



## Law and Justice Interim Committee 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

July 24, & 25, 2008

Room 137, State Capitol  
Helena, Montana

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

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### **COMMITTEE MEMBERS PRESENT**

SEN. DANIEL MCGEE, Chair  
SEN. LARRY JENT  
SEN. CAROL JUNEAU  
SEN. JESSE LASLOVICH  
SEN. JIM SHOCKLEY

REP. BOB EBINGER  
REP. EDWARD HILBERT  
REP. DEBORAH KOTTEL  
REP. RON STOKER

### **COMMITTEE MEMBERS EXCUSED/ABSENT**

SEN. GARY PERRY  
REP. SHANNON AUGARE, Vice Chair  
REP. KRAYTON KERNS

## **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 Law and Justice Interim Committee:

- approved for drafting legislative proposals presented by the Department of Corrections;
- approved for drafting legislative proposals presented by the Office of the State Public Defender;
- approved for drafting legislative proposals presented by the Judicial Branch;
- approved for drafting legislative proposals presented by the Department of Justice;
- approved as a committee bill and directed further work on LCyth4 - revising the evaluation and placement of youth under the Youth Court Act;
- approved as a committee bill and directed further work on LCLJC2 - establishing a pilot project under the DPHHS for suicide screening and suicide prevention in detention services;
- approved as a committee bill and directed further work on LCdvrs - providing for the diversion of mentally ill persons from the justice system;
- approved as a committee bill in final version LCdrug - removing obsolete funding language in drug court statutes;
- approved as a committee bill in final version LC0198 - requiring an attorney in youth detention hearings unless waived after consulting an attorney;
- approved as a committee bill in final version LCjdj2 - increasing salaries for district court judges and supreme court justices;
- appointed a subcommittee to continue work on LC7776- clarifying responsibility for payment of medical costs when a person is injured when being detained by law enforcement; and
- chose not to pursue a committee bill concerning consideration by a jury of prior offenses in certain DUI and sex offense cases and to extend sentencing to ensure enrollment in DUI treatment program.

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

00:00:01 SEN. MCGEE called the Law and Justice Interim Committee (LJIC) to order at 10:07 a.m. The Secretary noted the roll, SEN. PERRY, REP. AUGARE, and REP. KERNS were excused (ATTACHMENT #3).

## **OVERVIEW OF AGENCY OVERSIGHT RESPONSIBILITIES**

00:01:20 **Sheri Heffelfinger, Research Analyst, Legislative Services Division (LSD)**, reviewed statutes for LJIC's oversight of assigned agencies and for review of proposed agency legislation (EXHIBIT #1).

00:05:33 SEN. SHOCKLEY said that the Environmental Quality Council has subcommittees that deal with agency legislation and suggested that LJIC may wish to consider a similar approach in the future.

**DEPARTMENT OF CORRECTIONS: LEGISLATIVE PROPOSALS**

00:06:28 **Brenda Elias, Staff Attorney, Department of Corrections (DOC)**, presented the following DOC legislative proposals (in order of priority):

- to require an evaluation for defendants sentenced to the Department of Public Health and Human Services (DPHHS) as guilty but mentally ill and not guilty but mentally ill (EXHIBIT #2);
- allow court-ordered withholding of income for parents' cost-of-care contributions (EXHIBIT #3); and
- clarify statutes on prison industries Montana Correctional Enterprises (MCE) (EXHIBIT #4).

00:14:08 REP. HILBERT asked where room and board wages for inmates are currently being deposited. Ms. Elias said past practice has been for MCE to maintain the funds and that the legislation is needed to address concerns of the Legislative Audit Division's (LAD) regarding how the money is handled.

00:15:26 REP. KOTTEL asked if the change will impact what inmates earn. Ms. Elias said no. REP. KOTTEL asked if room and board has priority over court ordered payments. Ms. Elias said she did know not if there is a priority order and that as far as she knows, payments are taken out at the same time. REP. KOTTEL asked her to find out if there is a priority order for payment. **Diana Koch, DOC, Chief Legal Counsel**, explained that there is no priority order for payments, that before the inmate receives his paycheck, MCE makes all deductions and payments and the inmate gets the remaining amount. REP. KOTTEL asked what happens if the inmate does not make enough to meet his obligations. Ms. Koch said that can't happen because payments are a certain percentage of whatever the inmate earns.

Ms. Elias discussed proposed DOC legislation: Youth mental health legislation - prevent the commitment of youth with serious mental illness to a youth correctional facility (EXHIBIT #5).

00:21:39 SEN. MCGEE asked if this proposal would involve DPHHS funds, rather than DOC funds. **Steve Gibson, Administrator, Youth Services Division, DOC**, said no, that the funding would come from JDIP funds and DOC funds. He said a specific facility has not been identified, but that funds from corrections and Youth Court would provide funding.

00:23:41 REP. STOKER asked how a youth in this category will be temporarily handled until he is sent to a treatment facility. Mr. Gibson said that most of the youth would be placed in juvenile detention until disposition.

Ms. Elias discussed proposed DOC legislation: restitution and supervision fees - strengthen language relating to the administrative fee on restitution obligations (EXHIBIT #6).

- 00:28:12 In response to a question from SEN. JUNEAU about how the fee will work, Ms. Elias said the supervisory fee and restitution fees are separate fees and the two don't interact. She said the supervisory fees are imposed across the board, whereas a restitution fee may not be involved.
- 00:30:51 **Mike Ferriter, Director, DOC**, said supervision fees have been collected since 1989 on all probation and parole offenders, but that somewhere along the line, it got dropped; and that the DOC is trying to restore the language. He said the fee is important because it helps hold offenders accountable, that the fee can be waived in certain cases, and that the fee is used to pay for training for officers and for special equipment above what the general fund can pay for.
- 00:33:10 Ms. Elias discussed DOC proposed legislation: to permit 20-year contract terms - the proposal would allow the DOC to have a general exception to the 7-year contract rule (EXHIBIT #7).
- 00:35:51 SEN. SHOCKLEY **moved to approve** all of the DOC legislative proposals for drafting. The **motion passed** on a unanimous voice vote, with proxy "aye" votes from REP. AUGARE (Kottel), SEN. PERRY (McGee), and REP. KERNS (McGee).

#### **Statutorily-required report - Board of Pardons and Parole**

- 00:36:57 **Craig Thomas, Executive Director, Board of Pardons and Parole**, discussed a medical parole report covering the time period of July 2007 through July 2008 (EXHIBIT #8). He asked for direction from the LJIC on how it wished to receive the information in the future.
- 00:44:20 SEN. SHOCKLEY asked of the hearings for medical parole, what percentage were actually granted parole. Mr. Thomas said that about 50% are granted, which is very similar to regular parole hearing numbers.
- 00:45:12 SEN. LASLOVICH asked if health care costs and the person's ability to pay for care are considered when granting medical parole. Mr. Thomas said yes, that a screening process is in place to gather information and that the Board makes sure a plan is in place before the offender is released. SEN. LASLOVICH said Mr. Thomas' report contained good information and requested that it be even more detailed in the future. Mr. Thomas said that he intends to use a spreadsheet format in the future that will have more detailed information on costs.
- 00:48:46 REP. KOTTEL said she didn't realize that medical parole could be granted if the offender had not requested it. She asked how often that happens and if the decision is based on the state's "pocketbook". Mr. Thomas said it has never happened.
- 00:49:51 SEN. MCGEE said he liked the concise nature of the report and said the focus of the LJIC, as policymakers, is whether offenders are being unduly released, medical reasons for release, disposition, and costs. He complimented Mr. Thomas on the work of the Board.

00:51:45 Ms. Heffelfinger said that Mr. Thomas has discussed a possible statutory change regarding the Board and asked him if a change is needed. Mr. Thomas said that he has talked to Director Ferriter about his concerns and thought that a statutory change is not needed at this point.

**OFFICE OF STATE PUBLIC DEFENDER: LEGISLATIVE PROPOSALS**

00:52:51 **Randi Hood, Chief Public Defender, Office of State Public Defender (OPD),** presented the first of two legislative proposals:

- To require electronic recording of custodial questioning for felony offenses (EXHIBIT #9).

Ms. Hood explained the bill draft and said that electronic recordings would benefit the prosecution and defense.

00:57:06 SEN. SHOCKLEY said this is already being done in most cases and asked if the legislation is really necessary. Ms. Hood said yes, because of major cases in which recording equipment was "not working". She said she would have liked the State to have to show why the equipment was not working. She said this bill would create a safeguard that would require a legitimate reason why an interview was not recorded.

00:58:20 REP. HILBERT asked if this provision would mean that testimony of law enforcement officers would not be allowed if the testimony was not on tape or recorded. Ms. Hood said that memories are not always good and can't be relied on. She said a rebuttable presumption would allow that if a statement is not recorded, it would not be admissible and it would be state's obligation to say why. Ms. Hood said that if the State could provide evidence that the recording equipment was not working for a legitimate reason, then the presumption would be overcome and the Court could then consider other factors to determine whether or not it was a voluntary statement. REP. HILBERT asked how this provision would affect field activities, considering all of the different factors and scenarios that can affect field work. Ms. Hood said the requirement would apply to custodial questioning regardless of where it is conducted.

01:01:38 SEN. JUNEAU asked what the major objection was to the bill in the 2007 session. Ms. Hood said it was because it included all custodial interrogations. She said this version is limited to felony offenses.

01:02:20 SEN. JUNEAU referred to page 3 of the bill draft (section (1)(3) and said she thought REP. HILBERT's concerns were addressed there and that the language allows some flexibility regarding recordings. Ms. Hood agreed.

01:03:13 SEN. MCGEE said he opposes the allowance of rebuttable presumptions and would oppose this bill.

01:03:46 Ms. Hood discussed proposed legislation from the OPD: require the prosecutor to provide discovery documents free of charge to the defendant (EXHIBIT #10). Ms. Hood explained that the proposal would amend 46-15-322, MCA. She reviewed the provisions of the bill draft.

- 01:08:17 SEN. MCGEE asked if a client who is not indigent has to pay to get the prosecution's information. Ms. Hood said yes, in some counties.
- 01:08:44 REP. STOKER asked how long it takes to make a determination of indigency. Ms. Hood said usually about three or four days, but can take longer if income tax information is required to make the determination.
- 01:10:01 REP. HILBERT asked if the OPD has made the determination of indigency before making the request and how many OPD defendants are not indigent. Ms. Hood said about 99% of requests are made after determination of indigency has been made and that defendants who can pay are billed for services rendered.
- 01:11:50 SEN. MCGEE said the proposed legislation is written so that OPD is held harmless with regard to costs. He asked why information about why the defendant is being charged with a crime should be withheld from the defendant, regardless of ability to pay or income. Ms. Hood said if it were up to her, the information would be provided at no charge in all circumstances.
- 01:12:42 SEN. JENT said that he has done a lot of federal defense work and that he has never paid for discovery in federal court. He asked Ms. Hood if it would be agreeable to have the bill mandate that all OPD clients be provided one paper copy of all discovery documents, free of charge. Ms. Hood said she would support that.
- 01:14:04 REP. HILBERT said that it has been his experience that county attorney offices do not charge for access, but only for the cost of supplies necessary to provide the copies. He agreed that the costs should not be based on income.
- 01:16:01 SEN. SHOCKLEY **moved to approve** the OPD proposed legislation. The **motion passed** on a unanimous voice vote, with proxy "aye" votes from REP. AUGARE (Kottel), SEN. PERRY (McGee), and REP. KERNS (McGee).
- 01:16:47 SEN. MCGEE asked Ms. Hood to have Harry Freebourn provide information at the next Committee meeting showing how or if the Public Defender Act has reduced costs in other areas. He said, for instance, has there been a reduction in the number of cases being filed for ineffective assistance or counsel. He said it is time to begin to quantify the success of the OPD. Ms. Hood said the Office is in the process of doing that and will present the information as soon as possible.

#### **JUDICIAL BRANCH: LEGISLATIVE PROPOSALS**

- 01:18:16 **Lois Menzies, Court Administrator, Office of Supreme Court**, presented a legislative proposal for six additional District Court judges, two standing masters, and additional support staff (EXHIBIT #11). Ms. Menzies discussed the judicial workload study results, on which the proposed legislation is based; and the costs, as included in the 2011 biennial budget.
- 01:26:40 SEN. SHOCKLEY asked how standing masters are provided for in statute and assigned. Ms. Menzies said the authority to create standing masters is in statute

but that how standing masters are assigned is not. Ms. Menzies said the standing masters will be assigned based on the needs of each judicial district.

- 01:28:47 SEN. MCGEE said the proposal would increase by 14% increase the number of District Court judges. He asked why the large increase was needed. Ms. Menzies said the District Court Council (DCC) workload study tried to assess the amount of work done. The DCC then compared the workload to available judicial resources. Based on that comparison, a determination was made that additional judges and staff are needed to address the workload. She said the judicial districts identified as having the greatest need would be receiving the most resources.
- 01:31:27 REP. KOTTEL asked if it was true that migration from rural to urban communities is affecting the situation. She said that coverage of rural areas is still required, but that the case load in urban communities is growing. Ms. Menzies agreed that is the case.
- 01:32:12 SEN. SHOCKLEY asked if law clerks are available to judges in metropolitan areas. Ms. Menzies said she thought that was the case in most urban areas but would find out.
- 01:33:31 SEN. JENT **moved to approve** the judicial branch legislative proposals for drafting. The **motion passed** on a unanimous voice vote, with proxy "aye" votes from REP. AUGARE (Kottel), SEN. PERRY (McGee), and REP. KERNS (McGee).
- 01:34:15 Ms. Menzies also distributed copies of three reports:
- a statutorily required report on the annual license tax on attorneys (EXHIBIT #12);
  - a statutorily-required judicial branch information technology report (EXHIBIT #13); and
  - a response to the information request made by the LJIC regarding problem solving courts.

**LUNCH BREAK**

02:58:22 The Law and Justice Interim Committee reconvened at 1:05 p.m.

**DEPARTMENT OF JUSTICE: LEGISLATIVE PROPOSALS**

- 02:58:38 **Galen Hollenbaugh, Deputy Chief of Staff, Department of Justice (DOJ)**, reviewed a list of DOJ legislative proposals, listed in order of priority (EXHIBIT #15). Mr. Hollenbaugh said that a more detailed version of the proposed legislation, including background and fiscal impact, was mailed out in advance of the meeting (EXHIBIT #16). He used this packet to discuss each proposal:
- create special revenue account for crime victim compensation program;
  - amend 44-5-202, MCA, to limit interest on all loans to 36%;
  - amend restrictions on sentencing statutes (46-18-201 - 202, MCA);
  - repeal the sunset provision of the Domestic Violence Fatality Review Commission;
  - create a registry of non-profit entities operating in Montana;

- define membership and function of child justice teams and centers in local communities;
- allow the Motor Vehicle Division to issue an enhanced driver's license when requested by a Montana resident;
- amend 44-5-202, MCA, to require fingerprinting for certain misdemeanor offenses;
- amend Montana False Claims Act to comply with federal statutes;
- implement changes in federal motor carrier safety regulations for commercial driver licenses;
- housekeeping issues related to Motor Vehicle Division; and
- amend 44-4-115, MCA, to provide 1 FTE to prosecute criminal violations of statutes administered by the Department of Fish, Wildlife, and Parks.

- 03:13:39 Regarding the proposal to amend 44-5-202, MCA, to require fingerprinting for in certain misdemeanor offenses, SEN. JENT asked, if someone is arrested for family member assault, why not run an NCIC check using their name or social security number to see if there are prior offenses. He said a fingerprint is not necessary if the other information is available. Mr. Hollenbaugh said that there are problems with the bill as currently written and that the problems could be addressed in the 2009 legislative session.
- 03:15:20 SEN. SHOCKLEY asked, regarding the list of nonprofit organizations, if the Department of Revenue or the Secretary of State's Office already maintains such a list. Mr. Hollenbaugh said not necessarily.
- 03:16:04 Regarding the proposal to create a special revenue account for crime victim compensation, REP. EBINGER asked if the amount collected by the injured party would be affected. Mr. Hollenbaugh said no.
- 03:16:37 SEN. JENT asked about the child justice teams. Mr. Hollenbaugh said the teams will work directly with child victims of sex crimes and is intended to prevent the child victim from having to go through multiple interviews; and to give structure and guidelines to local communities on how to handle those crimes more effectively.
- 03:19:30 SEN. SHOCKLEY **moved to approve** the DOJ legislative proposals for drafting. The **motion passed** on a unanimous voice vote, with proxy "aye" votes from REP. AUGARE (Kottel), SEN. JUNEAU (Kottel), SEN. PERRY (McGee), and REP. KERNS (McGee).
- 03:20:23 SEN. MCGEE said he met recently with the Yellowstone County Attorney's Office. He briefly discussed a July 22, 2008, memo from David Carter, Deputy County Attorney, Yellowstone County, to Dennis Paxinos, Yellowstone County Attorney, and to Rod Souza, Chief Criminal Litigator (EXHIBIT #17) which addressed three issues: I. evidence of similar crimes in Driving Under the Influence (DUI) cases; II. new felony DUI penalties established by amending 61-8-731, MCA; and III. new fleeing or eluding penalty, amending 61-8-316, MCA. SEN. MCGEE said the memo would be discussed further at the next day's meeting.

03:24:18 SEN. SHOCKLEY said the proposed legislation attached to the memo pertains to Rule 404B and asked if a representative of the Yellowstone County Attorney's Office would be present at the next day's discussion. SEN. MCGEE said he was the representative.

03:25:39 SEN. MCGEE said the attachments in EXHIBIT #17 offer proposed statutory language. He asked that Committee members and staff study the memo and proposed legislation and said that Valencia Lane, Staff Attorney, LSD, would counsel the Committee during its discussion of the issues.

### **Public Comment**

03:27:21 **Steve Cape, President, Opening Door Inc.**, said he wished to advise the LJIC regarding the *Second Chance Act of 2007: Community Safety Through Recidivism Prevention* (EXHIBIT #18), signed into law in June of 2008. He reviewed key components of the law and its potential impact on Montana. Mr. Cape said that several mental health issues in prisons and juvenile courts, under consideration of the LJIC, may have to be modified in order to comply with the new federal law in order to be eligible for certain federal grants.

03:30:45 **Melissa Worthan, citizen, Missoula**, read a letter regarding her personal experience with Montana's public defender system (EXHIBIT #19). She reviewed charges made against her husband and said the public defender assigned to them provided ineffective and incompetent legal counsel, which resulted in her husband being convicted and great distress for her family.

03:36:30 **Kandi Matthew-Jenkins, founder, 'cpsxposed' Advocacy Network, Missoula**, read a letter regarding her concerns about Montana's public defender system, in particular the lack of respect shown to indigent families (EXHIBIT #20). Ms. Matthew-Jenkins said her requests for attention to the situation have been ignored and her opinion is that the public defender system has not performed satisfactorily.

03:51:51 **Anita Roessman, Disability Rights Montana (DRM)**, provided written comments regarding LCy4, revising the Youth Court Act, (EXHIBIT #21) and discussed a proposed amendment to the bill draft.

### **BREAK**

## **EVALUATION AND PLACEMENT OF YOUTH WITH A DISABLING CONDITION**

### **Staff Review of LCy4, public comments to date, and policy options**

04:23:18 Ms. Heffelfinger presented a July 16, 2008, memo (EXHIBIT #22) regarding the genesis of LCy3, the bill draft crafted by the Children's System of Care (SOC) Planning Committee, amendments made to LCy3 at the June 27, 2008, LJIC meeting, and public comment received to date on LCy4 (EXHIBIT #23 and EXHIBIT #24). Ms. Heffelfinger said that copies of the revised bill draft, LCy4 (EXHIBIT #25) were provided in the meeting materials. She discussed two

points, saying that the scope of the bill draft doesn't address all of the problems and that the intent was to define which kids should not be committed to a youth correctional facility; and that while the bill draft attempts to deal with definitions of mental disorder in the Youth Court Act, it leaves many unanswered questions. Ms. Heffelfinger thoroughly reviewed the bill draft section by section and referenced public comment received for each section.

04:48:34 REP. KOTTEL asked if cite references have been cross checked, saying she is concerned about where other provisions are defined. Ms. Heffelfinger said that has not yet been done.

04:49:18 REP. STOKER said that David Ward's public comment (EXHIBIT #23) brought up additional professionals to be considered to make evaluations. Ms. Heffelfinger said Mr. Ward wants the definition of "appropriate professional" to be broadened to include Licensed Clinical Professional Counselor (LCPCs) and Licensed Clinical Social Workers (LCSWs). She noted that there are others who would like the definition to be more restrictive and that this issue is a policy question the Committee must consider

#### **Public Comment on LCy4**

04:51:23 **John Larson, District Court Judge, 4th Judicial District, Missoula and Mineral Counties**, commended the SOC for its work developing the definition but suggested that it needs to appear in other code sections, such as the child neglect system and systems of care system. Judge Larson noted that several judges, including himself, submitted public comment regarding LCy4 (EXHIBIT #23) and said his comments at the day's meeting would supplement his written comments. He made several suggestions for changes to LCy4 concerning extending temporary legal custody coordination requiring medicaid eligibility

04:55:27 Judge Larson made additional general comments regarding youth. He said changes to the Youth Court Act are needed to ensure that when a youth is picked up for a DUI the case is a mandatory Youth Court case in order to prevent them ending up in a justice or municipal court, where there is no funding for treatment or enforcement mechanism for treatment. He suggested amending 61-8-723, MCA, to stipulate that youth under 18 charged with DUI will always go to Youth Court. Additionally, he said that youth with more than one Minor In Possession (MIP) charge and who have more than one Youth Court matter, need to stay in Youth Court. He said it doesn't work to have them appearing in different courts because of the lack of coordination between courts. He said it is very frustrating to him that so many Montana youth are lost to traffic, drug, and alcohol deaths, as well as teen suicide; and that early intervention by and continued involvement of the Youth Court could prevent many of the problems. Judge Larson concluded his comments by saying statutory language must be very clear regarding the detention of youth.

04:59:41 SEN. MCGEE referred to LCy4 - page 9, section 1. subsection (46) - and asked if a correctional center could have components of a treatment facility. Judge Larson said yes.

05:00:17 REP. STOKER said when the LJIC began looking into this issue, it was to study youth involved in a criminal act but with a disabling condition. He asked Judge Larson if the proposed legislation could also address involuntary commitment issues as well as criminal issues for youth, and if that is how the judge would apply it in his court. Judge Larson said that although there is no place for youth to be involuntarily committed in Montana, he has placed youth into treatment under dependency or juvenile statutes, especially if there is Medicaid or DPHHS support.

05:01:58 REP. STOKER asked Judge Larson if he is able hold youth, particularly violent youth, in local communities, in order to meet the requirement that they not be placed in correctional facilities. Judge Larson said no, that several youth are in detention currently and have no place to go. He said the violent youth get kicked out of treatment and come back to detention, and that he would like to have another option available for them; but because of their record, they are very difficult to place. He said it creates a great quandary for judges - does he release the youth, knowing that he will continue to offend, keep him in an ill-equipped detention facility, or send him to a correctional facility because there is no other place for him. REP. STOKER said he is concerned that the proposed legislation will not provide the judge with enough authority to do what needs to be done for these youth.

#### **Committee Action on LCyth4**

05:04:42 Ms. Heffelfinger said one option is to make LCyth4 a committee bill. If the Committee chooses to do that, then staff instruction is needed on to proceed and what the priorities are. She said it is a large issue and said she needs to be clear on what the scope of the bill is to be.

05:05:48 SEN. MCGEE said the next LJIC meeting is scheduled for September and that is when the Committee will take action on proposed bill drafts. He asked Mr. Gibson about the DOC's plans regarding this issue. Mr. Gibson said the LJIC approved DOC proposed legislation, which included this issue. He said the DOC proposal mirrors closely LCyth4, other than a few minor issues. He said the DOC would work with the courts and the DPHHS on remaining questions.

05:09:45 REP. EBINGER asked if the DOC proposal would include the definition of "disabling condition". Mr. Gibson said he has some questions about that but agreed that it needs to be considered.

SEN. MCGEE asked, if the LJIC chooses to go forward with its bill draft, would DOC also proceed with its bill. Mr. Gibson said it would depend on if the DOC's concerns were addressed in the LJIC bill. SEN. MCGEE encouraged the DOC to continue working on its proposal, saying that it would be valuable to have both for consideration in the 2009 Legislature.

05:12:15 SEN. MCGEE said he has grave concerns regarding special treatment of youth and that he doesn't think that they should be treated much differently than adults. He said he doesn't want the system to lose sight of the fact that if a youth has done wrong, that there must be consequences. SEN. MCGEE said some of the

language in LCy4 is too vague and he provided as an example the use of "or other disability", saying that such a term is not definitive enough. He said psychiatric medicine is difficult to quantify and diagnose and that he sees no check and balance measures in place to protect a person's liberty interests. He said he did not have faith that some of the "professionals" included in the bill draft would have the professional expertise to make such decisions.

- 05:16:17 SEN. SHOCKLEY recommended that the LJIC defer to the DOC on this issue.
- 05:16:39 REP. STOKER agreed that DOC does good work but thought that the LJIC should proceed with its bill draft also.
- 05:18:12 REP. KOTTEL said Montana code has language that allows professionals to make determinations of danger to self or others that sometimes result in an adult's liberty being taken away and that those are the same professionals that would be dealing with the youth addressed in LCy4; so she does not share SEN. MCGEE's concerns about the proposed bill draft.
- 05:19:19 SEN. JUNEAU said that the SOC has done much work and truly understands the issues involved. She said she supports moving LCy4 forward and that it is a good starting point.
- 05:20:57 SEN. JUNEAU **moved** to accept LCy4 as a committee bill. SEN. MCGEE asked if the language and issues would be more fleshed out by the September meeting. Ms. Heffelfinger said yes, that Committee, stakeholder, and public comment would be used to further flesh out the bill draft. The **motion passed** on 11-1 voice vote, with proxy "aye" votes from REP. AUGARE (Kottel) and SEN. PERRY (McGee), and a proxy "no" vote from REP. KERNS (McGee).
- 05:23:11 REP. KOTTEL asked how inconsistent comments and ideas received regarding LCy4 would be handled in the drafting process. Ms. Heffelfinger said that reconciling different points of view is a big hurdle but that when conflicting views are involved, she tries to bring everyone together to reach a consensus. She said that if consensus cannot be found, she would rely on instruction from Committee members for the final draft.

#### **GENERAL PUBLIC COMMENT**

- 05:25:15 **Harold Blattie, Montana Association of Counties (MACo)**, commented on judicial branch proposals made earlier in the meeting by Lois Menzies, Court Administrator. Mr. Blattie discussed SB 176, passed by the 2001 Legislature, that provided for state assumption of certain District Court costs. He said that the legislation provided that counties would continue to provide office space for District Courts but that in review of past minutes of the interim committee and of legislative hearings, he doesn't believe the interim committee or the 2001 Legislature adequately considered future needs. He said that two bills (HB 214 - 2001 Legislature - EXHIBIT #26 and SB 18 - 2005 Legislature - EXHIBIT #27) have been submitted in past sessions to create new judicial positions and that

both bills significantly impacted local governments. He commended the Court Administrator's Office on its efforts to keep counties informed on the study but said it doesn't relieve the concerns of county commissioners.

- 05:32:23 **Joy Ooka, Help Free Barry Beach, Montanans For Justice**, read a letter (EXHIBIT #28) into the record regarding Barry Beach, a Montana man convicted of murder and imprisoned in MSP. Ms. Ooka shared her belief in Mr. Beach's innocence and provided copies of a national television show that investigated Mr. Beach's situation (EXHIBIT #29), as well as a print out from the Montanan's For Justice web page regarding Mr. Beach's conviction and blog comments (EXHIBIT #30). Ms. Ooka asked the Committee to look into the case, saying that a man's life is at stake and that Mr. Beach has already spent 26 years in prison for a crime he did not commit.
- 05:35:50 **Penny Kolpin, Montanans for Justice**, read into the record a letter she wrote to Governor Schweitzer questioning the conviction of Barry Beach (EXHIBIT #31) ), which included public reaction to the television coverage and rallies organized in support of Mr. Beach. Ms. Kolpin also discussed her perspective of how the Attorney General's mishandled its case against Mr. Beach.
- 05:37:34 **Darci Olson, Montanans for Justice**, read a statement of support for Barry Beach (EXHIBIT #32). She submitted letters from others who also believe that Mr. Beach was wrongly convicted (Brenda Leland - EXHIBIT #33, Glenna Lockman - EXHIBIT #34, and Ilsa Dawson - EXHIBIT #35).
- 05:44:22 **Doug Lowney, Montanans for Justice**, thanked the LJIC for its work. Mr. Lowney explained his prison ministry work and his support for the movement to exonerate Barry Beach. Mr. Lowney said he was appalled by the Board of Pardons decisions regarding Mr. Beech and that there are big problems with Montana's law regarding confessions and said that the OPD proposal to require video taping of interviews would be very helpful. Mr. Lowney discussed details of Mr. Beach's trial and said that there is a great deal of information regarding the trial posted on the Montanans For Justice website. He asked that, as legislators, the Committee does what is right. He read several blog comments posted from Beach supporters on the website and said the entire country is watching to see what Montana does about this situation.
- 05:50:33 **Lillian Gunder, Stevensville**, said that Montana needs top-notch psychiatrists to adequately evaluate mental health patients and said that funding will be needed to pay for them. She said that there would be a lot less mental illness if the unnecessary drugging of children and the elderly was not allowed. Ms. Gunder discussed her son's situation and his struggle with mental health issues, drug therapy that is not working, and foster care. She also discussed her mother, saying she was diagnosed as schizophrenic, proved incompetent, and that her home and possessions were confiscated to pay for her care. She said she has been trying to get the LJIC to listen to her concerns for years and has not gotten a response. She said that these types of situations need to be investigated and that changes need to be made.

- 05:57:17 **John Jenkins, Missoula**, commented that the justice system is a difficult one to deal with and while some would argue that it is one of the best systems, he feels its because of its origins and constitutional provisions for individual liberty and individual responsibility. Mr. Jenkins said that parents can do the best job of raising their children and that great care must be taken when granting authority that could affect a parent's ability to parent.
- 05:58:32 **Judge John Larson, 4th Judicial District**, commented on the judicial branch proposal to create additional standing masters in certain District Courts (EXHIBIT #11). He provided background information on the use of standing masters, saying that the federal courts allow use of standing masters to assist judges but not to replace them, and that the judicial proposal was modeled on that premise. He said standing masters are used by all judges in Missoula County in certain types of cases and that they are very appropriate to take care of preliminary matters, such as arraignments, status, and scheduling of cases. Judge Larson said his district is not seeking additional judges because the use of standing masters eases their workload. He said the 4th Judicial District plans to ask that standing masters be granted the power of the justice courts of record, saying that the work is very appropriate for standing masters in making courts operate more efficiently. He said the proposal will come before the 2009 Legislature. He said the pay suggested is appropriate because of the level of work required of a standing master. Judge Larson also discussed transport issues and said that having a standing master assigned to the 3rd Judicial District would be of great help in decreasing transports and in scheduling.
- 06:04:12 SEN. MCGEE said his only concern regarding the use of standing masters is the amount of authority granted them and what level of checks and balances are in place. He asked if a standing master is allowed to make final disposition decisions. Judge Larson said a standing master is not allowed to make final disposition decisions, but that he plans to ask that justice court of record appeals be handled by a standing master. He said this would lighten the load for judges and allow them to deal with more complex cases, thus moving the process along more quickly than it otherwise would. He said that Missoula County needs two more judges but said he knows it is a more realistic goal to add standing masters. SEN. MCGEE asked if the standing master would be the court of record on appeals from the justice court only. Judge Larson said yes, and explained how the process would be handled.
- 06:07:30 SEN. SHOCKLEY asked if each judge needs his or her own court room. Judge Larson said that scheduling court rooms is a very big problem and that ideally, no more than two judges would have to share a court room.
- 06:10:00 SEN. MCGEE recessed the Law and Justice Interim Committee until 8 a.m., July 25, 2008.

**JULY 25, 2008 -- DAY TWO**

- 00:01:07 SEN. MCGEE reconvened the Law and Justice Interim Committee at 8:05 a.m. Copies of a position paper on LCy4 from the Office of the State Public Defender (EXHIBIT #36) were distributed.

## **JAIL STANDARDS AND SUICIDE PREVENTION**

- 00:04:10 SEN. JENT updated the LJIC on the Subcommittee on Jail Standards and Suicide Prevention meeting, held on July 17, 2008, in Bozeman. SEN. JENT said the Subcommittee used a list of decision points prepared by David Niss (June 27, 2008 meeting, memo -EXHIBIT #37) as the basis of its work and that a summary of the Subcommittee's work (July 21, 2008 meeting, memo - EXHIBIT #38) was provided to the full Committee in the meeting materials. SEN. JENT discussed three decisions made by the Subcommittee:
- to create a Montana mental health crisis network for jail suicide prevention, inspired by the Kentucky model, to initially be administered as a pilot project through the Department of Public Health and Human Services (DPHHS);
  - not to proceed with adoption of statewide jail standards and training beyond what will be included under the jail suicide prevention program; and
  - to include collection of suicide data as part of the jail suicide prevention program.
- SEN. JENT said the biggest obstacle will be dealing with the lack of mental health providers in the state.
- 00:17:03 REP. EBINGER said that stakeholders have repeatedly emphasized that there is a great need of secure inpatient treatment facilities and that any assistance from the 2009 Legislature would be greatly appreciated. Regarding jail standards, he said that the Subcommittee was reassured that the Montana Sheriff's and Peace Officers Association (MSPOA) is working toward voluntary standards and will keep the LJIC updated on its work to that end.
- 00:20:29 **David Niss, Staff Attorney LSD**, gave a detailed discussion of the provisions of the bill draft proposal, LCLJC2 (EXHIBIT #39), for the creation and operation of a pilot program for the reduction of risk of inmate suicide. Key discussion points were as follows:
- Kentucky's HB 157 was used as a guide in creating LCLJC2;
  - sets up a pilot program to help manage suicide risk;
  - first step in management is to find out what risk an inmate poses within a detention facility, and then to deal with the risk; and
  - the procedures and protocols with which to deal with that risk. including licensing, staff training, program set-up and administration, and yet-to-be-determined staffing costs.
- 00:44:28 SEN. MCGEE asked how much Kentucky appropriates for its program. Mr. Niss the program is funded solely by dedicated revenue from District Court fees and amounts to about \$2 million per year.
- 00:45:21 REP. KOTTEL asked to discuss ethical considerations, such as drug protocol. She said that if the project looks promising, it would be important to allow all detention centers to have access to the protocol. She asked if jails not participating in the pilot program would be opened to additional liability risk because that particular jail's lack of access to protocols. Mr. Niss said that REP. KOTTEL posed an important point but said facilities not participating in the pilot

program would not face an additional liability risk. He reported that Kentucky's pilot program proved to be so successful in such a short time that the decision was made to expand it statewide almost immediately.

- 00:48:45 REP. STOKER said one concern of his is that this may force an unfunded mandate on counties. Mr. Niss responded that he has ascertained, through telephone conversations with Kentucky officials, that local governments have welcomed the program because, as the risk of suicide decreases, so does the potential for liability, and that operating costs have decreased accordingly.
- 00:51:17 SEN. MCGEE commented that perhaps the LJIC should consider changing the proposal from a pilot project to a statewide program, given the success of the Kentucky program. SEN. JENT said that cost would be a major consideration but that option could be discussed. SEN. MCGEE said that if the Kentucky program could provide the software, training, and a blueprint for protocols, it should be doable. He thanked the Subcommittee and Mr. Niss for the work. He said that his opinion is that in the scope of things, suicide is a very serious issue and perhaps the Committee shouldn't take a step-by-step approach. He said if lives can be saved, the effort should be made to set it up as a statewide program from the beginning.
- 00:55:09 **Karl Rosten, State Suicide Prevention Coordinator, DPHHS**, said that a major hurdle will be finding mental health professionals to staff the program. SEN. MCGEE asked if it would be possible for the DPHHS to contract with larger hospitals that have mental health professionals on staff already. Mr. Rosten said he couldn't answer that until he had an opportunity to study the Kentucky model and see how it would translate to Montana. He said another potential problem is the geographic area of Montana. He said that there may not be enough mental health professionals to cover a statewide program.
- 00:58:06 SEN. SHOCKLEY and SEN. MCGEE both thought the program may be more appropriately placed with the DOC.
- 00:58:24 REP. EBINGER said the Billings Crisis Center has expressed great interest in facilitating the program and is willing to work with the DPHHS on program set-up.
- 00:58:48 SEN. JUNEAU said she is very concerned about the cost and that she would like more information, particularly regarding the \$125,000 for training. SEN. MCGEE agreed that the cost was high.

#### **Public Comment**

- 01:00:04 **Sheriff Jim Cashell, Gallatin County, MSPOA**, thanked the LJIC for its efforts to deal with the issue of jail suicide but said the MSPOA is concerned about the direction the LJIC appears to be taking at this time. He said the Committee is making assumptions that may not be correct and made the following points:
- All inmates are screened for suicide potential now. Most jails have screening software in place and referrals are made whenever possible.

- The biggest problem is that there are no facilities or people in place to send or refer inmates to. Law enforcement officers are good at identifying risk, the problem is getting them the help they need.
- Jails are not a safe place for people with mental health issues because jails are not set up to handle this type of prisoner, nor is staff properly trained.
- MSPOA's stance is that suicide is a statewide mental health issue and should be addressed as such, through community based secure facilities, for example.
- It is a disservice to the mentally ill to subject them to long trips to get them evaluated and/or admitted to a treatment program..

01:04:11

Sheriff Cashell commented on the LCLJC2, saying the MSPOA would support it, but would appreciate it if the Legislature would look at the bigger picture of fixing the entire mental health system in the State. He made the following suggestions:

- Page 4, Section 1 (2) - management protocols. Sheriff Cashell said jails already have management protocols but that what jails don't have is a method to deal with the problem.
- MSPOA fully agrees that an inmate should not be treated in a detention center, but the question is, where do they go and what services can they get?
- It is MSPOA's preference that jail standards and inspection remain a voluntary process and that state interference is not needed.

01:07:06

**Harold Blattie, Executive Director, Montana Association of Counties (MACo)**, said he participated as a stakeholder at the Subcommittee meeting and concurs with the recommendations made by the Subcommittee. He said he is not certain the bill draft reflects the recommendations of the Subcommittee, but will study the proposed bill further.

01:09:27

**Kandi Matthew-Jenkins, Missoula**, said:

- that the state already has mental health professionals on staff, including psychiatrists, and that the Committee should look into how they can be better utilized;
- she agreed with Sheriff Cashell that jails are not the place anyone with a mental health problem should be ;
- that a future LJIC should consider studying the causes of mental illness and the involuntary drugging of mentally ill citizens; and
- that while law enforcement tries to deal with the mentally ill effectively, there is still a great deal of harsh treatment of mentally ill people happening in the state.

01:12:24

**Deb Matteucci, Behavioral Health Program Facilitator, DOC and DPHHS**, thanked the Subcommittee for its work, and Mr. Niss for his memos addressing this issue. Ms. Matteucci said:

- that being mentally ill isn't necessarily an indicator of suicide risk;
- she would encourage the Committee to continue with the program as a pilot project because the extent of the program's impact, on the workforce for example, needs to be evaluated before going statewide;

- it may be difficult to adapt the Kentucky model to Montana because of the geographical differences; and
- the program is appropriately placed in the DPHHS Office of Suicide Prevention because suicide is a statewide risk and is not exclusive to jails or correction facilities.

01:17:22

**Alexandra Volkerts, Disability Rights Montana (DRM)**, thanked the LJIC for its work and made several comments and recommendations:

- She requested that Service Authority Areas (SAAs) be added to the list of advisors for developing standards (page 4, New Section 4, subsection (2)).
- Ms. Volkerts agreed that jails are not the appropriate place for the suicidal or mentally ill and that the MSPOA has been extremely cooperative in trying to resolve some of the issues.
- Regarding the discussion of whether or not the state has the authority to regulate county sheriffs and jails, Ms. Volkerts said that police power, under which county law enforcement operates, is a state power delegated to the counties. She said her opinion is that because police power is a state granted power, the state does have the ability to regulate county jails, but that if the Committee has questions, it should inquire further.
- Ms. Volkerts reported that an existing diversion program for mentally ill offenders already exists in Missoula County that does exactly what the proposed legislation does. She said it may be helpful for the Committee to learn more about that program because it is important to understand what is already happening in the state. She said the Missoula County program is funded through a grant from the GAINS Center and that the Center is committed to develop protocols for effective diversion.
- Regarding the Kentucky program, Ms. Volkerts said she was not familiar with it but planned to study it.
- She said that the pilot program is appropriately placed with the DPHHS.
- She agreed that the availability of mental health professionals will be a major issue, and suggested that financial incentives may be needed in order to attract the amount of staff needed to operate the program.

01:22:18

**Anita Roessman, DRM**, submitted prepared comments regarding standards for jail suicide prevention (EXHIBIT #40). She read a bullet point from her comment (a quote from the *Montana Strategic Health Plan*) about the suicide rate in jails and noted that Montana leads the nation in suicides committed in jails. Ms. Roessman agreed with a comment from Ms. Mattuecci that there is not necessarily a connection between suicide and mental illness, saying that 90% percent of people who attempt suicide attempt it only once. She submitted an article from the New York Times (EXHIBIT #41) about attempted suicides and read a quote from the last page of the article from a man who attempted suicide by jumping off a bridge. Ms. Roessman said that jails are suicide prone because the people who come in are already intoxicated or under other duress. She said that she learned that suicide is deeply impulsive and that the LJIC's job is to find a way to interrupt that type of thinking in time to divert the person from a suicide attempt.

- 01:26:36 **Patty Jacques, mother of mentally ill son, Helena**, thanked the LJIC for its work and drafting bill. She thanked Sheriff Cashell for sharing his opinions and agreed that jails are not a place for the mentally ill or suicide-prone and that facilities are badly needed.
- BREAK**
- 01:54:42 SEN. JENT **moved** to approve drafting of LCLJC2 as a committee bill. SEN. MCGEE said he would support the motion but had reservations about if it should be a pilot program only.
- 01:56:11 REP. KOTTEL said, regarding testimony that there is a lack of mental health professionals in Montana to treat or evaluate mental illness, that she researched statistics through the United States Department of Health and Human Services for communities at risk ratios. According the federal data, the risk ratio of 1 mental health provider for every 6,000 citizens is the threshold for risk. REP. KOTTEL said through further research of Montana statute and providers, she determined that Montana has approximately 2,559 providers, which, if divided by one million citizens, puts Montana's ratio of 1 provider for every 390 individuals. She said it would be a given that not all providers would be able to fit the needs of the program, but that there are more resources available in the state than thought. She said she would support the motion.
- 01:58:38 The **motion passed** on a unanimous voice vote, with proxy "aye" votes from REP. AUGARE (Kottel), SEN. PERRY (McGee), and REP. KERNs (McGee). The Committee will review the bill draft one more time in September.

## **INVOLUNTARY COMMITMENT, PRECOMMITMENT COSTS, AND DIVERSIONARY METHODS**

### **Staff review of bill draft - LCdvrS - and policy options**

- 02:00:02 Ms. Heffelfinger asked the Committee to refer to the bill draft, LCdvrS (EXHIBIT #42), a list of statutes referenced in the bill draft (EXHIBIT #43), and a map of mental health regions and locations of crisis screening and emergency hold beds in Montana (EXHIBIT #44) while she discussed the bill draft. She said the bill draft was based on the Oregon treatment model, and that initial contact, emergency detention - 24 hours, precommitment, and commitment are the four steps encompassed in the bill draft. She said the bill draft also includes a melding of comments from stakeholders and committee members and that some additional changes to current law will be necessary if the bill draft is adopted.
- 02:05:43 REP. STOKER asked how the 72-hour voluntary commitment law intersects with the 24-hour emergency hold. Ms. Heffelfinger said the voluntary 72-hour time period does overlap with the initial 24-hour emergency hold. She said once an involuntary commitment petition is filed, which could happen before the 72 hours is over, the voluntary 72-hour funding stops and the county becomes the payor of last resort.

- 02:07:07 SEN. SHOCKLEY said that creates a disincentive to move expeditiously because it costs the county to move quickly. Ms. Heffelfinger said that could be the case.
- 02:08:28 Ms. Heffelfinger reviewed the bill draft (EXHIBIT #42) section by section, referring to the list of affected statutes (EXHIBIT #42), and the map (EXHIBIT #44).

### **Discussion and Questions**

- 02:30:37 SEN. JENT asked, in Section 4 - dedicated crisis intervention beds - if the beds would also be available to law enforcement as part of the proposed jail standards and suicide prevention program. Ms. Heffelfinger said yes. SEN. JENT thought this concept needs to be pushed forward in order to create the incentive to create secure, inpatient community facilities.
- 02:32:14 SEN. JENT said, referring to Section 9 (2)(a), that the only change in professional duties is that the professional will now provide a recommendation on whether the person is suitable for diversion. Ms. Heffelfinger said yes.
- 02:32:56 SEN. SHOCKLEY referred to the map (EXHIBIT #44) and said that the location of the emergency detention beds in Butte and Bozeman are very close together. He said he would prefer that they be more geographically spread out for greater accessibility. Ms. Heffelfinger said those beds are part of Western Mental Health Center's programs and the location was determined by their needs assessment.
- 02:34:31 SEN. SHOCKLEY said 14 days is a long time to hold someone and said he would like to the rationale used to make that time determination. Ms. Heffelfinger said she used the same time period as the Oregon model uses. She said she that DRM and Ed Amberg, administrator of the MSH, also support the 14-day time period. Ms. Heffelfinger said a provision for earlier release could be added.
- SEN. MCGEE asked Ms. Heffelfinger in what section an early release provision would be added. MS. Heffelfinger said she would put it in either section 6 or section 7, or both.
- 02:38:10 SEN. SHOCKLEY asked if the state will pay a flat fee to have these beds available or a daily rate in order to guarantee the availability of the bed. Ms. Heffelfinger said that was a good question and that not all of the funding details have been worked out at this time.
- 02:39:14 REP. KOTTEL asked if there is an underlying assumption that hospitals act unethically and keep patients longer than necessary when insurance is in place. SEN. SHOCKLEY said yes, that he thinks that is a factor in many situations.

### **Public Comment**

- 02:40:39 Ms. Roessman, DRM, thanked the LJIC for recognizing the potential of diversion programs and directing staff to work on it. She stated that Ms. Heffelfinger's work was remarkable in that it synthesized 17 years of work and wove it into something that could work. She said it is still a preliminary draft and is a great starting point. Ms. Roessman said the proposal would correct a grievous wrong,

would provide a tremendous amount of relief for law enforcement and the MSH, and contains incentives for the creation of regionalized and localized systems. Ms. Roessman said she did have several concerns and discussed them:

- How to handle costs - there needs to be a mechanism for determination of whether a person can afford to pay before being billed.
- Involvement of county attorneys and judges - this is unnecessary and the Oregon model doesn't require it.
- Timing of recommendation of diversion - more information is needed.
- The 14-day hold time is appropriate but does she appreciate the concern about due process

02:46:24 **Joan Daly, Billings Clinic and Community Crisis Center, Billings**, said she agreed with Ms. Roessman's testimony. She provided copies of proposed language changes she drafted independently on the same issues as contained in LCdvs regarding cost, length of stay, and providers (EXHIBIT #45). She said the proposed language is not intended to amend LCdvs but is additional language to help clarify current law. She said her intent was to help private providers have some control over the length of stay and third party payer issues.

02:49:32 Patty Jacques, Helena, thanked the LJIC for its work on the issue. She said she read the bill to her mentally ill son and that he thought it was wonderful news. She said she would like to see a new section dealing just with funding. She suggested that reallocation of a percentage of the beer and wine tax be considered as a revenue source to create a trust fund as a permanent funding source.

02:50:53 **Lou Thompson, Chief of Mental Health Services Bureau, Addictive and Mental Disorders Division (AMDD), DPHHS**, said that licensure requirements have been completed for a secure crisis stabilization facility, that public comment has been taken, and the Department is in the process of drafting its response to the comments. She said that the licensure regulations would apply to the proposed beds in Butte and Bozeman. Regarding Behavioral Health Inpatient Facilities (BHIFs), Ms. Thompson said that while there has been a great deal of preliminary work on developing the regulations, nothing is ready for public comment yet, mainly because there is no real interest from providers. She said BHIFs are a very expensive project because of the rigorous building code requirements and that providers are hesitant because of the lack of a funding commitment from the Legislature. Ms. Thompson said that the language in LCdvs does indicate some sustainability and the DPHHS supports the direction of bill. She said she would not comment further on the funding issue until she has time to study it in more detail.

02:53:50 **Kathy McGowan, MSPOA, Montana County Attorneys Association, and Community Mental Health Centers**, said her initial reaction to the bill draft is supportive, but that she will take time to more closely examine it. She congratulated Ms. Heffelfinger on her in-depth understanding of a complex issue. Ms. McGowan said the organizations she represents would like to work on the details. She said that law enforcement agencies recently held a joint convention and that a major topic was mental health. She said there is a lot of excitement

about creating mental health programs but also the realization that there are great challenges as well.

02:55:52 **Harold Blattie, Executive Director, MACo**, congratulated Ms. Heffelfinger on her work and understanding of the situation. He said MACo has long endorsed diversion programs and has been working to find solutions for years. Conceptually, Mr. Blattie said, his association would support LCdvr. He discussed Section 5 - state contribution to insurance pool, saying the language was fundamentally sound, but that he could foresee problems with selective participation from counties, especially where precommitment costs are concerned. He suggested requiring participation if an insurance pool is created. Mr. Blattie also suggested that the Committee consider making the state's 50% contribution a statutory appropriation. He said an insurance pool can't work unless there is an assurance of state funding.

02:59:48 **Ed Amberg, Director, Montana State Hospital (MSH), Warm Springs**, said that his facility is often where people from all across the state are diverted. He said many of the individuals served are there voluntarily, but because of overcrowding and other issues, an individual often has to waive his rights to a commitment hearing in order to get treatment and are still saddled with going back and forth for hearings. Mr. Amberg said that bill addresses the fact the voluntary treatment is much more likely to be successful. He said involuntary treatment has its place, but that for most people coming into MSH, voluntary treatment is a much better approach. Mr. Amberg said he is in support of the 14-day hold period and would even support lengthening it. He explained that it takes time for a therapeutic relationship to be established and to complete a solid diagnosis, as well as time to work out medication issues and discharge plans. He suggested that 14 to 21 days would provide a reasonable amount of time to deal with these things. He said that overall, LCdvr accomplishes much of what has been discussed during the interim.

03:06:03 **Dr. Michael Bütz, President-elect, Legislative Chair, Montana Psychological Association**, said his association is willing work with the Committee on questions or professional matters affecting psychologists.

03:07:29 **Alexandra Volkerts, DRM**, said the 14-day period is very appropriate, would allow adequate time for voluntary treatment, and would be much less disruptive to the person's life and family. She said the proposal is a very sound approach to mental health crises and to controlling costs. She said the bill draft not only has a humane recovery element but makes financial sense. Ms. Volkerts said she strongly agrees with SEN. SHOCKLEY that emergency beds need to be more geographically distributed because of the long transports involved in getting people to treatment. She said she supports the three programs already in progress but would like more beds to be created in areas that serve a large number of citizens, such as Great Falls.

#### **Committee Questions, Discussion, and Action**

03:10:14 SEN. SHOCKLEY said the Committee has discussed the use of restraints and of video conferencing, where and when it is available. He said he is offended by

unnecessary handcuffing. He referred to a comment made by Mr. Amberg that people who arrive at the MSH with a minimal amount of restraint often respond better to treatment and asked Mr. Amberg to expand on that comment. Mr. Amberg said he discussed the issue of transportation and the Wyoming transport program at the last LJIC meeting. He said that most people arrive at the MSH in restraints, but that it varies by law enforcement agency. He said that restraints are more commonly used in large departments in more populated counties, and less in small departments or less populated counties, where personal relationships with the individual are more likely to exist. Mr. Amberg said that federal regulations prevent health care facilities from using law enforcement type restraints.

03:14:17 REP. KOTTEL discussed several concerns regarding Ms. Daly's recommendations for language changes (EXHIBIT #45).

**BREAK**

03:27:41 SEN. MCGEE reconvened the LJIC. He noted that the Oregon model does not involve a county attorney in the commitment process, but that LCdvrs does. He asked SEN. JENT to explain, under LCdvrs, what the role of the county attorney, the court, and the defense attorney would be. SEN. JENT said under LCdvrs, if the county attorney and the defense attorney (usually the public defender) agree that diversion is the best avenue, they would sign a written agreement and that the judge would sign off as well. The person would be taken to a secure treatment facility for the designated time period and then brought back before the judge. SEN. JENT said that if the person was allowed to make the decision to opt for diversion by themselves, the public would not be adequately protected.

SEN. MCGEE described two scenarios - one in which a person did not commit a crime but did need some sort of protective setting in order to stabilize some type of incident; and another one in which an individual violated a law and whose behavior indicates a possible mental health condition. He asked how each would be handled. SEN. JENT said that the county attorney would have the discretion on whether to file a petition for each case. Regarding the first example, the county attorney would be less likely to file because while the person may be a danger to self, he probably is not mentally ill and would not meet the legal requirements for filing a petition for commitment. The county attorney would be more likely to file a commitment petition in the second case.

03:34:47 Anita Roessman, DRM, said the judge plays an important gatekeeper role in the process because the diversion option is not available unless judge has first considered a commitment petition from a county attorney. She said several layers of review have been built into the process by requiring that the judge review and agree with the recommendations of the county attorney and defense attorney, and that the DPHHS, as payor, is an additional layer of review. Ms. Roessman noted that county attorneys are not involved in the voluntary diversion process in the Oregon model and said she does not support the requirement to involve them in LCdvrs. She said the county attorney can, upon being notified that a diversion agreement has been signed, request an evidentiary hearing to see if the person is in need of a higher level of care.

- 03:37:54 SEN. MCGEE said Oregon model has a "look back" provision to see if the person should have been paid for by the state and asked if the provision has caused problems for providers. Ms. Roessman said hospitals are used to having judgment questions and that she did not think it would be a problem. SEN. SHOCKLEY said if the judge has made a determination, the provider should be paid and it should not be questioned. He said he doesn't like the "look back" provision and asked for comment from the county attorney association.
- 03:39:25 Kathy McGowan, Montana County Attorney Association, said she did not know the position of the MCAA because it has not has an opportunity to study the proposed legislation.
- 03:40:37 **Kevin Gillan, Deputy County Attorney, Yellowstone County**, said he deals with the commitment process frequently. He said Yellowstone County treats petition requests very seriously and that more often than not, a petition is not filed. He said that the discretion of the county attorney is very important and should not be tinkered with; and that while mental health professionals establish criteria and diagnosis for mental illness, the medical criteria often does not always meet the legal requirements of the commitment process. He said he would have to study the bill draft to comment on what type of involvement the county attorneys would have under LCdvr.
- 03:43:04 SEN. SHOCKLEY said he wanted to keep the county attorney involved in order to protect the people's position. Mr. Gillan said his opinion is that the most important role of the county attorney is to protect the individual's constitutional rights and that his office will not rubberstamp involuntary commitment petitions.
- 03:45:32 SEN. MCGEE asked Mr. Gillan if he was familiar with 53-2-126, MCA, dealing with the trial or hearing on petition and appropriate disposition if commitment is required. Mr. Gillan said he was familiar with the statute. SEN. MCGEE read the four conditions for commitment and noted that the word "and" was used between the conditions and that this indicated to him that the four conditions are conjunctive. He said Dr. Donald Harr has recommended that the language be changed to "or" because it would allow each condition to represent a situation on which the court could act, and would make the commitment process easier. He asked Mr. Gillan to comment. Mr. Gillan agreed that if the statutory language was more deliberate, it would facilitate the petition process and would clarify the legislative intent of the statute.
- 03:48:23 SEN. MCGEE said his opinion is that the language, as written, provides a higher level of protection for an individual's liberty interest. He asked Mr. Gillan if he thought "and" should be changed to "or". Mr. Gillan said that he likes the statutory language as currently written.
- 03:50:17 SEN. SHOCKLEY **moved** to approve LCdvr as a committee bill in need of additional modification, with an emphasis on the geographic location of facilities. He said the additional work would bring the players to the table.

03:50:57 REP. EBINGER agreed that placement of facilities is a very important consideration.

03:54:29 The **motion passed** on a unanimous voice vote, REP. AUGARE yes. REP. KERNS and SEN. PERRY voted yes by proxy.

#### LUNCH BREAK

05:01:00 Ms. Heffelfinger provided copies of public comments regarding bill drafts under consideration by the LJIC:

- a July 1, 2008, memo from Director Ferriter to Wardens Mahoney and Acton regarding the LJIC's discussion and consideration of appropriate standards of care for mentally ill inmates (EXHIBIT #46);
- a letter from Brenda Desmond outlining her concerns about how the drug court bill draft would be funded (EXHIBIT #47) ;
- a letter from Ravalli County Commissioners opposing LC7776 (EXHIBIT #47);
- an email from Kathy Frame, Flathead Detention Commander, Flathead County Sheriff's Office, opposing LC7776 (EXHIBIT #49); and
- a faxed letter from Liberty County Sheriff Richard Burrows opposing LC7776 (EXHIBIT #50).

Ms. Heffelfinger said she has additional public comment regarding LC7776 attached to the bill draft in the meeting materials.

#### **GENERAL PUBLIC COMMENT**

05:04:57 Dr. Michael Bütz, Montana Psychological Association, suggested several changes to LCy4 - revise Youth Court Act to include evaluation and placement of youth with a disabling condition (EXHIBIT #25):

- Section 1. new subsection (3) - "appropriate professional" -- consider that evaluation records may already exist;
- Section 1, new subsection (3)(a) - "appropriate professional" definition -- require higher level of experience, supervision, and training than required in 53-21-102(16), MCA, due to the complex testing required to complete a mental health evaluation;
- Section 1, new subsection (3)(b) - appropriate professional -- require this individual to have training in psychometric testing and, if the individual suffers from both a developmental disability and a mental illness, an even greater level of assessment may be needed;
- Section 1, new subsection (3)(c) - "appropriate professional" -- to require a second level assessment for traumatic brain injury patients, such as a neurologist or nurse psychologist;
- Section 1, new subsection (17)(a) - "disabling condition" -- clarify statutory criteria for 24-hour residential care;
- Section 1., new subsection (17)(b) - "developmental disability of such severity" --clarify and set criteria for determining what level of disability would determine translate to a youth not being able to benefit from youth correctional programs;
- Section1, new subsection (46) - "treatment facility" -- clarify whether the Montana Developmental Center meets the criteria;

- Section 2, cost containment -- clarify what exactly the State will pay for. Forensic assessments may be needed in some cases, which requires a higher level of professional specialization. Determination of who will do assessment, what rate will be paid, who will pay, and the number served will impact costs; and
- competency of the youth whether youth is treated as an adult and whether a guardian ad litem is involved may also affect the types and cost of assessment.

Dr. Butz said the comments are his and not of the Montana Psychological Association.

- 05:15:55 **Kandi Matthew-Jenkins, Missoula**, read a statement written by Jonathan Loran of Missoula regarding challenges he is facing in life as a result of drugs he said he was forced to take as a child to treat attention deficit disorder. Ms. Matthew-Jenkins said in October of 2007, she submitted two pages of questions regarding the "effects of the government on families and their potential outcomes in life by those effects" to the LJIC and still has not received a response. Ms. Matthew-Jenkins resubmitted the questions and asked, as a citizen, that the Committee respond to her questions. She read a statement outlining her personal beliefs and opinions regarding mental health in general, which included her perspectives on genetic predispositions, the effect of governmental intrusion into people's lives, and environmental effects.
- 05:29:31 **Melissa Worthan**, testified about her experience visiting her husband at the Montana State Prison, his struggle with depression, and the well-being of their children; all issues her family has had to deal with since her husband's incarceration.
- 05:33:56 **Carl Seilstad, Fergus County Commissioner**, said he opposes LC7776. Commissioner Seilstad discussed the makeup of Fergus County, saying that the rural county has little revenue and is already struggling financially. He said his county has a good working relationship with area hospitals and he did not want the hospitals to have to shoulder all of the costs. He suggested that the burden be placed on the person committing the crime and that their assets should be sold before making the taxpayers pay their medical costs. Commissioner Seilstad said that counties can't absorb any more of the costs because they are already struggling.
- 05:37:20 **Father Robert Porter, Chaplain, Montana State Prison**, commented on the day's discussion of prison issues, and said that he gained great insight and information. He said that Warden Mahoney is uniquely qualified to be warden because he is sensitive toward all cultures and also that Director Ferriter has made innovative and responsible changes. Father Porter encouraged the Committee to carefully consider the requests of Warden Mahoney and Director Ferriter. Father Porter discussed a mentoring program in Billings and said there are many other interested parties eager to assist the state in helping offenders to re-enter society through aftercare programs. He suggested that the LJIC invite religious leaders in the state to meet to discuss how to facilitate such programs.

He said it is especially important to be mindful of the needs of Native American inmates because of their cultural needs.

### **REVIEW OF COMMITTEE BILL DRAFTS ALREADY APPROVED**

- 05:41:06 Ms. Heffelfinger and Ms. Lane reviewed several bill drafts approved by the Committee at its June 2008 meeting, including changes approved at the June meeting:
- LCdrug (EXHIBIT #51) -- remove obsolete funding language in drug courts;
  - LC0198 (EXHIBIT #52) --require an attorney for youth detention hearing; and
  - LC0199 (EXHIBIT #53) -- add 22nd Judicial District to the list in the Judicial Nomination Commission statute.

### **DISCUSSION OF OTHER BILL DRAFT IDEAS**

#### **LC7776 -- Clarifying responsibility for detainee medical costs -- (EXHIBIT #54)**

SEN. LASLOVICH clarified he did not draft the bill and that his goal was to have the stakeholders work in a collaborative fashion to create a bill draft, but that his goal was not realized.

05:46:48 SEN. MCGEE said that a subcommittee would be appointed to deal this issue and would meet before the September meeting. He said stakeholders would be invited to present their concerns to the subcommittee, which would then craft a bill draft to present to the full Committee at its September meeting. He said the other option is to not have a subcommittee and for stakeholders and committee members to provide information to committee staff, who would create a bill draft based on the input received. He said his opinion is that the issue needs more work and that a subcommittee would be the best approach. It was agreed that a subcommittee would be appointed, SEN. MCGEE appointed SEN. LASLOVICH (chair), SEN. JENT, REP. EBINGER, and REP. HILBERT as members.

05:49:39 SEN. LASLOVICH said it is clear that something needs to be done and agreed that more work is needed. He said the hospital side has been heard and that it would be helpful to hear public comment from counties. He said the Committee has heard much about the problem and he wants to hear proposals for solutions. REP. HILBERT asked for clarification on what exactly the bill draft would cover and said it is his understanding that a bill draft will cover medical costs that are a direct result of contact with law enforcement. He asked if the bill would be applied to other situations, such as may occur during a traffic stop or from extenuating circumstances. SEN. MCGEE said REP. HILBERT made a good point. He said it is not right for a law enforcement officer to shoot an individual with a weapon to not consider that an arrest, and then drop the person off for treatment, to return later to arrest the person.

#### **Public Comment on LC7776**

Public comment was received in advance of the meeting from:

- Gary Macdonald, Roosevelt County Commissioner - opposed (EXHIBIT #55);
- Kathy Frame, Flathead County Sheriff's Office - opposed (EXHIBIT #56);

- Ravalli County Commissioners - opposed (EXHIBIT #57);
- Jay Hansen, Beaverhead County Sheriff - opposed (EXHIBIT #58); and
- Montana Medical Association (MMA) (EXHIBIT #59) - support.

- 05:54:00 **Harold Blattie, MACo**, said that he has found a number of troubling things in the bill draft and strongly agreed that more work is needed. One suggestion made by Mr. Blattie was to more clearly define the term "interaction". He asked if the Montana Highway Patrol, the Fish, Wildlife, and Parks, and other state agencies would be included in the bill draft. Mr. Blattie said the definition of "detainee" also needs to be clarified. He said that MACo will continue to be involved in this issue.
- 05:57:15 **Pam Bucy, MSPAO, Chiefs of Police, and the Police Protective Association**, said her concerns are similar to those discussed by Mr. Blattie. She said she agrees that it is an abomination for law enforcement to shoot an individual and then say the person is not under arrest. She suggested using the measure of if the person would be free to go if not injured. She disagreed with comments submitted by the Montana Hospital Association that this issue is affecting the entire state, and noted that many hospitals and counties work well together. She said the bill draft could negatively affect those relationships and could possibly lead to more litigation in the future. Ms. Bucy said she too would work with the subcommittee.
- 05:59:25 **Mark Taylor, Montana Hospital Association (MHA)**, said a recent MHA board meeting generated a lot of comment on this issue. He said he appreciated the opportunity to continue working on the issue and that the MHA would support the counties in their efforts to find funding sources. He said the MHA also would work with the subcommittee.
- 06:01:49 **Mike Foster, Sister of Charity Hospitals (St. Vincent, St. James, and Holy Rosary,)** said the concerns from hospitals statewide are valid concerns and that this issue is a significant problem for many hospitals. He said that medical costs to treat injuries directly attributable to contact with law enforcement officers should have to be paid by the county. Mr. Foster said he has great respect for the difficult job of county commissioners, such as Mr. Seilstad, and agreed that the counties' concerns are legitimate also. He said he supported the creation of a subcommittee because it is clear that something has to be done and that the status quo is not working. Mr. Foster referred to the statistics related to St. Vincent's Healthcare in Billings about real cases that St. Vincent Hospital has dealt with. Mr. Foster said he welcomed the idea of a subcommittee.
- 06:07:08 **Erin Maclean, Montana Medical Association (MMA), Helena**, said she agreed with Mr. Foster's comments and offered her assistance to the Committee and subcommittee. She said the MMA is concerned with the language regarding physicians and said it is essential that they are included in the portion of the bill dealing with billing. She pointed out that many physicians are not employees of a hospital and bill patients separately. She said it is the MMA's position that the person would not have ended up at the hospital if not for the action of law

enforcement, so it should not be the hospital's responsibility to pay. Ms. Maclean said she will work with the subcommittee.

06:09:34 Commissioner Seilstad suggested including crisis intervention training for police officers for mental health cases and said it would be a good tool to help reduce altercations. Regarding paying for costs, Commissioner Seilstad repeated his request to make the criminal more responsible for costs.

06:11:31 Mr. Gillan said he agrees with most of those who oppose the legislation. He said it would be a good idea to have the subcommittee further study the issue but cautioned against unintended consequences resulting from legislation. Mr. Gillan said his office is committed to helping to find a solution.

#### **Other bill draft ideas**

06:15:57 SEN. MCGEE asked Committee members to refer to the document he discussed briefly at the previous day's meeting concerning by a jury of prior offenses in certain DUI and sex offense cases (EXHIBIT #17). He asked the Committee if it wished to create a bill draft to deal with the issue. He also asked if the Montana County Attorney Association was considering a bill draft on the issue. Mr. Gillan said he did not know.

06:18:00 Kathy McGowan. MSPOA, MCA, said that the organizations did discuss the issue at their summer meetings but that a legislative platform had not yet been approved. After additional discussion with Ms. McGowan, SEN. MCGEE said the issue would left as an individual legislator effort.

06:19:44 SEN. SHOCKLEY **moved** to approve as a committee bill LCjdg2 -- a revised bill draft to increase the salaries of supreme court and district court judges (EXHIBIT #60). He said the original proposal was not approved at the June LJIC meeting. He discussed the provisions of the revised bill draft, saying it is a reasonable compromise.

06:22:26 SEN. MCGEE asked where the money would come from and the total amount. SEN. SHOCKLEY said the cost would total \$700,000 per year under the revised version. SEN. MCGEE asked if SEN. SHOCKLEY considered the impact of a different bill to increase judges and standing masters.

06:24:48 The **motion passed** on 7-5 roll call vote, with a "yes" proxy vote from REP. AUGARE (Kottel). SEN. JUNEAU (Kottel proxy), SEN. PERRY (McGee proxy), SEN. MCGEE, REP. KOTTEL, and REP. KERNS (McGee proxy) voted no. SEN. MCGEE said the final bill draft would be approved at the Committee's final meeting in September.

#### **NEXT MEETING DATE AND INSTRUCTIONS TO STAFF**

06:26:55 SEN. MCGEE said the next meeting will be held on September 15 in Helena, and that in the meantime, the Subcommittee for Detainee Medical Costs will also meet in Helena. SEN. LASLOVICH said he would work with the members and staff to set a date.

**ADJOURNMENT**

06:28:08 With no further business before the Law and Justice Interim Committee, SEN. MCGEE adjourned the meeting at 2:31 p.m. The next and final Committee meeting is scheduled for September 15, 2008, Helena.

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