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Law and Justice Interim Committee

59th Montana Legislature

SENATE MEMBERS

BRENT CROMLEY
JESSE LASLOVICH
DANIEL MCGEE
GARY PERRY
JIM SHOCKLEY
CAROL WILLIAMS

HOUSE MEMBERS

GEORGE EVERETT
JOHN PARKER
DIANE RICE
RON STOKER
BILL WILSON
JEANNE WINDHAM

COMMITTEE STAFF

SHERI HEFFELFINGER, Lead Staff
VALENCIA LANE, Staff Attorney
FONG HOM, Secretary

MINUTES

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

July 26, 2005

Capitol Building, Room 102
Helena, Montana

COMMITTEE MEMBERS PRESENT

SEN. BRENT CROMLEY
SEN. JESSE LASLOVICH
SEN. DANIEL MCGEE
SEN. GARY PERRY
SEN. JIM SHOCKLEY
SEN. CAROL WILLIAMS

REP. GEORGE EVERETT
REP. DIANE RICE
REP. RON STOKER
REP. BILL WILSON
REP. JEANNE WINDHAM

COMMITTEE MEMBERS EXCUSED

REP. JOHN PARKER

STAFF PRESENT

SHERI HEFFELFINGER, Lead Staff
VALENCIA LANE, Staff Attorney
FONG HOM, Secretary

Visitors

Visitors' list ([Attachment 1](#)).

COMMITTEE ACTION

- Adopted the proposed Study Plan

CALL TO ORDER AND ROLL CALL

Sen. Dan McGee called the meeting to order at 8:30 a.m. Secretary noted roll visually (**ATTACHMENT 2**). Rep. John Parker was excused.

ELECTION OF OFFICERS

SEN. JIM SHOCKLEY nominated Rep. John Parker as chair, seconded by Sen. Brent Cromley, passed unanimously. REP. BILL WILSON nominated Sen. Dan McGee as vice chair, seconded by Sen. Shockley, passed unanimously. Sen. McGee acted as presiding officer for the meeting.

OVERVIEW - SHERI HEFFELFINGER

MS. SHERI HEFFELFINGER, Research Analyst, Montana Legislative Services Division, discussed the statutory responsibilities of the Law and Justice Interim Committee (LJIC) and study assignments. Ms. Heffelfinger said that with the LJIC's permission, the Legislative highlights could be provided in writing to the Committee at a later time. Ms. Heffelfinger then reviewed the proposal study plan (**EXHIBIT 1**).

REP. DIANE RICE asked what additional resources would be needed if the Committee formed a Subcommittee? Ms. Heffelfinger said that a subcommittee would be the same as a full committee meeting for staff because of minutes and preparation of information for the meeting.

DISCUSSION OF HJR 15 - STUDY OF SENTENCING EQUITY

ACTING CHAIR DAN MCGEE asked who would perform the sentencing equity study if it was contracted out. Ms. Heffelfinger said the Committee could hire anyone it wanted but the Committee would have to consider what amount to pay the contractor.

SEN. CAROL WILLIAMS said that HJR 15 is a worthwhile study because the issue has come up before and needs to be addressed.

DISCUSSION OF PUBLIC DEFENDER ACT (SB 146)

ACTING CHAIR MCGEE asked if the Legislative Audit Division (LAD) had done audit work in Missoula, Cascade, Lewis and Clark, Flathead, Gallatin, and Yellowstone Counties. Ms. Heffelfinger said LAD had not started the audit yet, but has issued an RFP to contract for the audit. LAD plans on awarding the contract by September 2005, and will have findings by April 2006.

MS. HEFFELFINGER discussed identifying law and justice issues, improving existing law through analysis of problems experienced with the application of law by an assigned agency, and providing a forum for feedback from state's citizens that have interaction with assigned agencies.

MS. HEFFELFINGER said that the Legislative Council has requested that the Law and Justice Interim Committee coordinate with Children, Families, Health, and Human Services Interim Committee on the study of SJR 37, but doing that, the Committee needs to look at the availability of staff, resources, and time.

ACTING CHAIR McGEE asked if the Children, Families, Health, and Human Services Interim Committee (CFHHS) had already met to decide whether or not they are going to conduct the SJR 37 study as a full committee or as a subcommittee. Ms. Heffelfinger said that the first meeting of the CFHHS will be August 22, so it has not yet decided.

REP. RON STOKER asked where in the survey SJR 37 ranked. SEN. CAROL WILLIAMS said that she sponsored the resolution and it ranked second.

DISCUSSION ON SJR 38 - STUDY OF IDENTITY THEFT

MS. HEFFELFINGER discussed SJR 38, the study of identity theft, which is under the Economic Affairs Interim Committee. Ms. Heffelfinger wanted the Committee to know that there are issues related to identity theft that will intersect some statutes that Law and Justice has monitoring responsibilities over. Ms. Heffelfinger said that the proposed study plan did not allocate resources for specific coordination, but that if coordination was required, it could occur at the study level.

JUDICIAL BRANCH OVERVIEW - CHIEF JUSTICE KARLA GRAY

CHIEF JUSTICE KARLA GRAY, of the Montana Supreme Court, reviewed the document entitled "Talking Points" (**EXHIBIT 2**). She said that the Supreme Court has updated their website and intends to maintain it regularly. She discussed the volume of cases that the justices hear, the work load and assessment study of district judges, the Supreme Court's budget, the new judgeship in Gallatin County, and the development of statewide uniform policies and procedures for Youth Court. She also said that the Supreme Court has adopted a new set of uniform case filing standards.

DEPARTMENT OF JUSTICE - ATTORNEY GENERAL MIKE McGRATH

MIKE McGRATH, Attorney General, talked about better access to the courts, the staff situation at the Montana Crime Lab, the policies on management of the Montana Highway Patrol, SJR 40

and the delivery of prosecution services, and the new Montana license plates.

OFFICE OF APPELLATE DEFENDER - CHAD WRIGHT, CHIEF APPELLATE DEFENDER

CHAD WRIGHT, Chief Appellate Defender, talked about the Office of Appellate Defender, which operates as conflict counsel. He said that within a year, the Appellate Defender Office will merge with the new Public Defender system.

PUBLIC DEFENDER COMMISSION - STEVE BENDER, DEPARTMENT OF ADMINISTRATION

STEVE BENDER, Deputy Director, Department of Administration, gave a status report on the first Public Defender Commission in Montana. He distributed a copy of a news release which listed the members of the Public Defender Commission (**EXHIBIT 3**) and also an agenda of the Commission's July 29, 2005 meeting (**EXHIBIT 4**).

DEPARTMENT OF CORRECTIONS - BILL SLAUGHTER AND JOE WILLIAMS, MONTANA DEPARTMENT OF CORRECTIONS

BILL SLAUGHTER, Director, Montana Department of Corrections, talked about the Montana Department of Corrections Management Team, which met to discuss reorganization, moving the legal unit under the Director's Office, and forming a new human resources unit. Mr. Slaughter discussed the expansion of pre-release areas which was authorized by the Legislature. He also talked about the WATCH Program, enhanced reporting and sanction services for offenders throughout Montana, and the MASKS Program with the Men's Diversionary Program.

JOE WILLIAMS, Montana Department of Corrections, discussed the Adult and Population Growth Sheet (**EXHIBIT 5**), which monitors average daily adult population growth from 1988 forward. He said that the biggest issue facing the secure custody facility is the need for empty beds in order to have separation needs met in case there's any administrative segregation for disciplinary procedures.

PUBLIC COMMENT

JIM KEMBEL, Montana Association of Chiefs of Police and Montana Police Protective Association, said that the Association offers its assistance to the Committee.

HAROLD BLATTIE, Executive Director of Montana Association of Counties, commented on the need for more emphasis on SJR 40. He said that the Association will provide assistance to the Committee in looking at data and surveys, and will work with the county attorneys on their salary issue. FRED VAN VALKENBURG, President of Montana County Attorneys Association, passed out his remarks (**EXHIBIT 6**) to the Committee. Mr. Van Valkenburg told the Committee that his

organization will try to have someone available at every meeting to be called upon as a resource, if necessary.

ACTING CHAIR McGEE asked Mr. Van Valkenburg for some bullet points that the Montana County Attorneys Association views as necessary legislation for the Legislature to enact. Mr. Van Valkenburg said they will certainly do that. If the proposed work plan is adopted, he said the Association will provide the staff for circulation to the Committee such a document so that the Committee can have full and open discussions of those matters at the September meeting.

SEN. GARY PERRY asked if the Association would supply the Committee with proposed solutions. Mr. Van Valkenburg said that was more difficult but certainly within the context of the current structure. If the Committee were to choose to go outside the current structure, the Association would be in a position to comment on what the Committee is proposing.

BETH BRENNEMAN, Attorney for Montana Advocacy Program (MAP), which is the designated protection and advocacy system for the State of Montana for people with disabilities, said that MAP is interested in the interim work of the Committee and would like to offer themselves as a resource for all issues involving the impact of the systems being studied on people with mental illness, developmental disabilities and mobility, and sensory impairments.

MELISSA WORTHAN, Missoula, Montana. Ms. Worthan came before the Committee to state that Judge Langton denied her due process of rights regarding her children. She said she felt that the Legislature is responsible for making the laws that the public employees have to follow and if Child Protective Services (CPS) is not following the law, then it is the duty of the Legislature to either make them obey it or change the law so they can't disobey the law without consequence.

PAM CASSADY, mother of Melissa Worthan, talked about trying to claim her grandchildren. She said she had been denied the right to have her grandchildren with her.

PASTOR COOK said he appreciates the work that the Committee is doing on the indigent defendant. He remarked about the CPS and their actions.

KANDI MATHEWS-JENKINS, Missoula, Montana, said she would like to reserve comments until lunch time because there are a couple of people who were not present. She said she felt that there was definitely inequity between the prosecution and the defense in that prosecuting attorneys are supposed to know the law, yet there are situations in the courtroom where the law is not adhered to.

GARY CONNELLELY, Crowley Law Firm, Billings, Montana, and the immediate past chair of the State Bar Association Access to Justice Committee, said he supports SJR 6. He spoke briefly about the effort to address the unmet legal needs of low income Montanans.

ACTING CHAIR McGEE asked Mr. Connelley if he thought that there could be a structure in the legal profession where legal expertise would be specific, such as in the medical community where you have doctors, registered nurses, LPNs, certified physician's assistants, etc., as a possible solution. Mr. Connelley said that he sees that as part of the program. He said he thinks there is a role for many professional and paraprofessional and lay advocates and he encouraged people to participate in those roles.

CINDY PETERSON, Hill County Attorney and a Board Member of the Montana County Attorneys Association, stated that she concurred with Mr. Van Valkenburg. Ms. Peterson said that the Committee is going to have to make a decision when studying the prosecuting services and duties of court attorneys whether to research a cross section of counties or whether to do a full study of all counties. She said she hopes that the Committee will go ahead and utilize the services of both the County Attorneys Association and MACo in putting together an all encompassing study of county attorneys. The County Attorneys Association welcomes the study and asks that they be allowed to participate in it.

KLAUS SITTE, Executive Director of Montana Legal Services Association, said that the Montana Legal Services Association provides civil legal assistance for low income Montanans and have done so for nearly 40 years. He said the Association is interested in the results of the study and in providing input on SJR 6. He said that the staff and the Board of Montana Legal Services Association look forward to working with the staff of the Law and Justice Interim Committee in providing any help, background information, material that the Committee may need to complete its investigation and study.

NANCY SWEENEY, Lewis and Clark County Clerk of District Court, also representing the Supreme Court Equal Justice Task Force, the Commission on Technology through the Supreme Court, and the State Bar Access to Justice Committee, said she was happy to see the Committee this interim and the work that will be done to prepare for the next Legislative Session, and also to see that the issues which the clerks of the district courts face are addressed this interim.

LILLIAN GUNDER, Stevensville, Montana, would like the Law and Justice Interim Committee to be involved in examining the judicial system process of Department of Family Services (DFS) cases and whether the agency adheres to the law and protects due process rights of accused

parents.

LONA SLINGER, Missoula, Montana, spoke about her two babies whom she said were taken from her at the hospital.

TONY FOSS, Missoula, Montana, would like to see some change in the policies of Department of Family Services.

KANDI MATTHEWS-JENKINS passed out documentation on reasonable efforts to prevent removal of children from home after the fact.

ACTING CHAIR McGEE addressed those who were complaining about Child Protective Services. He said that if the person wanted any member of the Committee to do anything about the person's case, the person must sign a release for the Committee to ask CPS to open the person's case file.

TOM CORBETT made brief comments regarding the sentencing equity issues described in SJR 15. He said there was an unequal delivery system, that there were disparities in treatment, and that the expenditure of taxpayer dollars was being made inappropriately. He urged the Committee to undertake the study and to construct it out if necessary.

COMMITTEE WORK SESSION

SHERI HEFFELFINGER reviewed the meeting schedules for Children and Families Interim Committee with regard of the study on Child Protective Services, and discussed staffing of a subcommittee.

SEN. JIM SHOCKLEY asked if there was going to be a meeting of the CFHHS between October 28 and March 30. MS. HEFFELFINGER said that the CFHHS has scheduled a meeting on January 27.

REP. DIANE RICE asked Ms. Heffelfinger to clarify that if there is a subcommittee not from this Committee, would it then be a subcommittee of CFHHS? MS. HEFFELFINGER said that that would be an option. She said that, under the proposed study plan, both interim committees would continue to coordinate and share information at the staff level. She said that if this committee wanted an actual joint subcommittee balanced with four members from the Children, Families, Health and Human Services Committee and four members from the Law and Justice Committee, then there would need to be a discussion on sharing that workload and staffing.

The CFHHS staff, however, has not proposed a subcommittee in the CFHHS study plan.

SEN. BRENT CROMLEY said that this topic is primarily with CFHHS and it seems presumptuous of this Committee to tell them what to do. He said it is up to the CFHHS and that the LJIC can offer its services. The CFHHS Committee can refer certain issues to the LJIC that happen to be within the LJIC baliwick, which would be legal justice issues.

ACTING CHAIR McGEE agreed with Sen. Cromley. He said he thought that it would be premature at this time to assign a subcommittee until the LJIC finds out what the CFHHS wants to do, whether it wants to do it as a full committee or whether it is going to assign a subcommittee, or a joint subcommittee. The Legislative Council assigned SJR 37 to the CFHHS, so the LJIC should stay the course until the September meeting.

ACTING CHAIR McGEE asked the LJIC members to look on page 9, Item (4), Allocation of Resources in the proposed Study Plan. He said if the LJIC accepts this allocation, then it would be accepting what staff has proposed for the study plan.

REP. RON STOKER asked, if the Committee agreed on the study plan today, could it adjust the Study Plan at a later date? ACTING CHAIR McGEE said that the Study Plan has always been adjustable.

SEN. JIM SHOCKLEY asked if Law and Justice Committee members could attend the CFHHS meetings? ACTING CHAIR McGEE said that was an excellent idea. Committee members could attend the meetings and then apply to the Legislative Council for additional funding. He said it was important that the LJIC hear from these folks every time we meet with regard to their concerns about CPS, and DFS, and so forth. Acting Chair McGee said that he has four or five signed releases in his possession that he needs to process with CPS so their files will be opened for his review.

MS. HEFFELFINGER said CFHHS' first meeting is August 22, during which the CFHHS will talk about its work plan. She said that CFHHS is planning on a two-day meeting in October where it will begin to dedicate their resources to the SJR 37 study.

ACTING CHAIR McGee said that on the August 22nd meeting, several LJIC members will attend to express concerns and willingness to help.

REP. RON STOKER asked if SJR 40 is a fallout of the State Assumption Program to see whether or not county attorneys are getting adequate funding and if their expenses are coming

forward to the state as originally planned. ACTING CHAIR McGEE said he didn't know if it's a fallout per se, but thought that it followed in the tailwind of (1) the district court assumption, (2) the issues of public defender, and (3) part of the whole current legal system fiscal process. Acting Chair McGee said that he thinks it is fiscal and something that the LJIC would want to look at is whether or not there should be the current county attorney type system or a district attorney system.

SEN. SHOCKLEY said that he thought the on SJR 40 study was very political. He said there is a movement amongst the lawyers in the state to go to a district attorney system with the county attorneys purely giving civil advice to the counties. He said he did not think SJR 40 should be a staff white paper.

SEN. CAROL WILLIAMS asked what the LJIC was obligated to do. She asked if the LJIC could not do a full study on one study, and it could do a white paper on another study, is it the LJIC's obligation to do the full study on SJR 6 based on what the Legislature told the staff?

MS. HEFFELFINGER directed the Committee to page 10 and 11 of the proposed Study Plan, and explained that a white paper concept is more staff research than input by a committee. Typical of any study, there would be the background report, the panel presentations and the round table. In a white paper, there wouldn't have the panel presentations. She said that in a white paper "plus" (as proposed in the Study Plan), there would be a panel discussion and more interaction with the committee. However, the study would primarily be a staff research paper.

ACTING CHAIR McGEE said that he personally liked the white paper idea.

SEN. WILLIAMS said that when the LJIC deals with stakeholders and invites people to round table discussions on the SJR 6 study, it should look at Native Americans and be sure that they are included as somebody who comes to talk to the Committee at the meeting.

ACTING CHAIR McGEE said that he noticed that there are three people representing Indian tribes on the Commission for the Public Defender Program.

DISCUSSION ON SJR 40 and HJR 15

SEN. CAROL WILLIAMS said that she would like the LJIC to do a white paper "plus" on SJR 40. She asked Ms. Heffelfinger what was meant by "access to data" on the HJR 15 study outline. MS. HEFFELFINGER explained that staff does a preliminary study outline prior to presenting recommendations to the Legislative Council on what level of staff support to provide

to each study. The researchers look at what information is available on the topic and analyze the capacity to answer the study questions posed in the resolution. She said that when staff looks at how to meet the study objectives and the question that arose with how to analyze something if you do not have data, for example, on how many people of a certain race or ethnic background are assigned counsel as opposed to hiring an attorney?

SEN. WILLIAMS asked why a researcher could not see who has been sentenced to the Montana State Prison and get data; why a researcher could not track it that way and then follow the sentencing backwards to what the quality of counsel the person was given? MS.

HEFFELFINGER said that as a research analyst, to make that information meaningful for the study, she would have to be able to make a correlation between the sentencing and the ethnic background of a person. She said that to say that there is a relationship to ethnic background and the quality of counsel, or to the arrest rate, or detention, or the sentencing patterns and to all of the other criteria that are listed in the study, the data has to correlate. However, the data providing raw numbers of incarcerated Native Americans, for example, does not provide for that correlation.

SEN. WILLIAMS asked whether there would be figures or data for a contractor. She asked if a contractor went out and had time to do this, would they be able to get more data? MS.

HEFFELFINGER said that she did not know and the reason that the Legislative Council actually took the recommendation of staff for a limited white paper, a white paper "minus", is that to answer that question there almost needs to be a study to determine how to do the study. The white paper "minus" is aimed at answering those [sic] question, what data do we have, what is the capacity that we have now to collect the data, what data do we need to collect, what data don't we collect, how do we fill the gaps, and how much will it cost to fill the gap so that we can actually do a study that meets the objectives in the resolution. Ms. Heffelfinger said it also involves deciding if the Legislature wants to start requiring that this information be collected, change some state laws, add more reporting requirements to the agencies that are involved, and how much is that going to cost those agencies to start reporting that data. The Legislature would also need to specify when and how the data should be reported. Ms. Heffelfinger explained that the purpose of the white paper would be to discuss those questions and how to set up the conditions that would allow for a meaningful study of the issues outline in HJR 15.

REP. JEANNE WINDHAM said that the HJR 15 resolution started out as a conclusion that there was a disparity in legal services provided or a disparity in sentencing. She said she also sees it as a study within a study and that she is for the white paper "minus".

SEN. SHOCKLEY said that to HJR 15 was an exercise in futility because the LJIC has have no

facts, no evidence to study. Sen. Shockley said he thinks there is no accurate statistics about the number of Native Americans in the prison system because when they check in, they are asked if they are Indian or if they are not Indian. He said he did not know how someone would ever get accurate information from self reporting or how one would ever be able to correlate ethnic group with the number of incarcerated persons who received public defenders versus private counsel.

ACTING CHAIR McGEE asked if Sen. Shockley thought it was fair to capsulize what he said, that the allocation of resources and the white paper" minus" is adequate HJR 15. SEN. SHOCKLEY said he supported a "minus", "minus" approach.

ACTING CHAIR McGEE said that he thinks that there are some cultural issues that would have to be considered because it is not just the legal system, it is how people think about what they do and what is important to them.

REP. WINDHAM said that she would use the word socioeconomic because there are cultural reasons people become police officers and lawyers and judges and criminals, all sorts of things. There is a socioeconomic component there which would still be qualitative and it is all over the board in the state.

ACTING CHAIR McGEE said the question is, what should this Committee do with regard to HJR 15? He said that he thinks that staff has offered us a proposal, Legislative Council has reviewed that proposal, Ms. Heffelfinger said her proposal is a reflection of the Legislative Council's decision, and unless somebody wants to do something more exhaustive when Rep. Parker is here, this Committee can take this issue up again.

SEN. GARY PERRY said he would refer everyone on the first page of HJR 15, lines 27 through 29, which indicate federal jurisdiction, federal prisons, federal supervisions, etc., and the data there is not reflected in the state's statistics, although that can be obtained. He said that what cannot be obtained is court records and history that are in tribal courts. On lines 11 and 12, page 2 of the resolution, the resolution makes recommendations for the criminal justice and correction systems in the judiciary to alleviate any disparate treatment of minorities. Sen. Perry said that he recommends that one of the things to do in the white paper is to include a move towards a coordination of court records between tribal courts and those courts outside the reservation and to do a study of the history of crimes within the reservations as well.

Rep. Diane Rice moved to adopt the proposed work plan and allocation of resources as presented with an element of flexibility should something arise that requires changes in

the future. Motion passed unanimously.

SEN. CROMLEY asked Ms. Heffelfinger if the Committee members will be getting reports on two issues far enough in advance of the meeting that they can review them. MS.

HEFFELFINGER said that she will make every effort to get that information to the members ten days before the meeting. REP. WINDHAM wanted to know if that could be emailed to her. Ms. Heffelfinger said yes.

ADMINISTRATIVE BUSINESS

SHERI HEFFELFINGER discussed travel vouchers; any material copied and mailed to the members prior to scheduled meetings should be brought to the meeting because copies will not be made for the members at the meeting.

SEN. JESSE LASLOVICH informed the Committee that he will miss some meetings starting in September because of school and requested that the material for the missed meetings be mailed to him.

ADJOURN

ACTING CHAIR McGEE adjourned the meeting at 2:45 p.m.

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