



Law and Justice Interim Committee

57th Montana Legislature

SENATE MEMBERS

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

HOUSE MEMBERS

TIM CALLAHAN
GILDA CLANCY
GAIL GUTSCHE
JEFF LASZLOFFY
JIM SHOCKLEY

COMMITTEE STAFF

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

MINUTES

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.**

Room 102, State Capitol
September 9, 2002

COMMITTEE MEMBERS PRESENT

Rep. Gail Gutsche, Presiding Officer
Sen. Duane Grimes, Vice Presiding Officer
Rep. Jeff Laszloffy
Rep. Gilda Clancy
Rep. Callahan
Rep. F. Smith
Sen. Al Bishop
Sen. Steve Doherty
Sen. Dan Harrington
Sen. Jerry O'Neil
Sen. Gerald Pease

COMMITTEE MEMBERS EXCUSED

Rep. Jim Shockley

STAFF PRESENT

Dave Bohyer, Research Director
Valencia Lane, Staff Attorney
Lois O'Connor, Secretary

VISITORS

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

COMMITTEE ACTION

- Approved the minutes from the June 3 and 4, 2002, meeting
- Approved draft legislation that repeals the requirement for transmittal and compilation of

- sentencing data by the Clerks of the District Courts and the Clerk of the Supreme Court as a Committee bill
- Approved draft legislation creating a task force on correctional and sentencing policy as a Committee bill
 - Failed to request draft legislation to revise the restitution laws

CALL TO ORDER AND ROLL CALL

The meeting was called to order by Rep. Gutsche, Chair, at 9:30 a.m. Attendance was noted; Rep. Shockley was excused. (ATTACHMENT #3)

Sen. O'Neill **moved** that the minutes from the June 3 and 4, 2002, meeting be approved. Motion passed unanimously.

DEPARTMENT OF CORRECTIONS

Joe Williams, Department of Corrections, stated the following:

- Leaving the August Special Session, the Department mitigated an additional \$900,000 in budget reductions above the \$2.3 million taken at the request of the Governor.
- The biggest issue the Department was forced to face was the \$576,000 pay plan reduction resulting in a reduction in force of five FTE. It classified down an additional position and two positions are being held open.
- The personnel savings were approximately \$300,000 and reductions to the Department's operating budget were \$280,000.
- The Department used its prerogative to move offenders to lower levels of supervision.
- As of August 30, 300 offenders have been identified to meet the criteria for lower level status--151 have been approved (104 males and 47 females).
- This will result in an increased case load for probation and parole officers.
- The target is to move 500 offenders out of secure custody facilities and into community supervision.
- The Department is also negotiating with the Missoula Regional Prison to change its focus to a DOC-commit reception center for revocations up to 30 days.
- The intent is to have all DOC-commits in one location instead of several county jails and have a centralized screening process to enable the Department to meet the commits' needs in the community.

Sen. O'Neil asked if the problems with medical services at the Montana State Prison (MSP) were because of the lack of employees and could inmate labor be used. **Bill Slaughter, Director, Department of Corrections**, said that prison medical services cause the most liability for the state and the biggest problem is that Montana has a "kite system" to receive those services. Although he was confident that the Department could fix the problems within the system, it has been unable to document illnesses and has had issues with how medical records are accumulated, how reports are pulled from them, and how the data is being compiled. Because of the budgetary constraints, the Department reorganized the MSP's health services. Director Slaughter added that MSP is using inmate help in many places, but that the infirmary was different because of the close proximity to narcotics and possible weapons.

Rep. Gutsche asked about the problems that have been alleviated and those that remain. Director Slaughter said that the most important issue within the kite system is a reasonable amount of time between an inmate's report of an illness, the nurse's assessment, and the

receipt of medical services by a doctor. Since July, the kite system has been improved with the implementation of certain checks and balances. Currently, the problem is the documentation of inmate medical visits and doctor assessments.

Director Slaughter provided an overview of the number of DOC commitments over the last three years and where they were placed. (EXHIBIT #1) He stated the following:

- The Department has seen a 9% growth in the incarceration rate--4% higher than what it was budgeted for.
- The Department may be requesting a potential \$9 million budget supplemental in the 2003 Session because of the increase in amount of contract bed dollars.
- The Department needs to address how to prevent putting people back into the system at the high rate that it is and whether offenders are properly placed in prison. For example, when offenders are sentenced, they may be sentenced to prison or to the Department of Corrections. If sentenced to the Department, the Department has to put offenders in an appropriate program or facility.
- The Department is currently working on whether offenders could be better dealt with in a community setting.
- However, when the contract beds, ISP, and the prerelease beds filled up and the Department realized an offender waiting list, it had to put offenders in prison--its most expensive bed.
- The Department decided that the state needed a reception center that is not the MSP and offender evaluation and appropriate placement processes, i.e. lower-level supervision.
- The Department's target is 450 offenders going into the community corrections options rather than prison.
- The Department has 50%-occupancy contracts in all of the regional prisons but there is no savings.
- The Department is in partnership with the Corrections Corporation of America (CCA) which is the future of corrections.
- The Department and CCA will propose legislation to permit the placement of out-of-state prisoners in the Crossroads Correctional Center (CCC) in Shelby.
- Inmates would be placed under three conditions: (1) out-of-state prisoners will be isolated in the CCC at Shelby, (2) the Department will get to assess the offenders before they are taken into the system, and (3) if in fact, Montana's correctional system continues to grow and if the Department is funded for every offender it puts into Shelby, out-of-state offenders must be moved out.
- If something happens that the state loses Shelby for any reason, DOC has a huge problem. Montana needs to keep the CCC in Shelby viable and it needs to ensure that it is a for-profit company.
- The Department knows that the offender population is going to grow but it does not know at what levels it will be funded in the future.

Rep. Laszloffy asked about the inmates who choose to remain in prison rather than be released to a lesser-level, lesser-cost placement. Director Slaughter said that this type of inmate is not motivated to go to counseling and they do not want to be released from MSP under supervision. They would rather be discharged and the best incentive for them to leave prison is by getting them involved in the prison industries so that they realize that they can make some type of living.

Sen. Harrington asked how the Department could consider bringing in out-of-state prisoners to make money while at the same time talk about releasing prisoners who should probably still be in prison; and how is the community of Shelby taking the idea. Director Slaughter said that the DOC commits that are being moved into community corrections options are offenders who should not be in prison anyway. In addition, when Montana brought in private businesses to run its prisons, it became a for-profit deal, and it is a different question than it was a few years ago. The question is can the state afford to let a private entity like CCA go "belly up" when the state may need it months or years down the road. The Legislature could also choose to put a sunset on the length of time to allow out-of-state prisoners to come in. He added that the CCC has been in Shelby for awhile, the citizens have become used to it, and it has been a huge economic development resource for Toole County. Sen. Harrington asked what other programs does the Department foresee being cut. Director Slaughter said that the Department has done its best to balance public safety and live within its budget. Although it has made some tough cuts in corrections, it has not cut correctional and probation officers. The Department has also revamped its health services delivery system and training program. The Governor has requested that the Department prioritize its programs, but there is a level of public safety that must be maintained.

Sen. Doherty asked who was going to make the decision on which out-of-state prisoners would come into the Montana system. Director Slaughter said that it would be a state of Montana person. Sen. Doherty asked if guarantees were made to the CCA that the state would ensure that it was a profitable company by coming to Montana. Director Slaughter said no, and there is no existing contract that keeps CCA at some level. However, the Department believes that it is in the best interests for the people of Montana to keep CCA up and running and profitable so that Montana does not have to build 500 more beds down the road. Sen. Doherty asked why it was necessary to change the deal with CCA in terms of privatizing. Director Slaughter said that the Department could keep in-state prisoners there, but when it faced with 9% growth in the prison population and being budgeted for a 4% increase and huge cuts on top of that, the only place to meet the Department's budget is to reduce the number of contract beds. At some point, CCA will close down and fire employees. The Department has the ability to manage those prison beds. Why out-of-state offenders? Because Montana cannot afford it from inside the state. Sen. Doherty asked if CCA has indicated that it will close down and what can the Department do to ensure that the state will have access to CCA's profit margins and books. Director Slaughter said that the CCA has not indicated that it was going to close its doors, and the Department has had an on-sight contract manager from the day the CCA opened. Sen. Doherty said that Montana has been "snookered" by big business before and CCA is a big business with one intent only, to make a profit. If Montana is going to be negotiating deals to take in out-of-state prisoners, it needs all of the information.

Rep. Laszloffy asked if the contract allowed the Department to make a profit from CCA to offset the Department's budget deficit. Mr. Williams said that there was nothing to preclude the Department from recapturing some of the costs. In answer to Sen. Doherty's question, he said that the Legislative Auditor has the ability to examine CCA's books.

Rep. Gutsche asked if moving the 400 offenders into lower levels of supervision translate into the \$3.2 million reduction. Mr. Williams said that between the Special Session reductions and cuts that the Department volunteered, the reduction is approximately \$10 million which translates into 400 offenders a year being moved from secure custody facilities into community

corrects or not showing up in the first place. The big tools that the Department can use to get to that point is the WATCH program (DUI unit), the DOC commit change, fewer revocations, trying to get the Missoula County Region Prison to except the 30-day sanction center, and to reduce the non-violent offender length of stay to 180 days and maintain public safety. In addition, the reduction of 5 FTE helped mitigate the \$576,000 for the pay plan reduction and a cash transfer from the Prison Ranch will also be used to reduce the deficit.

Director Slaughter said that the Department is not like DPHHS that provides services in the community. It is all about FTE and people. When it talks about mitigating costs, it only has one or two place for those dollars to come from--contract beds and people. Rep. Gutsche asked if the 48-bed sanction center in Missoula's currently free. Director Slaughter said that the Department is talking about three things: (1) a 30-day reception center for DOC commits coming out of the county jails for the first time to be evaluated and either sent to prison or community option, (2) a percentage of offenders that could have a community option and avoid prison and spend up to 90-days, and (3) a 48-bed sanction center. The Department would have to move everyone out of Missoula and put them into the CCA and bring a different population back in. Rep. Gutsche asked if the Department had submitted it's budget to OBPP. Director Slaughter said yes, and the Department has not asked for anything.

Rep. Laszloffy requested an update on the proposed victims' restitution legislation. **Diana Koch, Legal Counsel, Department of Corrections**, said that legislation for victims' restitution was presented to OBPP last week and was reviewed by three entities. The legislation also addresses Sen. Bishop's concern to have a private entity collect the restitution after someone is off of supervision. Draft legislation was also submitted to stakeholders who gave the Department some suggestions on the draft and the suggestions have been incorporated. Ms. Koch will provide a draft copy of the legislation for discussion later in the day.

Ms. Koch added that the CCA may bring forth the out-of-state prison legislation rather than the Department.

DEPARTMENT OF JUSTICE

Mike McGrath, Attorney General, stated the following:

- Total reductions to the Department were approximately \$1 million not including cuts due to the hiring freeze.
- The Department's vacancy savings level will be between 7% and 8% which gives him a concern in terms of public safety.
- One issue that arose is how the hiring freeze is being implemented. If a position is critical, the Department submitted a request to OBPP for approval. The OBPP procedure is that even if it is approved, it withholds 25% from the allocation for that position.
- This works fine for OBPP but it is a mess for an agency that is trying to comply with it.
- The Department would rather have OBPP give it a dollar figure and have the Department meet that figure.
- Taking 25% out of each position, does not make sense.
- If OBPP is going to approve the position, the Department needs the position, and OBPP does not need to micro-manage the Department of Justice.

Attorney General McGrath provided a brief update on the state's compliance with the Wetterling/Lychner amendments related to Montana's sexual and violent offender act. (EXHIBIT #2)

- The tobacco settlement master agreement continues to be enforced and Montana will receive revenue from it. The Department monitors the funds.
- The suit against the non-participating manufactures--the 38 companies in Montana that do business that are not major tobacco manufacturers--are proceeding.
- The Department is currently in the process of an arrangement with the Department of Revenue to allow for the electronic filing of information that the state requires to monitor non-participating manufactures. The Department of Revenue is requesting an auditor position to do this function.
- The Department of Justice is also implementing an amber-alert system in Montana through the Homeland Security Task Force.

Gene Huntington, Gambling Control Division, Department of Justice, provided a brief update on the automated accounting and reporting system (AARS)--dial-up system. (EXHIBIT #3)

Sen. Grimes asked if the Department's technical people could maintain the system. Mr. Huntington said yes. **Larry Fasbender, Chief of Staff, Department of Justice**, added that the state's problem has been made more complex because Montana had an existing gaming industry in place.

Overview of Spending Reductions for Fiscal Year 2003

Mr. Fasbender stated the following:

- The Department has not gotten to the point where it is looking at any major reductions for the next Legislature other than those that it has already taken.
- Homeland security has been a major issue, and the Department is still trying to find out what the federal government is going to be doing. The state will receive some federal funding but, to date, the amount is unknown.
- In the 2001 Session, the Department was authorized to borrow \$4.5 million from the Board of Investments to help pay for the motor vehicle filing system. To date, the Department has collected \$18 million which has been deposited into the general fund.
- Once the Department got into the filing process and it became clear that the state was going to have a deficit, the Department terminated the hardware for the program until it could come back to the Legislature for instructions on how to proceed.
- The Department will eventually have to have a new computer system in place to realize all of the benefits. At the same time, the system cannot be put in place until the Department knows that the registration and drivers license portions of the program are going to be funded.
- The registration and drivers license system will cost an additional \$18 million. The Department proposed to fund the entire project by a \$2 increase in registration.
- There is a limit as to how much can be cut in the Legal Services Division. Any cuts made, particularly related to the Law Enforcement Academy, falls directly on local governments.
- Forensic Science has become a major force in the way that crimes are established and convictions are achieved.

- The Highway Patrol staffing level is at the point it was in 1976 and Patrol Officers' driving time has increased substantially.
- The Information Technology Service Division is critical to the Department's operation.
- The Department is not in a position to recommend any major cuts, and it will come down to the Legislature deciding whether some of the service that the Department delivers are not going to be considered a priority.

Sen. Doherty asked if more cuts in the Department could be made without affecting public safety. Mr. Fasbender said that no matter what is done, services are going to be affected. The Department may have to reduce the number of the Motor Vehicle Division's 23 satellite stations in order to make the cuts it currently has received. Sen. Doherty asked if the backlog in forensic science was affecting the ability of prosecutors to effectively prosecute cases. Attorney General McGrath said that the impact in terms of the backlog at the lab has more to do with preindictment delay because it is the fingerprint and trace evidence section. If the evidence is necessary to make a case, then cases are not getting filed until the lab completes its work.

Sen. Harrington asked if the Department had been asked to make a program priority list. Mr. Fasbender believed that all state agencies were aware of the fact that they will have to come to the 2003 Legislature with some priorities. Some of the things being done in the Motor Vehicle Division will delay funding to the general fund because the work will have to be done as the Department has people to work on them.

Sen. Grimes asked besides the forensic issues, what other public safety concerns could be in danger. Attorney General McGrath said that other areas of concern are the 8% vacancy savings in the Division of Criminal Investigation which responds to larger cases in more rural communities; the cuts in the Fire Marshall's Bureau which will prevent them from inspecting public buildings and schools in rural areas; and the vacancy savings in the Motor Vehicle Division which is to the point where it is close to being on its last legs.

Rep. Smith asked what types of cutbacks are being discussed for the Law Enforcement Academy. Mr. Fasbender said that during the Special Session, some legislators explored the possibility of taking the Law Enforcement Academy off of the general fund money. If law enforcement officer trainees have to begin paying for a great deal more of the training, Montana will see fewer of them attending the Academy.

Attorney General McGrath added that the basic training program for a new law enforcement officer is approximately \$5,800 per officer. If it is determined that local government should pay the full cost, it is very big hit to local government budgets. Law enforcement candidates currently pay \$600 each and their cost will also increase substantially.

CLERK OF THE SUPREME COURT

Ed Smith, Clerk of the Montana Supreme Court, said that his office took a 1% overall cut in its budget along with the 20% reduction in the pay plan funding and the 25% cut in supplies. The operating expenses for the Clerk's Office, excluding the funding for salaries and benefits, is approximately \$47,000 a year which has been reduced to approximately \$37,000. Two positions are part time and the individuals will each take 30 one-half days off without pay to help defray the extra reductions.

Mr. Smith said that the Supreme Court filings have decreased from 630 last year to 533 this year. Of the total appeals, 407 are direct appeals, 245 civil appeals, and 162 criminal appeals. Original proceedings or writs being filed totaled 146 of which 51 are original or civil proceedings and 95 are criminal. The pro se cases total 218 of which 141 are inmate pro se appeals. There have been 157 cases to mediation of which 28 have been successfully mediated.

Sen. Grimes asked from where did the 10% drop in Supreme Court filings come and did the drop in filings decrease the workload. Mr. Smith said that there has been a decrease in the number of inmate writs. He added that to some degree, there is a drop in work load. However, with every case that comes before the Supreme Court, some of them could be more involved than others.

JUDICIARY

Bench Remarks

Karla M. Gray, Chief Justice, Montana Supreme Court, stated the following:

- The Supreme Court filings through August are approximately 540 of which 529 have been closed either by opinion or order this year.
- There are currently 580 cases pending of which 205 have been considered by the Court, voted on, and assigned and another 25 are currently before the Court for consideration by briefs or have been scheduled for oral argument this fall, leaving 350 cases pending and in the briefing stage.
- Many cases pending while in the briefing stage are significantly delayed because the Attorney General's Appellate Division lawyers are understaffed and cannot keep up with the load. This is becoming a significant problem in getting criminal cases through the Supreme Court.

Update on the Activities of the District Court Council (SB 176)

Chief Justice Gray stated the following:

- State assumption of District Court costs under SB 176 was up and running July 1, 2003, and the District Court Council continues to meet monthly.
- The Council has been working on proposed legislation to address the state assumption clean up bill related to SB 176 which mandates the proper allocation of expenses involved in voluntary commitments and youth court proceedings and the exemption for independent contractor Court Reporters from the Montana Procurement Act.
- It is also working on additional proposals to clean up other statutes for consistency or clarity in light of SB 176, such as Water Commissioners, Water Masters, and Special Masters.
- All legislative proposals will be approved at the Council's next meeting and it will find sponsors.
- In addition, the Council will begin its work on the resource allocation among the District Courts.

Impact of Spending Reductions for Fiscal Year 2003

Chief Justice Gray stated the following:

- The Judicial Branch made voluntary reductions in its budget totaling \$365,000 with additional Special Session reductions of \$162,000, including the reduced funding for employee pay raises.

- It implemented duplex copying and e-mail strategies which will meet the office supply reductions.
- The Supreme Court is currently considering a lengthy list of other strategies to meet the reductions, but it does not anticipate any layoffs or reduction in force.
- She advised the OBPP that, in her opinion, the hiring freeze as drafted did not apply to the Judicial or Legislative Branches but that the Judicial Branch intends to comply.

Policy and Budget Issues for 2004-2005 Biennium

Chief Justice Gray stated the following:

- The Supreme Court will not be proposing the refunding of the Asbestos Court, but suggested that the Legislature reestablish the Court in the 2003 Session and fund it.
- It will be asking for the restoration of other reduction amounts but it is unknown which reductions that it would be asking for.
- It will not propose any permanent program eliminations because its programs are few and critical to the Branch's constitutional duties.
- The Court completed the Judicial Branch's new classification and compensation plan.
- It anticipates proposing increases to bring the approximately 35 FTE through state assumption up to minimum levels of compensation, and it also anticipates a proposal to fund the longevity plan for all state employees who came over under state assumption.
- The Supreme Court needs substantial additional funding for information technology because its IT cost increases were in excess of \$2 million as a result of SB 176. The Judicial Branch hopes to offset the largest percentage of the increase by increasing the IT surcharge from \$5 to \$10 to all users.
- SB 176 will result in a significant cost to counties, particularly for indigent defenses, in the amount of \$6 million.
- Local Clerks of the District Court will also propose legislation to significantly increase the state assumed amount of civil jury trial expenses.

Sen. Harrington asked if funding for state assumption of District Courts was sufficient to cover the costs or would counties have to assume more of those costs. Chief Justice Gray said that funding would be sufficient until the 2003 Legislature meets. However, at some point thereafter, more funding will be needed particularly in the area of indigent defense. As SB 176 is currently written, counties will incur the shortfall in state assumption for this fiscal year only. Further county assumption of the costs would be a legislative decision. She said that the overall court costs are not going to decrease, they will increase. Either the Legislature is going to define ways to pay the bills through the general fund or it must carve out pieces of what was SB 176 and send them back to the counties. Chief Justice Gray added that neither the voluntary pre-Special Session reductions nor the Special Session reductions were made to state assumption items.

LJIC MEMBER ITEMS AND ADJOURNMENT

Dave Bohyer, Research Analyst, Legislative Services Division, provided an overview of LC 0091 that repeals the requirement for transmittal and compilation of sentencing data. (EXHIBIT #4)

Sen. Grimes **moved** that the Committee approve LC0091, the draft legislation that repeals the requirement for the transmittal and compilation of sentencing data by the Clerks of the District Courts and the Clerk of the Supreme Court as a Committee. Motion passed unanimously. Sen. Harrington will sponsor the legislation.

Mr. Bohyer provided an overview of LC 6001 creating a task force on correctional and sentencing policy. (EXHIBIT #5)

Sen. Grimes **moved** the approval of draft legislation creating a task force on correctional and sentencing policy as a Committee bill.

Sen. O'Neil opposed the motion because he felt that the Legislature was abdicating its responsibility. Sen. Doherty felt the task force would be an expansion of legislative authority and responsibility. Both Sen. Doherty and Rep. Smith supported the legislation because of the public involvement on the task force and because it would result in the uniformity of the sentencing statutes.

Sen. Grimes' motion passed on a 10 to 1 vote with Sen. O'Neil voting no.

Sen. O'Neil requested that the Committee consider proposed legislation to allow judges to sentence offenders to the Department of Corrections rather than to prison so that the Department had more authority for proper placement of offenders in lesser-costing facilities in order to save the state more money.

Rep. Laszloffy provided an overview on proposed legislation to revise current victim restitution laws. (EXHIBIT #6) He requested that the Committee request it as a Committee bill.

Rep. Smith asked why the proposal included "federally" certified industries programs. Ms. Koch said that the federally certified prison industries program includes federal requirements, one of which is that not more than 20% or less than 5% of an inmate's pay go to a program to compensate victims of crimes. The legislation that is currently in effect states that 15% of an inmate's wages would go to the Crime Victim Compensation Fund which is used to pay any crime victim and not specifically used to pay the victim to whom the offense was committed. This is the crux of the problem--persons working in federally certified prison industries are not paying restitution directly to their victims. The proposed legislation allows inmates to pay restitution to their victims. If no specific victim is stated in the restitution order, the money goes from the Department to the current Victims Compensation Fund. Rep. Smith asked if the legislation would carry over after inmates leave the federally certified industries program. Ms. Koch said the only thing that carries over after inmates leave the industries program is that restitution is an obligation that they carry with them as long as they have restitution to pay.

Sen. Doherty asked the following:

- What percentage of the restitution payment to the Department would it take to fully cover administrative costs?
- Would the legislation would provide a disincentive for inmates to work?
- Which entity would be the first in line to receive restitution--the victim, a governmental entity, or an insurance company?
- What did the Department mean by the language "or at a later time" as it relates to the court's findings on the amount of restitution due?

Ms. Koch responded:

- The Department will take 10% as administrative costs to pay for one FTE to handle the payments.

- Current statute states that any amount over \$200 in an inmate's bank account is supposed to be taken by the Department. The Department is proposing to take a percentage for certain things which will give inmates the incentive to have some money in their accounts for commissary items. The percentage would be used to pay restitution.
- The legislation allows the Department to enact administrative rules. She hoped that the rule would state that the victim who has suffered an out-of-pocket expense is paid first and governmental entities or insurance companies should come in second or third.
- It was not unusual for judges to sentence a person and say that they would reserve the issue of restitution for a restitution hearing. She said it would be nice to close the gap so that there would be a time frame for which to set the amount of restitution.

Sen. Doherty questioned whether the Department was going outside of a court-imposed sentence and whether it was delegating too much judicial authority to probation and parole officers who were making determinations on the amounts of restitution paid. Rep. Callahan said that he also had concerns about probation and parole officers making determinations because if offenders do not comply with what is expected, probation and parole officers can send offenders back to jail or prison. Ms. Koch said that the proposed legislation tries to address the difficulty for judges to set an amount of restitution that stays with offenders for long periods of time and tries to address what happens if an offender's income increases drastically or if an offender is out of work. Current statute states that judges must set a monthly amount of restitution at the time of sentencing, which has been very problematic. The proposed legislation is a compromise--the judge sets the total amount of restitution that is due and probation and parole officers set the amount of restitution per month within certain guidelines and they could not send an offender back to prison unless the total amount of restitution has not been paid. Sen. Doherty asked if the Department loses track of the victims, where does the restitution money go? Ms. Koch said that the money goes to the Department; and on a regular schedule, the money that is not going to a victim will be deposited into the Crimes Victims Compensation Fund.

Sen. Grimes expressed concern about a private collection agency being hired to collect remaining court-appointed amounts of restitution once an offender has left the auspices of the Department. He said that inmates were trying to transition back into society and private collection agencies were not attuned to an offender's mode of operation. Ms. Koch said that when a victim tries to collect restitution from an offender who is off of supervision, the victim is on their own and must pay the majority of costs. Although she understood the hesitation to use collection agencies, there were prominent attorneys that deal with debt collections and there are statutes prohibiting collection agencies from taking more than a certain percentage of someone's wages or property. Ms. Koch added that this process would take the burden off of the victim's shoulders and would allow the Department to subcontract with someone who would collect the restitution for them. Sen. Grimes asked if an alternative could be to allow the courts to do the same thing. Ms. Koch was unsure.

Sen. O'Neil asked if offenders were allowed to participate in prison industry programs that were not federally certified. Ms. Koch said that the title needed to be revised because the legislation was intended to allow everyone to participate. Sen. O'Neil also suggested that an alternative could be that a percentage of an ex-offenders' gross pay could be set so that probation and parole officers know exactly how much is needed for restitution payments. Ms. Koch said that guidelines are needed to show probation and parole officers how to calculate the amount.

Rep. Callahan expressed concern that if probation and parole officers were to set the amount of restitution, there will be the expectation by the victim that the monthly amount will come. When it does not come, the officers will receive the phone calls asking why it is not coming and why they are not enforcing the law.

Ms. Lane commented that the proposed legislation needed many revisions, such as there may be some question about ex post facto laws and applying things retroactively. There may also be a question that if the legislation is to be funded by a 10% administrative fee on money that is recovered from people who are in prison or otherwise, what happens if the 10% fee is not enough to support a full time staff person to handle the funds. The question will then be "If it cannot be funded that way, what happens to the peoples' expectations that there will be a full time staff person?"

Sen. Doherty added that applying the retroactive applicability date to the people who have already had sentences could open the door that this would be an increased sentence after the sentence that has already been handed down; and if a sentencing court requires an offender to sign a garnishment agreement, it could get the state into serious trouble.

Rep. Laszloffy said that the legislation was intended to help victims recover their restitution. He said that the current system does not work, and the ideas put in place in the legislation will lend themselves to make the system more friendly to people who are owed money. He **moved** that proposed legislation to revise the restitution laws be drafted as a Committee bill.

Sen. O'Neil requested that a copy of the Committee's comments and discussion be forwarded to John MacMaster, Legislative Services Division, who will be drafting the legislation.

Rep. Gutsche said that another way to get the message across was to include it in the Committee's final report. The report could state that the Committee seriously considered restitution, that it believed it to be a problem, and that the statutes need overhauling. She said that in light of the Committee's questions and concerns, she was unsure that the legislation, as currently drafted, is what the Committee wants.

Rep. Laszloffy motion failed on a 6 to 5 vote with Senators Pease, Harrington, and Doherty and Representatives Callahan, Gutsche, and Smith voting no and Senators Grimes, Bishop, and O'Neil and Representatives Clancy and Laszloffy voting yes.

Committee staff is currently working on the Committee's final report, and it will reflect that restitution was an important issue and should be reviewed in the next interim.

There being no further business, the meeting adjourned at 3:20 p.m.

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