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# Law and Justice Interim Committee

## 58th Montana Legislature

### SENATE MEMBERS

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

### HOUSE MEMBERS

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

### COMMITTEE STAFF

SHERI HEFFELFINGER, Research Analyst  
VALENCIA LANE, Staff Attorney  
REBECCA SATTTLER, Secretary

# MINUTES

October 23, 2003

Room 102, State Capitol

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

REP. GAIL GUTSCHE  
REP. MICHAEL LANGE  
REP. JOHN PARKER  
REP. DIANE RICE  
REP. SCOTT SALES  
REP. JIM SHOCKLEY  
REP. FRANK SMITH

### COMMITTEE MEMBERS EXCUSED

SEN. GERALD PEASE

### STAFF PRESENT

SHERI HEFFELFINGER, Research Analyst  
VALENCIA LANE, Staff Attorney  
REBECCA SATTTLER, Secretary

### AGENDA & VISITORS

Agenda, ATTACHMENT #1  
Visitors' list, ATTACHMENT #2

## **COMMITTEE ACTION**

! Approved Committee minutes from August 5, 2003 meeting.

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

The meeting was called to order at 9:05 a.m. by CHAIRMAN GRIMES, and the secretary went through the roll call (ATTACHMENT #3). The Committee minutes from August 5, 2003 were approved without objection.

## **STAFF BACKGROUND REPORT**

**Ms. Sheri Heffelfinger, Research Analyst**, presented a PowerPoint report (EXHIBIT 1) covering the following topics:

- ▼ Judicial Branch structure
- ▼ The right to defense counsel
- ▼ Public defender issues nationally
- ▼ Administrative and organizational models
- ▼ Funding schemes in other states
- ▼ Montana's current law, organizational models, and funding scheme.

She also referred to EXHIBIT 2, a chart of the judicial branch structure, and EXHIBIT 3, an extract of the constitutional and statutory provisions governing indigent defense.

## **INFORMATIONAL BRIEFINGS ON ACLU LAWSUIT**

**Mr. Ron Waterman, ACLU attorney**, explained that the lawsuit process started in February 2002 and that a trial date is set for May 2004. He stated that the lawsuit is the result of 30 years of neglect, and that a report generated in 1976 listing deficiencies in the system is still applicable today. Mr. Waterman also said that there is no accountability for funding or spending, nor are there standards to ensure the indigent defense is being adequately represented. He said that the words "Montana does not..." could be adequately inserted in front of the "Ten Commandments" as put forth by the American Bar Association (ABA) in 2002 (see Exhibit 1, pages 12-13). Mr. Waterman pointed out that there is no system or standard currently in place, with part of the reason being that it was never funded or staffed to ensure its conception. The other problems he delineated are that the appellate defenders are understaffed and underpaid, there is no public defender supervision or accountability, nor set standards to measure conduct or case load. He concluded by saying that, "Montana does not have a system -- what we have is an injustice."

**Mr. Norm Grosfield, County Defense Counsel**, stated that initially seven counties were included as defendants in the lawsuit, but six of those have now been dismissed from the case. He said that 2003 legislation provided 100% funding from the State for indigent defense costs, thereby releasing the counties from any funding obligation, so they were released from the case, and others have changed their indigent defense systems. Mr. Grosfield explained that Glacier and Teton Counties had a direct appointment system; Flathead, Ravalli, Butte-Silverbow, and Lake Counties had a contract system; and Missoula County has a county office with permanent employees. Missoula County is the only remaining defendant because of the status of its office, but he hopes to get them dismissed before the trial as well. Mr. Grosfield

admitted that there are problems with the system that could be improved, but said that they are not as severe as stated by the ACLU. He added that many of the allegations are not true. Mr. Grosfield said that the "Ten Commandments" have basically been met by the public defenders with the exception of #10, regarding the need for uniformity and standards. He explained that the system is court-driven in Montana by statute, but that he is supportive of a state-operated system as proposed in 2003 legislation.

**Mr. Brian Morris, Attorney General's Office, State Defense Counsel**, said that he has been compiling depositions from county officials. He explained that there is a lack of a central coordinating body, so the majority of his time so far has been spent trying to gather that information, but he will now focus his time on other depositions. Mr. Morris agreed that Montana has a court-driven system. He stated that the weakness with that type of system is if a person gets a bad defender appointed to them, there is no mechanism besides the District Judge interceding to handle that problem.

### **COMMITTEE DISCUSSION AND QUESTIONS**

REP. SMITH asked who provides the oversight for the judges. Mr. Morris explained that they are an independent branch, but that there is an inherent mechanism in place to provide oversight. REP. SMITH wondered what happens if a person is appointed a defense attorney with whom that they can't get along. Mr. Morris said that the guarantee for adequate counsel doesn't guarantee the person's choice of counsel. He added that per the defendant's request, the judge can appoint another counsel. REP. SMITH inquired if the counsel can be selected from out of the area. Mr. Morris responded that there are no restraints, as long as the counsel is a member of the Montana State Bar.

SEN. CROMLEY asked what distinguishes the seven counties included in the lawsuit from the other 49 counties in the state. Mr. Morris explained that it was done out of convenience for the lawsuit, and that the seven counties are representative examples of each type of system in Montana. Mr. Waterman agreed that the ACLU didn't want to sue all of the counties, so they picked the seven according to the three types of systems and the number of complaints received. He added that any remedies the representative counties worked out would have to be applied statewide. He also stated that judicial ethics keep judges from supervising the counsel; also the judge's function is to act independently of supervision from the other branches. He explained that the judges can't consider the background of the case or out-of-court actions.

CHAIRMAN GRIMES inquired about the gravity of the offenses cited by the ACLU and the practical impacts associated. Mr. Waterman explained the difficulty in determining how many people have been impacted; no specific study to determine that kind of impact has been conducted. He said that they have received hundreds of complaints over the years. Mr. Waterman then expounded on three past cases with convictions that were later overturned, due to faulty evidence by State Crime Lab professionals. He stated that the examples illustrate an inadequate job of public defense because the defendants were charged and convicted of a crime they didn't commit. REP. PARKER asked for descriptions of the allegations for the individual cases. Mr. Waterman said that there are a series of categories including: 1) defendants not seeing their counsel until months after the charges have been set forth; 2) bail hearings not held in an appropriate time with realistic bond pay; and 3) inadequate alternatives

to being sent to a state prison. Mr. Morris added that one disadvantage of the legal system is that the wheels of justice turn slowly, but that eventually the facts come to the surface. He said that not all of the complaints have merit, and that it's too soon to tell how bad or good the system as a whole is.

SEN. PERRY asked if public defense attorneys are paid less than their counterparts in prosecution. Mr. Waterman said that it is a very complex subject because a county attorney could be paid less, but they do not have to pay support costs out of that amount. A public defender makes \$60/hour, but they have to pay the other overhead costs, thus lowering the actual amount received. SEN. PERRY inquired if a public defender is less skilled as an attorney. Mr. Waterman replied that as a group they are not; many are good, dedicated attorneys. However, more of the skilled attorneys go into the private field where they are able to make more money, leaving the public defender positions to be filled by new attorneys without the necessary skills. Mr. Morris stated that county attorneys and public defenders are both generally young and inexperienced. He added that many private attorneys in smaller counties use public defense work as a source of reliable income, along with their highly-paid private work. He pointed out that private practice attorneys are not supervised either.

SEN. PERRY wondered if it is true that the Appellate Commission is not funded and has not adopted standards. Mr. Morris agreed that they have not adopted standards. REP. SHOCKLEY asked about the fact that most private practice attorneys are not supervised. Mr. Waterman agreed, but said that there are more services available to attorneys on the prosecuting side than on the defense. He said that prosecutors have access to continued training, and individual firms offer differing supervision as well. REP. SHOCKLEY protested that as a separate issue, but Mr. Waterman said that they are components of how effectiveness is assured.

REP. SHOCKLEY wondered if a competent attorney can make a decent living earning \$60/hour. Mr. Grosfield answered that public defense offices are generally located in larger cities with greater overhead than a private counsel. He stated that \$60/hour is too low, but it's similar to other states the size of Montana. Mr. Grosfield added that it didn't appear to be a problem to serve by either the hourly or contract rate in Ravalli County, nor do they have a problem finding adequate defenders. REP. SHOCKLEY observed that building overhead can cost \$30-40/hour in areas west of Billings. Mr. Grosfield said that civil litigation firms cost more than that, but public defenders' overhead incurred is of a different type. He added that he is not suggesting that nothing be done to change the situation. He said that a state-operated system (as proposed in SB 218) is a good thing, and wanted to clarify that the "hundreds of complaints" allegedly received by the ACLU is not accurately representative of the issue. REP. LANGE asked if the ACLU has a list of recommendations or proposed changes. Mr. Waterman said that SB 218 was a good start, but experts are looking into specific deficiencies and actual projections. REP. RICE requested that the ACLU provide specific details, such as funding required, regarding the proposed changes. Mr. Waterman assured her that the final ACLU report will become a public document.

### **INFORMATIONAL BRIEFING ON SB 218**

- ▼ **Ms. Valencia Lane, Committee's Staff Attorney**, distributed SB 218 (EXHIBIT 4) and gave an overall summary of the bill and its history in the 2003 legislative session

proceedings. She said that the bill was sponsored by SEN. McNUTT at the request of the Montana Association of Counties (MACo). She said that the bill went through the entire process without opponents (and with many proponents), but ultimately failed on the House floor. Ms. Lane explained that the bill would have combined the public defender and appellate defender system as an attachment under the Department of Administration (DOA). This posed a problem due to potential conflicts of interest under the three government branches. She added that the county employees would have become state employees, and the positions of Chief Public Defender and Administrative Director would have been created. Ms. Lane said that there were a few technical errors in the bill, but the main flaw was with the numbers and the fiscal impact stated.

### **STATE ASSUMPTION OF DISTRICT COURT FUNDING IN RELATION TO INDIGENT DEFENSE COSTS**

- ▼ **Mr. Jim Oppedahl, Administrator, Montana Supreme Court**, provided a spreadsheet of the Final Fiscal Year (FY) 2003 District Court Reimbursement to Counties (EXHIBIT 5), under the old reimbursement plan. He stated that it shows the costs by county and the shortfalls. Some bills received after the August deadline were turned back to the counties to cover, since all of the money had already been distributed. He said that the expenditures for FY2003 was \$7.8 million and that \$7.5 million is the general fund expenditure forecast for FY2004. Mr. Oppedahl explained that the Court Administrator's Office make direct payments to contractors, while appointed attorneys and attorneys in county public defender offices are reimbursed after costs are incurred. He added that the Gallatin County combined office startup costs will be allocated after three months. He said that in the 2002 legislative session, \$300,000 was taken out of the District Court funding, and that \$300,000 more was taken out in the 2002 Special Session.

REP. PARKER asked what public defender costs are still the counties' responsibility. Mr. Oppedahl responded that the costs outside of the District Court are still county responsibilities. REP. GUTSCHE wondered what percentage of cases start elsewhere before heading to the District Court, but Mr. Oppedahl replied that he does not know. REP. PARKER observed that misdemeanor public defenders are a cost of the county, and Mr. Oppedahl affirmed that is correct.

### **LEGISLATIVE POLICY ISSUES AND DECISION POINTS**

**Ms. Sheri Heffelfinger** reminded the Committee that page 24 of Exhibit 1 lists some potential issues for the roundtable discussion and stated that the main questions to be answered are: "What are the problems with respect to Montana's public defender laws and existing methods for providing for indigent defense?" and, "Do these problems need to be addressed legislatively?". She said that any new legislation should define the following: 1) policy/policy goals - the "why"; 2) structure - the "who, what, where"; and 3) funding.

### **ROUNDTABLE DISCUSSION TO IDENTIFY ISSUES AND PROBLEMS**

**REP. PARKER** acted as moderator for the discussion and introduced the panel members:

- ▼ Mr. Chad Wright, State's Chief Appellate Defender
- ▼ Ms. Jennifer Bordy, Gallatin County Public Defender's Office

- ▼ Court Administrator Dorothy Bradley, 18th Judicial District (Gallatin Co.)
- Chief Justice Karla Gray, Supreme Court
- ▼ District Court Judge Kenneth Neill, 8th Judicial District (Cascade Co.)
- ▼ Mr. John Connor, State attorney, Department of Justice
- Mr. Fred Van Valkenburg, County Attorneys' Association
- ▼ Mr. Gordon Morris, MACo
- ▼ Mr. Eric Olson, Chief Public Defender, Cascade County

The Committee received a outline for possible roundtable discussion and an Organizational Structures In Montana chart, included as EXHIBIT 6. REP. PARKER asked about budgetary and staffing issues involved in working with public defense clients. Mr. Olson answered that they are studying the system and have concluded that there is no perfect system, but that a better one could be developed. He said that the public defenders deal with contentious, cantankerous individuals and their families. He offered that a better system would allow public defenders to communicate with each other and share obligations more easily. Ms. Bordy said that a problem in Gallatin County is that judges have to approve expert witnesses, but that is not required for county attorneys. She added that there is the issue of overhead costs and that public defenders are actually making 1/3 less than county attorneys.

When asked about the same issues from the prosecutors' perspective, Mr. Van Valkenburg offered three points: 1) the importance of ensuring that defendants have representation that can withstand appellate attack; 2) 94% of the budget in Missoula County goes for salaries, the rest goes to overhead - the County Commissioners watch over the budget constantly; and 3) county attorneys don't just deal with indigent defense cases. SEN. McGEE asked how to ensure that point #1 is met. Mr. Van Valkenburg answered through education and training, experience, and peer review. Mr. Wright stated that public defense clients are generally desperately poor, and a high percentage are mentally ill. He said that they generally come to the Appellate Defender's Office as a last resort due to a conflict with their attorney. CHAIRMAN GRIMES wondered what percentage of his clients are juveniles. Mr. Wright responded that they don't serve any juveniles, unless they have committed a serious crime and will be tried as an adult. He said that about 18 out of 60 total clients are juveniles. REP. PARKER asked for Mr. Wright's critique of the public defender system, and he responded that there is a lack of judicial oversight and a lack of a standard. He added that a person's location in the state determines the type of defense counsel received.

REP. PARKER asked for the Department of Justice's viewpoint. Mr. Connor replied that they don't do appellate work, only criminal prosecutions. He added that the work of justice can't be accomplished unless there is a respect for what each side of the case does. He stated the need to ensure high quality defense work and improve the delivery of defense services and keep quality people on the job. REP. PARKER inquired about the problems at a courtroom level. Justice Gray made the following comments:

- No matter how good the defense is, appeals alleging ineffective defense counsel won't stop.
- Better defense counsel might result in a few less reversals based on ineffective assistance of the defense counsel, but that is not even granted very often.
- Montana needs educated, experienced defenders, but that won't change many results.
- Defense quality is not based on location, but is a lawyer-by-lawyer issue.
- Montana has no system currently, and never has; it grew county-by-county.

- Public defender offices are generally the most effective system, but she was not suggesting overall use.
- Montana needs a system separate from the judicial branch to avoid conflicts of interest.
- The system should be statewide, not created by SB 218, but by basing it on other states' models (WY and NM specifically), making it work for Montana, and funding it.
- Don't fund the new system by crippling the judicial branch.
- Case-by-case appointment is ineffective and inefficient.

REP. PARKER requested a brief review of the State vs. Bar Jona case with regard to the cost issues. Judge Neill stated that it is an example of the runaway costs a case can run into. He added that he was able to find two highly qualified attorneys to handle the case for \$60/hour. He explained that the case was a sexual assault and kidnaping/homicide case, and the District Court was compelled to authorize the costs. The Court did not deny the defense any expert witnesses they sought, but they did negotiate the limits on that expense. The total costs were \$624,000; \$332,000 was for attorney fees, \$29,000 paralegal fees, \$111,000 investigative fees, \$56,000 expert fees, and \$94,000 for other fees. Judge Neill added that there ought to be an investigative component in the statewide system; claims of impeding the defense can be used if the Court denies any fees or expenses in a case. His opinion is that a state public defender system is the best option. Judge Gray added that the Supreme Court is pursuing federal grants to install videoconferencing in courtrooms, which will help with costs in a statewide system.

SEN. McGEE said that it is difficult for legislators to know how much to spend for the judicial system and wondered the best way to determine the budget. Judge Neill suggested going by the historical record and figuring in an increase. He said that Montana needs to devise the best system and then consolidate services to determine an accurate, yet minimal, budget. SEN. McGEE agreed that the Court is obliged to appoint defense counsel and that defense costs must be paid, but wondered what limits could be set to allow the judge to decline any expenses. Judge Neill explained that the Courts are conscious of the costs, but they have to be equitable and not impede justice. Mr. Olson added that the Chief Attorney is conscious of the costs of the attorneys he supervises and can hear the issues, but a judge doesn't have that liberty. Mr. Van Valkenburg said that the State is on the hook for the cost, with no control over spending. He observed that if a statewide public defender system is created, an employee would then be accountable before the legislature. Also, the system would be able to utilize the efficiency of size to control cost. He added that costs are generally more predictable than the Bar Jona case, and would even out if it was put into the mix of the entire State's public defender costs.

REP. PARKER asked about the issues in evaluating a cost-effective way to deliver services. Ms. Bradley responded by explaining that a Criminal Justice Coordinating Council (CJCC) was formed in her district and was comprised of various parties attempting to understand the system and make suggestions for betterment. She said that one of the CJCC's functions is to assess the financial status of the defendant to determine indigent status. She urged the Committee to keep in mind with policy and funding decisions not to stifle the local level initiative and creativity. REP. PARKER wondered if it is possible for a single state system to adequately address both rural and urban counties' situations. Ms. Bradley responded that there is no quick answer, but the CJCC is working on a possible solution. Ms. Bordy stated that there is a Constitutional mandate for public defenders to adequately handle misdemeanors as well as District Court cases. Mr. Wright inserted that a centralized office tracks costs more efficiently than judges can. Ms. Bordy added that prosecution costs are always more than the defense costs. Mr.

Connor offered that a centralized office with legislative oversight should be created. He stated that often there is not a defense perspective present at legislative bill hearings.

Mr. Morris recommended that the Committee focus on realizing the “Ten Commandments” (pg. 12-13, Exhibit 1), and to use SB 218 as a basis for system structure, but that the funding issue is irrelevant because the judicial system is required to pay the bills. He said that there is flexibility in a district-by-district basis, where the Chief Public Defender has the option to contract services. He suggested that the Committee use SB 218 as a basis, but that if it can’t adequately be tweaked, to look to other states’ structures. Mr. Van Valkenburg said that the Constitution provided for public defender’s rights, but didn’t specify how that should happen or who would pay for it. He added that the citizenry cares more about protection of victims than criminals’ Constitutional rights. He said that the total burden of proof rests on the State and its prosecutors. Judge Gray stated that there are costs of law and order in the state; it’s part of our democracy under the Constitution. Ms. Bordy added that public defenders represent the innocent as well, not just the guilty.

REP. SHOCKLEY asked if one area investigator could be utilized, instead of each county having their own. Mr. Van Valkenburg agreed that would work, and that working together not only saves time, but builds esprit de corps and keeps everyone informed. REP. SHOCKLEY inquired about the disparity as to pay. Mr. Van Valkenburg said that in Missoula, the disparity goes by experience and time put in. He added that there is a high burnout factor of about five years in public defender work. He stated that Missoula County is proud of the system they have and feel it is unjust that they were singled out to be included in the lawsuit, while many other counties use the same system.

SEN. WHEAT inquired if there is anyone who doesn’t support a statewide system. Ms. Bordy said that she is not sure, and that the Committee should look to other states and other possible alternatives. Mr. Morris added that the counties feel that a statewide system is the way to go. Ms. Bradley wondered what is wrong with following the county attorney model for the public defense as well. Mr. Wright said that he is not opposed to the Washington state system where the State gives money to a separate nonprofit agency, but he is also in favor of the SB 218 structure. REP. LANGE observed that district attorneys and county commissioners are elected, but SB 218 would continue to have public defenders appointed. Mr. Morris said that legislative accountability would be provided by the county commissioners’ reporting during the session. He said that the courts have the control and spend the money, yet the taxpayers provide the funding. SEN. MCGEE wondered if a county public defender should be elected, like a county attorney is. Mr. Connor said that wouldn’t work very well; public respect is greater with criminal prosecutors than public defenders.

SEN. PERRY referred to Exhibit 5 and wondered why June expenditures are the highest. Mr. Morris explained that it reflects the Court Administrators’ requests for bills being claimed to close the fiscal year. SEN. PERRY wondered if rare, unexpected spikes in expenditures, such as with the Bar Jona case, could be covered by an insurance agency. Judge Gray answered that is not likely, but has never been suggested before. She said that there is an odd and complex court makeup in Montana. She explained that the State has assumed District Court and related expenses included in indigent defense, and counties have always funded the courts of limited jurisdiction locally. REP. SMITH asked how many public defenders have investigators. Mr. Olson said that they have two contract investigators, to be called in when

needed. REP. SMITH wondered how an investigator would prioritize his interests, should two counties share the same investigator. Mr. Connor explained that state prosecutors work with an investigator in the State Crime Investigation Bureau on an as-needed basis, but the investigator is not constantly utilized. SEN. ESP recommended that the Committee pay attention to Ms. Bradley's comments and vision for local ownership and local cost efficiencies in any statewide system to be implemented.

## **PUBLIC COMMENT**

**John Smith, Private Practice Criminal Defense Attorney, Missoula**, referred to a letter from Michael Sherwood to Chief Justice Karla Gray (EXHIBIT 7), written on behalf of the Montana Association of Criminal Defense Lawyers (MACDL). The letter provides a summary of the MACDL's position with respect to the issues and discussion of the roundtable. Mr. Smith said that he supports a statewide standards system, and that the current system is not working.

**Anita Rossman, Montana Advocacy Program (MAP)**, said that MAP deals with people with mental illness. She said that many detention centers are holding people that the courts don't know how to deal with. She added that sentencing investigations are not happening, and that public defenders should be valued just as much by the informed public as county attorneys.

**Steve Curtis Crawford, Flathead County citizen**, presented his remarks to the Committee (EXHIBIT 8). He said that his son is in a Montana state prison for a crime he didn't commit. He stated that the public defender took five months to see him, and that the public defenders are not adequately defending the public.

**Eduardo Gutierrez-Falla, Attorney in Kalispell**, said that the contract system used in Flathead County worked better than the new hourly system, even though by charging a rate of \$60/hour, he is making more money than before. He said that in Flathead County everyone makes the same amount of money. The head public defender assigns the cases, determines qualification, resolves conflicts, and handles client complaints, but only makes \$600 more per month than the other public defenders. His written comments are included as EXHIBIT 9.

**Kandi Matthew-Jenkins, citizen**, said that the public defender system is generally good, and noted that it is not only the "slime" of society who get public defenders. She said that the problem is that attorneys won't fight for their clients in certain situations, and that supervision should be present. She added that the public defenders' caseloads are too heavy and worried that the citizens are not being informed about the legislative process or meetings held.

**Shawn Guyman, Flathead County resident**, stated that the ACLU is involved because the people of Montana do not have a remedy. The indigent have no recourse but to "go it alone" with the county attorney.

**David Stufft, Flathead County Attorney**, explained that he has a civil practice and does public defense contract work as well. He said that prior to July 1, they were paid on a contract basis, but now they bill out their work to the County Administrator who reviews it and sends it on to the State to be processed. He said that it can take 45-60 days to receive his check now. He added that they have a lot of accountability as attorneys to the judge, the Ethics Committee, and to other attorneys. Mr. Stufft stated that within 18 months, the \$60/hour system will be bankrupt.

He is making more money under the per-hour billing system, but he prefers the flat fee contract system.

**Mark Sullivan, Flathead County Public Defender**, said that the public defenders make sure they are not over-billing the State, but this new \$60/day system is still costing the State more. He sees nothing wrong with the contract basis for pay, and stated that prosecutors and judges are paid by contract as well. His written comments are included as EXHIBIT 10.

**Melissa Worthin, citizen**, expressed her frustration in dealing with the Department of Family Services and indigent defense regarding her daughter who was born with a physical defect. She said that she has worked with two paid attorneys in the past, but has run out of money and now has a public defender. She told the Committee of her disappointment in dealing with the public defender and convincing him to subpoena witnesses. She stated that indigent people want experts to defend their cases too.

**Richard Stevens, Flathead County resident**, stated that he is trying to defend his property rights and has filed complaints through the Attorney General's office. He said that he doesn't have the money to seek private help, but that attorneys and DNRC employees have acted above the law.

#### **BOARD OF PARDONS AND PAROLE BRIEFING**

**Mr. Craig Thomas** gave a briefing about the report to the Committee by the Board of Pardons and Parole (BPP) as required in SB 211. He distributed EXHIBIT 11, the BPP Biennial Report from January 2003, with EXHIBIT 12 (the Executive Clemency Report) and EXHIBIT 13 (parole eligibility requirements). He also distributed EXHIBIT 14, the Interim Committee report regarding the Parole Dispositions of Native Americans. Mr. Thomas explained that SB 211 changed the composition of the BPP by requiring all members to be trained in Native American culture and problems, but not specifying that a Native American must be on the Board. He went through Exhibit 14 to show that they have compiled a database and information system through Microsoft Access. The project has taken three years to complete, but they are now able to track dispositions and various other factors of parole. Mr. Thomas informed the Committee that this detailed reporting is only possible from July 1 onward (since project completion).

SEN. McGEE explained that SB 211 was sponsored by SEN. PEASE to address two concerns: 1) insufficient representation for Native American issues; and 2) potential disproportionate number of paroles denied due to race or lack of training. He said that the bill had aimed to provide a reporting system to determine if the issues have merit or not. CHAIRMAN GRIMES said that SEN. PEASE is excused due to illness, and suggested that the Committee let SEN. PEASE determine if the reporting system is sufficient to fulfil the BPP's responsibilities in SB 211. SEN. McGEE added that the BPP has done well with the report. REP. SMITH said that the State-Tribal Relations Interim Committee might also be interested in the information. REP. GUTSCHE wondered if the database could provide the same statistics for all races, not just Native Americans. Mr. Thomas replied that it can.

REP. LANGE had a question on the Biennial Report (Exhibit 11) on page 20 regarding victim services. He asked about the number of victim requests, if there is a formal complaint process,

and if so, the number of complaints they receive. Mr. Thomas stated that there is not a formal complaint process, but that the victim has to file the complaint and keep their contact information current. REP. LANGE wondered if the BPP is making sure the victims have a process to file a complaint and be heard. Mr. Thomas said that there is no process because they don't receive many complaints. He added that there is an internal system of checks and balances. He said that they are currently amending the administrative rules and will try to put in a better process for victim complaints.

**Jeff Walter, Senior Administration Officer, BPP**, explained that the Access database contains a letter for victim notification when their offender goes on parole unless it is not a parole instance or the person has completed their sentence. REP. SMITH inserted that there is a U.S. Senate bill regarding victims rights as well. Mr. Thomas cautioned that the parole report data (Exhibit 14) is not accurate, but are examples of the type of information that the system is tracking. He added that the American Indian issue is more complicated than it seems, and that there is no criteria besides self-reporting to determine if a person is an American Indian or not.

### **COMMITTEE DISCUSSION/ACTION**

Sheri Heffelfinger reminded the Committee that the next meeting is set for Jan. 8, 2003. REP. PARKER asked if the next meeting could be dedicated to addressing possible solutions and problems with each option. He also requested information on Wyoming and New Mexico's plans, with their issues and other options. CHAIRMAN GRIMES agreed that the January meeting should be used to finish the public defender system, and put all other topics on hold until further meetings. Ms. Heffelfinger said that the Children, Families, Health and Human Services Interim Committee (CFHHSIC) wants to know if they can coordinate with the Committee with respect to the HJR 3 study of public defender representation for parents in child abuse and neglect proceedings. The CFHHSIC would also like to report to the Committee in March. REP. SHOCKLEY stated that the CFHHSIC's topic and the public defender system are separate issues. Ms. Lane said that the indigent defense system provides for the State to pay the cost for the defense, but the issue in HJR 3 is at what point in the process attorneys are appointed to represent the parents.

SEN. McGEE requested summarized copies of the Wyoming and New Mexico statewide public defender system models for the Committee. SEN. PERRY expressed interest in knowing more about Melissa Worthin's case. SEN. WHEAT responded that the Committee can look at the public defender system to fix the overall structural problem, but can't feasibly look into case-by-case issues. REP. PARKER added that Ms. Worthin has a public defender and a judge is currently involved. SEN. McGEE observed that there is a need for some form of appeals process and accountability through checks and balances. REP. LANGE referred to a letter the Committee members received from Sam Johnson (EXHIBIT 15), an inmate in the Crossroads Correctional Facility in Shelby, Montana. The letter listed several changes that Mr. Johnson would like to see in the system, speaking as Chairman of the Inmate Welfare Council. REP. LANGE suggested that the Committee look into those issues with regard to policy and rules administration. With no objection from the Committee, CHAIRMAN GRIMES said that topic would be covered during the Committee meeting in March.

### **ADJOURN**

CHAIRMAN GRIMES adjourned the meeting at 5:07 p.m. The next meeting is scheduled for Thursday, January 8, 2004.

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