



Law and Justice Interim Committee

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57th Montana Legislature

SENATE MEMBERS

AL BISHOP
STEVE DOHERTY
DUANE GRIMES
DAN HARRINGTON
JERRY O'NEIL
GERALD PEASE

HOUSE MEMBERS

TIM CALLAHAN
GILDA CLANCY
GAIL GUTSCHE
JEFF LASZLOFFY
JIM SHOCKLEY
FRANK SMITH

COMMITTEE STAFF

DAVE BOHYER, RESEARCH DIRECTOR
VALENCIA LANE, STAFF ATTORNEY
MIKO OWA, SECRETARY

December 6-7, 2001

MINUTES

Room 137, 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 documents.

COMMITTEE MEMBERS PRESENT

Rep. Gutsche
Rep. Shockley
Rep. Laszloffy
Rep. Clancy
Rep. Callahan
Rep. Smith

Sen. Grimes
Sen. Harrington
Sen. O'Neil
Sen. Pease

COMMITTEE MEMBERS EXCUSED

Sen. Bishop
Sen. Doherty

STAFF PRESENT

Dave Bohyer, Research Director
Valencia Lane, Staff Attorney
Miko Owa, Secretary

AGENDA & VISITORS

Agenda (ATTACHMENT #1)
Visitors' List (ATTACHMENT #2)

COMMITTEE ACTION

- Adopted minutes of October 12, 2001 meeting
- Adopted Appendix 1, Appendix 2, and Appendix 4 of the *Draft Legislative Reference Guide: Felony Sentencing Statutes 2003*
- Disbanded the Subcommittee on Intermediate Court of Appeal

CALL TO ORDER, ROLL CALL, ADOPTION OF MINUTES

The meeting was called to order at 9:00 a.m. by Sen. Grimes. Roll call was noted with all members present except for Sen. Bishop and Sen. Doherty who were excused (ATTACHMENT #3). The Committee adopted the minutes of the October 12, 2001 meeting. Chairman Gutsche arrived presently and assumed the chair.

BRIEFINGS ON MENTAL HEALTH AND CRIMINAL SENTENCING

The Committee received a briefing on mental health and criminal sentencing from the following:

- Bonnie Adee, State Mental Health Ombudsman
- Leslie Garvin, Mental Disabilities Board of Visitors
- Ed Amberg, Montana State Hospital
- Dan Anderson, Administrator, Addictive and Mental Disorders Division, Department of Public Health and Human Services
- Sally Johnson, Administrator, Health and Treatment Division, Department of Corrections
- Mark Murphy, Assistant Attorney General, Department of Justice
- Susan Fox, Research Analyst, Legislative Services Division
- Lois Steinbeck, Senior Fiscal Analyst, Legislative Fiscal Division

Sen. Eve Franklin participated via conference call.

Ms. Adee provided an overview of criminal sentencing with respect to mentally ill offenders (EXHIBIT #1). Her recommendations to the Committee were:

- Don't make any changes that make the functioning of any system more difficult.
- Determine the desired outcome of using these sentences and ask if we are achieving it.
- Appropriately fund the placement of the dangerous criminal with serious mental illness.
- Provide alternatives for mentally ill offenders who may eventually return to the community if they receive treatment.

Sen. Franklin added that there is a large number of people in the community who never make it to the state hospital but end up in the regional jail system because their mental illness is not acute.

Ms. Adee acknowledged that population, and commented about the wave of juvenile individuals

coming to the adult criminal system.

Mr. Amberg commented that the ways in which jurisdictions in various counties address issues of mentally ill people in their jails vary greatly and that many counties look to the state hospital to solve the problem. He emphasized that Montana State Hospital (MSH) is a hospital and not a prison setting. Mr. Amberg continued by stating that he thinks policy makers, service providers, and citizens need to recognize that jails have a responsibility to provide medical care for people who are in their custody and that medical care should also include mental health care.

Rep. Shockley asked Mr. Amberg about cells on the west side of MSH. Mr. Amberg responded that those rooms are seclusion rooms and that hospital certification rules are very specific on how they may be used.

Ms. Garvin reviewed for the Committee how Court Ordered Evaluations, Fitness to Proceed, Not Guilty but Mentally Ill, and Guilty but Mentally Ill are used in the judicial system (EXHIBIT #2).

Rep. Clancy asked Ms. Garvin how a person is sentenced who is found to be guilty but mentally ill. Ms. Garvin stated that they are sentenced to the director of Public Health and Human Services. The director then determines where the best care, custody, and treatment would be provided. She said that is usually the MSH. Rep. Clancy then asked about patients in pre-release centers. Ms. Garvin stated that not all patients should be placed in a pre-release center, but on occasion, a pre-release center is a better option than MSH for mentally ill patients.

Mr. Amberg provided the Committee with information about the population of the state hospital (EXHIBIT #3), various issues they face, programs offered (EXHIBIT #4), issues he would like addressed or clarified, and state comparisons (EXHIBIT #5). Mr. Amberg said that he would like people who make recommendations to visit MSH and review the facilities available. He continued to state that there are also limits in MSH's ability to treat people because, for example, some are advised by their attorney's to refuse treatment.

Rep. Laszloffy asked about patients who received their maximum benefit of care from MSH and why they would be transferred to the Department of Corrections (DOC) rather than the MSH transitional care unit. Mr. Amberg stated that transitional care is important on campus, but is difficult to transfer to the community. The spectrum of needs is large among forensic patients, so there is not one right service for all patients. However, he recommended mental health group homes. For those people for whom the group home is not right, he would like to see [criminal] pre-release centers more open to MSH. Rep. Laszloffy asked if MSH patients were transferred to the DOC because DOC staff want to evaluate that person themselves. Mr. Amberg did not know.

Ms. Garvin commented that another problem with releasing guilty but mentally ill patients into community mental health centers is that they are much higher functioning than the civilly committed patients and they tend to take advantage of those in the community health centers.

Sen. Harrington asked Mr. Amberg if he felt he was fully fulfilling the obligation to these people as he commented that he was at maximum capacity. Mr. Amberg said that he did not know the answer because MSH does not manage who enters or leaves the hospital, that decision is handled at the community level. Sen. Harrington asked if there is a rush to release patients that

should not be released. Mr. Amberg stated that MSH staff are under no pressure to release until they feel the patient is ready for discharge and they have an adequate discharge plan.

Sen. Grimes asked if the number of inappropriate admissions is high. Mr. Amberg responded that it is not a high population, but there are no standards for conducting a forensic evaluation or the contents of the reports to the court.

Rep. Gutsche asked Mr. Amberg about his proposed statutory change where admission to MSH is prohibited unless the patient consents to treatment, and whether that is for forensic patients. Mr. Amberg responded that it occurs rather frequently but he is referring to forensic evaluations.

Mr. Anderson stated that it is the goal of the public mental health system to increasingly shift resources and emphasis to community based treatment. It is the goal of the public mental health system to treat individuals in their homes and in their home communities. He said that that policy decision has been very effective. There is, however, a need for a state hospital as there are some patients with a serious mental illness who require an inpatient setting over a lengthy period of time and local communities do not have the resources. Mr. Anderson went on to concur with Mr. Amberg's statements. Mr. Anderson recommended specialized services within the mental health system for forensic patients.

Rep. Shockley asked Mr. Amberg if he knew Franklin Curtis. Mr. Amberg said yes. Rep. Shockley asked if he was at the MSH in Warm Springs. Mr. Amberg said no.

Sen. Stonington asked Mr. Anderson about the numbers of people in county jails that are waiting to be committed to the MSH. Mr. Anderson deferred to Mr. Amberg. Mr. Amberg responded that there is a waiting list of three individuals who need competency evaluations. Sen. Stonington asked if all of the patients at the MSH truly needed to be there. Mr. Amberg responded that they do according to the courts. However, there is a range of opinions about that. Sen. Stonington asked where additional patients go when the unit is full. Mr. Amberg stated that the additional person sleeps in a room that is designated as a seclusion room and, in addition, two beds can be put in single rooms.

Rep. Smith asked Mr. Amberg who performs competency evaluations. Mr. Amberg responded that the courts could order the evaluation to be done at the state hospital. What the law requires is that the evaluation has to be done by a psychiatrist or a licensed psychologist.

Ms. Johnson presented to the Committee statistics regarding mentally ill patients in the corrections system (EXHIBIT #6). She continued by commenting on the insanity plea and the way it works. She said utilizing this plea is very restrictive, rarely used, and very hard to fit the category. Ms. Johnson continued by commenting on the ideas of special needs parole, mental health courts, and a diversion program.

Sen. Franklin added that there is a lost population of people who would benefit from alternative facilities and concurred with Ms. Johnson's statements.

Sen. Harrington asked about pre-release centers and their selection process. Ms. Johnson responded that the perception may be that pre-release centers have an overly restrictive selection process. However, the DOC is going to approach the Golden Triangle Facility and see

if they can provide services.

Sen. Stonington asked Ms. Johnson if she could comment on Ms. Fox's memo (EXHIBIT #16) and the ability of DOC staff to deal with mental health care. Ms. Johnson responded that her staffing varies, but they do not place the most seriously mentally ill in facilities that are not equipped to handle them. In addition, she went on to detail the mental health staffing at the facilities. She said they have been reviewed by the ACLU, U.S. Department of Justice, and Settlement Agreement Monitors and the DOC's mental health programs have been completely signed off. Sen. Stonington asked who is Dr. Chansky. Ms. Johnson responded that he is a monitor for the ACLU-DOJ suit. Sen. Stonington requested that Ms. Johnson respond in writing what the reorganization has done in terms of medical and mental health services. Ms. Johnson commented that the reorganization has narrowed her role and she will provide a report in writing.

Rep. Clancy asked if the DOC wanted help with the entrance and exit of forensic patients as well as standards in sentencing. Ms. Johnson responded that the DOC needs to do a better job in training law enforcement officers so that they may respond appropriately because an officer's initial action determines the path an offender takes in the system.

Mr. Amberg added that the laws are applied differently in different places but he would still like judges to have discretion.

Mr. Murphy stated that his main issue is community protection and when you look at the census of people who are in the system, by and large, law enforcement and citizens do not want those people back in the community. He said that in reference to psychiatric evaluations in the field, there are only two board-certified psychiatrists in the state, one in Missoula and one in Billings. In terms of the group we are talking about (criminals determined to be mentally ill), he said they are statistically insignificant in comparison to the number of felony cases filed per year. Mr. Murphy stated that he would like it to be easier for people to get into Montana State Hospital and harder to get them out. He would also like to increase the number of beds at MSH for this population.

Ms. Garvin added that people who are determined to be guilty but mentally ill who refuse treatment should not be released to the community and they should not be sent to MSH.

Sen. Grimes asked Mr. Murphy how often insanity defenses are resolved utilizing plea agreements. Mr. Murphy responded that not guilty by mental illness is never subject to a plea agreement. The guilty but mentally ill is subject to some plea bargaining, but the number is minuscule.

Rep. Laszloffy asked about the possibility of video hearings. Mr. Murphy responded that they are in the process of establishing those services. Rep. Laszloffy asked if the only reason that video hearings were not widespread is because communities lack the technology. Mr. Murphy responded that a lot of the hospitals have the ability. However, he said that transportation would continue to be an issue.

Rep. Shockley asked Mr. Murphy if he was familiar with the Frank Curtis story. Mr. Murphy stated he is familiar with the story, but he was not involved in the prosecution. Rep. Shockley

asked if Mr. Amberg knew the story. Mr. Amberg consulted with an attorney and declined to comment.

Sen. Stonington asked Mr. Murphy what his opinion is regarding the "gatekeeper" bill [SB 458 (2001)]. Mr. Murphy stated he would like to see a more cooperative system rather than shifting more authority to the state hospital. In addition, he is comfortable with judges as gate keepers.

Sen. Stonington asked Mr. Amberg the same question. Mr. Amberg responded that he generally agrees with Mr. Murphy. He said that the bill was intended to allow input from the state hospital in determining the needs, care, and expected outcome of treatment for a forensic patient.

Sen. Franklin commented that the structure of the bill would have the unintended consequences of keeping people in the wrong environment.

Lois Steinbeck, Senior Fiscal Analyst, Legislative Fiscal Division, reviewed for the Committee HJR 1 (EXHIBIT #7) as well as the corresponding study plan (EXHIBIT #8). Ms. Steinbeck spoke specifically about the Mental Health Oversight Advisory Council which was created by the legislature in response to issues about the public statewide mental health managed care contract. When the Council makes a recommendation to DPHHS, the Department must report to two interim legislative committees on what the recommendation was and if DPHHS does not implement the recommendation, why they didn't. The Council is now working on the new regional mental health system. Ms. Steinbeck continued by stating that the HJR 1 Subcommittee on Mental Health has asked to review all mental health legislation that is proposed. She finished by discussing budget issues and mental health care spending and service cuts.

Susan Byorth-Fox, Research Analyst, Legislative Services Division, provided the Committee with an update on what the HJR 1 Subcommittee is doing so that efforts may not be duplicated. Ms. Fox also provided a brief, recent history of mental health care in Montana. She also said that there is a Subcommittee of the Mental Health Oversight Advisory Council that is reviewing the gatekeeper bill and will take their recommendation to DPHHS. She said there will be a joint meeting where all mental health legislation ideas will be presented and she invited LJIC members to be present at that time.

Rep. Smith asked Ms. Johnson if training would be needed at pre-release centers if that becomes an option for forensic patients. Ms. Johnson said yes.

Rep. Smith then asked about increased training for law enforcement personnel. Mr. Anderson responded that DPHHS is going to fill the training position within the next month.

Rep. Smith asked Ms. Johnson who would sit on the Mental Health Court if that came to fruition and the cost associated. Ms. Johnson responded that it would be appropriate to target one judicial district as a pilot program. She also said that there are some federal grant funds available.

Rep. Jayne provided a [criminal] defense perspective of the mentally ill. She said there was a lot of ridicule of the mentally ill from law enforcement and that training is greatly needed. In addition, persons convicted of crimes who are also mentally ill are sent to prison rather than sent for

treatment. After their sentence is served, their underlying mental illness remains.

Ms. Johnson agreed that the standards once the person is committed to the state hospital are at the civil standard of clear and convincing evidence. However, she said if you look at the policies of the not guilty but mentally ill determination, the standards are completely different.

Sen. Waterman stated that there is a lack of understanding, communication, and education. She said that the state can no longer afford to continue with the current system and that more patients should be treated within their community.

MONTANA WOMEN'S PRISON

Jo Acton, Warden, Montana Women's Prison, provided an update to the Committee regarding construction plans and activities at the prison (EXHIBIT #9). She also provided the Committee with inmate classification data (EXHIBIT #10) and a list of crimes committed by female offenders (EXHIBIT #11). Ms. Acton stated that they are a correction facility, not a treatment facility, and if a prisoner needs additional care then they would be sent to the MSH.

Rep. Laszloffy asked about legislation that would allow a child to stay overnight in MWP with his or her parent. Ms. Acton responded that women in the prisons do not have the appropriate skills for overnight stays, but she does believe extended visits are appropriate. She said that in the future, overnight stays may be possible. Rep. Laszloffy asked what the goals are for extended visits. Ms. Acton responded that extended visits help teach parenting skills and what skills need to be worked on. Rep. Laszloffy asked if the inmate has to reach a certain classification to have their children for visits. Ms. Acton responded that there is no restriction unless an inmate is going to be alone with the child.

Sen. Harrington asked if the new facility is connected to the old facility. Ms. Acton responded yes.

Sen. O'Neil asked about inmates who are imprisoned for drug-related crimes and the percentage of those who are on psychotropic medication. Ms. Acton said a large percentage. Sen. O'Neil commented that he would like to know if there was a higher percentage of people in prison for drug related crimes that needed medication for depression. Ms. Acton said she would look into that.

Rep. Clancy asked about recidivism and any programs that will help prepare inmates for public life. Ms. Acton responded that there is a program called Outward Bound.

Rep. Laszloffy asked about the effectiveness of the Boot Camp Program. Ms. Acton responded that overall the program is very successful, but it does not include her program.

Sen. O'Neil asked about the recidivism rate. Ms. Acton responded that DOC staff and others are working to define recidivism, but women returning to prison for new crimes is approximately 5%. Sen. O'Neil asked how many come back for parole violations. Ms. Acton responded 18%.

Rep. Gutsche asked about where children live if the custodial parent is in prison. Ms. Acton responded that almost all of the children live with relatives or friends. The majority are not in

care by the state. She said that a pre-release setting may be looked at to allow the parent and child to live together. Rep. Gutsche asked about the portion of Native American women and their cultural/spiritual needs. Ms. Acton responded that MWP is doing activities which the women run themselves. However, they are having difficulty obtaining Native American volunteers to visit the prison. Rep. Gutsche asked if the reason there was not a person onsite was financial. Ms. Acton responded partially, but she has numerous volunteers who are from religious organizations. Rep. Gutsche asked about the study which states there are more women drug users than men and if that study could be made available. Ms. Acton said she would provide a copy.

Rep. Laszloffy asked if the number of children and their disposition is included in the pre-sentencing evaluation. Ms. Acton said she did not know.

Rep. Shockley asked about the termination of parental rights and if the DOC gets involved. Ms. Acton responded that there is a great deal of time between being arrested and sentencing where a parent can make arrangements for their children. She said that DOC staff will step in if they have an ongoing issue of neglect.

Sen. O'Neil asked when a prisoner enters the system, is it noted if they come from a single parent home. Ms. Acton responded no.

STATUTORY REQUIREMENTS FOR EXPEDITED OR TIME SPECIFIC PROCEEDINGS

Valencia Lane, Staff Attorney, Legislative Services Division, reviewed for the Committee *A Summary of State Statutes That Require District Courts to Act Expeditiously or Within Time Limits* (EXHIBIT #12).

Sen. Grimes asked how these coincided with the federal time constraints. Ms. Lane stated that these would not supercede federal requirements and if there were federal requirements, they would have to coincide. Sen. Grimes asked how a court administrator handles simultaneous state and federal time requirements. Ms. Lane responded that administrators and judges have to be aware of certain requirements.

UPDATE OF FELONY SENTENCING STATUTES

John MacMaster, Staff Attorney, Legislative Services Division, reviewed for the Committee the *Draft Legislative Reference Guide: Felony Sentencing Statutes 2003* (EXHIBIT #13) which replaced *Title 45 Felony Sentencing Statutes Analysis Tool and Reference Guide 2001* (EXHIBIT #14). In addition, he presented to the Committee *Non-Title 45 Felony Statutes* (EXHIBIT #15).

COMMITTEE WORK SESSION

Dave Bohyer, Research Director, Legislative Services Division, continued to review Exhibit #13, specifically Appendix 2 which is the Crime Seriousness Ranking (CSR) Decision Tool for Non-Title 45 Felony Offenses. He asked the Committee to work through the document to determine the appropriate CSR level.

After lengthy deliberations, the Committee unanimously adopted Appendix 1, Appendix 2, and Appendix 4 of Exhibit #13 without any alterations.

Mr. Bohyer then reviewed for the Committee the memo from the Children, Families, Health and Human Services Interim Committee (EXHIBIT #16). He stated that the LJIC has been asked to respond.

After much discussion, the Committee determined that they would respond after hearing the Department of Corrections's position tomorrow.

Sen. Grimes informed the Committee that the Supreme Court will not be pursuing an intermediate appellate court, and therefore, the subcommittee that was created during the October meeting is disbanded.

RECESS

The meeting recessed until 8:30 a.m., Friday, December 7, 2001.

CALL TO ORDER & ROLL CALL

The meeting was called to order at 8:30 a.m. by Rep. Gutsche. Roll call was noted with all members present except for Sen. Bishop and Sen. Doherty who were excused (ATTACHMENT #3).

BENCH REMARKS

The Honorable Karla M. Gray, Chief Justice, reported to the Committee that the Court has changed its position and will not be going forward with a bill for an intermediate appellate court. In addition, she stated that the Court is not able to make significant headway in reducing the number of backlog cases. She then reviewed the activities of the Court in regards to SB 176 and HB 124. She said that she is not confident that there will be sufficient funds for variable court costs.

Rep. Shockley asked Chief Justice Gray to define "variable costs". Chief Justice Gray responded that they are costs to the judicial district that vary with the number of cases. Rep. Shockley asked about the impact of, e.g., a big murder trial in a rural county. Chief Justice Gray responded that a big murder trial in any county would have a significant impact. Rep. Shockley asked Chief Justice Gray what remedy she would suggest. Chief Justice Gray responded that she did not have any suggestions at this time.

Sen. Harrington asked if the counties have the right to set up five mills to cover court costs. Chief Justice Gray responded that counties still have that opportunity. Sen. Harrington asked about the change in numbers from \$25 million to \$19 million in HB 124 and if there is more or less money in the budgets. Chief Justice Gray responded that the legislature stated that up to \$25 million would be available and she did not know the current budget status at this time.

Rep. Shockley asked if counties that currently do not levy mills for court costs are going to have to now. Chief Justice Gray responded that she did not know.

On a different matter, Rep. Gutsche commented that Sen. Tester would not be available today and the Committee will simply be discussing the letter he provided.

MATTERS OF JUSTICE

Larry Fasbender, Deputy Director, Department of Justice, reported to the Committee that the DOJ has received a grant to help with the cost of cleaning up methamphetamine labs. In addition, the DOJ has been asked to nominate 8 counties to become members of the High Intensity Drug Trafficking Area which will be accompanied by additional funds. In reference to titling of motor vehicles, the DOJ will act as the general contractor to develop a new computer system. Mr. Fasbender continued that DOJ staff are working on having any new legislation presented to the Committee by the May deadline.

Sen. O'Neil asked if DOJ staff were only working on motor vehicle titling. Mr. Fasbender replied that they received \$4.5 million to work specifically on motor vehicle titling. Sen. O'Neil asked if the new system will be incorporated in other areas. Mr. Fasbender responded that they are making sure that if additional funds are received for driver's licenses or registration that the new system being built will be fully integrated.

COURT IMPOSED PENALTY FOR FRIVOLOUS LAWSUITS

Mr. Bohyer reviewed for the Committee a letter received from Sen. Tester and a response prepared by Greg Petesch, Legislative Services Division, Legal Director, regarding frivolous lawsuits (EXHIBIT #17). He said that Sen. Tester will speak directly to Chief Justice Gray about his concerns and if he continued to have concerns he would present them to this Committee.

CORRECTIONS' CONCERNS

Bill Slaughter, Director, Department of Corrections, reported to the Committee that the DOC had its first Corrections Oversight Advisory Council meeting. He commented that in the next session, additional money will be available if the state drops its driving under the influence (DUI) level to 0.08 which will affect fourth offense DUI's in the state. He said that a request for proposals (RFP) has been sent out and the DOC is hoping a DUI center will be opened shortly.

Sen. Harrington asked about the funding of the fourth DUI program. Mr. Slaughter responded that it is a residential treatment center that was originally funded at \$45 per day. When the RFPs came back, bidders were requesting \$52 per day, which created a dilemma. However, \$52 is much less than the \$60 at Montana State Prison. Sen. Harrington asked if the program is going to go ahead and if Mr. Slaughter had any concerns. Mr. Slaughter said the program is going forward and he has a great deal of confidence in it.

Rep. Callahan asked about addressing the 0.08 level and if Mr. Slaughter had any thoughts on a graduated sanction based on alcohol level at the time of arrest or conviction as opposed to number of DUI's. Mr. Slaughter responded that a 0.08 is going to affect the numbers of first time offenders, but it is a public safety issue as much as a corrections issue.

Rep. Shockley commented that he would encourage the Department to have good statistics for the DUI program because his understanding is that if it does not work, it will not be funded again.

Mr. Slaughter concurred and stated that the contract requires the contractor to show the Department outcome measurements.

Sen. O'Neil asked about the federal mandate for 0.08 DUI and if we can establish an offense without adding it into the calculation for a fourth DUI. Mr. Slaughter stated that he did not know how to do that. Sen. O'Neil asked if a person was arrested at 0.08, they could call that something else rather than add it to the existing numbers of DUIs. Mr. Slaughter responded that the legislation could be crafted to call a violation of the 0.08 threshold something else.

Rep. Smith asked about lower alcohol rates and corresponding statistics. Mr. Slaughter responded that the nation is trying to deal with teenage driving deaths and this provides another tool that officers can use.

Sen. Grimes asked if the Correction's Oversight Advisory Council is a long standing committee. Mr. Slaughter said it was a fairly longstanding committee that was disbanded a few years ago and has been recently reestablished. Sen. Grimes asked about budget issues and if Mr. Slaughter has gotten to the bottom of the issue. Mr. Slaughter responded that he has taken corrective measures to reduce the number of duplicated positions. He understands that the DOC has a bad reputation, and they are trying to show the legislature the positive changes they have made. He continued that there are going to be bad decisions made, but the DOC is no longer going to hide from them and will bring them to the legislature. Sen. Grimes commented that the Department will probably have to face a higher level of budget scrutiny during the next round, but he commended the efforts of Mr. Slaughter. Mr. Slaughter stated that the Department had earned the extra scrutiny.

Rep. Gutsche asked Mr. Slaughter about the letter from the Children and Families Interim Committee and if he could respond. Mr. Slaughter commented that medical oversight was a large issue, and Dr. Jones did a wonderful job and many of the federal mandates have been lifted. Mr. Slaughter stated that a Medical Oversight Committee has been established and advises if surgery will need to be performed. He also commented that medical services will be handled by contract instead of by an employee. The person in charge of federal oversight is happy with the choices that the Department has made. Rep. Gutsche asked what the consent agreement is in regard to federal requirements. Mr. Slaughter stated that they are not under significant scrutiny anymore, but that he will respond in writing.

Sen. O'Neil asked about notification in reference to the organizational change. Mr. Slaughter responded that the organizational chart for medical services has not yet been completed but they will file that when it is complete.

Sen. Grimes asked Ms. Lane if the Department should go to the Children and Families Interim Committee meeting. Ms. Lane stated that that would be very beneficial. Rep. Gutsche concurred. Mr. Slaughter stated that he would welcome the opportunity.

REVIEW OF HJR 39 STUDY OUTLINE

Jeff Rosky, Statistics Bureau Chief, Montana Department of Corrections, reviewed for the Committee the *Statistical Report to the DOC Advisory Council* (EXHIBIT #18) and the *Legislative Report 2000* (EXHIBIT #19).

Rep. Callahan asked about the male/female conviction comparison. Mr. Rosky stated that it is a rough estimate. Rep. Callahan asked about the requirements of clerks of court to compile information. Mr. Rosky said the DOC captures the information when a person enters the system. Rep. Callahan asked what numbers would not be captured by his Department. Mr. Rosky responded that the DOC only deals with felony convictions.

Rep. Clancy asked about the disparity in sentencing. Mr. Rosky responded that he could not comment on why there is a difference, because he is a statistician not a criminologist, etc.

Sen. O'Neil asked about the recidivism rate between men and women. Mr. Rosky responded that the Department is currently working to define recidivism and, therefore, the numbers have not been calculated yet. Sen. O'Neil asked if there was enough information to determine the effects of a single mother household compared to a single father household. Mr. Rosky responded that they do not have that data, but he can check with the Bureau of Justice to see if they are tracking the information.

Rep. Gutsche asked if the number of women incarcerated for drug crimes is because they are using drugs or are they distributing drugs. Mr. Rosky responded that drug possession is ranked second while sale of drugs is ranked fifth.

Rep. Callahan commented that the statistics may not accurately reflect what initiated an inmate's contact with the criminal system due to plea bargains. Mr. Rosky concurred.

Mr. Bohyer reviewed the goals of HJR 39 and asked the Committee to narrow their focus and provide a greater sense of direction to staff. The Committee then reviewed the preliminary questions Mr. Bohyer had sent to them (EXHIBIT #20). Following is a summary of the items reviewed, relevant discussion, and suggested priorities.

Item 1: What criteria can the LJIC or other legislators establish or assess to determine whether or not a statute or a related procedure is: (1) obsolete; or (2) inconsistent?

After much discussion the Committee determined the following as priorities for Item 1:

- Is the meaning clear?
- Is it still relevant?
- Does it affect anyone?
- Are people being convicted under a specific section?
- Is there direct conflict with other statute?
- Is the statute inconsistent with a court decision?

Item 2: How does the study committee wish to identify and analyze the effects, if any, of mandatory minimum sentences, truth in sentencing, two and three strikes provisions, and sentences for violations of 61-8-401 and 61-8-406 (DUI offenses)?

Mr. Bohyer stated that staff and the Committee have made an effort to identify all felony statutes under these requirements. He said that analyzing the statutes and determining what the effects

are is very broad in scope and what he may be able to do is provide some numbers and charts detailing how many people are affected and who they are. He then asked the Committee if this information is provided, how will that help legislators during the next session.

Mr. Rosky commented that the *Legislative Report 2000* provides information on DUI offenses and the impact that happens with a change in legislation.

Sen. O'Neil asked about recidivism rates and how far back the Department is going to go. Mr. Rosky stated that they should have the definition in a month or two and then they can trend back to 1991 as soon as their workload allows. Sen. O'Neil asked if crimes are decreasing because of increased penalties. Mr. Rosky responded that some of the information is known for offenders who have already been convicted. He continued to state that it would be difficult to determine the effect that an increased penalty has on the crime rate.

Rep. Shockley asked if Mr. Rosky could show if more or less people are convicted of a crime if harsher penalties are imposed. Mr. Rosky stated he could provide the information.

Rep. Smith asked about federal funds in relationship to federal mandates. Mr. Bohyer stated that he is unaware of a comprehensive list of federal mandates.

After much discussion the Committee determined the following as priorities for Item 2:

- Have an evaluation tool for policy makers?
- What discretion is left to the judge?
- Effects on DOC; county jails/resources?
- Populations, costs within DOC facilities?
- Does the crime have a deterrent effect?
- Effect on courts?

Item 3: How does the study committee wish to determine the effects of the elimination of good time credits on inmate population?

Sen. Grimes stated that on an anecdotal level the Committee should have some information on morale and behavior. Mr. Bohyer stated that a great deal of information could be obtained for Committee members, but he would need to know more precisely what information is desired.

Rep. Smith asked if behavior in prison is reflected during parole hearings. **Craig Thomas, Executive Director, Probation and Parole Board** stated that conduct is certainly a factor and the good time issue is extremely complicated because it became a right of inmates rather than something they earned.

After much discussion the Committee determined the following as priorities for Item 3:

- Effect on prison population numbers and cost?
- Effect on control and behavior of inmates?

Item 4: What type of information does the study committee wish to compile and analyze

regarding the use of and the effect of deferred sentences?

Mr. Bohyer asked Mr. Rosky if the Department obtains that information. Mr. Rosky stated that they receive the information for felonies.

After much discussion the Committee determined the following as priorities for Item 4:

- What are statistics in Montana?
- What are the opinions of justice/corrections officials?

Item 5: What types of information does the study committee wish to compile and analyze to determine the use and effect of sentences for offenses that must be committed multiple times to reach felony status?

After much discussion the Committee determined the following as priorities for Item 5:

- What is the effect on population numbers and associated costs?
- How are misdemeanor records kept and the cost associated with record keeping?

Item 6: How does the study Committee wish to identify and determine the effects of sentencing enhancements for the use of certain weapons or ammunition or for persistent felony offenders?

Mr. Bohyer stated that statistics are available to determine population and the number of years that have been added to sentences. After that information is gathered, the Committee may wish to work with Joe Williams and the Legislative Fiscal Division to estimate costs.

No priorities were identified by the Committee.

Item 7: How does the study committee want to identify and determine the effects of intermediate and alternative sanctions?

Mr. Rosky stated that DOC staff have begun tracking this information and could provide that to the Committee.

After much discussion the Committee determined the following as priorities for Item 7:

- Boot camp; Intensive Supervision Programs; deferred/suspended (revoke or not); house arrest?

Item 8: How will the study committee determine the effects on the correctional system of the commitment of certain offenders to the Department of Corrections?

Mr. Rosky stated that they could not provide this information adequately at this time. Rep. Callahan asked if judges could sentence an inmate to Boot Camp. Mr. Rosky stated yes.

After much discussion the Committee determined the following as priorities for Item 8:

- Where are inmates assigned within DOC, e.g. MSP, ISP, etc.

Item 9: How does the study committee wish to investigate the effects of different types of sentences on criminal justice and correctional resources?

After much discussion the Committee determined the following as priorities for Item 9:

- Sentenced to DOC vs. MSP, MWP, etc.
- Impact on state and regional facilities only.

Item 10: In what manner does the study committee intend to contemplate how proposed changes to current law would affect "recidivism" or the "growth of populations in secure facilities"?

Mr. Bohyer stated that whenever the Committee makes a recommendation to revise or change one of the felony statutes, they should do so after contemplating recidivism and the growth of population. Mr. Slaughter and Mr. Rosky commented that the DOC is working to define recidivism, and that he and Mr. Rosky will continue to research information on this topic.

Sen. Grimes commented that journal articles would be valuable information.

No priorities were identified by the Committee.

Item 11: What type of a working definition does the committee wish to give the term, "available resources of the state"?

Rep. Callahan commented that the cost per day does not necessarily follow the prisoner if he leaves a certain correction facility.

Rep. Gutsche said that she would like to know what the actual costs are and then that number can be pitted against what the available resources are. She also said that staff needs to be included in resources as well.

After much discussion the Committee determined the following as priorities for Item 11:

- Costs per day (year) in MSP, MWP, elsewhere.
- If alternatives are identified, what is the cost?
- Focus on actual resources: money, staff, etc. Distinguish between operating and capital costs.

The Committee then ranked the top three priorities of HJR 39 (EXHIBIT #21) which were determined to be:

1. Public Safety
2. Cost Control of State Correction System
3. Rehabilitation

PUBLIC COMMENT

Scott Crichton, American Civil Liberties Union (ACLU), orally provided a brief, recent history of inmate treatment at Montana State Prisons and the ACLU role. He suggested that the Committee start looking at addictive behaviors as medical problems rather than criminal problems. In reference to the letter from Children and Families (EXHIBIT #16), he commented that the state is still not in compliance with the settlement agreement. However, he said the state should be in compliance soon.

Rep. Laszloffy asked if there has been a change in the number of complaints received since the new DOC Director has taken over. Mr. Crichton responded that he could not provide statistics, but he said they receive approximately 65 written complaints per month. He said half of those complaints are from inmates, with the majority being complaints against county facilities.

Rep. Gutsche asked about the two issues the state is not in compliance on. Mr. Crichton responded that it would be more prudent for him to have his staff attorney address a letter to the Committee.

INSTRUCTIONS TO STAFF

Mr. Bohyer commented that the Committee needs to determine what it would like to do with the information received about mental health and criminal sentencing.

After much discussion the Committee determined that they would monitor and track any legislation related to sentencing of the mentally ill.

Mr. Bohyer summarized that the Committee does not intend to proactively create legislation related to HJR 1. In addition, to the extent that legislation is brought forth which specifically deals with the Department of Corrections and mental health issues, those would come before this Committee. He said that staff will also coordinate with other committees to determine if any additional legislation will be coming forward.

Mr. Bohyer asked if the Committee would like to respond formally to the letter from the Children and Families Interim Committee (EXHIBIT #16). The Committee stated they would.

Mr. Bohyer then reviewed the current agenda items for the March meeting. He also provided to the Committee a letter from Chief Justice Gray (EXHIBIT #22), a copy of HJR 39 (EXHIBIT #23), and a copy of the Study Outline and Committee Work Plan (EXHIBIT #24).

ADJOURNMENT

The meeting adjourned at noon. The next meeting is scheduled for March 28-29, 2002.