



# Children, Families, Health, and Human Services Interim Committee

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## 58th Montana Legislature

### SENATE MEMBERS

JOHN ESP  
JERRY O'NEIL  
GERALD PEASE  
TRUDI SCHMIDT

### HOUSE MEMBERS

EVE FRANKLIN--Vice Chair  
DON ROBERTS--Chair  
EDITH CLARK  
CAROL GIBSON

### COMMITTEE STAFF

SUSAN FOX, Research Analyst  
GREG PETESCH, Staff Attorney  
DAWN FIELD, Secretary

# MINUTES

June 29, 2004

Room 152, State Capitol  
Helena, Montana

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.**

### COMMITTEE MEMBERS PRESENT

REP. DON ROBERTS, Chair  
REP. EVE FRANKLIN, Vice Chair

SEN. JOHN ESP  
SEN. JERRY O'NEIL  
SEN. GERALD PEASE  
SEN. TRUDI SCHMIDT

REP. EDITH CLARK  
REP. CAROL GIBSON

### STAFF PRESENT

SUSAN FOX, Research Analyst  
GREG PETESCH, Staff Attorney  
DAWN FIELD, Secretary

### AGENDA & VISITORS' LIST

Agenda, Attachment #1.  
Visitors' list, Attachment #2.

## **COMMITTEE ACTION**

The Committee:

- approved the April 29 and 30, 2004, minutes as written;
- approved the drafting of certain OBPP-approved DPHHS bill draft requests;
- approved drafting LC 0031 - a bill to allow drug felons to receive food stamps and TANF benefits;
- approved drafting LC C&F1 - a bill to clarify the rights of the mental health ombudsman to protected health care information;
- approved a bill to clarify the safe haven newborn protection act bill;
- approved the drafting of legislation to address the issue of SB 35 commitment costs;
- approved placing the issue of unregulated youth residential care programs on the August agenda; and
- voted to repeal SB 473.

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

REP. ROBERTS called the meeting to order at 8:31 a.m. The secretary noted the roll, all members were present. The minutes from the April 29 and 30, 2004, meeting were approved as written by a unanimous voice vote.

## **MONITORING DPHHS**

**Director's Report - John Chappuis, Deputy Director**, provided the Committee with the Children and Adult Medicaid Eligibles report (EXHIBIT #1) which covered:

- Medicaid statistics through May 2004;
- TANF Eligibles;
- Pregnant Women and Children;
- Medicaid Disabled Eligibles;
- Aged & Disabled Eligibles residing in an institution;
- Medicaid Eligibles aged 65 & Up;
- Family Medicaid 2003-2004;
- Transitional Medicaid 2003-2004; and
- Poverty Child: Infant to 18 Years of Age 2003-2004.

REP. ROBERTS said there has been concern in the past that TANF benefits have decreased on the Reservations due to frustration with the system and the perceived lack of access. Mr. Chappuis said the Unified Application for receiving Medicaid benefits has been the main source of frustration. He explained that Montana has an asset test which is more comprehensive than other types of tests, requires more effort and information, and can be daunting to complete. He said there has been some discussion on alternative types of tests but that no changes have been implemented as of yet.

REP. FRANKLIN asked if the tribes had completed the process to assume their own TANF programs. Mr. Chappuis said the Salish-Kootenai and Fort Belknap tribes have completed the process and others are still in progress.

SEN. PEASE commented that distance and transportation barriers are big factors and that is why the reservations wanted to administer their own TANF programs.

Mr. Chappuis also distributed and discussed Montana-specific Medicaid data and information (EXHIBIT #2). Mr. Chappuis highlighted some of the information for the Committee:

- the Medicaid budget for fiscal year 2004 is approximately \$646 million;
- Montana has approximately 8,000 active providers;
- Montana has an innovative "nurse first" program for chronic disease management which is projected to save between \$2 and 3 million annually;
- Montana is participating in a pilot program which will fit 150 heart patients with an interactive device that will monitor their condition and alert case managers if there is a problem;
- a Preferred Drug List (PDL) is being prepared for the Medicaid Pharmacy Program; and
- the projected Medicaid benefits costs for fiscal years 2004-2007.

REP. FRANKLIN asked what agencies will be included in the preferred drug list program, if participation will be voluntary or mandatory, and how this program will impact the private nonprofit organizations, such as mental health homes, that order and/or purchase drugs with public money. Mr. Chappuis said the program will affect outpatient programs only and participation will be mandatory, but that a physician may request an exception through an appeal process. Mr. Chappuis also discussed the importance of rebates from the drug companies and other related cost issues.

REP. FRANKLIN asked if the PDL program is different, connected to, or the same as the recently publicized drug purchasing pools. Mr. Chappuis said this program is not limited to mental health and these drugs would not be excluded but the discounts and rebates that are available are important and the Department will work to get them, when appropriate. The general Medicaid population will all be covered under this, and it will be determined by class and be evidence-based, tailored to Montana.

Mr. Chappuis said the PDL program is not technically a purchasing pool but rather, the Department partners with a contractor (First Health, which serves a pool of several states) and the drugs on the common preferred drug lists that all the states in the partnership use, higher rebates can be leveraged because of this. The State does not purchase drugs, the pharmacies do, but the state can leverage a rebate through a bill to the pharmacy company. This can result in a savings of 12 to 13%. Montana does very well at its 5%, which is the equivalent of \$5 million.

REP. FRANKLIN said it was her perspective that many contracting agencies have too much latitude and that cost savings standards should be established in order to save taxpayer money.

SEN. SCHMIDT asked if the 340B Drug Pricing Program is a part of this program. Mr. Chappuis said he was not familiar with the 340B Program and would get back to SEN. SCHMIDT when he had information.

SEN. SCHMIDT asked what the timeline is for completing the PDL. Mr. Chappuis said the formulary committee working on the project is made up of pharmacists, stakeholders, advocates, and physicians, and that it should be completed by January of 2005.

SEN. SCHMIDT asked for additional information on the First Health company. Mr. Chappius said:

- A Request for Proposal (RFP) was put out in November of 2003 and First Health was the successful bidder.
- Montana contracted with it to manage the PDL program, in order to leverage the enhanced rebates.
- First Health is a multi-state company, which is a benefit because of the increased purchasing power.
- The cost of the First Health contract is approximately \$400,000 for two years.

SEN. SCHMIDT said the 340B Drug Pricing Program included the prison population and asked if the PDL will be linked to Montana's correctional system. Mr. Chappius said it was not at this time.

REP. GIBSON commented that the number of people in need of assistance is overwhelming and it concerns her that the balance remaining in the general fund/DPHHS budget is not being used to help these people. Mr. Chappius said the balance is due to a reversion of funds and may not be spent on anything it was not originally appropriated for. He noted that the main reason there was a reversion of funds was because the federal FMAP funding was made available. Mr. Chappius emphasized that this amount is separate from the TANF funding and shouldn't be confused. The TANF block grant level of benefit is static, regardless of the case load.

SEN. ESP asked if there would have been funds to revert if the FMAP match funds would not have been made to Montana. Mr. Chappius said the reversion would have been much smaller without the FMAP funds. SEN. ESP asked if there would be FMAP funds available in the next several years. Mr. Chappius said it was very doubtful that these funds would be available again but that the Department is projected to stay within its budget for the next several years and did not foresee a problem.

### **State Health Planning Grant (SPG)**

**Tanya Ask, Co-Chair, Steering Committee, and Maggie Bullock, Administrator, Public Health and Safety Division,** distributed an outline of the presentation (EXHIBIT #3) and provided a comprehensive overview of the SPG final work product (EXHIBIT #4 - blue folder). Ms. Ask said Montana was awarded the grant to study the issue of the uninsured in the State of Montana and to propose solutions to address the issue. The presentation included detailed information on:

- the history of the SPG;
- the Workgroups and Committee makeup;
- the vision and values of the study;
- reports and information compiled by the Workgroup and Committee;
- recommendations and coverage options; and
- the six-year plan with an emphasis on 2004/2005; and
- a cost/benefit analysis.

Ms. Ask noted that the data compiled was specific to Montana and therefore, invaluable to the Workgroup in formulating its recommendations.

SEN. SCHMIDT asked how the workgroup would be proceeding with the implementation of the recommendations. Ms. Bullock said the Department is working closely with the Medicaid Redesign efforts and will be moving forward with those recommendations, and that the implementation plans for the remaining recommendations have not yet been finalized. Ms. Ask added that there will be recommendations for specific pieces of legislation coming through individuals who have worked on this study. Several of the recommendations do not require legislation and will be presented as initiatives.

SEN. ESP asked if the federal government's Health Savings Account could impact the SPG proposals. Ms. Ask said the SPG Committee realizes that whatever course of action the federal government takes will impact the State's proposals and that an attempt was made to anticipate how potential state and federal legislation would interact.

### **Public Health Advisory Council - Medicaid Redesign**

Mr. Chappuis presented a summary of the eighteen Medicaid Redesign recommendations (EXHIBIT #5). He explained that all of the work done to formulate the recommendations was done in open meetings with public participation and that overall, the Department is very pleased with the results. He said the Final Report is not yet published but would be made available to the Committee members as soon as it is published.

SEN. O'NEILL asked, in Recommendation #8d, regarding the development of community services (EXHIBIT #5), if a spouse or caretaker of a patient who has been released from the state hospital and is residing in the community will have any control over whether or not the patient takes his/her prescribed medications and/or participates in whatever services may have been prescribed for that patient. **Joyce DeCunzo, Administrator, Addictive and Mental Disorders Division (AMDD)**, said there is not a clear way to assure that medications are taken or services used but that there is legislation that allows judges to order "assisted treatment" in a community setting. She noted that, for reasons unknown to her, this legislation is infrequently used. SEN. O'NEILL asked if improving the outpatient system would save money. Ms. DeCunzo said this issue will be considered and she thought it would result in savings.

SEN. ESP asked, regarding Recommendation #7 - Community Health Center Demonstration Project (EXHIBIT #5), what the obstacles were that caused the Department to defer pursuing the demonstration projects. Mr. Chappuis said providers in communities were concerned about the workload required by this type of project and that there was also an alienation factor with providers about losing some of their patients.

REP. FRANKLIN said she perceived an ethical dilemma: that on one hand, the strategic planning group's work depends on outreach and case-finding and, on the other, the Medicaid Redesign work focuses on lowering case loads. She asked how to bridge this dilemma from a public policy perspective. Mr. Chappuis agreed this was a difficult issue and stated that it is a constant battle between being fiscally responsible and reaching those truly in need.

## **DPHHS Legislative Package - EXHIBIT #6 - Priority 1**

Mr. Chappuis said the Department's highest legislative priority was the continuation of the Tobacco Settlement Account, as established in MCA 17-6-606, and asked for the Committee's support for reauthorizing this account.

**Hank Hudson, Human & Community Services Division**, presented legislative proposals for the Medicaid Redesign Project (EXHIBIT #7):

1. an extended Medicaid Asset transfer look-back;
2. to begin asset transfer penalty period in the month of Medicaid application (Priority 34, EXHIBIT #7);
3. to delegate eligibility determinations to Tribes;
4. changing Tribal TANF payment requirements;
5. to establish a TANF electronic benefit transfer program (Priority 17, EXHIBIT #7); and
6. to allow food stamp and TANF benefits for convicted drug felons.

Mr. Hudson said the biggest bill of the legislative session is HB 2 and the biggest part of HB 2 for his division is the TANF Block Grant. He said goals have been identified to ensure that the TANF program is sustainable:

- to provide childcare to low income working families;
- to provide a very aggressive program of employment; and
- barrier reductions to get people to work. Mr. Hudson distributed TANF benefits expenditures through May of 2004 (EXHIBIT #8).

REP. ROBERTS called attention the letter sent to Committee members from Rep. Carol Juneau urging restoration of the TANF benefits (EXHIBIT #9).

SEN. ESP asked, regarding the TANF Block Grant, if adjustments for caseload growth are made. Mr. Hudson said no adjustments are made, that it is based on calculations made in 1996.

**Dave Thorsen, Operations/Fiscal Chief, Child and Family Services Division**, presented two legislative proposals:

- to incorporate more specific provisions into the Montana Indian Child Welfare Act (ICWA), Child Abuse and Neglect, (Priority 14, Exhibit #7), and
- Omnibus bill to revise various provisions of Title 41, chapter 3, MCA, and Title 42, MCA, (Priority 23, Exhibit #7).

SEN. ESP asked if the proposals to amend confidentiality requirements were due to testimony presented at past Children and Families Interim Committee meetings and if the confidentiality of other people involved has been considered. Mr. Thorsen said the amendment would only be applicable to the person making the statements and would not breach the confidentiality of other individuals. SEN. ESP expressed his opinion that this would be easier said than done.

**Lonnie Olson, Child Support Enforcement**, presented two legislative proposals:

- Interaction with Tribal IV-D programs which amends provisions concerning Child Support Enforcement Division (CSED) authority (Priority 13, Exhibit #7);
- a CSED Omnibus bill, mainly housekeeping in nature (Priority 22, Exhibit #7); and

- review and simplification of child support orders (Priority 25, Exhibit #7).

**Maggie Bullock, Administrator, Public Health and Safety Division,** presented two legislative proposals:

- modification of the Public Health statutes (Priority 18, Exhibit #7), and
- licensing and regulation of tattoo and body piercing businesses (Priority 31, Exhibit #7).

**Mary Dalton, Quality Assurance Program,** presented two legislative proposals:

- critical access hospital issues (Priority 12, Exhibit #7) ,and
- unregulated youth home facilities (Priority 33, Exhibit #7).

**Joe Mathews, Administrator, Disabilities Services Division,** presented two legislative proposals:

- amend the definition of "seriously developmentally disabled" (Priority 8, Exhibit #7),and
- Medicaid Redesign (Priority 3, Exhibit #7).

**Chuck Hunter, Child & Adult Health Resources Division,** presented five legislative proposals:

- removing the hospital tax sunset (Priority 2, Exhibit #7);
- clarification of system of care model (Priority 10, Exhibit #7);
- CHIP simplified application form (Priority 24, Exhibit #7);
- waiver authority under the HIFA waiver (Priority 39); and
- Severely Emotionally Disturbed (SED) waiver for children (Priority 40).

**Kelly Williams, Senior Longterm Care Division Administrator, Rick Bartos, Bureau Chief, Adult Protective Services,** presented five legislative proposals:

- extension of waters edge funding sources (Priority 5, Exhibit #7);
- power of attorney - vulnerable seniors (Priority 16, Exhibit #7);
- amend Title 72 powers and responsibilities of a guardian (Priority 19, Exhibit #7);
- mandating representation for Adult Protective Services - county attorney duties (Priority 20, Exhibit #7);
- elder abuse and neglect penalties (Priority 21, Exhibit #7);

**Joyce DeCunzo, Administrator, AMDD,** presented two legislative proposals (EXHIBIT #10):

- to allow the billing of forensic patients (Priority 6), and
- pre-admission screening authority (Priority 7).

REP. FRANKLIN said she is very concerned about pre-admission screening (Priority 7) and feels it is an inappropriate way to deal with a much larger systemic problem. Ms. DeCunzo said the Department is very aware of concerns and is working closely with stakeholders to develop crisis stabilization services and detoxification services, in order to minimize the possible negative impacts.

**Greg Petesch, Staff Attorney, Legislative Services Division (LSD),** asked Russ Cater, regarding the billing of forensic patients (Priority 6, Exhibits 7 and 10), to address the legality of billing a criminally convicted patient for his/her care. **Mr. Cater, Chief Legal Counsel, DPHHS,** responded that he has not fully researched the legal aspects of this proposal but anticipated it would parallel the law already in place which allows other patients at the State Hospital to be

billed for services. Mr. Petesch said inmates in the State Prison are not billed for services. Mr. Crater said he was aware of that but that the inmates in Deer Lodge are not receiving the same type of medical treatment as the patients in the State Hospital. He said further research would be conducted.

Mr. Crater also presented four legislative proposals:

- administrative hearings representation (Priority 28, Exhibit #7);
- vital statistics changes (Priority 29, Exhibit #7); and
- eliminating the statutory requirement for a unified budget - Interagency Coordinated Council (Priority 32, Exhibit #7); and
- revise and clarify provider tax on ICF/MR (Priority 26, Exhibit #7).

Mr. Crater noted that the Department has withdrawn Priority 30 - interim study of AMDD facilities (Exhibit #7).

### **PUBLIC COMMENT**

**Mitzi Anderson, concerned citizen**, testified regarding the outpatient commitment law, 53-21-102, MCA, (EXHIBIT #11) and said that it is being grossly underutilized. Ms. Anderson provided her background as a citizen, parent, advocate, and teacher who is well-versed on mental health issues. Ms. Anderson said it is her understanding that the main reason this law is not being utilized is because no one knows about it. There also seems to be a mindset that if a person is allowed to "hit bottom" enough times, he will finally realize that he needs treatment. Unfortunately, most mentally ill people have no insight into their illness and are not capable of making this decision for themselves. Ms. Anderson discussed several provisions of the statute, (which she had highlighted for the Committee - EXHIBIT #11) and urged the Committee to not only familiarize themselves with this statute, but also to encourage the education and awareness of family members, mental healthcare providers, and judiciary/law enforcement personnel regarding this statute.

Ms. Anderson also distributed "*Mental Illness May Be Damaging To Your Brain*", written by Dr. Stephen M. Stahl, M.D., Ph.D. (EXHIBIT #12). Ms. Anderson concluded her testimony by quoting Dr. Jeff Leiberman: "75% of young people experiencing their first episode of schizophrenia, if treated within that first year with the new atypical medications, will have no residual cognitive affects". Ms. Anderson said using this approach is not only good medicine, but is economically sound as well.

SEN. ESP asked Ms. Anderson how she would implement an education plan. Ms. Anderson said a good place to start would be with the annual County Attorney convention. The DPHHS could also assist in the process by making sure that all case managers, mental health professionals, and providers are aware of the law and use it.

**Kandi Matthew-Jenkins, Missoula**, read testimony to the Committee regarding her ongoing difficulties with the Ravalli County Child Protective Services (EXHIBIT #13) and also provided a copy of "*Brainwashing: A synthesis of the Russian Textbook on Psychopolitics*" (EXHIBIT #14).

**Melissa Worthen, Missoula**, read a statement requesting an official investigation of DPHHS Child Protective Services by the Executive Branch and stated that her past testimony before the

Children and Families Interim Committee is being used against her. Ms. Worthen said the Department has filed a petition to terminate her parental rights and quoted from the petition: "Melissa Worthen continues to channel all of her efforts into fighting the Department by constantly writing letters to various legislative people, saying her husband has been wrongfully accused and her children were suffering as a result". Ms. Worthen said:

- It is her right to contact her legislators with her concerns.
- If the Department is allowed to file a petition to terminate her parental rights based on that right, it will set a precedent for other cases.
- If the Department is allowed to use Ms. Worthen's First Amendment rights to protect her children against her, it will create a serious breach to the family as a fundamental unit of society.
- The destruction of her family started 14 months ago and her husband was recently convicted of assaulting one of her daughters.
- Her parental rights are scheduled to be terminated in August and will complete the destruction of her family, and her children will have to live with strangers for the rest of their lives.
- She will be supporting legislation that supports the family and will oppose legislation that gives the DPHHS any powers that may destroy the family.

**Steve Crawford, grandfather,** testified that for three years, he has been denied visitation with his grandchild. He said he has filed petitions for access to his grandchild, that he has not received a hearing, and he would like to know who in the DPHHS has the right to deny him a hearing. He said he has sought help from legislators and has yet to receive any. Mr. Crawford said he would continue to fight for the right to see his grandchild.

**Pastor David Cook, Stevensville,** testified that he was there to ask for justice, not to complain. He said the Law and Justice Interim Committee has made the decision to investigate three cases being handled by the Ravalli County Child Protective Services and that the investigation is needed in order to help families that are losing their children. He asked the Children and Families Committee to join efforts with the Law and Justice Committee. Pastor Cook testified that his children have experienced emotional and health problems as a result of being removed from their home and that families need help to fight this.

**Al Nerling, Sun River,** testified that he was appearing before the Committee to "fight for our children from the abuse they are getting from our system and to take away the power they have". Mr. Nerling said he has been fighting for over 20 years and he asked the Committee for help.

**Krystina Nerling, Sun River,** testified that in her personal experience as a child who had been removed from her grandfather's care by Child Protective Services, more harm than good had been done. She said she was taken away from the only people who gave her love and care. Ms. Nerling said she was placed in 10 different foster homes and schools in 5 different cities. Efforts were made to keep her from her grandparents, medications were administered that affected her school work, and Ms. Nerling said she is very happy to be reunited with her grandparents. She said she wished for something to be done so these children the abuse can stop and asked the Committee to help.

## OTHER STUDY-RELATED REPORTS

### Coordinated Statewide Leadership (SJR 11): Bill Mercer, U.S. Attorney and Chairman, Montana Board of Crime Control (MBCC) - MBCC Proposal

Mr. Mercer read a prepared statement expressing his personal viewpoint on the need to develop a coordinated effort to control drug abuse in Montana (EXHIBIT #15).

REP. ROBERTS said previous testimony heard by the Committee indicates there is widespread concern regarding enforcement concerns and if a drug czar would be effective. Mr. Mercer said local task forces are being looked at carefully to determine if they are having the desired impact. He said it is not only a matter of enforcement, but of education and treatment as well.

REP. ROBERTS asked for Mr. Mercer's opinion of drug courts. Mr. Mercer said if a drug court's efforts are supported, they are effective. He noted that a drug court should be used just for initial offenders because serious criminals may try to take advantage of a drug court.

REP. ROBERTS asked if the drug czar would be able to work with Native American issues and laws. Mr. Mercer said drug cases on Reservations are prosecuted under federal law, with the exception of the Salish-Kootenai Tribe, which opted out of the federal system and is prosecuted in Lake County. If the State is to have a drug czar, the position would need to interact with both the Indian Health Service for treatment issues and the U.S. Attorney's Office for enforcement issues.

REP. CLARK asked Mr. Mercer if the MBCC has an official position on whether or not it supports the concept of creating a drug czar. Mr. Mercer said MBCC board makeup has changed recently and that he has not had the opportunity to discuss the position with the Board but suspected there would be support for this type of position.

SEN. SCHMIDT asked if there has been discussion with other states who have implemented a drug czar position. Mr. Mercer said he has not been in contact with other states but would do that if it was of interest to the Committee.

SEN. ESP suggested that Washington State be contacted because it's program concentrates on developing local infrastructure and has experienced a good level of success.

REP. CLARK asked Jean Branscum to comment on the upcoming summit on methamphetamine issues. **Jean Branscum, Health and Human Services Policy Advisor, Governor's Office**, said the meeting is scheduled for July 15, 2004, and is a follow-up to the Governor's Meth Summit held in June. A participant survey was done at the June summit and those recommendations have been compiled and will be presented at the July meeting. REP. CLARK asked if these recommendations would provide some guidance to the Committee in drafting legislation to establish a statewide coordinated leadership plan. Ms. Branscum thought the information would be very useful to the Committee.

## RELATED LEGISLATIVE AGENDAS

**Judy Smith, Women's Opportunity and Resource Development (WORD) and Fair Share Network, Missoula,** presented information on the Montana At-Risk Family Stabilization Package, saying that low income family advocates will be working in the 2005 legislative session to address the significant negative impact that the August 2003 TANF benefits reductions had on low income Montana families (EXHIBIT # 16). Ms. Smith discussed the details of the three proposals, expressed disappointment that the DPHHS has not brought this issue forward on its own, and said any support from Committee members would be welcomed.

**Jessie Lundborg, homeWORD Program, Missoula,** distributed information regarding payday lending practices. Ms. Lundborg said these businesses negatively affect low income families and estimated that 80% of 300-400 families she works with have payday loans (EXHIBIT #17). Ms. Lundborg's discussion also included regulatory options from other states which Montana could adopt to protect vulnerable Montana families and said advocate groups are evaluating each of the options. The original legislation which authorized these businesses to operate in Montana lacked key features to protect consumers. The legislation being proposed for 2005 will add these features in.

SEN. ESP asked how Ms. Lundborg determined that 80% of her clients have payday loans. Ms. Lundborg said it was an estimation based on her own observations and those of her co-workers.

REP. CLARK asked if an accurate statewide estimation of how these loans are affecting people is available. Ms. Smith said these numbers would be presented at the legislative session. Ms. Lundborg said the Consumer Protection Office will be working with WORD and homeWORD to prepare an accurate number.

SEN. ESP asked if WORD/homeWORD has considered developing this type of loan program to help out the clients that need it but would not charge the exorbitant interest rates. Ms. Smith and Ms. Lundborg said federal legislation will allow them to do that and that there has been discussion on this, but that the local credit unions and banks have been cooperative, so there is not need for it at this time.

Ms. Smith presented information on the Montana Fair Share Network and said the coalition will be coming together again to work in the 2005 legislative session for building a fair share tax menu, as it did in the 2003 session (EXHIBIT #18).

**Mary Caferro, Working for Equality and Economic Liberation (WEEL),** discussed WEEL's two legislative priorities:

- establishing a funding source for the At-home Infant Care Program which is currently in law but the implementation is contingent on federal or private funding; and
- restoration of TANF benefits.

**Janet Bush, Director, Montana Child Care Resource and Referral Network,** distributed a compilation of data about child care in Montana (EXHIBIT #19) and said the Network's legislative agenda has not yet been finalized. Ms. Bush did provide a general description of the four proposals which will be presented to the 2005 Legislature:

- funding for childcare payment assistance for low income working families;
- funding for children's healthcare services for low income working families;
- improved authority for DPHHS' Quality Assurance Division (QAD) to ensure that childcare licensing can close illegally operating childcare facilities or childcare facilities which pose a health and/or safety threat to children; and
- support for a school readiness or prekindergarten initiative.

Ms. Bush said the school readiness issue is becoming more important and has the Governor's support. It is also becoming a high priority nationally and that 42 states have implemented a readiness model. It is considered an economic development strategy by some states because of the cost savings realized in education intervention. The Office of Public Instruction (OPI) has identified universal full day kindergarten as a high priority and while it will have an impact on schools and daycare businesses, it is a better solution for families and children. It will require a lot of coordination between caregivers, families, schools, and other agencies, but can be done.

SEN. SCHMIDT asked Ms. Bush to elaborate on the need for increased QAD authority. Ms. Bush said it is difficult to conduct facility visits in remote areas of the state and this would provide the Department to have increased authority to deal with facilities which are not licensed or when there is a threat to health or safety.

REP. ROBERTS commented that caution should be used in granting additional authority to regulate childcare businesses because such authority could be abused, as has been the case in other states.

**Collette Gray, Opportunities, Inc.,** said she was appearing before the Committee as a board member of the Great Falls Advisory Council on Mental Health and requested a placeholder for legislation in the process of being approved by the statewide organization. She said the proposed legislation would be presented at the Committee's August meeting.

Ms. Gray said she was also appearing as representative of the Cascade County Law Clinic. She said the Clinic is asking DPHHS to restore \$60,000 funding to the CasCo Youth Project and would like the Committee's support also. Ms. Bush provided a brochure about the Cascade County Law Clinic (EXHIBIT #20) and program data (EXHIBIT #21).

### **Public Comment**

**Betty Whiting, Montana Association of Churches (MAC),** said:

- 130,000 Montanans live in poverty;
- MAC is most concerned with two groups of people: the people removed from the TANF rolls, either because of the 5-year limit or because of the benefit cut in 2003, and the low income people.
- MAC supports raising the minimum wage, raising the tax base so that people in poverty do not pay taxes; and allowing a state Earned Income Tax Credit (EXHIBIT #22). A sliding scale would be used to determine who would be eligible for the tax credit.
- As citizens of Montana, we all have a responsibility to look after the less fortunate.

Ms. Whiting also distributed a Families USA report written about Montana's tax revenues as a share of income and said it shows that new business activity and revenue increases when the

state pays money out for Medicaid (Medicaid: Good Medicine for State Economies -EXHIBIT #23). She also discussed Department of Revenue data showing Montana tax revenues as a share of income, regional changes in personal income, and regional changes in employment statistics (EXHIBIT #24).

**Lillian Gunder, Stevensville**, testified that her son was removed from her care by Ravalli County Department of Family Services (DFS) in 2001 and said not only has he been moved from foster home to foster home, but that the foster homes have exposed him to youth with drug addiction problems. Ms. Gunder said she feels powerless to help her son and is very concerned for his safety and well being. She asked the Committee to investigate Ravalli County DFS and to help return children back to their families before it is too late.

**Roxy Weaver** asked for an investigation of the Department of Health and Human Services, Division of Child and Family Services in Silver Bow County. Ms. Weaver said:

- Her parental rights were terminated after a two-year battle with the Department. The decision was reversed by the Montana Supreme Court but she still has not seen her daughter.
- She is not allowed to talk to her daughter and does not know where she is.
- The judges, the social workers, and the Director of the Division all deserve to go to jail for what has been done to her daughter.
- Money is the motivating factor behind many of the children being removed from their family homes and the children have no voice.

Melissa Worthen gave testimony regarding her personal experience with a pay day lending business and said that while they may be legitimate businesses, it is very easy for clients to get into deep financial trouble because of the high interest rates charged by these businesses. Ms. Worthen stated that she is in danger of losing her car as collateral to a loan company. She urged the Committee to carefully consider the business policies of pay day loan companies.

### **COMMITTEE LEGISLATIVE PACKAGE DEVELOPMENT**

Ms. Fox said Ms. Elizabeth Greenwood and Colleen Murphy would present legislative proposals at the August meeting on the Treatment Court Coalition and the National Association of Social Workers, respectively.

Ms. Fox reported that 18 of the DPHHS legislative proposals have been approved by the Office of Budget and Program Planning (OBPP) and are ready to be approved by the Committee to become official bill draft requests. The remaining proposals can be heard at the August Committee meeting, pending approval by the OBPP.

REP. GIBSON asked if Committee approval is implied if it moves to draft these proposals. Ms. Fox said approving the bill drafts does not imply support of the content, it is simply a courtesy to the Department to allow the bills to be processed in a more efficient manner.

Mr. Petesch said this process authorizes the Department access to the bill drafting staff on its specific pieces of legislation.

**SEN. ESP moved** to accept all of the bill draft requests, as proposed by the DPHHS.

SEN. ESP asked Mr. Petesch if he would be advising the Department regarding the waiver of privacy bill or if he would simply draft the bill however the Department wanted. Mr. Petesch said all drafts are treated equally and that as legal issues are foreseen, the issues will be brought to the attention of the requestor. If the requestor still wishes to proceed, the bill will be drafted to the specifications of the requestor.

**The motion passed on a unanimous voice vote.**

Ms. Fox said the 18 bill drafts would be submitted for drafting but that the Department must still find sponsors for the bills. Once a sponsor is found, the legislator has some power over the content of the bill so existing issues not addressed by the Department can be addressed at that time.

Mr. Petesch agencies have two options regarding proposed legislation:

- an individual legislator can be a requestor of a bill on behalf of an entity, or
- a Committee can make it its own bill by being the requesting entity as well as the requestor.

SEN. PEASE asked if similar bill drafts would be coming from the State-Tribal Relations Interim Committee. Ms. Fox said the State-Tribal Relations Committee has no oversight over DPHHS but that she would find out if it planned approving any similar legislation.

Ms. Fox referred the Committee to the last page of EXHIBIT #6 (DPHHS bill draft requests) and said the bill request to amend 46-14-312(4), MCA, would have to be handled by the Law and Justice Interim Committee but because it deals with mental health issues, it is relevant to this Committee and she thought the Committee should be aware of the situation. Mr. Petesch said the proposed bill will clarify how a mentally ill person is sentenced.

Mr. Petesch said by statute and by legislative rule, all bills that the Department of Public Health and Human Services ask to put forward must be approved by the Children and Families Interim Committee because it is the interim committee that has oversight of the agency.

**Law and Justice Public Defender Subcommittee (HJR 3) - Sheri Heffelfinger**

Ms. Heffelfinger said the Law and Justice Subcommittee on the Public Defender Study met the day prior to the Children and Families Committee and reported that the Subcommittee:

- has formed a recommendation to provide for appointment of counsel at the beginning of any proceeding that may result in the termination of parental rights;
- is considering how to provide for a state family law specialist, possibly in the form of a Chief Public Defender for the state who would have authority to assign or hire specialty attorneys for certain cases;
- has taken no action on requesting additional data;
- is working on a statutory definition of indigency;
- is making a consideration that even if a family is not economically indigent, there may be other reasons why counsel may need to be assigned;
- agreed that the guardian ad litem program should stay at the Court Administrators Office; and
- will include public defense participation in the drug court treatment teams.

**Sheri Heffelfinger, Research Analyst, LSD**, said the preliminary bill draft report will be presented to the full Law and Justice Interim Committee (LJIC) in July and that the Subcommittee will meet again in August to finalize the bill draft and its final recommendations. The final draft will be reviewed and adopted by the full Law and Justice Interim Committee on September 8, 2004.

Ms. Fox said she would have copies of the final draft made available to the Children and Families Committee and that members could make comments and recommendations to the LJIC members. Ms. Heffelfinger said she would be certain to pass information along to the Children and Families Interim Committee.

SEN. SCHMIDT asked Ms. Heffelfinger to discuss how this proposal will be funded. Ms. Heffelfinger said the Subcommittee is trying to determine what percentage of the total case load are public defender cases. Some fiscal accounts in the Office of the Supreme Court Administrator are mixed and these accounts must be separated out in order to formulate a budget. Nationally, statistics indicate that about 80% of the District Court criminal cases are public defender cases. The data collected by the LJIC Subcommittee revealed that approximately 60% of the District Court criminal cases were public defender cases. The draft, as it is now, will also incorporate Justice Courts. Ms. Heffelfinger said, generally speaking, the rule of thumb is that there are three misdemeanors for every felony case. In creating a budget, these case loads will have to be considered, as well as taking in account the time and manpower it takes to staff these cases with either a contract or full time employee. This issue will continue to be analyzed between now and the August meeting and the decision of whether or not to include the Justice Court case load will be made at that time. Additionally, what amount the cities and counties will be asked contribute to cover their share of the costs must be decided. Ms. Heffelfinger said additional data was needed to make this decision and that the counties have not yet had input on this issue.

Ms. Fox clarified that the Law and Justice would not be conducting an investigation into the Ravalli County Child Protective Services, as indicated in the previous Public Comment testimony. Ms. Fox referred to a letter written to Sen. Grimes and Rep. Parker by LSD Staff Attorney Valencia Lane regarding the LJIC's action taken at the May 20, 2004, meeting (EXHIBIT #25), and said that, as per Ms. Lane's legal opinion, the LJIC will not proceed with an investigation.

Ms. Fox also called attention to a letter from Ravalli County Sheriff George Corn informing Committee members of the recent conviction of Kelly Worthen (EXHIBIT #26).

Ms. Fox asked Committee members to examine the unofficial draft copy of the bill written to address the mental health ombudsman information access issues (LC C&F 1 - EXHIBIT #27), as has been discussed in the last several Committee meetings. Ms. Fox reported that she has worked with Greg Petesch, Bonnie Adee, and the DPHHS to develop statutory language to make sure the mental health ombudsman has access to protected healthcare information. The HIPAA issue has been dealt with but the Centers for Medicaid and Medicare Services (CMS) direct access issues have yet to be solved. Efforts will continue to be made to address this.

**Nan LeFebvre, Bureau Chief, Program Compliance Bureau, DPHHS**, introduced **Thad Houdeshell, HIPAA Compliance Specialist, DPHHS**, and said both she and Mr. Houdeshell have and will continue to work with Ms. Fox and Ms. Adee to address the access to confidential information issues. The system worked out to date is that the Department will respond to requests for information from the Mental Health Ombudsman Office (MHO) with a verbal authorization, to be followed up with a written authorization. The DPHHS is unable to grant the MHO is direct access through the Department's online system such as the MMIS. The reason for this is because any patient's information is available on this system and there are no restrictions in place to protect a patient's confidential information. This is the root of the problem that CMS has with MHO access.

REP. ROBERTS asked what the time delay is in getting information to the MHO. Ms. LeFebvre said three people, including herself, have been assigned to assist Ms. Adee to be certain her requests are responded to immediately. In a case where additional questions based on eligibility explanations occur, the Human and Community Services Division staff has been made available to Ms. Adee also.

SEN. O'NEIL asked who is allowed direct online access to the MMIS information. Ms. LeFebvre said only the Department employees who are directly involved in the administration of the Medicaid program have direct online access and even then, access is carefully granted. CMS does not recognize the MHO as part of the Medicaid administration and therefore, will not grant access. SEN. O'NEIL said that an oversight entity, he thought Ms. Adee should be granted direct online access. Ms. LeFebvre said this could be discussed with CMS again but even though the MHO has an oversight function, she is fairly certain the position of CMS will remain the same.

**Bonnie Adee, Mental Health Ombudsman**, said the primary reason she needs access is to verify client eligibility or ineligibility.

Ms. Fox said this could be pursued further through a conference call which Ms. LeFebvre has offered to set up with CMS. Ms. Fox pointed out that a possible solution would be to attach the MHO to DPHHS instead of the Governor's Office.

REP. GIBSON asked Ms. Adee if she felt she needed more access or if the level of access she was being given now was sufficient. Ms. Adee said when she had the direct access, it was very useful and was more timely than waiting for a third party to provide her with the needed information. The Department has been responsive but it is not the same. She said she can still provide the service and get the job done with the system in place now, so in terms of absolute need, the answer would be no, she does not need additional access. Ms. Adee said having direct access would expedite things but that the current system is workable.

SEN. SCHMIDT asked Ms. Adee to comment on page 2, section 5 of the draft bill (EXHIBIT #27) regarding MHO access to state and local agency records, including those that are considered confidential, particularly if this conflicts with what Ms. LeFebvre previously stated. Ms. LeFebvre responded that it was not a conflict because the MHO is being granted access to this information, just not to the online eligibility system.

Mr. Petesch said there are two separate issues contained in the bill draft:

- 1) solving the HIPAA issue, which was the initial issue brought before this Committee and this bill codifies that issue, and
- 2) addressing Medicaid confidentiality regulations.

Ms. Fox said in addition to those specific issues, the bill also clarifies the ombudsman duties,

SEN. O'NEIL **moved** to officially draft bill LC C&F 1. The **motion passed unanimously** on a voice vote. REP. ROBERTS asked Ms. Fox to arrange a conference call with Ms. LeFebvre and CMS in order to continue work on this issue.

**LC0031 - Public Assistance and Felony Drug Offenders: committee bill draft for review**

Ms. Fox provided copies of the bill draft (EXHIBIT #28), saying she used the 2001 version of the bill draft as a starting point. Ms. Fox said she has worked with both Hank Hudson, DPHHS, and Mike Ferriter, Department of Corrections (DOC) to clarify that the enforcement agency would be the DOC.

Ms. Fox provided written comments from the Food Policy Council of the Montana Food Bank Network (EXHIBIT #29) regarding LC 0031, saying the Food Policy Council thinks the bill draft is too restrictive.

Mr. Ferriter expressed concern that probation and parole are not the only two avenues of supervision in the community and asked the Committee to consider adding more general terms of supervision instead of using "probation and parole" because they have such specific meanings in law.

Ms. Fox said Peg Shea has requested that this bill also cover those in the middle of their treatment plans.

Ms. Fox said she had left all of the provisions in the bill and that the Committee should make the changes, if it felt any are needed.

SEN. SCHMIDT asked Hank Hudson to comment on the bill draft. Mr. Hudson said the bill draft is acceptable to DPHHS.

SEN. O'NEIL referred to page 5, part 3 of EXHIBIT #28, and said it appeared to him that a person could complete treatment, go back on drugs, and continue to receive food stamps. Ms. Fox said that couldn't happen because when the person meets with the parole or probation officer and does a urinalysis, the drug use will be detected. A positive urinalysis will be a violation of the conditions of probation and the benefits would end.

Ms. Fox said the time of greatest need for food stamps is when the person is back in the community, trying to establish themselves in an independent living situation and trying to find a job. Technically, the person may not be on probation or parole and that is the point Mr. Ferriter is concerned about.

SEN. SCHMIDT clarified that every other felon is eligible for food stamps except those who have been convicted of a drug charge and this bill removes that distinction. Ms. Fox said the

current law applies different conditions to convicted drug felons because they are asked to base their eligibility on public assistance on their compliance with their parole and probation/correctional supervision requirements which currently no other felon has to do. This bill addresses that issue. Ms. Medora's position is that the bill should remove all conditions on receiving benefits.

SEN. SCHMIDT asked Ms. Medora to comment on the discussion. Ms. Medora said the Food Policy Council was very appreciative of the Committee's work but that the proposed bill still places restrictions on the convicted drug felons. They are trying to put their lives back together and they are already overwhelmed and over burdened with all of the procedures they have to go through. Many people without convictions do not apply for food stamps because they find the process overwhelming. DPHHS is in agreement that this will be one more glitch in the road and they won't apply for or use the benefit. If they do not receive food stamps, they will have to go to the food banks which are being overrun with demands for food. The monitoring of their drug treatment plan should not be used as a carrot to get food stamps and TANF benefits.

REP. GIBSON asked what the original reason was for separating out drug felons. Ms. Fox said the decision was made by Congress in 1996 as part of the war on drugs. The rationale was that if the felon was given more money, it would likely be used for drugs.

REP. FRANKLIN said the concept of barter and exchange can be very effective with people who are using drugs and that she was comfortable with some monitoring.

Ms. Fox said Montana is transitioning to an electronic benefit transfer and actual food stamp coupons will no longer be issued, This will make it difficult for them to be sold or traded, as has happened in the past and will prevent abuse of the system.

REP. ROBERTS asked if the states that have done the food stamps to the drug felons, have they noticed a lower recidivism rate. Ms. Medora said she did not know.

REP. FRANKLIN **moved** to approve the bill draft, including some aspect of monitoring and to allow Ms. Fox the editorial and policy freedom in drafting the final language, adding that the language could be amended in the legislative session if recidivism data is collected. The **motion passed unanimously** on a voice vote.

Ms. Fox said there were four legislative items remaining on the potential legislative bill draft requests for Committee consideration (EXHIBIT #30). She said she had not done extensive research and wanted a sense of whether the Committee is interested in pursuing them. Ms Fox explained each one:

#### **1. Clean-up for Safe Haven Newborn Protection Act**

Ms. Fox said this issue was raised to the Code Commissioner by LSD editors, saying that there is a quirk in the legislation that left an internal reference to a section that was temporary and has now disappeared.

Mr. Petesch said the issue will be resolved in the upcoming legislative session, either through action by this Committee or through the Code Commissioner bill. Mr. Petesch said that a

committee bill is needed to retain references to contacting the Department or receiving information for counseling or medical attention. The Code Commissioner bill would delete the subsection.

REP. ROBERTS **moved** to draft the safe haven newborn protection act bill, as recommended by Ms. Fox. The **motion passed unanimously** by a voice vote.

## **2. Developmental Disability Commitment Costs: SB 35 Revisited**

Ms. Fox said in the 2003 Legislative Session, SB 35 was passed to provide due process for a person criminally convicted and with a developmental disability to be sentenced to an appropriate developmental disabilities facility. However, the cost was not addressed and the Committee must decide if it wants to clarify where these costs should be designated.

Mr. Sturm, Developmental Disabilities Program Director and MDC Superintendent, said MDC has had five admissions recently which would be affected by this legislation: 1 unfit to proceed, 3 for court evaluations, and 1 for a 20-year sentence to MDC. Mr. Sturm said when he asked the staff attorney about the payment issue, he was told that the Court is responsible for the room, board, and care while the person is being evaluated and that is the way the services will be billed out. MDC will be responsible for that for costs for the person sentenced to 20 years at MDC.

Mr. Mathews said this is of concern for many reasons, including space and safety. Certain types of patients can't be mixed and this could result in tremendous costs. MDC is not budgeted for this and that is the issue.

REP. FRANKLIN said it was her inclination is that some research be done on this before any sort of a recommendation is made, since it is a gray area.

Ms. Fox said she was a third party to the discussion between the DPHHS attorney and the State Court Administrator. She said it is fairly easy to determine who will pay costs on determination of fitness to proceed but other cases are less clear. The 2003 legislation was passed based on only one case so this may not help in predicting what the actual case load will be but it will clarify who will be responsible for what costs.

SEN. SCHMIDT **moved** to draft the legislation to address the issue of commitment costs of SB 35.

SEN. ESP asked where patients are initially taken under this type of commitment. Mr. Sturm said the way the language is written in SB 35, that it is up to the Department Director to have discretion on where the person goes. SEN. ESP asked if there is a lag time between the initial hearing and the dispositional ruling. Mr. Sturm said there is a lag time but couldn't say how long it usually is. He did say that the patient is committed for a minimum of 60 days. SEN. ESP commented that a civil commitment for evaluation of a mental illness is for a fairly brief period of time, compared to a criminal commitment. Mr. Sturm agreed this was the case.

Mr. Petesch said it is more equivalent to the criminal determination of fitness to proceed and if the person is fit to proceed, then the criminal case will go forward. If the person is determined

not fit to proceed, then a commitment proceeding can arise on the civil side. Ms. Fox said a person could be found guilty but developmentally disabled and that is when a forensic or criminal commitment to Boulder would occur. That is where the person would serve out the sentence and it isn't clear how parole and other issues are worked out. The person has been found guilty and has a conviction, but the placement, because of the developmental disability, would be at MDC and not Warm Springs.

REP. FRANKLIN asked Mr. Mathews if he could speculate on any connective thread between any of these recent cases. Mr. Mathews said most of the cases have been deemed sexual predators. Mr. Mathews said he thought the idea behind the 2003 bill was that this type of prisoner would receive treatment for the problem at MDC, rather than be cast in with the general prison population.

The **motion passed unanimously** on a voice vote.

### **3. Unregulated Youth Residential Care Programs in Montana**

Ms. Fox said the Department has requested a place holder for this bill and will have additional information for the Committee at the August meeting. The Committee can cosponsor legislation, make it a Committee bill draft, or assign it as an interim study for the next interim. Meetings between the Department and these facilities have been scheduled for July and additional information will be gained from that. Also, it has come to light that Montana did pass licensure requirements for outdoor behavioral programs in the 2003 Legislative Session but it was a very narrow bill and does not provide adequate coverage for all the facilities. This issue will have a fiscal impact and that may cause some reluctance on the part of the Department to bring a bill forward. The Committee must decide if it wants to commit to a bill draft request right now or wait until it has more information from the Department at the August meeting.

SEN. SCHMIDT **moved** to place the issue of unregulated youth residential care programs on the August agenda. The **motion passed unanimously** on a voice vote.

SEN. SCHMIDT said she has received an e-mail from Rick Johnson, Executive Director, Summit Prep School in Kalispell, addressing licensure issues and asked if any other members had received it also. Ms. Fox said she had given SEN. SCHMIDT's name to Mr. Johnson but had not received the e-mail and would like a copy of it.

REP. FRANKLIN asked how these businesses can be accurately counted if they are unlicensed and unregistered. Ms. Fox said between OPI and DPHHS both have established lists but that they probably are not 100% accurate. She said it is easy to find information on these businesses because they advertise on the internet, in magazines, and in newspapers, and that how Director Gray compiled her list of facilities to invite to the July meetings.

SEN. SCHMIDT said the information she had received from Mr. Johnson, Delaware was cited often as a state that has requirements for residential childcare facilities and day treatment programs.

#### **4. Prescription Drug Program: SB 473 Repeal**

Ms. Fox said SB 473 was passed in 2003 but not implemented, and asked the Committee to consider whether or not it wanted to repeal the Act. She said Lois Steinbeck, Legislative Fiscal Division, is conducting some research on the federal prescription drug legislation and that she has offered to share the information with this Committee.

REP. ROBERTS said this bill deals with the people who are too rich for Medicaid but too poor for insurance and asked if there is going to be some kind of program for these people.

**Chuck Hunter, Child & Adult Health Resources, DPHHS**, said there is no plan for that at this time. The Medicare prescription drug bill took about 80% of the clientele that were expected to be served under SB 473 and provided them with a richer benefit than could have been provided under the state piece of legislation. For the people that remain unserved, a prescription drug program cannot be funded through Medicaid with the existing Montana law. In the Medicaid redesign proposal, there has been some discussion of doing a HIFA waiver and using a portion of it to fund a prescription drug benefit for this group of people.

REP. ROBERTS **moved** to repeal SB 473. The **motion passed unanimously** on a voice vote.

Ms. Fox said Joyce DeCunzo had reported to the Committee in January regarding the SAA/SB 347 and distributed a letter from Ms. DeCunzo (EXHIBIT #31) updating the Committee on the issue of whether there should be a special designation of Community Mental Health Centers. Ms. Fox said the Department does not plan on bringing forth legislation to clarify this but wouldn't be surprised if other interested groups do, particularly County Commissioners. She said she would keep the Committee informed on any action taken.

SEN. ESP said he had been involved in this issue and that the argument was that the urban centers subsidize the rural counties. He suggested implementing a differential scale so that everyone could compete on a level playing field. REP. ROBERTS said the payment schedules in place now are difficult to meet and didn't think that anyone is being overpaid.

#### **PUBLIC COMMENT**

**Anita Roessman, Montana Advocacy Program (MAP)**, asked to speak on the issue of Developmental Disability commitment costs, saying MAP had supported SB 35 and had worked with Mr. Sturm and others to draft that bill because MAP thought it was appropriate for people with mental retardation to take responsibility for those things that they can take responsibility for when they are charged with criminal offenses and to be able to clear their names when that is an option. Ms. Roessman explained that in many situations, as soon as the Court learned the defendant was developmentally disabled, the charges would be dismissed and the person would be charged civilly instead. It combined the worst of both worlds because the result was that people were being committed over and over again to MDC, being separated from everything they have known in the community and making it difficult to return. Also, it was not possible for them to clear their names. Accusations were left in the file and never removed. The intent of SB 35 was to remedy that.

Ms. Roessman also spoke regarding the recent individuals committed to MDC for evaluations, saying that they were sent there by different judges and that two questions must be answered:

- does this person have the ability to assist their lawyer in the defense of their criminal case, and
- at the time the offense was alleged to have been committed, could this person have had the mental frame of mind to commit a criminal offense.

Ms. Roessman addressed the use of the term "sexual predator", saying it can be easily misused. She related the story of a male client at MDC with the hormones of a 16-year old and the cognitive ability of a 5-year old who had "played doctor" with a small girl and said it is wrong to call that kind of behavior "predatory". A predator is someone who goes out looking for a victim and sets them up, traps them, and terrifies them into staying quiet. Not someone who opportunistically acts when a certain set of circumstances arise.

Collette Gray, Opportunities Inc., commented regarding food stamps and drug felons and said these comments were her personal opinions and not those of her agency. She said families frequently end up losing what few benefits they have when a drug felon returns to the home of a non felon. Ms. Gray gave the example that subsidized housing assistance is lost if a drug felon is allowed to move into the home of a non felon. If the nonfelon wished to reapply for subsidized housing in the future, he/she is placed on a long waiting list. She said food stamps for a few are frequently shared among many and that it amounts to food being taken out of someone's mouth. Finally, when the situation becomes too rough, the felon frequently reoffends and is placed back in jail and the family is left without housing and few options.

### **COMMITTEE RECESS**

REP. ROBERTS recessed the Committee at 4:55 p.m. until 8:30 a.m., June 30, 2004.

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