



Law and Justice Interim Committee

60th Montana Legislature

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MINUTES

Subcommittee on Suicide Prevention and Jail Standards

July 17, 2008

Community Room, Gallatin County Courthouse
Bozeman, Montana

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SUBCOMMITTEE MEMBERS PRESENT

SEN. GARY PERRY, Chair
SEN. LARRY JENT
REP. ROBERT EBINGER

STAFF PRESENT

SHERI HEFFELFINGER, Lead Staff
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Subcommittee chose to present a proposal for a mental health crisis network and a proposal for collection of jail mental health data for consideration by the full Law and Justice Interim Committee.

CALL TO ORDER AND ROLL CALL

- 00:00:01 SEN. PERRY called the meeting to order at 1:02 p.m. He asked those present to introduce themselves.
- 00:03:08 **Sheri Heffelfinger, Research Analyst, Legislative Research Division (LSD)**, reviewed the purpose for which the subcommittee was appointed, saying that at the Law and Justice Interim Committee's last meeting, the Committee approved a concept for a bill draft to address jail standards and suicide prevention. She explained that two topic areas would be discussed: a mental health crisis network model (the Kentucky model - EXHIBIT #1) and jail standards and training - EXHIBIT #2). She said that a June 27, 2008, memo (EXHIBIT #3) prepared by David Niss, Staff Attorney, LSD, would be referenced throughout the discussion. Ms Heffelfinger distributed copies of a VisionNet map indicating the district court locations throughout Montana where videoconferencing is and is not available (EXHIBIT #4). She said the green dots indicate the locations that have video conferencing and that the red dots represent areas that do not have video conference capability.

Part 1: Montana Mental Health Crisis Network and what should be provided (EXHIBIT #3)

- 00:10:54 SEN. PERRY asked Sheriff Jim Cashell to discuss his jail's video conference capability. **Jim Cashell, Gallatin County Sheriff**, said his jail facility does not have video conference capability but that VisionNet is available in the District Court rooms.
- 00:11:38 **Terry Jessee, licensed clinical counselor, Billings Clinic**, said that tests in Yellowstone County have shown that existing systems are compatible and could be used. He estimated that at least 95% of Montana counties have at least some capability but would need to be augmented in some way. Sheriff Cashell said that VisionNet is used in mental health cases but within the jail.
- 00:14:51 **Dennis McCave, Captain, Billings Police Department**, said he believes that most jails may have the equipment but not a connection, and that software and programming issues may be problematic. He said it would be good to know who has what equipment.
- 00:16:09 **Harold Blattie, Montana Association of Counties (MACo)**, said that MACo recently conducted an impromptu study on video conference capability and found that equipment issues exist, as well as the availability of broadband, particularly in low-populated and rural counties. He said that broadband is expensive and that many counties cannot afford it. He said that to suggest that smaller and rural counties have video conference capability is not a good assessment.
- 00:17:48 SEN. PERRY said that for this item, work could begin with counties that have capabilities and then the remaining counties could be evaluated to determine what it would take to get them to the same level.

00:18:22 **Deb Matteucci, Behavioral Health Program Facilitator, Department of Corrections (DOC) and Department of Public Health and Human Services (DPHHS)** said another key point is if even all counties have video conference capability, it is not always available on the other end because of the shortage of mental health providers. She said it is both a technology issue and a provider/workforce issue.

00:20:10 Mr. Jessee agreed that mental health care is not available in all communities, and that teleconference capability would allow agencies, such as the Billings Crisis Center, to serve those of communities from a distance. He said that additional staff and equipment would be needed but the capability already exists.

Sheriff Cashell said that jails are not the place to house people identified with mental health issues because jails do not have the staff, training, or expertise to deal with them. He said that the mentally ill offender can be identified by his staff but that the problem is that there is no place to divert them to in order to keep them out of the jail. He said that Montana statute requires that these people be diverted out of the criminal justice system, but the question is, where do they go. Sheriff Cashell also explained the difficulty of having to transport mentally ill offenders and asked that the Legislature "take law enforcement out of the transport business", saying it is a disservice to all involved. He said that Montana's mental health care system is seriously broken and that the Legislature needs to look at what needs to be done to fix it.

Question 1c in EXHIBIT #3 - What agency/board will supervise creation of network: DPHHS, MBCC, or other?

00:28:21 SEN. JENT said the Montana Board of Crime Control (MBCC) has expressed interest in working with the Kentucky model program but that because the Department of Public Health and Human Services (DPHHS) has expertise in mental health issue, he would prefer that it be the lead agency. He said that the Department of Corrections also has valuable experience. Ms. Matteucci said a group meeting was held recently and that a main topic of discussion was how to create and administer such a network. She said she was not clear at this point which agency should supervise.

00:31:25 **Jim Smith, Montana Sheriff's and Peace Officers Association (MSPOA)**, said Kathy McGowan has discussed the Kentucky model program with Kentucky officials and received very good feedback. He said both he and Ms. McGowan feel that the Kentucky program is very workable and has great potential for use in Montana. He agreed that not all jails have the same capability at this point, but thought that overall, much of the needed infrastructure is in place.

00:35:11 REP. EBINGER asked for discussion of how assessment for mental health issues would be handled on the scene, specifically if a person could be diverted at the scene and not even be transported to a jail, if mental health issues were detected. Mr. Smith said that would be possible and is already being done to some degree in some Montana communities. He said that the Kentucky model provides more assessment after a crisis has been resolved but would be compatible with what crisis intervention teams in Montana are already doing.

00:38:05 Sheriff Cashell explained that officers with mental health crisis training would make the assessment to determine if the individual is suffering from a mental health issue first and if the criminal activity was a result of the mental health issue. If so, then the person would be diverted from jail. He said that both crime rates and costs would decrease eventually, but cautioned that the Legislature would have to be behind the program for it to work. SEN. JENT said it appears that triage is already being done by law enforcement officers in the field and that the Kentucky model does the triage in the jail. He thought that the two approaches would be compatible but that because of the differences in Montana jails, any program should be designed as a pilot program initially.

00:44:26 SEN. PERRY asked what agency should provide oversight for the program. SEN. JENT said that DPHHS and/or the MBCC should be involved.

00:45:52 **Roland Mena, Executive Director, Montana Board of Crime Control (MBCC)**, said that the DPHHS is the licensing body for mental health services and has the expertise and history in dealing with mental health care. REP. EBINGER noted that Crisis Centers won't take anyone in custody or in the jurisdiction of a judge and said that the issue would have to be dealt with.

00:47:30 SEN. PERRY said he would not preclude the involvement of the MBCC. Ms. Heffelfinger said the Subcommittee needs to approve a bill draft for presentation to the full LJIC. She said that she is looking into contractual issues that would deal with REP. EBINGER's concern. SEN. PERRY said for purposes of the bill draft, DPHHS would be listed as the administrating agency.

Question 1d in EXHIBIT #3 - If special screening forms are to be used, do the forms need legislative input and oversight or should they be created by the DPHHS?

00:50:29 Mr. Smith, Mr. Jessee, and Sheriff Cashell were all in agreement that it would serve everyone well to have uniformity, no matter who creates the screening process. Sheriff Cashell did express concern about who would have to pay for associated expenses, such as changes in software.

00:53:07 SEN. JENT thought that the administrative agency should be required to create the forms, taking into consideration the concerns discussed by Sheriff Cashell. SEN. PERRY agreed, saying that the forms may not have to be identical, but that all should contain the same protocol.

Question 1e in EXHIBIT #3 - Where will remote consulting mental health professionals be located and should the location be specified in the bill draft?

00:54:14 Mr. Jessee said it would be possible to use all of the current available agencies, including remote areas. He pointed out that the Kentucky model uses one agency for 96 jails, but that his opinion is that regional centers would be more effective than one central agency. Mr. Smith agreed that a regional approach would work well in Montana.

00:58:15 SEN. JENT, SEN. PERRY, and REP. EBINGER said they did not think this issue needed to be addressed specifically in the bill draft.

Question 1f in EXHIBIT #3 - Will the program include follow up care?

- 00:58:42 Ms. Heffelfinger said the question is what should be done in initial screening, if an additional risk is identified that is beyond the protocols of the jail. She asked the Subcommittee members if they wanted to broaden the focus of the bill draft to include the need for follow up.
- 00:59:46 Sheriff Cashell said in a perfect world, providing aftercare would be ideal but that realistically, he did not see how this could be included at this time.
- 01:00:30 Mr. Jessee asked if the term "follow up care" included care inside the jail or would take place after release. Ms. Heffelfinger said she did not know what Mr. Niss' intention was. Mr. Jessee said that, in the Kentucky model and others, follow up care includes having a mental health professional talk with the person within three hours of being jailed and that video technology would allow this to be done in almost any jail.
- 01:02:06 SEN. JENT supported including the concept of in-jail follow up care.
- 01:02:26 REP. EBINGER said he has heard from county sheriffs about the inconsistency of follow up care and the availability of care, mostly due to the lack of mental health professionals. He suggested using contractual arrangements to make sure that care is consistent, reliable, and on time.
- 01:03:22 Ms. Matteucci discussed different types of followup care and protocols needed, as well as screening tools used to detect mental illness, as contained in the Kentucky model. SEN. PERRY asked Ms. Heffelfinger to summarize SEN. JENT's and Ms. Matteucci's comments for presentation to the full LJIC.
- 01:06:25 Mr. Blattie said he wholeheartedly agreed with Mr. Smith that having uniform screening tools is essential and would greatly reduce liability for jails. He said one issue that troubles him is, if a person is identified in a jail as having mental health issues, then who would take responsibility and who would bear the cost. He said how to pay for a regional center is another issue he is struggling with.
- 01:10:25 SEN. JENT read from Memo No. 4 - the Kentucky model (EXHIBIT #1) regarding follow up services and said that was what he envisioned, not aftercare. He suggested that the bill draft mirror that language. Sheriff Cashell asked that any language make clear that jails are not the proper place for persons with mental health issues and that diversion is extremely important for these types of people. SEN. JENT, SEN. PERRY, and REP. EBINGER agreed.

Question 1g in EXHIBIT #3 - Will the bill draft proposal include jail protocols?

- 01:12:07 SEN. JENT said he would like the bill draft to mirror the Kentucky model in terms of jail risk management protocols. He said the protocols should emphasize diversion from jails as soon as possible in the process.
- 01:13:14 Captain McCave said that jail protocols should start with a pilot program before mandating a statewide program. He said that different facilities have different capabilities and that it would not be practical to get too specific.

01:15:06 Ms. Matteucci said another resource is the statewide suicide officer and that he could be the umbrella for uniformity on this issue.

01:16:19 SEN. JENT agreed that a "one size fits all" protocol would not work. Ms. Heffelfinger said the Subcommittee can decide how specific the bill draft should be and that the key will be to balance the risk with what is practical and doable. She suggested that the bill draft could specify minimums for different levels, depending on the capabilities of a particular jail.

01:19:23 SEN. PERRY said he would prefer that the bill draft offer guidelines but not mandate specific requirements. SEN. JENT and REP. EBINGER agreed.

Question 1h in EXHIBIT #3 - Will the Community Mental Health Centers have any roll, and if so, what?

01:19:55 Ms. Heffelfinger said the language could be general enough to allow the DPHHS to do a general request for proposals (RFP) to see what the interest is from the various agencies, or the language could specify that DPHHS use the Community Health Centers.

01:21:19 Mr. Smith said either approach would work but thought that the Community Mental Health Centers would be interested.

01:22:53 SEN. JENT and REP. EBINGER both thought that the bill draft should just specify that the DPHHS will be agency to oversee and administer the program.

Question 1i in EXHIBIT #3 - If additional funding is necessary for any purpose, should an appropriation go into the bill draft?

01:23:41 SEN. JENT said he thought there should be an appropriation in the Governor's budget for this but that he would like it to be as flexible as possible, in order to allow for contractual agreements to be used, if necessary.

01:26:46 Mr. Mena said there are a number of private, nonprofit organizations that provide services that may be interested, in addition to the Community Mental Health Centers.

Question 1j in EXHIBIT #3 - If additional revenue is necessary, how should it be paid for?

01:27:31 Sheriff Cashell supported the idea of the Legislature appropriating funding for services. SEN. JENT said there is a large mental health budget already appropriated in the state budget and that it would be helpful to work with the Governor's Budget Office on how best to use existing funding. SEN. PERRY and REP. EBINGER both agreed. Ms. Heffelfinger asked for clarification if the appropriation was to come from the existing budget or if it would be a new appropriation. SEN. JENT said that the existing budget has some funding that could be made available, such as through the suicide prevention officer program or AMDD, for example. He suggested that portions of those types of funding sources could be devoted to the jail crisis concept. Ms. Matteucci said that many of the DPHHS programs are tied into Medicare or Medicaid, and would be available only to those people diagnosed under serious mentally disabled illness (SMDI) criteria. She cautioned against pulling money from different programs and

said that by doing so, the unintended consequence of creating problems at other levels of the intercept could occur. Ms. Heffelfinger suggested that a bill draft be developed with DPHHS, including a fiscal note, and that funding sources could be examined, based on that information.

01:35:00 After a brief discussion on funding, SEN. PERRY, SEN. JENT, and REP. EBINGER agreed that an appropriation from the general fund for a pilot project would be the best approach.

Question 1k in EXHIBIT #3 - Effective date(s)?

01:36:54 Ms. Heffelfinger said because the proposal would initially be a pilot project, it could be phased in or be implemented all at once. She suggested that July 1, 2009, would be a good effective date for fiscal year purposes.

01:37:39 SEN. PERRY that transportation concerns, including costs, would be addressed at a future meeting of the LJIC.

BREAK

Jail Standards and Training

01:52:50 Ms. Heffelfinger reviewed the LJIC's work to date on the issue of jail standards and referred to Mr. Niss' June 13, 2009 legal memo (EXHIBIT #2) while giving an overview of the questions and issues (EXHIBIT #3) that the Subcommittee would address in its deliberations.

Question 2a in EXHIBIT #3 - HB 185, but for mental health issues only?

01:55:13 SEN. PERRY asked Captain McCave and Sheriff Cashell to comment. Captain McCave said it is his understanding that this would create only mental health standards and would deal with the overall daily operations of jails, which, he said, would be a very complex undertaking covering a wide range of issues. Captain McCave said he would support care standards on a community level but that creating statewide standards would be destructive because a "one size fits all" approach would not work. He said that community mental health standards must be formed before state standards can be developed. He noted that the MSPOA standards mirror those of the American Corrections Association (ACA) and said, in his opinion, that they are adequate.

02:01:22 Sheriff Cashell agreed with Captain McCave's comments. He said that Mr. Niss' memo indicates that MSPOA has been working on this issue for some time and will continue to do so. He said that putting standards in statute would create big problems.

02:02:54 SEN. JENT said he thought that the standards developed in the mental health crisis screening bill draft would take care of most of the mental health jail standards issue. He suggested having only one bill draft that would address the crisis network and jail suicide protocols.

02:05:09 SEN. PERRY said that the LJIC has brought forth ideas and has asked how ti can help but is not looking to create legislation where none is needed. He said that the Subcommittee would use its remaining time to consider other issues.

Question 2b in EXHIBIT #3 - What agency to adopt standards (MBCC, POST Council, MEA)?

02:06:43 The Subcommittee agreed that this question did not need to be addressed.

Question 2c in EXHIBIT #3 - Should bill adopt standards directly or provide adoption process to be used? Which standards to be adopted and kept current?

02:06:53 SEN. JENT said that rulemaking guidance may be needed and suggested that the Montana Administrative Procedure Act (MAPA) be considered. Ms. Heffelfinger said that MAPA regulations don't apply to local governments (county jails), so care would have to be taken when drafting the bill's language. She suggested that the issue of rule making authority be discussed with DPHHS and that consideration of who the rules would apply to would also have to be considered.

Question 2d in EXHIBIT #3 - Standards to include: suicide screening form, suicide protocol, jail management protocols, and/or jail mental health standards for dealing with mental health issues?

02:08:58 SEN. JENT said that, in his opinion, these items had been taken care of under the mental health crisis network discussion.

Question 2e in EXHIBIT #3 - Should the bill specify a train-up period for inspectors and jail personnel, use of consulting services from NIC, etc.?

02:10:35 **Jen Dwyer, American Civil Liberties Union (ACLU) of Montana**, said that the ACLU receives 60-80 complaints per month from detainees and that many of the complaints include mental health issues. She said that she appreciates the internal efforts being made but still is of the opinion that state jail standards are needed.

02:12:48 Captain McCave said that jails have a limited amount of resources with which to deal with mentally ill inmates and that all jails struggle with providing the needed care. He said that passing a statute would not change anything and that it would be better to build community mental health programs. He said he is not dismissing the complaints of the inmates but that experience does show that not all complaints are related to mental health issues. Captain McCave said that many jails voluntarily use certain standards and really are trying to do the best job possible with the resources available. Ms. Dwyer said that inmates have few venues through which they can complain, whether legitimate or not, and that her concern is that they have the opportunity to voice their complaints.

02:15:55 Mr. Smith said that accountability and oversight for jails may be available through MACo insurance programs that provide liability protection for county jails. He said that MACo is very concerned about liability issues.

02:18:44 **Matt Kuntz, Executive Director, National Association of the Mental Illness (NAMI), Montana Chapter**, discussed challenges presented by Montana's size and topography and said that while he has a great deal of respect for what the LJIC is attempting to do, a "one size fits all" approach won't work because of the issues he discussed.

- 02:21:38 Mr. Blattie discussed the fiscal impact that Initiative 105 (1985) had on county budgets, including jails. He said that smaller counties are never going to have the funding to implement extensive programs and that counties do the best they can with the resources they have. He said that the Legislature could provide help.
- 02:25:43 Sheriff Cashell agreed strongly that I-105 had a huge impact. He said that the mental health issue and the crumbling tax structure in the state of Montana has crippled counties and said it is up to the Legislature to help
- 02:26:56 **Tim Ravandal, Broadwater County**, agreed with Mr. Blattie and Sheriff Cashell. He said that voters in Broadwater County defeated a mill levy that would have helped with recruitment, retention, and officer training. He said it is a question of resources and that unfunded mandates on local governments from the state must be avoided. He cautioned the Subcommittee to proceed with caution.
- 02:28:33 SEN. JENT summarized the issue, saying that he believed the concerns of the ACLU and NAMI would be covered by the bill, if it was correctly drafted. He read from Mr. Niss' memo dealing with the Kentucky model (EXHIBIT #1) and said the intention of the proposed bill draft is to get the state out of the business of incarcerating mentally ill people. He said it would not be a perfect system but would be a good place to start.
- 02:33:03 Regarding Question 2e in EXHIBIT #3 - training for inspectors and jail personnel, SEN. PERRY asked Captain McCave and Sheriff Cashell to explain what kind of training is currently being done. Captain McCave said that three inspectors were trained in April and that by year end (2008), a network of peer trainers will have been established. He predicted that by the end of 2009, full inspections will be taking place.
- 02:34:51 SEN. PERRY said that in his opinion, Questions 2f and 2g are no longer relevant. He asked Captain McCave to comment on 2h - jail inspection. Captain McCave said that inspections are being done but that the lack of funding is a big obstacle. HE said work being done to finalize an inspection process should be completed in 2009 and that at that time, counties may request additional resources from the state to implement jail inspections.
- 02:36:53 Sheriff Cashell referred to Mr. Niss' conclusion on page 7 of EXHIBIT #2, saying that Montana has a 24-year history of trying to adopt jail standards. He said that sheriffs are supportive of inspections of some type but want to avoid a situation of being told how they have to run their jail by the State of Montana. He said that peer inspections are the best way to get the job done.
- 02:39:03 SEN. PERRY said there would be no bill draft for Question 2 in EXHIBIT #3 - jail standards and training.

Question 3 - Collection of jail mental health data

- 02:38:54 SEN. PERRY said that this issue has been discussed by the full LJIC. Ms. Heffelfinger said that she has no specific instructions on data collection but suggested that jails be required, for instance, to report data from inmate

screenings, not just on suicide but on other mental health issues also. She suggested that the MBCC could possibly be the entity to which jails would report the data.

- 02:41:48 Mr. Mena. MBCC, said that it has been working on data collection and has a repository of self-reported data from participating jails. He said he would work with Ms. Heffelfinger on language and said that he would like to build the requirement so that it would be within the scope of existing resources.
- 02:43:27 Ms. Matteucci said that the state suicide officer should also be considered because he is already tracking suicide data.
- 02:43:56 Mr. Blattie said that MACo has had a great deal of experience in collecting information from counties and that it is not an easy task because there is no uniformity in collection procedures or formatting of information. Because of that, he said, data collected should be prospective and not be retrospective. He agreed that uniform data would provide a needed prospective.
- 02:45:46 SEN. PERRY said there is a tremendous lack of data on jail suicide, which makes it very difficult to discuss the issue. He recommended that a bill draft contain a requirement for a data collection system. SEN. JENT and REP. EBINGER agreed. It was agreed that the bill draft would also have to specify what agency would be responsible for collecting the data and that the state suicide officer or the MBCC would be good resources.
- 02:47:44 Ms. Heffelfinger said a bill for a screening process and a pilot program would be administered by the DPHHS. SEN. PERRY asked that the DPHHS report back to the LJIC on the success of the pilot program. Ms. Heffelfinger said that the Subcommittee would have to determine how long the pilot program would be.
- 02:49:52 Ms. Matteucci said another piece to consider, as a part of the data collection system, is the collateral impact and what effects the program had on the current situation.
- 02:51:56 Mr. Mena asked the subcommittee to consider whether case studies should be a part of the process.

PUBLIC COMMENT

- 02:52:58 **Charlie McCarthy, former DPHHS employee and family member of a mentally ill person**, related his professional experience and agreed that data is very important. He said that not enough is known about jail suicides and said it is important to remember that many of those who commit suicide in jails do not have a mental illness diagnosis, but rather are reacting to their feelings of shame. He said other factors also are considerations in a person's decision to commit suicide, including age, sex, and conditions of the person's arrest or confinement. He emphasized the importance of a person being closely monitored in the first few days of incarceration, saying that most suicides occur in the first day or two.

02:55:56 **Anita Roessman, Disability Rights Montana (DRM)**, read written testimony in support of establishing mandatory jail standards (EXHIBIT #5). Ms. Roessman stated she would like to see mental illness treated like other medical conditions, such as diabetes, and not stigmatized or minimized.

03:04:58 SEN. PERRY thanked all those who attended the meeting, particularly the panelists and staff.

ADJOURNMENT

03:05:21 With no further business before the Subcommittee, SEN. PERRY adjourned the meeting.

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