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DRAFT

HJR 50 Survey Results: Involuntary Precommitment Process and Costs

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for the
Law and Justice Interim Committee

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INTRODUCTION

This report compiles the data reported from a survey of Montana's 56 counties on their involuntary precommitment petitions and costs. Montana State Hospital admissions data and 2000 census data are used to augment the survey data.

The report is organized as follows:

Part I - Overview of Study Tasks

Part II - Questions, Findings, and Conclusions

Part III - Issues and Options

PART I - OVERVIEW OF STUDY TASKS

Review of HJR 50

During the 2007 Legislative Session, Representative Arlene Becker sponsored HB 551 to limit the number of days for which a county is responsible (as the payor of last resort) for paying the detention, evaluation, treatment, testimony, and transportation costs associated with the involuntary commitment of a person suffering from a mental illness. The bill failed and House Joint Resolution No. 50 was born. The whereas clauses in HJR 50 states the problem in terms of the fiscal uncertainty to counties and the lack of time limits on psychiatric precommitment evaluations.

WHEREAS, section 53-21-132, MCA, requires Montana counties to serve as the payor of last resort for the psychiatric precommitment examination, detention, and treatment costs incurred when a court order has been sought to commit a seriously mentally ill person to the Montana State Hospital; and

WHEREAS, psychiatric precommitment evaluations for which counties have been billed have ranged in duration from 3 days to more than 45 days; and

WHEREAS, the lack of time limits on psychiatric precommitment evaluations not only creates uncertainty for a person subject to commitment proceedings, but also may delay the person's placement in the most appropriate treatment setting; and

WHEREAS, the lack of time limits on psychiatric precommitment evaluations also creates financial uncertainty for Montana's counties, resulting in unanticipated costs.

The resolution goes on to requests that an appropriate interim committee complete three study tasks as follows:

(1) study the ways in which the psychiatric precommitment examination, detention, and treatment provisions of state law have been used across the state, including the number of days that individuals are in precommitment evaluation status in each county;

(2) determine the amount of money that Montana's county governments have paid for psychiatric precommitment examination, detention, and treatment, including the trends in those costs over time; and

(3) review the number of people committed to the Montana State Hospital pursuant to the provisions of Title 53, chapter 21, part 1, MCA, including the number of people committed from each Montana county.

Finally, the resolution asks for the following outcome:

that the committee identify alternatives to the current psychiatric precommitment examination, detention, and treatment process that would:

(1) allow timely resolution of commitment proceedings to ensure that a person who is subject to a commitment proceeding is placed in the most appropriate treatment setting as quickly as possible; and

(2) improve a county government's ability to predict and budget for the costs of psychiatric precommitment evaluations.

Survey process and limitations

To begin engaging the outlined study tasks, the Law and Justice Interim Committee's study plan for HJR 50 called for a survey of each county with reliance on the Montana Association of Counties (MACo) for assistance in conducting the survey. Legislative staff met with Sheryl Wood, Deputy Director of MACo, and Bill Kennedy, Yellowstone County Commissioner, to develop the survey questions. A draft survey for was circulated for comment. On November 9, 2007, in Butte, the Committee took testimony from a panel of stakeholders and adopted the survey instrument. In late January, MACo formatted the survey and sent it out to each county attorney with a return deadline of March 3, which was subsequently extended to March 10. The returned survey forms and the list of counties who had not responded was provided to legislative staff on March 20 for compilation and analysis.

At the writing of this report, 20 counties had not yet responded. Of the 36 counties that did respond, most of the surveys were incomplete because the information was not readily available.

To the extend surveys were completed, that data is presented in this report.

PART II - QUESTIONS, FINDINGS, AND CONCLUSIONS

Study Task #1:

Study the ways in which the psychiatric precommitment examination, detention, and treatment provisions of state law have been used across the state, including the number of days that individuals are in precommitment evaluation status in each county.

A. What is the current law and process?

- Montana's current law governing involuntary commitments are summarized in the July 13, 2007, staff report entitled *HJR 50: A Primer*.

- A review of Kendra's Law and of Montana's statutes concerning community commitments was provided to the Committee in a staff research memorandum on dated March 27, 3008.

- In terms of process, survey responses do not point to the problem being the

timelines specified in the statute. Rather, the written comments suggest that the process delays are primarily caused by:
-- lack of community crisis stabilization beds and local alternatives to involuntary detention at the MSH
-- lack of mental health professionals in the most rural areas who can do an emergency evaluation
-- courts not holding hearings on weekends
-- legal process (i.e., respondents exercising their rights to contest the commitment and request a jury trial)

B. *How many involuntary commitment petitions are filed in each county compared to the county's population?*

➢ See TABLE 1: Population Compared to Petitions Filed.

C. *Do county attorneys choose to not file petitions for involuntary commitment even though a professional person has made a determination recommending that a petition be filed? If so, why?*

➢ See TABLE 2: Determinations Compared to Petitions.

➢ Cascade, Custer, Flathead, Hill, Ravalli, and Yellowstone Counties reported differences in the number of determinations compared to petitions filed. Reasons for the differences were varied and are noted at the bottom of TABLE 2.

➢ Nothing in the survey responses suggest that the reason for discrepancies between the number of professional determinations recommending commitment proceedings and the number of petitions filed by county attorneys is concern over county costs.

D. How do counties provide for emergency detention and evaluation pending the precommitment hearing?

- ➢ See TABLE 3: Facilities used other than MSH. Of the 36 counties who responded to the HJR 50 survey, 18 counties use local facilities: Cascade, Custer, Dawson, Fergus, Flathead, Hill, Lewis & Clark, Madison, McCone, Missoula, Phillips, Ravalli, Roosevelt, Sheridan, Teton, Toole, Valley, and Yellowstone.

- ➢ The other 18 counties rely solely on the MSH: Blaine, Choteau, Daniels, Gallatin, Glacier, Golden Valley, Judith Basin, Lake, Liberty, Mineral, Park, Petroleum, Pondera, Powder River, Prairie, Rosebud, Treasure, and Wibaux.

- ➢ See TABLE 4: MSH Admissions by County and Commitment Type FY 2007. This table also shows which counties use the MSH for emergency detention (EM DET) pending an evaluation. The number of court ordered detentions (COD) pending an evaluation and hearing are also provided. Note that the emergency detentions constitute 45% of the commitments to MSH.

- ➢ Testimony to the Committee pointed to the need for local crisis beds. Based on the data in Tables 3 and 4, local crisis bed would significantly reduce emergency detention admissions to MSH, reduce county transportation costs, and keep mentally ill individuals from having to be transported to the MSH in handcuffs.

E. How many emergency detentions and court ordered evaluations ultimately result in an involuntary commitment to MSH?

- ➢ See TABLE 5: MSH COD and ED Commitment by County.

- ➢ According to admissions information provided by MSH, 62% of the emergency detentions and court ordered evaluations done by the MSH result in an involuntary commitment.

F. How many days are individuals in a precommitment evaluation status in each county?

- ➢ See TABLE 3: Facilities used other than MSH. For those counties that used a facility other than the MSH, the average length of stay varied from a high of 10

days (McCone County), to a low of 1.5 days (for individuals released following the examination in Ravalli County).

➢ See TABLE 6: Montana State Hospital Length of Stay. Admissions data from the MSH show that the median length of stay in FY 07 for an emergency detention was 3 days and for a court ordered evaluation was 4 days.

Study Task #2:

Determine the amount of money that Montana's county governments have paid for psychiatric precommitment examination, detention, and treatment, including the trends in those costs over time. (Testimony and transportation costs were added to the HJR 50 survey.)

A. What are each county's detention, examination, treatment, and testimony costs for involuntary precommitment proceedings?

➢ See TABLE 7: Detention and Examination Costs and TABLE 8: Treatment and Testimony Costs for FY 2004 through FY 2007.

➢ In some counties, detention, examination, treatment, and testimony costs change significantly year to year (see Custer, Dawson, Missoula, and Ravalli Counties), while in other counties those costs seem to remain relatively stable (see Gallatin, Madison, and Valley).

➢ The most significant costs were for detention and examination. However, Cascade and Ravalli Counties stand out as having significant treatment costs as well. These two counties also use local facilities.

➢ Costs for testimony were generally the least significant costs.

➢ For per diem rate comparisons, see TABLE 3 and the MSH rate sheet attached after TABLE 3. Local per diem rates for emergency detention in local hospitals is significantly higher that the MSH rates and the average lengths of stay at these facilities are also higher.

- ➢ Pages 4 and 5 of the admissions policy for the Montana State Hospital (MSH), which is provided as a separate handout, contains information relevant to involuntary commitments to and emergency and court-ordered detentions in the MSH. One of the criteria for an emergency detention is that no local facility is available.

- ➢ Total costs reported for detention, evaluation, treatment, and testimony for FY 2004 through FY 2007 are provided in TABLE 9. However, looking at total costs can be misleading because several of the counties did report all the information for each of the component costs.

B. What are the trends in detention, examination, and treatment costs?

- ➢ Ravalli County shows a steady increase in costs, but costs in the rest of the reporting counties varied year to year. Again, much of the cost information reported was incomplete.

- ➢ See TABLES 10, 11, and 12. A comparison of detention, examination, and treatment costs to the number of petitions filed shows wide ranging discrepancies. Although incomplete, if the cost data provided is fairly accurate, then it seems clear that these costs cannot be predicted based on the anticipated number of petitions that will be filed.

C. What are the transportation costs by county?

- ➢ See TABLE 13: Transportation Costs. The counties with the highest number of individuals transported to the MSH and with the transportation costs were Gallatin, Lewis & Clark, Missoula, and Yellowstone Counties.

- ➢ See TABLE 14: Transportation Costs Per Individual - FY 2007. Based on the information provided by Glacier, Roosevelt, Sheridan, and Valley Counties, it costs between $1,100 and $1,700 to transport one individual to MSH from counties located furthest from MSH. However, Toole County reported a cost of only $481.

- ➢ For counties that are closer to MSH (Gallatin, Missoula, Yellowstone, and Lewis & Clark), the cost is between $140 and $280 per individual transported.

Study Task #3:

Review the number of people committed to the Montana State Hospital pursuant to the provisions of Title 53, chapter 21, part 1, MCA, including the number of people committed from each Montana county.

A. How many people on involuntarily committed to the MSH from each county?

- See TABLE 4: Admissions by County and Commitment Type and TABLE 6: Length of Stay. Involuntary commitments account for about 25% of the total admissions to MSH, with an average length of stay in FY 2007 of 111 days.

- See TABLE 14: Per Capita MSH Admissions Rates. The counties with the most admissions to MSH per capita are: Silver Bow, Deer Lodge, Park, Powell, and Lewis & Clark. The counties with the next highest admissions rate per capita are: Custer, Fergus, Missoula, and Beaverhead. The per capita admissions rates for the remaining counties are at or below the statewide mean.

Written comments

Time constraints precluded a staff summary of all the written comments received, except to type up the handwritten comments and copy the more lengthy prepared comments. They are provided in raw form as attachments to this report.

Conclusions

Survey limitations

Before drawing conclusions, the limitations of the survey and findings must be noted.

- As reflected in the written comments by several counties, the survey did not ask questions that could capture all costs.

- ➢ A key question related to process and timelines and causes for delays was inadvertently dropped from the bottom of the survey form when the survey was formatted and sent out by e-mail. Consequently, only a few counties who used the web-based form replied to those questions.

- ➢ It is clear that all of the counties struggled to pull together the information that was asked for in the survey and, in many cases, had limited degrees of success, so, as shown in the tables generated from the date, many fields in the survey were simply left blank. However, it was also clear that many counties made a huge effort to provide what they did provide.

- ➢ To the extent data was provided, there was no opportunity for follow-up and clarification of some responses that seemed questionable or that seemed to indicate that the question was not understood as intended.

Based on the above limitations and qualifications:

- ➢ The survey data cannot provide an accurate measure of the financial impact involuntary precommitment proceedings have on county budgets nor provide answers to questions about process timelines.

- ➢ The survey can provide some basis for some general conclusions and perhaps help the Committee to focus on certain options discussed later.

<u>Key problems</u>

1. *Volatility of costs.* Involuntary precommitment costs are volatile, unpredictable, and significant, especially in the most rural counties that may handle only a few commitments in several years. However, it is not possible to predict with any certainty how many people will suffer a mental health crisis requiring emergency detention. Additionally, the evaluation process and treatment needs vary by individual.

2. *Cost of hospitalization.* Counties that are not located near the MSH prefer local alternatives for emergency detention. However, if local options are hospital beds, the costs will likely be higher and the length of stay longer. Costs may only become somewhat more manageable if community crisis intervention services are developed to help de-escalate a crisis before emergency hospitalization and detention is necessary.

See also Judge McKinnon's letter to the Committee related to multiple proceedings against the same individuals.

3. *Some delays are inevitable.* Process delays cannot be fixed statutorily. The primary reasons for delay seem to simply be the nature of this issue (i.e., the fact that crisis occurs outside of normal business hours and that individuals have a due process right to context involuntary commitments).

4. *Need for statutory revisions stated, but no specifics.* General statements have been made in testimony to the Committee by various individuals that the statutes concerning involuntary commitment need to be revised. However, no specifics have been provided. Nonetheless, based on the policy questions concerning involuntary community commitments (aka Kendra's Law), recent news coverage related to two murders in Red Lodge that may be related to the suspects mental illness, and a recent Montana Supreme Court opinion (*In the Matter of the Mental Health of A.S.B., 2008 MT 82*), a closer look at the statutory criteria for involuntary commitments may be warranted.

PART III - ISSUES AND OPTIONS

If the Committee desires to address the problems identified above, the following are some of the issues and options for discussion and action.

Issue #1: Costs. HJR 50 specifically requests that the Committee consider costs. Who should be responsible for precommitment costs for individuals who do not have private insurance and are not covered by a medicaid or other public assistance program?

Options:

A. Counties. No change in current law.

B. Consider options for shared responsibility of counties and state.

C. Consider options for state assumption of costs.

Issue #2: Crisis intervention. Does the Committee want to further consider crisis intervention and local alternatives to the MSH?

Options:

A. Yes. Instruct staff to work with interested parties to develop specific recommendations in the form of a bill draft for the Committee to consider.

B. Yes. Place the topic on the agenda for the next meeting and ask stakeholders to present more testimony.

D. Yes. Consider other products. Ask staff to develop recommendations. (See menu handed out at February meeting.)

C. No. Take this issue off the plate and focus on other issues.

Issue #3: Streamlining the process. HJR 50 specifically asked the Committee to consider ways to streamline the involuntary commitment process.

Options:

A. Instruct staff to work with interested parties to develop specific recommendations in the form of a bill draft for the Committee to consider.

B. Place the topic on the agenda for the next meeting and ask stakeholders to present more testimony.

D. Consider other products. Ask staff to develop recommendations. (See menu handed out at February meeting.)

C. Take this issue off the plate and focus on other issues.

Issue #4: Statutory basis for commitments. Does the committee want to further consider revising the criteria used by courts to determine whether a person should be committed to the state hospital or to a community commitment?

Options:

A. Yes. Instruct staff to work with interested parties to develop specific recommendations in the form of a bill draft for the Committee to consider.

B. Yes. Place the topic on the agenda for the next meeting and ask stakeholders to present more testimony.

D. Yes. Consider other products. Ask staff to develop recommendations. (See menu handed out at February meeting.)

C. No. Take this issue off the plate and focus on other issues.