



## Law and Justice Interim Committee

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### 60th Montana Legislature

#### SENATE MEMBERS

LARRY JENT  
CAROL JUNEAU  
JESSE LASLOVICH  
DANIEL MCGEE  
GARY PERRY  
JIM SHOCKLEY

#### HOUSE MEMBERS

SHANNON AUGARE  
BOB EBINGER  
KRAYTON KERNS  
DEBORAH KOTTEL  
TOM MCGILLVRAY  
RON STOKER

#### COMMITTEE STAFF

SHERI HEFFELFINGER, Lead Staff  
VALENCIA LANE, Staff Attorney  
DAWN FIELD, Secretary

# MINUTES

July 13, 2007

Room 102, State Capitol  
Helena, Montana

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

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#### **COMMITTEE MEMBERS PRESENT**

SEN. LARRY JENT  
SEN. CAROL JUNEAU  
SEN. JESSE LASLOVICH  
SEN. DANIEL MCGEE  
SEN. GARY PERRY  
SEN. JIM SHOCKLEY

REP. SHANNON AUGARE  
REP. BOB EBINGER  
REP. KRAYTON KERNS  
REP. DEBORAH KOTTEL  
REP. TOM MCGILLVRAY  
REP. RON STOKER

#### **STAFF PRESENT**

SHERI HEFFELFINGER, Lead Staff  
VALENCIA LANE, Staff Attorney  
DAWN FIELD, Secretary

### **AGENDA & VISITORS' LIST**

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

### **COMMITTEE ACTION**

The Law and Justice Interim Committee:

- elected SEN. DAN MCGEE to serve as Committee Chair;
- elected REP. SHANNON AUGARE to serve as Vice-Chair; and
- approved the proposed Work Plan with changes.

TAPE 1 - SIDE A

### **CALL TO ORDER AND ROLL CALL**

00:00:01 SEN. MCGEE called the meeting to order at 8:33 a.m. The secretary took roll, all members were present (Attachment #3). SEN. MCGEE advised all present that the meeting is televised and recorded and asked that members of the public sign in and identify themselves when addressing the Committee. Committee members introduced themselves, as did staff.

### **OVERVIEW OF COMMITTEE DUTIES**

00:12:39 **Sheri Heffelfinger, Research Analyst, Legislative Services Division (LSD)**, reviewed the Law and Justice Interim Committee (LJIC) duties, assigned studies, and emerging issues; and discussed the proposed Work Plan (EXHIBIT #1).

### **OVERVIEW OF ADMINISTRATIVE RULE REVIEW PROCESS**

00:16:34 **Valencia Lane, Staff Attorney, LSD**, gave an overview of the administrative rule review process and the Committee's role (EXHIBIT #2 and EXHIBIT #3). Ms. Lane asked the Committee to provide input on how it wishes to receive information relating to proposed administrative rule changes. SEN. MCGEE discussed how proposed rule changes have been handled in the past, saying that it is a powerful responsibility and important function of interim committees.

REP. MCGILLVRAY asked which agencies and boards LJIC has authority over. Ms. Lane said that LJIC has oversight of the Department of Justice and the Department of Corrections and any agencies administratively attached to those departments; and that LJIC acts as a liaison to the Judiciary Branch. She noted that while LJIC does not review rules proposed by the Judiciary Branch, the Legislature as a whole may object to a proposed rule.

### **STAFF BRIEFINGS ON ASSIGNED STUDIES: SJR 24, HJR 26, HJR 50, & SJR 6**

00:24:45 Ms. Heffelfinger presented staff background papers on each of the assigned studies. She said the paper are available to the public and that the studies are also available electronically on the LJIC webpage:  
[http://leg.mt.gov/css/committees/interim/2007\\_2008/law\\_justice/default.asp](http://leg.mt.gov/css/committees/interim/2007_2008/law_justice/default.asp). Ms. Heffelfinger said that the purpose of each report and discussion would be to

provide a background on the study topic so that members will know the key issues for the decision making process to come later in the interim.

**Senate Joint Resolution 24: Study of Population Growth and Diversion Programs**

Ms. Heffelfinger began with *SJR 24 PRIMER: STUDY OF PRISON POPULATION GROWTH AND DIVERSION ALTERNATIVES* (EXHIBIT #4) and discussed: **TAPE 1 - SIDE B**

- information on challenges and trends, the three categories of diversion programs, Department of Corrections (DOC) data and statistics, crisis intervention, sentencing laws, and treatment courts;
- the history and rationale for SJR 24, including study tasks, study objectives, and study questions; and
- an explanation of Attachments A through F (included at the end of the report).

00:51:09 SEN. JUNEAU asked where the issue of alcoholism is addressed in the study. Ms. Heffelfinger said that alcohol is categorized as a drug and is addressed in the sections dealing with substance abuse and chemical dependency.

Regarding mental illness, SEN. JUNEAU asked if a definition of "serious mental illness" has been established or if a definition will be established in the course of the study. Ms. Heffelfinger said that establishing such a definition is necessary and would be a high priority. She said that while establishing a definition, the difference between a serious mental illness and a mental disorder must be considered. She said that discussion of HJR 26 would provide a good deal of information on mental illness to use in establishing a definition.

SEN. JUNEAU said that Attachment D lists the tribal courts in Montana that either have established or have plans to establish a drug court. She said that because of the high population of American Indians in the corrections system, she would like a presentation to be made to the Committee by a person involved with a tribal drug court.

00:53:58 SEN. SHOCKLEY asked if the Committee's work would be based on the Diagnostics Statistics Manual (DSM) model. Ms. Heffelfinger said that the DSM model contains the clinical definitions of mental illness and would be used in Committee work.

**House Joint Resolution 26: Study of Mental Health Treatment in Adult and Juvenile Corrections**

00:54:47 Ms. Heffelfinger reviewed *HJR 26 Primer - Study of Mental Illness in Adult Criminal and Juvenile Justice System* (EXHIBIT #5). **TAPE 2 - SIDE A** She discussed a general background of mental illness and its impact on the criminal justice system, the context of this issue within the DOC and the Department of Public Health and Human Services (DPHHS), the study plan objectives, questions, and tasks, and a work schedule. Ms. Heffelfinger noted that the attachments at the back of the report would be very helpful to committee members as sources of additional information.

01:07:10 REP. KOTTEL said that the study does not include preadjudicated cases and asked if that could negatively affect the HJR 26 study. Ms. Heffelfinger said that adjustments may be made to include LJIC members' interests and priorities.

01:08:55 SEN. JUNEAU said that the Mental Health Oversight Advisory Council report (Page 4 and Attachment C - EXHIBIT #5) contains a great deal of information regarding mental illness issues and suggested that the Advisory Council be contacted to see if it has already done some of the work that LJIC is interested in. Ms. Heffelfinger agreed and said that the Advisory Council has done a great deal of work that the Committee could use. SEN. JUNEAU asked what LJIC could add. Ms. Heffelfinger said that the study resolution envisioned that the Committee would create a blueprint for the Legislature to use in establishing mental health treatment policy for the state.

### **House Joint Resolution 50: A Study of Involuntary Mental Health Precommitment Process and Costs**

01:12:46 Ms. Heffelfinger discussed *HJR 50: a Primer on the Study of the Involuntary Mental Health Precommitment Process and Costs* (EXHIBIT #6) and explained:

- current law provisions: process and costs; TAPE 2 - SIDE B
- key stakeholders and their primary concerns; and
- study objectives and questions, and a work plan approach.

In response to a question from SEN. MCGEE, Ms. Heffelfinger said that probable cause for involuntary commitment is based on an assessment that the person is an imminent danger to themselves or to another. SEN. MCGEE asked if it is the peace officer in the field that makes the assessment. Ms. Heffelfinger said yes.

01:31:21 SEN. LASLOVICH asked if the Montana State Hospital (MSH) is the only entity to which an individual can be involuntarily committed. Ms. Heffelfinger said that a clinic with a psychiatric unit can perform an evaluation but the actual commitment has to be made to the MSH. She said that while state statute created community-based treatment facilities, they have yet to get off the ground because they have never been funded.

SEN. MCGEE said that involuntary commitment costs to counties is very significant and suggested that this issue be added to the survey in the form of specific questions such as:

- How many involuntary commitment cases per county has there been to date?
- How many of those cases were found to be truly a threat to themselves or others and involuntarily committed, versus how many were not found to be a threat?

SEN. PERRY said that because a county sheriff has a certain amount of discretion in releasing prisoners to relieve overcrowding, the information from the survey may be skewed. He asked how the Committee can be assured that the information will be accurate. Ms. Heffelfinger said that including providers and hospitals in the survey will help ensure accurate information.

REP. KOTTEL said that the high costs of civil commitment and the inability of counties to recover this cost forces law enforcement personnel to place individuals into the criminal justice system, rather than the mental health system. She said that the cost issue for counties and the issue of civil liberties violations that result of from incorrect placements must be pursued.

**Senate Joint Resolution 6: A Study of the Juvenile Justice System**

01:38:18 Ms. Heffelfinger's discussion of *SJR 6: Study of Juvenile Justice System* (EXHIBIT #7) included:

- an examination of the multi-faceted nature of the juvenile justice system and the fact that it is not self-contained;
- the components of the juvenile justice system;
- the policy development and guiding principles of the system;
- national trend data on juvenile offenses;
- the context of this information as it applies to Montana;
- the rationale and study tasks outlined for SJR 6;
- the overlapping areas between SJR 6 and HJR 26; and
- work plan recommendations.

TAPE 3 - SIDE A

**PRESENTATION OF PROPOSED STUDY PLAN, OPTIONS FOR EMERGING ISSUES, AND WORK SCHEDULE**

02:09:24 Ms. Heffelfinger said that the most effective approach to the study resolutions would be to study the background information, identify the options for the problems to be addressed, and finally, develop recommendations. Ms. Heffelfinger referred the Committee to the Work Plan (Pages 5-8, EXHIBIT #1). She asked for discussion of the suggested time allocations for all of the study plans, including consideration of out-of-state speakers, subcommittees, coordination with other committees, and meetings outside of Helena. Ms. Heffelfinger also suggested adding HJR 50 to the September meeting agenda.

SEN. MCGEE noted that many of the meetings are scheduled outside of Helena. Ms. Heffelfinger said that the reason for that is so members can tour facilities and gain a first-hand knowledge of the study issues.

SEN. MCGEE asked to have copies of the LJIC budget distributed to the members.

SEN. SHOCKLEY said that he and many other Committee members have seen all or most of the facilities involved in the studies. He suggested that, in order to save time and committee resources, members who have not toured the facilities do so on their own time but be reimbursed for travel expenses. SEN. MCGEE agreed and said that would be discussed further.

REP. STOKER said that the Montana Genetics Program is conducting a psychotropic drug study and that the Committee could benefit from updates of this study because of the potential impact on the patients at Warm Springs, Deer Lodge, and in local communities.

**AGENCY PRESENTATIONS: BRIEF OVERVIEW OF AGENCY MISSION, ORGANIZATION, FUNDING, GOALS AND OBJECTIVES, AND COMMENTS ON ASSIGNED STUDIES**

02:20:10

**Beth McLaughlin, Court Services Director, Office of Court Administrator, Judicial Branch**, expressed regrets from Lois Menzies, Court Administrator; and Supreme Court Chief Justice Karla Gray, who were unable to attend the meeting. Ms. McLaughlin said that her presentation would include a brief overview of the Judicial Branch, an update on the current major projects of the Branch, and to provide comments on the study resolutions. Ms. McLaughlin distributed and explained an organizational chart of the Judiciary Branch (EXHIBIT #8). She noted that the largest portion of the court system is the District Court system and briefly discussed the rationale for state assumption of District Court costs, which occurred in July 2002. Ms. McLaughlin said that a grant from the State Justice Institute was used to conduct a District Court Judicial Need Survey (EXHIBIT #9). This survey identified resources that are either lacking or in surplus. Ms. McLaughlin discussed the findings of the survey and noted that drug courts are very time intensive because of the level of involvement by the judge and that there is significant need for additional judges across the State, with several judicial districts in particular need.

Ms. McLaughlin noted that commitment cases can now be tracked through the Court Administrator's Office.

Ms. McLaughlin reviewed several new projects funded by the 2007 Legislature, which included a major overhaul of the information technology system **TAPE 3 - SIDE B** to add electronic document and case management capabilities, a judicial video network, courtroom infrastructure and equipment, and judicial calendaring (EXHIBIT #10). Ms. McLaughlin said that these improvements will make information much more accessible.

**Committee Questions**

02:45:01

SEN. SHOCKLEY asked when Full Court (a court information and case management system), which was to be implemented by 2005, would finally be up and running. Ms. McLaughlin said that the project is almost complete and will be available statewide very soon.

Regarding electronic filing, SEN. SHOCKLEY asked if briefs and motions will be able to be filed electronically. Ms. McLaughlin said yes. SEN. SHOCKLEY said that strict formatting requirements for these types of documents could cause problems in the electronic filing process. Ms. McLaughlin said that standards will have to be adopted.

SEN. SHOCKLEY said that Montana lawyers have indicated that 13 additional judges are needed to deal with the current court load. Ms. McLaughlin said that is correct but that there will not be a request for all 13 of the needed judges. She said new judges would be requested first for the areas of greatest need. SEN. SHOCKLEY agreed that additional judges are needed and asked if any thought has been given to redrawing judicial districts in order to increase efficiency. Ms. McLaughlin said that possibility has been discussed and is an agenda item for a meeting next week.

02:50:30 SEN. JENT asked if the District Court Council has responsibilities beyond the oversight of the assumption of District Court costs and said that he would like to know who speaks for the District Court judges. Ms. McLaughlin said that ultimately, all decisions have to be approved by the Supreme Court but that all decisions, however minute, go through the Council first. SEN. JENT said that he is concerned about the differences between the views of District and Supreme Court judges and asked if District Court judges need their own voice. Ms. McLaughlin said that as staff, she did not have an opinion on that issue but that both District Court Judges and Supreme Court Justices have a private organization (the Montana Judges Association) to help deal with these differences. She said that while there are still growing pains, the two groups have made great progress in working together.

Regarding HB 4, SEN. JENT asked what is being done to implement electronic filing in District Courts. Ms. McLaughlin said that the objective is to develop and pilot a system in a District Court which, if successful, would then be moved out statewide to all District Courts.

02:54:49 SEN. SHOCKLEY asked if the counties have been engaged in discussion regarding improving and expanding court infrastructure. He referenced the creation of the 22nd Judicial District that was carved off because Yellowstone County did not want to build the additional infrastructure. He said that the state assumption only covers salary and related court expenses and that it is his opinion that some districts are reluctant to add more judges because they don't want to pay for the additional infrastructure needed to accommodate the judge. Ms. McLaughlin said that discussions have been held with most of the counties in need of an additional judge and that the initial reactions have generally been receptive. She agreed that it is a challenging issue.

02:56:47 Ms. McLaughlin discussed the study resolutions, stating that her office is most interested in HJR 26 and SJR 6 because of the juvenile justice aspects. She said that judiciary branch staff is available to assist the LJIC. She said that probation officers have expressed concern that SJR 6 is too big an issue to deal with in conjunction with so many other studies. They recommend that the focus be held to youth with serious mental health issues. If those kids can be identified earlier and prevented from entering the system, it will result in more efficient use of resources and save a great deal of heartache.

Ms. McLaughlin distributed information on the breakdown of kids in the youth court system in Montana (*Youth Court At-A-Glance*, EXHIBIT #11) and an invitation to the second annual Montana State Leadership Summit on the Protection of Children (EXHIBIT #12).

03:00:06 **Mike Ferriter, Director, Department of Corrections**, thanked LJIC for its past work with DOC and for its support in the 2007 Legislative Session. Director Ferriter said that the information contained in the 2007 Biennial Report (EXHIBIT #13) will provide a great deal of valuable information to the Committee for its work. He provided an overview of the Department and discussed:

- the DOC Mission Statement (inside front cover of report);

- the Department's vision, values, and goals - page 2;
- the DOC Code of Ethics - Page 3; **TAPE 4 - SIDE A**
- Governor Schweitzer's guiding principles for DOC - page 4;
- accomplishments and highlights - Page 6;
- the DOC Advisory Council members - Page 8;
- a 2006 organizational chart of DOC - Page 41;
- population trends and plan - Appendix A; and
- a budget summary.

03:14:09 Director Ferriter commented on the study resolutions before LJIC. Regarding SJR 24, Director Ferriter said that the rapidly growing prison population is of great concern and even though the funding level for DOC was increased in the 2007 session, it will not cover the current growth rate. He also discussed the role of community correction facilities and DOC's expectations of such facilities. Director Ferriter said that Montana is unique because of its third sentencing option, which is its ability "commit" someone to the DOC. Traditionally, a sentence either deferred, suspended, or a direct sentence to prison. In Montana, if the judge is unsure what the appropriate sentence is, the judge may commit the individual to the DOC and that the DOC could place the individual in treatment, such as the methamphetamine treatment program. Director Ferriter said that this unique situation must be considered in the course of the study to determine if first-time drug offenders are actually being diverted from prison.

Regarding the mental health studies, Director Ferriter said that there are four key areas to focus on: management of sex offenders, management of and improvement of opportunities for Native American offenders, addictions, and mental health. He discussed data from a University of Montana study of the prerelease population which revealed that 41% of all pre-release offenders have mental health issues, 69% of the female offenders have mental health issues, and 93% in this population are addicted to chemicals. He said that mental health issues are even more of a problem in the juvenile justice system. Director Ferriter said that the full report is available on the DOC website or in hard copy form. He concluded his comments by stating that the Committee members are welcome to tour DOC facilities or to meet with staff at any time.

03:21:23 SEN. SHOCKLEY said that he is very concerned about the additional work load put upon DOC with the passage of SB 547. He asked what has been done regarding the treatment center for sex offenders. Director Ferriter agreed that sex offenders are a huge issue and said that the DOC is in the Request For Proposal (RFP) process for the 136-bed sex offender treatment center. He said that the value of using an RFP process to establish a community facility is that the community feels invested and interested and not as if it was forced into having the facility located there.

03:24:02 **Steve Gibson, Administrator, Youth Services, DOC**, discussed HJR 26, saying that as far as he knows, Montana is only state in nation without a single adolescent psychiatric state bed. Currently, Montana must place children in out-of-state mental health facilities for treatment. This is a money issue, a family issue, as well as a monitoring issue. Great caution must be used when dealing

with diagnosing 'serious mental illness' because of the different standards being used nationally.

Mr. Gibson said that years ago, state statute authorized juvenile assessment centers but there has never been any funding allocated to actually do it. There have been various contracts with private companies that attempted to address this issue but none have worked satisfactorily. Problems have included high costs, unstable programs, family separation, and travel distances for families.

Regarding SJR 6, Mr. Gibson provided a national profile of the different juvenile justice agencies across the nation (EXHIBIT #14). Mr. Gibson encouraged LJIC to tour the Pine Hills male juvenile facility.

TAPE 4 - SIDE B  
04:35:40

**Larry Fasbender, Deputy Director, Department of Justice (DOJ)**, provided information on DOJ activities and projects. He reported that DOJ employs 750 people and has a \$70 million budget based on a mixture of general fund, special revenue, and federal funds. Mr. Fasbender explained each of the Department's nine divisions.

04:50:53

SEN. JUNEAU said that it was recently announced that Montana has the deadliest highways in nation. She asked if alcohol, gender, age, or geographical location are contributing factors. Mr. Fasbender said that he would find that information for SEN. JUNEAU. SEN. MCGEE asked to include information from both before and after the institution of the speed limit. SEN. SHOCKLEY asked to also include if there is a correlation between increasing the penalties and the increasing death rate. He said they seem to be inversely related.

SEN. MCGEE asked about GPS tracking capability in law enforcement cars. Mr. Fasbender said that officer response time and safety would be improved if GPS tracking was available because it would allow law enforcement agencies to keep track of where officers are and more quickly and easily identify the closest officer to an accident or crime scene.

SEN. MCGEE discussed a situation that occurred about 2 years ago, in which he observed approximately five highway patrol cars and ten officers using survey instruments to gather information at an accident scene. He asked if survey instruments are still being used at accident scenes and if that many officers were necessary at an accident scene. Mr. Fasbender speculated that it may have been a training exercise. SEN. MCGEE said that it was an obvious accident site but that it seemed absurd to him that five patrol cars and ten officers were necessary. He said that he had called the Highway Patrol headquarters to see if that was a wise use of manpower and resources but got an unsatisfactory response. Mr. Fasbender said that he would followup with SEN. MCGEE.

SEN. MCGEE announced that he had been given a recent press release regarding passage of a public defender bill in Louisiana, which was modeled after Montana's public defender statutes.

04:57:42

**Randi Hood, Chief Public Defender, Office of the State Public Defender (OPD)**, updated the Committee on Montana's public defender system, saying that significant gains have been made in providing Montana citizens equal access to justice when charged with a crime. Ms. Hood discussed an information sheet about OPD, covering its mission statement, organizational structure, strategic plan, and funding for the 2009 biennium (EXHIBIT #15).

TAPE 5 - SIDE A

Ms. Hood discussed several goals of OPD. The first goal of establishing a public defender system was accomplished by establishing 11 regions in Montana (EXHIBIT #16). Each region has a staffed regional office and the public defense work is done by a combination of state and private attorneys. Since providing effective assistance is a mandate of the system, a complaint policy process has been set up to deal with individuals who feel they did not receive effective assistance. Ms. Hood pointed out that the number of complaints has significantly decreased statewide. She noted that the public defender program has received accolades from Yellowstone County and Missoula County praising the effectiveness of the program.

Ms. Hood said that the second goal is to establish a system free of undue influence and to deal with conflicts of interest. She reported that the Public Defender Commission recently adopted standards after many months of work and noted that private attorneys and three state attorneys will act as "rovers" to deal with conflict cases impartially.

Ms. Hood said that the third goal is that services provided by the public defender system be provided by quality, competent people. The training program is outstanding and a wide range of topics have been made available statewide. Additionally, a number of highly qualified attorneys have been hired.

Ms. Hood said that the fourth goal is to have a system that utilizes both state and contracted employees who will be responsive to regional and community needs. This has been accomplished by incorporating the individual needs of each region into the public defender program, so long as it still provides the effective representation.

Ms. Hood said that the fifth goal is a system that will provide services in a fiscally responsible manner. This has been the most difficult goal to implement because there was so little information available on previous public defender costs in Montana. Measures are being taken to control costs and to establish fiscally responsible practices. There are ongoing discussions with attorneys on billing issues and there have been instances that resulted in the termination of the relationship because it was determined that the private attorney was abusing the system. Additionally, geography has made it difficult in some cases to find qualified attorneys willing to serve as a public defender.

SEN. MCGEE thanked Ms. Hood for her good service as Chief Public Defender.

05:17:33

**Harry Freeborn, Chief Administrator, OPD**, said that the Chairman of the Public Defender Commission, Jim Taylor, asked him to relate to the Committee

that he is looking forward to the joint meeting of LJIC and Commission, tentatively scheduled for November.

Regarding the OPD budget, Mr. Freeborn reported that the amount requested by the Commission - \$19.8 million - was approved by the 2007 Legislature. He said he anticipated actual operating costs to be approximately \$19.6 million, well under budget. Mr. Freeborn discussed other budget items, including \$30,000 per year (HB 629) to provide mediation for certain crimes, \$141,000 per year (SB 104) to extend statute of limitations on certain sex crimes, and \$45,000 to implement the requirements of SB 547.

Mr. Freeborn said that Title 47 requires that a report be prepared containing all of the policies and procedures, standards, and the case counts and costs divided out by region and by court. The report will be updated and presented to the Committee at a fall meeting.

05:21:23 SEN. JENT asked what type of interaction OPD has with federal Criminal Justice Act (CJA) staff and if they have been of help in setting up the public defender system. Ms. Hood said that OPD plans to participate in a federal defenders conference in August and that CJA staff have been helpful and informative.

SEN. MCGEE asked what the budget proposal was for the first full year for the Public Defender Office and recalled that a supplemental was requested. Mr. Freeborn said that the original budget was for \$14.1 million and that a \$5 million supplemental was requested.

SEN. MCGEE asked if professional standards have been finalized. Ms. Hood said that the Commission adopted 140 pages of standards in March of 2007 and that they are available on the website.

#### **PUBLIC COMMENT**

05:25:23 **Gail Gutsche, Subcommittee Chair, Department of Corrections Advisory Committee member**, discussed the activities and findings of the DOC Advisory Committee and subcommittee, saying that much of the information compiled will be very relevant and useful to LJIC in its study of SJR 24, in particular. Ms. Gutsche said that:

- the purpose of the subcommittee was to study what individualized programs and services would be needed in community corrections in order to keep non dangerous and nonviolent offenders out of prison, thus reducing prison populations while still ensuring public safety; **TAPE 5 - SIDE B**
- the focus was mainly on drug-addicted and mentally-ill inmates but also included sex offenders, female methamphetamine addicts, and Native American inmates;
- all phases of the process were examined in order to determine how best to design community-based treatment programs that would allow the offender to remain in their community;
- the subcommittee examined prevention and treatment programs for sex offenders because of the high recidivism rate for those who don't receive treatment;

- the subcommittee closely studied women with methamphetamine addictions because 80% of female inmates are addicted and the disproportionately high rate of American Indian inmates.

Ms. Gutsche said that the subcommittee came up with a list of solutions and recommendations, some of which were picked up by the 2007 Legislature. She strongly encouraged LJIC to make use of the information gathered by the subcommittee, saying that it would save a great deal of time and prevent duplication of efforts. Ms. Gutsche said that the subcommittee learned:

- that providing a continuum of services to inmates from the beginning through post release phases, is extremely important to the inmate's ability to succeed after release from a program or facility, particularly with sex offenders;
- that shorter sentences produced better results in terms of recidivism;
- that probation has better outcomes than prison;
- that a treatment oriented approach is superior to supervision and revoking parole; and
- that the Native American population needs very specialized treatment programs for counseling and culturally sensitive programming for success in prison and that additional staff just for this population is needed.

Ms. Gutsche briefly discussed California's Proposition 36, which provided money for drug treatment programs and for research to determine the most effective treatment options.

05:37:05

**Patricia Marchington, former Montana citizen,** testified on behalf of her late son, Shawn Marchington, who was incarcerated at Pine Hills Correctional facility and who later committed suicide. Ms. Marchington testified that her son's suicide note said "it was the system". Ms. Marchington related the circumstances that led to her son's incarceration and his experiences while incarcerated at Pine Hills. She said that he was studying to complete his high school degree and on adult probation in Gallatin County at the time of his death. Ms. Marchington said that the Pine Hills facility did not include her in any discussions of her son's treatment and that, in her opinion, DOC does not have the best interests of the child in mind. She related several instances in which she was discouraged or prevented from being a part of her son's life and treatment while incarcerated over the course of four years. She read two excerpts from her son's journal that he wrote while at Pine Hills to further inform the Committee of her son's mental state while there. Ms. Marchington stated that the pressure of going back to jail on a parole violation was too much for her son to bear and is the reason why he committed suicide. Ms. Marchington noted that her son had been assaulted while at Pine Hills and that she was never given an explanation and that his disposition noticeably changed after the assault.

05:54:06

**Kathy McGowan, representing Community Mental Health Centers, Sheriff's and Peace Officer's Association, and County Attorney's Association,** offered the resources of all three associations for the Committee's use in its study efforts. **TAPE 6 - SIDE A** Ms. McGowan stated that the organizations feel that Montana is desperately in need of community crisis services and that the lack of

these services is one of the main reasons for the rapidly increasing prison population. The organizations also feel that the budget is out of balance in terms of community and institutional needs and are pleased that LJIC will be addressing these important issues.

Ms. McGowan said that Montana has never had an overall vision or determination of how to deal with mental health issues and has reacted in a "knee-jerk" fashion, rather than making policy decisions for long term solutions. She referred to the large percentage of uninsured Montanans as an example, saying that the cost is enormous, yet the State won't take any responsibility, even though the burden usually ends up being shouldered by the taxpayers.

Ms. McGowan said that some crisis services have been statutorily established but not funded, which creates a huge problem for law enforcement agencies. Even though law enforcement officers have received crisis training, they are frequently forced to place mentally ill citizens in jail, simply because there are no other services available.

On behalf of the organizations she represents, Ms. McGowan thanked the Committee for its support and interest in these important issues and said that she is willing to assist however she is able.

06:03:31

**Anita Roessman, Attorney, Montana Advocacy Program**, announced that the program is changing its name to "Disability Rights Montana". She thanked LJIC members for their support of funding for mental health issues in the 2007 Legislature. She said that the system is very frayed, has lost a lot of ground in the last decade, and that the severity of this situation can no longer be ignored. The Department of Corrections has been left to deal with the consequences and juvenile corrections, in particular, has suffered. The consequences have impacted the entire state on public, private, and local levels.

Ms. Roessman said that as an advocate, she is very grateful that hospitals, law enforcement agencies, county commissioners, and private providers have been as generous as they have been in dealing with this situation but these groups are asking for relief. Community mental health treatment facilities, known as Behavioral Health Inpatient Facilities, were approved four years ago and the time has come to fund them. They are Medicaid eligible and would provide all of the mental health services needed by any patient in or close to their community.

Ms. Roessman urged the Committee to work with DPHHS to get these facilities going and said that to date, the biggest challenge has been figuring out how to fund and operate them using a business model.

Ms. Roessman said that she would like to see LJIC draft legislation to work in conjunction with the Behavioral Health Facilities to allow voluntary self-commitment for a certain amount of time. This process would eliminate a great deal of the expense because no judge is involved, there is no petition or hearing and by self committing, transportation costs are eliminated as well. Ms. Roessman explained that currently, if a Montana resident wants to go to Montana

State Hospital for treatment, he or she must first sign away his or her rights as a Montana citizen, waive a commitment hearing, and allow themselves to be involuntarily committed in order to get desperately needed services. Even though there is a statute in place to allow treatment, it is ignored.

Ms. Roessman said that the testimony given by Ms. Marchington was very disturbing and that she recently visited Pine Hills at the request of a parent whose child is incarcerated there. She said that her investigation revealed that most of the juveniles there have never received a psycho-social evaluation yet are still medicated.

Ms. Roessman invited LJIC members to attend a family violence conference in Billings on August 9 and 10. Dr. Bruce Perry, an authority on children's mental health, will be speaking and that attending this conference would be extremely beneficial in gaining an understanding of children's mental health. Neglect is far more damaging than abuse and affects brain development and until that is understood, effective policy cannot be created.

## **COMMITTEE DISCUSSION AND WORK SESSION**

### **Election of Officers**

06:31:24 SEN. SHOCKLEY nominated SEN. MCGEE to serve as Chair. He briefly discussed the chair rotation history and suggested that the Committee maintain the cycle. SEN. LASLOVICH closed nominations. SEN. MCGEE was elected Chair on a unanimous voice vote.

SEN. MCGEE said that 30 minutes had been scheduled for public comment and he apologized to those who didn't get to speak. He said that in future, he would tell people how many minutes are available for comment and let each individual be aware of the time allowance. SEN. JUNEAU suggested scheduling a morning and afternoon public comment period at future meetings. SEN. MCGEE agreed.

REP. KOTTEL nominated REP. AUGARE to serve as Vice Chair. REP. EBINGER closed nominations. REP. AUGARE was elected Vice Chair on a unanimous voice vote.

### **Revise and Adopt Study Plan Priorities and Work Plan**

06:36:07 SEN. MCGEE and REP. STOKER asked that a list of committee member contact information (email and telephone number) to be compiled and distributed to members and staff. Ms. Heffelfinger discussed the proposed meeting calendar and referred to a calendar of all interim committees' meeting dates. She then asked LJIC members to refer to the proposed LJIC meeting dates in the Work Plan (Page 5 - EXHIBIT #1).

**TAPE 6 - SIDE B**

SEN. MCGEE said that there is a great deal of crossover information in the study resolutions and suggested that the entire committee hears all information and presentations regarding the studies but then break into smaller work groups to deal with each study.

REP. KOTTEL said that the SJR 50 study resolution dealing with civil commitment is significantly different from the other studies and the issue of site visits. She agreed that site visits may not be necessary for all committee members and said that members not going on site visits could spend the time working as a subcommittee or work group on the civil commitment issues in HJR 50, which would in turn, create more time for the whole committee to address the other study resolutions.

Ms. Heffelfinger explained the Committee budget, including projected travel costs (EXHIBIT #17).

SEN. MCGEE said that for efficiency's sake, most of the meetings should be held in Helena. He asked members to provide a list to the secretary of any site visits he or she wanted to make. REP. EBINGER suggested Committee members going on site visits go as a group in order to improve the learning experience.

SEN. JUNEAU asked, in order to avoid duplication of effort, that Ms. Heffelfinger study the DOC Advisory Council information and report back to the Committee on what information could be used by LJIC. SEN. SHOCKLEY said that as a member of the DOC Advisory Council, he would assist with that.

By consensus, the Committee agreed on the time allocations outlined in the Work Plan.

The Committee discussed the proposed meeting calendar and approved the following meeting dates by consensus:

- October 1, 2007, in Helena. SEN. MCGEE asked if a preliminary copy of the HJR 50 survey could be sent out before the meeting for member edits. Ms. Heffelfinger said yes.
- November 8 and 9, 2007, in Butte.
- January 10 and 11, 2008, in Helena.
- February 28 and 29, 2008, in Helena. TAPE 7 - SIDE A
- April 10 and 11, 2008, in Helena.
- June 26 and 27, 2008, in Helena.
- August 1, 2008, in Helena.

07:20:58 Ms. Heffelfinger asked the members how they wished to organize meeting materials and suggested using binders. After a brief discussion, it was agreed that binders would be used and that Committee members would be responsible for maintaining their own binders.

07:24:42 REP. STOKER **moved** to approve the Work Plan with the changes discussed by the Committee. REP. AUGARE requested, because there is such a large Native American population in the corrections system, that a field expert from a tribal community participate as a panelist on any issues to all panels invited to appear before the Committee. It was agreed. The **motion passed** on a unanimous voice vote.

## **PUBLIC COMMENT**

07:27:02 **Laurie Lamson, Administrator, Business and Financial Services Division, DPHHS**, discussed DPHHS concerns regarding 53-21-132, MCA (EXHIBIT #18).

07:29:34 **Tracy Velasquez Executive Director, Montana Mental Health Association (MMHA)**, thanked the Committee for its support of mental health issues in the 2007 legislative session. She said that there are several issues of concern to MMHA in addition to the study resolutions:

- Crisis services -- Currently St. Vincent's Hospital and Billings Clinic in Billings are providing crisis services at the cost of approximately \$500,000 each. They are unable to continue this practice much longer and smaller hospitals are unable to do it at all. State funding for crisis services is badly needed.
- Patient restraint during transport. The Western Mental Health Service Area Authority has recommended that this issue be a study issue for all involved stakeholders, particularly law enforcement.
- Use of preadjudication options to avoid sentencing. MMHA urges the Committee to study this option, particularly for mental illness cases; and
- Establishing a clear definition of mental illness. The MMHA supports establishing a clear definition and one that includes post traumatic stress disorder (PTSD).

Ms. Velasquez said that MMHA is eager to assist the Committee in whatever areas it can.

07:34:12 **Patti Jacques, parent and recently retired from Board of Crime Control**, spoke as an advocate of her mentally ill son and said that because of her past work experience, she has a good deal of knowledge of the system and where its greatest weaknesses are. She suggested that the Committee look closely at crisis intervention training for police officers, the overcrowding occurring in jails and the treatment of the mentally ill within facilities. She noted that her son spent four and a half weeks, restrained, in solitary confinement before being transferred to MSH and that a request for diversion treatment was refused.

TAPE 7 - SIDE B

Ms. Jacques asked that correctional facilities must offer treatment and programs that prepare inmates to reenter the general population.

Ms. Jacques discussed instances in which several counties have high referral rates to MSH in order to avoid paying for mentally ill patients. She said that data on this issue is available from several sources that support her testimony.

SEN. MCGEE asked that public testimony be submitted as written documents with identifying information to the committee secretary .

07:40:11 **Charles Brooks, Yellowstone Board of County Commissioners**, said that Billings recently opened a 155 bed private, nonprofit treatment facility for female methamphetamine addicts. He said that the additional beds have taken some of the pressure off other facilities and predicted that the program would be very successful. He encouraged the Committee to visit the facility.

Regarding HJR 50, Mr. Brooks said that he has been involved with this issue in Yellowstone County for many years and is aware of the magnitude of the problem. There is no psychiatric treatment in eastern Montana and many mentally ill citizens migrate to Billings because of the medical facilities there. This has placed a great burden on Yellowstone County. Yellowstone County is willing to pay its fair share but cannot shoulder the burden it has in the past.

Mr. Brooks reported that Judge Susan Watters recently initiated a discussion with the Yellowstone County Commissioners regarding the possible addition of one or two additional judges in the 13th Judicial District. At this point, the Commissioners' position is that at the time of State assumption, they agreed to supply facilities for the existing judges but that they did not agree to future expansion of the District Court.

07:45:05 **Tom Daubert, Writer and Communications Consultant, Helena,** said that mental illness has affected his family. Mr. Daubert spoke on behalf of two groups who are very interested in the studies. He said that Patients and Families United is a group that recently formed in support of the over 300 patients in Montana using medical marijuana. The group has an interest in several of the study issues and would welcome the opportunity to brief the Committee on the state's medical marijuana program.

Mr. Daubert said that he also was speaking for Citizens for Responsible Crime Policy, which formed about 19 months ago for the purposes of promoting an initiative (that passed) in Missoula that recommended that adult marijuana offenses be the lowest law enforcement priority of the Missoula Police Department. The group has now expanded statewide and would like to be an active participant in the SJR 24 study process. Mr. Daubert said that the study objectives are on target but said that additional breakdown of drug offenses into specific type of drugs would be beneficial.

Mr. Daubert also suggested that later in the study phase, asking for more structured public comment regarding each study may make things more manageable for the committee. He also suggested utilizing citizen panels for several of the study topics.

07:50:23 **Scott Crighton, Executive Director, American Civil Liberties Union (ACLU) Montana,** commended LJIC's commitment to tackle such difficult and complicated issues. He said that the current system, in which an individual can't get treatment until they are determined to be a criminal, must be changed to allow treatment options for people before being adjudicated. Mr. Crighton encouraged the Committee to think boldly to make substantive changes and said that he realized that major policy changes would challenge the current approach to these problems. He said that ACLU's greatest concern is a citizen's deprivation of liberties and cautioned that the ACLU will continue to closely monitor the situation and will take swift action whenever an individual's liberty is deprived.

## **ADJOURNMENT**

With no further business before the Committee, SEN. SHOCKLEY **moved** to adjourn. The **motion passed** by unanimous voice vote. The next Law and Justice Interim Committee meeting will be held on October 1, 2007, in Helena.

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