



**Law and Justice Interim Committee**  
**59th Montana Legislature**

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**COMMITTEE STAFF**

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

# PUBLIC DEFENDER SUBCOMMITTEE MINUTES

Date: August 7, 2006

Montana Association of Counties  
Conference Room

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.**

## **SUBCOMMITTEE MEMBERS PRESENT**

SEN. DANIEL MCGEE (Chairman)  
SEN. CAROL WILLIAMS  
REP. DIANE RICE  
REP. JEANNE WINDHAM

## **STAFF PRESENT**

SHERI HEFFELFINGER, Lead Staff  
VALENCIA LANE, Staff Attorney  
PAT GERVAIS, Legislative Fiscal Analyst  
CYNTHIA A. PETERSON, Secretary

## **Visitors**

Visitors' list (Attachment 1)  
Agenda (Attachment 2).

## **COMMITTEE ACTION**

- The Subcommittee voted to accept a formula presented by Scott Turner bringing the reductions in the county entitlement fund to \$990,000.
- The Subcommittee requested Ms. Heffelfinger to draft legislation regarding the reductions in the county entitlement fund which will be presented to the Law and Justice Interim Committee (LJIC).

## **AGENDA**

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

Sen. McGee, Chairman of the Public Defender Subcommittee (Subcommittee), called the meeting to order at 8:09 a.m. The secretary noted the roll (Attachment 3).

## **REVIEW OF SB 146 ENTITLEMENT SHARE PROVISIONS--Sheri Heffelfinger, Legislative Research Analyst**

Sheri Heffelfinger, Legislative Research Analyst, submitted a written Historical Context of Public Defender Funding (EXHIBIT 1). Ms. Heffelfinger also provided a copy of SB 146 (EXHIBIT 2), as well as a copy of the SB 146 Fiscal Note (EXHIBIT 3). Ms. Heffelfinger referred the Subcommittee to the Handbook on the Payment of State Costs for Montana's District Courts (EXHIBIT 4).

### **Questions from the Subcommittee**

Sen. Williams asked why all counties were not audited. Chairman McGee stated it was not worth auditing all the counties because of the expense. Chairman McGee thought a complete audit may have given a larger picture, but would have been too time consuming.

## **COUNTY CONCERNS AND PERSPECTIVES--Mr. Harold Blattie, Executive Director, Montana Association of Counties, AND COUNTY REPRESENTATIVES**

Harold Blattie, Executive Director, Montana Association of Counties (MACo), submitted copies of the SB 146 Public Defender Cost Allocation - County and County Share of Consolidation (EXHIBIT 5) and a red-lined version of SB 146 Public Defender Cost Allocation--County and County Share of Consolidation, which used the Justice Court public defender cost figures identified in the audit (EXHIBIT 6). Mr. Blattie talked about the District Court Council policies and that some costs were not eligible for reimbursement but had been reimbursed in the past. The audit was conducted to identify for the Legislature the total costs. He said that Section 3-5-901, MCA, provided that the state pay all the district court costs and if a county paid for some costs, it was the Legislature's intent to reimburse the counties. Mr. Blattie also submitted a Comparison of SB 146 entitlement share numbers to the Audit findings (EXHIBIT 7). Mr. Blattie suggested it would be fair and equitable to use only the justice court costs from FY 2004. Mr. Blattie stated the counties in the audit were chosen because they have public defender offices and did not utilize contract attorneys for public defender cases. Mr. Blattie also stated the majority of the money is in the six counties, so that was the most effective way of doing the audit.

### **Questions from the Subcommittee**

Rep. Rice asked Mr. Blattie to identify where he thought the discrepancies were in the audit. Mr. Blattie quoted SB 146 and Section 3-5-901, MCA, which enumerated state costs and county costs.

Chairman McGee noted Mr. Blattie's reference reflected the argument that the state should pay all unreimbursed district court public defender costs, and that counties should pay only justice court public defender costs. Mr. Blattie said all counties not audited paid only justice court costs. Chairman McGee noted that when SB 146 was crafted, everyone agreed that only the counties with the highest unreimbursed costs would be audited.

- **Missoula County**

Dale Bickell, Missoula County, agreed with MACo's position and wanted to see the six audited counties treated the same as the other counties. Mr. Bickell suggested the costs of the program should only be the new costs for the state.

**(Tape 1; Side B)**

- **Gallatin County**

There was no representative present from Gallatin County.

- **Lewis and Clark County**

Ron Alles, Chief Administrator for Lewis and Clark County, identified the issues as very complex. Mr. Alles believed counties did submit costs differently across the state. Mr. Alles commended the Subcommittee for its attempt to track down the costs. Mr. Alles believed the numbers were relatively accurate. In the interest of simplicity and trying to do what is right for the state as a whole, Mr. Alles stated Lewis and Clark County would concede and pay the unreimbursed district court costs. Mr. Alles believed at some point, the public defender costs would meet enable the counties to reach a break even point, and the state would be paying more. Mr. Alles would like to do the right thing for everybody and keep it simple.

- **Cascade County**

Randy Hand, Cascade County, stated Cascade County wants to pay its fair share like everyone else.

- **Flathead County**

No representative from Flathead County was present. Mr. Blattie informed the Subcommittee that Flathead County has a new administrative officer who did participate in the conference call prior to the meeting and supported the principle that the other five counties adopted providing for the use of justice court costs only.

- **Yellowstone County**

Scott Turner, Finance Director for Yellowstone County, said Yellowstone County's position was that the Subcommittee should consider philosophically what is appropriate for state funding and what is appropriate for county funding. Mr. Turner pointed out the types of cases the Office of State Public Defender takes are state cases, and misdemeanor cases are not state actions. Mr. Turner believed the counties should be responsible for public defense for misdemeanor cases and the state should be responsible for public defense in actions in district court. Therefore, the

counties should only fund justice court cases, and the state should fund the state cases. Mr. Turner explained that Yellowstone County believes throughout the years, it has not been reimbursed for items that should have been reimbursable. Mr. Turner believed FY 2004 was a good year to base the audit on and advised against moving backwards.

#### **Questions from the Subcommittee**

Chairman McGee asked about what should remain a county expense. Mr. Turner said justice court cases should be left at the county level.

#### **Public Testimony**

There was no public testimony offered.

#### **Questions from the Subcommittee**

Rep. Rice asked whether Gallatin County was included in the conference call. Mr. Blattie stated a representative from Gallatin County was on the call and did not comment.

Ms. Heffelfinger said on Exhibit 5, the last column says SB 146 numbers, but for audited counties, those are not the SB 146 numbers. Mr. Blattie explained the column shows only the justice court component of the SB 146 numbers.

- **Gallatin County**

Michael Harris, Legislative liason for the Gallatin County Commissioners, wanted to ensure that the reimbursement was accurate and the numbers Gallatin County got from the public defender administrator are the same. Mr. Harris wanted to ensure they are not being charged twice for the public defender system. He said he supported paying justice court costs only.

#### **Questions from the Subcommittee**

Sen. Williams asked Mr. Harris what he meant by his reference to "double dipping." Mr. Harris explained the concern was that it looked like they were being charged twice.

Chairman McGee wanted to know how much Gallatin County paid pay for public defender district court costs during FY 2004. Mr. Harris responded Gallatin County paid \$455,000 for district court costs and was reimbursed \$331,000. Chairman McGee stated the Legislature is concerned about there being adequate funding for the public defender system. Chairman McGee believed the issue is not state versus counties because it is all taxpayer money. Chairman McGee said he wanted to be sure there was adequate money to fund the public defender office. Chairman McGee stated he wanted to make things whole for the counties, but wanted to take the right amount.

Commissioner John Ostlund, Yellowstone County, was interested in paying all the misdemeanor costs for justice court in Yellowstone County. Commissioner Ostlund believed the state was supposed to reimburse all the costs of felonies in district court.

Ms. Heffelfinger explained that the key question was whether the state assumed public defender

costs with district court assumption. Ms. Heffelfinger reviewed the history of district court assumption and the ambiguity in Section 3-5-901, MCA.

Linda Stahl, Missoula County, participated in developing SB 218 (2003 Session), which would have created a state-wide criminal trial and appellate public defender system. Ms. Stahl recalled that the counties did not want to have the cost of the state wide public defender system or of the appellate defender system.

Sen. Williams asked for comment from Mr. Blattie. Mr. Blattie stated the clerks of district court and the public defenders remained county employees during district court assumption but wondered whether their public defender costs would be reimbursed in a timely manner. Mr. Blattie noted that the public defender system today is not the one Montana used to have, and said that the counties should not be responsible for costs that exceed those of the old system.

## **BREAK**

*(Tape 2; Side A)*

### **COMMITTEE DISCUSSION AND QUESTIONS WITH INVITED GUESTS**

- **Brent Doig, Governor's Budget Office**

Mr. Doig submitted a spread sheet comparing the public defender costs found in the audit with the costs estimated in SB 146 (EXHIBIT 8). Mr. Doig stated it was Judy Paynter's opinion that the district court costs reported by the counties during district court assumption could be disputed.

- **Beth McLaughlin, Office of the Court Administrator**

Ms. McLaughlin stated her office has no position on what the numbers be. Ms. McLaughlin stated when state assumption occurred in July 2002, the District Court Council, had worked through each section of Section 3-5-901, MCA, and developed policy on what should be paid by the state as part of district court assumption. Ms. McLaughlin offered to answer questions about the handbook.

Chairman McGee summarized when a county submitted a bill to be paid, the Office of the Court Administrator compared the bill to the rules regarding reimbursement, then decided what should be paid. Ms. McLaughlin agreed. Chairman McGee addressed FY 04 and wanted to know why items were not fully reimbursed and whether it was because the money was not available or whether some of the items submitted were non-reimbursable. Ms. McLaughlin believed items not reimbursed in FY 04 were not included in the handbook. Ms. McLaughlin suggested some items may not have been reasonable expenses. Ms. McLaughlin cited an example of a non-reimbursable expense as being ancillary expenses associated with a psychiatric exam.

Sen. Williams asked why they would want to go back to 2001 numbers when the audit provided more current numbers. Ms. Heffelfinger explained Ms. Paynter's rational was that the base year used for district court assumption was 2001. She noted that MACo wanted to use the 2004 numbers for justice court. She explained that the bottom chart represents a compromise with MACo to use the FY 01 figures for district court costs and the FY 04 figures for the justice court

costs.

Chairman McGee addressed Mr. Turner and asked as the financial officer for Yellowstone County whether he had a guide as to what was and was not reimbursable. Mr. Turner said yes. Chairman McGee asked if there were times when the county may have submitted a bill to the Court Administrator's Office hoping it would be paid, but knowing it may not be reimbursable. Mr. Turner replied the county attempted to differentiate between eligible and ineligible items before the items were submitted, but there were items where reimbursement was not clear.

- **Pat Gervais, Legislative Fiscal Division**

Ms. Gervais pointed out the Subcommittee has substantial information, but emphasized the Subcommittee now has the advantage of having audited numbers. Ms. Gervais stated there are arguments pros and cons, but believed the Subcommittee needed to make a policy decision. Ms. Gervais offered to respond to questions.

Rep. Rice asked Mr. Harris whether Gallatin County's circumstances were similar to Yellowstone County's experience. Mr. Harris believed so but stated he would have to look at the nature of each un-reimbursed item. Mr. Harris believed some of the items lacked proper documentation.

- **Angie Lang, Legislative Audit Division**

Angie Lang, Legislative Audit Division, had no position, but stated she was available for questions.

Chairman McGee noted there were audits done in six counties, but the audit did not determine whether the Court Administrator's Office should have reimbursed those amounts. Ms. Lang agreed her office did not attempt to determine what should or should not have been reimbursed. Chairman McGee was curious about whether the non-reimbursement occurred because of a lack of money or whether items that were billed were not eligible for reimbursement.

Chairman McGee solicited input from the Subcommittee. The members of the Subcommittee wished to proceed into the work session.

**COMMITTEE WORK SESSION AND ACTION TO DEVELOP A RECOMMENDATION TO THE FULL LJIC ABOUT A COMMITTEE BILL TO ADJUST THE ENTITLEMENT SHARE AMOUNTS IN SB 146.**

Chairman McGee expressed his desire to take action that would be fair to both the state and the counties. Chairman McGee requested each county provide the Subcommittee with a number it believed would be appropriate for their county. Chairman McGee believed it was unknown whether the costs submitted were reimbursable, but that there were rules providing guidance and those rules changed continually. Chairman McGee believed the umbilical cord between the state and county should be severed and the counties should be made whole. Chairman McGee emphasized there is a cost benefit to the counties because they no longer have to do public defense work. Chairman McGee expressed concern about there being no representative present from Flathead County.

Rep. Rice agreed with Chairman McGee and suggested there will be issues in the future, and the line needed to be drawn. Rep. Rice thought there would always be discrepancies and counties would always want reimbursement. Rep. Rice agreed with the \$971,000 figure found in the audit.

Rep. Windham stated she agrees with Chairman McGee and believed there is a cost benefit to solving the problem since it costs the counties money every time they pursue the matter. Rep. Windham doubted whether any numbers were entirely accurate, but stated she would rather rely on the numbers provided in the audit.

Sen. Williams wondered why anyone would rely on the 2001 numbers and believed the 2004 audit numbers would probably be more accurate. Chairman McGee explained 2004 was the base year for all the other counties. Sen. Williams understood why the other counties were not audited, but stated it was not the fault of the six counties that all counties were not audited. Chairman McGee suggested the Subcommittee take a recess to give the counties an opportunity to calculate an amount to be presented to the Subcommittee.

## **BREAK**

Chairman McGee requested the counties to present their numbers.

Randy Hand explained the Cascade County Commissioners would support \$106,390. Mr. Hand's original proposal had been \$77,198.

No one from Flathead County was present.

Mike Harris, Legislative Coordinator, from Gallatin County, stated Gallatin County had an issue with the 2004 figure. Gallatin County's figure was \$135,000-\$140,000 range and that range meets their desire. Under Chairman McGee's formula the amount would be \$228,530 and the Gallatin County Commissioners did not authorize Mr. Harris to go that high.

Ron Alles stated Lewis and Clark County is committed to \$160,000.

Dale Bickell, Missoula County, stated Missoula County's original amount was \$172,600. Mr. Bickell stated both proposals, by population and Sen. McGee's "aspirin" proposal would be approximately \$197,000. Mr. Bickell believed Missoula County was landing where it should.

Scott Turner, Finance Director for Yellowstone County, noted Yellowstone County's original allocation was \$266,600, and thought that was a reasonable number.

## ***(Tape 2; Side B)***

Mr. Hand clarified Cascade County's proposal was \$77,198. Sen. McGee requested input from the Subcommittee. Sen. McGee identified three proposals for consideration: (1) the amounts indicated by the counties; (2) a per capita fee based on population; and (3) Sen. McGee's "aspirin" formula. Flathead County's fee if it were based on population would be \$160,000. Mr. Hand stated Cascade County opposed tying the figure to population.

Sen. Williams thought it would be easier to do the \$2 per capita fee and stated that would be

her preference.

Rep. Windham stated she was stuck on Judy Paynter's numbers and wanted to be clear that once the issue is resolved, it should not be revisited. Rep. Windham expressed her concern about counties in 2002 and 2003 when there was a shortfall in state reimbursements and believed the those counties should be reimbursed. Rep. Windham stated she would be more comfortable with the compromise and with carrying a separate appropriations bill requesting the money the counties did not receive when no money was available. Sen. McGee agreed and stated he would like to make the counties whole on those things that should have been legitimately paid.

Rep. Rice stated she could see problems with the proposed figures and thought both figures are somewhat skewed.

McGee explained his formula and stated he recognizes there is a cost benefit for counties to no longer deal with public defense; and he desires to cut the umbilical cord and get the counties out of the picture once and for all. Sen. McGee stated he is looking for an equitable way to divide up \$1 million.

Mr. Bickell, Missoula, suggested in light of the relative closeness in numbers between both the population formula and the "aspirin" formula, the two numbers could be averaged together.

## **LUNCH BREAK**

Chairman McGee acknowledged there is no magical number and at the end of the day an amount will have been negotiated for each of the counties. Chairman McGee explained the total amount of the audit for the six years for the six counties is \$25,219,080 total. Chairman McGee explained the percentages of that total attributable to each of the six counties. Chairman McGee also calculated the percentages of non-reimbursed costs for the six counties. Chairman McGee summarized the question as how to distribute \$1 million in costs equitably.

Rep. Rice asked if the amount is based on population, whether there would still be a \$1 million cap. Sen. McGee stated it would be approximately \$1 million. Rep Rice was concerned about obligating future legislatures to something that could grow beyond what they have control over. Rep. Rice thought there could be other factors in specific areas that may impact the counties.

Rep. Windham requested clarification that the payment is for past performance and now that the Office of State Public Defender has taken over, the counties are done. Ms. Heffelfinger replied that was correct. Ms. Heffelfinger explained the deducted amount from the entitlement share is a one-time deduction from the 2007 entitlement share payments. When that amount is taken out of the county base, then every subsequent year there is an inflationary factor which

impacts the amount of the entitlement share a county receives. The question is does that number that comes out of the FY 07 base include the un-reimbursed district court costs and justice court costs.

Mr. Turner explained his compromise proposal to the Subcommittee which included the following:

• Cascade	100,000
• Flathead	80,000
• Gallatin	160,000
• Lewis & Clark	160,000
• Missoula	200,000
• Yellowstone	270,000
Total	\$970,000

The county representatives indicated they could live with the proposal.

Sen. Williams moved to accept the formula as presented by Mr. Turner for reductions in the county entitlement fund and to present those numbers to the full Law and Justice Interim Committee (LJIC).

Chairman McGee requested comments from the audience. Mr. Bickell requested clarification from Mr. Turner on how he arrived at the numbers. Mr. Turner explained he took the numbers from the FY 04 audit and the numbers based on population (\$2 per head), and averaged the numbers together. Mr. Turner then tweaked the numbers according to what the counties had indicated was acceptable. Mr. Turner pointed out that Cascade County comes out high because of its population, so he looked at what Cascade County indicated was an acceptable level. Mr. Turner explained how he reduced the number for Gallatin and Yellowstone Counties. Also, Mr. Turner thought Flathead County seemed low, so he brought it up to a more consistent level.

Ron Allis, Lewis and Clark County, expressed his concern that if the \$970,000 is insufficient, that the difference could be made up in some other county.

Mr. Blattie pointed out the \$1,040,000 that was used as a basis included justice court costs from all counties plus added district court costs. Therefore, there is a part of the \$1,040,000 that is attributable and being deducted from all of the other counties' entitlement share. Mr. Blattie thought that the number was most likely in the \$960,000-\$970,000 range.

Sen. Williams asked Ms. Heffelfinger for input. Ms. Heffelfinger stated the \$1,040,000 was based on the MACo survey for justice court costs and did not include any district court costs. Ms. Heffelfinger recalled the \$970,000 was the bottom line, but was bumped up to \$1,040,000 by MACo. Mr. Blattie agreed, but could not recall how MACo arrived at the \$1,040,000. Mr. Blattie stated he misspoke and the \$1,040,000 did include justice court costs.

Chairman McGee asked Sen. Williams if she would consider making Flathead County \$100,000 rather than \$80,000.

Sen. Williams made a substitute motion to accept the formula as presented by Mr. Turner for reductions in the county entitlement fund to \$990,000, which would include an increase for Flathead County to \$100,000, and that the Subcommittee present the formula to the full LJIC. Sen. Williams' motion carried unanimously by voice vote.

### **Instructions to Staff**

Chairman McGee requested Ms. Heffelfinger to draft the necessary legislation.

Chairman McGee requested the counties to revisit their non-reimbursed costs in 2002-03 and identify which costs were not reimbursed due to lack of money and present those costs at the August 31, 2006, Law and Justice Interim Committee (LJIC) meeting. Chairman McGee stated it would be necessary to begin looking at requesting an appropriation for payback. Ms. Lang and Harold will work on providing the numbers.

Rep. Rice moved to request Ms. Heffelfinger to draft a bill for LJIC at the end of the month. The Motion carried unanimously by voice vote. Chairman McGee requested Ms. Heffelfinger to draft a discussion letter summarizing the ideas the Subcommittee considered and its deliberations.

Sen. Williams thanked Chairman McGee for all his work and stated she found the formulas presented by Chairman McGee to be very helpful in the Subcommittee's deliberations.

### **ADJOURNMENT**

There being no further business to come before the Subcommittee, the meeting adjourned at 1:59 p.m.

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