

Meeting Summary: April 10-11, 2008

Activity on several fronts....At its April 10-11 meeting, the Law and Justice Interim Committee took action in the following areas:

- instate residential psychiatric treatment for youth in order to divert mentally ill youth from youth correctional facilities and avoid out-of-state placements;
- adult mental health precommitment costs and commitment laws;
- prison and jail standards for the handling inmates with a mental illness;
- judicial salaries;
- housekeeping legislation;
- juvenile detention hearings;
- drug and mental health courts;
- sex offender registration classifications; and
- collection of payments for public defense costs from convicted defendants who have assets.

In-state residential psychiatric treatment for youth ...The committee heard from Steve Gibson, Administrator of the Youth Services Division under the Department of Corrections, about the number of justice-involved youth placed out-of-state for treatment for serious mental illness, including Bi Polar Disorder, depressive disorders, or psychotic disorders. Mr. Gibson presented information about the need for a treatment facility that could serve about 18 youth in a secure setting. He estimated an operational cost of about \$2 million for such a facility, not including the building. Concerns were raised about how secure the facility would need to be and about secure facilities being ineligible for Medicaid reimbursement. The information provided by Mr. Gibson indicated that the state was already spending about \$2 million in state general fund money for an average of 18 justice-involved youth in out-of-state treatment facilities.

Mary Dalton, Administrator of the Health Resources Division under the Department of Public Health and Human Services (DPHHS), presented information about 187 youth who in FY 2007 were placed in out-of-state residential psychiatric treatment facilities, about 26 of whom were Department of Corrections placements. Ms. Dalton explained that DPHHS placement decisions are made on the basis of behavior and treatment needs, rather than on a specific diagnosis. She also explained some of the complexities involved in determining whether a facility is Medicaid eligible, including whether the treatment provided is for a mental disorder, whether the youth meets the income eligibility criteria as well as other criteria, whether the mental health treatment is medically necessary, and whether there is a reasonable expectation that the youth with

improve.

Larry Noonan, Chief Executive Officer for A.W.A.R.E. (Anaconda Work and Residential Enterprises) Inc., presented information about how A.W.A.R.E., as a private non-profit corporation, is one of the state's largest providers of services to adults and youth with mental, emotional, and physical disabilities. He noted that services include case management, employment services, and intensive therapeutic care for youth throughout Montana. Mr. Noonan explained his frustration as a provider in trying to coordinate with multiple governmental agencies when there is not a single point of contact. He also described the difficulties involved in developing and maintaining staff and programming to meet needs when funding, agency rules, and eligibility criteria are constantly changing.

Lois Menzies, Court Administrator for the Judicial Branch, reported that in FY 2007, of the approximately 7,000 youth referred to youth court, 32 were placed in residential psychiatric treatment facilities, and of those, 16 were youth were placed out-of-state. Ms. Menzies explained that youth may be placed out-of-state if: (1) there are no in-state beds available; (2) the in-state facilities cannot provide the necessary treatment; or (3) in-state facilities decline to accept the youth because of risks to the safety of the youth, the staff, or other residents.

The Committee also heard public comment from several other stakeholders and advocates.

During its work session, the general sense of the Committee was that it should further consider the development of in-state residential psychiatric treatment alternatives to out-of-state placements. The Committee directed staff to continue to work with the Children's Systems of Care Planning Committee (SOC), which has appointed a subcommittee on recommendations for statutory revisions, to develop bill draft language and recommendations for the Committee to consider at its next meeting. The SOC is a statutory committee under the Department of Public Health and Human Services that, as stated in section 52-2-304, MCA, is responsible for developing policies that support the development of "an in-state quality array of core services in order to assist in returning high-risk children with multiagency service needs from out-of-state placements, limiting and preventing the placement of high-risk children with multiagency service needs out of state, and maintaining high-risk children with multiagency service needs within the least restrictive and most appropriate setting".

HJR 50 involuntary commitment process and costs ... The Committee received a staff report summarizing the results of a survey sent to county attorneys in all of Montana's 56 counties. The survey asked for information about the number of involuntary commitment petitions filed, county detention, examination, treatment, testimony, and transportation costs, and the facilities each county relies on for precommitment detention, examination, and treatment.

The Committee also received testimony from a panel of speakers including Yellowstone County Commissioner Bill Kennedy on behalf of the Montana Association of Counties, and, on behalf of the Montana County Attorney's Association, Merle Raph, Toole County Attorney, Leo Gallagher, Lewis and Clark County Attorney, and Kevin Gillan, Yellowstone Deputy County Attorney. The panel discussed the need for the state to partner with counties to address the unpredictable and

significant costs associated with precommitment detention, treatment, examination, and transportation, and presented a proposal for a statewide insurance pool (e.g., a contingency fund) that would help participating counties cover precommitment costs. County mental health mill levies, a statewide mental health levy, or an increase in state beer and wine taxes as possible funding sources.

Dr. Laura Wendlandt, psychologist and mental health consultant for the Office of Public Defender, suggested statutory changes in the definition of a "professional person" to increase the number of people who could conduct a mental health examination in commitment proceedings.

Ed Amberg, Administrator of the Montana State Hospital, told the committee that Montana's involuntary commitment laws should be overhauled, not just tweaked, particularly with respect to voluntary commitments. Mr. Amberg supported the idea of pooling costs for smaller counties and suggested that the venue for all commitment proceedings be moved to the local judicial district (i.e., the 3rd Judicial District).

Public comment was provided by numerous other stakeholders and advocates, including testimony from Disability Rights Montana (formerly the Montana Advocacy Program) suggesting a voluntary commitment and mental health rights act modeled after Oregon's laws. Some testimony and committee discussion highlighted the challenges of transporting people to the state hospital and the controversial practice of using restraints.

During its work session, the Committee instructed staff to:

- develop options for how the counties and the state can share precommitment costs;
- work with stakeholders to develop a discussion bill draft to enhance local crisis intervention services;
- work with stakeholders to develop a discussion bill draft to amend adult mental health commitment statutes, particularly with respect to voluntary commitments; and
- place the topic of transportation to the state hospital on the agenda for the next meeting so the committee can receive testimony on the feasibility of a contracted transportation service based at the state hospital.

Jail and prison standards ... In response to a Committee request for testimony on state and local compliance with constitutional standards for mental health care of inmates, representatives from the Department of Corrections, the Department of Justice, and the Montana Sheriffs' and Peace Officers' Association presented testimony covering state and local policies and suicide prevention plans. Representatives of Disability Rights Montana, NAMI-Montana, and the ACLU discussed the need for further scrutiny and compliance with the constitutional standards. Committee discussion encompassed how to improve information sharing and ensure mental health records are forwarded when an offender is transferred from jail to prison. The content of presentencing investigation reports was also discussed as an area of law that may need revision to ensure that

more information about an offender's mental health history is provided to the prison.

During its work session, the Committee made the following decisions:

- asked for more information and testimony to be presented at the next meeting on mental health care standards set by the National Commission on Correctional Health Care and about what other states provide in statute or rule with respect to those national standards;
- asked for a bill draft to amend section 46-18-112, MCA, to provide that if a presentence investigation report is ordered by the court, the report must include a physical and mental examination of the defendant;
- asked for additional information about the policies (statutory or administrative) on the transfer of mental health records from jails to the prison and for the topic to be placed on the agenda for the next meeting; and
- asked for a panel discussion at the next meeting on the statewide collection of data on suicides in jails and prisons.

Judicial salaries ... The Committee discussed changing the statutory language concerning the salary survey on which district court judge and supreme court justices' salaries are based. Following the meeting, staff was instructed to develop a bill draft that would take Montana out of the list of states included in the survey, to add Colorado to the survey, and to provide that the survey be conducted after July 1 in each even-numbered year.

Medical costs incurred by hospitals for a person's injuries after an encounter with law enforcement ... Staff presented a bill draft requested on behalf of hospitals to clarify responsibility for paying medical treatment costs for persons who are either injured by law enforcement or who are county inmates brought to the hospital for medical treatment. The language of the bill was opposed by representatives for county attorneys and county commissioners. The Committee took no action on this topic.

Housekeeping legislation ... The Committee instructed staff to draft bills to:

- clarify that in mental health commitment cases, the victim of an action by the respondent may not be appointed by a court to be a "friend of the respondent"; and
- add the 22nd Judicial District to section 3-1-1001(1)(b), MCA, concerning the composition of the judicial nominations commission.

Youth detention hearings ... Based on recommendations developed by the Juvenile Justice Working Group at its February 29, 2008, meeting, the Committee instructed staff to draft a bill requiring that a youth be represented by an attorney at the detention hearing (unless waived after consulting an attorney prior to the hearing), to increase the time limit in which a detention hearing must be held from 24 hours (current state law) to 48 hours (federal law), and to provide

that a youth may not waive the right to an attorney without first consulting an attorney.

Drug and mental health courts ... Staff was instructed to work with interested parties to develop a bill draft adjusting drug and mental health courts statutes in a manner that would clean up outdated language, provide for state-level administrative responsibilities, require court data collection and reporting, and, with respect to the drug court statutes, recognize that drug courts include family and juvenile drug courts.

Sex offender registration ... The Committee requested that staff provide additional information about the fiscal implications for Montana if the state fails to comply with federal sex offender registration classification guidelines contained in the Adam Walsh Act by the 2009 deadline.

Collection of payments from convicted indigent defendants for public defense costs ... The Committee instructed staff to include in the Committee's final report a statement identifying the Committee's concern that the courts, county attorneys, and public defenders need to be more cognizant of and adhere to current law specifying that convicted indigent defendants who have assets should be held accountable for making court-ordered payments toward their public defense costs.

Next meeting date and further information ... The Committee's next meeting will be June 26 and 27 at the Capitol. For further information contact Sheri Heffelfinger at 444-3596 or visit the Committee's website at www.leg.mt.gov/ljic.