



Law and Justice Interim Committee

59th Montana Legislature

SENATE MEMBERS

DANIEL MCGEE--Vice Chair
BRENT CROMLEY
JESSE LASLOVICH
GARY PERRY
JIM SHOCKLEY
CAROL WILLIAMS

HOUSE MEMBERS

JOHN PARKER--Chair
GEORGE EVERETT
DIANE RICE
RON STOKER
BILL WILSON
JEANNE WINDHAM

COMMITTEE STAFF

SHERI HEFFELFINGER, Lead Staff
VALENCIA LANE, Staff Attorney
FONG HOM, Secretary

MINUTES

Date: August 31, 2006

Room 102, State Capitol Building

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

REP. JOHN PARKER (Chairman)
SEN. DANIEL MCGEE (Vice Chairman)
SEN. BRENT CROMLEY
SEN. GARY PERRY
SEN. CAROL WILLIAMS
REP. GEORGE EVERETT
REP. DIANE RICE
REP. RON STOKER
REP. BILL WILSON
REP. JEANNE WINDHAM

COMMITTEE MEMBERS ABSENT

SEN. JESSE LASLOVICH
SEN. JIM SHOCKLEY

STAFF PRESENT

SHERI HEFFELFINGER, Lead Staff
VALENCIA LANE, Staff Attorney
PAT GERVAIS, Legislative Fiscal Analyst
CYNTHIA A. PETERSON, Secretary

Visitors

Visitors' list (Attachment 1)
Agenda (Attachment 2)

COMMITTEE ACTION

- The LJIC approved the minutes from its June 29-30, 2006, meeting.

- The LJIC approved the appropriation changes to LC0071 as articulated by Ms. Heffelfinger and the proposed amendment contained in Exhibit 2.
- The LJIC approved LC 0071 as amended.
- The LJIC approved LC 8888.
- The LJIC approved for drafting purposes the legislation requested by the Office of State Public Defender.
- The LJIC approved for drafting purposes the Department of Corrections' bill draft requests regarding medical parole, probation and parole officers, and seriously mentally ill offenders.
- The LJIC approved for drafting purposes the bill draft proposal from the Supreme Court Administrator's Office regarding travel expense reimbursement for judges in multi-county districts
- The LJIC approved for drafting purposes the Department of Justice's proposed legislation with the exception of proposals regarding the law enforcement exception to HIPPA, the primary seatbelt law, the proposal to revise the initiative and referendum process, the real ID Act, all gambling related proposals with the exception of the proposal to provide funds for problem gambling.

CALL TO ORDER AND ROLL CALL

Rep. John Parker, Chairman of the Law and Justice Interim Committee (LJIC), called the meeting to order at 8:40 a.m. The secretary noted the roll (Attachment 3).

AGENDA

APPROVAL OF MINUTES

Sen. Williams moved to approve the minutes from the June 29-30, 2006, LJIC meeting. The motion carried unanimously by voice vote with Sen. Laslovich and Sen. Shockley voting aye by proxy.

SJR 40 PROSECUTION SERVICES

Committee Decisions on LC 71 to Date--Sheri Heffelfinger

Ms. Heffelfinger submitted bill draft LC0071 (EXHIBIT 1) and a proposed amendment (EXHIBIT 2). Ms. Heffelfinger pointed out two changes. Ms. Heffelfinger requested that the LJIC members edit the appropriation amounts contained on page 16 of LC0071 by changing the FY 2008 amount to \$334,132 and the FY 2009 amount to \$322,494. In addition, Ms. Heffelfinger requested that the LJIC members change the appropriations for the Forensic Sciences Division in FY 2008 to \$297,516 and change the FY 2009 amount to \$291,724. Ms. Heffelfinger addressed the amendment proposed in Exhibit 2 and explained that her understanding was that

there was consensus among stakeholders to revert back to current law.

Rep. Rice moved to accept Ms. Heffelfinger's proposed changes. The motion carried unanimously by voice vote with Sen. Laslovich and Sen. Shockley voting aye by proxy.

Ms. Heffelfinger noted that the appropriation amounts in LC0071 for legal services and forensic science services are also included in the Governor's budget; however, the statutory appropriation for the county attorneys is not included in the Governor's budget.

Larry Fasbender, Department of Justice

Larry Fasbender, Deputy Director, Department of Justice (DOJ), stated that the difference in numbers between current law and the amount contained in LC 0071 for the county attorneys is related to health insurance benefits. Mr. Fasbender stated there is agreement on all the numbers in the bill and that it is a good piece of legislation. Mr. Fasbender explained it is the intent of the Governor's office and Office of Budget and Program Planning to fund the pay plan at 80 percent of entry. If that occurs, Mr. Fasbender believed the problems related to employee retention will be somewhat alleviated. Mr. Fasbender thanked the LJIC for its hard work.

Brent Doig—Governor's Budget Office

Mr. Doig testified the Governor's Budget Office approved of LC 0071.

Fred Van Valkenburg, Montana County Attorney's Association

Mr. Van Valkenburg, introduced Mike Weber, Richland County Attorney and President-elect of the Montana County Attorney's Association. Mr. Van Valkenburg explained a problem was identified in Yellowstone County where the county compensation board has tied the county attorney's salary to the salary of a district court judge. Yellowstone County expressed concern with some of LC 0071 because a district court judge's salary is set on a two-year basis and did not anticipate providing a salary increase for the county attorney during the second year.

Mr. Weber, Montana County Attorney's Association, urged the LJIC to give LC0071 a favorable vote. Mr. Weber identified two areas of friction: The source of county attorneys' salaries and the resulting friction with DOJ and between county attorneys and their county commissioners. Mr. Weber believed LC 71 would solve both problems. However, Mr. Weber believed the amendment, which was designed to solve the problem in Yellowstone County, would cause problems in other counties. Mr. Weber proposed adding language stating "unless the increase will cause the salary of the county attorney to exceed that of a district judge."

Mr. Weber clarified for Sen. McGee that his proposed amendment would be at the top of page 8, at the end of subsection (b).

Harold Blattie, Executive Director, Montana Association of Counties (MACo), submitted a summary of MACo's concerns, the current language in LC0071, Mr. Van Valkenburg's proposal, and Ms. Heffelfinger's proposal (EXHIBIT 3). Mr. Blattie emphasized the legislation establishes

the relationship between the state and counties and the resulting shared responsibility for county attorney salaries. Mr. Blattie believed the proposed language suggested by Mr. Weber would solve emerging problems.

Public Comment

Bill Kennedy, Yellowstone County Commissioner, testified he is in agreement with Mr. Weber's amendment. Mr. Kennedy expressed his concern about having to give the county attorney a salary increase in the second year.

Questions from the LJIC

Sen. Cromley addressed Mr. Weber and stated that in the past the county attorney's salary was somewhat related to other county officials. Sen. Cromley wondered why section 3(b) was necessary. Sen. Cromley requested an example of a situation that could arise that would necessitate the need for section 3(b). Mr. Weber explained various county attorneys have received a one percent increase or no increase, while other county officials received substantial raises. Mr. Weber clarified the decision on how much to pay a county attorney would still be a local decision and not a decision made by the state. Mr. Weber stated that county commissioners could decide to pay the county attorneys less than 85 percent of a district judge's salary.

Mr. Blattie added clarification and stated Yellowstone County is the only county that has made any direct connection between the county attorney's salary and a district court judge's salary. Mr. Blattie stated the 85 percent language would be to establish the amount of payment to the counties for providing prosecution services and does not, in any way, tie the county attorney's salary to a district court judge's salary.

Chairman Parker asked Mr. Kennedy if he thought Mr. Weber's amendment was appropriate. Mr. Kennedy agreed Mr. Weber's amendment would work for Yellowstone County.

Chairman Parker asked Mr. Van Valkenburg to comment on Mr. Weber's proposed amendment. Mr. Van Valkenburg agreed with the amendment but noted his concern that the language, as drafted, could limit a raise. Mr. Van Valkenburg thought the intent was that the effect of the raise should not cause a county attorney's salary to exceed a district court judge's salary. Mr. Van Valkenburg thought the amendment may need some fine tuning.

Committee Work Session

Chairman Parker asked Valencia Lane, staff attorney, whether the LJIC could honor the intent of Mr. Weber's proposal without the unintended consequences. Ms. Lane was confident the language could be worked out and referred the question to Ms. Heffelfinger. Ms. Heffelfinger explained the purpose of the original amendment was to ensure the county attorneys would be treated equitably with regard to pay increases. However, the problem is with Yellowstone County since the compensation board has already tied the county attorney's salary to the salary of a district court judge. Ms. Heffelfinger was concerned that Mr. Weber's proposed amendment could have the unintended consequence of capping the salary for a county attorney. Ms. Heffelfinger offered Mr. Blattie's amendment to Mr. Weber's proposal and suggested after subsection 1(a) inserting "unless a county has established a county attorney's salary as that of

a district court judge." This language would exempt Yellowstone County, or any other county with the same process, from the effect of subsection 3(b).

Sen. McGee stated he did not like subsection 3(b). Sen. McGee agreed with tying the county attorney's salary to that of other elected officials. Sen. McGee suggested the county attorney's salary increase should be left to local officials and should not be determined by the state. Sen. McGee supported county attorneys being paid what they are worth, but could not support the proposal and reiterated he would like to see Section 3(b) removed from the legislation.

Sen. McGee moved to delete subsection 3(b) from LC0071 beginning on page 7 and ending on page 8.

Sen. Cromley asked whether all the county officials in subsection 1(a) are paid the same amount. Ms. Heffelfinger stated that subsection 1(b) requires uniform salaries for all county officers, but does not include the county attorney. Sen. Cromley believed the concern expressed by Sen. McGee could not arise since an increase could not be given to only one of the officials listed in subsection 1(a).

Mr. Blattie stated it is important that the base salary is uniform for all elected officials other than the county attorney. Mr. Blattie stated there are special adjustments in statute for other elected officials, but the county attorney has not been part of the uniform base salary.

(Tape 1; Side B)

Sen. McGee asked whether it would be easier for the county commissioners to give an increase to a county attorneys because the increase would fall back on the state. Mr. Blattie pointed out the state contribution is tied to 50 percent of 85 percent of district court judge salary and 50 percent of what the state contributes for a single employee health insurance. Therefore, the only thing that could affect that would be an increase from a three-quarter time county attorney to a full-time county attorney.

Rep. Windham restated her understanding was that no matter what the county compensation board wants to pay their county attorney, the state will only pay 50 percent of 85 percent of a district court judge's salary. Mr. Blattie replied other than the health insurance, Rep. Windham's understanding was correct.

Sen. Perry asked about raises given by the county compensation board, whether the raises are given in a percentage or a dollar amount. Mr. Blattie replied the majority of increases have been on a percentage basis, although there have been raises given based on a dollar amount. Sen. Perry noted the intent of the legislation was to give a more definite idea of what the state's portion of a county attorney's salary would be. However, the proposed legislation does not define a percentage or dollar amount. Sen. Perry thought the legislation goes further to create the potential for an unfunded mandate. Sen. Perry agreed subsection 3(b) should be stricken.

Chairman Parker asked Mr. Blattie if MACo was concerned about creating an unfunded mandate. Mr. Blattie replied it was not a concern. Mr. Blattie stated MACo explained some county boards of commissioners have less than a good working relationship and there needed to be assurance that county attorneys would not be treated differently than the other elected officials enumerated in the statute. Mr. Blattie directed Sen. McGee to page 4, subsection (b)(I),

which was the language that would limit the state's cost. Mr. Blattie noted increasing a county attorney's salary would have no effect on the cost to the state. Sen. McGee provided a scenario, and Mr. Blattie assured Sen. McGee the state's share would be the same before the increase.

Rep. Stoker noted the figure is determined by the survey of surrounding district court judges. Sen. McGee replied his concern was that an increase at the county level could bind the legislature. Rep. Stoker recalled Mr. Van Valkenburg originally wanted it to be possible for the county attorney to receive some increase along with other elected county officials as long as it does not exceed a district court judge's salary. Rep. Stoker thought the language "not to exceed the salary of a district court judge" would resolve the issue. Mr. Van Valkenburg agreed and recalled the 2001 Legislature decided that the increases should be uniform for all elected officials to alleviate intra-courthouse disputes.

Sen. McGee's motion failed 4-8 by roll call vote with Sen. Laslovich and Sen. Shockley voting by proxy.

Sen. Cromley moved to approve Mr. Weber's proposed amendment to LC0071. Sen. Cromley thought the amendment proposed was too specific and could result in a county attorney getting too large of an increase. Ms. Heffelfinger stated that the effect would be that county compensation boards could not raise a county attorney's salary higher than a district court judge's salary.

Chairman Parker requested a restatement of the language. Ms. Heffelfinger said Mr. Weber's amendment would edit subsection (3)(b) by inserting language on page 8, after the reference to "subsection (1)(a)" stating "unless the increase would cause the county attorney's salary to exceed the salary of a district judge." Sen. Cromley agreed with the language read by Ms. Heffelfinger.

Sen. Cromley's motion to accept Mr. Weber's amendment to LC0071 carried unanimously by voice vote with Sen. Shockley and Sen. Laslovich voting aye by proxy.

Sen. McGee addressed subsection © on page 9 and the reference to the base pay and asked about the county's ability to pay and the taxpayer's ability to pay. Sen. McGee expressed his concern about writing laws that do not consider whether the taxpayer has the ability to pay. Sen. Williams agreed with Sen. McGee in concept, but stated that the legislation would give the power back to the counties where the decisions should be made. Sen. Williams believed the best way to address the problem was to let the counties decide.

Sen. Williams moved the LJIC adopt LC0071 as amended.

Sen. Cromley stated he shared Sen. McGee's concerns, but stated he would support the bill since it provided a funding mechanism.

Sen. Perry agreed with Sen. McGee and directed the LJIC to page 9 which dictates what the counties have to do and does not allow for any movement up or down by the county compensation board. Sen. Perry summarized the principle question as when to dictate to counties and local governments.

Sen. Williams' motion carried 8-4 by roll call vote with Sen. Laslovich and Sen. Shockley voting aye by proxy.

BREAK

SB 146 ENTITLEMENT SHARE CHANGES FOR PUBLIC DEFENDER SYSTEM FUNDING

Sen. McGee provided the LJIC with an update on the Public Defender Subcommittee activities. Sen. McGee explained how it was clear that no one solution would satisfy every county. The Subcommittee's target amount became approximately \$1 million. Sen. McGee explained how the Subcommittee considered various scenarios and formulas and directed the LJIC to the Public Defender Subcommittee Recommendation dated August 7, 2006 (EXHIBIT 4). Sen. McGee reported that the amounts in the proposed bill draft LC 8888, Exhibit 4, were a negotiated settlement agreed to by the counties and the Subcommittee. Sen. McGee believed that any adjustments to the 2007 payment to the counties would be made in the last payment and would be reconciled before the end of FY 2007.

Pat Gervais, Legislative Fiscal Analyst

Ms. Gervais directed the LJIC to her two-page summary contained in Exhibit 4.

Questions from the LJIC

Rep. Everett asked about the increase from \$33,000 to \$100,000 for Flathead County. Sen. McGee explained Flathead County had operated under a contract public defender system. Contractors submitted their bills to the court and the court was then reimbursed. All other public defender officers submitted their bills to the Court Administrator's Office. Various counties were never fully compensated for their public defender work when the Court Administrator's Office ran short of funds. The \$33,000 was not representative of what the public defender system cost in Flathead County. Therefore, the \$33,000 represented un-reimbursed district court and justice court costs, not total costs.

Sen. Williams addressed the Flathead County issue and recalled that the Subcommittee entertained numerous ideas including calculations based on population. Sen. Williams complimented Sen. McGee on his ability to address the issue before the Subcommittee.

Valencia Lane, Staff Attorney

Ms. Lane referred the LJIC to bill draft LC8888 contained in Exhibit 4. Ms. Lane explained the bill draft is an amendment to Section 15-1-121, MCA, the entitlement share payment section, and revises the withholding from the entitlement shares for the six affected counties. The bill draft has an effective date of "upon passage and approval" and directs the DOR to adjust the fourth quarterly payments for FY 2007 to reflect the base entitlement share for each county as adjusted in the act.

(Tape 2; Side A)

Sen. McGee explained that the immediate effective date was necessary so the fourth payment that goes out to counties can reflect the adjustments.

Ms. Lane added that Mr. Blattie had suggested it might be possible to amend Section 15-1-121, MCA, and remove the entire subsection containing the county numbers since it will become moot after FY 2007. However, Ms. Paynter had suggested that this is such a complicated section of law, it is best to preserve it by amending the numbers in hard code. The law could then be amended in 2009. Ms. Lane warned there is a danger of having unintended consequences if the section is removed.

Rep. Rice asked if the final bill would contain adjustments for the other counties. Ms. Lane said the effect of changing the number for the six counties would change the final numbers for the other counties as well, but the change would be reflected in the calculations not in the numbers shown for the other counties listed in Section 15-1-121. Ms. Lane thought Mr. Blattie could answer the question in more detail.

Brent Doig, Governor's Budget Office

Mr. Doig thanked the Subcommittee for its work and stated that the Governor's Budget Office supports the proposed changes.

Harold Blattie, Montana Association of Counties

Mr. Blattie concurred with Ms. Lane's advice and recommendation to keep the numbers in statute until 2009. Mr. Blattie explained that the calculation of growth dollars to the other counties will be affected, but will not change the numbers that will be in statute. Mr. Blattie thanked the Subcommittee for its work. Mr. Blattie reiterated that he had previously requested that the six counties wanted only the costs of justice court to be included. Mr. Blattie relayed Flathead County's dismay at the dollar amount of the adjustment for Flathead County.

Public Comment

Joe Brenneman, Flathead County Commissioner, stated he was unaware that negotiations would occur at the Subcommittee meeting. Mr. Brennan asked that Flathead County be treated like that other 55 counties and that the numbers be reconsidered. Mr. Brenneman did not believe Flathead County was treated fairly.

Bill Kennedy, Yellowstone County Commissioner, concurred with the Subcommittee's report and recommendation.

LJIC Work Session

Rep. Windham moved the LJIC adopt LC 8888.

Sen. McGee responded to Mr. Brenneman's concerns and referred the LJIC to page 3 of the legislative audit of the six counties dated March 2006 (06C-09) and reviewed past costs expended for the public defender system. Sen. McGee explained the difficulty the Subcommittee had in coming up with a number and noted that Flathead County is 8.7 percent of the total of \$25 million. Sen. McGee suggested that the Subcommittee could have used that number. Sen. McGee noted the different spikes and valleys that occurred during the past six years and assured Mr. Brenneman that Flathead County was considered. Sen. McGee stated he was sorry a Flathead County representative was not present at the Subcommittee meeting.

Sen. McGee emphasized the question is what will it cost the state of Montana to provide public defense. Sen. McGee explained that the bill will still need to go through the entire legislative process and interested parties will have an opportunity to make their arguments at that time. Sen. McGee urged the LJIC to approve Rep. Windham's motion.

Rep. Windham's motion carried 11-1 by voice vote with Rep. Everett voting no and Sen. Laslovich and Sen. Shockley voting aye by proxy.

PUBLIC DEFENDER SYSTEM IMPLEMENTATION

Jim Taylor, Chairman, Public Defender Commission

Jim Taylor, Chairman, Public Defender Commission, provided written responses to concerns raised by Sen. Shockley (EXHIBIT 5). Mr. Taylor reviewed his responses with the Subcommittee.

Ms. Randi Hood, Chief Public Defender

Randi Hood, Chief Public Defender, reported that after two months, there are 120 private attorneys available to take public defender cases, and there are 18 public defender offices across the state. Ms. Hood reported that many contract public defenders in Kalispell walked away from their cases and left the new public defender office with hundreds of active cases. One Justice of the Peace in Kalispell reported in the past he received an average of one letter a day from individuals in jail requesting to see their attorney, but the same Justice of the Peace has not received one letter since the implementation of the new public defender system. Ms. Hood praised public defender employees who made the switch from the old system to the new system. Ms. Hood explained the case management system for tracking cases and compiling information required by the Legislature. Training was held in July for all public defender attorneys and was well attended by both public defender attorneys and attorneys from the private sector, and a boot camp will be held for new attorneys in October. The Office of the State Public Defender (OPD) also took over the appellate defender's office. Ms. Hood reviewed the OPD's proposed legislation (EXHIBIT 6). Ms. Hood reported they will look at the Public Defender Act to determine whether courts have the ability to review indigence determinations. Ms. Hood identified a substantial amount of confusion regarding the representation of children in dependent and neglect cases. Child neglect cases are being handled differently across the judicial districts and opinions differ on who pays for appointment and representation. Ms. Hood will request feedback from the Montana Supreme Court and District Court Council.

(Tape 2; Side B)

Harry Freebourn, Finance and Administration, Office of State Public Defender

Harry Freebourn reported the OPD received \$30,000 from the Governor's Office to cover a payroll variance since the OPD brought deputy attorneys on board earlier than expected. In addition, \$185,000 was transferred from FY 2006 to FY 2007 to purchase office equipment so the offices could be up and running by July 1. Mr. Freebourn reported the 2007 budget contains 90.25 FTE and \$14.1 million in funding, but their strategic plan anticipates 175.75 FTE and \$17.4 million in funding. Mr. Freebourn expected to have 193 FTE on staff by the end of the year since employees are being brought on in phases. Mr. Freebourn identified three reasons

for the variance: (1) office space leases, transportation costs for employees, and office supply costs; (2) purchase of computers, communication equipment, and a case management system; and (3) simultaneous use of employees and contract services.

Public Comment

Kandi Matthew-Jenkins, Missoula, thanked the LJIC for its work. Ms. Matthew-Jenkins believed the new system will save money in the end. Ms. Matthew-Jenkins addressed the proposed legislation and agreed with the proposed reintroduction of LC 1343 and hoped the legislation would include parents in child protection cases. Ms. Matthew-Jenkins also agreed with the proposed amendments to Section 53-20-125(3), MCA, and Section 72-5-315(1), MCA. Ms. Matthew-Jenkins hoped the LJIC would continue to oversee the public defender system.

Mike Weber, Montana County Attorneys' Association, stated the County Attorneys' Association will have a different view of LC 1343 and believed there were good reasons the legislation was not enacted previously.

Ed Miller, Billings, was glad to see changes in the public defender system. Mr. Miller stated in the past, he was denied due process of the law.

Tina Has the Eagle, Fort Belknap, stated she hoped the public defender system would become more representative and defensive of Native Americans since reservations are subject to federal jurisdiction.

Pastor Cook became involved in the public defense issue in 2000 and testified most prisoners that he has visited had never received representation. Pastor Cook addressed previous ad litem procedures. Pastor Cook would like to see a different avenue taken rather than families being destroyed and separated.

LJIC Discussion

Sen. Cromley asked Ms. Hood how the OPD is handling conflicts of interest. Ms. Hood explained they treat each region as a separate law firm; therefore, Region 2 would not have access to information in Region 3. Ms. Hood is currently attempting to acquire information on how conflict issues are handled in other areas of the United States. Ms. Hood also reported they have hired a person to coordinate conflict of interest cases.

Sen. Perry recalled Ms. Hood referring to a bill regarding whether a judge can determine indigence. Ms. Hood expanded by explaining her office determines indigence and some judges have asked to participate in that decision. A writ for supervisory control was filed by the OPD and is currently pending.

Rep. Rice asked about the 10,000 caseload and whether the cases were new or old cases. Ms. Hood replied ongoing cases at the end of June were transferred to her office and offered to provide a breakdown to the LJIC.

Sen. McGee commented that Oregon created consortiums to handle conflict resolutions. Sen. McGee asked how the OPD responds to a request for a public defender on a reservation in federal court action. Ms. Hood explained the state public defender does not practice in federal

court, and those cases are left to the federal public defender. Ms. Hood added her office is very sensitive to issues surrounding Native Americans and is looking for better ways to represent the Native American community.

Sen. McGee asked whether the dropping of cases by Kalispell attorneys violated any requirements of the State Bar of Montana. Ms. Hood replied the court granted the attorneys the authority to withdraw in some of the cases, and OPD focused more on finding competent attorneys to represent the clients.

Sen. McGee asked about the relationship between the cost of an FTE and the cost of a contract attorney and asked whether infrastructure costs are included in determining the cost of an FTE. Mr. Freebourn agreed the cost of an FTE included infrastructure.

Rep. Stoker requested clarification because he recalled the numbers cited at the Butte hearing as being 103 FTE and the budget was \$14 million. Mr. Freebourn noted this is a transition year for the OPD. Mr. Freebourn explained 90.25 FTE and \$14.1 million was approved by the Legislature. The bill required the OPD to assume district courts, lower courts and city courts which will require additional employees. Also, contract work, like that previously performed in the Kalispell area, is being replaced with FTE work. Therefore, 175.75 FTE is now need for this year, and 103 more people will be needed. The amount of funding the OPD is estimating it will need is \$17.4 million.

Chairman Parker asked if there were any disparities in pay between veteran public defenders versus new hires. Mr. Freebourn could not respond to the question. Mr. Freebourn recalled current county employees were brought in at their current pay levels, and new people are either coming in lower or in the appropriate ranges relative to competence and work expectations. Ms. Hood recalled there were several existing public defenders who were below the minimum level of the pay band, so they did a wage adjustment. Ms. Hood explained they tried to be cognizant of a person's experience. If an attorney had not yet passed the bar examination, they were brought in below the minimum of the pay band with the understanding that they would be raised to the minimum in the pay band. Ms. Hood explained consideration was also given to the range of the salaries and experience of those people already in the office and noted it made a difference if the community was rural.

Committee discussion, possible work session on proposed OPD legislation.

Ms. Lane explained the process utilized by interim committees for agencies to request bills.

(Tape 3; Side A)

Rep. Stoker moved the LJIC authorize the drafting and LC number assignments for the three bills requested by the OPD. Rep. Stoker's motion carried 11-1 by voice vote with Sen. Cromley voting no and Sen. Laslovich and Sen. Shockley voting aye by proxy.

LUNCH BREAK

JUVENILE DELINQUENCY INTERVENTION PROGRAM

Valencia Lane: Issue overview, discussion of legal analysis by Ms. Diane Koch,

Department of Corrections

Ms. Lane provided a background memorandum dated August 21, 2006 and an overview (EXHIBIT 7). Ms. Lane explained, to date, she has not received a written bill draft request addressing the problems with the Juvenile Delinquency Intervention Program (JDIP).

Lois Menzies, Supreme Court Administrator

Ms. Menzies provided an update on events that had occurred since the June LJIC meeting in Butte. Ms. Menzies reported that the parties have met five times, have had numerous phone conversations, and have settled several substantive issues, including how the Youth Court Prevention and Intervention account would be administered. The account will be handled by the Judicial Branch. The Department of Correction's Cost Containment Review Panel has been reconfigured to better serve the needs of the program. In addition, the Youth Court Act would be updated to address reflect district court assumption. Remaining issues to be resolved are the distribution of unexpended cost-containment funds and the appropriate evaluation function by the DOC. Ms. Menzies believed the parties would reach an agreement to be presented to the 2007 Legislature, but noted the complexity of the issue. Ms Menzies was encouraged by the progress that has been made. Ms. Menzies asked the LJIC to approve the proposal in concept, so the bill drafting process could begin.

Mike Ferriter, Department of Corrections

Mike Ferriter, Director of the Montana Department of Corrections, stated he attended numerous meetings, and the parties understand each other's points of view. Both entities recognize the need to have outside parties to look at children's needs, placement, and treatment options. Mr. Ferriter noted the DOC and the Judicial Branch must continue to work to ensure that funds go directly to help youth. Unutilized funds would be used for intervention projects, and unexpended funds can be used for more appropriate placement of children with mental illness. Mr. Ferriter believed that the parties are making progress and are in a position to present a joint bill to the 2007 Legislature.

Public Comment

Kandi Matthew-Jenkins, Missoula, provided a story about a family whose son was sent to Pine Hills, was unable to resume his life upon release, and ultimately committed suicide. Ms. Matthew-Jenkins directed the LJIC to documented evidence regarding the tragic event, and stated that anything related to the juvenile correction system should be carefully reviewed. Ms. Matthew-Jenkins urged the LJIC to look at the outcome of the system before changing rules or appropriating funds.

Ed Miller, Billings, agreed with Ms. Matthew-Jenkins, and stated he has been dealing with the system for the past 25 years. Mr. Miller provided stories about his personal experiences and the experiences of twin boys who were placed in foster care. Mr. Miller stated he found statistics in the Montana State Prison library indicating 97 percent of allegations of abuse and neglect by parents are false.

Committee Discussion

Chairman Parker said he did not believe the JDIP issue was ripe for a decision since the LJIC did not have a written proposal.

Rep. Stoker stated that it appeared the parties were diligently working on the JDIP issue, and that it would be inappropriate for the LJIC to get involved until the issue is before the 2007 Legislature.

Mike Ferriter, Department of Corrections, New Agency Legislative Proposals

Mike Ferriter, Administrator, Montana Department of Corrections, submitted DOC's Proposed 2007 Legislative Initiatives, Working Draft--August 31, 2006 (EXHIBIT 8). Director Ferriter reviewed Exhibit 8 with the LJIC. Director Ferriter clarified for Chairman Parker that the DOC was limiting its proposed legislation, at this time, to the issues listed on Exhibit 8.

Ms. Heffelfinger correlated the proposed legislation from DOC's Bill Draft Proposals for LJIC's Approval (EXHIBIT 9) with those proposals in Exhibit 8.

Questions from the LJIC

Rep. Rice addressed the issue of four misdemeanors being committed within twelve months and asked why DOC was proposing the change. Director Ferriter replied that there continues to be youthful offenders that enter correctional facilities for misdemeanors. DOC questions whether misdemeanor violations are an appropriate reason to place youth in a correctional facility and suggested there are more appropriate alternatives.

(Tape 3; Side B)

Rep. Stoker stated he was under the impression the DOC did not have strong feelings about drafting legislation regarding proposal 6 on Exhibit 8. Director Ferriter agreed and stated proposal 6 was a major decision and might not be the right thing to do for all entities in the criminal justice system. Director Ferriter explained a 208 transfer would allow a serious juvenile offender to be converted into the adult system when they turn 18. Rep. Stoker commented he could not support proposal 6.

Sen. Williams stated she would support medical parole, but wondered about the population in the regional prerelease centers. Director Ferriter stated that there would be a need to create 30 additional beds in an additional unit. Sen. Williams asked whether there would be a fiscal implication and whether the state would save any money. Director Ferriter stated that DOC will be requesting 80 additional prerelease beds, and those 80 beds could possibly be adjusted to meet this need. Director Ferriter suggested that it would cost more than the average-cost-per-day to keep medically needy inmates incarcerated at Montana State Prison.

Sen. McGee asked whether federal dollars would be available if the individual were housed in a different setting. Director Ferriter agreed federal funds would be available and stated he has looked at those avenues.

Ms. Gervais clarified in order to access federal medicaid funding, the offenders would have to have a family and a child in the home or be totally permanently disabled.

Sen. Perry directed Mr. Ferriter to the back page of Exhibit 9, the victims' rights constitutional amendment. Sen. Perry has been working with the Victims' Advisory Council and understood that legislation, rather than a constitutional amendment, had been considered to appropriately address the shortcomings of the law. Director Ferriter stated that he did not get the proposal in time. Director Ferriter stated that there are concerns because it is a constitutional amendment.

Ms. Lois Menzies, Supreme Court Administrator

Ms. Menzies explained the Office of the Supreme Court Administrator had one bill draft request, in addition to the upcoming JDIP legislation. Ms. Menzies explained that state employees, including legislators, are required to turn in travel claims within three months, and that that requirement applies to most district court judges. However, in the instance where a judge in a multi-county district is traveling to a county outside his/her residence, the travel claims must be turned in within three days after the first of the month. Since those travel claims are now paid by the state, Ms. Menzies believed that it is no longer necessary to have a separate deadline for submission of a judge's travel claims.

Questions from the LJIC

There were no questions from the LJIC.

Mr. Larry Fasbender, Department of Justice

Ms. Heffelfinger explained that there was no representative from the DOJ present and directed the LJIC to the summary of DOJ's proposed legislation (EXHIBIT 10).

Questions from the LJIC

Sen. McGee asked if the DOJ was proposing a primary seatbelt law. Chairman Parker said yes.

Public Comment on Agency Legislative Proposals

No public comment was offered

LJIC Work Session

Ms. Lane pointed out one of DOC's proposals, numbered 008, appeared to be the same as the JDIP proposal that the LJIC chose not to endorse. Mr. Ferriter agreed that the second to the last item was the proposal concerning JDIP.

Sen. Williams moved that the LJIC authorize the drafting all five proposals, excluding the JDIP proposal. Sen. McGee stated that he was reluctant to request a bill draft for something that is not a little further along in DOC's thinking. Mr. Ferriter requested that the bill draft be moved forward, but admitted that they need more research and that the legislation may be pulled at a later date.

Rep. Rice commented on the four misdemeanors within a 12-month period. Rep. Rice stated that a felony begins at \$1,000. Rep. Rice noted that the proposal meant that DOC was not

really concerned about misdemeanors. Rep. Rice urged the LJIC to step back from that proposal.

Rep. Rice made a substitute motion to approve the proposed legislation, except proposal 004. Rep. Stoker stated that there were three proposals which were questionable, and the LJIC should only consider passing the three proposals with universal agreement.

Rep. Rice withdrew her substitute motion.

Sen. Williams withdrew her original motion and moved DOC's proposal 001, medical parole, be approved by the LJIC. Sen. Williams' motion carried 11-1 by voice vote with Sen. Cromley voting no and Sen. Laslovich and Sen. Shockley voting aye by proxy.

Sen. Perry moved that the LJIC approve DOC's second proposal related to probation and parole officers. Sen. Perry's motion carried 11-1 by voice vote with Sen. Cromley voting no and Sen. Laslovich and Sen. Shockley voting aye by proxy.

Rep. Windham moved that the LJIC approve DOC's proposed bill draft 003 regarding seriously mentally ill offenders. Rep. Windham's motion carried 11-1 by voice vote with Sen. Cromley voting no and Sen. Laslovich and Sen. Shockley voting aye by proxy.

Sen. Williams moved that the LJIC approve DOC's proposed legislation stating a judge may not commit misdemeanants to Pine Hills/Riverside. Sen. Williams' motion failed by roll call vote, with Sen. Laslovich and Sen. Shockley voting by proxy.

Sen. Cromley moved that the LJIC approve the bill draft proposal from the Supreme Court Administrator's Office regarding travel expense reimbursement for judges in multi-county districts. Sen. Cromley's motion carried unanimously by voice vote with Sen. Laslovich and Sen. Shockley voting by proxy.

Department of Justice legislative proposals.

Sen. McGee stated that if committee members had strong feelings about an issue and do not want to see the proposal in the session, they should not authorize the drafting of the legislation.

BREAK

Sen. Williams moved to segregate DOJ's proposals regarding the law enforcement exception to HIPPA, the primary seatbelt law, the proposal to revise the initiative and referendum process, the real ID Act, all gambling related proposals with the exception of the proposal to provide funds for problem gambling. Sen. Williams' motion included moving ahead with the balance of DOJ's proposal.

Sen. McGee agreed with Sen. Williams' motion, but noted there were probably more DOJ bill draft proposals that he normally would not endorse, but acknowledged there was no one present from DOJ to defend the proposals.

Rep. Stoker requested that Ms. Heffelfinger explain the interim committee and bill draft request process. Ms. Heffelfinger provided a history on the role of interim committees relating to agency

bill draft requests.

Sen. Cromley commented that the LJIC members have no idea what they are voting on and thought the policy regarding agency legislation needed to be changed, so the bills are only reviewed by an interim committee and not approved by the interim committee.

Sen. Williams' motion carried by 7-5 by roll call vote with Sen. Cromley, Rep. Everett, Rep. Rice, and Rep. Stoker voting no, Sen. Shockley voting no by proxy, and Sen Laslovich voting aye by proxy.

(Tape 4; Side A)

SJR 37: CHILD PROTECTIVE SERVICES STUDY

Sen. Carol Williams

Sen. Williams provided the LJIC with an update on the Children, Families, Health and Human Services Interim Committee. Sen. Williams read a statement from Attorney General McGrath. Sen. Williams explained Kathleen Jenks identified glaring problems in the child protective statutes and that Susan Fox had drafted proposed legislation for the Children, Families, Health and Human Services Interim Committee's review (EXHIBIT 11). Sen. Williams explained that due to time constraints, it was not possible to address all the child protective statutes. The proposed legislation did not require any action from the LJIC.

Kathleen Jenks summarized Exhibit 11 and explained the reasons for the proposed changes. Ms. Jenks depicted the current statutes as extremely difficult to read which has resulted in a system that is inaccessible to most parents. Ms. Jenks stated the current code system does not allow for easy discovery of information and explained her proposed changes to address the discovery process. Ms. Jenks stated a substantial amount of confusion and litigation has occurred because some statutes refer to families that have been separated by the state while other statutes refer to families. The proposed legislation addresses the issue and states if there is a fit and able parent, that parent, not the state, should be parenting the child. Ms. Jenks also divided the termination statutes by providing for termination without a treatment plan and terminations that do involve a treatment plan. The termination without a treatment plan statutes also address the termination of parental rights of incarcerated parents. Ms. Jenks also addressed the service of process statutes, so parents are personally served with the initial petition and any petition to terminate. The proposed legislation also provides a section requiring DPHHS to give notice to the court when a child in the system has either aged out or been adopted. In addition, hearings involving children will now be required to be set as a priority. Ms. Jenks noted a substantial amount of the proposed legislation simply changes the reference from parents to parent. Ms. Jenks admitted the legislation had not been widely circulated for comment, but that prosecutors who had reviewed the legislation were very supportive.

Questions from the LJIC

Sen. McGee thanked Ms. Jenks for her work to address the child protective statutes.

Sen. Williams also thanked Ms. Jenks and Ms. Fox for taking the initiative to address the issues with the child protective statutes.

Public Comment

Aaron Christensen, Hamilton, submitted written testimony regarding his ten-year battle to obtain custody of his children (EXHIBIT 12).

Kandi Matthew-Jenkins testified about her past experience and education in assisting parents and grandparents in protecting their children. Ms. Matthew-Jenkins hoped there would be a further and more in-depth study and that the study would include parents. Ms. Matthew-Jenkins wholeheartedly approved of the proposed amendment to the discovery statutes. Ms. Matthew-Jenkins believed people who are accused should have an opportunity to face their accusers. Ms. Matthew-Jenkins also believed the Department of Health and Human Services (DPHHS) should be investigated. Ms. Matthew-Jenkins displayed a box of her past testimony and papers supporting her testimony.

(Tape 4; Side B)

Committee Discussion

Sen. Williams requested that LJIC members review the proposed legislation and provide her with feedback.

Sen. McGee agreed the law needed to be made right and just and suggested DPHHS should be looked at to ensure justice is being carried out.

HJR 15 DISPROPORTIONATE MINORITY CONTACT IN CRIMINAL JUSTICE SYSTEM

Ms. Heffelfinger submitted her Staff Report on HJR 15 and reviewed the report with the LJIC (EXHIBIT 13). Ms. Heffelfinger explained inherent problems with the collection of data to perform a study regarding disproportionate minority contact in the criminal justice system.

Sen. Williams' recalled previous conversations with the DOC, and that the DOC did not collect data regarding the racial origin of people admitted to the DOC. Sen. Williams suggested the DOC could be requested to begin collecting the information. Ms. Heffelfinger agreed that would be an appropriate request.

Rep. Stoker wondered how a researcher could legally gather racial information and thought that could be an obstacle to data collection. Ms. Heffelfinger replied that would not be the primary obstacle.

Public Comment

Tina Has the Eagle, Fort Belknap Community Council, addressed the disparities in Montana's legal system and provided written testimony (EXHIBIT 14). Ms. Has the Eagle urged the LJIC to move forward with a study addressing the minority disparity in Montana's criminal justice system.

LJIC Work Session

Chairman Parker believed the state is already taking action regarding minority disparity since

both the public defender's office and the DOC are already providing training on how to deal with Native American clients.

Sen. McGee agreed and added that the Pardons and Parole Board also has a member who is knowledgeable about the Native American culture and is charged with briefing the other members of the board.

Sen. Williams reiterated that she would like to see the DOC begin collecting data, so Montana has a place to start. Ms. Williams stated that she would continue communications with the DOC and encourage the DOC to collect data.

Chairman Parker requested that Ms. Heffelfinger do a written inquiry to the DOC on behalf of the LJIC to obtain the status of its ability to collect statistics.

Sen. McGee expressed concern about planting a seed with the DOC that there is a correlation between crimes and Native Americans and which could result in racial profiling.

Sen. Williams summarized the question as whether Montana is incarcerating more Native Americans than the total percent of Native Americans in the general population

(Tape 5; Side A)

WRAP-UP

Ms. Heffelfinger directed the LJIC to the Statutorily Required Reports to the Law and Justice Interim Committee (EXHIBIT 15).

Ms. Heffelfinger said she did not have a draft of the LJIC's final report available. Sen. McGee suggested it would be appropriate for Chairman Parker to review the draft of the LJIC's final report. Chairman Parker identified the three main points of the LJIC's final report as the three committee bills adopted by the LJIC, the site visits completed by the LJIC, and the committee white paper on HJR 15.

Assignment of Committee Bills

Chairman Parker made the following committee bill assignments: LC 71, Sen. Williams; LC72, Sen. Shockley; and LC 8888, Sen. Laslovich.

There being no further business to come before the LJIC, the meeting adjourned at 4:15 p.m.

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