

Law & Justice Interim Committee

Meeting # 2

Thursday, October 23, 2003

Morning Agenda

✍ Staff backgrounder, sets stage

✍ Break

✍ Updates and info. briefs



- ✍ ACLU lawsuit (What is the complaint and its current status?)
- ✍ SB 218 from last session (Where have we been?)

✍ Staff review of issues and decision points



Afternoon Agenda

 Lunch Break

 Moderated roundtable discussion

-  What are the issues?
-  What is the scope of these issues?

 Committee decision points

-  Which issues to address legislatively?
-  What approach....overhaul or tweaks?

 Other business

Systematic Study Process

- ✍ *Gather information*
- ✍ *Identify issues/agree on problems*
- ✍ *Problem analysis/agree on what to address*
- ✍ *Develop options*
- ✍ *Analyze options*
- ✍ *Select an option, gather more info.*
- ✍ *Develop recommendations*

Staff's Role

- ✍ Process expert, analyst, consultant
- ✍ Frame policy issues, decision points
- ✍ Provide info. and analysis
- ✍ Objectively facilitate debate

Indigent Defense Backgrounder

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For the

Law and Justice Interim Committee




October 23, 2003

Part I:


Anatomy of Judicial
Branch

Judicial Branch Structure (HO#1)

Supreme Court

-  7 Justices, 8-yr terms, elected, non-partisan
-  Supervises 10 Boards and Commissions
-  Supervises District Courts

Court Administrator's Office

-  Hired and supervised by Supreme Court
-  Administers state funding of District Courts
-  Staff support to District Court Council

District Court Council




- ✍ Established in 2001 with state funding legislation
- ✍ To develop policies on state-funded district court program
- ✍ 9 members appointed by statute
 - ✍ 5 voting members: Chief Justice, 4 District Court Judges
 - ✍ 4 non-voting members: chief juvenile probation officer, county commissioner, court reporter
- ✍ Policies subject to Supreme Court approval

District Courts

22 Judicial Districts

-  Constitution says district boundaries to be set in statute

44 District Court Judges

-  Constitution says number to be set in statute
-  Elected to 6-yr terms
-  Non-partisan ballot

Courts of Limited Jurisdiction

- ✍ Youth Court (each District Court)
- ✍ Justice of the Peace Courts (County)
- ✍ Municipal/City Courts
- ✍ Special Courts
 - ✍ Water Court
 - ✍ Workers' Compensation Court
 - ✍ Small claims courts
 - ✍ Etc.

Part II:

Legal Basis of Right to Counsel

Defense Counsel: Constitutional Right (HO #2)

U.S. Constitution

-  6th Amendment

-  14th Amendment

Montana Constitution

-  Article II, Section 24

State Codes

U.S. Supreme Court decisions

- ✍ *Gideon v. Wainwright* (1963) – Landmark

- ✍ State obligation in felony criminal cases tried in state courts

- ✍ *In re: Gault* (1967)

- ✍ Right to counsel in juvenile proceedings

- ✍ *Arsinger v. Hamlin* (1972)

- ✍ Right to counsel in misdemeanor state proceedings if imprisonment possible

- ✍ *Alabama v. Shelton* (2002)

- ✍ Further rights to counsel in state misdemeanor proceedings

- ✍ Many other cases...

- ✍ Right to “effective” counsel & counsel in non-trial proceedings, etc.

Part III:

The Playing Field

Federal Guidelines & Tech. Support to States, Grants

- ✍ U.S. Dept of Justice

- ✍ U.S. Attorney General

- ✍ Office of Justice Programs

- ✍ Bureau of Justice Assistance

Think Tanks Study

- ✍ The Spangenberg Group
- ✍ Brennan Center, NY University
- ✍ The Pro Bono Institute
- ✍ Cascade County Law Clinic
- ✍ Others....

Non-Profit Advocacy Groups Watchdog

- ✍ NOW Legal Defense and Education Fund
- ✍ The Alliance for Justice
- ✍ The Native American Rights Fund
- ✍ Equal Justice Coalition (MA)
- ✍ Legal Resource Center of Connecticut
- ✍ Etc....

Professional Associations Support Public Defenders

- ✍ American Bar Association (ABA)
- ✍ National Assoc. of Criminal Defense Lawyers
- ✍ National Legal Aid and Defender Association (NLADA)
- ✍ Trial Lawyers for Public Justice

Non-Profits May Provide Direct Services to Indigent Defendants

- ✍ Acadiana Legal Services Corp. (Louisiana)
- ✍ Alaska Legal Services Corp.
- ✍ Blue Ridge Legal Services, VA
- ✍ Etc...






Part IV:

Standards &
Measuring Sticks

Compendium of Standards

A Resource Guide of Standards

(Institute for Law and Justice supported by a contract with Bureau of Justice Assistance, U.S. Dept. of Justice)

-  Administration
-  Attorney Performance
-  Capitol Case Representation
-  Appellate Representation
-  Juvenile Justice Defense

The Ten Commandments (ABA, 2002)

1. Independence from conflicting interests
(administrative and fiscal relationships)
2. Uniform quality in representation
3. Systematic eligibility screening and access to
counsel within 24 hours of arrest or detention

Ten Commandments (pg 2)

4. Counsel should have sufficient time to prepare and private space to meet with client
5. Counsel should have manageable workload for quality representation

Ten Commandments (pg 3)

6. Counsel should have ability, training, and experience to match case's complexity
7. Client should have same attorney throughout the case
8. Public defenders should have resource parity with prosecution

Ten Commandments (end)

9. Public defenders should have access to continuing education

10. Should be supervision and quality control regarding public defender performance

Part V:

Structures

Service Delivery Models

✍ Public offices, state or county

- ✍ Public funds and budget process
- ✍ Public employees

✍ Private practice attorneys on contract

- ✍ Terms of contract set budget parameters
- ✍ Non-profit corporation may also be contracted with

✍ Private practice attorneys appointed by the court

- ✍ List of approved attorneys
- ✍ Court order sets budget parameters

Service Delivery Nationwide

✍ Most states use combination

- ✍ Public defender offices
- ✍ Contracted counsel
- ✍ Appointed counsel

✍ In 1999, 18 states had state-funded public defender offices at state level, as one component

- ✍ 10 in Executive Branch
- ✍ 6 in Judicial Branch
- ✍ 2 were independent non-profit agencies

Service Delivery in Montana

✍ State-level: Appellate defender

- ✍ Service only provided in appeals

✍ Local-level

- ✍ County offices, public employees
- ✍ County contracts with private attorney/firm
- ✍ Courts assign/appoint counsel

Appellate Defender Commission (attached to Dept. of Admin.)

- ✍ Established by statute in 1991
- ✍ 5 members appointed by governor by statute
 - ✍ 1 district judge, 3 attorneys, 1 non-attorney public member
 - ✍ 3-year staggered terms
- ✍ Shall “propose minimum standards to which all trial and appellate public defenders, including locally appointed private counsel, shall conform”
 - ✍ Sec. 2-15-1020(9), MCA

Office of Appellate Defender

- ✍ Appellate Defender hired by Commission
- ✍ Appellate Defender hires staff
 - ✍ All classified positions, 3 FTE
 - ✍ General Fund agency, biennial budget about \$377,000
- ✍ Handles appeals for indigent defendants convicted in District Court

Local-level structure

✍ 1 regional public defender office

- ✍ Shared by Anaconda-Deer Lodge, Granite, Powell Counties
- ✍ Reimbursed by state

✍ 5 county public defender offices

- ✍ Cascade, Missoula, Yellowstone, Lewis & Clark, Gallatin
- ✍ Reimbursed by state

✍ Most counties

- ✍ Contracted by county, paid directly by state (changing landscape)
- ✍ Court-appointed, paid directly by state (changing landscape)

Part VI:

Funding

Funding Nationwide

- ✍ According to Bureau of Justice Statistics, in 1999:
- ✍ 21 states, 90% or more of funding from state
- ✍ 10 states, shared state and county funding
 - ✍ Montana included in this list, but now 100% state funded
- ✍ 17 states, all or most of funding from counties
- ✍ 1 state, funded by court fees

Funding amounts

- ✍ In 1999, in states with state-level offices:
 - ✍ Per capita spending on indigent defense ranged from:
 - ✍ low of \$5.60 per person (Maine) to
 - ✍ high of \$18.50 per person (Alaska)
 - ✍ Total spending ranged from:
 - ✍ \$6 million in Vermont with total pop. of less than 600,000 to
 - ✍ \$72 million in New Jersey with total pop. of about 8.1 million
- ✍ Montana: FY 2001:
 - ✍ \$7.8 million spent on “allowable” District Court costs (includes \$400,000 paid by counties)
 - ✍ \$8.70 per capita

Budget Process in Montana

✍ Indigent defense \$ in lump-sum for District Courts

- ✍ Within overall budget, is variable cost component

✍ Payments by Court Administrator's Office

- ✍ Reimbursement paid to counties for county offices
- ✍ Direct payments to providers for contracted and court-ordered services

✍ Cost controls/limitations

- ✍ Statutory limits/controls on what is paid for (HO #2)
- ✍ Supreme Court sets policies on allowable expenses (handbook)
- ✍ Budget appropriated

Part VII:

Where are we now?

Indigent Defense & State Assumption

- ✍ Pre-state assumption of 100% of District Court Costs
 - ✍ County/court delivery system and responsibility
 - ✍ County on hook for funding
 - ✍ State helped by District Court Criminal Reimbursement Program
 - ✍ But, amount available usually covered 100% of claims
- ✍ Post-state assumption on July 1, 2003
 - ✍ Still county or court delivery system
 - ✍ But, no more county funding obligation
 - ✍ State on hook for 100% of funding

Indigent Defense: Same Costs But New Universe

- ✍ State assumption did not change WHAT was “allowable expense” for state funding
- ✍ Public defenders still either
 - ✍ county employees (counties still reimbursed); or
 - ✍ contracted by county (but counties have stopped contracting...); or
 - ✍ assigned by court (paid directly by Court Administrator under terms of court order...but in compliance with policy)
- ✍ In sum, 180-degree shift in funding philosophy (legal responsibility?)
 - ✍ still same variable costs, but concern over how behaviors may change

Indigent defense costs paid by state in...(HO#2)

- ✍ District Court criminal cases
- ✍ All Youth Court cases
- ✍ Youth in-need-of care proceedings
 - ✍ Child receives counsel in abuse and neglect proceedings
 - ✍ What about parental rights?
- ✍ Involuntary commitment cases (mental illness)

Types of expenses “allowable” (Supreme Court Policy Handbook)

- ✍ Hourly comp. (\$60 per hr, no flat rate, new policy)
- ✍ Travel, Meals, Lodging (actual or per diem)
- ✍ Paralegal
- ✍ Case-related supplies
- ✍ Phone/FAX/Postage (limited)
- ✍ Misc. (investigators, expert witnesses, etc., must have court order)
- ✍ Service of subpoenas

Expenses NOT “allowable”

- ✍ Compensation above \$60 per hour IF contracted or assigned by court order at higher rate or on flat fee basis
- ✍ Clothing for indigent defendant
- ✍ Cost of general office operations not directly allowable
- ✍ Public defender costs outside proceedings listed as covered
 - ✍ e.g. Criminal proceedings that start in a Justice or Municipal/City court

Info. Briefings

- ✍ ACLU class-action lawsuit
- ✍ SB 218, 2003 Session
- ✍ Current Fiscal Situation, Court Administrator
- ✍ Issues: after these briefings
 - ✍ *CAUTION: Remember systematic study process shouldn't be driven by the lawsuit issues or the perceptions of SB 218, but these help tell how the water feels*



Questions?

BREAK




Issues & Decision Points

A Balancing Act



Constitutional right to counsel

-  Conformity of state law to court decisions
-  Policy to balance individual rights with public interest

Quality control

-  Who supervises?
-  Who is accountable to who and for what?
-  Performance standards

Paying the bills

-  Market forces v. budget restrictions
-  How much is “enough” for quality, parity?

Discussion Helps Define Issues:

Issue categories

- ✍ Access and eligibility
- ✍ Independence from conflicting interests
- ✍ Quality of services (performance standards)
- ✍ Parity (access to resources)
- ✍ Funding (sufficiency vs. cost containment)
- ✍ Uniform application of standards and procedures
- ✍ Juvenile justice proceedings
- ✍ Others?

Most Challenging Issue

✍ Defining the funding picture

- ✍ Lump sum budget for district court funding
- ✍ Of the Supreme Court budget (staff and operating), how much should be “carved out” for indigent defense?
- ✍ Variable and volatile costs
- ✍ Potential changes in how business is done when counties/courts make decisions, but don't have the obligation to fund it.

Where are we in systematic process?

NOW

- ✍ *Background information*
- ✍ *Identify issues/problems*
- ✍ *Problem analysis*

LATER

- ✍ Develop options to address
- ✍ Analyze the pros and cons of each option
- ✍ Select an option/develop recommendations

Committee Decision Points

- ✍ Does the LJIC wish to approach the issues as an “overhaul” or as “tweaks”?

- ✍ Need to define scope of the problems, then...
 - ✍ Revamp or establish new statewide system

 - or

 - ✍ Tweak current system

If overhaul:

✍ Next decision points will be:

- ✍ Defining policy and intent
 - ✍ Why (policy goals and rationale)
- ✍ Defining structure
 - ✍ Who (agency and personnel)
 - ✍ What (duties)
 - ✍ Where (structural relationships)
- ✍ Defining funding
 - ✍ How many, how much (FTE and operational budget)

If tweaks:

✍ What areas require “tweaking”?

✍ Structure

- ✍ District Court Council structure, duties
- ✍ Appellate Defender structure, duties

✍ Funding

- ✍ Overall funding amounts
- ✍ Allowable costs under current state-funded District Court program

Questions?
Lunch Break