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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

August 5, 2003

Room 102, State Capitol  
Helena, Montana

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division.

**Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

### COMMITTEE MEMBERS PRESENT

SEN. BRENT CROMLEY  
SEN. DUANE GRIMES  
SEN. GERALD PEASE  
SEN. GARY PERRY  
SEN. MICHAEL WHEAT

REP. MICHAEL LANGE  
REP. JOHN PARKER  
REP. DIANE RICE  
REP. JIM SHOCKLEY  
REP. FRANK SMITH

### COMMITTEE MEMBERS EXCUSED

SEN. DAN MCGEE  
REP. GAIL GUTSCHE

### STAFF PRESENT

SHERI HEFFELFINGER, Research Analyst  
VALENCIA LANE, Staff Attorney  
DAWN FIELD, Secretary

## **AGENDA & VISITORS**

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

## **COMMITTEE ACTION**

- The Committee unanimously elected Sen. Grimes Chair for the 2003-04 interim.
- The Committee unanimously elected Rep. Parker Vice Chair for the 2003-04 interim.

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

The meeting was called to order at 9:35 a.m. by Sen. Grimes. Sen. McGee and Rep. Gutsche were excused, all other members were present. Sen. Grimes welcomed members, staff and visitors; introductions were made. Sen. Grimes opened the floor to nomination of officers.

Sen. Shockley nominated Sen. Grimes as chair. There were no further nominations. Sen. Grimes was elected Chair unanimously by voice vote.

Rep. Lange nominated Rep. Parker for vice chair. There were no further nominations. Rep. Parker was elected Vice Chair unanimously by voice vote.

## **STAFF OVERVIEW: STATUTORY DUTIES AND SJR 31 STUDY, MS. SHERI HEFFELFINGER, RESEARCH ANALYST, LEGISLATIVE SERVICES DIVISION, (LSD)**

Ms. Heffelfinger gave an overview of the duties and responsibilities of the Law and Justice Interim Committee (Exhibit #1 - *Duties and Work Plan Proposal and Rules* - Tab 1, *Procedures, and Guidelines for Interim Committees* - Tab 2). This Committee shall:

- monitor and oversee the Department of Corrections and the Department of Justice, and act as a liaison with the Judicial Branch;
- address any study issues assigned by the Legislative Council;
- address emerging issues of interest to this Committee; and
- screen and approve for drafting agency bill draft requests.

Ms. Heffelfinger said by "screening" agency bills, she meant it is the Committee's responsibility to make certain the agency bills that must be pre-introduced by this Committee in the next Legislative session are well thought out, written clearly, and complete. Ms. Heffelfinger noted there is a difference between a bill this Committee sponsors and an agency bill for which this Committee acts as "requestor" purely for bill drafting purposes.

Ms. Valencia Lane, Staff Attorney, LSD, explained that approximately four years ago, the Legislative Council assigned all state agencies to a particular interim committee for oversight. The duties of the committee were to authorize for drafting bill requested by the committee's assigned agencies. By reviewing the agency bill proposals for legislation, the Committee is giving its approval for drafting, it is not giving a substantive vote on that issue.

Ms. Heffelfinger said SJR 31, the study of the juvenile justice system regarding administration of juvenile probation, was assigned to the Law and Justice Committee for study. She reviewed a preliminary study outline (Exhibit #1, Tab 2). The four main issues of the study are:

- to examine the elements and organization of the Montana juvenile justice system;
- to examine the operation of juvenile justice systems in other states;
- to examine specifically juvenile probation programs and to determine management and oversight of uniform policy and procedure; and
- examine any other aspect of the administration of juvenile justice in Montana that the Committee deems appropriate.

## **AGENCY OVERVIEWS**

**Mike McGrath, Attorney General, Department of Justice, (DOJ)**, gave an update on DOJ issues of interest to the Committee. Attorney General McGrath noted that:

- The DOJ has decreased its workforce from 750 employees to approximately 700. He said he was confident the department is operating efficiently and productively.
- A Legislative audit was completed recently and the DOJ received very high marks.
- The Division of Motor Vehicles recently completed upgrading its computer system and beginning in the fall of 2003, any driver who has a HAZMAT endorsement on their driver's license will be required by federal law to be fingerprinted.
- The DOJ is continuing its investigation into the Crime Lab controversy concerning its former director, Arnold Melnikoff. Two cases involving DNA testing of hair samples have been proven to be incorrect and other cases handled by the Crime Lab while under Mr. Melnikoff's direction are being reviewed and audited.
- The Crime Lab is in the process of becoming accredited through the American Society of Crime Lab Directors (ASCLAD).
- The Division of Criminal Investigation is reorganizing to include a cyber-crime unit authorized in the last legislative session
- The DOJ legal caseload has grown dramatically and there are several cases of particular interest to the Committee. The first case involves the challenge to the public defender system currently used in Montana and the second case involves county attorney salaries. At issue is determining the amounts the counties and state are each responsible for in paying the County Attorneys' salaries. The DOJ is also defending a lawsuit regarding the school funding system and is involved in challenges to the game farm initiative.
- The Gambling Control Division assesses a fee on each gaming machine used in the State of Montana. This fee was recently raised from \$100 to \$120 per machine. There was an increase in gaming revenue in 2002 of 5.8%.
- The Montana Highway Patrol is still experiencing a shortage in manpower. There is a big turnover in patrolmen due to low wages and travel requirements. Attorney General McGrath reported that highway fatalities numbers are higher than last year and said that many of the fatalities were not wearing seatbelts.

Attorney General McGrath extended an invitation to the Committee to visit any of the DOJ facilities and said the DOJ appreciated the support given by the Committee and welcomed the opportunity to serve the Committee in any way it could.

Rep. Smith said some Montana counties have only half-time county attorneys. He asked Attorney General McGrath to confirm that a county is solely responsible for paying the overtime pay earned by a half-time county attorney. Attorney General McGrath confirmed that was true.

Sen. Cromley asked what a HAZMAT endorsement for drivers is. Attorney General McGrath answered that it is an acronym for "hazardous materials". Drivers who transport such materials are required to carry this endorsement on their license.

Sen. Cromley asked if the litigation involving the county attorney salaries was brought forward by an individual or a group of county attorneys. Attorney General McGrath said the litigation was initiated by the Sweetgrass County Attorney.

Sen. Wheat asked for a status update on the public defender litigation and if a trial date had been set. Attorney General McGrath said a trial date had been set for July of 2004 in the courtroom of District Court Judge Thomas Honzel. Sen. Wheat asked Attorney General McGrath if there was a possibility of settling the case. Attorney General McGrath said that with guidance from the Legislative and Executive Branches, a settlement could be reached. Attorney General McGrath said he thought the plaintiffs were seeking some sort of state assumption of the Public Defenders but that as Attorney General he was not in the position to settle the case.

Rep. Smith asked if drivers would be given a grace period in which to obtain their HAZMAT endorsement. Attorney General McGrath said he was not sure because the federal Department of Transportation had not provided specific guidelines at this time. Rep. Smith asked if drivers will be notified that they need to get the HAZMAT endorsement. Attorney General McGrath said yes.

**Mr. Bill Slaughter, Director, Department of Corrections, (DOC),** reported to the Committee that he and Attorney General McGrath were proud of the cooperation between the two Departments. Director Slaughter said:

- The DOC is operating under budget and has returned approximately \$1.4 million to the system and that the biggest savings was in the Conditional Release Program. Montana's return-to-prison rate was a low 17% and the national average was between 37% - 47%. Additionally, it restored approximately \$400,000 back to the Youth Court Services.
- He was pleased to see the SJR 31 panel discussion scheduled for the afternoon and wanted to correct the misnomer that the DOC Youth Services are primarily secured care such as Pine Hills and Riverside. Secured care makes up only about 45% of budget. Approximately 55% of budget is for community care options for children in the system who need different kinds of solutions other than secured care.
- The DOC perspective on the SJR 31 study will focus on parental rights, clearly identifying the chain of command, agency accountability, youth services, and establishing appropriate measures for dealing with youth that include treatment and intervention plans.

Director Slaughter said he was looking forward to working with the Committee on the SJR 31 Study.

**Karla Gray, Chief Justice, Montana Supreme Court**, expressed her enthusiasm for and support of the SJR 31 Study and urged the Committee to contact her or her staff for any needed assistance. Chief Justice Gray gave an overview of the workload and duties of the Supreme Court for the benefit of the new Committee members in an effort to help them understand the Supreme Court and the court system in general:

- The workload at the Supreme Court is high and the Court has already issued 200 opinions as of August 2003.
- The Court has begun to review and update the Lawyer Rules for Professional Conduct and significant changes will be proposed.
- A working group has been established to significantly update the Canons of Judicial Ethics adopted in the mid-1960's. These Canons are in great need of modernization.
- The Court is working to ensure equal access to civil justice and is encouraging attorneys to provide more pro bono work for low and moderate income people who are in need of representation. The Court will participate in the Equal Justice Conference scheduled for Helena in mid-October of 2003.
- District Court Council continues to meet monthly to deal with the state assumption of District Court costs and to develop and adopt policies.
- Chief Justice Gray introduced Mr. Jim Oppedahl as the new Court Administrator and reported that the Administrator's Office was preparing a handbook on the payment of state costs for District Courts.
- The Court has established 36 new accounting codes to track and record Court expenses.
- An increase in court user fees has been implemented and will be used to fund Information Technology staff.
- The strategic plan for court technology upgrades includes a plan to develop a District Court judicial case management system as well as a case management system for courts of limited jurisdiction.
- The Court received federal grant dollars to install video conference capabilities in 28 District Courts and the potential for funding installation in another 10 District Courts. This will result a great savings in time, travel, and expense for the Court.

Regarding the SJR 31 study:

- Chief Justice Gray said although the juvenile justice system is complex, the Youth Court Act (YCA) itself is not "broken" in any significant way.
- Chief Justice Gray said she thinks everyone agrees the YCA is very functional but an amendment to provide for appropriate parental rights is needed;
- The Court is working on implementing a complaint process (accountability) within the YCA proceedings so people who believe they have not been treated appropriately have recourse to resolve problems.
- Chief Justice Gray quoted SJR 31 as stating, "the Supreme Court is responsible for administering elements of the juvenile justice system that include Youth Courts and juvenile probation officers and programs", and asked the Committee to bear in mind this has only been in effect since July 1, 2002. Since then, the Court has initiated changes and made improvements, and has every intention of reviewing and correcting the problems that still exist. It is the goal of the Court to instill uniform policies and procedures for all judicial districts to follow.

Sen. Wheat asked Chief Justice Gray to state her opinion on how important she thought it was for this Committee to study the redistricting issue. Chief Justice Gray answered that the Committee should study it, but only if a redistricting bill was going to be prepared for the next legislative session. She added that while the Court does not have the authority to redistrict, the Court does have the authority to redistribute some of the existing workload.

Sen. Grimes asked Chief Justice Gray to recap the work the court is doing on revisions to the Lawyer Ethics Panel. She said the State Bar of Montana petitioned the Court to make the changes in the Lawyer Ethical Rules for Professional Conduct and has provided input into the process. The proposed changes have been formulated and opened for a six-month period of public comment. At the end of the comment period, the Court will review the proposed changes, consider the comments given, and make its decision.

Chief Justice Gray said the Judicial Ethical Canons were in dire need of revision because of their age which, in turn, has affected their usefulness and quality. She said there were separate rules of ethics for lawyers and judges and each set would be examined and revised. This has been a national project of the National Bar Association and other groups. The Court has already implemented changes to allow the Commission on Practice, which handles complaints of unethical conduct by attorneys, to more easily investigate complaints about unethical conduct. Chief Justice Gray said it is important to understand that ethical rules are separate from legal malpractice claims. Legal malpractice claims are brought by a party as an actual lawsuit in court against their lawyer or former lawyer and generally allege that the lawyer's services were deficient and because of those deficient services, the party lost a case that should have been won. The ethical rules are subject to the Commission on Practice and if discipline of a serious nature is recommended, it has to be reviewed by the Supreme Court. Such things as suspending a lawyer from practice for ethical violations or disbarring a lawyer must be done by order of the Supreme Court. The Court takes this role very seriously.

Rep. Rice asked if the Court was making headway with the backlog of cases before the Court. Chief Justice Gray said there is still a significant backlog. She said the Court is trying to be more efficient and has adopted a "memorandum opinion" that is useful in cases where the law is very clear cut. She said the biggest reason the Court has such a backlog is that it cannot control the number of cases that come before it. Rep. Rice asked how many cases were pending. Chief Justice Gray said there were approximately 587 cases waiting. Of those, at least half have had a notice of appeal filed with the Court but are not ready for the Court's consideration because the briefings have not been completed by the attorneys. Approximately 200 more cases have been tentatively decided by the Court and assigned to a Justice to issue the Court's opinion.

**STAFF OVERVIEW: RULE-MAKING PROCESS AND COMMITTEE RULE REVIEW RESPONSIBILITIES. MS. VALENCIA LANE, STAFF ATTORNEY, LSD**

Ms. Lane discussed the Committee's powers relating to administrative rules as outlined under the Montana Administrative Procedure Act (MAPA) (Exhibit #2).

## **STAFF OVERVIEW: BASIC ANATOMY OF THE MONTANA JUVENILE JUSTICE SYSTEM AND REVIEW OF SJR 32 ISSUES**

**Sheri Heffelfinger, LSD**, briefed the Committee with a flowchart detailing the organizational structure of the Montana juvenile justice system (Exhibit #3). Ms. Heffelfinger said the issue of juvenile justice evolved from situations where adult standards and adult corrections were being applied to children and either the child was treated as an adult or was acquitted. There was a need for middle ground for dealing with youth in order to balance the need for accountability and responsibility with rehabilitation and public safety. That middle ground developed into juvenile probation, which is an a means to adjudicate youth outside of an adult correctional facility. Ms. Heffelfinger said:

- four basic entities make up the juvenile justice system: Department of Justice, Department of Corrections, Supreme Court/District Court System, and the 56 Montana counties, each with administratively attached agencies and programs;
- balanced and restorative justice is the current philosophical approach used in juvenile justice issues;
- it is important to be aware of the difference between juvenile parole (takes place after court proceedings and is directed by the Department of Corrections) and juvenile probation (intervention before court proceedings and is under the jurisdiction of District Court).

Sen. Cromley asked what restorative justice means. Ms. Heffelfinger said it is the concept that once a youth has violated the law and the family and/or community has been aggrieved; the family and community must be restored from the offense. Treatment, incarceration, or an alternative course of action may be used accomplish this.

Ms. Heffelfinger gave a legislative history of SJR 31(Exhibit #4) and also distributed the February 19, 2003 minutes from the Committee on Finance and Claims and the April 7, 2003 minutes form the Committee on Judiciary (Exhibit #5). Ms. Heffelfinger reiterated the relevant legislative actions, related spin off issues, and the follow-up research that culminated in the final version of SJR 31.

**Sen. Tash, SD 17, SJR 31 sponsor**, added further detail and said this issue began when constituents contacted him and asked for help in resolving a situation involving their son. Sen. Tash said through working with this family, it became apparent there was a need for more agency accountability and parental rights within the Youth Court Act. He said this would be a controversial process and achieving a balanced end result may be difficult. The purpose of this bill is to rehabilitate the youth, not punish. This Committee must find the most beneficial means of treatment and the most cost effective measures to accomplish that goal.

Valencia Lane submitted a letter from the family that contacted Sen. Tash (Exhibit #6). Sen. Tash explained that the letter outlines the difficulties the family experienced in dealing with the juvenile justice system. The letter also includes their suggestions for changes and improvements to the system. Sen. Tash said he was pleased with the placement of SJR 31 with the Law and Justice Interim Committee and offered his support of and confidence in the ability of the Committee to address this issue.

## **JUVENILE JUSTICE SYSTEM PANEL DISCUSSION**

**Mr. Jim Oppedahl, Montana Supreme Court Administrator**, gave a brief summary of what the court has been doing over the last year under state assumption, specifically as it relates to the juvenile probation function within the youth court:

- State assumption began July 1, 2002.
- 275 employees transferred from county employment to state employment, which included 140 juvenile probation officers and staff.
- The challenge of no uniform system automation was met by upgrading and linking all juvenile probation offices.
- Uniform payroll and personnel plans for system employees were developed.
- Training and policy coordination with other state agencies was developed and instituted.
- Strategic planning procedures with juvenile probation officers and the National Center for Juvenile Justice to develop policy and training programs has taken place.
- His staff has become involved in understanding the system, working with the Board of Crime Control, OPI, and other agencies to chart the Youth Court Act itself. Staff recognizes that it is important to know how the Youth Court operates and to be able to share this knowledge with the public and employees.
- The Court Administrator's Office has worked with the District Court Council to develop a platform for citizen use to address the issues to clarify how the system works, who to talk to, how to access information, and to be sure the complaints are channeled to the appropriate people.
- The Court Administrator's Office is coordinating with the Department of Public Health and Human Services (DPHHS) programmers to track payments and case information and in the process, improving efficiency and training.
- Juvenile probation officers are working with OPI in 14 judicial districts to collaborate and partner with educators and mental health providers to implement and enforce community projects for troubled youth.
- All juvenile justice officers have a copy of the Desktop Guide to Juvenile Probation Practices put out by the National Center for Juvenile Justice in an effort to instill continuity and conformity in the system.

Mr. Oppedahl concluded by saying that he thinks significant progress has been made over the last year and the issues (parental rights, chain of command, accountability, and the focus on youth) are important to all of the agencies involved.

**Mr. Bob Peak, Juvenile Probation Officers' Association (JPOA)**, said the public must be educated as to what juvenile probation officers do. Many people, including some involved in law enforcement, do not understand the difference between parole and probation. A probation youth has never been institutionalized in a correctional facility. A parole youth is one who has been released from a correctional facility and is under court supervision. The youth's rights are quite different in each situation. Mr. Peak presented the JPOA's position on the youth justice system in Montana and made the following points:

- In the past, system fragmentation has been a very real problem. Under the Supreme Court's administration, a central chain of command has been established and that has been very beneficial.
- JPOA has seen other situations similar to the one described by Sen. Tash. Mr. Peak predicted there would be other similar situations, due to the very large caseload facing



- juvenile probation officers. He personally dealt with over 600 cases in the last year.
- Restorative or "balanced" justice must meet three criteria:
  - ✓ The youth must be held accountable for his actions.
  - ✓ The safety of the community must be maintained.
  - ✓ The youth must be rehabilitated.
 Juvenile probation officers must use the "least restrictive" approach in treating a child. 90% of cases are handled without court intervention, usually using the "consent adjustment" approach.
- Consent adjustment is an informal probation agreement between the parents, youth, probation officer, county attorney, and the District Court judge. The parents and youth agree to do exactly what the authorities ask them to do.
- A "formal process" probation occurs when the youth appears before a District Court judge. The judge has total control over the outcome. Probation officers can provide history and make recommendations but the judge makes the final decision. Approximately 10% of the cases are handled in this manner, usually after a consent adjustment has failed.
- JPOA has identified problem areas within the Youth Court Act and has formed a subcommittee to study these issues. The subcommittee's conclusions will be presented to the 2005 Legislature for consideration. The issues are:
  - ✓ financial accountability for each judicial district;
  - ✓ creating a more efficient and uniform data management system;
  - ✓ examining all of the local programs offered in each community and the importance of local decision-making authority;
  - ✓ parental rights - what is current law, how can it be improved, and formulation and preparation of a parental rights handbook; and
  - ✓ educating the public on youth justice issues.

**Mr. Steve Gibson, Juvenile Justice Division, Department of Corrections (DOC)** gave the Committee a packet of information including an organizational chart, a synopsis of responsibilities of the Department of Corrections' Juvenile Corrections Division, fact sheets, and an overview of other states' juvenile justice programs (Exhibit #7). Mr. Gibson said this is a complicated issue and asked the Committee to look at neighboring states' models of juvenile justice systems. Mr. Gibson offered to serve as a liaison between the other states' juvenile agencies and the Committee for information gathering purposes.

**Ms. Audrey Allums, Youth Justice Council (YJC)**, gave the Committee an overview of how the YJC functions and how the Juvenile Unit of the Montana Board of Crime Control functions. Ms. Allums said the Board of Crime Control is required to provide oversight to the clients with the Youth Court Act and has hired a contractor to make sure that Youth Court Act guidelines are being upheld.

Ms. Allums distributed a list of the YJC membership (Exhibit #8) and provided further details. The YJC has twenty-two members who are appointed by the Governor. No more than 50% of members can be government employees, the chairperson cannot be a government employee, nor can the vice chair. The Council must have at least three members who have been in the juvenile justice system, and at least one-fifth of the Council must be youth under the age of twenty-four.

The YJC is charged with oversight of the Youth Court Act and also the Juvenile Justice and Delinquency Prevention Act (JJDP). Ms. Allums provided the mandates of the JJDP to the Committee (Exhibit #9) and said Montana is in full compliance with these mandates.

Ms. Allums said the YJC has oversight of four block grants, funded through the Office of Juvenile Justice and Delinquency Prevention (Exhibit #10) listed as follows:

- Title II Formula Grant Funds,
- Title V Delinquency Prevention Fund,
- Challenge Grant, and
- Juvenile Accountability Incentive Block Grant.

She also provided two additional handouts (Exhibit #'s 11 & 12) that gave specific details of how these grants are distributed throughout the state.

Ms. Allums said both the Juvenile Justice Unit and the Youth Justice Council has had an excellent working relationship with the DOC, as well as with the Court Administration. She said that now that everything is under one place, it is easier to deal with the problems that do arise. She complimented the juvenile probation officers and said that in the majority of cases, all works as it is intended. When the law has not been followed, the YJC has intervened. Ms Allums offered the Committee the support of the YJC.

Rep. Parker questioned Mr. Oppedahl and Mr. Gibson on their understanding of the facts relating to the case that resulted in Sen. Tash sponsoring SJR 31. Rep. Parker said in his experience as a Youth Court prosecutor, it would be highly irregular for a youth to be sent to an out of state facility based on a single offense. He asked if there were other facts that have not been presented. He also inquired if this complaint was an isolated incident or indicative of broader complaints that have been brought to the attention of the Court Administrator or the DOC. Rep. Parker said he thought the Committee needed more information and direction on this issue before the Committee formulated a study plan. He asked Mr. Gibson what he thought the most valid critiques were of the juvenile court system in Montana.

Mr. Gibson said in his opinion, the Youth Court Act is very functional and effective but did see a need for a statewide standard procedure and policy for probation. Mr. Gibson said it was "very fixable" and would not recommend that juvenile probation go to the DOC or the Supreme Court. However, he said he would, in the best of all possible worlds, recommend that youth services be its own department also incorporating aspects of youth programs now in DPHHS.

Sen. Grimes asked Mr. Peak about the makeup of the JPOA study group. Mr. Peak said there were six subcommittees with a total of twelve members chosen from the different judicial districts. Mr. Oppedahl said it is a working group working to create statewide conformity and continuity in the juvenile justice system.

## **PUBLIC COMMENT**

**Anita Roessman, Montana Advocacy Program (MAP)**, said MAP is a federally funded private non-profit legal services organization for Montanans and its purpose is to advocate for people with disabilities. She then gave the Committee the history of how she became involved in the

situation that resulted in SJR 31. Ms. Roessman said Bonnie Adee, Mental Health Ombudsman for the Governor's Office contacted her and asked her to advocate for the family involved. Ms. Adee felt the family's rights had been violated over the three and a half years this case had been going on. Ms. Roessman said great harm had come to this child through this ordeal and this was not the first instance of conflict between parents and the juvenile probation officer involved.

Ms. Roessman said SJR 31 will remedy many of the problems in the Youth Court Act and will clarify the law for both parents and probations officers. She said the focus of the study should be children with serious emotional disturbances and how best to treat them. Ms. Roessman suggested dividing the study into three areas;

- Beginning - when youth gets placed in detention facilities. These facilities are not set up to hold or treat a youth as long as they frequently do. Emotionally disturbed kids deteriorate very quickly under these circumstances.
- Middle - after a child is adjudicated and placed in the system. Parental involvement and communication is critical at this point and often falls apart under the current system.
- End - after a child has been in an out-of-home placement. Both the child and family need a great deal of support to help with the adjustment.

Ms. Roessman said she thought more money should be spent on preventative measures that would allow the family to solve its problems and alleviate the need to remove the child from the family home. Out-of-home placements are very expensive and damaging to the family.

Rep. Rice asked Mr. Peak to refer to EXHIBIT #9 and confirm that a youth can commit a crime but not appear before a judge. Mr. Peak said the Youth Court Act allows for treating these offenses informally. A first time felony offense requires the county attorney and district judge to sign off on the consent agreement. After a second misdemeanor or felony offense, the youth must go through the formal process and be sentenced.

Rep. Lange asked Mr. Peak to confirm that a judge has the authority to establish boundaries that the probation officers must operate within. Mr. Peak said the District Court judge is the probation officer's immediate supervisor and has the authority to intervene at any point in the informal process.

Rep. Parker asked Ms. Roessman to provide an overview of the history involving Sen. Tash's constituent. Ms. Roessman said she would send a copy of the report prepared by the Mental Health Ombudsman to the Committee.

**Brian Garrity, Governor's Office, Mental Health Ombudsman**, said similar complaints do come in to his office but did not have a specific number.

Sen. Cromley asked if any sort of consent was signed by the parents in the SJR 31 case. Mr. Garrity and Sen. Tash both said it was their understanding that the parents did not agree to any course of action and were not allowed to be a part of the decision-making.

Rep. Smith asked Mr. Garrity to be more specific about other similar complaints his office had received, particularly from Sen. Tash's district. Mr. Garrity said it was his recollection that there had been another complaint from that area.

Mr. Oppedahl recommended the Committee meet with Bonnie Adee and Mr. Gibson to establish a time line of the events.

Sen. Grimes said the Legislature mandated the matter be studied. Sen. Wheat said in the process of studying this issue, it is critical that the Committee determine if this is a systemic problem or an isolated problem.

### **COMMITTEE DISCUSSION AND INSTRUCTIONS TO STAFF**

Sen. Grimes asked the Committee to refer to the last page of EXHIBIT #1 (*Committee Members Areas of Interest, Tab 3*). Ms. Heffelfinger gave a brief description of each item and the Committee made the following decisions:

<u>ISSUE</u>	<u>ACTION</u>
#1 - DOC operation/organization streamlining:	put into agency oversight and monitor.
#2 - non-violent offender commitments:	keep on the list for consideration and possibly roll into SJR 31.
#3 - Native American inmate population numbers:	keep on the list for consideration.
#4 - corrections options for women and if they work:	looked at before so eliminate from formal consideration.
#5 - identifying non-institutional alternatives for adult and juvenile offenders:	combine with #2.
#6 - preventing youth placements in institutional settings:	either eliminate or combine with #2, Committee will decide later.
#7 - "designer crimes" issue:	Committee will not address.
#8 - judicial redistricting:	Committee will not address; and
#9 - continued monitoring of state budget/funding of district courts:	Committee will address because it falls under the Committee's normal workload.

Sen. Grimes asked the Committee to consider several items that did not make it on the list. He said resurrecting Sen. Mahlum's bill (SB 37) dealing with DUI had been suggested. After discussion, it was decided that since this issue will be raised again in the next legislative session, the Committee need not devote time to it.

Ms. Heffelfinger said state assumption of public defenders (SB 218) was also suggested as a

study topic. Rep. Shockley, Rep. Parker and Sen. Wheat were all in support of studying this issue. Sen. Grimes expressed his support as well and added it as a study topic.

Ms. Heffelfinger said proposed changes in county attorney pay had been suggested for study.

**Harold Blattie, Montana Association of Counties (MACO)**, commented that he has been working with the County Attorneys Association to research how Montana counties are funding their county attorney positions. Mr. Blattie submitted his findings (Exhibit #13) to the Committee. He said there is little continuity in funding between the counties and ranges from fully funding whatever the State does not fund to counties paying only what they are required by law to pay.

Ms. Heffelfinger said another issue was that a District Court judge from Libby contacted her requesting clarification of defense representation of youth that are a "minor in possession".

After Committee discussion, it was decided that no action would be taken on either the topic of county attorney pay or the issue raised by the District Court judge unless the judge provided more information.

Rep. Parker said he would like to leave time open for addressing emerging issues.

Sen. Wheat suggested allocating time and resources in the following manner:

- 40% - public defender issue,
- 20% - SJR 31 and related issues,
- 20% - emerging issues, and
- 20% - agency oversight and rule review.

Sen. Grimes recommended that a subcommittee be formed to address the Native American inmate population issue. Sen. Pease said there are some crossover issues with SJR 31 asked if it could be taken care of within the SJR 31 study. Rep. Smith said this issue would take a lot of time and resources and suggested waiting to see if the Committee would have the time and resources available. It was decided no action would be taken at this time to specifically study Native American issues; but these issues would be kept in mind when dealing with any topic.

Rep. Lange asked if the alternative sentencing issue would also fit into the SJR 31 study. Sen. Grimes said this issue could be added and encompassed in that study.

Sen. Grimes said the Committee must decide what exactly it wants to do with SJR 31. Ms. Heffelfinger said it would be easier for the Committee to develop a course of action as it gets more complete information. She said she would develop an outline of study questions to present at the next meeting.

The Committee agreed by consensus to adopt Sen. Wheat's proposal percentage allocations of Committee time and resources.

Ms. Heffelfinger asked the Committee to set its meeting schedule. Sen. Grimes referred to EXHIBIT #1 (*Duties and Work Plan Proposal, page 2*). The Committee decided to keep all of the meetings in Helena in the Capitol Building.

Sen. Wheat asked to have information presented on the public defender issue at the next meeting on October 23, 2003.

Sen. Grimes asked Mr. Peak to update the Committee at the January 8, 2004, meeting about the work the Juvenile Probations Officer's Association has done on the juvenile justice issues.

Ms. Heffelfinger asked if the Committee would like to have an overview of the Youth Court Act at the October meeting. Sen. Grimes said he would like to devote the entire January 8, 2004, meeting to SJR 31, the Youth Court Act, and all other related issues.

Ms. Lane asked how the Committee wanted to address rule review. The Committee agreed notification would be in order only if there was a problem situation, otherwise it had trust in Ms. Lane's knowledge and expertise in handling any rule changes.

### **ADJOURNMENT**

With no further business, the Committee adjourned at 4:30 p.m. The next meeting will be on October 23, 2003, in the Capitol Building in Helena, Montana.

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