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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: May 12, 2006

Room 137, 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. BRENT CROMLEY
SEN. GARY PERRY
SEN. JIM SHOCKLEY
SEN. CAROL WILLIAMS
REP. GEORGE EVERETT
REP. RON STOKER
REP. BILL WILSON
REP. JEANNE WINDHAM

COMMITTEE MEMBERS EXCUSED

SEN. JESSE LASLOVICH
SEN. DANIEL MCGEE (Vice Chairman)
REP. DIANE RICE

STAFF PRESENT

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

Visitors

Visitors' list ([Attachment 1](#))
Agenda ([Attachment 2](#))

COMMITTEE ACTION

The LJIC took no formal action.

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

UPDATE ON SJR 37, CHILD PROTECTIVE SERVICES STUDY

- **Sen. Carol Williams**

Sen. Williams reviewed a summary of the SJR 37 Study which was provided to the Children and Families, Health, and Human Services Interim Committee (CFHHS) and summarized the court roundtable discussion ([EXHIBIT 1](#)). Sen. Williams spoke about the impact of methamphetamine use on Child Protective Services. Sen. Williams highlighted difficulties, including the number of continuances, trying to get people served, finding attorneys with training in child welfare cases, the need for new federal programs to pay for court management data, and agency cross-training. Sen. Williams said the CFHHS received a recommendation to rewrite the abuse and neglect statutes because they are unworkable. The CFHHS also received a recommendation that the Attorney General's Office should assume prosecution of all child abuse and neglect cases. Sen. Williams reported it was also suggested there should be more consistency county-to-county.

- **Susan Fox, Legislative Research Analyst**

Ms. Fox submitted a copy of her Report on March 30, 2005, to the CFHHS ([EXHIBIT 2](#)). Ms. Fox has been talking with Kathleen Jenks on rewriting the child protective statutes. Ms. Fox identified two emerging issues: (1) grandparents raising grandchildren, since that number has doubled within the last decade; and (2) the effects of methamphetamine on children.

Questions from the LJIC

There were no questions from the LJIC.

AGENCY MONITORING DUTIES

Overview of LJIC Agency Monitoring and Bill Draft Duties, Sheri Heffelfinger, Legislative Research Analyst

Ms. Heffelfinger submitted the Agency Legislation Timeline, 2007 Session ([EXHIBIT 3](#)).

- **Judicial Branch**

Beth McLaughlin, Court Services Director, Office of the Court Administrator, submitted and reviewed a Judicial Branch Administrative Update ([EXHIBIT 4](#)), which included informational technology, judicial workload/caseload study, variable budget and transfer of costs to the Office of the Public Defender, court security review, child protection and the courts summit, and proposed 2007 legislation to move control of the Juvenile Delinquency Intervention Program (JDIP) funds from the Department of Corrections (DOC) to the Court Administrator's office.

Questions from the LJIC

Sen. Shockley stated he did not believe JDIP funds could be used for court IT and that the funds could only be used for placing juveniles out of state who could not be treated in Montana. Ms. McLaughlin explained the JDIP money used for court IT was leftover in the cost-containment fund and could be used for prevention programs. Sen. Shockley recalled leftover money was supposed to be used somewhere else. Sen. Shockley asked if they would attempt to completely fund Full Court during the next legislative session, and Ms. McLaughlin agreed that would be the case.

Sen. Shockley wondered if identified threats have resulted in the increased expenditure on court security. Ms. McLaughlin reported a survey determined there have been numerous threats against the courts, court staff, and members of the public. The Department of Justice (DOJ) is now tracking the number of threats against judges or judicial officials. Ms. McLaughlin stated they will have better data within a year.

Rep. Everett asked about state reimbursement to counties for over-budget expenses and wondered if there was a cap on those expenses. Ms. McLaughlin explained the expenses are related to indigent persons and paying for public defenders, and they have no authority in statute to place a cap on the expenses.

Upon request from Rep. Windham, Ms. McLaughlin offered to submit a copy of the court security review to the LJIC.

Public Comment

There was no public comment on the Judicial Branch proposals.

- **Department of Corrections**

Bill Slaughter, Director of Department of Corrections (DOC), reported there are currently 12,200 offenders under supervision of DOC, and the system grows by the net rate of one offender per day. Approximately 77 percent of the offenders are in programs as an alternative to prison; more than 8,000 offenders are on probation or parole; and 640 offenders are in prerelease centers. Director Slaughter believed good work was being done in the area of methamphetamine treatment, including new facilities in Lewistown and Boulder. Director Slaughter offered to keep the LJIC updated on the new programs. Director Slaughter noted that the April 24 edition of *Newsweek* reported on the new treatment centers. Director Slaughter believed an average of \$18,600 would be saved for every male offender in the program and approximately \$21,100 would be saved for every female offender that completes the program

when compared to a two-year prison sentence. Director Slaughter explained the Sanction, Treatment and Assessment Revocation Transition Center (START) program in Warm Springs, which was started to deal effectively with people who violate conditions of community placements. Director Slaughter reported in excess of 70 percent of offenders are returned to the community after completing the START program, which results in a \$48,000 savings per offender. In addition, an enhanced supervision program was implemented at pre-release centers which has enabled DOC to serve more offenders. The Montana Chemical Dependency Center (MCDC) in Butte will be accepting eight probationers who need immediate assistance. Four additional probation and parole officers have been added, and DOC is being cautious with workloads. In addition, DOC has contracted with chemical dependency counselors and employment technicians to provide more immediate services. Director Slaughter reported an increase in offenders who are chronically ill, and that rising medical costs have made a significant impact. Director Slaughter also reported on the need to comply with the settlement terms in the *Langford* decision. In addition, DOC struggles with hiring healthcare professionals, as well as having someone to manage mental health projects and to coordinate efforts. DOC is becoming more involved with serving inmates with special needs, and Director Slaughter spoke about the need to hire individuals with that particular expertise.

(Tape 1; Side B)

DOC will take over state-wide transportation of inmates in the major thoroughfares and will continue to work with County Sheriffs. Director Slaughter explained the change is meant to address past escapes. The Montana State Prison population remains beyond its emergency capacity and currently has 1,477 people on site. The Montana Women's Prison is beyond its operational capacity, and county jails hold 230 state inmates because the system is full.

Questions from the LJIC

Rep. Stoker wondered how many warrants are out that need secure beds versus a full capacity. Director Slaughter replied there are approximately 4,000 warrants and approximately one-quarter of those will end up sentenced to Montana DOC or prison. Director Slaughter spoke about the national struggle to house inmates.

Sen. Perry requested a printed summary of DOC statistics and data to take back to Montana's communities. Director Slaughter added he believed Governor Schweitzer is on the right track, and that non-dangerous offenders need to be treated in the community.

- **Diana Koch, Chief Legal Counsel, Department of Corrections**

Ms. Koch submitted a copy of DOC's Proposed 2007 Session Legislative Concepts and reviewed them with the LJIC ([EXHIBIT 5](#)). Ms. Koch explained the concepts have been submitted to the Governor's Office for approval.

Questions from the LJIC

Sen. Shockley asked if mentally-ill inmates would be paroled to DOC's own facility. Ms. Koch explained they are asking for statutory authority for the parole board to parole to a DOC facility. Sen. Shockley did not understand how inmates could be paroled from one DOC facility to another DOC facility. Ms. Koch explained they believe these people are not eligible to

participate in the pre-release program. Ms. Koch suggested the community would be assured if these people were in some type of a facility. Ms. Koch explained DOC is finding it difficult to place mentally-ill offenders. Sen. Shockley asked if it was required to go to the parole board to place offenders in a facility run by the DOC. Ms. Koch replied all prerelease centers are run by private non-profit contractors, and that they would need statutory authority.

Rep. Stoker requested a definition of a medical parole situation. Ms. Koch explained that to be eligible for regular parole, a person must serve a requisite number of days. Medical parole has no time restrictions and states that if someone is incapacitated, they will not pose a risk to the community. Medical parolees must have a plan addressing where they will stay and how they will be taken care of. Medical parolees will then be able to access other benefits, which would ease the strain on DOC.

Sen. Williams asked if there is a big problem with drugs and DOC employees. Ms. Koch did not believe there is a big problem, but stated DOC would like to lead by example. Sen. Williams thought it was invasive to drug test DOC employees if DOC did not believe there was a problem. Ms. Koch stated they hoped the procedure would be as least invasive as possible.

Sen. Shockley clarified DOC would parole people to another DOC facility in order to access federal dollars. Ms. Koch agreed it would increase that ability.

Committee Discussion

There was no discussion by the LJIC. Chairman Parker thank the DOC for the information.

Public Comment

No public comment on DOC was offered.

BREAK

- **Department of Justice**

Allie Bovington, Assistant Attorney General, presented an overview of DOJ's proposed legislation ([EXHIBIT 6](#)). Ms. Bovington pointed out that if the title is bolded on the exhibit, the proposed legislation is past the conceptual stage and is ready to begin the bill drafting process.

Questions from the LJIC

Sen. Shockley asked about *City of Billings v. Gonzalez*, and asked if the Montana Supreme Court had determined a person cannot be convicted of driving without a license when that person was never issued a license. Ms. Bovington agreed.

Sen. Shockley then asked about the proposal to revise the initiative referendum process and stated it was his recollection the Attorney General's Office killed the bill during the 2005

session. Ms. Bovington disagreed and stated Rep. Clark's bill was brought at the request of the DOJ.

Rep. Stoker asked about removing DOJ from the Montana Information Technologies Act and asked if that would eliminate the sexual offenders website. Ms. Bovington replied the website would still exist but would be removed from the oversight of the Montana Department of Administration and the Montana Information Technologies Act. The website would then be maintained by DOJ. Rep. Stoker then addressed the increased lemon law arbitration fee and asked if that would be a "loser pays" situation. Ms. Bovington could not readily respond, but offered to obtain the information for Rep. Stoker.

Sen. Williams inquired about Jessica's Law and whether there would be a mandatory 25-year sentence. Ms. Bovington explained they are looking at all the provisions of Jessica's law and whether those provisions would be appropriate for Montana. Sen. Williams asked that the provisions already in law to be sent to her.

Public Comment

There was no public comment offered regarding the proposals from DOJ.

(Tape 2; Side A)

- **State Public Defender**

Ms. Heffelfinger submitted a copy of a letter dated May 11, 2006, from Randi Hood, Chief Public Defender ([EXHIBIT 7](#)), which summarized the Public Defender Commission's proposed legislation.

Public Comment

Kandi Matthew Jenkins, Missoula, testified that she attended the last Public Defender Commission meeting in Great Falls, and that she was encouraged by the quality of people on the Commission. Ms. Jenkins testified she was also present at the March 30 meeting of CFHHS where the suggestion of changing the laws regarding Child Protective Services was broached. Ms. Jenkins stated she is in receipt of a report from Child and Family Services which cited the penalties for noncompliance in Montana as \$3,386,993. Ms. Jenkins thought the fine was indicative of a massive problem in Montana. Ms. Jenkins suggested a good public defender system and good oversight of case workers would help alleviate the problem. Ms. Matthew Jenkins also believed there should be bonafide evidence of mistreatment or neglect before a case goes to court.

LUNCH BREAK

Chairman Parker reconvened the meeting at 1:05 p.m.

GENERAL LJIC MONITORING DUTIES

Overview of Honorable James A. Hayes Letter

Ms. Heffelfinger directed the LJIC to a memorandum from the Honorable James Haynes, Twenty-First Judicial District, Ravalli County ([EXHIBIT 8](#)). Judge Haynes' letter requested an amendment to Section 46-16-105(1), MCA, regarding the no contest plea. Ms. Heffelfinger pointed out the amendment was on the list of proposed legislation presented by the DOJ. Sen. Shockley stated he carried the original bill which was designed to allow criminal cases to move forward when there was a civil suit involved. Sen. Shockley stated he already submitted a bill request to remedy the problem.

EMERGING ISSUE: JUVENILE DELINQUENCY INTERVENTION PROGRAM (JDIP)

Chairman Parker explained that tensions are brewing between the Judicial and Executive Branches over the issue, and that he hoped the presentation would shed some light on the issue. Ms. Heffelfinger informed the LJIC that the Legislative Auditors have stated they are available for questions. Ms. Heffelfinger provided a broad overview of JDIP, a program to fund community-based intervention programs for delinquent youth that are subject to youth court as an alternative to placing the youth in an institution operated by the DOC. Therefore, the program provides cost containment, as well as intervention from institutional placement. Ms. Heffelfinger provided a history of JDIP from the Legislative Audit Division's Performance Audit Summary dated January 2006 ([EXHIBIT 9](#)). Ms. Heffelfinger referred the LJIC to a memorandum from Valencia Lane regarding her review of DOC rules to be implement the JDIP and respond to a legislative audit ([EXHIBIT 10](#)). Ms. Heffelfinger said that the Legislative Audit Division's recommendations include:

1. Clarification of rules regarding allowable expenditures and program standards;
2. correction of calculations for the allocation formula;
3. improving the allocation formula;
4. improving accountability for expenditures and collection of baseline data;
5. adoption of formal criteria used to evaluate requests for use of contingency funds; and
6. update the Youth Court Act.

Alternatives for legislative consideration included: (1) maintain the JDIP status quo; (2) transfer JDIP to the Judicial Branch; (3) create a new entity to administer the program; or (4) eliminate the program entirely.

Rep. Stoker wondered if eliminating the program would eliminate the funding as well. Ms. Heffelfinger noted the recommendation is to eliminate the program and transfer the funds not eliminate the funds. Sen. Shockley added the money would be divided among the various youth courts. Sen. Shockley recalled the program started with \$900,000 and, if the money was not used, it would build up over the years. Ms. Heffelfinger offered to research the issue for Sen. Shockley. Sen. Shockley suggested it appears both the court and the DOC have been dipping into JDIP. Sen. Shockley recalled the intent of the program was to deal with the high-cost of serving juveniles and suggested the money is not being used for its intended purpose. Sen. Shockley stated he would like to know what the original concept was and when the money began being used for purposes for which it was not originally designed.

Pat Gervais, Senior Fiscal Analyst, submitted a color coded flow chart depicting the flow of JDIP funds and how those funds are used ([EXHIBIT 11](#)). Ms. Gervais reviewed Exhibit 11 with the LJIC.

Rep. Stoker asked whether the DOC has to ask the Judiciary for permission to take action and spend money. Ms. Gervais stated that once the funds are allocated to the judicial districts, they can use the funds as specified by statute and the DOC's administrative rules.

Valencia Lane, Staff Attorney, explained that she reviewed the DOC rules for the LJIC and did identify some problems. Ms. Lane identified three areas which need to be discussed: statutes, rules and rule review, and the overall policy decision implicated by the statutes and the rules. Ms. Lane explained that the statutes do not address what should be done with the funds. In addition, the statutes state the DOC will have oversight over some of the Judicial Branch and the courts themselves, which brings into play the overarching question of separation of powers and will require a policy decision. Ms. Lane explained how state assumption has changed the playing field resulting in the need to review both the program and its funding.

(Tape 2; Side B)

Ms. Lane believed the statutes set up a conflict between the three branches; therefore, the statutes need to be addressed. Ms. Lane then addressed the rules and rule review and stated she identified a defect in the rule notice itself. The Montana Administrative Procedures Act (MAPA) requires that notice has to indicate why rules are reasonably necessary. Ms. Lane explained the notice simply states the rules are in response to the audit, but Ms. Lane thought each change needs to be related to the audit and show what the audit recommended and why, and how the rule change responds to that audit. In Ms. Lane's opinion, the notice itself is not sufficient. Ms. Lane did not believe the DOC could continue to adopt the rules based on the current notice. Ms. Lane suggested the DOC could file a new notice or an amended notice. In addition, the rules do not conform to their statutory authority and, in some instances, exceed the statutory authority granted by the Legislature. Ms. Lane also identified conflicts between the rules and the statutes. Ms. Lane clarified she is not implying the DOC had done anything devious but is working with defective statutes, and the program was started before state assumption of district courts. Ms. Lane identified several policy decisions between the DOC and the Judicial Branch. One of the rules would limit use of the funds to individuals under the age of 18; however, the youth court can retain jurisdiction under the Extended Jurisdiction Prosecution Act of some individuals until the age of 21. Another problem Ms. Lane identified is the provision that once a court has spent 80 percent of its allocation, the remaining 20 percent would be frozen until they got a supplemental; however, that authority does not exist in the statute. The DOC rules give a priority for use of supplemental funds, but limits the ability of the courts to access those funds. The rules also prohibit JDIP funds for transportation costs, which would be in violation of another statute which specifically requires the youth court to pay transportation out of JDIP. In addressing the separation of powers issue, Ms. Lane recommended joint legislation between DOC and the Supreme Court Administrator's office should be drafted. Ms. Lane also recommended the LJIC make a legislative decision on the policy questions.

Sen. Shockley asked if the youth intervention and prevention (PIF) account was the only time the DOC's rule impacts the court. Ms. Lane acknowledged the problem regarding PIF but noted that there are other conflicts throughout.

Sen. Shockley referred to the top blue box on Exhibit 11, and stated it was his understanding that if an individual district did not spend its money, it got to keep the money. Ms. Lane explained there is a rub as to how the PIF account funds go back. One-third of the money goes to the DOC, and a certain amount goes toward the allocations to the district courts. If the district courts do not spend the money, it goes to the Supreme Court, and then back to the district court. Sen. Shockley wondered why the money would go down to the Supreme Court and then revert back up.

Chairman Parker summarized a hierarchy of complicated issues: (1) constitutional issues of separation of powers and whether the supervision of juvenile delinquents is inherently a Judicial Branch or Executive Branch function; (2) whether the statutes that govern the funds are too vague; and (3) whether the administrative rules had been properly promulgated.

Bill Slaughter, Director, Department of Corrections, stated the policy decision was already made and the responsibility was given to the Executive Branch. Director Slaughter submitted information regarding the intent of JDIP and reviewed the information with the LJIC ([EXHIBIT 12](#)). Director Slaughter attributed the decreased number of youth incarcerated at Pine Hills to the good work of juvenile probation officers and the courts and the availability of JDIP funds to properly divert youth from institutional placements. Director Slaughter emphasized that the JDIP program is so successful, that DOC is considering implementing a similar program for adults.

(Tape 3; Side A)

Sen. Perry noted the substantial increases in the adult men's and women's system and the decline in the juvenile program. Director Slaughter agreed the decrease in juvenile incarceration was mostly attributable to the success of JDIP.

Chairman Parker inquired whether the process for promulgating rules was still underway. Director Slaughter replied it was. Chairman Parker requested an update from DOC at the LJIC's June meeting on how the rules process is progressing. Director Slaughter agreed and explained DOC is attempting to meet the requirements of the audit.

Ms. Koch explained DOC is in the process of reviewing comments to the proposed rules and is attempting to cure defects in the rules. The comment period was extended until June 15, 2006. Ms. Koch stated DOC welcomes comments and the opportunity to cure the defects pointed out by Ms. Lane. Ms. Koch agreed to provide an update at the LJIC's June meeting.

Chairman Parker noted Section 41-5-2011(2), MCA, contains a Judicial Branch function that is supposed to be administered in accordance with rules adopted by the Executive Branch and wondered if that would cause a constitutional problem. Ms. Koch agreed there are some structural separation of powers issues. Ms. Koch pointed out conflict is inherent in the statutes, and that the Legislature has looked at the issue several times. Ms. Koch believed more research on separation of powers needed to be done.

Chairman Parker requested Ms. Koch to prepare a legal opinion about how separation of powers is handled in Montana or other states and provide copies of relevant case law. Ms. Koch agreed to research the issue and make a presentation at the LJIC's June meeting.

Sen. Shockley suggested if the money were placed with DOC, and the rules on how the money could be spent were placed in statute, a juvenile judge could look at the statutes and order the DOC to spend the money in the manner he decides. Sen. Shockley stated he believed the DOC was acting properly in using the extra money.

Rep. Everett asked if the reference to the balance in the contingency fund was the same as the containment pool. Director Slaughter said it is the same. Rep. Everett asked whether the \$1 million was put in every year. Director Slaughter said the amount is \$1 million every year in cost containment.

- **Judicial Branch**

Beth McLaughlin, Court Services Director, Court Administrator's Office, commented that the fact she was the only person present on behalf of the Judiciary was not indicative of a lack of support for the JDIP program. Ms. McLaughlin stated the Judicial Branch is fully supportive of JDIP and believes it is essential to the youth of Montana. Ms. McLaughlin identified the Administrative Rules as the immediate issue that causes the largest problems. Ms. McLaughlin believed the youth courts have made the JDIP program successful. Youth courts make decisions about the placement of youth within the bounds of the law, and youth courts have done so in a way that has cut the cost dramatically. Youth courts have an incentive since they have the ability to recoup the savings and use the savings for prevention programs. Ms. McLaughlin admitted DOC has done a good job of keeping the books, but the youth courts make the decisions about how the funds are spent. Ms. McLaughlin submitted written comments on the Proposed Administrative Rules ([EXHIBIT 13](#)). Ms. McLaughlin requested that the LJIC exercise its statutory authority and delay implementation of the rules. Ms. McLaughlin believed that adoption of the proposed rules as written would result in significant problems in administering the program in the Youth Court. Ms. McLaughlin pledged that the Judicial Branch would work with the DOC to develop a legislative solution to the administration of JDIP. Ms. McLaughlin made it clear that the Judiciary is very concerned about the separation of powers issue. In addressing the PIF funds, Ms. McLaughlin stated the language in statute was drafted in conjunction with the DOC during the 2005 Legislature and was in response to an audit recommendation. Ms. McLaughlin stated the youth courts would be unable to meet the reporting requirements in the proposed rules without additional resources. Ms. McLaughlin believed that youth court is inherently a function of the Judicial Branch. Ms. McLaughlin did not believe the system could be bifurcated and the funding of the youth courts could be separated from the programs it runs. Ms. McLaughlin directed the LJIC to the agreement entered with the Executive Branch, included in Exhibit 13. Ms. McLaughlin was hopeful the Executive Branch would be willing to engage in discussions about where JDIP belongs. Ms. McLaughlin submitted draft legislation currently open for discussion ([EXHIBIT 14](#)).

Ms. Lane submitted and reviewed a written summary of the statutory process an interim committee must follow regarding rule review ([EXHIBIT 15](#)). Ms. Lane noted that an interim committee can object to a proposed rule adoption or amendment and require up to a six-month delay in adoption.

- **Discussion**

Chairman Parker asked the Judicial Branch what outcome it wanted by having the LJIC delay the adoption of the rule that is any different than what DOC is already volunteering to do. Ms. McLaughlin responded the delay would provide some solid commitment that the rules will be delayed and analyzed. Chairman Parker recalled the DOC already offered to address the technical flaws with the rules. Sen. Shockley explained the LJIC's objections to the proposed rules will require a hearing. After the hearing, the DOC would have to come back to the LJIC and, if the LJIC still has objections, the LJIC could require that the rules not be implemented until one day after the next legislative session adjourns.

Chairman Parker stated he requested the DOC to provide an update to the LJIC in June on what steps it is taking to address the issues. Chairman Parker asked the DOC if it could delay promulgation of the rules until presentations can be made to the LJIC. Ms. Koch assured Chairman Parker that the DOC would delay implementation of any rules until after it reports to, and receives approval from, the LJIC, and Ms. Lane ensures the rules comply with all requirements. Ms. Koch agreed to work the Judicial Branch to ensure the rules are correct and necessary.

Chairman Parker asked the LJIC if it would agree that if the DOC delays implementation of the rules until June, and in June, if the LJIC is not satisfied, the LJIC could exercise its statutory authority. Rep. Windham stated she would prefer to "delay adoption" rather than to "delay implementation" of the rules.

(Tape 3; Side B)

Sen. Williams acknowledged the seriousness of the issues, but stated she was satisfied for the moment, but would like to look at the issue in June.

Chairman Parker suggested it would be fair for the Office of the Court Administrator to be given an opportunity to provide a legal opinion, but that he cannot request the opinion because of U.S. Constitutional reasons. Sen. Shockley pointed out the Judicial Branch had just voluntarily provided its opinion to the LJIC.

Sen. Shockley asked Ms. McLaughlin about the passage of Section 41-5-2011, MCA. Ms. McLaughlin directed the LJIC to the analysis of the separation of powers issue contained in Exhibit 13. Sen. Shockley wondered if moving the juvenile probation officers to DOC would solve the constitutional problem. Ms. McLaughlin replied an attempt to move the juvenile probation officers away from the court would create significant chaos. Ms. McLaughlin suggested an easy way to solve the constitutional problem would be to shift the money to the Judicial Branch.

BREAK

GENERAL PUBLIC COMMENT

John Madsen, formerly of Alternative Youth Adventures, has 34 years of experience in social work and youth programs. Mr. Madsen addressed the declining number of children in Pine Hills. Mr. Madsen addressed Sen. Perry's comments about the increased number of adults in

the criminal justice system and the decreasing number of youth being incarcerated. Mr. Madsen noted the amounts of money available to do early intervention work has also decreased and wondered if there might be a correlation between the shrinking dollars available for early intervention and the increase in the number of adults entering the prison system.

INSTRUCTIONS TO STAFF

Chairman Parker anticipated at the June meeting the LJIC would fine tune its access to justice bill, work on the prosecution services bill, and look at the sentencing equity issue. In addition, the LJIC will have an Informational meeting regarding the state public defender system and tour their Butte office. There will be an optional joint meeting with Public Defender Commission. The JDIP issue will also be addressed in Butte.

Ms. Lane stated she will research the passage of Section 41-5-2011, MCA, and the minutes will be mailed.

The next meeting of the LJIC will be June 29-30, 2006, in Butte at the State Public Defender's Office.

Sen. Williams requested Chairman Parker to visit with Sen. Schmidt to determine whether the LJIC could co-introduce legislation or assist the CFHHS in any way. Chairman Parker agreed to discuss the issue with Sen. Schmidt.

ADJOURN

There being no further business to come before the LJIC, the meeting adjourned at 3:26 p.m.

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