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# Law and Justice Interim Committee

## 59th Montana Legislature

### SENATE MEMBERS

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

### HOUSE MEMBERS

JOHN PARKER--Chair  
GEORGE EVERETT  
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.**

November 17, 2005

Capitol Building, Room 102  
Helena, Montana

### **COMMITTEE MEMBERS PRESENT**

REP. JOHN PARKER, Chair

SEN. BRENT CROMLEY  
SEN. JESSE LASLOVICH  
SEN. JIM SHOCKLEY  
SEN. CAROL WILLIAMS

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

### **COMMITTEE MEMBERS EXCUSED**

SEN. DANIEL MCGEE, Vice Chair  
SEN. GARY PERRY  
REP. GEORGE EVERETT

### **STAFF PRESENT**

SHERI HEFFELFINGER, Legislative Research Analyst  
VALENCIA LANE, Staff Attorney  
FONG HOM, Secretary

### **Visitors**

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

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

The meeting was called to order by the presiding officer, REP. JOHN PARKER, at 8:50 a.m. The secretary noted the roll. Sen. McGee and Sen. Perry were excused.

## **CONSUMER PROTECTION ISSUES - Pam Bucy, Attorney General's Office**

PAM BUCY, Assistant Attorney General, said that the Office of Consumer Protection is now under the Department of Justice and gave an overview of the function of the office. Ms. Bucy described the various issues that consumers face, which are listed below.

**Predatory Lending.** Predatory lending is a relatively broad situation and occurs primarily in sub-prime mortgage markets where targets are borrowers who use collateral in their homes for debt consolidation or other consumer credit purposes. This is a big part of predatory lending, but now there are other lending outlets; i.e., payday lenders, title lenders, rent-to-own.

**Home Mortgages.** Equity stripping is done in home mortgage departments involving hidden loan terms; i.e., balloon payment, loan flipping, loan packing and the home improvement loan scams.

**Equity stripping.** A lender will seek out someone whose home is almost paid for, or someone who has a lot of equity in their home, and will often ask you to pad your income by adding babysitting expenses and other things to qualify for a loan you might not otherwise qualify for. These loans have very high interest rates and high processing fees. The lender is not concerned about whether you make your payments and the reason is, your house is almost paid for and if you miss a payment, they will foreclose on your house.

**Hidden loan terms.** The best example of this is a balloon payment. Often their monthly payments will be reduced because the lender is offering a loan which allows someone to just pay interest or pay a partial interest payment for a year. After that year, a balloon payment is due and it is usually sold to someone who will be able to refinance at that time.

**Loan flipping.** Lenders refinance borrower's loans repeatedly. It is the same loan for the same amount of money, but each time they are charging high fees to reprocess the loan. Sometimes they include a prepayment penalty when they are doing the refinancing.

**Loan packing.** Products are added; i.e., credit insurance, padded closing costs and recording fees, inflated appraisal costs, broker fees to the loan package.

**Home improvement loan scam.** This occurs when a contractor, a roofer, siding company comes and tells you that you need a new roof and they can do it for you, they can finance it for you, and finally, they take a lien on your house to do that. The elderly population are especially susceptible to this scam.

**Payday lenders.** These are advancement companies. They carefully word how much it will cost to take out a loan. They state on their contracts "the bi-weekly cost is \$10.00 per \$100.00 borrowed." They do not talk about an APR. In Montana, the average loan is \$300. The APR becomes 780%. This preys on the most vulnerable population.

**Rent-to-own.** This allows you to use an item for a short period of time; you pay rent on that item; you do not purchase the item until you have paid enough rent to purchase the item. However, if you miss a payment regardless of how much you paid, they will repossess it.

**Title loans.** Money is borrowed using a car title as collateral, which the finance company keeps. If you have difficulty paying the loan back, the lender tells you to pay the interest until the next month and they will not repossess your car. This keeps happening; you can't pay the loan but you keep paying the interest, and eventually you end up paying more in the end of the month interest fees totally more than what you borrowed.

#### **QUESTIONS FROM THE COMMITTEE**

SEN. SHOCKLEY asked Ms. Bucy if she was talking about mortgages or trust indentures. MS. BUCY said that she was talking about mortgages, although some of those schemes would be applicable in a trust indenture. SEN. SHOCKLEY asked about usury law. MS. BUCY said that the usury law in Montana only applies to banks.

SEN. WILLIAMS asked for a copy of Ms. Bucy's presentation, which Ms. Bucy said that she would provide to the Committee.

#### **SJR 6 – ACCESS TO JUSTICE FOR LOW INCOME MONTANANS - Sheri Heffelfinger, LSD**

SHERI HEFFELFINGER gave highlights from the last meeting on SJR 6 ([EXHIBIT 1](#)), summarized the issues and options so far identified, gave a progress report on her research identifying funding sources and budgets, and reviewed Defining the Needs and What Comes Next ([EXHIBIT 2](#)).

#### **SELF-HELP LAW PROJECT - Tara Veazey, Director of Self-Help Law Project**

TARA VEAZEY presented an overview of the Self-Help Law Project. Ms. Veazey discussed information on statistics and budget resources of Montana Legal Services ([EXHIBIT 3](#)). Ms. Veazey said that by using the GIS technology, they were able to map small amounts of data in order to look at trends. She also discussed eligibility standards for a family unit size of 1 through 8 at both the 125% level and the 180% level.

DEBBIE PATTERSON, former client, Helena, spoke about her experience as a victim and survivor of domestic abuse and how she found help from Montana Legal Services and the Friendship Center.

DONNA COFF, former client, Sidney, read and submitted her testimony to the Committee ([EXHIBIT 4](#)).

#### **MONTANA STATE BAR - Chris Manos, Executive Director**

CHRIS MANOS presented a brief overview of the pro bono obligation of attorneys and reported that the legal needs study is moving ahead toward publication. He distributed to the Committee a copy of an article written by D. Michael Dale, which appeared in the October 2005 issue of The Montana Lawyer regarding a study which found profound levels of unmet legal needs ([EXHIBIT 5](#)).

BETH BAKER, Attorney, Volunteer Chair of the State Bar's Access to Justice Committee said that is aware that the Committee is trying to grasp the nature of the problems and issues affecting real people in Montana. Ms. Baker passed out a copy of a letter from a client who resides in Lincoln (**EXHIBIT 6**) describing how having a pro bono lawyer helped her. Ms. Baker said that there are several initiatives underway for law firms to participate in pro bono services, work with the Law School to try to bring the culture of pro bono to law students, and try to coordinate pro bono services. Ms. Baker said that she sees the nature of this problem being three-fold: one, the understaffing at Montana Legal Services and other legal aid programs; two, the need for education and assistance with self-help litigants; and three, the need to increase pro bono services.

JUDY MEADOWS, Librarian of State Law Library, Chair of the Montana Supreme Court's Commission on Self-Represented Litigants, said that the Law Library is the only public law library serving lay people in the entire state and that 75% of the users of the Law Library are lay people who do not qualify for legal services. Ms. Meadows said that one of the projects that the Pro Se Commission is involved in is traveling around the state conducting training sessions with the Clerks of Court, helping them understand the difference between legal information and legal advice, and trying to get them to understand that they can give more information without straying over the line. The Commission is also attempting to get judges to be more forthcoming in the courtroom and going the extra mile to assist the self-represented litigants.

#### **PUBLIC COMMENT**

KANDI MATTHEWS-JENKINS, Missoula, said that for the past five years she has been advocating for the parents and children who are caught up in Child Protection Services and that the last two years have been spent attending hearings of the Law and Justice Interim Committee dealing with the public defender system. She said that making it possible for those who cannot afford legal representation to get legal services is a good thing, but it will be to no avail if the current judicial system is autonomous and has no system of oversight. Ms. Matthews-Jenkins started to make comments regarding another committee, but Rep. Parker ruled her out of order and told her the Committee will not hear critiques on another committee. Ms. Matthews-Jenkins told the Committee that she is filing a petition with this Committee and with the AG's Office and other pertinent legal places. (**EXHIBIT 7**)

PASTOR COOK, Stevensville, introduced his son, Matthew Cook, and gave a brief history of his son's case. Mr. Cook started to talk about his court-appointed lawyer, and Rep. Parker told Mr. Cook that the Committee will not hear criticism on individuals whether they are legislators or private attorneys but will welcome comments about how laws can or cannot be changed. Mr. Cook said that the system doesn't work and that you cannot have people in the system working under the cover of law rather than following the law.

KIM ABBOTT, advocate and organizer of Working for Equality and Economic Liberation (WEEL), Helena, talked about her membership and the capacity of being an advocate. Ms. Abbott said that she agrees with many things that Beth Baker said earlier that there is the need

for pro bono programs in the state and the need for pro se assistance.

RICHARD STEVENS, Flathead County, said that he has been following SJR 6 and SJR 40. Mr. Stevens discussed his experience of filing a complaint against the Montana Supreme Court, Attorney General, and many other attorneys and public officials for taking away his right for trial by jury and taking property without due process or equal protection of law. He said that the problem with our system is that no one is held accountable.

REP. PARKER touched on a few points with regard to the Constitutional scope of public comment and wanted to remind the public that pursuant to Constitutional requirements of due process of law, public comment will be heard with regards to proposals to change the law and to adhere to the Constitution. He said that what the Committee cannot do, because of separation of powers, is intervene in an ongoing litigation and cannot review personnel matters of state employees because of their Constitutional right to privacy.

### **COMMITTEE DISCUSSION**

REP. WINDHAM said that she thought that there might be a correlation between low income and lack of knowledge or understanding of their legal rights. She thought that education would be a solution to address the individual's lack of understanding of the system, their legal rights, and what is available.

REP. RICE asked for more elaboration by Judy Meadows on her comment that 75% of her clients are people not hiring an attorney and yet seeking legal information because they do not qualify for legal aid. As a followup question, Rep. Rice asked Ms. Meadows why people do not know about the resources on the State website and the different departments. MS. MEADOWS said that people come to the Law Library after first going to Montana Legal Services. She said that if the Law Library cannot help, the person is referred to another entity. The Law Library gets 30 to 40 questions a day, many of which can be referred to the Montana Code Annotated. The Law Library has legal forms which the Pro Se Commission and Montana Legal Services worked on and were approved by the Commission, and those forms can be found on the Law Library website. The Law Library provides referrals to other organizations and to the Lawyer Referral System if a person needs an attorney.

REP. PARKER said that a number of possible solutions might be things that don't require legislation and prior to the Committee's next meeting, correspondence could be sent to the Chief Justice asking if this Committee could have a discussion of that issue. Rep. Parker said that another area outside the scope of legislation might be to talk to private sector computer companies about the possibility of donating computers for self-help work stations at the courthouses.

REP. PARKER asked Ms. Baker if she could let the Committee know about her meeting on January 27 to give all the interested parties an opportunity to discuss some of these issues. MS. BAKER said that the Montana Justice Foundation and the State Bar are organizing a

funding conference for legal services issues, which will be held on January 27, in Helena. The purpose of that conference is to identify targets and goals, needs, what money is needed for Access to Justice in Montana, and how to spend those resources.

REP. STOKER asked Ms. Baker to describe the process within the Bar Association for pro bono services, how lawyers are introduced to it, and what efforts are being done to expand the pro bono work. MS. BAKER said that the Access to Justice Committee, which is comprised of volunteers, is working to get information out about pro bono services. They are working with the Supreme Court Task Force, or sponsoring equal justice conferences which are continuing legal education programs for lawyers that focus on not only poverty law issues, but the pro bono requirement and the value of doing pro bono work. They are also working with local pro bono programs around the state to help coordinate and get the message out to private attorneys in communities about the need and programs available in their area.

REP. STOKER asked if anything is being distributed to the public which provides a rundown of some of these organizations? MS. MEADOWS, State Law Library, said that they distribute brochures and there are references and links available on their website. TARA VEAZEY, Montana Legal Services, said that they have an extensive community education project, they have a library of brochures on a wide variety of topics, including a legal resource guide as well as an overview of services from Montana Legal Services. Ms. Veazey said that the Self-Help Law Project has a brochure describing their services as well. They give free copies to all Clerk of Court in all the districts. CHRIS MANOS, Montana State Bar, said that they provide brochures from Legal Services, the State Bar, and other organizations. The State Bar has a legal resource guide that is provided to other organizations. When there are referrals to the State Bar, there is an attempt to answer questions and provide assistance rather than send them to someone else for help.

SEN. CROMLEY asked Ms. Veazey if she could give the Committee some idea of the types of problems that people are bringing. MS. VEAZEY turned the Committee's attention to the first page of her handout which listed some of their case statistics for 2004 and 2005. She said that Family Law makes up the bulk of what they do and that is consistent with the numbers the District Court sees. They serve and get requests for services on a variety of topics, including landlord/tenant, consumer law matters, native and migrant farm units, social security and public benefits cases.

SEN. WILLIAMS asked how many areas are covered by brochures and how many areas are not, and what would the cost be to put that information out? MS. BAKER said that they have a program that screens clients to determine who needs an actual lawyer and if they do, they are referred to lawyers doing pro bono work. Another program they have is if someone can be served by going through a clinic to learn how to fill out forms and can represent themselves. MS. VEAZEY said that she agrees that is necessary to get information out to make sure people know about the services that are available, but they do not have the resources to serve all the people they are getting requests from. MS. BAKER said that one of the things that Legal

Services has been doing in trying to address the needs of the rural areas is video conferencing. SEN. SHOCKLEY said that he thinks the focus should be on the consumers of legal services, but it was his perception that what a judge likes to see least is a pro se litigant.

JUDY MEADOWS said that the Chief Justice has suggested to the American Bar Association that a change in the Judicial Canons of Ethics be made by inserting language wherever appropriate that a judge's assistance to a pro se does not violate the judge's premise of impartiality. The Pro Se Commission has unanimously endorsed that. SEN. SHOCKLEY said that the judge is there to be fair and if it is a pro se litigant, particularly if one side has an attorney, he would feel an obligation to get involved. Sen. Shockley said that it would be a good idea if it could work. REP. PARKER said to Ms. Veazey that the Committee can break it down into two aspects: 1) there is a large number of people who qualify for help from Montana Legal Services and cannot get it because of scarce resources, and 2) there are those who don't qualify for the service but still cannot afford an attorney. MS. VEAZEY said that the State Bar is trying to develop a program with Montana Legal Services called the Modest Means Program. CHRIS MANOS said that the Modest Means Program is a pilot program that looks at groups of people at the poverty level of 195% to 200% who don't qualify for the legal services threshold guidelines, but can't afford to get the legal representation that they need.

REP. STOKER asked if the public defender has set criteria based on poverty for public defender work and at what percentage? MS. VEAZEY said that she is uncomfortable speaking for the Public Defender Commission, but if she had to guess, she would go higher. REP. PARKER said that he thought that there is a provision in the statute that even if a person does not qualify under the technical threshold for a public defender under the system, the judge can order one in the interest of justice.

DOUG MATTA, Phillipsburg, gave a brief history of each of his four cases and the costs of each case. He said that a civil procedures manual containing forms should be considered and made available that is geared to a pro se litigant. The problem that one runs into is when you go to the Clerk of Court for assistance, you are told immediately that they cannot advise you on the law. It is necessary that the pro se litigant have the assurance that a judge will hear your case on a timely basis.

SEN. CROMLEY said that in a lot of cases there is a need for some threshold screening process. A person needs to talk to somebody who is either a lawyer or skilled in the law and get some feedback on whether or not that person should pursue a remedy.

REP. WINDHAM said that even though there are other issues out there, we need to understand that we are talking about low income individuals needing legal services, how many pro se litigants are really low income as opposed to moderate income, they don't want to get a lawyer or a lawyer doesn't want to take their case.

SHERI HEFFELFINGER told the Committee that it is important for the Committee to have

dialogue and discussion about what it is that the Committee is most concerned about and it is important to rank for staff's benefit and for the Committee's objectives, what the Committee is concerned about. Ms. Heffelfinger said that she is asking for the Committee's discussion and articulation on what is the most important area to focus on.

REP. WINDHAM said that the Committee has been told that no matter how much money we put into it, Montana Legal Services will only be able to service a small portion of people who need services and for her, the focus becomes self-help programs and the standardized procedure forms where people go into the courthouse, get brochures, work on forms available through the computer.

**REP. PARKER moved to make it a number one issue on how to expand support for self-help legal resources throughout Montana. REP. WINDHAM seconded.**

SEN. CROMLEY said that he questioned the idea of making Rep. Parker's motion a number one issue and that the Committee should define a hierarchy of where a person goes for legal help. SEN. SHOCKLEY said that the Committee should endorse the idea of standard forms and getting them to the Bar and the Justices. Sen. Shockley said that if there was a rule or a statute that says if you help somebody get started, you are protected from liability to a limited extent. He said that would help in solving the court's problems and other people's problems. Sen. Shockley had another suggestion pertaining to landlord/tenant issues, where if the tenant is right, the tenant should get lawyer's fees. He said that the conservative members of the Republican Party always say, let's have the loser pay. If there were more loser pay statutes in certain situations like landlord/tenant, that would get more lawyers involved and it would tell the landlord that if you are wrong, you are going to court and you are going to end up paying the freight both ways. He said that those are his three suggestions for the record.

REP. WINDHAM said that she would like to expand or improve self-help mechanisms which would include forms, computers in the courtroom, brochures.

**REP. STOKER moved a substitute motion to eliminate "number one issue" so the motion would just say "expand pro se support throughout Montana." Motion carried unanimously.**

SHERI HEFFELFINGER told the Committee her reason for separating out the pro se issues from staff attorneys and pro bono services. She said that she needed to know what the Committee wants concerning state support for the Montana Legal Services Association and the people and organizations that provide salaried attorneys to provide legal services to low income people. Does the Committee want to focus more on the pro bono? SEN. CROMLEY said that he did not agree with separating pro se and pro bono services because he thinks that they are not separate and assisting Montana Legal Services could be both in terms of having additional staff lawyers or additional staff paralegals who would in turn provide support and assistance to

the private attorneys.

**SEN. CROMLEY** moved that another top priority would be to assist or expand the services available through the Montana Legal Services Association. Motion carried unanimously.

**SEN. SHOCKLEY** moved that the Law and Justice Interim Committee coordinate with the Montana State Bar, Legal Services, and the Supreme Court to facilitate the providing of forms to help pro se litigants. Motion carried unanimously.

**SEN. CROMLEY** moved to improve and support initial review referral to appropriate resources whether it is through a state agency or through the Montana Legal Services or through the State Bar. Motion carried unanimously.

**SEN. WILLIAMS** moved to coordinate and encourage pro bono legal services and to coordinate with judges to help people assigned to cases. Motion carried unanimously.

**SJR 40 STUDY OF COUNTY ATTORNEY SERVICES - Sheri Heffelfinger, LSD**

SHERI HEFFELFINGER gave a summary report on SJR 40 from the last meeting (**EXHIBIT 8**) and discussed Analysis of Available County Data (**EXHIBIT 9**). Ms. Heffelfinger also discussed information on district attorneys from other states (**EXHIBIT 10**).

**UPDATE ON COUNTY ATTORNEY ASSOCIATION AND MACo - Fred Van Valkenburg, Montana County Attorney Association**

FRED VAN VALKENBURG, Missoula County Attorney and President of the Montana County Attorney Association, said that since the Committee's last meeting the County Attorney Association has developed a numerical survey in an attempt to gather baseline data in regards to budget, number of deputies, amount of budget associated with criminal prosecutions and an amount associated with civil prosecutions, the number of felonies prosecuted, number of petitions revoked, number of dependent neglect or child abuse cases, and mental health cases, and youth court cases. Mr. Van Valkenburg told the Committee that the data they have is not useful because the definition of misdemeanor has been interpreted differently in terms of people's response to the survey. Mr. Van Valkenburg thought it important to start gathering data of this nature so they can have some measuring stick to look at. Written testimony describing the life of a county attorney was submitted to the Committee (**EXHIBIT 11**).

**STATE OF MONTANA ATTORNEY GENERAL'S OFFICE - Mike McGrath, Attorney General**

MIKE McGRATH, Attorney General, told the Committee that there is a proposal for a District Attorney System. He said that there are several ways to do that: 1) create a system that followed judicial districts where 22 judicial attorneys are elected within a particular judicial district in which they preside; 2) separate the civil functions from the criminal functions and have the district attorneys perform only criminal functions. Mr. McGrath told the Committee that

based on what he is hearing from discussions with committee members, other legislators, and the county attorneys themselves, there does not appear to be a lot of support at this time for creating a District Attorney System primarily because of the fiscal note.

Mr. McGrath presented a proposal that would deal with several issues: to provide assistance in areas that lack the resources to prosecute a major homicide or felony, to add additional FTEs to a unit that conducts internal affairs investigation, to have the Attorney General's Office handle death penalty cases from the beginning, to require that the decision for a death penalty conviction be made in conjunction with the County Attorney and the Attorney General, and to deal with the pay issue of county attorneys.

SKIP CULVER, Administrator of Centralized Services, Department of Justice, discussed the proposal from the Attorney General's Office (**EXHIBIT 12**) that would change the distribution of funds to counties for the payment of county attorney salaries.

#### **PUBLIC COMMENT ON SJR 40**

HAROLD BLATTIE, Director of MACo, said that he would like to draw the Committee's attention to the spreadsheets provided by Sheri Heffelfinger, particularly the salary numbers. He said that they did not include the added employer benefit costs for social security and workers comp. He said that there is about 15.42% in added cost that employers pay for those benefits and that that needed to be included to have a true reflection of the costs. He also said that benefits costs add about \$.5M more than what is actually being spent by both the state and the counties. He said that the other thing he would like to bring to the Committee's attention is that neither columns included the costs of health insurance.

#### **ROUND TABLE DISCUSSION**

REP. PARKER invited the presenters to come to the table and help the Committee identify issues for which legislation might be developed.

REP. RICE asked Mr. Blattie about the status of part time county attorneys. MR. BLATTIE said that he knew that some county attorneys did get transitioned to full time over the course of the past year. MR. VAN VALKENBURG said that the changes that the Attorney General's Office highlighted on the spreadsheet came about after a meeting with the Attorney General's staff. The County Attorneys Association raised the issue that if this formula that the Attorney General was proposing went into effect, it would freeze in place what is there right now and some counties will probably move to full time county attorneys in the near future.

REP. STOKER asked Mr. McGrath if a county government is required to provide prosecution services and if they were also required to prosecute crime. MR. McGRATH said that a county is required to provide prosecution services and to prosecute crime, but the county is not required to have a county attorney. He said the proposal presented would build some incentives for small counties to consolidate to improve prosecution services.

REP. PARKER asked if Mr. Van Valkenburg believed that the uniform filing procedures is adequate or could the County Attorneys Association suggest how statistics can be compiled uniformly. MR. VAN VALKENBURG said that he believed that the Supreme Court's order regarding uniformity of filing requirements will provide the Legislature and other interested parties with that information. He did not think that it will do much in terms of analyzing misdemeanor workload because misdemeanors are not filed in district court. REP. PARKER asked Mr. Van Valkenburg if he thought that it would be possible for the County Attorneys Association to work with the Attorney General's Office to come up with a draft standard of uniform statistics on misdemeanor. MR. VAN VALKENBURG said that it would be difficult to put that together because of the width and breadth of Montana. REP. WINDHAM asked if the salaries were based on caseload, would the number of felonies or misdemeanors filed show how many were dismissed, how many were settled, how many went to trial. MR. VAN VALKENBURG said that he did not think those statistics were kept anywhere and that it would be difficult to keep information of that nature because people don't have the time to keep time records. REP. WINDHAM asked that if a case is closed, is it just closed? MR. VAN VALKENBURG said that sometimes the case gets dismissed as part of a plea bargain process.

SEN. CROMLEY asked if there was a need for a standard for determining when the Attorney General becomes involved in prosecuting a felony and does the Attorney General have to take a case if it is requested by a county attorney? MR. McGRATH said that the ABA publishes prosecution standards that are ethical standards, and most prosecutors follow those in terms of how they would evaluate a case, but there are no standards in terms of how the Attorney General becomes involved in a case. It is a discretionary function whether or not the Attorney General takes a case.

REP. PARKER asked if the Attorney General believed that there should be incentives to encourage more cooperation from the county attorneys. MR. McGRATH said that they looked at that and had asked that Mr. Culver build into his fiscal analysis incentives for communities to consolidate prosecution services. He said it was very difficult to come up with anything that made sense other than natural incentives built into the proposal because the counties would still get the money that was in the entitlement program, but if a county consolidated with neighboring counties, they could create a district attorney in those communities and may save some dollars for the county that way.

SEN. SHOCKLEY said that he has been involved with the criminal justice system for a few sessions and that he carried a bill in 2003 that was supposed to set up a system that would allow the Legislature to know what was going on in the system. He said that the problem was that the Legislature did not have information regarding what was going on in the system and where the resources were needed and where the work was. The Legislature therefore underfunded a system called Full Court and as a result, the data provided during the Public Defender study was bogus. MR. VAN VALKENBURG said that he was referring to the uniform district court filing requirements that is going into place the first of January. Mr. Van Valkenburg said that he did not think that it will provide anything meaningful about misdemeanor cases

because most misdemeanor cases are not filed in district court. SEN. SHOCKLEY asked if it was anticipated in the near future that misdemeanors will be put into the system? MR. VAN VALKENBURG said that he could not answer that because he has not been personally involved in that. SEN. SHOCKLEY asked that when that becomes available online in January, are they going to be able to compare the workload of the deputies in Missoula County with the workload of another county? MR. VAN VALKENBURG said that they will have situations where cases will not be filed against multiple defendants in one court proceeding. There will be a separate court proceeding for each defendant but there will still be situations where there will be multiple counts.

REP. PARKER asked the staff to provide to the Committee with a copy of the new uniform filing standards in the next mailing packet and if there could be a guest speaker who could respond with information about court technology.

SHERI HEFFELFINGER said in response to Sen. Shockley's comment on information gathered for the Public Defender Study, that the problem was finding out which of those cases were public defender cases and which were not. The district courts did not have a methodology for tagging what cases were public defender cases and which were not, so that when the Court Administrator's IT people wrote the programs and went into each individual court and collected their data, there was no way to match the case with the public defender. So the Court Administrator identified public defender cases as cases with the name of attorney known to be a public defender. However, the attorney may or may not have been acting as public defender at that time. That is why that information was questionable.

REP. PARKER asked Mr. McGrath if he thought that there will be a need to step up resources on the prosecution side to make sure that there is not an imbalance compared to public defender resources. MR. McGRATH said that he was not sure that he could answer that question until they have experience with the public defender system. He said his experience as a prosecutor has been that he would prefer to try a case where the defense attorney is experienced and well trained and will do a better job representing their client and dealing with issues.

REP. PARKER asked both Mr. Van Valkenburg and Mr. McGrath if there was a possibility that the manpower in the public defender system might grow to the level that it will outgun the manpower on the prosecution side. MR. McGRATH said that that was a possibility but it would depend on the situation in each county. MR. VAN VALKENBURG said that he is concerned about what the status of resources will be five or ten years from now if there are no significant changes made in the way in which the decision making process works regarding allocation of resources. Ten years from now prosecution services will be behind defense services in terms of the ability to deal with the issues out there. County attorneys are dealing with victims of crime and victims of crime are not going to be happy if they begin to see resources move towards the defense side because that is where the potential revenue growth is and the county commissioners will be in a situation where they will not have resources to be put towards

prosecution services.

MR. BLATTIE said that he feels that the majority of the county attorneys are spending more than half of their time on criminal matters. His concern is that there is a continual erosion of the county attorney's time because they need to handle civil matters. Mr. Blattie said he wanted to remind the Committee that the directive in the study bill was to review the various means of prosecution services and county civil legal services and to also review the funding of both of those and have some balance in there.

SEN. WILLIAMS said that she would appreciate a follow up on Mr. McGrath's comment regarding the Child Protective Services Division in the Department of Justice. She said that the Children, Families, Health and Human Services Interim Committee was working on SJR 37 and she thought it would be helpful if Mr. McGrath would get information to that committee about what the needs of his department are because CFHHS is looking at how to make the system work better for children. MR. McGRATH said that they just did a review of caseload numbers in their unit and the requests for assistance from local communities, and he could make that available and would be happy present that to the CFHHS Committee.

SEN. SHOCKLEY said that he is not voting for any more support of the counties in the criminal justice system until he can believe the data is relevant to the vote. Sen. Shockley feels that the system has to be able to provide the Legislature with the right data to make sure enough money is given. MR. VAN VALKENBURG told Sen. Shockley that unless they appropriate some money and set some standards in terms of data gathering, the Legislature will not get uniform data that is very good. If you want that information, the Legislature is going to have to come up with the means of gathering the data. SEN. SHOCKLEY said that it was represented to the Legislature that that was what Full Court was going to do. REP. PARKER suggested that those questions be addressed to the Office of the Court Administrator.

REP. WINDHAM asked what the Association's position is on a district attorney's model where the district attorney would provide all the prosecution services and individual county attorneys would handle all civil matters. MR. VAN VALKENBURG said the Association, at this point, believes that there should be a county attorney who essentially has both criminal and civil responsibilities. REP. WINDHAM said that at the last meeting she heard that there was no support for a district attorney type of system. MR. VAN VALKENBURG said that just because the Association takes a particular position does not mean that it is a position that is in the best interest of the State of Montana. He said that it is the duty and obligation of a legislator to decide what is in the best interest of the State of Montana and if one concludes that the system described is a better system than the county attorneys would like to have, then it is the job of a legislator to put that in place. The county attorneys think that the county attorney system, as it exists now, is in the best interest of the State of Montana, but most county attorneys would say that the state needs to put more resources into criminal prosecution, not less. REP. WINDHAM asked Mr. Van Valkenburg what makes county attorneys believe that they need to know the criminal as well as the civil. MR. VAN VALKENBURG said that, with respect to the criminal,

there is a long history in the United States and particularly in the western United States where you have an elected prosecutor who has the authority of the electorate behind his office and can use that authority of the electorate to carry out what he or she perceives to be in the community's best interest; and in terms of the civil side, particularly in Montana, the system has worked best with an elected county attorney because an elected county attorney becomes to some degree a check and balance on the executives within the county. If county commissioners were able to operate solely on what they wanted to do and hired an attorney who was basically their hired gun, commissioners, in our opinion, would be more likely to stray from the law.

REP. PARKER said that he wanted to have each panel member and the two county attorneys in the audience to take a look at the issues being listed on the flip chart papers and let the Committee know if anything is missing. At the end of the session, they will vote on which of the listed issues to address.

REP. PARKER said that there was discussion at the last meeting about supplementing resources at the state level that could provide assistance to county attorneys on civil matters. Rep. Parker asked Mr. McGrath if that was something that was needed to be added on the list, a civil services bureau within the AG's office, or is that a function that is already covered by MACo? MR. McGRATH said that they had discussed that issue and there is a need for it. MR. BLATTIE said that for the Committee's information, the Montana Association of Counties insures 46 counties and 150+ special purpose districts in the state for property, casualty and liability insurance. MACo employs an attorney who does HR guidance and advice and is paid by the insurance pool as a risk management pool to try to prevent litigation. Mr. Blattie said that having civil assistance in the Attorney General's Office would be something that he would want to consult with his membership about. He thinks that the connection between the county attorney and the voters is valuable in conveying the values of a particular community and that an elected official has a pretty good handle on what their community wants and doesn't want.

REP. PARKER asked Mr. Van Valkenburg if the county attorney is obligated to defend the State of Montana in certain cases where the state is sued in that county? MR. VAN VALKENBURG said that he can't think that if the state is named as a defendant a situation where a county attorney would be defending the state, there are no cases that he knew of in his office where they had anything like that. MR. McGRATH said that there is a statute that requires county attorneys to represent the state, but as a practical matter, it isn't done.

**BOARD OF CRIME CONTROL - Roland Mena, Executive Director, Board of Crime Control**

ROLAND MENA spoke about the multi-jurisdictional drug task force efforts throughout the state. Mr. Mena handed out a statement made by Sen. Max Baucus (**EXHIBIT 13**) on the issue of reduction of the Federal Justices Systems Grant that funds the drug task force efforts. He also handed out a spreadsheet of how the task forces are funded (**EXHIBIT 14**) and a map that showed coverage of the state (**EXHIBIT 14**) by the task forces. He talked about the

consequences of the \$600,000 reduction in funds. The other issue Mr. Mena wanted to address was the dilemma with jails. The jails are holding around 176 state prisoners and there are an estimated 400 unserved felony warrants because the jails have no room. He said that more community-based treatment programs are needed and that there is also a need to provide transition and re-entry programs for inmates coming back out of the prison, to redirect resources into this population, and to do more public education.

REP. STOKER said that based on a conversation with Sen. Shockley and Mr. Slaughter, the number was 4000 unserved felony warrants because of the lack of secure beds. MR. MENA said that was correct.

#### **UPDATE ON SJR 37 - Sen. Carol Williams**

SEN. CAROL WILLIAMS gave an update on SJR 37. The CFHHS meeting took place on October 20, 2005. The CFHHS Interim Committee and staff identified areas where further research was requested. The staff put together a panel which included people from Intake, Service and Placement, Courts, Mediation and Public Defender, and last, Permanency and Placement. Many of the public comments that were heard that day were incorporated into the study. Some issues that were discussed were: the Indian Child Welfare Act, doing a better job working with the tribes and with the county attorneys on those issues; the issue of termination of parental rights, whether or not the courts were doing their work in a timely manner, suggestions on how parties could do a better job making sure judges get all the information that they need in order to make a decision, and accountability on all levels. The next CFHHS meeting will be held on January 26 and January 27, 2006.

REP. RICE asked Susan Fox, Research Analyst for CFHHS, if minutes of the October meeting were available on the website. MS. FOX said they were not because the secretary, who is also the secretary for the Law and Justice Interim Committee is still working on them, but that the minutes should be posted in the next week or so.

REP. PARKER said that he would like to make a formal request of the Legislative Services Division to consider hiring additional temp staff for secretarial resources. It is not fair to place the blame on our secretary who does an excellent job, but for Committees to perform their duties, they need minutes in a more timely fashion. Rep. Parker said that he would like to officially request that more money be put together because this Committee is trying to evaluate possible legislation and the fact that they did not have minutes in advance of this meeting today was a real setback.

REP. RICE gave a report on the CFHHS' August meeting which she and Rep. Stoker and Sen. Shockley had attended. She said that their main thoughts at that meeting were to try to determine whether or not there was going to be a joint sub-committee with members from both committees. From what she remembered, it was their feeling that CFHHS wanted a joint sub-committee but because the financial resources were not there, that was not possible. SEN. SHOCKLEY added that some of the testimony by the public was totally out of bounds and was

the most egregious, obnoxious testimony he has ever heard. He said it was embarrassing to be associated with them. He said that it was terrible and he thought that if the waters hadn't been tainted, and the witnesses hadn't been totally out of line and abusive, resources might have been found.

REP. PARKER said that he would like to touch again on public comment. He said that the public has a due process right to be here and advise us as we evaluate possible legislation, but personal attacks on individuals will not be allowed, personnel critiques of elected officials or state employees will not be allowed because that violates their constitutional right of privacy.

### **ADMINISTRATIVE RULES - Valencia Lane, Staff Attorney**

VALENCIA LANE did not have anything to report on Administrative Rules.

### **IDENTIFY COUNTY ATTORNEY ISSUES FOR FURTHER STUDY**

The Committee discussed and voted on in round table fashion issues of importance for further study with regard to County Attorneys. The issues and voting results are listed below:

- 1) The issue of uniformity of training among county attorneys and deputy county attorneys around the state. IN FAVOR: Sen. Cromley, Rep. Windham, Sen. Williams, Rep. Parker; OPPOSED: Rep. Rice, Rep. Wilson, Sen. Shockley, Rep. Stoker. This issue failed on a tie vote.
- 2) The issue of pay equity among county attorneys and deputy county attorneys in different counties. IN FAVOR: Sen. Cromley, Rep. Windham, Rep. Wilson, Rep. Stoker, Sen. Williams, Rep. Parker. OPPOSED: Rep. Rice and Sen. Shockley. This issue passed 6-2.
- 3) The issue of the mechanics of county attorney pay, the draft proposal brought by Skip Culver, Department of Justice. This issue overlaps with the concept of creating voluntary incentives for counties to consolidate prosecution services. This issue passed unanimously.
- 4) The issue of uniform statistics, how we evaluate the number of felonies, and the number of misdemeanors prosecuted in different counties. This issue passed unanimously.
- 5) The issue of the Prosecution Services Bureau. This overlaps with SJR 37 in terms of how the PSB handles Youth in Need of Care cases, and could also potentially involve the high level felony cases such as homicides around the state. Do we want to keep tracking the issue of the Bureau in the AG's Office? IN FAVOR: Sen. Williams, Rep. Parker, Sen. Shockley. OPPOSED: Sen. Cromley, Rep. Rice, Rep. Stoker, Rep. Windham, Rep. Wilson. This issue failed 3-5.

- 6) The issue of lack of resources for the State Crime Lab. This issue passed unanimously.
- 7) The issue of equitable prosecution in different counties. Some counties might choose not to prosecute domestic violence cases whereas other counties will. The problem is that counties do things differently. IN FAVOR: Sen. Cromley, Sen. Williams, Rep. Parker. OPPOSED: Rep. Windham, Rep. Stoker, Rep. Rice, Sen. Shockley, Rep. Wilson. This issue failed 3-5.
- 8) The issue of parity of resources with the Public Defender System between prosecution resources around the state. It was decided that there was no need to call a vote on this issue because it was premature and the Committee wanted to wait and see what happens with the Public Defender System.
- 9) The issue of whether the state should pay a higher percentage than 50% of salary and all costs for the county attorneys or not. It was voted unanimously not to pursue this issue.
- 10) The issue that if the state public defender system starts to outgun the prosecutors, will the county prosecutors will put more of their energy into criminal cases than the civil. It was thought to be part of issue (8). It was agreed that the Committee will not consider this issue.
- 11) The issue of support for county attorneys in their civil law function coming from the Attorney General's Office. This issue failed unanimously.
- 12) The issue of the District Attorney model was discussed by Rep. Windham. She said that all she heard was that the support was not coming from the Association of County Attorneys and it may or may not be true that they are protecting their turf, but she did not want to discount the issue. She said that everything the Committee has heard has argued for looking at that. SEN. SHOCKLEY said that if in the future this Committee determines that the prosecution is outgunned, then the District Attorney System would make more sense.

#### **NEXT MEETING DATE**

The next meeting will be on January 19, 2006.

#### **ADJOURN**

REP. PARKER adjourned the meeting at 4:40 p.m.

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