



## 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  
EDWARD HILBERT  
KRAYTON KERNS  
DEBORAH KOTTEL  
RON STOKER

#### COMMITTEE STAFF

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

# MINUTES

April 10 & 11, 2008

Room 137, State Capitol  
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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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. EDWARD HILBERT  
REP. KRAYTON KERNS  
REP. DEBORAH KOTTEL  
REP. RON STOKER

### **STAFF PRESENT**

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

## **AGENDA & VISITORS' LIST**

Agenda, Attachment #1.

Visitors' list, Attachment #2.

## **COMMITTEE ACTION**

The Committee took the following actions:

- expressed general support for developing state operated or state contracted in-state residential treatment capacity for justice-involved youth suffering from a mental disorder, but delayed further action pending receipt of recommendations from a working group of the Children's System of Care planning and advisory committee under the Department of Public Health and Human Services;
- instructed staff to work with stakeholders on options for how the counties and the state can share precommitment costs related to involuntary civil mental health commitments;
- instructed staff to work with stakeholders to develop a discussion bill draft to enhance local mental health crisis intervention services;
- instructed staff to work with stakeholders to develop a discussion bill draft to amend adult mental health commitment statutes, particularly with respect to voluntary commitments;
- requested a briefing at the next meeting on hospital-based transportation of patients to and from the Montana state hospital;
- requested a bill draft to require that when a presentence investigation is ordered by the court, the investigation include mental health information;
- requested further information and testimony on jail and prison mental health standards and of data collection and reporting of mental health treatment and suicide prevention programs be presented at the next meeting;
- requested a bill draft to require attorney representation at youth detention hearings and to provide that the youth detention hearing be held within 48 rather than 24 hours of detention;
- requested a housekeeping bill draft to include the 22nd Judicial District in the list of judicial districts to be represented on the judicial nomination commission;
- requested further work on a bill draft to clarify payment responsibilities for medical treatment of individuals detained or arrested by local law enforcement;
- instructed staff to work with the Office of Court Administrator on a bill draft to cleanup unnecessary language in the drug court and mental health court statutes; and
- instructed staff to work with Senator Shockley on a bill draft to increase salaries for Supreme Court Justices and District Court Judge.

## CALL TO ORDER AND ROLL CALL

00:00:01 SEN. MCGEE called the Law and Justice Interim Committee (LJIC) meeting to order at 9:34 a.m. The Secretary noted the roll, all members were present (ATTACHMENT #3).

## IN-STATE RESIDENTIAL PSYCHIATRIC TREATMENT FOR YOUTH

Ms. Heffelfinger distributed copies of *Residential Treatment for Montana's Justice-Involved Youth* (EXHIBIT #1), saying that it was a background report provided to the Juvenile Justice Working Group and contained information that may be useful in discussing this issue, including an attachment of a spreadsheet of out-of-state placements.

00:02:43 **Steve Gibson, Administrator, Youth Services, Department of Corrections (DOC)**, distributed copies of a DOC news release - *Youth corrections honored for American Indian programs* (EXHIBIT #2), and a Juvenile Justice News article about the Montana DOC's multifaceted intake to discharge approach for youth (EXHIBIT #3).

00:04:23 Mr. Gibson discussed spreadsheet data regarding youth in the juvenile justice system with significant mental health issues placed during fiscal year 2008, including three youth that were eligible for treatment but unable to be placed (EXHIBIT #4). Mr. Gibson's data revealed that the state is spending about \$2 million annually for treatment of 18 justice-involved youth with mental health issues.

00:15:30 Ms. Heffelfinger said that this issue was identified by the Juvenile Justice Working Group as its priority issue and it is on the full Committee's agenda because of the Working Group's concerns regarding 41-5-1504, MCA. She said the two main issues are concerns about the mental health definition within the statute and the lack of an in-state treatment facility for this category of youth. Ms. Heffelfinger said the Juvenile Justice Working Group requested that the DOC and the Department of Public Health and Human Services (DPHHS) appear before the full Committee to discuss this.

00:19:19 SEN. SHOCKLEY said it would be better for the youth and the taxpayers if youth could be treated in-state. He said that he thought that one of the reasons the Juvenile Delinquency Intervention Program (JDIP) was set up was to minimize the number of youth being sent out-of-state for treatment. Mr. Gibson said that JDIP money is available for youth in need of treatment and that ten of the 18 youth in his report are using it, but the real problem is that Montana has no place to treat seriously mentally ill youth. He said that there are only three residential treatment centers (RTCs) in Montana and that while they all offer good programs, none of them have the level of security necessary to take the types of youth in this category and may refuse to take them. SEN. SHOCKLEY said the bottom line is that there are certain youth that simply can't be treated in-state. Mr. Gibson said that was correct and noted that Montana has not had a state-operated children's unit for adolescents since 1989.

- 00:23:42 SEN. MCGEE asked if it is the court or the DOC that decides what facility a youth is sent to. Mr. Gibson said that either the court or the DOC can decide, and that occasionally it is simply a matter of what facility will take the youth.
- 00:24:58 SEN. SHOCKLEY said that the Pine Hills facility has an available wing that could house a treatment facility, and asked if the lack of a psychiatrist in eastern Montana would prevent that wing from being used. Mr. Gibson said yes, that DOC advertised in 1993 for a psychiatrist for Pine Hills and did not receive a single application. Additionally, Mr. Gibson said cost is another issue in operating such a facility.
- 00:26:34 SEN. SHOCKLEY said, if a youth treatment facility is established, whether contracted or state-run, it should be placed in a large community with extensive medical resources. Mr. Gibson agreed that would be best. He said the biggest obstacle is access to a child psychiatrist and noted that there is a major national shortage.
- 00:28:41 REP. HILBERT, referring to the youth listed in the DOC spreadsheet (EXHIBIT #4), asked what happens to them when they turn eighteen. Mr. Gibson said that DOC loses jurisdiction over the majority of them when they turn eighteen and that many facilities won't take them once they turn eighteen.
- 00:30:34 REP. STOKER asked if the remodel project planned for the Montana State Hospital (MSH) could include a secure wing for juveniles. Mr. Gibson said that he could not speak for MSH.
- 00:32:04 Mr. Gibson said that he has prepared a rough estimate of what it would cost to operate a state-operated 20-24 bed facility for males and females. He said the facility would meet JACO standards and Medicaid standards; and would contain classrooms, recreational, and dining facilities; and a full staff of about 36 FTE that would include of teachers, mental health professionals, nurses, food services, mechanical and maintenance, security, and a recreational therapist. He said his estimate also factored costs such as contracts for services, food, and utilities. Mr. Gibson said that total costs would be approximately \$1.8 million for one year of operation, and that amount did not include the acquisition/lease/rental cost of the facility. He said if a facility is built, the best-case scenario for getting it up and running would be for 2011. Mr. Gibson said if the facility was a Medicaid facility, it would decrease the cost to the state.
- 00:36:14 SEN. MCGEE said that the method used for Medicaid payments and information on Medicaid payments for these youth needs to be clarified, because as it stands now, the amount of Medicaid money actually paid to the provider is unknown. He said the LJIC needs to know the actual costs of operating a program and of building a facility, regardless of where the money comes from. Mr. Gibson said that the total cost of constructing a building and operating a program for one year would be between \$2.5 and \$4 million. SEN. MCGEE asked Mr. Gibson to provide written estimates to the LJIC for the operating costs for such a facility, as well as an estimation of what the Medicaid payments are for the youth listed in EXHIBIT #4.

- 00:39:46 SEN. SHOCKLEY asked if it is possible to get Medicaid payments for a program administered through DOC, as opposed to DPHHS. Mr. Gibson said probably not, because the level of security at a facility affects Medicaid eligibility. He said operating costs would probably be a wash with what is currently being spent from the general fund.
- 00:42:40 **Mary Dalton, Administrator, Health Resources Division, DPHHS**, discussed Medicaid youth served in out-of-state facilities for fiscal year 2007 (EXHIBIT #5) and said that DPHHS placements depend more on a youth's behavior than on a specific diagnosis. She also explained criteria for Medicaid eligibility, such as if the treatment facility meets certain licensing and certification standards, if the youth meets certain eligibility requirements, if the service is medically necessary, and if there is a reasonable expectation that the youth will improve.
- 00:53:27 Ms. Dalton discussed Medicaid payments in fiscal year 2007 for children in specific provider types, a summary by age, a summary by primary diagnosis, and out-of-state provider history (EXHIBIT #6).
- 01:02:17 Ms. Dalton said that in order for a state-operated or state-contracted facility to operate as a Medicaid facility, it must meet three criteria: it must be dedicated to mental health treatment programs, the child must be likely to benefit, and the child must be eligible for Medicaid.
- 01:02:54 SEN. SHOCKLEY asked if it was true that some children simply can't be helped, and would not fit the eligibility. Ms. Dalton said it would be very rare, but in certain circumstances, could be the case. SEN. SHOCKLEY said that even with an in-state facility, there would still be instances in which a child had such a unique circumstance that out-of-state treatment would still be required. Ms. Dalton said that was true. SEN. SHOCKLEY asked if the state could get around Medicaid eligibility rules by contracting with a non-profit organization. Ms. Dalton said no, because Medicaid looks at the facility, not the operator.
- 01:04:43 SEN. MCGEE asked why it is so difficult to get a straight answer about Medicaid-related issues. Ms. Dalton said it is because there are so many different categories of eligibility, facility issues, and the needs of the child; and the varying degrees of interplay between those three factors. SEN. MCGEE asked her to state her opinion on why some children don't respond to treatment. Ms. Dalton said that could be for a variety of reasons, but that most of them have failed all through the system and have lost hope.
- 01:07:15 SEN. MCGEE asked if the loss of corporal punishment and the removal of God from schools has contributed to this situation. Ms. Dalton said that she did not feel qualified to comment on that.
- 01:07:56 SEN. JUNEAU said that Ms. Dalton's information did not include any discussion of what types of efforts are made to involve parents or what services are available to help them deal more effectively with the child and to get the child home. Ms. Dalton said there are limited resources within the Medicaid process and said it is very difficult to provide services to a family when the child is placed

out-of-state. She said that one difficulty with Medicaid is that the child may be eligible for Medicaid, but that the parents may not be, which affects what services are available to the child and the family. She agreed that this is an area of disconnect.

01:11:15 **Larry Noonan, Chief Executive Officer, A.W.A.R.E. (Anaconda Work and Residential Enterprises) Inc., Butte**, said that A.W.A.R.E. is a private, non-profit corporation that provides quality, community-based services to persons with challenging mental, emotional and in some cases, physical needs who would otherwise be served in a more restrictive setting; or not at all. Mr. Noonan discussed the history of the corporation, the services offered to youth and adults affected by disabilities, and the ten principles on which A.W.A.R.E. bases its operation (EXHIBIT #7).

Mr. Noonan said that from A.W.A.R.E.'s perspective, the state agencies have done a good job with the resources available to them, but are falling short of what really needs to be done. He said that a small number of people are trying to fix an enormous problem and referenced the "80/20 rule", saying that a small percent of the people are eating up a large amount of the resources. Mr. Noonan said that there really isn't a good state-based mechanism for addressing mental health issues and that there are many private entities that are eager to help, and would do so, if a mechanism was in place that would allow them to do so.

01:27:55 SEN. MCGEE asked if A.W.A.R.E. has a secure residential facility that would be able to serve DOC youth. Mr. Noonan said A.W.A.R.E. has a facility in Galen that could be made secure. He said that Shodair also could probably provide such facilities, and that both would probably meet Medicaid requirements. He described several public-private programs designed and operated by A.W.A.R.E.

01:30:45 SEN. JUNEAU asked how clients find A.W.A.R.E. and how services are paid for. Mr. Noonan said that most clients are referred through a case manager, through the schools, and sometimes courts. He said that a sliding fee scale is offered and that most of A.W.A.R.E.'S contracts are Medicaid, but that A.W.A.R.E. accepts payments of any kind.

01:32:38 SEN. LASLOVICH asked what can be done legislatively to foster more public-private partnerships. Mr. Noonan said that there are other agencies like A.W.A.R.E. that also could help with this problem. He said that he doesn't know what the ultimate solution is but one suggestion would be to create a liaison within state government who would help coordinate programs, agencies, services, and providers; and who would assist in streamlining rules to make it easier to meet requirements.

01:36:54 **Lois Menzies, Court Administrator, Judicial Branch**, reported that 7,000 youth were referred to Youth Court in fiscal year 2007 and discussed the placements of those youth and the reasons why a youth was placed in a particular facility. Ms. Menzies also reviewed funding considerations and said the Judicial Branch would welcome more in-state options for addressing seriously mentally ill youth (EXHIBIT #8).

## Break

### Public Comment

01:57:33 **Betty Carlson, Office of Public Defender (OPD), Region Three, Great Falls,** said the OPD supports the idea of a state residential facility for mentally ill youth. Ms. Carlson made the following suggestions:

- create commitment criteria specific to youth;
- create three small facilities, spread across the state, that would make family participation and access easier;
- strengthen funding streams through working with schools to access federal funding for educational resources for these youth; and
- lengthen the funding period to at least six months.

SEN. MCGEE asked Ms. Carlson to provide the LJIC with suggested statutory language.

02:03:06 **Eve Franklin, Mental Health Ombudsmen (MHO), Governor's Office,** said that the overarching issue is finding a balance between early prevention, community based care, and institutional care. She said that her position, as MHO, is that these things are not mutually exclusive and that they must all be a part of the continuum of care. She agreed that the need for mental health treatment for youth is great.

Ms. Franklin said that this is a very complicated and complex issue, with financial eligibility issues, clinical issues, and availability of services all intertwined. She said that several myths perpetuate the problems, such as that Medicaid is a catchall, or that there is some sort of safety net for mentally ill youth. Ms. Franklin said it is very difficult to change rules that deal with Medicaid because Medicaid is a tightly-regulated federal program that states have little input on. She stressed that out-of-state programs are not the answer, because private companies frequently change ownership and are frequently unstable. Ms. Franklin asked that the LJIC consider her as a resource and that she would assist the Committee however possible.

02:12:58 **Dr. Donald Harr, Psychiatrist, Billings,** related his experience with mental health issues and said his knowledge and experience have led him to the following conclusions:

- it is possible to combine private and public resources to treat mentally ill youth, but limits should be established for private entities;
- it is possible to provide suitable and meaningful treatment program for youth that will meet Medicaid requirements in either the DOC or DPHHS;
- agency cooperation is necessary in order to provide the most effective treatment; and
- causes of mental illness are usually due to a variety of factors and with proper treatment, recovery can usually occur.

02:25:41 **Pam Honich, Clinical Therapist and Clinical Director, Florence Crittendon Home, Helena,** said that, regarding resource allocations, her experience is that youth are showing problems because resources are not being allocated soon

enough. She suggested that by offering prevention programs much earlier, much of the intensive intervention required for mentally ill youth could be diverted. Ms. Honich said the state could pay now, or pay later, but that it would cost less to pay up front.

02:29:29 **Anita Roessman, Disability Rights Montana (DRM)**, (formerly Montana Advocacy Project), agreed that early intervention is key. She said that her organization does not support the use of out-of-state treatment programs and cited cases of abuse that have occurred in some of the programs. She said that it is not fair that there is general fund money for adult mental health services, but not for youth, and DRM would like to see that changed. She said that in order for some children to receive services, they must be very poor and have a mental health diagnosis, or be placed out-of-home in order to become Medicaid eligible. Some children are manipulated into an incorrect diagnosis, just so they can receive services.

Ms. Roessman said a critical factor in a child's mental health and well-being is the presence of a strong adult in their life. She said this same factor must carry over into providing services to them, and that the DRM would reserve judgement of a proposal for an in-state mental health treatment facility for youth until more specific information is available. She said it must be adequately funded in order to respond effectively to children's needs. She read from a System of Care Planning Committee document regarding barriers to effective care for children and families.

**LUNCH BREAK - recess until 1 p.m.**

#### **Committee Discussion and Work Session**

03:28:39 Ms. Heffelfinger distributed copies of an April 8, 2008, memo, written by Clark Kelly, Chief Youth Probation Officer, 17th Judicial District, regarding in-state residential psychiatric treatment for youth (EXHIBIT #9).

03:31:16 Ms. Heffelfinger discussed the work done by the Juvenile Justice Working Group. She said that one of the group's recommendations was to review MCA statutes related to placement of youth with a mental disorder in a Youth Court Correctional Facility. She said that the Working Group asked the Children's Systems of Care (SOC) to consider this issue and to suggest statutory language concerning children's mental health statutes. The SOC has met and is working on suggested changes to statutes, and will present its suggestions at the June meeting. Ms. Heffelfinger briefly reviewed the statutes under examination by the SOC and the Juvenile Justice Working Group (EXHIBIT #10 and EXHIBIT #11). She said that the issue before the LJIC is whether these statutes should be amended to address youth and how to apply these statutes for children. She said the LJIC could choose one of several options: (1) wait for the SOC recommendations, (2) have staff develop recommendations based on specific instructions from the Committee, or (3) set the issue aside for now.



03:36:26 SEN. MCGEEw referred to 53-21-126(1)(d), MCA, said that a recent Supreme Court ruling in which Chief Justice Gray questioned the constitutionality of that particular section. He said he did not understand why the criteria in that section of code would not apply to a juvenile, and he asked Valencia Lane and David Niss, staff attorneys, to comment on their opinion and if there is a need for a legislative action to deal with the consequence of the Supreme Court decision.

03:39:44 **David Niss, Staff Attorney, LSD**, said there may be, but pointed out that that particular section of law concerns only what the Court should consider and what a professional person may testify to. He said the actual standard for involuntary commitment is 53-21-127(2), MCA, and said, in his opinion, that is where the focus should lie. Mr. Niss said that implications from a 1942 Supreme Court case regarding implied severability would very likely negate the need for amending either statute.

SEN. SHOCKLEY asked Mr. Niss to cite the recent Supreme Court case being referred to. Mr. Niss said it was *In the Matter of the Mental Health of A.B.M.*, decided on March 11, 2008.

03:45:49 REP. KOTTEL asked to have Dr. Harr present his recommendations for changes to the Montana involuntary commitment statute, as they would apply to youth.

Dr. Harr said that there are many youth who are not getting adequate care when it relies entirely on the parent's willingness to put the youth into treatment, particularly when there is a severe emotional disturbance. He said that he did not have specific wording but did recommend that latitude be allowed for a youth's commitment. He said he would comment further regarding community commitment options for youth that did not necessarily involve institutionalization.

SEN. JUNEAU said that in her opinion, 53-21-126, MCA, does need revision because the requirements are unreasonable for a youth, such as being responsible for their own food, shelter, clothing, health, and safety. Another issue to consider, in terms of what the court can consider, is that there is no provision for family circumstances. Ms. Heffelfinger said that creating new statutory language within the Youth Court Act to circumvent the adult commitment laws is part of what is being considered by the SOC, and defining which youth should be placed in an in-state psychiatric facility, as opposed to a DOC facility. REP. HILBERT said he also has concerns regarding 53-21-126 (1)(a). After discussion, there was a consensus agreement to wait until the SOC presents its recommendations regarding statutory revisions. Ms. Heffelfinger said it would be helpful to the SOC to know if the LJIC supports the concept of an in-state psychiatric facility for youth.

03:57:36 SEN. LASLOVICH said, based on the testimony heard in the morning, that there needs to be much greater coordination of services and providers. He said he supports the idea of funding an in-state facility, with the realization that there will always be a certain number of individuals that may have to be sent out-of-state. He said that he would prefer to begin the process by seeing if there is an existing building.

- 03:59:47 SEN. MCGEE agreed, but cautioned that every law has the potential to restrict an individual's liberty; and asked that this be kept in mind when creating or amending mental health statutes. He said that it is particularly important when considering requirements for involuntary commitment, and that it is important to keep a clear line between the practice of medicine and the practice of law.
- 04:03:17 SEN. SHOCKLEY commented that mental health science changes rapidly and agreed that early intervention would prevent more severe problems later in life. He also supported an in-state facility, with the caveat that it be located in a large area with existing medical services.
- 04:05:25 SEN. SHOCKLEY said the LJIC doesn't have the expertise to decide exactly how the facility should be designed, but has identified the need. He said that creation of an in-state facility will be a major expense and would have to be settled in the upcoming legislative session.
- 04:06:13 SEN. LASLOVICH said the question for this Committee is whether to establish a policy for such a facility, that it should be left to the experts to put forth a proposal on the exact needs and design of the facility.
- 04:07:03 SEN. MCGEE said he also supports the creation of an in-state facility. He said that he was impressed by the A.W.A.R.E. presentation and that other providers exist who could also provide care to some of the youth in need of mental health services.
- 04:07:44 REP. STOKER said that there is a possibility that a building located at MSH may become available. SEN. SHOCKLEY said that it is very difficult to find psychiatrists who are willing to practice in Montana and that in order to attract qualified staff, the facility will have to be located in an urban area.
- 04:09:24 REP. KERNS noted that there has been a five-fold increase in mental health diagnosis since the 1960s and said that the cause of the increase has yet to be addressed. He said all of the testimony heard has been that there problem is growing and that more funding is needed, but until the root cause is identified, little will change. SEN. MCGEE asked what he would propose. REP. KERNS suggested drafting a study resolution to consider the changes that have occurred since the 1960s, including factors that have contributed to the destruction of the American family and the removal of God from every day life.

#### **HJR 50 - INVOLUNTARY COMMITMENT PROCESS AND COSTS**

- 04:11:37 Ms. Heffelfinger said that the HJR 50 survey gathered data from Montana's 56 counties on their involuntary precommitment petitions and costs. Ms. Heffelfinger said she prepared a report on the survey results and said that the report is organized into three parts: Part I - Overview of study tasks, Part II - questions, findings, and conclusions, and Part III - issues and options (EXHIBIT #12). Ms. Heffelfinger asked the Committee to carefully consider the survey results as she provided a review of each of the three parts. As a part of her discussion of Part II - questions, findings, and conclusions; Ms. Heffelfinger provided a packet of materials relating to *Kendra's Law* (EXHIBIT #13).

## BREAK

### Panel Discussion

05:15:00

**Bill Kennedy, Yellowstone County Commissioner, Montana Association of Counties (MACo)**, complimented Ms. Heffelfinger on her good work in compiling the survey results and offered to work with the Committee and the 2009 Legislature to bring together a system that works for the least populated and remote county to the most urban counties. Mr. Kennedy said:

- all counties have a different manner of dealing with things, so it is difficult to get uniform answers for all of the questions;
- costs are the greatest concern to counties and each county's costs differ, particularly for facilities and transportation;
- the availability of resources varies tremendously from county to county;
- small counties can be more significantly impacted by a large bill, and the availability of services in a small or low-population county can be decreased or eliminated due to a single person who incurs a large bill;
- as a person goes into a facility, the medical professionals have to consider what is best for that person from a medical perspective, whereas county attorneys have to consider what is best for that person from a legal perspective, which can be two different approaches; and
- there are no easy answers or solutions, but counties are eager to partner with the state to create some uniformity for addressing these costs.

Regarding Yellowstone County specifically, Mr Kennedy said that:

- numbers are down at the county jail and at the emergency room, and the number of commitments are down, all due to the Crisis Center;
- the Crisis Center is a result of a collaborative effort and has been very successful to date, but that the partners feel they are unable to continue to pick up all the costs, and that if asked to continue doing so, services will have to be decreased;
- if that happens, the numbers for precommitment and commitment costs will increase; and
- local community resources and crisis intervention programs are the right approach, because they are cost-efficient for the county and state and very effective for the patient.

Mr. Kennedy said this is a very difficult subject but that he feels the LJIC is headed in the right direction with its work and thanked the LJIC for its efforts to address the many issues encompassed in the HJR 50 study.

05:31:15

**Merle Raph, Toole County Attorney, President, Montana County Attorney Association (MCAA)**, addressed the process and costs associated with involuntary commitment. Mr. Raph said:

- the process has become adversarial over the years, and that medical and legal standards that have to be met sometimes conflict with one another;
- the statutes have been called "antiquated", but the real problem is that they offer only one option;

- a lesser standard to allow intervention at the local level should be established, an example of which is a recent DRM proposal for a 14-day in-patient diversion option;
- a key component is community services, or at least regional services for rural counties; and
- "migratory" cost issues have affected counties and cost-sharing must be a component of discussion.

Mr. Raph said that the MCAA has discussed possible solutions to the cost issue and that Leo Gallagher would present them to the LJIC.

05:39:32

**Leo Gallagher, Lewis and Clark County Attorney, MACo Board of Directors,** said that "outside the box" thinking will be required to fix this problem and offered the following perspective:

- this is a statewide issue and needs statewide leadership;
- consumers will more likely succeed if services are received voluntarily, rather than involuntarily, which will require that services be provided at a local level;
- services are better and more cost-effective at the local level;
- adopting a "sooner rather than later" approach to mental health is more economical;
- teamwork, rather than an individual approach, is the key to conquering the problem; and
- very few consumers can afford to pay for services, so any system will have to be supported by the government.

Mr. Gallagher said that complete state assumption won't work and made several suggestions for consideration:

- create a statewide insurance pool to be used to help counties pay for precommitment costs;
- establish a county mental health mill levy and/or a statewide mental health levy; or
- increase the beer and wine tax.

Mr. Gallagher also suggested that five regional centers be created through out the state so that services are available to everyone.

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05:51:43

**Kevin Gillan, Deputy County Attorney, Yellowstone County,** said that as the chief litigator for his office, he has dealt with mental health issues and the commitment process many times, and agreed with Mr. Gallagher that the approach to mental health care in Montana should be a joint effort between the state and the counties. Mr. Gillan discussed the following points:

- Yellowstone County has greatly diminished the number of petitions by simply following the law, because while an individual may be in need of medical treatment, many do not meet the legal requirements for commitment;
- there are many good reasons to commit someone from a medical perspective, but the Yellowstone County Attorney Office is most

concerned about the person's rights, which creates a conflict between the medical and legal communities;

- the heart of the problem is that there is no middle ground, as discussed by other panelists;
- there is a need to deliver help to the people who require it, but a different approach from what is currently used must be created;

Mr. Gillan said that his position is that commitment should be the exception, not the rule, and agreed that major reform is needed.

- 05:57:59 REP. KOTTEL said there can be conflicts of interest regarding filing petitions versus the cost to a county, and asked how to deal with these types of ethical issues. Mr. Kennedy said the crux of the problem is lack of funding for local resources. Because of that, Yellowstone County started using the commitment process as a means of getting treatment for people. He said that he would like to reverse that approach and, instead of putting people through the commitment process, find a funding method to provide services on a voluntary basis, delivered through local providers. He said that the commit process will still be needed, but only for a very few.
- 06:01:39 SEN. PERRY asked how an insurance pool would be created. Mr. Gallagher said he would insure the counties, on a per capita basis, for precommitment costs. SEN. PERRY asked if such a program exists in Montana. Mr. Gallagher said no.
- 06:02:18 SEN. SHOCKLEY said he is working on a bill draft to allow initial appearance proceedings to be done through video conferencing, at the discretion of the judge. He said it would decrease trauma for the defendant and would save money for the county. Mr. Raph said it would be extremely helpful to his county to have this option, and would expedite the process for the person to get them into treatment sooner.
- 06:04:51 REP. STOKER asked the panelists to discuss how a crime committed by a mentally ill person complicates the commitment process and how counties handle such a person. Mr. Gillan said that Yellowstone County Attorney Office will not file a petition request on behalf of an individual with mental health issues, regardless of what charges are filed against him or her; and that it is left to the public defender to file appropriate motions on fitness to proceed.
- 06:07:11 REP. STOKER asked how the mental health patient is held under those conditions. Mr. Gillan said the person is placed in a holding facility, but that followup is done to monitor the person.
- SEN. MCGEE encouraged the MCAA to work with LJIC staff on potential legislative issues, saying that the Committee would value its input.
- 06:10:17 **Eric Olson, Training Coordinator, Office of the Public Defender (OPD)**, introduced Kelly Sather Harrison as an authority on civil commitment law, and Dr. Laura Wendlandt as the mental health consultant for the OPD. Mr. Olson

commented that the OPD advocates for those facing civil commitment proceedings, and that the goal is to see that the law is interpreted appropriately and that proper decisions are made. He said the KGF case, which was a landmark case for the nation, created the mandate that public defenders provide competent counsel to anyone facing civil commitment proceedings. Mr. Olson said the OPD would strongly oppose any legislative changes that would affect the mandates of the KGF decision but noted that he has not heard any discussion that would indicate that may happen. He said that while costs are a consideration, the OPD's main objective is advocating competently for the individual.

06:14:55 **Kelly Sather Harrison, OPD, Missoula**, said that she has been representing all of respondents in petition filings in Missoula County since January of 2005, and that the OPD has much information that would be very valuable to the LJIC.

Ms. Sather Harrison said the OPD vigorously advocates for their clients, but that it is difficult to do so when the client is immediately sent to Warm Springs. She said it is difficult to communicate effectively over the telephone and that local facilities are critical to the OPD in representation of their clients. Ms. Sather Harrison said that Missoula desperately needs crisis stabilization center and that she strongly supports funding for local facilities, which she feels will save costs and improve representation for clients. Regarding delays, Ms. Sather said that some delays are necessary, and that the OPD would oppose any restriction on its ability to request a delay or that would limit the rights of a client, such as transportation delays.

06:23:19 **Dr. Laura Wendlandt, Mental Health Consultant, OPD, Butte**, said that she gets many telephone calls about the lack of providers and lack of facilities in local communities; and that there are excessive wait times, even in communities with local services. Dr. Wendlandt discussed allowing physician assistants and psychologists with prescriptive privileges to provide treatment, saying that it would increase available providers and facilitate treatment.

### **Committee Questions**

06:25:47 SEN. SHOCKLEY asked Ms. Sather Harrison to comment on his proposal to allow video conferencing for initial appearance. Ms. Harrison said it would decrease travel time and costs, as well as trauma for the individual, since many of them are shackled during transport. SEN. SHOCKLEY said that he was not aware that shackles were still being used on mental commitments. Ms. Sather Harrison said that in her tenure, the use of shackles has been commonplace. SEN. SHOCKLEY said this needs to be discussed further.

06:29:01 SEN. JENT asked if rules should be promulgated on how or if people should be shackled. Ms. Harrison discussed an example of a 75 year-old man on oxygen being shackled for hours and another of an individual whose behavior justified the use of shackles. She said that it would be useful to have rules for the use of shackles, but that the rules should clearly delineate under what circumstances they can be used. SEN. JENT asked that the OPD provide the LJIC with suggestions.

06:32:50 In response to a question from REP. EBINGER, Dr. Wendlandt said that currently there is no standard procedure for oversight of mental health assessment, but that there is certain criteria to follow. She said that she firmly believes there should be a standardized assessment process and written form; and that having these tools would be of great assistance to county attorneys and to public defenders; and would provide a level of consistency currently not available.

06:35:01 **Ed Amberg, Superintendent, Montana State Hospital (MSH)**, thanked Ms. Heffelfinger for her report and said he agrees with her conclusions. Mr. Amberg said he is a strong advocate for reform of involuntary commitment laws and said his comments are his own, and not necessarily those of MSH. Regarding the voluntary commitment process, Mr. Amberg said the process must be made easier to allow people to access care and that the current set of mental health commitment laws center around avoiding unnecessary institutionalization. He said it is not working very well and that it is time to overhaul the system. The focus should be on access to proper care that is close to home and cost effective. Mr. Amberg provided suggestions for change:

- Use voluntary processes whenever possible.
- Review guardianship laws and allow families to obtain guardianship and consent to admission to mental health facilities or to get needed services.
- Create a mechanism to require treatment to be continued after release from a mental health facility for individuals with a history of being admitted to a mental health facility, with a simple hearing to return the individual to involuntary commitment status if treatment is not continued;
- Dramatically increase community services and incorporate automatic use of preplacement visit status for the first 14 days after leaving the hospital.
- Consider revision of statutes regarding the extension of commitment and revocation of conditional releases.
- Create an initial shorter commitment process, such as the proposal by DRM.
- Move jurisdiction of courts to MSH for commitment proceedings.
- Pool costs for smaller counties.

Mr. Amberg made several additional points for the record, saying that:

- he has nine psychiatrists on staff;
- patients do not appear at MSH hearings in shackles and restraints, and that shackles and restraints are not used except for certain circumstances;
- considerations are made for clothing preferences and medications;
- he would like to see detention periods as short as possible; and
- transportation is a big issue for MSH patients and that many times, they spend unneeded time there because of lack of transportation.

06:54:18 **Joyce DeCunzo, Administrator, Addictive and Mental Disorders Division (AMDD), DPHHS**, said she agrees with the comments made by Mr. Gallagher. She said she would like to provide the Committee with an update on mental health services:

- it has been frustrating trying to get the new services up and available. but work continues to decrease waiting time for local services and to provide more services locally, so that treatment can occur before a crisis occurs;
- three of seven methamphetamine treatment centers are open and the others will be open before July;
- a significant expansion of mental health services plan will serve more individuals and will include some freedom of choice for providers;
- the 72-hour crisis stabilization center opened March 1, 2008, the first seven counties are up and running, and 225 referrals were taken in the first month;
- the suicide prevention program is in operation on a statewide basis, with 24 hours-a-day staffing in two suicide prevention centers;
- five drop-in centers will be opened by July 1, 2008, and five half-time community liaison officers will be hired to assist people in obtaining care who have been recently discharged from MSH;
- the behavioral health in-patient facilities (BHIF) have not moved forward due to unforeseen problems;

Ms. DeCunzo also reported on developments new to the LJIC:

- because of high population at MSH, sixty community placement slots have been developed that are not for Medicaid eligible individuals, but for uninsured individuals;
- rules for secure crisis stabilization beds have been developed but challenges remain, such as funding, unanticipated expenses to county budgets, and whose responsibility it is to serve an uninsured individual;
- there is potential legislation forthcoming that will address the lack of mental health professionals; and
- there may be legislation to deal with transportation to and from MSH.

07:08:33 SEN. SHOCKLEY asked how many patients at MSH are considered a danger to themselves or to others. Mr. Amberg estimated that around 50% of patients fall into that category. He said that law enforcement officers do a great job of transporting unwilling patients but thought that they would be happy to not have to perform that function. He said it is a difficult call for law enforcement officers to make when having to decide whether or not to use restraints and said they would be happy to be out of that business. He said that in Wyoming, the state hospital staff takes care of transporting patients.

07:11:47 SEN. PERRY said that patrol cars are not designed for transport of mentally ill individuals and asked if the MSH could provide transportation in an adequately equipped vehicle. Mr. Amberg said that the lack of resources has prevented this from being done, but that if resources were to become available, it would be possible for MSH to design, equip, and staff a vehicle that would be appropriate for transporting mental health patients to the hospital.



**Public Comment -- Advocacy Groups, Family Members, Consumers, and Other Interested Persons**

07:15:03

**Patti Jacques, Family Member and Advocate**, said that she:

- supports the use of video conferencing for the initial hearing and for attorney-client consultation;
- supports changes in transportation of mentally ill individuals and noted that her son was sedated when transported as a mentally ill patient in Canada, which lessened the trauma;
- is working to raise funds for a new crisis care facility in Helena;
- there is a severe lack of housing and job opportunities for mentally ill people;
- does not support an increase in the beer and wine tax, but does think it should be reallocated, as should be the video gaming and lottery taxes.

07:21:26

**Anita Roessman Disability Rights Montana (DRM)**, said that she was heartened to hear of the Committee's concerns regarding the use of shackles and restraints and the proposal to revive Sen. Weinberg's bill from the 2007 legislative session that would have addressed this issue. Regarding the use of video hearings, Ms. Roessman said that the DRM supports the use of video hearings but does not approve of the judge's ability to veto the respondent's right to request video hearings. Additionally, she said that DRM would strongly support a respondent's right to appear in person. Ms. Roessman presented and discussed a proposal for a 14-day inpatient diversion program based on Oregon law (EXHIBIT #15).

**Joan Daly, Director and Administrator, Crisis Center, Billings**, said that she agrees with most of the points made in the day's discussion. Regarding the costs of providing care for people in the commitment process and jail diversion services, Ms. Daly said that the costs of the hospitals and private providers have not been taken into consideration. She suggested that the Committee obtain this information. Regarding length of stay, Ms. Daly said that often times, the hospital is not paid for the full length of stay and said it behooves the Committee to discuss this with hospitals. Finally, Ms. Daly said that while she supports the rights of individuals, she believes there is a need for a process that would allow a medical professional to appeal the decision of a county attorney and/or judge that the person does not meet the standard for involuntary commitment.

07:37:41

**Mitzi Anderson, Whitefish**, related her experience in dealing with her 50-year-old son who suffers from schizo-effective disorder, saying that he was a very successful and outstanding young man until the onset of his illness in his early twenties. Ms. Anderson said that her son responds well to treatment and that he has always received good care during his three involuntary commitments at MSH, and commended Mr. Amberg for this. She said she would support the 14-day inpatient diversion program presented by Ms. Roessman, and the video conference option. Ms. Anderson said that mental illness is a very difficult issue to study and understand because it can be caused by emotional problems due to life, or by organic brain disease. She said that it is not right to not treat people obviously suffering from mental illness under the guise of violating their civil rights.

- 07:43:14 **Winifred Story, Kalispell**, said that her mother and daughter both suffer from schizophrenia, and has other family members diagnosed with other forms of mental illness. She said that the MSH is a vitally needed facility and that there should be no stigma attached to going there for care. She discussed the difficulties of getting treatment for mentally ill people, and the past use of NAMI volunteers to transport mentally ill patients to the MSH. She suggested establishing safe rooms at all Montana hospitals to provide short term care for people in a severe mental health crisis until other arrangements can be made.
- 07:48:27 **Kathy McGowan, Montana Sheriff's and Peace Officers Association**, said that she listened with interest to the discussion regarding the use of shackles. She agreed that sheriffs should not be a transport service and said they would rather not have to provide this service. She said it is difficult for officers to determine in advance the level of risk an individual presents, but that experience has proven that bad things can happen when an individual is not shackled or restrained. Ms. McGowan said if the decision is made that restraints are not to be used, other options must be provided. She reported that law enforcement agencies are doing more than ever to train their staff on mental health issues and that many positive things are happening. Regarding serving uninsured individuals, Ms. McGowan said that these individuals are being served through many avenues but because it is on a piecemeal basis, it is difficult to see.
- 07:52:49 **Scott Crichton, American Civil Liberties Union (ACLU)**, focused his discussion on *Kendra's Law* and said that the Montana law is based on New York law, which still has not been permanently adopted in New York. He said that the rights of personal liberty and bodily integrity are of utmost importance to the ACLU, and that the patient's right to choose medical treatment is superior to what the doctor feels obliged to provide. Mr. Crichton discussed the results of several studies of court-ordered treatment programs and said that results indicated that compulsory treatment programs are not nearly as effective in reducing recidivism and problematic behavior as are access to enhanced services and enhanced monitoring. Mr. Crichton said that there are disturbing statistics on who is being forced into compulsory treatment and that there are major racial, ethnic, and geographical disparities occurring. He said that New York has not finalized *Kendra's Law* and continues to search for a more appropriate balance between the interests of the state and of the individual. He said that increased services on the front end are the best investment that could be made to protect Montana's population.
- 08:01:02 Dr. Harr said that he would prepare his suggestions in written form and provide them to the Committee.
- 08:02:40 **Tony Austad, Lincoln**, explained that she has repeatedly requested medical parole for her brother who is incarcerated for a violent crime. She provided copies of a newspaper article about her brother (EXHIBIT #16) and clarified that she is making the request for medical parole, not her brother. She also discussed a physical therapy report describing his severe physical impairments (EXHIBIT #17). Ms. Austad said that the Parole Board has been difficult to deal with and that it won't grant him release because of the severity of his crime,

despite the fact that a doctor has testified to her brother's severe medical condition. She said that she is very concerned because the MSP is not providing adequate medical care and that his condition is deteriorating.

08:07:57 Ms. Heffelfinger submitted written testimony by John Honsky regarding transportation with dignity and recommendations, including suggestions for draft legislation (EXHIBIT #18).

08:09:16 Mitzi Anderson asked that Ms. Heffelfinger provide copies of a report to all Committee members. SEN. MCGEE said it would be done.

### **Committee Discussion and Action**

08:12:48 After discussion of the options listed on pages 11 and 12 of EXHIBIT #12, the Committee made the following choices:

- to develop options for how the counties and the state can share precommitment costs;
- work with stakeholders to develop a discussion bill draft to enhance local crisis intervention services;
- work with stakeholders to develop a discussion bill draft to amend adult mental health commitment statutes, particularly with respect to voluntary commitments; and
- place the topic of transportation to the state hospital on the agenda for the June meeting so the committee can receive testimony on the feasibility of a contracted transportation service based at the Montana State Hospital.

### **Recess**

08:38:50 The Law and Justice Interim Committee recessed at 6:13 p.m.

### **April 11, 2008 - Day Two**

00:03:13 SEN. MCGEE reconvened the Law and Justice Interim Committee at 8:00 a.m. The Secretary noted the roll, SEN. LASLOVICH was excused.

### **JAIL AND PRISON STANDARDS**

SEN. MCGEE said that the Committee will consider four questions in its discussion of jail and prison standards. He read the questions listed on the agenda.

Copies of a March 21, 2008, memo to Mike Ferriter, Director, DOC (EXHIBIT #19) were provided to LJIC. The memo was an invitation to Director Ferriter to respond to the LJIC's concerns regarding constitutional standards for mental health treatment for prison inmates, and requested that the Director prepare responses to four recommendations put forth by the Committee.

00:04:22 Director Ferriter discussed the DOC's response to each of the four recommendations (EXHIBIT #20), and said that while the DOC has done much to address problems and to improve treatment programs within the DOC, he recognizes that work remains to be done. He said that he looks forward to

working with the Committee on strategies that will ensure that Montana's mentally ill offenders get appropriate and effective care while in state care.

### **Committee Questions**

- 00:12:23 SEN. MCGEE asked if there is a written suicide prevention program at MSP and the Montana Women's Prison (MWP). **Jill Buck, Mental Health Director, DOC**, said there is a written policy. SEN. MCGEE asked if, when a offender is released from MSP and moved into another program, such as probation or parole, does the offender's medical history move with him and is the service provider knowledgeable of the person's mental condition. Ms. Buck said she did not know. **Mike Mahoney, Warden, Montana State Prison**, said at one time the MSP had a mental health practitioner to work on after care plans, but that the person left the position. In the absence of that person, the probation and parole office has tried to fill that function.
- 00:15:33 Director Ferriter said that presentence information is distributed throughout the system when a prisoner is released and moved to another facility. He discussed what steps are taken to make certain the offender continues to receive needed treatment and medications. SEN. MCGEE said the question is, does the person fall out of the system when released from prison and/or paroled out, or are their mental health needs met through continued support from DOC. He asked where the system doesn't measure up and may leave the state culpable to a law suit. Director Ferriter said that when offenders are released into a community setting, they are set up with a counselor as part of their probation or parole program. The offender is encouraged to establish a good relationship with the counselor, but Director Ferriter said, it is up to the offender to do so.
- 00:19:37 **Deb Matteucci, Behavioral Health Program Facilitator, DOC and Department of Public Health and Human Services (DPHHS)**, said that Montana has made great strides in this particular area and that other states have inquired about the model programs. Ms. Matteucci discussed two programs that have been very successful, one being a program to provide medications to offenders outside Medicaid eligibility criteria, and the other to provide a mental health services program for case management, treatment, and evaluation. She said that a discharge planning group meets monthly with DOC and outside programs to coordinate services and make transitions go more smoothly.
- 00:22:29 SEN. MCGEE said that the *Walker v. Montana* Monitoring Committee suggested that 46-18-112, MCA, be amended. He asked Warden Mahoney if that has been done, or needs to be done. Warden Mahoney said that he did not have the information. David Niss, Staff Attorney, LSD, said that the final report of the monitoring committee was provided at an earlier meeting and that the Monitoring Committee had recommended that the statute be amended to address its concerns regarding presentence investigation (PSI) reports. Director Ferriter said that prison staff puts a great deal of effort into making sure that PSIs include all relevant information. He said that in his opinion, the DOC has met the requirements of the recommendations, but would review it just to be certain. SEN. MCGEE said it would be good for the Committee to know, in the event that legislation may be needed.

00:25:52 REP. STOKER said that suicide has been an issue in the MSP and asked if data has been gathered on suicide statistics. Warden Mahoney said he would provide data from 2002-2007 on threats, attempts, and actual suicides. He agreed that it is a critical issue and that the DOC has focused on it as such. He said DOC staff receives suicide prevention training and that when suspicious behaviors and warning signs are spotted, action is taken. Warden Mahoney discussed the many measures that have been implemented to prevent self-harm behaviors.

00:31:27 REP. KOTTEL asked several questions relating to gaps or interruption of medication that may occur as a person enters or transitions through the system. Specifically, she wanted to know if offenders typically arrive with medication, and if so, is the person taken off the medication for the evaluation phase. Ms. Buck said that medication is not taken away, even through the evaluation process. REP. KOTTEL asked about the difference in drug formularies and if the prisoner is kept on the same medication originally prescribed to them, or how a transition to a different medication is made. Ms. Buck said there are different formularies between the jails and the prisons and that sometimes medications do have to be switched. She said the DOC psychiatrist, Dr. Schaefer, oversees the transition. Ms. Buck also explained how prisoners who come into prison without medications are able to obtain prescribed medications, if they are deemed necessary or if it can be documented that a prescription has been written in the past for the person. REP. KOTTEL asked what the DOC's definition of "necessary" is and what the DOC's definition of mental illness is. Ms. Buck said necessary medications would be those that treat the symptoms of the diagnosis made by the mental health professional. REP. KOTTEL asked if there are internal DOC regulations that define the parameters of "necessary" and what is or is not a mental illness; or if it is totally up the discretion of the DOC psychiatrist. She asked, if that is the case, if there is a grievance procedure for the offender to contest the opinion of the doctor and to request a second opinion. Ms. Buck said the DOC uses the Serious and Disabling Mental Illness (SDMI) criteria to evaluate offenders, and that medication is prescribed based on that. Regarding a grievance policy, Ms. Buck said there is a grievance process and she reviewed the steps that are taken to address the problem. REP. KOTTEL said it doesn't appear that there is any independent review available in the grievance process. Director Ferriter said that all grievances filed come to him and that he reviews all of them with legal staff and others, but that he makes the final decision. REP. KOTTEL asked Director Ferriter to explain why he feels qualified to make decisions in these matters, considering his lack of medical background. She asked if there is an independent medical person who could make the assessment. Warden Mahoney said he also reviews grievances and explained that sometimes prisoners file a grievance simply because the medication available in the prison formulary isn't the one they want. Mr. Mahoney said that he is not medically qualified to make such decisions and doesn't. He said that Dr. Schaefer can contact the physician who made the original prescription and can consult with other medical professionals. REP. KOTTEL asked if there is sufficient budget available for medications and if a prisoner is ever taken off medication due to budget considerations. Warden Mahoney said no, that those decisions are strictly up to the mental health professionals and that they have never been directed to make such a decision.

- 00:41:52 REP. EBINGER asked if the mental health professional position will be filled. Warden Mahoney said that the position is open and is being advertised.
- 00:43:08 SEN. JENT explained the PSI process and said that it very useful to the judge and to DOC staff. Director Ferriter agreed. SEN. JENT said that the concerns voiced by the *Walker v. Montana* Monitoring Committee were due to the discretionary nature of the PSI and the current language of the statute. He asked if all PSIs should require that a specific portion of the report deal with the mental health of the offender. Director Ferriter said the DOC model has a segment that deals with mental health and that if further exploration or evaluation is indicated, it can be done. He noted that defense and prosecuting attorneys also have an opportunity to review and comment of the PSI, which is another safeguard. Director Ferriter noted that the DOC prepares over 3,500 PSI reports every year and that it is his expectation that DOC staff presents the best picture possible of the offender to the judge or probation and parole officer, because of its importance to the future of the offender. SEN. JENT commended the DOC model but asked if there is a need for a specific report on the mental health for each offender. Director Ferriter said doing so would significantly increase the process and workload, but that the DOC would carry it out, if mandated to do so.
- 00:49:33 SEN. JUNEAU referred to the monthly meetings held at MSP, and asked if the meetings address all DOC facilities and inmates, or just those at MSP. Ms. Matteucci said the meetings she referenced are for MSP inmates discharging from that facility only, but that other facilities hold similar discharge planning meetings. Regarding inmate suicide data, SEN. JUNEAU asked if it could be broken down into male and female data. Warden Mahoney said he would check with Warden Acton of the MWP on available data from that facility. SEN. JUNEAU asked for statistics from the private prisons also. SEN. JUNEAU asked if support services are available in all correctional facilities, or mostly just at MSP and MWP. Warden Mahoney said that mental health services are available at all DOC facilities, but that the chronically mentally ill inmates are transferred to a facility with a full-time psychiatrist and more intensive care programs.
- 00:52:48 **John Connor, Chief Criminal Counsel, Attorney General Office, Department of Justice**, discussed his duties and job responsibilities, which include inquests into jail suicides. He said his opinion is that, if an individual is determined to commit suicide it is difficult to prevent them from doing so. He said to his knowledge, there is not a compilation of jail suicide data or a single repository of information, other than the coroner's register but that it would be relatively easy to obtain by working with county attorneys.
- SEN. MCGEE asked Mr. Connor to offer suggestions, based on his years of experience and personal knowledge of the situation, on what legislation may be needed. Mr. Connor said to the best of his knowledge, there are not statewide jail standards, and that opinion varies on whether they are necessary. He said if standards were to be legislated, factors that deal with jail suicides could be included to create assessment tools. He said from his perspective, legislative standards would be a good start.

- 00:59:58 SEN. PERRY said a statewide study of jail suicide would be a good idea. He said it would be valuable information and may involve some cost, but that savings would be greater, just in saved legal fees for law suits, inquiries, inquests, and so on. SEN. MCGEE said this could be further discussed in the work session.
- 01:03:11 **Captain Dennis McCave, Montana Sheriff's and Peace Officers Association (MSPOA), Billings**, said that several individuals with expertise in the issue of jail standards were present at the meeting and would be available for questioning. Captain McCave said that:
- MSPOA Montana Jail Standards have been in existence since the late 1970s, undergoing several revisions in that time;
  - compliance is voluntary at this time and while adoption is encouraged, there is no mechanism to force agencies to do so; and
  - a new jail review process is being developed with the assistance of national experts with the expectation that this will increase compliance.
- Captain McCave provided multiple documents to the Committee and explained how each is used (EXHIBIT #21):
- Montana Jail Standards - revised September 2006;
  - Yellowstone County Detention Facility Policy and Procedures;
  - an inmate classification form;
  - a suicide prevention screening form;
  - an assessment form used by the mental health professional; and
  - a suicide prevention protocol.
- Captain McCave said it would be impossible to determine how many different processes or protocols are being used at this time, but that the jail review process should address this. He said that the problems are being addressed through updating of the standards, initiating a review process, and by having a data collection project underway; and that work continues to resolve the problems in an operationally appropriate manner. Captain McCave concluded his remarks by saying that no sheriff wants to operate an unconstitutional jail and the greatest challenge is lack of resources.
- 01:20:11 **Terry Jessee, Licensed Clinical Mental Health Case Worker, Yellowstone County Detention Center**, agreed that the major issue is lack of resources, both in funding and personnel. He estimated that of the 43 working jails in Montana, 35 would have major liability issues, mainly due to lack of personnel.
- 01:21:25 **Jimmy Steyee, statistician, Montana Board of Crime Control**, said he would answer questions regarding the data collection project. He said a May 30 meeting is scheduled to review data collected to date and to consider other issues.
- 01:22:56 SEN. MCGEE asked if small or rural jails can video conference with larger jails in order to take advantage of the larger jail's medical staff for evaluations or other services. Mr. Jessee said yes, if both jails have the necessary equipment and the issue of contracts and protocols were addressed. SEN. MCGEE asked if it is

possible to conduct a medically sound evaluation or exam of a patient using this means. Mr. Jessee said yes, with the caveat that certain assessments are better done in a face-to-face setting.

- 01:25:49 SEN. MCGEE asked what it would entail to allow outlying or rural jails to take advantage of urban facilities. Captain McCave said videoconferencing is the wave of the future and that he has already been contacted by outlying areas to tour his facilities. Despite that, he said, it will take a dedicated effort and partnership between many entities and agencies to make it a reality. Mr. Jessee commented that the state of Texas uses this technology in over 200 facilities to deal with all of its inmates. SEN. MCGEE asked Mr. Jessee and Captain McCave to study the statutes and make recommendations, if needed, that would allow counties in Montana to cooperate in a similar fashion.
- 01:29:15 SEN. SHOCKLEY asked how many counties are served by the Yellowstone County Jail. Captain McCave said his jail has contracts with two neighboring counties but also provides assistance on an as needed basis to other counties, such as use of handicap access prison cells. SEN. SHOCKLEY asked, by legislating standards, if that would result in a decrease the number of jails in operation. Captain McCave said that would be a possibility and said the voluntary process that is being pursued now is a better approach.
- 01:30:42 SEN. JUNEAU asked if tribal prisons are collaborating with the MSPOA on jail standards or if they are outside the jurisdiction of Yellowstone County. Capt. McCave said tribal jails are outside county jurisdiction and have not been included at this point because of the jurisdictional difference. SEN. JUNEAU asked if collaboration could be encouraged so that similar standards could be developed for tribal jails to address the mental health needs of tribal jail prisoners. Captain McCave said that it may be possible and that he would make the invitation.
- 01:33:57 REP. KOTTEL asked if there is uniformity between counties regarding the definition of mental illness and, if counties limit mental illness to Axis I disorders under the DSM-IV, what happens to people suffering from Axis II disorders. Captain McCave said there is a grievance procedure in place similar to the DOC procedures, that care can be provided for these types of patients, and that the goal is to provide a reasonable level of care.
- 01:36:06 Mr. Jessee said that jails are a maintenance facility, not a treatment facility, and that jails do not have the capability of providing treatment. Diagnosis of mental illness is limited to what will keep the person safe and relatively comfortable.
- 01:38:30 **Anita Roessman, Disability Rights Montana (DRM), formally Montana Advocacy Program (MAP)**, shared the experiences of some of her clients in jails. She noted that the quality of mental health services in the jail system lacks uniformity and suggested that screenings be done as soon as the prisoner is admitted. Common complaints from prisoners and staff include: lack of access to a psychiatrist, drug formulary issues, prisoners being taken off medication upon admittance to jail; and records management and information issues. Children in



the probation and parole system are often between parents/providers and their parole/probation officer. Ms. Roessman said she would like to have more training for officers working with children and to clarify the role of parents whose children are in the custody of the court or DOC.

- 01:58:22 Ms. Roessman made several recommendations:
- that there be mandatory standards for jails and juvenile detention facilities with regard to mental health services;
  - create statutory mental health standards in the corrections system, including youth corrections;
  - statutorily clarify the legal rights of parents with regards to health care of their children who are in court or DOC custody; and
  - give DRM an opportunity to brief the committee about what can be done statutorily to provide appropriate treatment on a timely basis.

- 01:59:52 **Dr. Gary Mihelish, President, National Alliance of the Mentally Ill (NAMI) - Montana**, referenced recent events involving mentally ill youth, including the suicide of a young man whom Dr. Mihelish had known for many years. He said he was grieving, angry, and discouraged. Dr. Mihelish said time and again he has seen a lack of responsibility in Montana's correctional system for inmate's mental health needs and said he considers it criminal to put a mentally ill person in the corrections system where they will not get the level of care needed. He said there has to be a better way. Dr. Mihelish listed three issues of concern:
- much more training on mental illness is needed for corrections and probation and parole officers and that the expense pales in comparison to the value;
  - prisoner access to medications and;
  - transition issues of connecting people with services in the community.

Dr. Mihelish discussed 189, an executive branch goal to reduce the MSH census to 189 patients and returning people to the community from MSH. He said that in most cases it is good but that in certain cases, it is in the best interest of severely mentally ill to remain in the MSH because of the level of care they are given in that setting.

- 02:10:04 REP. STOKER said the Committee heard conflicting testimony the previous day regarding the percentage of the population with mental illness. He asked Dr. Mihelish to comment. Dr. Mihelish said that National Institute of Mental Health data estimates that approximately 5.4% of the national population suffers from a severe mental illness. He provided other statistics on mental illness, saying that about one out of five families has an member with a mental illness.

- 02:13:14 **Scott Crichton, Executive Director, ACLU, Montana**, began his comments by saying that he has a great deal of respect for law enforcement and corrections staff who have to manage the lives of offenders, saying that he believes they do the best they can with the resources allocated to them. He said that the Declaration of Rights in Montana's Constitution expressly states that citizens have the right to individual dignity and that no person shall be denied the equal protection of the law. Keeping that in mind, Mr. Crichton said, the ACLU has

several recommendations regarding mental health care, suicide prevention, and options for legislation (EXHIBIT #22). Mr. Crichton said the recommendations were based on testimony and interviews conducted by ACLU legal staff with prisoners. He read portions of interviews as he discussed each of the three recommendations:

- collect data on the treatment of serious mentally ill individuals detained in state prisons and county jails;
- require county detention centers to adopt and train staff in suicide prevention programs; and
- consider legislation to clarify or enact language about constitutionally-based mental health treatment standards in prisons and jails.

## **Break**

### **Public Comment**

- 02:52:31 **Patti Jacques, Helena**, provided a document containing 2000-2005 statistics from the Bureau of Justice regarding deaths in custody (EXHIBIT #23). She also offered several recommendations:
- amend 46-4-201, MCA, regarding inquests, to include persons in custody and/or awaiting trial;
  - require coroners to report to DCI at the Department of Justice on jail suicides and that the data be readily available on request;
  - establish mandated mental health treatment plans and mental health treatment standards for jail and prisons; and
  - fund programs by reallocating tax revenues from the beer and wine tax, the video gaming tax, and the lottery profits.
- 02:56:37 **Christopher Boer, citizen, Great Falls**, said that he suffers from mental health and chemical dependency issues. Mr. Boer discussed his personal experience in a detention center, including several attempted suicides. He said it was weeks before he was given medications and that while in jail, he felt he was punished for being mentally ill. He said once he received medication he improved quickly and that proper mental health care choices will reduce crime. He said that treatment and rehabilitation would be more effective than letting a person deteriorate in a jail cell, receiving little to no care.
- 03:00:54 **Colette Gray, Opportunities Inc., Great Falls**, read testimony regarding the services provided by her organization and provided statistics regarding the incidence of mental illness among Montanans (EXHIBIT #24).
- 03:03:07 **Tom Daubert, Helena**, asked to respond to a comment made by Dr. Mihelish, saying he agrees strongly that it would be a huge improvement to have more training in mental illness and sensitivity towards the mentally ill. He related his family's experience with mental illness and said that he has seen first-hand the support provided by NAMI, both as a volunteer in the program and as family member. He discussed similarities between mental illness and physical illness, and the importance of treating each for the well being of the individual. He discussed his involvement with Patients and Families United, a Montana's medical marijuana patients.

03:06:43

**Jim Smith, Mayor of Helena, Montana Sheriff's and Peace Officer's Association, and Montana County Attorney Association (MCAA)**, thanked the Committee for its work, saying it is a tremendous challenge for the Committee to take all the information gathered and comments made and build them into a meaningful policy and change. He also thanked the DOC and DPHHS for sharing their goals and plans. He made several comments regarding the issues at hand:

- there is no disagreement that the mentally ill need to be treated with dignity, but that may mean different things to different people;
- creating partnerships is emerging as a top priority and the MCAA will work on the suggestions made by Leo Gallagher at the previous day's meeting;
- addressing the problems from a regional perspective would work well because Montana already does that with many other programs;
- privatization of public functions should be considered with caution; and
- the current statutory framework is adequate and it is a matter of cooperation and creating partnerships to take care of the problems.

03:13:45

**Winifred Story, Kalispell**, said she is a parent of a mentally ill child, and as such, has spent time at Warm Springs. She said that she doesn't understand why the Xanthopolous building is no longer being used as a forensic unit and asked the Committee to consider bringing it back. She said that is where the seriously mentally ill ought to be.

03:14:40

**Mitzi Anderson, former President of NAMI, Whitefish**, reviewed her involvement in mental health issues and said she concurred with Dr. Mihelish's statements. Regarding previous discussion of an individual's right to liberty, she said it can't be assumed that a mentally ill person can make a rational decision about his or her treatment. She recommended a recent book on mental illness by Nancy C. Andreasen and discussed recent research on mental illness, saying that eventually, detecting mental illness may be as simple as a saliva test.

Ms. Anderson said that 46 states have moved away from eminent danger as the sole criteria for treatment and commitment. She discussed schizophrenia statistics, saying that about 30% are very sick and will always need sheltered living and a high degree of assistance. She said about 25% will have one psychotic episode, will recover, and likely never have another episode. That leaves about almost 50% of those diagnosed with schizophrenia in need of treatment and services. She said early intervention and treatment is key to their recovery and that research indicates that if a young person receives appropriate treatment within the first year of being diagnosed, there will be little to no cognitive deficits. She said that has a huge implication for society and makes early intervention even more essential.

03:21:28

**Dr. Donald Harr, Psychiatrist, Billings**, said he would provide his comments in writing to Ms. Heffelfinger. Dr. Harr noted that he is the legislative representative for the Montana Psychiatric Association, is president of the Montana Chapter of the American Foundation for Suicide Prevention, participates in the Suicide

Prevention Coalition - Yellowstone Valley, and was a member of the Monitoring Committee in the *Walker v. Montana* case.

### **Committee Discussion and Work Session**

Ms. Heffelfinger guided the Committee through a decision-making process using an *Issues and Options* list for the four issues under consideration (EXHIBIT #25). The Committee discussed the options listed under each issue and made the following decisions:

- asked for more information and testimony to be presented at the June meetings on mental health care standards set by the National Commission on Correctional Health Care and about what other states provide in statute or rule with respect to those national standards;
- asked for a bill draft to amend 46-18-112, MCA (EXHIBIT #26), to provide that if a presentence investigation report is ordered by the court, the report must include a physical and mental examination of the defendant;
- asked for additional information about the policies on the transfer of mental health records from jails to the prison and for the topic to be placed on the June agenda; and
- asked for a panel discussion at the June meeting on the statewide collection of data on suicides in jails and prisons.

### **LUNCH BREAK**

05:12:46

**Deb Matteucci, Behavioral Health Program Facilitator for DOC/DPHHS,** presented a brief analysis of California's Proposition 36, which was intended to reduce prison populations and divert offenders. She said she pulled out the five key elements of Prop 36 and then examined how those elements are handled in Montana. Ms. Matteucci said that under Prop 36, people convicted of a nonviolent drug possession charge receive probation or court-ordered treatment and must have no serious prior felonies. In the first five years of the program, California saw a reduction of about 27%. Ms. Matteucci's comparison with Montana data revealed that this is already occurring in Montana.

Ms. Matteucci said the second element of Prop 36 mandated that people placed in court-ordered treatment had conditions of probation and parole supervision attached, and if a violation occurred, the treatment or supervision may be intensified or revoked and the offender could be incarcerated. She said a key distinction between the two states is that Prop 36 has no funding for drug testing and doesn't allow jail sanctions as a part of supervision, whereas Montana's drug courts allow for both of these. Ms. Matteucci said that Montana's treatment completion rate is much higher than the rate under Prop 36.

Ms. Matteucci said funding was the third element she compared, and that in California, over \$120 million was allocated annually for chemical dependency treatment. In 2006, the appropriation sunsetted, but treatment was still required. Counties assumed the cost and responsibility and were very concerned because they were mandated to provide treatment with no funding. Ms. Matteucci reviewed funding in Montana (about \$17 million per year), and said that per capita, treatment funding was three to four times more in Montana than in California.

Ms. Matteucci said the fourth issue was research, annual reports, and additional long-term study. She noted that Montana is lacking long-term data, but after comparing the data that does exist, she found that Montana's treatment completion rate is higher than California's.

Ms. Matteucci said the fifth element of Prop 36 she compared regarded dismissal of the conviction if successful completion is achieved, an option also available in Montana. She said that overall, incarceration is increasing in California and that incarceration in Montana is declining. Ms. Matteucci noted that under Prop 36, outcomes would change for only 3.5 Montanans, which indicates to her that Montana is doing a good job.

### **DISTRICT COURT JUDGE SALARIES**

- 05:30:36 Ms. Heffelfinger presented a report on District Court judge's salaries (EXHIBIT #27). She said that materials were mailed out in advance of the meeting and included a survey from national and state courts and MCA sections relating to the issue. Ms. Heffelfinger also distributed copies of a table showing salaries for elected state officials (EXHIBIT #28). She discussed the background of the issue and comparisons with surrounding states.
- 05:37:53 SEN. SHOCKLEY said being a judge is a tough job with a great deal of responsibility and that the state must make it attractive in order to recruit well-educated, intelligent people.
- 05:40:09 SEN. MCGEE said that other salaries are based on judges salaries and asked what impact it would have if judicial salaries were raised. SEN. SHOCKLEY explained how salaries are set and said the state can set the maximum amount paid, but that it is up to a county if it wishes to pay more, which some counties do. He said that other salaries will still be set by county commissioners. SEN. MCGEE said an average Montanan may not be happy that judges are being paid \$100,000. SEN. SHOCKLEY pointed out that in order to become a judge, a great deal of education, training, and expertise is required and that it carries a great deal of responsibility.
- 05:43:39 Ms. Heffelfinger said correspondence from Judge Jeffrey Langton was included in the mailing regarding judicial pay and salaries (EXHIBIT #29) as well as information about the salaries of University of Montana Law School faculty (EXHIBIT #30).
- 05:44:14 **Ed McClean, District Court Judge, Fourth Judicial District**, said the judges are requesting four things:
- drop Montana from the list of states included in the survey average;
  - add Colorado to the average;
  - compute the average as of July 1 of the year and pay the district court judges from the same date; and
  - compute the average of the other five states and make the changes effective July 1, 2010.

He said that if no changes are made, Montana salaries will remain at the bottom of the list and judges just want to be paid a comparable salary to states in the Rocky Mountain region. He noted that Washington State was not included because of the impact Seattle would have.

05:48:44 **Sheryl Wood, MACo**, clarified that county commissioners set county attorney salaries. She explained the formula used in determining salaries for district court judges and said that changes would not affect county attorney salaries, but would affect the appropriation paid to counties for services.

#### **MEDICAL COSTS INCURRED BY HOSPITALS FOR COUNTY "INMATES"**

05:50:08 **Valencia Lane, Staff Attorney, LSD**, reviewed a bill draft requested by LJIC after listening to testimony at the last Committee meeting (EXHIBIT #31 - LC9999). Ms. Lane said it was first brought to the Committee's attention by St. Vincent's Hospital in Billings. She explained the provisions of the bill draft. SEN. MCGEE referred to page 7 and read the last three lines. He asked if the language should include the words, "or detainees" after "inmate's" on the very last line. Ms. Lane said it yes.

05:55:42 REP. STOKER referred to page 5 of LC9999 - EXHIBIT #31, Section 3(3)(c), and asked if the language shifts responsibility for payment to the agency that the officer who injured the detainee is employed by. Ms. Lane said yes. She noted that concerns have been raised regarding the suggested amendments and that the amendment may not be the best way to go about clarifying responsibility for payment.

05:57:52 REP. HILBERT referred to page 3 of LC9999 and Section 2(1) regarding the definition of "detainee". He said it is his opinion that the bill, as drafted, would open up the state to a huge liability risk. Ms. Lane agreed that was a possibility.

06:01:03 REP. EBINGER asked who would be responsible to pay if the detainee can't pay. REP. HILBERT said if the expense occurred while the person was in custody or incarceration, the county or state jail facility pays the bill. He said his concern is that under LC9999, the requirement that the person be in a facility is not there, and the county or state could be liable for expenses even if the person is simply cited for an offense. SEN. MCGEE agreed that more work is needed if the bill is to go forward.

06:03:25 **Tom Ebzery, St. Vincent's Hospital, Holy Rosary Hospital, and St. James Hospital**, discussed the hospital's concerns with the definition of "inmate" and said it was difficult to solve the language problems. He said the word "detainee" is a reasonable solution and that the bill would give a "detainee" the same legal standing as "inmate". He said this is a statewide problem and that LC9999 is a good remedy.

06:07:42 **Bob Olsen, Montana Hospital Association**, agreed that it is an issue for every community and hospital in Montana. He said that LC9999 establishes responsibility for who has to pay and it would put a stop to the problem of "unarresting" individuals or the practice of deferred booking. Mr. Olsen said the

bottom line is that the bill will eliminate the dispute and will improve each hospital's relationship with the arresting agency.

06:11:41 **Kevin Gillan, Deputy Yellowstone County Attorney**, agreed with REP. HILBERT's concerns. He said the unintended consequences could be enormous and could shift responsibility to local governments and counties that don't have the resources to pay large medical bills.

06:17:26 **Bill Kennedy, Yellowstone County Commissioner, MACo**, said that he also sees problems with the bill, particularly with the definition of "detainee". He said language dealing with the arresting officer needs to be clarified, as does wording on who has to pay, and how payment will be made. He suggested using permissive hospital levies to pay for the these types of costs. He asked how Medicaid and private insurance would affect payment. He said much more study and consideration is needed before making a decision on the bill draft. He said his final concern is if this bill would cause officers to hesitate in the line of duty out of concern for liability and payment issues.

06:23:02 SEN. MCGEE asked Mr. Kennedy if he would feel the same way if he was CEO of a hospital that had to pay a half-million dollars in medical bills. Mr. Kennedy said he would look at everything involved and work to get it resolved. He said that Yellowstone County has worked successfully with the hospitals on payment for mental health cases. He said that counties shouldn't necessarily be responsible for all bills. SEN. MCGEE said the LJIC is charged with creating a fair system for all. Mr. Kennedy said he agreed with that statement, but not with the proposed bill.

06:24:59 REP. STOKER asked if MACo could provide insurance coverage to a county as payor of last resort to cover this type of unusual circumstance. Mr. Kennedy said that MACo is interested to see where this goes, but it also wants other partners to be involved, such as law enforcement agencies and other municipalities. He said the entire gamut should be looked at before making a decision.

#### **OTHER ISSUES: POTENTIAL LEGISLATION, ACTION, PRODUCTS, OR RECOMMENDATIONS**

06:27:54 Ms. Heffelfinger discussed an issues outline she prepared for the LJIC based on discussion at the last meeting (EXHIBIT #32), which included suggested legislation and recommendations from the juvenile justice work group, adult mental health work group recommendations, and emerging issues. She asked that the LJIC decide if it wants to continue to work on the item or if it wishes to remove the item from further consideration.

#### **Suggested Legislation**

1. The Committee instructed staff to draft a bill to clarify that in a mental health commitment cases, the victim of an action by the respondent may not be appointed by a court to be a "friend of the respondent".

2. The Committee instructed staff to draft a bill to add the 22nd Judicial District to section 3-1-1001(1)(b), MCA, concerning the composition of the 22nd Judicial District.

### **Juvenile Justice Working Group Recommendations**

3. The Committee instructed staff to draft a bill requiring that a youth be represented by an attorney at the detention hearing, unless waived after consulting an attorney prior to the hearing.
4. The Committee instructed staff to draft a bill to increase the time limit in which a detention hearing must be held from 24 hours to 48 hours.
5. The Committee instructed staff to draft a bill to provide that a youth may not waive the right to an attorney without first consulting an attorney.
6. The Committee instructed staff to continue to work with the Children's Systems of Care Committee.
7. The Committee took no action on the possible referral of issues to other interim committees or entities.

### **Adult Justice Working Group**

Items 8 and 9. The Committee instructed staff to work with interested parties to develop a bill draft adjusting drug and mental health courts statutes in a manner that would clean up outdated language, provide for state-level administrative responsibilities, required court data collection and reporting, and recognize that drug courts include family and juvenile drug courts.

### **Emerging Issues**

10. Does the Committee wish to further examine state compliance with sex offender registration and notification matters related to the Adam Walsh Act?

06:56:44

Ms. Lane distributed copies of:

- an April 11, 2008, legal memo regarding the Adam Walsh Act -- sex offender registration -- federal guidelines (EXHIBIT #33);
- a National Conference of State Legislatures (NCSL) summary of the Adam Walsh Child Protection and Safety Act of 2006 (EXHIBIT #34); and
- a NCSL summary of proposed Office of Justice Programs Guidelines to Implement the Sex Offender Registration and Notification Act (SORNA) (EXHIBIT #35).

She said the issue is that Montana's sexual offender registration program is not compliant with the Adam Walsh Act but that after review, the Attorney General's Office made the decision that the provisions of the Adam Walsh Act are not suitable for Montana and that the Department of Justice would not propose legislation to address the problem.



After discussion, the Committee requested staff to provide additional information about the fiscal implications for Montana if the state fails to comply with the 2009 deadline.

11. The Committee instructed staff to include in the Committee's final report a statement of concern that the courts, county attorneys, and the public defenders need to be more cognizant of and adhere to current statutory requirements for collection of payments for indigent defense costs.

### **Public Comment**

07:22:36 **Judge Larson** said, regarding payments from convicted defendants, that Missoula County started collecting payments four months ago. He explained how Missoula County structured the program. Regarding the sex offender registration issue, Judge Larson said that the DOC is in the best position to monitor juvenile sex offenders moving in from out of state and that it should be left alone. Judge Larson also commented (regarding the drug court treatment bill) that the intent of the language in the drug court treatment bill from several sessions ago was to be broad.

07:25:35 **Betty Carlson, OPD, Great Falls**, commented on three items on the Options List, saying that she:

- supports representation for youth at detention hearings;
- does not agree that youth should be able to waive right to counsel;
- does not support increasing the time limit for holding a youth from 24 hours to 48 hours but; and
- would recommend as alternative that all youth interviews be videotaped.

07:29:58 **Gayle Lambert, Administrator, DOC**, updated the LJIC regarding identification cards issued to DOC inmates (EXHIBIT #36).

07:34:58 Ms. Heffelfinger noted, for the record, she just received HJR 50 survey results from Lincoln county (EXHIBIT #37).

### **INSTRUCTIONS TO STAFF**

07:36:05 Ms. Heffelfinger pointed out information in the meeting packet on faith-based corrections and re-entry programs (EXHIBIT #38).

### **ADJOURNMENT**

07:38:57 With no further business before the Committee, SEN. MCGEE adjourned the meeting at 3:38 p.m. The next meeting will be held on June 26 & 27, 2008, in Helena.