



## Law and Justice Interim Committee

### 59th Montana Legislature

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#### 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 HEFFELINGER, Lead Staff  
VALENCIA LANE, Staff Attorney  
FONG HOM, Secretary

# MINUTES

Date: June 29, 2006

Location: Office of State Public Defender  
Butte, Montana

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

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

#### COMMITTEE MEMBERS PRESENT

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

#### COMMITTEE MEMBERS ABSENT

SEN. JESSE LASLOVICH  
REP. BILL WILSON (Arrived at 1:00 p.m.)

#### STAFF PRESENT

SHERI HEFFELINGER, 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 voted to segregate the amendment as proposed by Beth Baker and Ann Gilkey in Exhibit 2, as to whether to insert the word "direct," from the amendment to page 3, Section 3 and the new proposed subsection (4) amendment.
- The LJIC adopted paragraphs two, three and four to Exhibit 2, the proposed amendment to LC72rv prepared by Beth Baker and Ann Gilkey.
- The LJIC voted to eliminate one manager or attorney, for a total of seven employees, to present the budget at \$505,000 annually.
- The LJIC adopted LC72rv as amended.

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

Rep. John Parker, Chairman of the Law and Justice Interim Committee (LJIC) called the meeting to order at 8:17 a.m. The secretary noted the roll (Attachment 3).

### **AGENDA**

#### **APPROVAL OF MINUTES, OVERVIEW OF AGENDA, MEETING GOALS - Chairman Parker**

Chairman Parker reviewed the agenda for LJIC's two-day meeting.

#### **ACCESS TO CIVIL LEGAL JUSTICE**

##### **Review of LC 72: Access to Civil Legal Justice Act - Sheri Heffelfinger, Legislative Research Analyst**

Ms. Heffelfinger directed the LJIC to LC72rv, which contained changes made at the last LJIC meeting (EXHIBIT 1). Ms. Heffelfinger also provided a copy of LC72rv with an attached amendment prepared by Beth Baker and Ann Gilkey (EXHIBIT 2). Ms. Heffelfinger also submitted a chart from the Montana Legal Services Association regarding the I-CAN Interim Project (EXHIBIT 3), as well as a paper regarding The Economic Impact of Legal Aid of Nebraska (EXHIBIT 4).

##### **Attorney pro bono Obligations: UM Law School Role in Providing Civil Legal Services to Low-income Montanans**

##### **Ed Eck, Dean, University of Montana Law School**

Ed Eck, Dean of the University of Montana School of Law (UM-School of Law), submitted a catalog from UM-School of Law (EXHIBIT 5), and an outline of the UM-School of Law and Civil Legal Services to Low-Income Montanans (EXHIBIT 6). Dean Eck reported the University of Montana Law School is one of eight law schools in the country that requires clinical education to help students serve clients and society upon graduation, and students must engage in four clinic credits. Dean Eck identified the Indian Law Clinic as being the most relevant to pro bono services and stated there are three in-house clinics (on campus) and twelve external clinics where students are supervised by lawyers in the Missoula area. In addition, students work with

various organizations in the Missoula area, including the Associated Students of the University of Montana and the Child Support Enforcement Division. The campus library also assists lawyers in western Montana who want to undertake pro bono matters by providing forms, treatises, and other research materials. Dean Eck identified the UM-School of Law web page as helpful to lawyers throughout the state who do pro bono work since it provides important links to other resources. The UM-School of Law also assists pro se litigants. Dean Eck perceived the UM-School of Law as a role model. Various speakers are brought in, and the speakers' speeches are available on the website. Dean Eck explained a number of UM-School of Law faculty participate in providing pro bono services. The UM-School of Law encourages students by giving awards for pro bono work. UM-School of Law also supports pro bono work by sharing in costs and assisting with fundraising activities for Montana Legal Services. Dean Eck reported an average student leaves UM-School of Law with \$80,000 in debt, but statistics indicate the average annual starting salary in a Montana law firm is \$41,000, and the average starting salary for a public interest position is \$30,000.

#### **Andrew King-Ries, Assistant Professor of Law, UM Law School**

Andrew King-Ries, Assistant Professor of Law, UM Law School, commended the LJIC for its work. Professor King-Ries suggested the legal needs of Montanans are not being met and the lawyers are being recognized as important players and leaders in the communities and as community servants. Professor King-Ries addressed pro bono and pro se issues and said he has seen an increase in student activity within the last two years with the creation of the Rural Advocacy League and the Montana Public Interest Law Coalition, which creates employment opportunities for lawyers in the public interest both during and after law school. Professor King-Ries stressed the importance of recognizing that to be an accomplished successful lawyer, it takes much more than knowing the law. The Student Bar Association now has a Community Relations Coordinator who reaches out to the legal community and emphasizes pro bono and public service and attempts to match students' interests. Professor King-Ries explained many students come to law school interested in doing public interest work, but do not have the same interest when they come out of law school. The Community Involvement Grant Program will place four students in legal aid offices and those students will each receive \$500. Professor King-Ries suggested the UM-School of Law could do more and should be working with the legislature. Professor King-Ries addressed the bill draft and identified areas where the UM-School of Law could provide assistance such as providing information about the state court system and assisting with funding for a coordinator position. Professor King-Ries believed the students would be interested in volunteering to provide informational videos, training materials, forms, and volunteering to assist people. Professor King-Ries was enthusiastic about students wanting to help, and believed it was important to take advantage of that resource. Professor King-Ries believed volunteer students could be on call in the library to assist people who come to the law library seeking help.

#### **Questions from the LJIC**

Sen. McGee was interested in the idea of students going into rural communities and asked for clarification about whether the groups were active in rural communities, as well as in Butte, Great Falls and the Billings areas. Professor King-Ries explained many students coming from rural communities want to go back to their communities. Professor King-Ries noted Montana Legal Services is state-wide agency, but that it is a challenge throughout the state to provide legal services to rural areas.

Sen. Williams identified frustration that occurs because of the difference in forms from court to court. Sen. Williams wondered if that would be something the students could address.

Professor King-Ries agreed the issue of forms needed to be addressed. Professor King-Ries suggested the issue could be overcome with technology and assistance. Professor King-Ries stated the best solution would be to have an attorney, but that is not always possible, so it is important to look at the next best solution.

Chairman Parker provided background information about his opportunity to participate in the UM Legal Services Clinic and earn academic credit. Chairman Parker believed clinical programs provide practical skills for students. The proposed legislation envisions a small team of attorneys developing forms and training programs and asked Dean Eck if he sees any reason that if the program becomes law, a program could not be created where students could earn clinical credits when assisting with development of training materials. Dean Eck replied it would be a possibility. Dean Eck stated he would be glad to discuss the issue further, but was not sure whether it would part of clinical program or another part of UM-School of Law because they want students to be able to deal directly with clients like they would in real life.

**(Tape 1; Side B)**

Chairman Parker asked if it would be possible for a student to assist under the supervision of a faculty member. Dean Eck agreed that would be a possibility.

Sen. McGee noted that in the medical world in Montana there is a movement toward distance medicine, and asked whether Dean Eck envisioned a similar infrastructure in the field of law and asked him to identify the pros and cons to such services. Dean Eck thought there was a lot right with that vision and explained, to some extent, the infrastructure already exists. Dean Eck believed a similar system was already being used by Montana Legal Services Association (MLSA). Sen. McGee asked whether attorneys could attend to their pro bono responsibilities by spending a day at a centralized location assisting people. Dean Eck responded MLSA already conducts family advice clinics where people can call in with questions. He suggested that service could be expanded. Sen. McGee asked whether Dean Eck could envision the legislation being crafted in such a way that it would allow for internet ideas. Dean Eck agreed that could be done.

Rep. Stoker asked about the illegal practice of law and noted court clerks are concerned that they do not step across that line. Rep. Stoker was curious about the law library providing workshops on how to access Montana law and asked Dean Eck about his philosophy about those people stepping across the line. Dean Eck agreed the unauthorized practice of law is an important issue and clarified the librarians only provide materials and provide instruction on how to perform research. Dean Eck explained this is also an issue for the students. Therefore, the library only provides the research tools. Rep. Stoker asked if all of the faculty are part of the State Bar of Montana and whether the UM-School of Law assumes any liability. Dean Eck responded approximately two-thirds of the faculty are members of the State Bar of Montana,

and all of the faculty are members of some bar. Dean Eck agreed there is a potential for liability, but added the University has never been sued on the issue.

Rep. Everett noted Sen. Jerry O'Neil's study indicates high consumer satisfaction with independent paralegals. Rep. Everett wondered how far a paralegal could go to assist pro se litigants. Dean Eck was not certain, but suggested once a person goes beyond providing the tools and begins to provide legal advice, the line is not black and white. Mr. Everett commented paralegals seem to be very informed, and wondered if paralegals could be included. Dean Eck responded it is a question of licensing and accountability, and suggested it is also a constitutional question since the Supreme Court is charged with determining the rules that govern the practice of law.

Sen. Shockley pointed out the state of California addressed the issue in statute.

#### **PUBLIC COMMENT**

Beth Baker, a practicing attorney in Helena and Chair of the State Bar of Montana's Access to Justice Committee, addressed Exhibit 2 and explained the purpose of the amendment. The proposed amendment would provide clarification by inserting the word "direct" in two places. Ms. Baker suggested the proposed language regarding the appropriation would allow the court to prioritize. Ms. Baker identified the amendment as a critical piece of the proposal since a legal services program cannot operate without pro bono lawyers. Ms. Baker thought the UM-School of Law could be an important asset, and that the bill would allow for the incorporation of the UM-School of Law's efforts.

Tara Veazey, MLSA and a member of the State Bar of Montana's Access to Justice Committee, thanked the LJIC for its time and effort in addressing the issue. Ms. Veazey provided a recap of why the bill and funding is important. Ms. Veazey explained MLSA has eleven attorneys that provide direct representation to approximately 180,000 income-eligible people in Montana. The State Law Library has one legal reference librarian to answer questions. Ms. Veazey identified legal assistance as important to help maintain a person's security, productivity, and livelihood. Ms. Veazey believed lack of access to the legal system creates a negative view of the justice system. Ms. Veazey explained how they have used one-time nonrenewable grants to do work so far, but that the efforts have not been enough. Ms. Veazey closed by stating their goal is to have a system where every person has some meaningful access to justice when they have a problem.

Klaus Sitte, Director, MLSA, believed the bill provides an excellent structure for helping low-income people in Montana. Mr. Sitte stated every dollar spent would be money well spent and will produce an economic benefit. Mr. Sitte directed the LJIC to Exhibits 3 and 4, and noted the significant differences and parallels between programs in Montana and Nebraska. Mr. Sitte suggested the legislation would result in a win/win situation for Montana taxpayers.

Michelle Mudd, a member of the UM-School of Law and the Montana Justice Foundation, spoke about the willingness and availability of attorneys to help with access to justice issues. Ms. Mudd thought it would be crucial to have attorneys who are available and willing to participate and identified a need to cultivate a culture of service in the legal field. Ms. Mudd thought it would be critical to empower attorneys, so they are able to work in the public sector. Ms. Mudd suggested creating an opportunity for a law student to participate would be a good investment

since the students' ethics are formed during law school. Ms. Mudd would like to see a new generation of lawyers created who have a strong public service ethic. Ms. Mudd directed the LJIC to the Rural Advocacy League website for more information. Ms. Mudd could foresee students being available for assistance via Vision Net. Ms. Mudd thought an order from Montana Supreme Court addressing the inconsistency in court forms and recognizing the validity of forms would substantially remedy the current problem.

Judy Meadows, State Law Librarian and Chair of the Supreme Court's Commission on Self-Represented Litigants (the Commission), thanked the LJIC for its concern for pro se litigants. Ms. Meadows explained the Commission is made up of volunteers and has never received any funding. Ms. Meadows addressed the need for legal services and stated she is worried about these litigants and their legal rights.

Nancy Sweeney, Lewis and Clark County Clerk District of Court and Co-chair of the Equal Justice Task Force, thanked the LJIC for its time and work. Ms. Sweeney emphasized the increase in pro se filings and the lack of resources available to the poor in Montana. Ms. Sweeney explained in 1994 in Lewis and Clark County approximately seven percent of filings were done with one party representing themselves. In 2004, the number increased to approximately 50 percent and the number is now approaching 75 percent. Ms. Sweeney emphasized how important it is to have a pro bono piece to the legislation. Ms. Sweeney explained the burden that all clerks of court have experienced because of the inadequacy of the current forms. Ms. Sweeney now directs people to the Montana Law Help website for forms, if those forms are available. Ms. Sweeney identified the need for a minimal level of funding to continue to address the issue.

Chris Manos, Executive Director of the State Bar of Montana, was heartened by the LJIC's interest and hard work. Mr. Manos stated the collaborative effort going on prior to the LJIC's interest will continue. Mr. Manos identified the money as well spent and that it would assist the legislators' constituents. Mr. Manos explained how the initiative has involved all three branches of government, and stated the State Bar of Montana stands ready to assist, provide information and, as appropriate, make recommendations.

Michele Snowberger, Belgrade Judge and a member of the Commission on Self-Represented Litigants, emphasized the Commission is working for seamless opportunities for people who need direction to the court, access to forms, guidance on how to fill out the forms, and direction for individuals with pro bono attorneys. Judge Snowberger offered her support and assistance to the LJIC.

**(Tape 2; Side A)**

Kandi Matthew-Jenkins, Missoula resident, thanked the LJIC for its hard work and emphasized money will be saved when you have an informed knowledgeable citizen that can use resources for themselves to defend themselves. Ms. Matthew-Jenkins suggested you cannot expect people who gain knowledge not to share that knowledge, and encouraged protection for people who are simply sharing information from being considered as practicing law without a license.

**(BREAK)**

**COMMITTEE ACTION ON LC 72**

Rep. Stoker referred to Exhibit 2, the proposed amendment submitted by Beth Baker, and stated he would support inserting the word "direct" in the title and Section 4(6). In addressing the program to extend funds for the training of volunteer lawyers, Rep. Stoker believed that would be the duty and category that should be developed by the UM-School of Law, and stated he would oppose that section.

Rep. Stoker MOVED to divide the amendment as proposed in Exhibit 2 into the question of whether to insert the word "direct" and from the amendment from page 3, Section 3 and the proposed new subsection (4) amendment.

Valencia Lane, Staff Attorney, addressed the LJIC stated she reviewed the amendments and did not have any technical problems with the proposed amendment. Ms. Lane deferred to Ms. Heffelfinger for further comment. Ms. Heffelfinger explained that in the bill draft reflecting the Baker amendment, she inserted the word "direct" into the title, but that she inadvertently did not insert the word "direct" on page 3, subsection (6).

Rep. Stoker recalled testimony from Montana Legal Services and did not want to inhibit their attorneys from going before a judge. Rep. Stoker did not object to the word "direct" going into the title or in subsection 4(6).

Sen. Cromley commented on renumbering, and Ms. Heffelfinger clarified the subsections would not be renumbered at this point, since Rep. Stoker was not moving subsection (4) of the proposed amendment.

Chairman Parker explained Rep. Stoker's motion would include the title section, but would not include the amendments regarding Page 2, Section 4, or Page 3, Section 3, but would include the remainder of the proposed Baker amendments.

Rep. Stoker's motion CARRIED unanimously by voice vote with Rep. Wilson and Sen. Laslovich voting yes by proxy.

Sen. Perry MOVED to adopt paragraphs two, three and four to Exhibit 2, the proposed amendment to LC 72rv prepared by Beth Baker and Ann Gilkey.

Rep. Windham expressed concern about the amendment to Page 3, Section 3, and the reference to "with civil legal needs who are unable to pay for those services." Rep. Windham recalled previous LJIC discussion about low-income versus moderate income and thought the language would need to be changed to come into the scope of the joint resolution. Rep. Windham MOVED to amend Sen. Perry's motion by replacing the language with "to provide legal advice and direct legal representation to low-income persons with civil legal needs."

Sen. McGee explained he could not support the amendment because the question becomes what is "low-income." Sen. McGee stated he would rather leave the reference to those "who are unable to pay for those services." Sen. McGee did not want to see the ability to pay be tied to a numeric value set by a previous standard.

Sen. Shockley stated he would like to leave the language as suggested by Sen. McGee.

Sen. Williams stated she also would like to leave the language the way it is.

Rep. Windham's motion FAILED 1 to 11 by voice vote, with Rep. Windham voting yes and Rep. Wilson and Sen. Laslovich voting no by proxy.

Rep. Rice asked what happens when a person says they are unable to pay and where the cutoff would be.

Chairman Parker explained the program in the proposed legislation does not contemplate direct service to any one person and that there is not a question of who is in and who is out since the legislation does not provide for direct representation.

Sen. Perry suggested analyzing to whom pro bono services are available and that the determination would be made by the people who provide the pro bono services. The LJIC would not have to state in the legislation who would be eligible.

Rep. Stoker recalled in past testimony by MLSA and the State Bar of Montana. He stated the MLSA's screening process is what sounded most favorable for qualifying people on the lower-income level. Rep. Stoker would like to keep MLSA and the State Bar of Montana in charge of that screening process.

Sen. McGee provided an explanation to Rep. Rice's question and suggested "those persons unable to pay for the services" is a modifier to the program being developed and not to the services being offered.

Sen. Perry's motion CARRIED by voice vote with Rep. Stoker voting no, and Rep. Wilson and Sen. Laslovich voting yes by proxy.

Sen. McGee MOVED that the appropriation be set at \$575,000 annually. Sen. McGee admitted the amount may not be enough or may be too much. Sen. McGee suggested the program could consist of three attorneys, one of which would also be the program manager.

Rep. Everett wondered if an attorney would be needed every year once forms are set up. Rep. Everett also thought setting up a curriculum for pro se clinics would occur only in the first year. Chairman Parker believed past discussions indicated a certain amount of work had been done in family law, but he envisioned the program being ongoing and that over time someone could chip away at the tremendous amount of work to be done. Chairman Parker did not believe the entire program could be developed in one year.

Rep. Windham said the Legislature changes or adds new laws, and those laws could affect the forms and require the need to update the forms.

Sen. Shockley envisioned in the future, there would no longer be the need for a full-time job to administer the program.

Sen. Williams would like to leave the attorney position in for the next couple of years and believed it would be better to have the work done appropriately in the beginning.

Sen. Shockley suggested implementing a five-year deadline and revisiting the issue of whether a whole FTE is needed.

Pat Gervais, Legislative Fiscal Analyst, explained the bill would be a "cat and dog" appropriation which would get reviewed as to whether the appropriation would be included in the base budget for the next biennium. Generally, it would be reviewed as to whether it was the LJIC's intent that this be an ongoing program. Ms. Gervais suggested language could be included in the bill indicating the intent that a certain level of funding would be ongoing and become part of the base budget.

Sen. McGee preferred not to address the issue in the bill and suggested including a five-year sunset clause which would require the program to come back and provide an opportunity to decide future funding.

Ms. Lane added sunset provisions of two, four or six years fit best into the budget process. Ms. Lane cautioned future legislatures can do what they want and that the Code Commissioner prefers to avoid sunsets. Ms. Lane explained Montana's Codes have been convoluted because of sunset provisions.

Sen. McGee suggested including language that specifically says the program will report to the LJIC and the Judiciary Committee on the progress of the program. In the end, the Legislature would have the ability to determine every few years whether the program is working.

Chairman Parker noted reporting requirements to the LJIC, House Appropriations, and Senate Finance and Claims is already in existing language.

Sen. Perry agreed the precautions and safeguards are already in the bill. In addition, the Supreme Court will report to the LJIC.

Sen. Williams stated she would be willing to support eliminating an attorney position, but wanted to keep the funding.

Sen. Stoker made a SUBSTITUTE MOTION to approve a manager/attorney, a program officer, a tech officer, and two support administrative positions, and a full operating cost and full pilot project working station for a total of \$375,000.

Sen. Shockley asked whether the manager job would now be one attorney/manager. Rep. Stoker agreed that would be the case.

Sen. McGee asked who would do the work that was envisioned being done by attorneys. Sen. Stoker explained the pro bono coordinator would be a member of the State Bar of Montana. Sen. McGee wondered who would run the self-help clinic. Sen. Stoker explained the program officer or administrative support person would run the self-help clinic.

Sen. Williams thought Sen. Stoker's proposal did not address the need to get legal aid, legal support, and lawyers together to create the program. Sen. Williams believed removing lawyers from the equation would undercut the whole process.

Sen. Stoker responded to Sen. Williams and stated he opposed incorporating additional lawyers under the voluntary training, and that he resists having state paid attorneys providing representation in court, as opposed to pro se and pro bono programs, which should be supported.

Sen. Williams clarified the attorneys would not be representing the people, but helping people to represent themselves.

Sen. McGee appreciated not growing state government, but noted that justice is an arena properly overseen by government.

**(Tape 2; Side B)**

Sen. Shockley agreed a separate manager would not be needed, but believed two attorneys would be needed, one of which could act as a manager. Sen. Stoker WITHDREW his substitute motion.

Sen. Shockley made a SUBSTITUTE MOTION to have two attorneys, one of which would be a manager and one of which would be dedicated to the self-help clinics, and that the appropriation be \$445,000.

Sen. McGee inquired whether the State Bar would provide the attorney for the volunteer pro bono coordinator.

Chairman Parker clarified that there would be a statutory requirement for the pro bono coordinator and that the LJIC would have some statutory latitude to triage its tasks.

Mr. Manos responded to Sen. McGee's concern and noted the State Bar receives no funding from the state and is financially constrained. Membership dues for the State Bar are set by the Supreme Court. Mr. Manos responded the State Bar does not have \$70,000 for the position. Mr. Manos stated the need is far greater and this is a great step and will have some impact, but the legal desk coordinator position would remain since it is much more broad than what is in the legislation.

Chairman Parker clarified the appropriation as proposed would be \$435,000.

Sen. Shockley's SUBSTITUTE MOTION failed by roll call vote of 4 to 8, with Sen. Shockley, Rep. Everett, Rep. Rice, and Rep. Stoker voting aye, and Sen Laslovich and Rep. Wilson voting no by proxy.

Sen. McGee AMENDED his motion to eliminate a manager or attorney, for a total of seven, and the budget would be \$505,000.

Sen. Perry stated he could not vote for Sen. Shockley's substitute motion because he thought a reduction would take the legislation it to a point that is one step below what was recommended by the people in the field. The legislation will go through the appropriations process during the Legislature and the appropriation will be pared down.

Sen. McGee's motion CARRIED by voice vote with Sen. Stoker voting no and Rep. Wilson and Sen. Laslovich voting aye by proxy.

Sen. McGee moved LC 72 as amended. The motion carried unanimously by voice vote with Rep. Wilson and Sen. Laslovich voting aye by proxy.

#### **JUVENILE DELINQUENCY AND INTERVENTION PROGRAM (JDIP)**

##### **Ms. Diana Koch, Chief Legal Counsel, Department of Corrections**

Diana Koch, Chief Legal Counsel, Department of Corrections, submitted a memorandum on the JDIP and separation of Powers (EXHIBIT 7).

##### **Questions from the LJIC**

Sen. Shockley asked Ms. Koch whether she had seen the proposed bill draft from the Court Administrator. Ms. Koch replied she had seen the bill draft but had not reviewed it in detail and was not prepared to comment. Sen. Shockley stated the Court Administrator had done a lot of work, and he believed the proposed bill would solve the problem and would not be offensive to the Department of Corrections (DOC). Sen. Shockley pointed out the DOC could not make rules that are binding on the court.

Chairman Parker suggested the LJIC should address the JDIP issue at its August meeting, so the LJIC members could have an opportunity to review Ms. Koch's memo. In addition, Chairman Parker requested that the DOC review the Court Administrator's bill draft and be prepared to comment at the August meeting. Ms. Koch explained she wanted an opportunity to conduct research before engaging in any dialogue.

Sen. Stoker asked if there were other people involved in the JDIP, other than judges, that are under the judiciary. Ms. Koch identified the juvenile probation officers as being under the Judicial Branch and deferred the question to Steve Gibson, Administrator, Youth Services Division, DOC. Mr. Gibson replied at this time the proposal would not shift any employees.

Chairman Parker inquired about the status of the rule implementation and whether the process was put on hold. Ms. Koch replied the DOC would do an amended rules notice in July or August which would start the process over. The DOC is attempting to alleviate the concerns expressed by Ms. Lane and will give the court a draft of the proposed rules.

##### **Office of Court Administrator comments on Department of Corrections JDIP rules, Ms. Lois Menzies, Court Administrator.**

Lois Menzies, Court Administrator, Montana Supreme Court, testified she has not reviewed the legal opinion; therefore, she did not attempt to address the legal issues or conclusions in the opinion. Ms. Menzies believed the JDIP should be moved to the judicial branch, but the

Governor's administration would not support the move. Ms. Menzies explained that in order to move beyond the contention, the Judicial Branch has been working on a bill draft. Ms. Menzies reviewed the summary of the bill draft (EXHIBIT 8). Ms. Menzies requested the LJIC include the proposal as a judicial branch bill.

Sen. Shockley recalled that he originally carried the JDIP legislation in 2001 and stated he has been critical of the courts interfering with the Legislature. Sen. Shockley appreciated the court backing off the JDIP money and dealing with the constitutional problem, although he could still foresee constitutional issues.

#### **Legislative options on JDIP and the Youth Court Act.**

Ms. Lane explained that a policy decision has to be made, and that there is a history of conflict and non-cooperation between the executive branch agency and the judicial branch agency.

#### **(Tape 3; Side A)**

Ms. Lane identified several issues on the table: The first issue Ms. Lane addressed was the rules proposed by DOC. In Ms. Lane's opinion, the rules could not be adopted as proposed. Ms. Lane requested the LJIC to instruct DOC not adopt the rules for at least six months. Ms. Lane explained that the DOC needs to publish a new notice of intent to adopt rules. In addition, the rules are in conflict with statutes and are inconsistent. Ms. Lane suggested that the statutes that set up the program need to be amended, and that a policy decision needs to be made regarding how to amend the statutes. Ms. Lane identified cost containment as the original reason for the statutes. Ms. Lane suggested the LJIC probably wants the program to continue, but needs to consider who it wants to administer the program. Ms. Lane explained the LJIC's options are: (1) do nothing; (2) draft a committee bill; or (3) sign off on and authorize the drafting of any agency bills that come before the LJIC. Ms. Lane spoke about the Memorandum of Understanding between the two agencies but noted there has been no cooperation between the agencies. Ms. Lane could not identify the exact issue of contention between the agencies. Ms. Lane reminded the LJIC that the program is working and judges and probation officers are implementing the program. She noted that the Auditor's Office suggested four alternatives: (1) maintain JDIP in its current structure and location; (2) transfer JDIP administration and appropriation to the judicial branch; (3) create a separate entity to administer the program; or (4) eliminate the program and transfer youth court placement funding to the judicial branch. Ms. Lane closed by emphasizing the need for LJIC to make a policy decision.

Chairman Parker requested Ms. Lane to draft a one-page memorandum summarizing the options for the LJIC to consider. Sen. Shockley commented on the past history of the JDIP program and suggested the DOC is not cooperating. Sen. Shockley believed the two agencies need to communicate and cooperate.

Rep. Windham asked how the LJIC could recommend the DOC not adopt any new rules if the DOC is intending to re-notice the new rule. Ms. Lane read Section 2-4-305(9), MCA, that states if a majority of the members of the appropriate administrative rule review committee (LJIC) notify the committee's presiding officer that those members object to a notice of proposed rule making, the committee shall notify the agency in writing that the committee objects to the proposal notice and will address the objections at its next meeting. Following the notice by the committee to the agency, the proposed notice may not be adopted until publication of the last

issue of the register that is published before expiration of the six-month period.

Chairman Parker said he sensed the issue is not ripe for the LJIC to develop a committee bill. Chairman Parker saw a need to keep gathering information but did not believe the LJIC had the time and staff resources to develop its own solution. Chairman Parker recommended the issue be placed on the LJIC agenda for August.

Sen. Shockley requested the parties to get together before the next meeting in an effort to come to an agreement. Sen. Shockley stated his preference was to solve the issue before the next Legislative session.

Sen. McGee suggested the LJIC should authorize a committee bill in an effort to get something in the process. Sen. McGee further recommended staff craft language as a beginning and present a list of issues the LJIC and legislature will need to address. Sen. McGee would like to see the LJIC establish policy.

Sen. Shockley thought the court's initial attempt is close to a decision he would support. Sen. Shockley was concerned about messing up a program that works and believed the program should not suffer because of agency problems.

Sen. McGee asked Ms. Lane if it would be better to vote to have a committee bill now or to make that decision in August. Ms. Lane replied it would not make any difference if the decision were made now or in August.

Chairman Parker suggested the LJIC could hold its meeting in August with an eye towards the question of whether the DOC and judicial branch can agree on consensus language based on the Court Administrator's bill. The final question for the LJIC at the end of August would be whether the LJIC is going to adopt the proposal as a committee bill or let the proposal remain an agency bill.

Rep. Windham reminded the LJIC about the proposed rules and believed those rules needed to be addressed.

Sen. Shockley MOVED to have the LJIC put DOC on notice that it does not approve of the rules as written.

Sen. Stoker recalled at the last LJIC meeting, there was a gentlemen's agreement between DOC and the judiciary to hold off on the rules for the six-month period. Sen. Shockley reminded Sen. Stoker that the DOC is preparing to re-notice the rules.

Mike Ferriter, Administrator of Community Corrections and soon-to-be Director of the DOC, agreed to delay noticing the proposed rules and operate under existing rules. Mr. Ferriter offered to put DOC's efforts into getting the statute worked out with the courts.

Sen. Shockley asked Mr. Ferriter if DOC had changed its position as stated by Ms. Koch regarding renoticing the rules. Mr. Ferriter responded he was confident the problem could be worked out. Sen. Shockley WITHDREW his motion.

### **Public Comment**

Mike Ferriter, Department of Corrections, thought it was important to remember the program continues to be successful and everyone has the same goals. Mr. Ferriter agreed to work with Ms. Menzies to reach a solution. Mr. Ferriter stated he would attempt to work together on the issue and that he expected a positive level of cooperation. Mr. Ferriter thanked the LJIC for giving the parties until August to work out the problem.

Ann Brodsky, legal counsel for Governor Schweitzer, agreed the program is working well and serving its purpose. Ms. Brodsky pointed out the DOC's proposed rules were promulgated at the direction of the Legislative Audit Committee.

Sen. Shockley asked whether the bill draft was presented as it is now to the Legislative Audit Committee. Ms. Brodsky did not know.

Harold Blattie, Montana Association of Counties, stated he did not want to enter into a debate between the two agencies, but wanted to make sure the counties are not taken out of the loop. He said the county concern relates to the transportation of juveniles to and from detention and treatment facilities.

Ms. Lane stated she has a memo from Mike Wingard, Legislative Auditor's Office, stating the Legislative Auditor's Office had agreed not to criticize the DOC for not adopting the rules.

### **Instructions to Staff**

Chairman Parker requested Ms. Lane to prepare a one-page memorandum summarizing the various policy options to assist the LJIC in analyzing their options and any proposed legislation. Chairman Parker further requested that if the judicial branch and the DOC are going to reach a compromise, they have specific language to Ms. Lane ten days' prior to the meeting, so Ms. Lane can perform an analysis of the language.

Sen. Shockley offered to communicate with Mr. Ferriter and Ms. Menzies to determine possible topics and speakers for the August meeting.

### **(LUNCH)**

Chairman Parker reconvened the LJIC at 1:12 p.m.

### **DOC AGENCY BILL**

Ms. Koch reviewed the DOC's agency bills with the LJIC.

### **Questions from the LJIC**

There were no questions from the LJIC.

## **STATEWIDE PUBLIC DEFENDER SYSTEM**

### **Public Defender Act and implementation, LJIC duties--Sheri Heffelfinger**

Ms. Heffelfinger directed the LJIC to information contained in the Public Defender Information Packet and reviewed the information with the LJIC (EXHIBIT 9).

#### **(Tape 3; Side B)**

Randi Hood, Chief Public Defender, welcomed the LJIC to the Office of the State Public Defender. Ms. Hood explained how the Montana Public Defender Act (SB 146) was being implemented on a number of different levels. Ms. Hood explained how the Commission developed standards to be followed by the Office of the State Public Defender while Ms. Hood worked to understand how public defender services would be delivered in Montana. Ms. Hood traveled around Montana to talk with different people to ascertain what was happening to date and identify problems in the way services were being delivered. Montana was divided into 11 different regions. A regional deputy public defender was assigned in each region and each deputy has an assistant. The new program absorbed six existing public defender offices and closed one office. In addition, new offices were opened in Butte, Kalispell, Hamilton, and Polson. These changes were made to address populations and increased caseloads. In addition, 10 or 11 new investigators were added. Ms. Hood reported she has spent most of her time interviewing and hiring staff and stated she is pleased with the newly hired staff and that extensive training has begun. Ms. Hood explained how the new legislation will allow the Office of the State Public Defender to enter the system earlier, which will result in better representation.

The members of the State Public Defenders' Commission introduced themselves to the LJIC. The members are: James Taylor (Chairman), Stephen Nardi (Vice-Chairman), Daniel Donovan, Mike Sherwood, Wendy Holton, Doug Kaercher, Caroline Fleming, Tara Veazey, Theda Newbreast, Jennifer Hensley, and Betty Bishsel.

#### **(Tape 4; Side A)**

Chairman Parker stated he would be appointing a four-person subcommittee to address state budget versus county budget issues.

### **Questions from the LJIC**

Sen. McGee thanked all the members of the Commission and offered his assistance and support.

Rep. Windham asked if there was going to be at least one Native American public defender in Region 1, specifically in Lake County. Ms. Hood explained that at each training session, one of the training subjects will be cultural issues.

Chairman Parker introduced Eric Folsom, the trainer coordinator for the Office of the State Public Defender.

At the request of Sen. Shockley, Ms. Hood addressed the substantial increase in Full-Time Equivalent positions (FTEs). Ms. Hood identified staff increases across the state which were implemented to meet the needs in those areas. Ms. Hood also addressed the decision to hire investigators to assist attorneys. Ms. Hood explained Kalispell was an area identified in the ACLU lawsuit alleging the quality of services being provided in Kalispell was not up to minimum standards. Ms. Hood also believed there were cases of public defenders making an unreasonable amount of money for their defense work. Ms. Hood stated although contract work would still be performed in the Kalispell area, those contractors will still be required to participate in training in an effort to meet the minimum standards. Ms. Hood expressed her concern about a substantial number of cases in the Kalispell area being turned back over to her office for representation. Although a judge in Kalispell had offered to issue a court order regarding continued representation, Ms. Hood expressed her preference to assume those cases to ensure quality representation.

Mr. Nardi added that in the past approximately ten percent of his income was received from public defender work even though he spent between 50 or 60 percent of his time performing the work. Mr. Nardi stated his motivation for sitting on the Commission was to see changes in Kalispell.

Rep. Shockley stated he did not like hybrid offices and wondered why there was not a full-time office in Kalispell. Sen. Shockley suggested the hardest and most time-consuming cases would go to contractors. Sen. Shockley believed small offices with leadership from experienced attorneys would be most effective and contractors should be used only in the most extreme situations. Ms. Hood explained the hybrid offices were a result of bargaining with judges, and that they need to forge new relationships in the Kalispell area. The decision to establish a hybrid office was the result of the Commission's best judgment. Sen. Shockley expressed his concern about contractors simply turning over their cases without consulting with their clients. Ms. Hood assured Sen. Shockley that most of the clients had expressed their desire for new legal representation.

Chairman Parker suggested contractors walking away from their public defender cases could be even more costly considering what those attorneys have billed in the past. Chairman Parker thought the issue was worth looking at.

Mr. Taylor explained the Commission's staffing decisions, and that the Commission put a lot of time in those decisions and that while the Commission has no desire to micro-manage Ms. Hood, they do have input and stand behind their decisions. Mr. Taylor reminded the LJIC that the Office of State Public Defender does not have any authority until July 1. Mr. Taylor stated for purposes of possible conflicts of interest, each region would be treated like a law firm.

Ms. Hensley stated the recent discussion reminded her that there is misinformation across the state. Ms. Henlsey explained that all the answers to questions are addressed in the standards. Ms. Hensley emphasized the Commission fully debated all scenarios and decisions.

Chairman Parker suggested the LJIC set aside one hour at next meeting for public defender issues not related to budget.

Rep. Windham asked if the hybrid office in Kalispell would be transitional and eventually taken over full time. Ms. Hood stated she would want to see how things develop.

Sen. McGee stated he received a letter from Flathead attorneys and that he has always been supportive of the private sector. Sen. McGee stated that while he initially had concerns about the increased number of FTEs, the legislation was written to be flexible, and Sen. McGee is confident the right people are doing the right thing.

#### **(RECESS)**

#### **Law and Justice Interim Committee and Public Defender Commission Members Provide Statements and Comment on the July 1, 2006, Official Opening of the Office of State Public Defender**

#### **PRESS CONFERENCE**

Governor Schweitzer addressed a joint session of the LJIC and the Public Defender Commission and congratulated both bodies on the opening of the new Office of State Public Defender and the implementation of the new program.

#### **(Tape 4; Side B)**

Chairman Parker reconvened the meeting at 3:45 p.m.

#### **"Written Public Comment" on Public Defender Matters**

Written testimony regarding SB 146 was received from Harold Blattie, Executive Director, Montana Association of Counties (EXHIBIT 10).

#### **AGENCY BILL PROPOSALS**

##### **Judicial Branch**

Lois Menzies submitted and reviewed Proposed Judicial Branch Legislation (EXHIBIT 11).

##### **Questions from the LJIC**

Sen. McGee noted that Judge Jones travels throughout Big Horn, Carbon, and Stillwater Counties. Sen. McGee asked if Judge Jones was to travel to Helena, whether he would fall under the three-month rule provided in the proposed agency bill. Ms. Menzies confirmed that was correct.

##### **Public Comment on Agency Bill Proposals**

There was no public comment offered on agency bill proposals.

## **PUBLIC COMMENT ON ANY MATTER WITHIN THE LJIC'S JURISDICTION**

Kandi Matthew-Jenkins submitted written testimony from Jeff Allen regarding his past experience with the public defender system (EXHIBIT 12). Ms. Matthew-Jenkins was glad to see the changes made to the public defender system and hoped the changes would put an end to the violation of due process rights of parents and children. Ms. Matthew-Jenkins emphasized changes to the system could save the state huge amounts of money in the long run.

Matthew Cook from Missoula spoke about his negative experience with the public defender system at a young age and testified he was also glad to see the recent changes.

### **RECESS**

Chairman Parker recessed the LJIC at 3:56 p.m.

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