

Draft Only
Approval Pending
**SUMMARY of
PROCEEDINGS**



JOINT JUDICIARY COMMITTEE

COMMITTEE MEETING INFORMATION

May 17 and 18, 2010
Wyoming Girls' School
3500 Big Horn Ave.
Sheridan, Wyoming

COMMITTEE MEMBERS PRESENT

Senator Tony Ross, Cochairman
Representative Keith Gingery, Cochairman
Senator Sandra Meyer
Senator Drew Perkins
Senator Kathryn Sessions
Representative George Bagby
Representative Joseph Barbuto
Representative Gregg Blikre
Representative Richard Cannady
Representative John Patton
Representative Frank Peasley
Representative Lorraine Quarberg
Representative Mary Throne

COMMITTEE MEMBERS (NOT PRESENT)

Senator Bruce Burns

LEGISLATIVE SERVICE OFFICE STAFF

John Rivera, Senior Staff Attorney
Lily Sharpe, Staff Attorney

OTHERS PRESENT AT MEETING

Please refer to Appendix 1 to review the Committee Sign-in Sheet
for a list of other individuals who attended the meeting.

The Committee Meeting Summary of Proceedings (meeting minutes) is prepared by the Legislative Service Office (LSO) and is the official record of the proceedings of a legislative committee meeting. This document does not represent a transcript of the meeting; it is a digest of the meeting and provides a record of official actions taken by the Committee. All meeting materials and handouts provided to the Committee by the Legislative Service Office, public officials, lobbyists, and the public are on file at the Legislative Service Office and are part of the official record of the meeting. An index of these materials is provided at the end of this document and these materials are on file at the Legislative Service Office. For more information or to review meeting materials, please contact the Legislative Service Office at (307) 777-7881 or by e-mail at lso@state.wy.us. The Summary of Proceedings for each legislative committee meeting can be found on the Wyoming Legislature's website at <http://legisweb.state.wy.us>.

EXECUTIVE SUMMARY

The Committee met for two days in Sheridan to consider preliminary testimony on juvenile justice issues, wind energy, streamlined civil procedure, obsolete laws and other matters. The Committee is tentatively scheduled to meet in early August in Thermopolis to consider proposed draft legislation staff will prepare on various issues.

CALL TO ORDER (AUGUST 17, 2009)

Chairman Gingery called the meeting to order at 8:11 a.m. The following sections summarize the Committee proceedings by topic. Please refer to Appendix 2 to review the Committee Meeting Agenda.

TOUR OF WYOMING GIRLS' SCHOOL

Mr. Clark Fairbanks, Superintendent, and Ms. Chris Jones, Education Director, hosted a tour of the Wyoming Girls' School.

UPDATE ON WYOMING GIRLS' SCHOOL

Superintendent Fairbanks advised the Committee that the Wyoming Girls' School was established in 1925. There are currently 46 girls residing at the facility. Before coming to the school, most of the girls have already been in approximately four prior placements. Many of the girls come to the facility with a drug and criminal history. The school's goal is to provide the girls with the skills needed to become confident individuals. The facility serves approximately 100 girls per year. The average length of stay is 8.3 months. In the course of the stay, the average grade level improvement is 3 grades. The safe environment, structure and attention to mental health counseling allow the girls to flourish.

The Wyoming Girls' School has undergone major changes in its population since inception. The most current and significant issues are mental health and self harm. Forty-eight percent of the residents have attempted suicide. Consequently, the school is increasing both mental health therapy and treatment for addiction. Ninety-one percent of the residents report abusing alcohol and other drugs. This is the first year the school has reported a decrease in methamphetamine use. Alcohol and marijuana are the most abused drugs at this time. Prescription drugs are also a growing problem. Sixty-eight percent of the residents have histories of mental and substance abuse issues.

Only adjudicated delinquents are placed at the school. By statute, each girl is ordered to stay at the school for an indefinite length of time. A team, including the county attorney, guardian ad litem and therapists, make the determination concerning each girl's actual length of stay.

COURT ORDERED PLACEMENT

Mr. Tony Lewis, Director, Department of Family Services, Ms. Nicky Anderson, Assistant Deputy of Legislation and Policy, and Mr. Chad Shaver, Statistics Officer, addressed the Committee on the issue of court-ordered placement of juveniles.

Director Lewis advised that the philosophy of the Department of Family Services (DFS) is that beyond punishment, DFS must address behavior management and treatment. Success is accomplished in the home school district. The home setting, school and community are critical components to achieving positive outcomes. The home setting, however, can be the most difficult area to address.

Director Lewis presented a hand out (Appendix 3) to the Committee showing a continuum for 24-hour care and alternative support systems. He clarified that this population only includes youths who have been placed in the juvenile justice system. The continuum reflects a scenario after a youth is apprehended. The youth may be placed under house arrest and required to wear an electronic monitoring device. Weekend detention is also an option before secure detention is imposed. At times, the youth may only need crisis intervention. In this situation, options include temporary foster care, group home or crisis shelter until the youth can be returned to the family. The critical aspect of the entire juvenile process is to appropriately assess the youth before placement. DFS uses the positive assessment change tool (PACT) and psychological evaluations to make placement recommendations.

Ultimately, the youth may require detention and 24-hour care. Secure residential treatment is provided at the Boys' School and Girls' School. Residential treatment is also used for sex offenders. Psychiatric residential treatment is the most restrictive level of treatment. When the youth is released, after-care is imperative.

Representative Quarberg inquired what psychiatric residential treatment includes. Director Lewis responded that this is an intervention managed between the court and the Department of Health. There are three psychiatric residential treatment facilities: St Joseph's Children's Home, NSI Academy (Normative Services) and Wyoming Behavioral Institute. Although the Y.E.S. House in Gillette was an option, it is experiencing trouble segregating the residents as required to obtain payment from Medicaid.

Chairman Gingery questioned how DFS handles pre- and post-adjudication juveniles. He asked why DFS completed the PACT before adjudication. Director Lewis responded that a judge will often request DFS to conduct a pre-dispositional report to assist the judge in determining what facility may be appropriate for placement and in assessing the action to be taken. The youth may even be in shelter care before the district attorney or DFS is notified. To prepare a pre-dispositional report, DFS uses the PACT.

Senator Meyer questioned how the child was actually moved from one type of placement to another. Director Lewis replied that the court must order a change in the level of placement.

Chairman Gingery asked what happens when a youth is sent to the Multidisciplinary Team (MDT) with respect to placement. Director Lewis responded that the MDT attempts to determine how to keep the child in the home district. The information is provided to the judge with recommendations. Director Lewis advised that there is no guide or handout provided to the MDTs to identify the possible treatment or facilities available. The MDT does not match the child to a facility or placement available. They do not have the information to know what facilities are appropriate and available.

Chairman Gingery raised a concern as to the number of beds available. He noted that there may be too many beds. Senator Sessions echoed that in Colorado, the number of detention beds for juveniles were reduced once Colorado built up its diversionary options.

Director Lewis informed the Committee that in 2006, Wyoming had the highest rate of juvenile detention, including placements at the Boys' and Girls' Schools. In 2007, Wyoming was the second highest state for detentions. Although Wyoming may have too many beds, other options in the community do not exist.

Mr. Shaver advised that there has been a reduction in residential placements. The trends are related to decrease in methamphetamine use and federal programs that encourage earlier services. Mr. Shaver explained that DFS primarily funds placement. Substantial funds are not allocated for diversion services.

Senator Ross queried why Wyoming's out-of-state-placements are so high in light of the excess of beds. In 2007, there were 39 out-of-state placements, while in 2009, there were 92. Director Lewis explained that the higher numbers were due, in part, to families advocating the need for specialized placement. He observed that the cost of out-of-state placement is more expensive. DFS does not negotiate the costs. It must place the youth as the court orders.

Ms. Anderson reported that the Joint Appropriations Committee has directed DFS to analyze in- and out-of-state placements. There is a moratorium on the number of residential beds and DFS will look at current capacity to:

- Determine the need for statutory changes to encourage in-state placements;
- Define the levels of necessary care;
- Define needs for community based services.

A report on this analysis is due July 2011. The report will be submitted to the Joint Judiciary and the Joint Appropriations Interim Committees.

Representative Perkins asked whether DFS could undertake an outcome analysis. Mr. Shaver responded that such analysis would be an entirely different type of study than DFS is currently undertaking.

Mr. Brian Christensen, Natrona County Assistant District Attorney, described the flowchart for the juvenile placement process. He stated that a youth is apprehended by one of various law enforcement agencies. The county or district attorney's office then determines what action to take. The options include:

- Child taken into custody based on dangerous behavior.
- If necessary, child is placed into detention or shelter care. A court order is not necessary, but a petition must be promptly filed to commence juvenile court proceedings.
- The district attorney is the point of entry for the minor into the legal system. The options the district attorney have include: 1) youth diversion; 2) municipal court appearance; 3) juvenile proceedings in circuit court which involve youths charged with misdemeanors (where most of the cases are sent because most of the services are available there); juvenile proceedings in district court; and adult proceedings in district court.
- The district court judge is the juvenile court judge. The district court judge may order a transfer hearing to another court with jurisdiction.
- Informal detention or shelter care hearing must held within 48 hours.
- Before a hearing, the court orders DFS to conduct a predisposition study and report.
- The court also appoints a Multidisciplinary Team (MDT).

Detention means care of a child in a physically restricting facility pending court disposition. Shelter care means the care of a child in a physically unrestricting facility pending court disposition

THE STATE OF JUVENILE JUSTICE IN WYOMING

Honorable Gary Hartman, Juvenile Justice Policy Analyst for the Governor's Office, distributed Appendix 4 and addressed the Committee with the following suggestions for juvenile placement legislation:

1. Add a preamble somewhere in Title 6 of the Wyoming Statutes, to state that the goal of the state is to keep juveniles within our community.
2. Propose legislation authorizing DFS to determine the placement facility. Judges currently make appropriate placements, but the length of treatment is critical. The judge could still decide that the youth would be removed from the home, but then DFS could decide where the child should be

placed. DFS must be made accountable for the outcome. This could result in a shorter length of stay. If this occurs, DFS can work with schools to ensure that the youth receive proper school credits and address transition needs. Currently, if a youth is to be moved to a greater level of detention, there must be a hearing. DFS could be given authority to make this determination.

3. Amend circuit court and municipal court authority to place youth in detention. The courts are overusing detention in Wyoming. There are due process issues when doing this. Yet, some of these judges do not have law degrees. The courts should only place dangerous youths in the detention facilities. The committee may wish to consider limiting the authority of the municipal courts in this area.
4. Establish a central data collecting agency for juveniles offenses. Statutorily, the Division of Criminal Investigation (DCI) only keeps records on felony convictions. There are 27 various agencies that collect data on juveniles. The State needs a single office that can keep all the information. Without data, we cannot find a solution to juvenile issues. DCI may be the place to retain such data.
5. It may be time to think about a family court for Wyoming. It may be beneficial to have a judge with specialized knowledge in family law.

Senator Ross reminded the Committee that preamble language expressing legislative intent is normally not placed in the codified law. Representative Throne suggested that it might be possible to develop a guideline that could be placed in Title 6.

Ms. Charlene Edwards, Campbell County Deputy Attorney, also addressed the Committee on behalf of the State Advisory Council on Juvenile Justice, about whether Wyoming should become a participating state in the federal Juvenile Justice and Delinquency Prevention Act (JJDP) program. The JJDP provides federal funds to encourage the deinstitutionalization of juveniles if the states provide "core protections" with respect to the care and treatment of youth in the justice system. This could be action taken by the Governor.

Chairman Gingery expressed concern that the state might actually deplete federal funds for the juveniles if the state participates because the state must pay administrative fees. It is believed that it would cost between 5% and 10% to administer the federal program. Senator Ross said that it would be premature to recommend whether the state should become a member. More information is necessary.

MONTANA JUVENILE JUSTICE SYSTEM AND PROCESS OVERVIEW

Mr. Steve Gibson, Director, Juvenile Corrections for the Montana Department of Corrections, distributed Appendix 5, outlining the FY2010 budget for his office. He delineated the manner in which Montana operates its juvenile justice process. In Montana, court ordered detention and diversionary programs are paid by different sources. Detention is only ordered by the district court. It is administered by the Department of Corrections and paid by the county. Each court is allocated a budget for placements of adjudicated delinquents. If a court exceeds its budget, the court may apply for funds from a discretionary funding pool. Montana spends approximately \$6,000,000 on placements. This does not include the youths who are given mental health placements. Youths must initially be placed in-state. If they are refused, then they may be placed out-of-state. Most of the costs are paid for by Medicaid. Very few youths, however, are actually placed in formal detention. Ninety percent are processed through probation. Probation handles the youths who are not committed to the Department of Corrections in the juvenile facilities. The federal government pays about 15% of the cost. Probation is under the authority of the state supreme court and has a state budget. Montana emphasizes diversion and transition. This has allowed the state to reduce its secure facility capacity by over 50%.

WYOMING YOUTH SERVICES ASSOCIATIONS

Mr. David Thorne, President of Wyoming Youth Services Association (WYSA), explained the role of member facilities. The WYSA was created in 1994. The organization members include crisis homes, group homes, and two BOCES homes. Currently there are 18 organizations which employ 680 employees. WYSA receives its funding through federal, local, town and county sources and donations. WYSA members also have contracts with the State, including a contract with DFS for crisis placement. They are considered out-of-home providers. Their services include prevention, intervention, runaway support, secure 48-hour hold and out-of-school suspension.

Mr. Bob Mayor, Director of St. Joseph's Children's Home, distributed Appendix 6, a flowchart illustrating the continuum of care available in the juvenile justice system in Wyoming. He reported that placement is based on the service the facility is able to offer and the beds available. The facilities communicate with each other to find an appropriate placement for a child. St. Joseph's accepts Medicaid. The Medicaid rate is \$257 per day. The MDTs assist in determining where the child is best served. In the process of the MDT referral and acceptance by the facility, the child is appropriately placed.

Mr. Bruce Burkland, Executive Director, Teton County Youth and Family Services, urged the Committee not to make major changes at this point, but to allow the agencies to adapt to the changes which have already been made. He expressed that the Juvenile Justice and Delinquency Prevention program is not in itself undesirable. It is difficult, however, to adapt with yearly changes to the juvenile justice system.

Senator Sessions observed that we still are losing too many youths in the system. There are so many youths coming to school with mental and behavioral problems, that the schools have difficulty finding solutions that work for this population.

DISTRICT COURT JUDGE'S PERSPECTIVE

Honorable John Fenn, Fourth Judicial District Court Judge, sought the Committee's consideration of:

1. Amendments needed to the Child Protective Services Act and shelter care hearings in abuse and neglect proceedings. Judge Fenn stated that once an officer or doctor reports a possible child abuse situation, a hearing must be held within 48 hours. The court advises the parents of their rights and asks the parent to immediately enter a plea. Judge Fenn insisted that this chronology does not make sense. An abuse and neglect petition at this point has not even been filed. The parent does not have an opportunity to even understand the situation and does not have adequate time to consider what plea to enter. Senator Sessions pointed out that a child could be placed back in the home if a parent does not deny the charge. Judge Fenn replied that the case worker report and evidence allow the court to make the placement determination without the need for a plea.
2. Parent, counsel and guardian ad litem program.
 - a. The guardian ad litem (GAL) program has improved. The centralization has eased the process. The pendulum, however, has moved the other way in terms of cost. Moving the program from the Supreme Court to the public defender has been a good move. Judge Fenn informed the Committee that as the presiding judge, it is difficult to question the GALs' bills. Now the public defender has oversight, but we may be losing good guardians because of fiscal constraints placed on the GALs.
 - b. The same issues have arisen with parents' counsel. Parents who have a child in the system are provided an attorney. The counties are paying for this and there has been a dramatic increase in the cost for attorneys. Each parent who may be involved in the process has the right to an attorney. Those who are accused of neglect certainly should have counsel, but to appoint each

putative parent an attorney is very expensive. At times, there may be seven attorneys at a MDT hearing. In response to Representative Perkins, Judge Fenn advised that he does not believe that there is a constitutional right to each of the non-charged putative parents to have an attorney. The best interest of the child is the issue. Judge Fenn believes that this is a statutory right. Chairman Gingery observed, however, that by having a lawyer there for each parent, the working parent does not have to be present when the parent has a job and difficulty attending the numerous meetings.

3. Juvenile Justice. The state has been operating under the single point of entry process for a year. The court is witnessing more diversions and consent decrees. The county and city attorneys are deciding where the child should start in the system. There are more out-of-state placements in his court in Sheridan than in Casper, but that is because it is easier for parents in Sheridan to get to Billings. The statute requires the court to make findings with respect to the costs before out-of-state placement is ordered. Senator Ross inquired what evidence the judge hears as to costs. Judge Fenn responded that this is something that they are working on. He does request an assessment of placement costs prior to ordering placement. Outcomes, however, are not necessarily related to costs. Chairman Gingery expressed concern as to length of stay and the time that it takes to get a child from one level of detention to another. Judge Fenn said that this is a fair criticism, but if a hearing is necessary, it is held right away. The juvenile does not suffer. Civil cases, however, may get bumped. Judge Fenn believes that juvenile cases absorb 30-40% of his court time.

Honorable Scott Skavdahl, Natrona County District Court Judge, articulated the following points:

1. Importance of Juvenile Justice. Although juvenile justice issues are exceedingly important, it is a very difficult area. It is incredibly difficult to get people to make changes.
2. Out-of-State Placements. Whenever Judge Skavdahl makes an out-of-state placement, he considers the factors in W.S. 14-6-229 and no opposition is ever entered. Most commonly, out-of-state placement is necessitated where severe emotional issues and violence are present. Other options are limited as the state hospital cannot take minors. There is also difficulty placing deaf children.
3. Multidisciplinary Teams (MDTs) are very important, but they have become very difficult to manage. If a majority of the team is in agreement, a presumption arises which the judge must follow. It would be helpful to have an agency representative with expertise to provide the court a placement recommendation. The MDT has become a battle ground.
4. The Guardian Ad Litem Program has become a Catch 22. It works well but it is not a cheap program. As a judge, however, there is no time to analyze the GAL's billing statements. The billing comes through the county. It does not seem appropriate for the Judge to tell the county to change its position and refuse to pay an amount that the county has approved.
5. Title 14 already has a preamble. W.S. 14-6-201(c) presently sets forth the purpose of the Juvenile Justice Act.
6. Developing a family court would be a very expensive proposition. It may be very positive. The main concern is that we do not change the system through a band aid approach. Representative Peasley expressed that a family court would not be positive.

PUBLIC COMMENT

The Committee received public comment from Mr. Bob Rolston, Sheridan County Commissioner, Mr. Bud Patterson, Executive Director, NSI Academy (Normative Services) and Ms. Robin Haas, Executive Director of Cathedral Home for Children. Mr. Patterson distributed Appendix 7, containing his statement to the Committee. He reminded the Committee that, historically, youth were in placement for years. The

pendulum has turned the other way and now they often leave too early. The issues are much different now, as approximately 80% of the youth placed with NSI are on medications.

Ms. Haas agreed that there is difficulty with transitioning youth back to school, but stated the educational credits do transfer now and certain schools welcome the youth. She also believes there are funds available to transition youth back to school. She stated that the responsibility of transition lies with the facility at which the youth was placed. Cathedral Home accepts violent youth and currently houses 38 out-of-state youths and 34 from Wyoming. When Wyoming was not able to pay the funding, Cathedral Home obtained scholarships for the youths. California, she stated, has subsidized Wyoming by about \$1,000,000. Senators Nicholas and Massie visited the home and then sought the budget footnote in 2010 to study youth placements. Ms. Haas voiced that each agency that funds placements should be able to report exactly where they are placing the youths.

Representative Bagby stated that Carbon County is only allocated \$50,000 for diversionary options. Representative Patton expressed that the Committee is dedicated to an educational opportunity for each child in the state. Chairman Gingery voiced concern whether the system is the best that it could be. Management Council has asked the Committee to review this issue. The Legislature has distributed \$50,000 to diversionary programs for this biennium. Once that money has been spent, it is gone. The question is how to make the system better and try to find an economical solution to assisting youth. Representative Blikre emphasized that it was very useful to learn how Montana is spending its money. Representative Sessions noted that the Montana Department of Corrections deals with adjudicated juveniles, while Wyoming deals with all youths in the system.

Mr. Blonigen, Natrona County District Attorney, stressed that it is important to analyze the figures carefully. When a student in Natrona County is placed for 5 weekends in confinement, the figures for the county show 5 separate placements. Mr. Blonigen added that it is important to recognize which youth are placed at certain locations. Usually out-of-state placements involve youths with very serious mental health issues, rather than delinquency issues. Mr. Blonigen emphasized that data collection is very critical. The single point of entry process serves a good function. The single point of entry should also allow for better data collection. The data should come from the circuit and district courts.

Ms. Cindy DeLancey, Executive Director of the Wyoming County Commissioners Association, articulated concern with the manner in which GALs may be paid. The rate has been reduced from \$100 to \$70 per hour. The county commissioners would like the ability to supplement the pay, but the option does not currently exist. Chairman Gingery suggested that this change may be accomplished by rule and counseled the counties to discuss the matter with Diane Lozano, State Public Defender. The purpose of the funding system was that there would only be one bill. The invoice could go to Ms. Lozano, and then she could pay the bill and get reimbursed from the county.

Ms. DeLancey reiterated that in child abuse and neglect cases, it is frustrating to have to pay for counsel for all parents. It may be a better to use funds for guardians ad litem, rather than an attorney for a parent who has not even had contact with a child for years.

Senator Perkins advised that Natrona County paid approximately \$100,000 to pay for guardians ad litem five years ago. Now, it pays \$540,000. Senator Perkins wondered if other counties were having similar expenses.

Ms. Linda Burt, Director, Wyoming ACLU, advised that the report she previously promised the Committee would be finished by the end of the summer.

Mr. H.J. Arnieri, President, Sheridan County Title Insurance Agency, asked the Committee about the intent of the recently enacted statutory lien act. The act states that the claimant shall send notice to the record owner and queried if this was the actual intent of the act. Senator Perkins responded that notice must be provided to the record owner.

COMMITTEE DISCUSSION

The Committee directed that staff should:

1. Draft a bill addressing Judge Fenn's concern that parents not be required to immediately enter a plea at the initial child abuse and neglect hearing.
2. Look at the MDT bill that was introduced in an earlier session. Director Lewis advised that the Supreme Court was proposing juvenile court rules concerning MDT's. The Committee directed staff to research what the Supreme Court is proposing and place the MDT topic on the agenda for the next meeting.
3. Research the role of municipal courts and circuit courts in placing youth in detention. Distinguish between detention for contempt and detention for a conviction.

MEETING RECESS

The Committee recessed at 6:00 p.m. on Monday, May 17, 2010.

CALL TO ORDER (MAY 18, 2010)

Chairman Ross called the meeting to order at 8:03 a.m. The following sections summarize the Committee proceedings by topic. Please refer to Appendix 2 to review the Committee Meeting Agenda.

WIND ENERGY AND SEVERANCE OF ESTATES

Professor Dennis Stickley, University of Wyoming College of Law, distributed Appendix 8, a primer on Wind Energy Rights, and Appendix 9, a hard copy of a PowerPoint presentation made to the Wind Energy Task Force last year. He informed the Committee that the United States Supreme Court has recognized the authority of states to regulate land use and property rights. With respect to creating a divisible estate, Professor Stickley believes that Wyoming could certainly do so as it did when the Split Estates Act was created. The task is determining how to express the nature of this interest. Solar rights, pore estates and condominium rights establish precedence for this action. The downside of not clarifying the law is evidenced in 150 years of disputes between owners of mineral rights and surface rights. With respect to wind energy, the option of not doing anything will lead to continued disputes.

In developing legislation, the issue that will arise is the conflict between development of wind energy rights and mineral rights. Professor Stickley concluded that the best option is to allow the wind energy to remain appurtenant to the estate. The surface owner should be allowed to lease out the wind energy rights, but not to sever the rights from the estate. It is also important to realize that even if the wind energy rights remain appurtenant to the estate, this will not preclude the owner from leasing the right to develop the wind.

In response to Committee questions, Professor Stickley advised:

- The focus in establishing solar rights was to preclude interference with the use of an owner's access to solar energy.

- A land owner may have to compensate a mineral owner for development of wind energy and the amount of the compensation will have to be negotiated.
- With respect to the pore estate area, as of 2008, we no longer follow the common law. It is necessary to clarify, in the area of wind energy, which of the estates will be dominant. The legislation will need to address which will be the dominant estate and that the dominant estate will have to accommodate the various subservient estates.
- If the wind development rights become a divisible interest which can be transferred, the Legislature will have to enact legislation to resolve fractional interests. There are different ways that can be accomplished. For example, as with mineral estates, a separable estate could be adjudicated in court. A better approach may be to require leases to avoid adjudications.
- Relativity of rights may need to be addressed if wind development projects are developed in close proximity to each other. Currently, the remedies would be limited for the subsequent user. The first project would take precedence. There are engineering standards on siting turbines.
- Wind is not a depletable resource. There is no necessity for a unitization approach for wind energy.
- Land owners do need to be able to transfer their economic benefits of wind. Lease type transactions could offer the same benefits as severing mineral interests.
- It may be beneficial to reemphasize that the mineral estate is dominant. He noted that the mineral versus the surface estate are no longer controlled by common law.
- If the Legislature creates a new estate, the new estate would not necessarily be controlled by the statutory law pertaining to the split estates of mineral and the surface rights.
- The state possesses water, mineral, solar, and pore estates law. The legislation must analyze what type of law into which wind energy rights would fall. It would be necessary to take into account good engineering practices to determine what may interfere with a beneficial use.
- If the Legislature does not act, the courts will develop the case law which will become the basis for wind energy law.

Representative Gingery questioned:

- Whether we should pass a bill similar to South Dakota and specifically state that wind rights cannot be severed from the estate? Transactions have occurred in Wyoming where wind rights have been severed from the estate. We need to take action to preclude this. Professor Stickley was not aware of states which have allowed severance. The advantage of severing is that the interest can be conveyed to third parties and be conveyed by will to heirs.
- Is it necessary to adopt legislation concerning compensation similar to the Split Estates Act? We may need legislation to address the compensation of the mineral rights for the damage caused by the wind rights development. The solar rights law would be a good place to start if proceeding in this area.
- Whether it would be sufficient to define the beneficial use of wind as a property right or whether the right should be defined as a wind energy development right? Professor Stickley advised that the Legislature needs to work on a definition of wind energy and consider in the definition: 1) Use and purposes of generating electricity; and, 2) Other beneficial use that can be made of the wind energy.

Chairman Ross predicted that the Committee will agree that the wind rights should not be severable from the surface estate. He considered how the disputes between adjoining land owners would be resolved and whether the state should define a first in time, first in right principle. Professor Stickley iterated that legislation should create a test to determine what would constitute interference. It is more a technical issue than a first in time and first in right issue. It should not be on a first come, first serve basis. Ms.

Krista Macdonald, intern at the University of Wyoming College of Law, would be happy to help with this issue.

Chairman Ross reminded the Committee that its task is limited. Its challenge is to look only at property rights in the area of wind energy.

PUBLIC COMMENT

Mr. Scott Zimmerman, Rocky Mountain Farmers Union, expressed that Farmer's Union does not support a severable wind right. The Union would like exclusions for the small land owners. It does not support regulating where small owners place their wind turbine.

Mr. Kevin Lind, Powder River Basin Resource Council, apprised the Committee that its members are not in favor of separating wind energy from the surface estate.

Mr. Dan Sullivan, Wyoming Power Producers Coalition, beseeched the Committee to consider the ramifications on an existing oil and gas lease if the surface owner develops a wind farm. If the mineral owner then cannot develop the mineral estate, or is limited in the development his rights, the question is: who should have to compensate the mineral rights owner? The mineral owners should have the right to accommodation and should be given some sort of notice before the owner can develop the wind rights.

Representative Blikre asked if mineral owners should have to take action on their rights within a reasonable time. Senator Perkins, however, noted currently when an owner develops a subdivision, it is effectively very difficult then for the mineral owner to exercise its rights.

Mr. Mark Grant, Wyoming Manager of Governmental Affairs for Rocky Mountain Power, urged the Committee to consider the conflicting issues with respect to wind, minerals, pore space, and surface owner estates. Mr. Grant's presentation is set forth in Appendix 10. He affirmed that the greatest concern of Rocky Mountain Power is severance of the wind estate.

Mr. Jim Magagna, Executive Vice President, Wyoming Stockgrowers Association, stated that the WSA has not developed a position as to wind rights yet, but vocalized that wind and surface rights are critical to land owners and ranchers. Although the WSA did support the severance of pore space rights, wind energy may be different. The WSA believes that the owner should be able to retain the economic benefits of selling wind rights. If the Committee determines that the right should not be severable, he urged the Committee not to define the right differently from every other property right. Rather, it should be treated as any other surface ownership right. For example, the Game and Fish Commission has now adopted the best management practices policy. This would not be advisable in legislating wind energy. When the State develops a special status, a state agency can then regulate property and grazing use in light of wind energy issues. The WSA does not favor this unique status.

Chairman Ross closed the public comment at 10:35 a.m.

The Committee discussed the options for a bill addressing the right to develop wind energy. After discussion, the Committee directed staff to prepare a bill providing that wind rights are not severable from the surface estate. Staff should consider providing that the beneficial development of wind energy is a property right, defining ownership and defining the ability to develop beneficial use of wind. Representative Gingery suggested that staff begin with the language South Dakota uses. The Committee will consider the issue again at the next meeting.

STREAMLINED CIVIL PROCEDURE

Ms. Sharpe, Legislative Service Office, briefed the Committee regarding steps taken in other jurisdictions to combat the prohibitive costs of litigation in legal actions involving limited damages. Ms. Sharpe described the substantial studies conducted by the Institute for the Advancement of the American Legal System at the University of Denver and explained that Oregon has taken the most extensive measures to streamline its civil procedure and discovery process. She pointed out that Colorado has adopted a Simplified Procedure for Civil Actions. A summary of the action taken by other states is attached as Appendix 11. Ms. Sharpe informed the Committee that the Institute is currently working with the Wyoming Supreme Court on the issue.

Wyoming Supreme Court Chief Justice Barton Voigt introduced the Supreme Court Administrator, Joann Odendahl, and updated the Committee on the Supreme Court's investigation of options for making litigation affordable. Chief Justice Voigt indicated that the Supreme Court is considering a number of reforms with respect to the Rules of Civil Procedure, pleadings, discovery and jurisdictional amounts. The investigation will entail a two-year study and Justice Kite has intimated that it will be a top priority in her term as chief justice. Chief Justice Voigt suggested that the Supreme Court work together with the legislative branch to develop solutions and sought the Committee's assistance in pursuing necessary substantive changes to the statutes.

Chief Justice Voigt also raised concern about the role of district court commissioners. He observed that the commissioners are acting even when a district court judge is present in violation of the constitution and statute and he believes that that a constitutional change is needed.

OBSOLETE PROVISIONS

Mr. Rivera, Legislative Service Office, suggested with respect to:

- W.S. 1-39-117, that it may be helpful to develop language specifying that the "exclusive jurisdiction" does not apply to federal courts. Representative Gingery suggested that the section also include language that supplemental jurisdiction could be found in federal courts to make lawyers aware that they can also go to federal court. The Committee agreed staff should prepare this change.
- W.S. 1-40-112, the cross-reference to W.S. 7-9-101 through 7-9-112 should be expanded to include W.S. 7-9-113 through 7-9-115, dealing with restitution for long-term care. The Committee agreed to expand the cross-reference to include those references.
- W.S. 5-6-211, 6-10-105 and 7-11-504, which have been declared unconstitutional with respect to indigent persons, could specify that an indigent person cannot be imprisoned if the court makes a finding that the person is indigent. The Committee agreed staff should prepare this change.
- W.S. 6-1-103, Mr. Rivera will research why this was assigned to the Committee and report back to the Committee before the next meeting.
- W.S. 7-3-705, Mr. Rivera will research why this was assigned to the Committee and report back to the Committee before the next meeting.
- W.S. 7-13-401, 7-13-408, 7-13-421, Mr. Bob Lampert, Director, Department of Corrections, offered the assistance of Mr. Les Pozsgi to work with Mr. Rivera for the development of proposed changes to these statutes the Department believes are important. The Committee agreed that Mr. Rivera should work with Mr. Pozsgi to prepare a draft bill relating to amendments to parole provisions for consideration by the Committee.
- W.S. 7-18-114, Mr. Rivera will research why this was assigned to the Committee and report back to the Committee before the next meeting.

COMPENSATION FOR PERSONS EXONERATED

Ms. Kathryn Monroe, Director, Rocky Mountain Innocence Project, Mr. Matt Redle, Sheridan County Prosecuting Attorney, and Ms. Mary Rose Brown, University of Wyoming Law Student intern, addressed the Committee on compensation for exonerated persons. Ms. Brown distributed Appendix 12, and explained that 27 states offer compensation for individuals exonerated of a crime. Ms. Brown expanded that individuals who spend a number of years in jail and are then exonerated need services. Because they have been exonerated, they are not eligible for the same services as individuals who have been released after their sentence has been served. The purpose of the Innocence Project proposal is to provide these individuals with services for transition. Mr. Redle stated that Ms. Brown has prepared proposed legislation to address this issue. The proposed legislation would be sent to stakeholders for comment and changes before being submitted to the Committee.

Chairman Ross asked if there are two different models and whether compensation is automatic or must be approved. Ms. Brown answered that one mechanism is court ordered. The other option is a two step process. The individual can file a suit against the State or go through an administrative process. The compensation scale depends on the State.

Chairman Ross asked if the states that have done this have set up a fund. Ms. Monroe stated that most states have not set aside funds. The Legislature would appropriate funds as the need arises.

Representative Gingery questioned whether this legislation would bar a suit for a civil liberties violation. Ms. Monroe replied that some states include waivers and others do not.

Chairman Ross asked if the Committee was in favor of sending a letter to the Management Council requesting this topic be added as an interim study. The Committee agreed to ask the Management Council for approval to add the topic as interim committee topic.

OTHER BUSINESS

The Committee tentatively agreed to meeting dates of August 2 – 3, 2010 for the next meeting. The location preferred for the meeting was Thermopolis.

There being no further business, Chairman Ross adjourned the meeting at 2:45 p.m.

Senator Tony Ross, Cochairman

Representative Keith Gingery, Cochairman

Committee Meeting Materials Index

Appendix	Appendix Topic	Appendix Description	Appendix Provider
1	Committee Sign-In Sheet	Lists meeting attendees	Legislative Service Office
2	Committee Meeting Agenda	Provides an outline of the topics the Committee planned to address at meeting	Legislative Service Office
3	Department of Family Services (DFS) Juvenile Justice Statistics	Provides statistics and data relating to juveniles served by DFS	Department of Family Services
4	Proposed Legislative Intent relating to Juveniles	Contains language expressing proposed legislative intent of juvenile services in Wyoming	Honorable Gary Hartman, Governor's Office
5	Montana Department of Corrections Youth Services Budget	Describes the FY2010 Youth Services budget for the Montana Department of Corrections	Steve Gibson, Director, Montana Youth Services Division
6	Flowchart of Services for Juveniles in the Juvenile Justice System	Describes the continuum of care available in Wyoming for juveniles in the juvenile justice system	Bob Mayor, St. Joseph's Children's Home
7	White paper on Juvenile Services in Wyoming	Provides a copy of testimony presented to the Committee describing services available for juveniles in the juvenile justice system	Bud Patterson, Normative Services Inc., Sheridan, Wyoming
8	Primer on Wind Energy Rights	Describes basic legal issues relating to the development of wind energy	Professor Dennis Stickley, University of Wyoming College of Law
9	PowerPoint Presentation on Wind Rights in Wyoming	Provides information on wind energy issues relating to the development of wind energy	Professor Dennis Stickley, University of Wyoming College of Law
10	Position Paper on Wind Energy	Presents the position of Rocky Mountain Power on wind energy issues	Matt Grant, Rocky Mountain Power
11	Memorandum on Streamlined Civil Procedures	Describes issues and studies on streamlined civil procedures in cases involving limited damage claims	Legislative Service Office
12	Rocky Mountain Innocence Project (RMIP) Report	Describes the reasons and need for compensation of persons exonerated by DNS evidence after being wrongfully imprisoned	Ms. Mary Rose Brown, Rocky Mountain Innocence Project

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JOINT JUDICIARY COMMITTEE *Summary of Proceedings*