



Law and Justice Interim Committee

58th Montana Legislature

SENATE MEMBERS

DUANE GRIMES--Chair
BRENT CROMLEY
DANIEL MCGEE
GERALD PEASE
GARY PERRY
MICHAEL WHEAT

HOUSE MEMBERS

JOHN PARKER--Vice Chair
GAIL GUTSCHE
MICHAEL LANGE
DIANE RICE
JIM SHOCKLEY
FRANK SMITH

COMMITTEE STAFF

SHERI HEFFELFINGER, Research Analyst
VALENCIA LANE, Staff Attorney
SANDRA SHEPHERD, 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.

COMMITTEE MEMBERS PRESENT

SEN. DUANE GRIMES, Chair
REP. JOHN PARKER, Vice Chair

SEN. BRENT CROMLEY
SEN. DANIEL MCGEE
SEN. GARY PERRY
SEN. MICHAEL WHEAT

REP. GAIL GUTSCHE
REP. MICHAEL LANGE
REP. DIANE RICE
REP. FRANK SMITH

COMMITTEE MEMBERS EXCUSED

SEN. GERALD PEASE
REP. JIM SHOCKLEY

STAFF PRESENT

SHERI HEFFELFINGER, Research Analyst
VALENCIA LANE, Staff Attorney
KIP DAVIS, Secretary

Agenda & Visitors

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

CALL TO ORDER AND ROLL CALL

CHAIRMAN GRIMES called the meeting to order at 8:30 a.m. The secretary called the roll (ATTACHMENT #3). Minutes from the last meeting were unavailable for approval at this time.

I. Work Session on LC 214

CHAIRMAN GRIMES initiated the work session by asking the Committee for their input. SEN. MCGEE commented that, during the last meeting, the focus was on the structure of the public defender system, and that this meeting should focus on funding. SHERI HEFFELFINGER said that she had created a table of contents for the bill (see *EXHIBIT #1*) that can be used to determine areas of the bill that still require work. CHAIRMAN GRIMES turned the meeting over to REP. PARKER.

Harry Freebourn, Legislative Fiscal Analyst, reviewed a slide presentation to the Committee, detailing the estimated costs of the statewide public defender system and options for allocating the costs to the state, counties and cities (see *EXHIBIT #2*). *EXHIBIT #3* contains the details of the costs of funding the new statewide public defender system for fiscal years 2006 and 2007, and *EXHIBIT #4* gives details of the cost allocation options. Detailed breakouts of specific cost allocation, based on formula factors, for Montana counties and cities are included as *EXHIBITS #5* and *#6*, respectively. *EXHIBIT #7* is the result of a statewide survey performed by the Montana Association of Counties comparing each county's current public defender costs with the estimated cost allocations under the bill. **Mr. Freebourn** explained that the new \$1 million estimate for public defender costs in justice's courts, as opposed to the previous extrapolation of \$8 million, was arrived at as a result of the MACO survey. Approximately 75% of the estimated costs of the new statewide public defender system are currently being paid by either the state, counties, or cities, and the new costs, most of which are attributable to the office of chief public defender and the public defender commission, amount to approximately 25% of the total estimated cost of the system. Embedded in the \$14.1 million cost estimates are one-time costs, involving the installation of IT systems, the purchase of equipment and furniture, and various other start-up costs.

SEN. MCGEE asked whether \$1 million will cover the costs of public defenders in Justice's Courts throughout the state. **Mr. Freebourn** answered that the MACO survey asked one question: how much each court was currently paying for public defender services. He said that inflationary increases in caseloads were not factored into the survey, only current actual costs. He said caseload data received from the courts was sporadic and fragmented, at best, and it would be very difficult to use it for cost estimates. He said more accurate caseload data can be collected after the statewide public defender system begins operations. SEN. MCGEE then asked if the MACO survey included non-criminal representation. **Harold Blattie, Assistant Director, MACO**, told the Committee that non-criminal and Youth Court cases were not included in the survey, because those cases are handled in the District Courts, not the Justice's Courts. **Ms. Heffelfinger** pointed out that those costs were included in the estimate of District Court costs that are currently being funded. **Ms. Heffelfinger** said a workload analysis of the state's six largest counties is included as *EXHIBIT #8*.

Mr. Freebourn said that once the Committee has decided which option to use and what amount to charge the counties and cities, an allocation formula he has developed can be used to determine the exact dollar amount to charge each city or county. The county allocation formula is a 3-factor formula involving population, the taxable value of property within the

county, and an index of crimes within the counties, with each factor evenly weighted. For the cities' portion there is a 2-factor formula of population and taxable value of property within the city. Wyoming uses a similar cost allocation formula. Adjustments can be made to the formula to include caseload, after caseload data is available.

CHAIRMAN GRIMES expressed concern that the decision to allocate the costs would put the burden of the cost of major court cases onto counties and cities that normally do not experience such costs. REP. PARKER explained that the allocation options would spread the costs of misdemeanor prosecutions and that major court costs are already being funded out of the main state budget.

SEN. MCGEE commented that, before a decision can be made on how to allocate costs, it would be helpful to know where the money is currently coming from. For example, the \$1 million for public defender costs in Justice's Courts--does it come from a county levy, a state tax, or from where? **Mr. Freebourn** said that, according to his basic research, most of the money comes from court-ordered fines, fees, and forfeitures. The five largest Municipal Courts included in the survey collected \$5.7 million annually in fines, fees, and forfeitures while the cost of operating those entities was only \$435,000 annually. All of the revenue from the fines, fees, and forfeitures collected by each Municipal Court goes into the general fund of that municipality, with no specific earmarking of funds. **Mr. Blattie** said that the same principle applies to the operation of Justice's Courts. The operation of the courts is funded from the county general fund, and revenue to that fund is comprised of property tax money, non-levy revenue, and the fines, fees, and forfeitures generated by the Justice's Courts.

REP. RICE asked for clarification of how the weighted allocation formula works. **Mr. Freebourn** explained that *EXHIBIT #5*, which lists the allocation to each county, shows a total dollar amount of \$3.4 million for public defender costs. Using Beaverhead County as an example: Beaverhead County has a population allocation factor of 0.0097 (0.97% of the population of the state), a taxable value allocation factor of 0.0089 (0.89% of the taxable value of counties within the state), and a crime index allocation factor of 0.0056 (0.56% of the statewide county crime index). These allocation factors are added together and divided by three (equal weighting for each factor) to reach an average allocation factor. That average allocation factor is multiplied by the total dollar amount of \$3.4 million to arrive at the total biennial allocated cost to Beaverhead County of \$27,810. **Mr. Freebourn** pointed out that the advantage to this formula is that it is not based only on one factor--a county is not going to be penalized for merely having a large population without having a corresponding caseload of crime, for example. REP. RICE expressed concern that this allocation system would result in the smaller counties supporting the larger ones. **Mr. Freebourn** said that the allocation formula is based on the three factors, not what the counties are already spending. **Ms. Heffelfinger** pointed out that these amounts are not what the state is going to pay to the counties, it is what the counties will be paying to the state, and the total amount being spent on public defender services throughout the state will not change.

REP. PARKER told the Committee that seven major issues that need to be resolved for this bill were identified at the last meeting, as well as points **Ms. Heffelfinger** has requested clarification on (included in *EXHIBIT #1*), such as how to collect the money from the cities and counties. REP. PARKER noted that, although this is the final opportunity to put the Committee's mark on the bill, it is probably beyond the scope of this Committee meeting to completely finalize the funding mechanism and a set of hearings may be needed during the session to determine exactly how the funding mechanism is going to work. The seven issues that need to be resolved are: the make up and total numbers of the commission; how the

statewide public defender system will handle appellate work (whether the primary responsibility will remain with the trial lawyer or will the function of the state appellate office be enhanced); what percentage of the federal poverty level will be the threshold of indigence for eligibility for a public defender (including the issue of partial indigence); which positions in the public defender system will be exempt from the statewide classification plan; whether the state or the localities should pay for office space; choosing a cost-sharing formula for the counties and cities; and who pays for psychiatric examinations and associated costs.

REP. PARKER asked Committee members for their input on the number of members and the make up of the public defender commission.

Ms. Heffelfinger told the Committee that written comments regarding this, and other issues concerning the proposed statewide public defender system, are in the meeting packet and are included as *EXHIBIT #9*.

SEN. MCGEE recommended leaving the commission membership as it is currently in the bill, saying that a smaller commission will get more work done more quickly and that it isn't necessary to create a commission with many areas of individual expertise.

SEN. PERRY commented that, if the Supreme Court can operate very well with seven members, so can the public defender commission.

REP. PARKER noted that the more people on the commission, the thinner the money for commission costs will have to be spread.

SEN. WHEAT said that he would vote to increase the commission membership to nine members and representation on the commission should include more than just public defenders, because the differing views will aid in implementation.

SEN. WHEAT made a *motion* to increase the public defender commission to nine members, with the two additional members being appointed by the Governor, without nomination, and the two additional members should be citizens in specific areas, mental health and chemical dependency, that are related to the public defender client base.

CHAIRMAN GRIMES said he was ambivalent about this, noting that it will likely be a topic of discussion during the session, and said that it behooves the Committee to start conservatively--the bill, as it stands, already allows for 2 members of the public on the commission, and more can be added later, if it proves desirable. CHAIRMAN GRIMES stated his preference for adhering to the Subcommittee's decisions, unless compelled otherwise.

REP. GUTSCHE, stating her concern that interested persons may not be represented, asked what category "members of the public" would come from. SEN. MCGEE said that the issue of where the public members would come from was not specifically discussed, rather the discussion hinged on the number of different kinds of disciplines, and he preferred not to put sidebars around the appointees because that could prevent the best people from coming forward.

Ms. Heffelfinger pointed out that the current appellate commission, which is the basis for the public defender commission, has five members and two were added for the public defender commission.

The **motion** was voted down on a voice vote.

Concerning the question of responsibility for appellate work, **Ms. Heffelfinger** pointed out that the current state appellate defender office only handles cases involving conflict with the trial attorney and ineffective assistance of counsel issues. The question is whether the statewide appellate defender function should be enhanced to handle all appeals, the costs of which are included in **Mr. Freebourn's** assumptions, or should the responsibility for appeal work remain with the trial lawyers. The current language in the bill is flexible and leaves the decision to the chief public defender, and the decision is significant only because of the budget totals.

SEN. WHEAT said that he feels that the trial attorney is in the best position to know the case and the issues raised on appeal.

SEN. MCGEE said that he had always thought that statewide public defender's office would have the responsibility of any appellate functions. He said the current appellate defender's office should be absorbed into the chief public defender's office because by implementing a chief public defender's office the Subcommittee was attempting to create a more uniform standard under which indigence defense will be performed, and the attorney at district court level is the best person to handle the appeal. Once standards have been established by chief public defender's office, and once there are public defenders operating in each region, there will already be public defenders doing that work at the district level. SEN. MCGEE said that he doesn't see the need for two distinct entities, and the chief public defender's office should have the duty of all appellate work, and the current state appellate defender's office should be absorbed by the chief public defender's office.

REP. PARKER, referring to pg. 16 of the draft bill (included as *EXHIBIT #10*), pointed out that the bill already provides for a chief appellate defender and that person will be a part of the statewide public defender system. He said that the question is whether every appeal should come out of the central office or stay with trial attorney, or whether this should be left for the chief public defender's office to decide.

SEN. WHEAT said that he views the chief public defender's office as having an appellate division, commenting that trial layers may not have time to handle appeals, and that he suggests leaving this flexible and having the chief public defender or the commission decide how to handle this. The public defender bill should set broad policy parameters but leave the specific decisions to the commission or chief public defender.

REP. RICE asked SEN. MCGEE if there were safety measures in place to keep every single losing case from being appealed to the Supreme Court. SEN. MCGEE answered no, but with the statewide standards, procedures, and policies for effective assistance of counsel in place there will be less rational basis for appeal.

Carl Jensen, Cascade County Public Defender, told the Committee that every defendant has a right to appeal--the decision is theirs and, if the attorney doesn't feel there is merit for an appeal, the attorney can file an Anders Brief, which the Supreme Court will review and, usually, agree that there is no merit for an appeal, although sometimes the Supreme Court will think there is an issue and appoint an attorney for the appeal. As a public defender, **Mr. Jensen** said he feels that some other method of handling appeals would be beneficial because, in spite of his best intentions, he simply does not have enough time to devote to appeals. A statewide appellate defender's office would greatly aid in the quality of representation that is available for appeals, because for a trial attorney an appeal means crunch time and the temptation is there

to attempt to talk the defendant out of filing an appeal.

REP. PARKER said that, if no Committee member wished to make a motion on this issue, the bill draft would remain as written, with the decision to allocate appellate work remaining with the commission.

REP. PARKER directed the Committee's attention to the next decision to be made and asked what was the Committee's thoughts on the percentage of the federal poverty level that would qualify someone to receive the assistance of a public defender.

Ms. Heffelfinger distributed a handout detailing the federal poverty index guidelines (see *EXHIBIT #11*) and explained that pages 10 and 11 of the bill draft (see *EXHIBIT #10*) have blanks that need to be filled in with percentages.

REP. PARKER, noting the critical nature of this issue, opened the floor to public comment on the appropriate target number for the threshold of indigence.

Mariah Eastman, Chief Public Defender, Gallatin County, asked the Committee to consider making the system dependent not only on income and assets, but also on the specific community the defendant lives in as well as the charges against the defendant, noting that the cost of hiring a private attorney can vary widely across the state and the more serious the charges against a defendant the higher the cost of defense. **Ms. Eastman** recommends using 200% of the federal poverty level because, if the threshold of indigency is lowered too much, then many individuals, because of life's circumstances, would not be able to afford a private comparison and says that she believes the Medicaid comparison is appropriate, because if someone qualifies for Medicaid then they are also probably qualified to receive a public defender.

Anita Roessman, Attorney, Montana Advocacy Program, told the Committee that she represents people with disabilities and offered two suggestions that would better serve the disabled persons of this state. The first suggestion is to change "and" to "or" in (5)(a) and (5)(b), saying that being any more specific can tie the hands of the judge and the justice system. The second suggestion is that any monetary contributions designed to help cover the expense of receiving a public defender should be added at the time of sentencing, which is when other stipulations of that type occur.

Mr. Jensen said that, in his opinion, the "and" in subsections (5)(a) and (5)(b) serves the taxpayers of this state better than "or" would, citing the example of young airmen who, although they receive a small salary, do not pay rent or food or other common living expenses yet often drive expensive vehicles or have other expensive toys.

SEN. PERRY, noting that *EXHIBIT #11* says that Colorado, Wyoming, and South Dakota have set their threshold for eligibility for provision of a public defender at 125% of the federal poverty level and anybody at or below that level receives a public defender with full costs paid by the state, asked if other states have a provision for partial indigence? **MS. HEFFELFINGER** answered yes, and directed the Committee's attention to *EXHIBIT #12*, a compendium of standards for indigent defense systems. Some states do not necessarily have it codified into statute.

REP. RICE questioned what percentage of the federal poverty level was used as a basis for Mr. Freebourn's numbers. **Ms. Heffelfinger** explained that, because there is no statewide standard

in use today, no specific percentage was used in the cost estimates. She said the estimates reflect what is currently being spent, which is based on whatever standards each specific judge is using now. She said guidelines are being adopted by the district court advisory council, and they represent a sliding scale based on income and weighted factors regarding the complexity of the case. A handout offering the definitions of "gross household income", "household", and "income" used for income tax purposes in the MCA is included as *EXHIBIT #13*. She said the definitions in the bill draft are tied to these definitions.

REP. LANGE expressed concern that, with the current definition of "household" being used, the potential exists for families to be financially destroyed because of the actions of a single member of the household.

SEN. PERRY made a ***motion*** to define the indigence level at 125% of the federal poverty level and the level for partial indigence at 200% of the federal poverty level.

SEN GRIMES offered his support for the motion, saying that a conservative fiscal note gives the bill the best chance for passage through the Legislature.

SEN. MCGEE commented that it is important that the actual percentages for a sliding scale be codified and not left to the discretion of the commission because, if the percentages are left to be decided by rule, it would be impossible to determine the ultimate cost whereas if the percentages are in statute the Legislature would be able to fund the public defender's office accordingly. A sliding scale is important because it requires people to participate in their own defense. If the motion was amended to say "125%-200% as proposed by Sen. Perry" then the staff can figure out the exact language.

REP. PARKER commented that he was very concerned about the concept of partial indigence, because it is such a complex issue to deal with in addition to trying to enact a statewide public defender system, address personnel issues, implement a training program, and trying to ensure effective assistance of counsel. REP. PARKER said his instinct is to set aside the question of partial indigence until the statewide system is in place and operating.

SEN. WHEAT said that he agrees on waiting to decide the partial indigence issue. Although he supports the concept, the practical issues of getting the statewide system up and running is the priority and the Committee should avoid the sliding scale issue at this time and should set the bottom line criteria for defining indigency. The commission could make recommendations to the Legislature for the 2007 session.

CHAIRMAN GRIMES said that he had the same concerns and that he had seen complex legislation be passed that didn't work because it tried to do too much too fast. CHAIRMAN GRIMES said that he would support an alternative motion to put the threshold level at 125% and hold the partial indigence issue until it can be worked on more thoroughly.

SEN. PERRY said that his intent is to be fair and believes that a sliding scale is fair and balanced. How to collect the money is spelled out on page 11 of the bill draft, and he doesn't see it as terribly complicated or confusing.

REP. LANGE said that he agrees with SEN. PERRY on the issue of a sliding scale. The level of poverty in this state has already been established at 133% for a number of things and, if an individual is eligible for food stamps at 130% and welfare at 133%, the poverty threshold level for a public defender should certainly be at 133%.

REP. LANGE urged the Committee to err on the side of being financially generous, saying that the percentage can be debated later, and offered a **substitute motion** of setting the threshold eligibility for a public defender at 133%, with SEN. PERRY'S sliding scale on up to 200% of the federal poverty level.

SEN. CROMLEY said that he was satisfied with the 133% threshold level proposed by REP. LANGE.

Ms. Heffelfinger requested clarification on the motion. She said the sliding scale in (6)(a) relates to an applicant's gross household income as one of the factors, but the other factor relates to the complexity and type of case. She asked if that factor falls out of the motion?

SEN. PERRY said that this is outside the scope of the sliding scale and should be left up to the commission and commented he agrees with SEN. MCGEE in being uncomfortable with leaving the budgetary issues to the commission. The sliding scale should be included in statute.

REP. PARKER request clarification from REP. LANGE on his current motion.

REP. LANGE said that he would **move** that indigent threshold poverty be established at 133% of the federal poverty level and that the partial indigence defense be established at 200% of the federal poverty level, with a sliding scale between those two points based on the other levels of the poverty level at 150% and 175% that would be applicable as SEN. PERRY indicated.

Ms. Valencia Lane, Staff Attorney, suggested that, if possible, the Committee put the sliding scale into statute, saying that, in order to be constitutional, any guidelines given to the commission to implement a sliding scale must be complete and sufficient so that they are not vague or ambiguous.

REP. LANGE amended his motion, and **moved** that the indigency level be set at 133% of the federal poverty level and the partial indigency level be set at 200% of the federal poverty and defer on the numerical breakdown of the sliding scale that would comprise a separate motion.

REP. PARKER called for a voice vote on the amended motion. The motion carried, with SEN. WHEAT and REP. RICE voting "no".

SEN. MCGEE **moved** that a sliding scale be adopted as follows: at 150% of the federal poverty level the state will pay 75% of the cost of a public defender; at 175% of the federal poverty level the state will fund 50% of the cost of a public defender; and at 200% of the federal poverty level the state will fund 25% of the cost of a public defender.

CHAIRMAN GRIMES, seeking clarification, asked if the final decision of indigency remained with the judge's discretion? SEN. MCGEE said that it would and, with no extenuating circumstances, the sliding scale would be the guide. He said the court will have the discretion to make the decisions concerning any extenuating circumstances. He said the Committee had to start somewhere with a number to set a range.

Ms. Heffelfinger said that the language in the bill draft involving "weight factors based on the complexity of the case" implies a grid chart, and if the motion was amended to include language authorizing the commission to develop the rest of the chart (the complexity factors) it would satisfy the need for detail as well as accommodate the concerns expressed by many of the public defenders within the state.

CHAIRMAN GRIMES suggested the addition of the language "a formula based on this sliding scale", to allow the commission to weigh the other factors against the scale we develop. This would strike a balance between the need to be fiscally clear and not delegate legislative authority with what we have heard from the public defenders about areas where we should allow some discretion.

SEN. MCGEE said that he doesn't like legislation that he doesn't know what it is going to cost and, for the purposes of the Committee's work on this bill draft today, he wants to leave his motion as it was proposed, because it would be impossible to figure out all of the weighted factors today.

SEN. PERRY, noting that the intent of this bill is to provide an adequate and appropriate defense for people who can't otherwise afford it, expressed concern with the idea that the complexity of a case, or the severity of an offense, would have an effect on the percentage of the expenses that the taxpayers of Montana should have to bear.

REP. PARKER called for a vote on the motion made by SEN. MCGEE. The motion failed on a tie roll call vote. (The roll call vote is included as *EXHIBIT #14*.)

REP. PARKER then directed the Committee's attention to the issue of cost-sharing between the state, counties, and cities, saying it would be prudent to deal with the most complicated, and possibly controversial, issue next.

Ms. Heffelfinger asked the Committee to look at the new language of subsection (1) of the bill draft (see *EXHIBIT #10*), which states the rationale behind the cost-sharing decision. She explained that if the decision is to share the costs of the new statewide public defender system, it should be decided if the entire budget is to be shared or only the new costs of the system. She also said that because the information received on caseload is so unreliable, it would be difficult to base an allocation factor on caseload at this time, but it would be possible to include language in the bill that would require the collection of that data over a specified period of time so that allocations could be based on a caseload factor in the future.

SEN. MCGEE told the Committee that he had taken the number reflecting the public defender costs around the state that are currently being funded, \$11 million, and divided that by the amount that the counties report that they are currently contributing. He said the resulting number, 15.6%, represents the percentage of the current costs that the counties are already paying; the percentage for cities comes out at 6.7%; and the balance, 77.7%, is the responsibility of the state. He said the counties and cities will continue to pay the same portion of the total budget as they are paying now, and one advantage to this is that current funding streams will remain the same. SEN. MCGEE said that he believes the new costs, or costs attributable to the state office, should be included in any cost allocation plan, because each region or jurisdiction will benefit from the operations of the state office. These percentages are the best representation of who is paying what at this time. When the Committee is ready, SEN. MCGEE said he would offer a motion to adopt these percentages.

SEN. WHEAT emphasized that the bill should contain language that requires accounting of caseload and expenditures so that, once accurate caseload data is available, the percentages can be adjusted, if necessary.

Mr. Blattie, MACO, told the Committee that he sees a potential problem with SEN. MCGEE's percentages in that the percentage that is the counties' share of public defender costs is based

on current costs, but if these percentages are applied to the total cost of the statewide public defender's system it would result in the counties absorbing part of the new costs, which the counties do not feel they can support. **Mr. Blattie** said that MACO has found that the counties are against the weighted formula, because of the disparities created and that there is no good, hard correlation between the weighted factors and the actual cost of operating Justice's Courts. **Mr. Blattie** pointed out that any language regarding when the counties must send a check to the state is critical because of the timing involved--and the Legislature should not ask the counties to adopt a budget today for a commitment that won't happen until June. Included in the meeting packet is a handout titled "Entitlement Share Tables" (see *EXHIBIT #15*), and **Mr. Blattie** said that entitlement shares, which is a payment mechanism that was created in HB 124 in 2001, could be used as a vehicle for revenue adjustments that could replace the cost-allocation factors.

SEN. MCGEE asked **Mr. Blattie** what he saw as the counties role in funding the statewide public defender's system. **Mr. Blattie** answered that, in his opinion, the counties should be responsible for what they are currently responsible for paying, with a reasonable growth factor built in, and that the counties do not want to bear the responsibility for paying for the new costs associated with a statewide office.

REP. PARKER asked **Mr. Blattie** if the counties would be supportive if, instead of inserting a percentage, the Committee inserted a flat dollar amount, without including the new costs, along with some sort of nominal growth rate, until the caseload data is available. **Mr. Blattie** said the counties could support that, and that the counties are fully aware of their responsibility to fund their obligation toward a public defender system.

Ms. Eastman, Gallatin Co. Public Defender, said that she would encourage the Committee to endorse SEN. WHEAT'S idea of mandating a caseload accounting system. Her office used percentages much like those offered today to calculate the City of Bozeman's portion of the costs of her office and found that the lack of caseload data caused some unreal percentages, which after the caseload data was gathered proved to be too small.

REP. PARKER called for a motion from the Committee.

SEN. MCGEE *moved* that the Committee go forward with the percentages listed earlier--77.7% state share, 15.6% county share, and 6.7% city share. SEN. MCGEE offered the comment that, if the counties do not feel that they should have to financially participate in this, an option would be to not take any money from the counties and, instead, the state could bill each county for the services provided by the chief public defender's office, including training, standards, protocol, current updates, assistance for appellate division work, etc. The state could treat the situation like a business, with the state picking up the tab and billing the counties for the work the state performed.

SEN. WHEAT reiterated his concern that the development of accurate accounting of caseload data and expenditures is critical to the budget of the statewide public defender system, and provision must be made for adjustments to the formula once accurate data has been gathered. SEN. MCGEE agreed. SEN. WHEAT asked **Ms. Heffelfinger** if the bill draft contained sufficient provision this. **Ms. Heffelfinger** answered yes, that provision is included in the duties of the commission and the chief public defender, as well as in the functions of the statewide office, that they must keep an accounting of their expenditures and caseload data sufficient to implement the provisions of the bill.

SEN. MCGEE offered a qualifier for his motion: that the percentages should be reviewed at a later date; and noted that his motion was meant to serve as a starting point and should certainly be reviewed and adjusted, if necessary, after accurate caseload and expenditure data is available. SEN. MCGEE also said that, because of the very real benefits the cities and counties are going to receive from having this statewide office, it is reasonable for them to share in the costs of that office.

Ms. Heffelfinger suggested adding language requiring the commission to report to the Committee and the Legislature regarding caseload data and how the commission would recommend the allocation factors be adjusted for the future.

SEN. MCGEE said that he would like to **amend** his motion to require that the commission report back to the legislature and the L&JIC with specific data regarding the cost of operating the statewide public defender's office and recommendations for adjustments to the allocation factors.

REP. PARKER told the Committee that there are two matters requiring a vote: the percentages in SEN. MCGEE'S motion and the allocation system. He said voting on SEN. MCGEE'S motion will help the Committee answer the first part, and for the second the Committee will have to choose between Options #1, #2, or #3.

REP. LANGE suggested a compromise designed to appease the cities and counties and offered a **substitute motion** with the percentages as follows: state share 80%; county share 15%; city share 5%.

SEN. WHEAT argued that the Committee should use the most accurate numbers the state has available, which are the basis for SEN. MCGEE'S percentages, rather than just picking numbers. The percentage breakdown should be based on the best real data the Committee can access.

REP. PARKER called for a voice vote on REP. LANGE'S **substitute motion**. The motion failed on voice vote.

A voice vote was called on SEN. MCGEE'S **motion**. The motion passed unanimously.

REP. PARKER said that, now the percentages have been decided, the next decision is which allocation option to use.

Ms. Heffelfinger explained that the allocation formula is the method to split the counties' or the cities' share of the percentages contained in SEN. MCGEE'S motion proportionately between all 56 counties and 129 cities. Although it may result in some counties spending somewhat more than they have in the past, it equitably smooths out the spikes related to unusual court cases, which could occur in any court in any county or city.

REP. PARKER advised the Committee that the bill draft, as it is written, does contain an allocation system. Even if the Committee does not take a vote on this issue today, the mechanism is in place, and this issue will likely receive a great deal of discussion during the session.

Ms. Heffelfinger called the Committee's attention to subsection (5)(a)(ii) on page 25 of *EXHIBIT #10*, saying that, because the caseload data is unavailable at this time, she would like

to receive the Committee's approval to change "caseload allocation factor" to "taxable value allocation factor", thus coordinating with the allocation factors for the counties.

SEN. WHEAT objected, saying that the language regarding caseload should remain in the bill draft, and perhaps even be expanded into a separate section of its own, because caseload will be one of the allocation factors in the future.

SEN. MCGEE suggested changing the language referencing "biennial review" to language that specifies that, as data becomes available on caseloads or other parameters that can be used as part of the funding allocation formula, the information be studied by the commission and presented to the Legislature for consideration.

Ms. Heffelfinger pointed out that SEN. MCGEE'S motion included a requirement that the commission report back to this Committee and the Legislature on caseload data and, based on that report, the Legislature could introduce a bill to change the language of the allocation factors. To make those changes now will require the use of contingency language and would result in a temporary subsection (5)(a)(ii) and a subsection (5)(a)(ii) with a delayed effective date.

SEN. CROMLEY suggested, in the subsections referring to the cities allocation formula, language saying "subsequent to X date, a public defender caseload allocation factor must . . ."

Ms Heffelfinger said that was possible, but it would create a temporary section in statute. If the language regarding the commission's reports to the Legislature and this Committee is retained, this Committee in the future could simply request a committee bill and add the language for a caseload allocation factor in the cities and, in the subsections involving the counties' portion, "crime rate allocation factor" could be stricken and "caseload allocation factor" inserted.

REP. PARKER told the Committee that, without objection, the chair would entertain a motion to adopt this committee bill as drafted.

SEN. CROMLEY said that he **moves** that the Committee amend the language in subsection (5)(a)(ii) to "taxable allocation value factor" and adopt the bill draft of LC 214 as written.

REP. PARKER called for a voice vote regarding the **motion** calling for language cleanup in subsection (5)(a)(ii). The motion passed unanimously.

REP. PARKER called for a voice vote on the **motion** to adopt the bill draft of LC 214, enacting the statewide public defender system, as written. The motion passed unanimously.

II. Report from the Montana Board of Crime Control

Roland Mena, Executive Director, Montana Board of Crime Control, offered a packet of information (included as *EXHIBIT #16*) to update the Committee on expenditures of federal grant money and allocations to, and results from the various drug task forces within the state.

Mr. Mena explained to the Committee that a bill currently in Congress will reduce the federal grant money from the U.S. Department of Justice to the states for use by the drug task forces. If the bill is passed, Montana stands to receive 64% less federal grant money for these uses.

REP. PARKER asked **Mr. Mena** if there were any actions this Committee could take that would

be helpful in addressing this situation. **Mr. Mena** replied that he wasn't aware of any, and there was still a chance that this bill would not pass through Congress.

III. Briefing from the Department of Corrections on Inmate Escape Attempt

Bill Slaughter, Director, Department of Corrections, gave the Committee an overview of the attempted prison van escape that occurred recently in Helena. The prisoners were being transported by van from the prison in Shelby to the Montana State Prison under the auspices of Transcorp, the transportation entity of Corrections Corporation of America, a contracted prison entity. These prisoners were being moved because they had been reclassified as "maximum security" prisoners, and the Shelby facility does not handle prisoners in that classification. The Transcorp van stopped at Burger King in Helena and, while one of the accompanying officers was inside the restaurant, four male prisoners defeated their restraints (handcuffs and leg restraints) and escaped from the van. The second accompanying officer, whom remained outside the restaurant, followed department policy and two of the escapees were caught immediately. The other two escapees were caught several hours later, by the combined efforts of the Department of Corrections, local law enforcement, the Highway Patrol, and the National Guard. **Mr. Slaughter** explained to the Committee that transfer of prisoners between facilities is a common occurrence, and the Transcorp has moved about 1300 inmates in a 4-month period for the state, federal marshals, and sheriffs of this state. **Mr. Slaughter** said that the Department is entering into a memorandum of understanding with Corrections Corporation of America to break out the details of the existing contract and make several changes immediately: no maximum security or administrative segregation inmates will be moved without an accompanying chase car; no inmates will be moved without an accompanying face sheet or a color digital photo taken at the time of the move; prisoner transports will not stop except at secure locations for restroom or meal breaks; and transporting entities must be able to notify 9-1-1 about transports. Other actions that must be taken within 30 days include: prisoners transported in Montana must be considered "close custody"; transporting agents will carry handheld radios provided by Transcorp; travel manifests must be approved by the DOC command post or higher authority; and Transcorp will require their agents to wear their sidearm when appropriate. Two issues still under discussion are whether or not deadly force can be used by Transcorp agents and whether Transcorp can export their state-of-the-art GPS system to the command post in Montana.

REP. GUTSCHE asked how often prisoners whose classification will require a chase car are moved. **Mr. Slaughter** said that he believes it is only one or two per month. A chase car is provided for every relocation that the DOC handles. REP. GUTSCHE then asked if the numbers of prisoners being moved, 1300 in a 4-month period, is standard or has this number increased recently. **Mr. Slaughter** explained that the old Northwest Shuttle System used to transport perhaps 20 inmates per week, but the numbers are growing rapidly, which is what prompted the state to enter into the contract with Transcorp. This will be a huge issue during the next legislative session, because the state is required to pay for all jail-to-jail transports for even county inmates. The counties are responsible for the payment of costs associated with the first transport of a felony offender from county jail to the prison, but all other transports are the responsibility of the state.

REP. SMITH asked if the armed Transcorp officers are trained through the police academy. **Mr. Slaughter** explained that Transcorp has their own academy and conducts their own training programs specific to the problems of transporting prisoners.

IV. Public Comment

Richard Stevens, Somers, MT, spoke to the Committee urging the Legislature to repeal the Montana Constitution, saying that if the Constitution is not good for, or does not offer protection to, him why should it be good for, or offer protection to, anyone else. A letter to the Committee from Mr. Stevens and accompanying papers is included as *EXHIBIT #17*.

V. Wrap-up of Other Business

Ms. Heffelfinger told the Committee that the Judicial Branch has some bill drafts, drafted by request of the Supreme Court, that need a Committee motion and approval for drafting purposes.

Jim Opendahl, Office of Court Administrator, explained that the first bill he was proposing to the Committee (see *EXHIBIT #18*) will require a written judgment to include a direction to the clerk of the district court regarding distribution of written judgments. The Supreme Court is receiving applications for writs of mandate from inmates whose written judgements aren't getting to the detention facility in a timely manner, thereby affecting their ability to move into a lower security classification, and the amendments contained within this bill should alleviate the problem.

SEN. MCGEE **moved** that the Committee approve the bill for drafting. The motion passed unanimously.

Mr. Opendahl said that the second bill (see *EXHIBIT #19*) the Supreme Court was requesting has come about as a consequence of the state assumption of District Court costs. Currently, if bail is posted and subsequently forfeited, the entire sum of the bail goes to the county, regardless of whether the bail is posted in relation to a District Court case. This bill will change the statute to provide that if a forfeited bail is posted in District Court for a felony case the money will go to the state general fund. At this time, **Mr. Opendahl** was not aware of how much money this will involve on an annual basis.

SEN. MCGEE **moved** that the Committee approve the bail forfeitures bill for drafting. The motion passed unanimously.

Ms. Lane distributed copies of LC 215, a proposed bill draft that extends the term for renewal of driver's licenses by mail for spouses and dependents of military personnel stationed outside of Montana (see *EXHIBIT #20*).

SEN. MCGEE asked why the period for mail-in renewal is only being extended for 1 term. **Ms. Lane** answered that, at the last Committee meeting the bill, as it was drafted at that time, proposed allowing unlimited renewal by mail but after hearing the concerns of SEN. CROMLEY, the policy decision was made to limit the renewal to a single extra by-mail renewal. The original term of a license is 8 years, the first by-mail renewal, which is applicable to every Montana driver's license holder, is another 8 years, and the additional by-mail renewal allowable in this bill is for 8 years, and the consensus of this Committee was that 24 years was enough.

REP. PARKER said that he would entertain a motion the Committee introduce this bill.

SEN. CROMLEY **moved** that LC 215 be approved by the Committee. The motion was approved unanimously.

SEN. MCGEE announced his willingness to sponsor the statewide public defender system bill.

SEN. CROMLEY announced his willingness to sponsor the mail-in driver's license renewal bill.

Ms. Heffelfinger said that the Committee's Final Report is not completed at this time and will be mailed to the members at a later date. Three sets of minutes also require Committee approval. A ballot will be mailed to each Committee member and can be marked to approve or disapprove the minutes and Final Report.

The meeting was adjourned at 4:07 p.m. This was the final meeting of the Law & Justice Interim Committee for 2004.

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