



Law and Justice Interim Committee

60th Montana Legislature

SENATE MEMBERS

LARRY JENT
CAROL JUNEAU
JESSE LASLOVICH
DANIEL MCGEE
GARY PERRY
JIM SHOCKLEY

HOUSE MEMBERS

SHANNON AUGARE
BOB EBINGER
KRAYTON KERNS
DEBORAH KOTTEL
TOM MCGILLVRAY
RON STOKER

COMMITTEE STAFF

SHERI HEFFELFINGER, Lead Staff
VALENCIA LANE, Staff Attorney
DAWN FIELD, Secretary

MINUTES

January 10 & 11, 2008

Room 137, Capitol Building
Helena, Montana

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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COMMITTEE MEMBERS PRESENT

SEN. DAN MCGEE, Chair
SEN. JESSE LASLOVICH
SEN. LARRY JENT
SEN. CAROL JUNEAU
SEN. GARY PERRY
SEN. JIM SHOCKLEY
REP. SHANNON AUGARE, Vice Chair
REP. BOB EBINGER
REP. KRAYTON KERNS
REP. TOM MCGILLVRAY
REP. RON STOKER

COMMITTEE MEMBERS EXCUSED/ABSENT

SEN. LARRY JENT - excused on January 11
REP. DEB KOTTEL

STAFF PRESENT

SHERI HEFFELFINGER, Lead Staff
VALENCIA LANE, Staff Attorney

DAVID NISS, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

The Law and Justice Interim Committee approved the meeting minutes from November 8 & 9, 2007, and November 30, 2007, as written.

CALL TO ORDER, ROLL CALL, AND APPROVAL OF MINUTES

00:00:01 SEN. MCGEE called the Law and Justice Interim Committee to order at 10:05 a.m. REP. EBINGER moved to accept the meeting minutes from October 1, 2007, as written. The motion passed on a unanimous voice vote. REP. EBINGER **moved** to accept the meeting minutes from November 8 and 9, 2007, as written. The **motion passed** on a unanimous voice vote.

STAFF BRIEFING ON TWO RIVERS DETENTION CENTER

00:01:56 **Valencia Lane, Staff Attorney, Legislative Services Division (LSD)**, provided a detailed discussion of her memo relating to the Hardin Detention Center (EXHIBIT #1). Ms. Lane pointed out that a November 2007 memo from Legislative Audit Division (LAD) regarding the detention facility is attached to her memo. She said the memo came to her attention the previous day and she strongly urged the Committee members to read it, saying it raises concerns about the consortium group that constructed the facility. Ms. Lane said the meeting materials also contain a copy of the December 3, 2007, Attorney General's opinion on the Hardin facility (EXHIBIT #2) and that members had received a copy of the complaint filed by the City of Hardin against the State of Montana in previous mailing.

00:20:23 SEN. MCGEE said he had requested this information and that it had been his intention to have the involved parties provide comment, but with the advent of the court case, it would not be appropriate for the Committee to debate the issue. He thanked Ms. Lane for providing copies of the LAD memo, saying the Committee can monitor the situation.

00:21:50 SEN. JUNEAU said she noticed that the Bureau of Indian Affairs (BIA) is listed as a player in EXHIBIT #1 and asked if the BIA has taken a position in the lawsuit. Ms. Lane said the BIA is not a plaintiff to the suit at this point and that she does not know the official position of the BIA in the matter.

00:23:33 SEN. JUNEAU asked if the Crossroads Correctional Center in Shelby takes BIA federal prisoners. Ms. Lane said the Department of Corrections would have to provide a definitive answer but that she thought it could. She said facility has completed construction of a 90-bed facility specifically for federal prisoners.

00:24:30 SEN. JUNEAU said she was recently approached by a constituent who has a son in a federal prison in Michigan and that the constituent would like to have her

son closer to home. SEN. JUNEAU said one of the reasons she was in support of establishing the Shelby prison was to allow Indian inmates to be incarcerated closer to home. She said she was glad to hear the Shelby facility is now able to take federal prisoners and that she would inform her constituent.

HOSPITAL COSTS FOR PERSONS INJURED BUT NOT UNDER ARREST

- 00:27:05 **Mike Foster, Regional Director of Advocacy, Saint Vincent's Health Care - Billings, St. James Healthcare - Butte; and Holy Rosary Health Care - Miles City**, discussed 7-32-45, MCA, and how payment occurs to healthcare providers in a situation in which a person is brought to hospitals by law enforcement officers for treatment of injuries that occurred in an altercation with the officers (EXHIBIT #3). Mr. Foster said there must be clarification of the intent of the statute and that other ways of dealing with these situations must be explored. He said the law enforcement agencies are not paying the medical bills for these persons, which means that either the individual pays or the hospital treats them as charity care, which is usually the case. He said this has greatly impacted hospital budgets because it is very difficult to collect any payment from the injured person, usually due to lack of insurance and Health Insurance Portability and Accountability Act (HIPAA) requirements. Mr. Foster said this situation is not unique to Billings and is happening all across the state. He discussed an instance in which an inmate was "unarrested" before being brought to a hospital for treatment of self-inflicted injuries, in order for the law enforcement agency/county to avoid having to pay medical costs for the person. Mr. Foster said that these types of patients add other significant costs, mainly security costs. He said hospitals are very concerned for the safety of staff, patients, and visitors, because some of these individuals are very dangerous. Mr. Foster said hospitals do not have the staff, training, or financial resources to provide security for these patients. He said the hospitals want to work cooperatively with the counties and that he has met with Yellowstone County officials to discuss the issue. He said the County officials raised valid concerns, such as budgetary and due process requirements concerns. Mr. Foster supported the concept of state-established forensic units in several hospitals. He asked that the Committee consider this option.
- 00:35:30 **Kay Wagner, Director of Patient Access, St. Vincent Health Care, Billings**, said she concurs with Mr. Foster's statements regarding the issue. She said the hospital has a strong charity care program and is fully committed to treating those in need but that these types of patients provide a unique circumstance. She said the more seriously injured patients that have recovered to a point where they can be treated with a lower level of care, such as a recovery and rehabilitation facility, cannot be transferred because of safety concerns and no method of payment. Ms. Wagner asked the Committee to take this issue under consideration.
- 00:38:18 **Curtis Harper, Director of Public Safety, St. Vincent Healthcare, Billings**, discussed safety and security issues within St. Vincent hospital, saying that if an individual is not under arrest, his staff has to provide security. He said these individuals are frequently homicidal or suicidal, requiring 24-hour surveillance. He said his staff of 14 does not have the training or equipment to deal with these

types of individuals. He noted that there are added safety and security risks when these patients are involved in gangs or with drugs. Mr. Curtis said local law enforcement provides no support and that his staff has to put in many hours of overtime, which is very expensive. He supported the concept of forensic units and agreed that the safety and security of the patients, staff, and visitors are the biggest concerns.

- 00:41:01 REP. STOKER asked Mr. Foster if federal funding is jeopardized if treatment is refused to these types of patients. Mr. Foster said yes.
- 00:42:39 SEN. LASLOVICH asked if information could be compiled on the number of individuals treated and the treatment costs for each. Mr. Foster said that while hospitals are in agreement that this is a problem, few have tracked these costs. He said St. Patrick Hospital recently began tracking these costs and that other hospitals plan to also. He said that over time, there will be some hard data and that the Montana Hospital Association plans to assist in gathering this information but at this time, no data is available.
- 00:44:38 REP. MCGILLVRAY asked for a definition of a forensic unit. Mr. Foster said a forensic unit would be unit within a hospital and would be a very secure setting specifically for dangerous individuals. It would accommodate local law enforcement officers in order to improve security and safety concerns and also would allow electronic arraignments or other legal proceedings to be conducted from the unit. He said the big question is who would pay for it.
- 00:46:14 REP. MCGILLVRAY asked Mr. Foster if it would be a secure multiple bed facility within a hospital, similar to a psychiatric ward. Mr. Foster said he didn't know how many beds would be needed but did recommend that several hospitals, such as Great Falls, Missoula, and Billings for example, each establish a forensic unit. He suggested that research be done to find out what other states are doing to address this problem.
- 00:47:23 REP. AUGARE asked if there is a common definition of charity care. Ms. Wagner said charity care is defined as paying for those with the inability to pay, as opposed to those who can pay but choose not to. She said that the threshold is 200% of the poverty level.
- 00:48:16 REP. AUGARE asked if a hospital often goes over its charity budget. Ms. Wagner said yes, that it happens frequently.
- 00:48:40 REP. AUGARE referred to comments made by Mr. Harper that hospital security staff is not trained to deal with violent persons and said he said he is concerned about this. He asked Mr. Harper if local law enforcement agencies are providing any support to hospital security staff. Mr. Harper said that support or assistance is seldom offered to his staff. He reiterated that hospital resources are limited and that his staff is not licensed to carry firearms. He related instances of gang retaliation and revenge situations occurring in the hospital that have caused great safety concerns to staff.

- 00:51:32 SEN. LASLOVICH asked for the amount of St. Vincent's charity care budget and how much over budget the hospital typically goes. Ms. Wagner said she did not have an exact figure available but said the charity care budget is based on a percentage of the hospital's expected annual revenue. She said in any given month, the hospital may incur at least \$1 million in strictly charity care costs.
- 00:52:41 SEN. JUNEAU asked that any data collected on these costs include identification of the types of offenders treated, for example, dangerous or violent. She said there are two issues involved: one is that hospitals are not getting paid under 7-32-2445, MCA, and the other is a safety issue. Mr. Foster said the issue of who pays would have to be decided but that he would like the wording in the statute to be changed to allow hospitals to be paid for the treatment and care of these types of patients. He agreed that safety and security are also issues and said that if law enforcement officers are placed in the emergency room, for example, the situation would be much more secure. Mr. Foster said law enforcement agencies could also help gather data on these individuals.
- 00:57:46 SEN. PERRY asked Mr. Foster to clarify if hospitals are a law enforcement facility, a government agency, or a civilian health care facility. Mr. Foster said hospitals are civilian health care facilities.
- 00:59:52 SEN. MCGEE asked if it would be a fair statement to say that charity costs are rerouted to overhead costs of the hospital and eventually are paid by those who can pay. Mr. Foster said cost shifting is an unfortunate consequence of this type of situation and that general healthcare costs are increased because of situations such as this.
- 01:01:57 SEN. MCGEE asked if law enforcement officers can bring in an individual who is a severe alcoholic and have them admitted for care. **Joan Daly, Billings Clinic**, said that trauma patients and co-occurring disorder patients are two different types of patients but that both can be determined to be a danger to themselves or others. She explained the different standards and procedures that are used to determine how each type of patient is admitted and treated

COUNTY RESPONSE

- 01:04:32 **Dennis Paxinos, Yellowstone County Attorney**, discussed several different examples of situations in which individuals can be admitted to a hospital as a result of injuries sustained during apprehension but before being arrested. He said as County Attorney, he has to deal with the facts as they come in and that usually, an arrest is not made until a person's mental status has been determined. Additionally, hospitals are bound by HIPAA requirements, which hinder law enforcement efforts. Once a charge is filed, the individual's due process rights come into play, which is yet another complication. Mr. Paxinos said he is in agreement with Mr. Foster that establishing forensic units for use by all counties would be helpful. He said this would allow the individual to get the medical treatment and care needed while meeting HIPAA requirements and criminal proceedings requirements. He said it would also eliminate the safety issues for staff and other patients.

- 01:15:12 SEN. SHOCKLEY discussed a scenario in which an individual was shot multiple times by law enforcement officers. He said the totality of all of the circumstances should be considered and said that in his opinion, shooting a suspect, especially multiple times, creates an assumption of arrest. Mr. Paxinos said under that technical analysis, that assumption would be correct. Regarding "unarresting" an individual for certain reasons, Mr. Paxinos said many counties are doing this and agreed that it creates very real issues for the hospitals.
- 01:16:30 SEN. PERRY asked Mr. Harper if hospital security staff is allowed in rooms and if they are exempt from HIPAA requirements. Mr. Harper said security staff is exempt but that his greatest concern is security and safety.
- 01:17:37 SEN. PERRY asked if it would be possible to designate a law enforcement officer as a security officer for the hospital, in order to provide a more secure environment for hospitals and still meet HIPAA requirements. Mr. Paxinos said that would be the purpose of creating a forensic unit.
- 01:19:59 SEN. JENT asked how well the HIPAA requirements are understood and if there is some type of exemption that could be found to deal with this situation. Mr. Paxinos said HIPAA is very complicated and is frustrating to work with but that he believes other cities have found ways to work around HIPAA in dealing with forensic patients.

PUBLIC COMMENT

- 01:22:30 **Greg Smith, Two Rivers Port Authority, Businessman, National Guard Sargeant, Hardin**, handed out copies of an executive summary of the Two Rivers Detention Center (EXHIBIT #4). Mr. Smith reviewed the summary for the Committee and invited the Committee to visit. He said the summary provides a detailed outline of the history of the facility and of the process followed.
- 01:25:59 Joan Daly, Billings Clinic, stated she was in full agreement with Mr. Foster's statements. She recommended, because HIPAA is such a confusing and complicated law, that an expert be consulted to help interpret HIPAA requirements in how this issue can be addressed and still comply with the requirements. Ms. Daly said as an advocate for mentally ill people, care must be taken when arresting individuals to make sure that those with mental conditions are not wrongfully arrested and incarcerated while interacting with law enforcement officers.
- 01:27:23 **Mark Taylor, Montana Hospital Association (MHA)**, distributed letters from St. Patrick Hospital in Missoula and St. Peter's Hospital in Helena (EXHIBIT #5 and #6) supporting Mr. Foster's discussion points regarding non-charged criminals being brought to hospitals for medical treatment. He agreed that this is a widespread problem among hospitals. Regarding HIPAA, Mr. Taylor said other jurisdictions have worked around this and MHA has access to information and would be happy to assistance. SEN. MCGEE asked him to work with Mr. Foster to get information to committee.

01:29:36 REP. EBINGER thanked staff for the complete meeting minutes prepared. SEN. MCGEE recessed the Committee for lunch and said the Committee will reconvene at 1:00 p.m.

LUNCH BREAK

DIVERSION ALTERNATIVES FOR NATIVE AMERICAN YOUTH PANEL

03:01:58 **Sherry Matteucci, attorney, Billings**, reviewed her professional work as a United States Attorney and her experience with the Crow Tribe as a consultant. She said an important factor in dealing with Native American youth is the jurisdictional challenges faced by law enforcement and service programs, on and off the reservation. Ms. Matteucci said there is a difference in the opportunities to deal with on reservation Indian youth, as opposed to those living off reservation. The State's primary interest is with off reservation juveniles but it is important to remember that, whether on or off the reservation, all are Montana citizens and are entitled to their fair and proportionate share of services. The best approach would be to work through the schools, because the least amount of barriers exist there and are the avenue in which the State could most easily increase services. Truancy is an enormous problem in schools with a high percentage of Native American students and the first step must be to get these kids into schools. Strengthening the partnership opportunities between the tribes and schools is critical.

Ms. Matteucci said that diversion of Indian juveniles is most effective when the program is culturally appropriate and reinforces the Indian youth's identification with his culture and ancestry. She said the majority of Indian juvenile offenders coming into the juvenile justice system off reservation come from counties with good access to tribal programs, which could, if appropriately developed and supported, provide access to state courts and state diversion programs to acquire additional resources to divert Indian kids.

03:09:34 Ms. Matteucci said the very best diversion opportunity for non-criminal juvenile offenders is family support, either direct or extended. If that is not a possibility for the youth, then an appropriate and meaningful mentor system should be developed for Indian juveniles. Indian children are in a unique situation because they need to be able to function in both the Indian and non-Indian worlds. Any programs that are developed should place a strong focus on the challenges of Native American youth because they have even higher risk factors than other juvenile offenders.

03:12:10 Ms. Matteucci said another important factor are tribal courts. She said she realizes that focus of SJR 6 is on off-reservation juvenile offenders but the tribal court system has the best chance of making a difference in the lives of Native American juvenile offenders. It would be ideal to have Indian juvenile programs under the auspices of tribal courts because the court could be a conduit for effective programs, both on and off the reservation. Ms. Matteucci recommended forming a small working group comprised of members who have experience in working with Indian juveniles and who recognize and respect the extreme challenges of Indian families. She said the group should work to

address specific programs created through state-tribal partnerships and that the programs should respect tribal sovereignty and tribal contributions.

- 03:16:48 **Karen Duncan, Youth Services Division, Youth Community Corrections, DOC**, said she deals with youth who are on parole in the community and that the goal of the Division is to keep them from re-entering the system. Ms. Duncan provided information on the Youth Services Division, saying that the Division serves male and female youth referred by District Courts, ages 10 through 17. She said the state population of Native Americans is estimated to be approximately 7%, but the number of Indian youth in corrections programs well exceeds that percentage. She briefly discussed how Indian juvenile offenders are handled by the Salish-Kootenai Confederated Tribe, under Public Law 280. She said those juvenile offenders are not included in DOC statistics.
- 03:19:25 Ms. Duncan said DOC makes every attempt to be culturally sensitive and responsive to the needs of Indian youth. She said a pamphlet detailing the cultural programming and activities for youth was included in the meeting materials (EXHIBIT #7) and pointed out that the Youth Services Division was chosen as a model program by the Office of Juvenile Justice and Delinquency Prevention (OJJDP) for its emphasis on the needs of Native American juvenile offenders. Ms. Duncan discussed Wellness Days (EXHIBITS #8, #9, and #10) and extended an invitation to LJIC members to attend any of them. She provided the contact information for Nancy Wikle, Native American Liaison, DOC, and asked that the members contact her if they plan to attend.
- 03:25:46 **Bob Peake, Office of Supreme Court Administrator, Bureau Chief, Youth Court Services, Department of Justice (DOJ)**, said it is important that people realize that a youth can be incarcerated for any offense that an adult can be charged with. The decision to incarcerate lies with law enforcement and is based on the seriousness of the offense, whether there are community safety concerns, or if the youth will abscond. Unfortunately, Mr. Peake said, when law enforcement officers pick up an Indian juvenile offender, it is frequently difficult for them to contact the youth's family, which forces law enforcement to place the youth in detention. This could be avoided if reservations had safe houses for youth to be taken to when families cannot be found or contacted. Mr. Peake said transportation is another issue because even if a parent or relative is located, many times they do not have transportation. Establishing transportation agreements between tribes and law enforcement may be a way to deal with this issue. Statutory requirements that the child be placed with a parent or legal guardian or other adult supervision, such as tribal police, would have to be written into the agreement, but such agreements would prevent many Native American youth from being held in detention unnecessarily.
- 03:30:18 Mr. Peake suggested other diversion alternatives, such as using global positioning system (GPS) monitoring and electronic monitoring, could be used to monitor youth but the family would have to have a telephone installed in their home to use this technology. He said these types of systems could be set up through memorandums of understanding (MOUs) between tribes and local jurisdictions. Mr. Peake said the most important factor in establishing a strong

diversion program is communication and sharing of information between the tribe and the community.

- 03:31:52 Mr. Peake provided 2007 Youth Court statistics. He said 6,692 children came through Youth Court and of that number, 846 were Native American (12.6%). The number of intakes (tickets) issued was 10,467 tickets and 1,519 (14.5%) were written to Native Americans. Youth offenses totaled 13,052 statewide, of which 2,043 (15.6%) were Native American youth.
- 03:33:59 SEN. PERRY, referring to the 15.6% Native American youth criminal offense statistic, said the *OJJDP DMC Reduction Best Practices Database* report, provided by DOC (EXHIBIT #11) states that Native American youth account for 39% of incarcerated youth. He asked why there is a discrepancy in percentages. Mr. Peake said the offense committed is the most important factor in deciding if a youth is committed to DOC from Youth Court. The child has to have committed a felony offense and has to have failed many times within various community services and placements. A male juvenile, for instance, isn't eligible to be sent to Pine Hills unless he has committed a felony offense. Of the 2,043 youth criminal offenses, a large percentage will be the felony offenses that resulted in the youth being sentenced to a youth correctional facility. That could be one reason for the higher number. Mr. Peake said his numbers are off-reservation numbers only and that no statistical data is available from tribes.
- 03:37:11 Ms. Duncan said her facilities do not house youth under federal jurisdiction so she does not have an explanation for the discrepancy.
- 03:37:52 SEN. JUNEAU said the disproportionate number of juvenile Indians in the correctional system is even more pronounced than the adult Indian numbers. She reiterated that the DOC numbers are based on off-reservation numbers and don't include statistics from the reservations, making the situation even worse than thought. She said this is a huge issue for the State of Montana. SEN. JUNEAU said Indian people are not more criminal in nature than others but that they do not have equal access to justice. She said preventative programs in schools are critical to reduce youth offense numbers and that she appreciates the work DOC has done in the past few years to address Native American issues, but the bottom line is that there are still too many Indians in the corrections system. She said the State and tribes must work together to change this.
- 03:41:55 Mr. Peake clarified that the DOC statistics do include on-reservation youth and explained that Native American youth living on the reservation who have committed off-reservation felony offenses are prosecuted in District Court. He said that tribal courts also have the option of transferring a youth felony offense to District Court.
- 03:43:20 SEN. SHOCKLEY asked Mr. Peake to comment about an issue that arose with the Canadian government regarding Canadian inmates in Montana prisons who are also Indian. He said it was his understanding that an understanding was reached that an Indian advocate would work with prisoners' attorneys. Mr. Peake

said this is not currently being done but would be helpful. He said the advocates would be valuable to public defenders, especially in the sentencing portion of the process where diversion programs could be used.

- 03:46:07 REP. STOKER said Ms. Matteucci had stated that tribal courts could do a better job of handling off-reservation Indian kids. He asked what would prevent tribal courts from asking state courts for jurisdiction of these kids. Ms. Matteucci said a tribal court would not likely take that step for several reasons, such as lack of funding and an already heavy work load. She said she thought there could be very effective programs established between the tribal and District Courts, such as supervision of a diversion agreement for an Indian child, but that overarching agreements would have to be reached. Another critical aspect would be if a tribe has sustainable, effective, appropriate, and stable programs to deal with juvenile offenders. At this point, tribes vary in their capacity to deal with juvenile offenders. Ms. Matteucci proposed increasing the interaction between the State and tribal probation systems, saying there is a great opportunity for creative projects between the State and tribes. She also said that it must be fully understood that the impact on Indian juveniles impacts the entire state and that they need the same, if not greater, level of support.
- 03:50:43 SEN. JENT asked why there couldn't be a State-Tribal Diversion Task Force. Ms. Matteucci said that would be a positive step.
- 03:53:12 REP. MCGILLVRAY asked if he could have the Indian youth statistics broken down even further. Mr. Peake said the statistics can be broken down however far REP. MCGILLVRAY would like them. He asked to clarify that approximately 80% of youth proceedings are handled in an informal process, in which jurisdictional lines are crossed between state and tribe. He said the informal process can't be used if the appropriate services are not available on that reservation. He said if an Indian child can be served on the reservation, he tries to make it happen, but that depends entirely on what is available on the reservation and on the cooperation of the probation officer.
- 03:57:24 SEN. MCGEE asked how jurisdiction is decided and cited an example of a crime committed off-reservation by an Indian youth against a white person. Ms. Matteucci said an offense committed off-reservation, against Indians or non Indians, is prosecuted off-reservation, but that voluntary agreements are possible to transfer jurisdiction. She said the federal government has jurisdiction of all major crimes committed on reservation against either Indians or non Indians and that the federal government also has jurisdiction of juveniles who commit offenses on-reservation, so tribal courts have the greatest amount of jurisdiction over Indian offenses.
- 03:58:57 SEN. PERRY said he serves on the Montana Domestic Violence Fatalities Review Board and that it has been very difficult for the Board to get information from tribes and tribal courts. He said the same problem seems to exist with the juvenile system. He said he would like to see more information sharing between the State and tribes and that he would like to have a plan to accomplish this in place before the next legislative session. Ms. Matteucci suggested developing

an ad hoc working group to consider the issues and make recommendations. The group should include a tribal court judge, a District Court judge, tribal and state juvenile probation officers, and others who would be effective in identifying the issues and potential solutions. She said youth would be best treated using a multi-disciplinary approach that brings together the various service components in order to build a network of appropriate services which include the courts, social services, mental health, substance abuse, law enforcement, and others.

04:02:31 SEN. PERRY asked if the federal government is a barrier to the progress the Committee is trying to make. Ms. Matteucci said no, because the vast percentage of juvenile offenses are not serious or violent crimes, so they don't make it into the federal system. She said, however, that there is a need to harmonize and promote cooperation between federal, state, and tribal law enforcement agencies. She said the lack of cooperation between these agencies has been a long-standing problem and needs to be addressed. Law enforcement in Indian country is remarkably underfunded and ineffective in serving the needs of Indian people on reservations.

04:05:09 Mr. Peake said it is important to remember, regarding negotiations with the tribes, that all tribes are sovereign nations and that one agreement will not work for all of the tribes.

PUBLIC COMMENT

04:08:27 **Scott Crichton, Executive Director, American Civil Liberties Union (ACLU) of Montana**, said if Ms. Matteucci's recommendations of establishing ad hoc working groups are pursued, he would encourage the LJIC to include the Montana Board of Crime Control and Office of the Public Defender training staff. Regarding SEN. PERRY's question if the federal government is a barrier, Mr. Crichton said that there may actually be federal money available to help the State resolve some of the issues discussed.

04:10:23 **Anita Roessman, Montana Advocacy Project (MAP)**, said the suggestions made by the panelists were modest and humble suggestions and that all would benefit children. She said it is striking, when talking with those working in youth corrections, that all recognize the severe poverty that most Native American youth come from. Solutions must be about supporting these kids and where they live, because these children live in very stressful situations with few amenities, and their needs are simple. In order for them to succeed in their communities, they must get to school regularly, connect to their families, and receive community support, such as through a mentor.

04:12:18 **Tracy Velazquez, Montana Mental Health Association**, said she also would like to see a greater breakdown of DOC Native American youth statistics. Ms. Velazquez said that anecdotally, she has heard that mental health services are even sparser on reservations than they are elsewhere. She said she would like to learn more about what mental health services, particularly assessments, are available to Native American youth on reservations. She said she would like to know if these kids are getting mental health assessments, and if not, if that is contributing to a higher rate of incarceration for this particular population.

04:13:35 **Dr. Donald Harr, Psychiatrist, Billings**, said he is also working with the Children and Families and Health and Human Services Interim Committee and that the CFHHS committee is struggling with very similar issues. Dr. Harr said that helping Native American youth requires a more extreme effort and that support from tribal leadership is key.

BREAK

YOUTH SERVICES FOLLOW-UP AND RESPONSE

04:31:16 Karen Duncan, Youth Services, DOC, said Mr. Peake and she had recently attended a Systems of Care Statutory Planning Committee meeting. She said the Committee asked her to relay a message to the LJIC on its behalf, saying that it stands ready to assist the LJIC in any way it can. Mr. Peake said the Committee is examining current statutes governing juvenile mental health and will make recommendations for revisions. He said the revisions would include mental health kids within DOC and DPHHS.

04:34:10 Ms. Duncan discussed several points that the DOC wished to respond to stemming from the November 30, 2007, LJIC meeting:

- Information regarding the Youth Corrections programs, including youth detention facilities, was presented and discussed at the meeting (see EXHIBITS #9 through #16 from the November 30 meeting). Ms. Duncan asked that the LJIC's future work sessions devoted to juvenile justice issues include DOC youth detention managers and the the Youth Services Division.
- Regarding discussion about the suicide risk assessment for youth entering detention facilities, DOC is reviewing administrative rules and will recommend that a balanced suicide risk assessment be done on all juveniles entering detention facilities.
- Steve Gibson, Director, DOC, serves on a national commission dealing with the prison rape elimination act for youth and standards will be completed in March. The standards will be included in DOC youth detention rules and in DOC Youth Correctional facility policy.
- Regarding mental illness and youth in the corrections and juvenile justice system, Ms. Duncan said DOC has concerns about the definitions. Ms. Duncan provided copies of a draft definition from the National Center for Mental Health and Juvenile Justice for youth with mental health issues (EXHIBIT #12).
- DOC was recently involved in a state-wide video conference meeting regarding the needs of and possibilities for mental health services for youth in the youth justice system, which included DOC, DPHHS, the Court Administrator, and the Systems of Care Statutory Planning Committee. Discussion is ongoing and regular reports will be provided to LJIC. Options under consideration include issuing a Request for Proposal (RFP) for a private facility, establishing a state-operated facility, or creating a regional facility. Ms. Duncan said that additionally, existing state statute will be given a comprehensive examination by the group and if revisions are needed, she recommended that a broad-based group approach be used.

- 04:41:01 SEN. SHOCKLEY asked where a facility would be placed, who would staff it, and what would it cost. Ms. Duncan said that populated areas such as Billings, Missoula, Great Falls, or Bozeman would all be good candidates because of the resources already available in those places. Regarding costs, she said that placing a youth in an out-of-state psychiatric residential facility can cost up to \$400 per day.
- 04:43:01 SEN. MCGEE said one of the biggest needs is to reach a conclusion about how to define what it means to be mentally deficient, mentally ill, mental disorders, and so on.

OVERVIEW OF DEFINITIONS RELATED TO MENTAL ILLNESS

- 04:45:05 **Deb Matteucci, Behavioral Health Program Facilitator, Liaison, DOC / DPHHS**, discussed the role of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) and reviewed the ten different definitions of mental illness she found in state statute and administrative rule (EXHIBIT #13).
- 04:56:24 Ms. Matteucci said revising definitions will be challenging and will involve issues tied to money, making it even more difficult. She explained how Texas crafted its definition so it could count the population it wanted to track and said Texas now has 17 years of data. She said Montana has no data and recommended that Montana choose one of the existing definitions that would apply when gathering data.
- 04:58:30 SEN. SHOCKLEY said the various definitions are each used for a specific purpose and said he didn't think there could be just one definition that would fit all needs. Ms. Matteucci agreed but said within a criminal justice setting, one cannot measure the scope of the problem without consistent data. SEN. SHOCKLEY said the primary purpose of the DSM-IV was to analyze data, in order to create definitions. He asked if the definitions/criteria already established in the DSM-IV could be used to track people's symptoms and behaviors. Ms. Matteucci said it would be close but that there is enough variance in the definitions and would not be a totally reliable method.

ADMINISTRATIVE RULES REVIEW

- 05:04:00 **Valencia Lane, Staff Attorney, LSD**, provided a brief description of proposed administrative rules and her analysis, which were included in the September 20, 2007 (EXHIBIT #14 and EXHIBIT #15), and November 7, 2007 (EXHIBIT #16), mailings. Ms. Lane said the most recent rule filing by DOC deals with conditions for probation and parole and the prohibition of the use of medical marijuana, even though the use on medical marijuana was approved by Montana voters.
- 05:07:17 SEN. SHOCKLEY said that the use of medical marijuana is a federal crime. Ms. Lane said yes, but Montana passed a Medical Marijuana Act, even though it conflicts with federal law. She said the DOC chose to clarify that even with the passage of the Act, its parolees and probationers will not be allowed to use medical marijuana.

05:08:39 REP. STOKER asked if, historically, administrative rules have been noticed to committee members and if an analysis or a summary is provided after a hearing. Ms. Lane said as staff attorney, she is noticed of proposed administrative rules. She said she reviews each one and prepares an analysis for the Committee, as she did in September and November. She noted that she had to postpone her presentations at previous meetings because of time restrictions but that copies were mailed out to members. She explained the process that must be followed in proposing, noticing, and adopting rules.

COMMITTEE DISCUSSION

05:16:27 Ms. Heffelfinger presented a budget update, saying that the Committee has spent \$15,885 of its \$50,000 budget, not including the current meeting, and has five meetings remaining in the work plan. She also discussed an updated work plan (EXHIBIT #17).

05:20:23 SEN. MCGEE appointed the Adult Justice System Working Group members: SEN. LASLOVICH - Chair, SEN. JENT, SEN. MCGEE, REP. MCGILLVRAY, REP. KOTTEL, and REP. STOKER.

05:20:37 SEN. MCGEE appointed the Juvenile Justice System Working Group members: SEN. PERRY - Chair, SEN. JUNEAU, SEN. SHOCKLEY, REP. EBINGER, REP. KERNS, and REP. AUGARE.

05:20:59 SEN. MCGEE said there is much information and data to be considered and he outlined the process through which the work groups would conduct their work: 1. Each group will decide what it is it will do, can do, and will act upon; and will decide if a legislative proposal is warranted. 2. The work groups are not subcommittees and do not have to take public comment but can do so. 3. It will be the responsibility of the chair to keep work moving along in the appropriate time frame but work group members must let the chair know what is needed. The work process will be customized to get the job done and "out of the box" thinking will be encouraged. 4. Just because was this issue began as a resolution, that doesn't mean it has to result in new laws. It is the duty of the Committee to consider and conclude if there is a need for a law. 5. Keep in mind what is good for Montana. 6. Ask what God Almighty thinks about the work, when all is said and done.

05:29:49 REP. EBINGER said he has asked Matt Robertson (Cascade County Attorney) for his suggestions for revisions to the Youth Court Act. Ms. Heffelfinger said that she has contacted Mr. Robertson and he said the list would be forthcoming.

05:31:06 Ms. Heffelfinger said she will rotate between the two work groups. She noted that each meeting is a public meeting and will be streamed live on the internet. She said staffing issues will have to be addressed at the next meeting.

05:33:03 REP. EBINGER asked if there is funding available for additional staff. Ms. Heffelfinger said it may be possible to contract for another secretary but that there are no available research analysts.

- 05:34:42 Ms. Heffelfinger reviewed meeting materials that would be needed at the work group meetings.
- 05:43:36 SEN. MCGEE asked Ms. Heffelfinger for a brief update regarding the December 19, 2007, Montana Supreme Court decision regarding "D.V.". Ms. Heffelfinger asked the members to look at page 5 of the updated Work Plan (EXHIBIT #17) and said this was an emerging issue and is an important decision. She said copies of the decision were included in the Dec. 27, 2007, mailing to the Committee. She discussed the important points of the case, as noted in EXHIBIT #17. She suggested that this information also be added for consideration by the juvenile justice work group.
- 05:45:33 SEN. MCGEE asked for public comment. None was given. SEN. MCGEE recessed the Law and Justice Interim Committee until 8 a.m., January 11, 2008, at which time the Committee would divide into the Adult and Juvenile Justice Working Groups.

The meeting minutes for the adult and juvenile justice working groups are available as separate documents and are posted on the Committee website under the appropriate heading.

FULL COMMITTEE RECONVENE AT 1 P.M. - JANUARY 11, 2008

- 04:58:53 SEN. MCGEE called the full Law and Justice Interim Committee back to order at 1:00 p.m. He asked SEN. PERRY to give overview of the work done by the Juvenile Justice Working Group.

SEN. PERRY said the working group identified three areas of priority but that time and budget constraints indicated that the list must be pared down even further. He said the opportunity to do that arose when he was made aware of other groups also working on the issues: the Children's System of Care Statutory Planning Committee and a program new to Montana called the Juvenile Detention Alternatives Initiative (JDIA). SEN. PERRY recommended waiting for these groups to make recommendations.

SEN. JUNEAU asked for more information about the Children's Systems of Care Statutory Planning Committee. Ms. Heffelfinger said her understanding is that it is a statutory committee designed to address children's mental health needs and includes juvenile probation. She asked Bob Peake to provide additional details.

- 05:07:55 **Bob Peake, Court Administrator's Office**, said the Planning Committee is legislatively mandated to address mental health needs of all children and was brought about because of the large number of children who were being sent out-of-state for mental health treatment. Members are from many agencies and backgrounds. He explained that Kids Management Authorities (KMAs) are the ground level of the Planning Committee and frequently is how children enter treatment programs. One of the duties is to review mental health statutes at they apply to children and to make recommendations, if it is thought that change is needed.

- 05:08:54 SEN. PERRY said a list of the Planning Committee members was being passed around the room. He said there is a strong level of expertise on the Planning Committee and recommended that the Juvenile Justice Working Group delegate that portion of its work to the Planning Committee. He said he would ask the Committee to provide updates on its work to the Juvenile Justice Work Group.
- 05:10:19 SEN. JUNEAU said youth detention, regardless of whether or not the youth is experiencing mental health issues, is her number one priority and that she wants to be certain it is being addressed. SEN. PERRY said he would make sure SEN. JUNEAU's concerns will be addressed.
- 05:12:25 SEN. PERRY gave a brief report on the Juvenile Justice work and said it began with a telephone conference call with Bart Lubow, who discussed the JDIA program. He said there is a possibility that LJIC may be eligible for funding that would pay for a meeting with Mr. Lubow in order to learn more about JDIA. SEN. PERRY said the work group used the decision tool to choose three areas of priority: crisis and intervention services, youth detention with secure placement, and probation and re-entry.
- 05:20:23 After discussion of what work remains to be done by the Juvenile Justice work group, SEN. MCGEE said the next two meeting dates (February 28 and 29 and April 10 and 11) will include time for the work groups to meet and that public comment will be requested at the June meeting. Any proposed legislation will be fine-tuned and ready for approval at the LJIC's final meeting in August.
- 05:25:05 SEN. LASLOVICH reported that the Adult work group reached consensus on several issues. He said that the members learned a great deal about drug courts and recognize that a discussion of California's Proposition 36 is necessary. The work group asked to see the specific language of the proposition. The work group also recognizes the need for formal definitions regarding mental illness to be promulgated. SEN. MCGEE has requested that Dr. Harr present his thoughts on possible definitions and he will present those at the February meeting. SEN. LASLOVICH said HJR 50 - involuntary civil commitment - will not be a strong focus because of the influence of the public defender system. The work group will also consider Mr. Niss' legal memo and recommendations and Captain McCave and Warden Mahoney will also report back on those issues at the next meeting. Recommendations will be formulated as a result of this information. The work group decided to monitor the issues raised by hospitals, as discussed by Mr. Foster. SEN. LASLOVICH said it would be prudent for counties and hospitals to work together on the issue. SEN. LASLOVICH requested that Ms. Heffelfinger follow-up with AMDD regarding Mr. Smith's comments about the \$15 million appropriation. He said that the work group also received copies of recommendations from two different advisory councils whose work intersects the same issues being studied by the work group. He encouraged the work group and full Committee members to read all of the materials provided before the next meeting.
- 05:37:30 Regarding the three recommendations he proposed in his legal memo, Mr. Niss said that public testimony should be taken regarding the recommendations. He

said he did not intend that any stakeholder be excluded from testifying and asked that they be allowed to do so.

BREAK

REPORT ON PERFORMANCE MEASURES

- 06:01:39 Pat Gervais, Legislative Fiscal Analyst, Legislative Fiscal Committee (LFD) discussed three performance measures reports related to appropriation (EXHIBITS #18, #19, and # 20). She said she would update the Committee on this issue again at the June meeting. She said the reports are also available online.
- 06:06:08 SEN. LASLOVICH clarified, for the record, that HJR 50 is not going to be ignored and said that Sheryl Wood from MACo will provide information. He thanked Ms. Matteucci for providing the informational document about Proposition 36.

PUBLIC COMMENT

- 06:08:29 Anita Roessman, MAP, said she learned a great deal in observing the two-day meeting and that she agrees with Warden Mahoney's suggestions, with the exception of pursuing a STEP program. She announced with regret that the Montana Fair Housing Office in Missoula has been closed, which affects housing issues discussed by the Committee in previous meetings. She briefly explained how the housing office assisted low income and mentally ill citizens and that these people now have nowhere to turn for help.
- 06:11:12 **Brett Linneweber, Park County Attorney and Montana County Attorneys Association (MCA)**, offered three suggestions for consideration:
- the extreme effect on the local resources when dealing with mental health issues -- it is becoming clear that this is a statewide issue that is being dealt with on a local level;
 - use extreme care when using the DSM-IV to create definitions for mental health definitions; and
 - bring in a District Judge who is currently operating a treatment court to explain what works and what doesn't work, particularly when dealing with criminal and mental health issues.
- 06:16:55 Dr. Harr said he has long history of working with mental health issues and of attending legislative sessions since 1959 to further mental health issues. He commended the Committee for its dedication and hard work, saying that the Committee has gone above and beyond in its efforts to deal with the issues before it. SEN. MCGEE said it is a rare opportunity to have citizen such as Dr. Harr to work with legislators and offer his vast knowledge and expertise. He thanked Dr. Harr for his many years of service to the State of Montana.
- 06:19:27 Mr. Daubert discussed the past Corrections Advisory Council's study of Proposition 36 and recalled that there was strong support for enacting policy but that it was realized that there was not enough time to develop legislation.

COMMITTEE DISCUSSION AND INSTRUCTIONS TO STAFF

- 06:21:19 SEN. LASLOVICH asked that a District Judge be invited the next meeting. He asked Ms. Heffelfinger to follow up with the issues discussed by Mr. Smith regarding the appropriations to AMDD.
- 06:23:52 SEN. SHOCKLEY asked to look at how judge's pay is computed. SEN. MCGEE said he would discuss how this should be done with SEN. SHOCKLEY before involving staff.
- 06:25:40 SEN. PERRY expressed concern that staff may be overburdened by the Committee's demands. Ms. Heffelfinger said it can be worked out and that the work load will be managed. She said the greatest difficulty is translating tasks into agenda items and said it is easiest for her to do her work when she feels she has clear goals and objectives from the Committee.
- SEN. PERRY reiterated the importance of Indian youth in the Juvenile Justice working group and said that even though the topic of youth detention has been delegated to another group, every effort will be made to keep Indian youth as a focus of the group's work. He asked Mr. Peake to personally confirm that Native American issues would be considered in work on youth detention issues. Mr. Peake clarified that the group that will be addressing juvenile detention is the JDAI group. He said his Committee will make recommendation on mental health statutes for youth, but assured SEN. PERRY that care will be taken to consider the needs of Indian youth, and that any recommendations that result will be presented to the LJIC for review.
- 06:34:11 SEN. JUNEAU said she is concerned about the timeline for drafting new legislation and asked when recommendations from the other groups working on juvenile justice issues would be presented to the Committee. SEN. MCGEE said any proposed legislation will need to be drafted by June in order for a public comment period to be conducted and for final approval by the Committee. SEN. MCGEE asked that a letter be sent to the two groups working on juvenile issues, outlining the Committee's time line for drafting legislation.

ADJOURNMENT

- 06:37:03 With meeting for further business before the Committee, SEN. MCGEE adjourned the meeting at 2:45 p.m. The next meeting of the Law and Justice Interim Committee is scheduled for February 28 and 29, 2008, in Helena.

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