

unedited draft submitted for *The Interim* newsletter:

## LAW AND JUSTICE INTERIM COMMITTEE

At its April 10-11, 2008, meeting, the Law and Justice Interim Committee again split itself into an Adult Justice Working Group and a Juvenile Justice Working Group to further engage issues related treatment alternatives for justice-involved adults and juveniles with a mental illness or substance abuse disorder.

### **Adult Justice Working Group**

Update on initiatives passed by 2007 Legislature .... The 2007 Legislature approved almost \$15 million in state funding for several initiatives to expand community-based mental health and chemical dependency services. Two of the initiatives serve mentally ill offenders in community corrections: one helps pay for medications, and the other funds certain mental health services for offenders on probation or parole or in prerelease centers. The Adult Justice Working Group received updates on the status of these initiatives and discussed where each initiative fit into the sequential intercept model, which is a conceptual framework used to discuss a series of points within the justice system where adults or juveniles with mental illness or substance abuse disorders may be intercepted and diverted to appropriate treatment.

Mental health courts ... The Adult Justice Working Group received a presentation on the Missoula mental health court, which is the only mental health court in Montana. The court handles selected municipal, county, and district court pre-trial and post-trial cases. Initial funding for the court came from a three-year federal grant provided in 2003. Participation by a defendant or convicted offender is voluntary. To be eligible, a participant must have been diagnosed with a serious mental illness and the illness must have been a contributing factor in the person's offense. The court requires participants to comply with a treatment plan in lieu of formal charges (pre-trial) or more restrictive sentencing (post-trial). Since January 2006, the court received 109 referrals, 74% of which involved substance abuse as well as mental illness. Thirty-three percent of the referrals were accepted. The most common reason for rejecting a referral was the seriousness of the offense. The most common offense involved referred cases were criminal possession of a dangerous drug. The most common mental health diagnosis was bipolar disorder.

The court reported a current caseload of 16 participants, all of whom had a co-occurring substance abuse disorder and 64% of whom had recently struggled with homelessness. The court's estimated annual budget is \$99,600, with \$47,000 in salary and benefits for a coordinator and case manager, \$40,000 for services, and \$5,000 for program evaluation and data collection. Options presented for legislative action included state funding for mental health courts, funding of a forensic PACT team (which is a Program of Assertive Community Treatment initiative involving a multi-disciplinary team of mental health professional and community support providers), incentives for local funding, such as providing a state match, and allowing certain court fees to be increased and retained for mental health court funding.

Drug offender data ... In response to a detailed information request from the committee pursuant to the SJR 24 study of diversion alternatives for drug offenders, the Department of Corrections presented a comprehensive report on drug offenders. The following are some highlights of the reported data:

- There are a total of about 13,200 offenders in the corrections system, more than 80% of all offenders are in community placements. About 26% of the all offenses committed are drug offenses, with 58% of those offenses involving only drug possession and/or use (not drug manufacture, distribution, possession with intent to sell, and fraudulently obtaining drugs). This data suggests that there are about 2,000 nonviolent offenders in the corrections system for drug possession and/or use.
- The average daily population in Department of Corrections drug or alcohol treatment programs is 971, with about 699 on waiting lists.
- The FY 2008 Department of Corrections budget for treatment programs is about \$15.3 million, with \$13.8 million of that spent for contracted services.
- About 31% of the offenders convicted of drug possession are female, and about 12.8% are American Indian.
- Of the sentences given to nonviolent drug offenders, 69% are deferred, 18% are suspended, 11% are sentences to the Department of Corrections for placement, and 2% are to prison.
- About 78% of the all sentences imposed for drug possession and/or use are sentence of from one to three years.
- For FY 2003 to FY 2007, of the offenders convicted for drug possession and/or use and who were sentenced to the Department of Corrections for placement, about 25.8% were placed in a chemical dependency treatment program, 25.6% were placed in a prerelease center, and 26.4 percent were placed in prison.
- Of the nonviolent drug offenders entering the corrections system in FY 2007, 23% were ordered by the court to receive treatment, 40% were ordered to undergo a chemical dependency evaluation, and 6% were ordered to receive treatment or evaluation at the discretion of the probation and parole officer.
- In FY 2007, 143 nonviolent drug offenders were placed in prison, 97 (or 67.8%) were placed in prison because of a probation or parole revocation.
- The FY 2007 cost to keep one offender in the Montana State Prison was just over \$79,800, while the cost for meth treatment was about \$17,677, and the cost for alcohol treatment (WATCH) programs was about \$16,500. Prerelease costs are about \$12,400 for females and \$9,400 for males.

Drug policy reform initiatives in California ... Ms. Tamar Todd, a staff attorney for the Drug Policy Alliance (a national organization advocating sentencing reform for drug offenders and a driving force in the passage of Proposition 36 in California in 2000) presented information on what Proposition 36 provides and how it has affected California's correctional system. Under Proposition 36, sentencing laws were changed to allow certain nonviolent drug offenders to receive court-ordered treatment rather than to be incarcerated and it provided for \$120 million to fund treatment services allocated annually for five years. Proponents of Proposition 36 say studies show that about 36,000 Californians receive treatment annually under Proposition 36, that the number of drug offenders serving time in prison has decreased by 35%, and that more than \$1.3 billion has been saved. Options for legislative action include revising Montana's sentencing laws to require court-ordered treatment and funding to enhance treatment capacity.

Drug Courts ... A legislative staff report provided background on drug courts nationally as well as specific information on Montana's four adult drug courts (two district, one county, and one municipal), four family drug courts (which handle abuse and neglect cases), and four juvenile drug courts. National studies indicate that drug courts cost more than regular courts (about \$5,900 per participant, according to one study), but reduce recidivism by 15% to 20%. According to these national studies, even with the higher costs, savings and cost avoidance amounts to about \$5,000 per participant. Fewer jail and probation days account for most of the cost avoidance, while treatment services account for the higher costs. However, more rigorous data collection and analysis is needed and the quality of the treatment services to be provide is a key factor in achieving any lasting reduction in recidivism.

Drug courts began to proliferate after a federal grant program was first established in the 1994 federal crime bill. All but one of Montana's drug courts were established with federal grant funding. With federal grants expiring, the 2007 Legislature appropriated about \$1.34 million to provide state funding to Montana's existing drug courts. To administer the funding, the Office of Court Administrator under the Montana Supreme Court developed a grant program, which has provided grants ranging from \$25,073 (Mineral County Youth Drug Court) to \$180,584 (Billings Adult Misdemeanor Drug Court). Options for legislative action include continued state funding and adjustments to the drug court statutes to explicitly provide for administration by the Office of Court Administrator and for data collection and evaluation.

### **Juvenile Justice Working Group**

The Juvenile Justice Working Group received information and conducted roundtable discussions covering residential psychiatric treatment for juvenile offenders, early-intervention and schools, and juvenile detention.

Residential psychiatric treatment ... Some justice-involved youth exhibit signs of serious mental illness as well as dangerous behaviors, such as suicide attempts, self-mutilation, and verbal or physical aggression against classmates, parents or other authority figures. Statute prohibits mentally ill juvenile offenders from being placed in a youth correctional facility. Although adults with serious mental illness and who pose a danger to themselves or others may be committed to

the state hospital for treatment or diverted to a crisis center (if available), there is no state-contracted or state-operated secure residential treatment facility for juvenile offenders. Consequently, the state relies on private providers of residential treatment, such as Shodair, Yellowstone Boys and Girls Ranch, and Acadia. Private providers may decline to accept very difficult or aggressive youth or the provider may not have the capacity to accept a youth at the lower medicaid rate. As of January 25, 2008, 63 justice-involved youth were in out-of-state placements: 53 were placed by youth probation, 7 were placed by youth corrections from either Pine Hills or Riverside, and 3 were placed from parole. The youth in these placements have a variety of diagnoses and not all would require hospital-level psychiatric treatment.

Additionally, although current statute authorizes a judge to commit a youth to a mental health facility, not only do no state-dedicated beds exist for such a commitment, the commitment determination is tied to the civil involuntary commitment statutes for adults, which includes criteria about self-sufficiency that are irrelevant for determining a youth's level of disability.

Finally, although a justice-involved youth with a mental illness may be placed by a judge in a "youth assessment center" for up to 10 days, rather than in a detention center, there are no youth assessment centers. The statute authorizes probation officers to act as "assessment officers". However, the lack of youth assessment centers, which would provide a safe and secure place for a mental health assessment, may result in a youth with a mental illness being placed in a youth detention center or sentenced to a youth correctional facility rather than being diverted to appropriate treatment.

Options for legislative action include consideration of a state-contracted or state-operated residential treatment facility or center in Montana for mentally ill youth.

Early intervention, schools, and juvenile detention ... Juvenile Justice Working Group members engaged stakeholders in a roundtable discussions covering early intervention, school-based programs to handle habitual truancy, and juvenile detention alternatives. The audio files for these discussions are available on the committee's website. The written minutes will be posted as they become available.

Recommendations to the full committee ... The Juvenile Justice Working Group made the following recommendations to the full committee:

- The committee should request legislation to require that a youth be represented by an attorney at a detention hearing, unless the youth waives that right after consulting with an attorney. (Under current law, a youth may waive the youth's right to counsel without consulting an attorney.)
- The committee should request legislation to increase the time limit in which a detention hearing must be held from 24 hours (current state law) to 48 hours (federal law).
- The committee should state that it recognizes that juvenile sex offenders in public schools is an issue that the 2009 Legislature should address and that the state must balance its

obligation to provide an education to sex offenders with the need to protect students and the community.

- The topic of in-state options for secure psychiatric treatment for juvenile offenders is the priority concern of the working group and that testimony and presentations from stakeholders should be on the committee's April 10-11 agenda.
- Issues related to early intervention and school-based diversion alternatives should be referred to other appropriate interim committees, such as the Children, Families, Health and Human Services Interim Committee and the Education and Local Government Interim Committee.

Next meeting ... The working groups were dissolved. The full committee will meet on April 10-11 at the Capitol, Room 137. The following topics will be on the agenda:

- instate residential psychiatric treatment for youth;
- the HJR 50 survey results on adult involuntary commitment process and costs;
- Kendra's Law (court-ordered "commitment" for supervised community mental health services);
- jail and prison standards for treatment of mentally ill offenders, including suicide prevention;
- salary increases for district court judges;
- medical costs accruing to hospitals for treating county inmates or detainees when the county either does not formally arrest the person or temporarily releases the person from county custody;
- suggested housekeeping legislation and discussion of the committee's sense of direction with respect to drug courts, mental health courts, youth detention, and referral of issues to other interim committees.

For further information, please contact Sheri Heffelfinger, 444-3596, or visit the committee's website accessible by going to the legislative branch home page at <http://leg.mt.gov> and selecting "Committees", "Interim", and "Law and Justice".