.3}

SENATOR GRIMES questioned **Mary Dalton** in reference to the two bills and differing opinions, whether this should start in an interim committee with the two sponsors involved, structuring a study bill clearly identifying criteria regarding the licensing issue. Would the Department be willing to appointment of an interim committee.

Mary Dalton said they crafted section 6 very carefully based on assisted living. They didn't come forward with licensing as they felt it premature for this session. They came forth with a proposal saying the Department would work with the providers. The public schools said they would like to be involved. This bill is crafted to say the Department, providers, advocates, and schools have two years to meet together and come up with something for the 2007 legislature. At that time, the legislature can vote yes or no.

{Tape: 2; Side: B; Approx. Time Counter: 8.3 - 12.9}

SENATOR GRIMES asked **REPRESENTATIVE CLARK** if this should go to an interim committee for registration and licensure issues.

Representative Clark replied, if you look at section 6 on page 13, it says the Department shall develop and make recommendations to programs. That means the Department is in charge. Further on down, on line 15, it says the Department shall consult with interested parties, including representatives from residential therapeutic schools. The schools are concerned with who is involved here. He felt this part of the bill was an afterthought.

{Tape: 2; Side: B; Approx. Time Counter: 12.9 - 15.3}

SENATOR WILLIAMS asked **Representative Parks** if the legislators have an overall state responsibility for the children in the care of the programs adding she isn't sure that the professional organizations ought to steer the vote. **Representative Parks** agreed with her statement, but said he was talking about steering the process of licensing. He visualizes a Board that does a lot more than a Board of Medical Examiners. He sees a Board with standards and accountability; a broad spectrum of members appointed by an independent body.

{Tape: 2; Side: B; Approx. Time Counter: 15.3 - 17}

Closing by Sponsor:

SENATOR SCHMIDT drew attention to the title of the bill, defining residential therapeutic schools or programs, and providing for registration. The bill is about registration and licensing. The next part has to do with requiring the Department of Public Health to do this in the interim. Section 5 speaks to licensure and registration of residential therapeutic schools and programs and the reporting requirement. The bill speaks to residential therapeutic schools' programs that are not licensed and asking that they be registered. If **Representative Clark's** bill and her bill can be put together somehow, she would be open to that.

{Tape: 2; Side: B; Approx. Time Counter: 17 - 20.9}

SENATOR ESP added this was not a surprise bill. They dealt with the issue in **Interim Committee**. They approved the registration part, two or three months ago. They talked about it six months ago. He wanted to make it clear to the people in the room that it has been a while in the process.

HEARING ON SB 119

Opening Statement by Sponsor:

SEN. TRUDI SCHMIDT, SD 11, opened the hearing on **SB 119**, Revise child protective services laws. She said they heard about this bill in Interim Committee. It is a compliance bill, a proposed amendment that will assist the Department to comply with federal requirements and reviews. Amendments in two of the sections will comply with the Attorney General's opinion related to the centralized intake that started about two or three years ago.

{Tape: 2; Side: b; Approx. Time Counter: 20.9 - 27}

{Tape: 3; Side: A; Approx. Time Counter: 0 - 1.1}

Proponents:

Shirley Brown, Administrator, Child and Family Services Division, told the committee this is a compliance bill as most of the proposed amendments better allow the Division to comply with various federal requirements. Non-compliance with those requirements does have, or could have, a negative impact on the Division's budget.

EXHIBIT (phs08a08)

{Tape: 3; Side: A; Approx. Time Counter: 1.1 - 8.3}

Twila Costigan, MSFAPA, rose in favor of the bill.

{Tape: 3; Side: A; Approx. Time Counter: 8.3 - 9.1}

Opponents:

Jeff Sherlock, District Judge representing the **Montana Judges' Association**. He does not represent the supreme court judges. The Association has two points of contention. One is with allowing an agent, through an employee, to be a guardian ad litem. They feel that may undermine the independence of the guardian ad litem and give contentious parents, or others in

cases, another grounds to appeal. They are also not in favor of the permanency hearings in district court because they are always looking for a way to get rid of cases. This is one area he feels they should keep a hand on.

{Tape: 3; Side: A; Approx. Time Counter: 9.1 - 13.3}

Opponents: Jeff Sherlock

Informational Witnesses: None.

Questions from Committee Members and Responses:

SENATOR WILLIAMS asked **Judge Sherlock**, in reference to his concerns of guardian ad litem with people in protection, why he would call that not technically deemed. **Judge Sherlock** replied he thought the bill said they didn't have a direct conflict. He referred to a case out of Great Falls involving a Great Falls law firm that had a conflict of interest. He said it gets down to a point of perception. He talked to a social worker in Helena who said a lot of his current guardians had left the program and gone to work for these departments. His worry is about perception.

{Tape: 3; Side: A; Approx. Time Counter: 13.3 - 15.3}

SENATOR ESP asked **Judge Sherlock** to expound on the contradiction. **Judge Sherlock** replied they keep a tight eye on this in Helena. In other counties, that is not the case. He was worried that the judges might let somebody else do it.

{Tape: 3; Side: A; Approx. Time Counter: 15.3 - 16.3}

SENATOR ESP asked if he thought judges in every other county might do that. **Judge Sherlock** didn't think they all would.

SENATOR O'NEIL asked **Judge Sherlock** if he had any ideas how to have more guidance in the bill or guidance to handle more cases. **Judge Sherlock** didn't. He said they have a tremendous turnover. The judges in Helena encourage people they know to do it and try to help the local agencies any way they can.

SENATOR GRIMES asked **Ms. Brown** if she could tell the committee why Department employees were excluded from the adoption proceedings. **Ms. Brown** thought that, at the time the guardian ad litem statute was written, nobody within that Department of Family Services could be a guardian ad litem. In 1995, when the umbrella increase was created, it increased from several hundred people to 3000 people who are now with the Department of Public

Health and Human Services. This was so a social worker from Child and Family Services could not be a guardian ad litem.

SENATOR CROMLEY asked **Judge Sherlock** about his concerns with judges referring out of court to the foster care committee. It seemed to him it was important to get the hearings held through. He wondered if that had widespread opposition from the judges when it is at the discretion of the court for that referral.

Judge Sherlock said that after an audit of their members in October, the majority were opposed.

{Tape: 3; Side: A; Approx. Time Counter: 18.3 - 21}

Closing by Sponsor:

SENATOR SCHMIDT would prefer **Judge Sherlock** help make changes to the two things he had problems with. She said she would talk with **Shirley Brown** regarding what should be done. She wanted the bill to get out and to be passed.

{Tape: 3; Side: A; Approx. Time Counter: 21 - 22.4}

ADJOURNMENT

Adjournment: 5:10 P.M.

SEN. BRENT R. CROMLEY, Chairman

RITA TENNESON, Secretary

BC/rt

Additional Exhibits:

EXHIBIT ([phs08aad0.PDF](#))