



Law and Justice Interim Committee

62nd Montana Legislature

SENATE MEMBERS

JIM SHOCKLEY--Chair
SHANNON AUGARE
STEVE GALLUS
GREG HINKLE
LYNDA MOSS
TERRY MURPHY

HOUSE MEMBERS

MIKE MENAHAN--Vice Chair
ELLIE BOLDMAN HILL
STEVE LAVIN
MARGARET MACDONALD
MICHAEL MORE
KEN PETERSON

COMMITTEE STAFF

SHERI SCURR, Lead Staff
DAVID NISS, Staff Attorney
DAWN FIELD, Secretary

MINUTES

December 16, 2011

Room 152, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the 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

SEN. JIM SHOCKLEY, Chair
REP. MIKE MENAHAN, Vice Chair

SEN. STEVE GALLUS
SEN. GREG HINKLE
SEN. TERRY MURPHY
REP. STEVE LAVIN
REP. MARGARET MACDONALD
REP. MICHAEL MORE
REP. KEN PETERSON

COMMITTEE MEMBERS EXCUSED/ABSENT

SEN. SHANNON AUGARE
SEN. LYNDA MOSS
REP. ELLIE BOLDMAN HILL

STAFF PRESENT

SHERI SCURR, Lead Staff
DAVID NISS, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Law and Justice Interim Committee:

- approved drafting two committee bills on jail suicide prevention (Rep. MacDonald);
- approved redrafting of HB 365 (with technical corrections) to revise emergency detention standards;
- approved drafting a third committee bill on jail suicide (Rep. More); and
- approved a motion to delay any action related to the preservation of biological evidence until the June meeting.

CALL TO ORDER AND ROLL CALL

00:00:37 SEN. SHOCKLEY called the meeting to order at 8:00 a.m. The Secretary took roll, Sen. Augare, Sen. Moss, and Rep. Boldman Hill were excused (Attachment 1).

00:00:51 **Sheri Scurr, Research Analyst, Legislative Services Division (LSD)**, reviewed the day's meeting agenda (Attachment #1).

JAIL SUICIDE PREVENTION

Kentucky Mental Health Crisis Network - potential Montana Hotline

00:02:41 **Connie Milligan, Licensed Clinical Social Worker, and Raymond Sabbatine MA, Bluegrass Regional MH-MR Board, Kentucky**, discussed Kentucky's jail suicide prevention model which created a partnership between jails and mental health and was developed as a response to a high number of jail suicides. Ms. Milligan and Mr. Sabbatine discussed the Power PowerPoint slide presentation via polycom telephone (EXHIBIT 1).

00:39:09 **Terry Jessee, Counselor, Yellowstone County, Detention Facilities**, said that Yellowstone County does not need the Kentucky program because of its significant resources and jail suicide prevention programs already in place but that the Kentucky model is an evidence-based best practice model and would work well in Montana. He said that 24-hour mental health centers would probably be needed to help provide assessment and services but that much could be done via telephone, video, or computer technology. (Mr. Jessee provided a summary of his thoughts, including preliminary budget information (EXHIBIT 2).)

00:43:12 Ms. Milligan and Mr. Sabbatine discussed the Kentucky program's applicability to Montana.

00:47:22 Mr. Jessee said the program is unaffordable for counties, law enforcement agencies, and/or the Department of Public Health and Human Services (DPHHS) and would require state funding. Mr. Jessee noted that since HB 61 (Rep. Bob Ebinger's bill for a pilot program for jail suicide prevention) was tabled in the 2009 Legislature, twelve jail suicides have occurred in Montana jails.

Committee Questions

- 00:49:29 REP. MENAHAN asked how the Kentucky program structures its court surcharges. Ms. Milligan said that a \$5 surcharge on criminal offenses is the sole funding source.
- 00:52:57 SEN. SHOCKLEY asked for the total cost of the program. Ms. Milligan said that annual cost is approximately \$800,000. She provided additional budget details.
- 00:54:36 SEN. SHOCKLEY asked if it is possible to stop a person from committing suicide in a detention center if the person is determined to do so. Mr. Sabbatine said that it comes down to a question of providing a reasonable standard of care and that the more a jail does to prevent a suicide, the more liability protection it has.
- 00:55:46 SEN. SHOCKLEY asked if a Montana program could be funded through court fees. **David Niss, Staff Attorney, LSD**, explained surcharges that are assessed in Montana courts and the programs they fund.

Responses and Recommendations for Moving Forward

- 01:02:16 **Captain Dennis Mccave, Yellowstone County Sheriff's Office and Montana Sheriffs and Peace Officer's Association (MSPOA)**, read a statement into the record summarizing the MSPOA's position on jail suicide prevention (EXHIBIT 3).
- 01:06:20 **Kevin Olson, Administrator, Montana Law Enforcement Academy**, reviewed the Academy's training requirements, including topics specific to mental health/suicide prevention issues. He said that Montana' training program would require adjustments and that additional costs would be incurred, should the Kentucky model be adopted (EXHIBIT 4).
- 01:11:15 **Greg Jackson, Montana Association of Counties (MACo)**, explained MACo's Joint Powers Insurance Authority Property and Liability Trust and MACo's efforts to mitigate the liability to counties resulting from jail suicide events (EXHIBIT 5).
- 01:17:56 **Jimmy Steyee, statistician, Montana Board of Crime Control (MBCC)**, reviewed measures taken by the MBCC to keep accurate and complete statistics on the scope and nature of deaths in custody and arrest-related deaths. He discussed details of several programs created by the MBCC to track this information.
- 01:19:54 **Karl Rosston, State Suicide Prevention Officer, Department of Public Health and Human Services (DPHHS)**, said he sees his position as providing technical support and training, and to work collaboratively with counties on jail suicide prevention programs.

Committee Questions

- 01:21:06 REP. MORE asked Mr. Jackson how many detention centers are located in the nine counties that do not participate in MACo's liability insurance pool. Mr. Jackson said that two are insured by a municipal authority but would find out about the remaining counties.

- 01:22:19 REP. MACDONALD asked if MACo has reviewed claims related to jail suicides. Mr. Jackson said no but that he would obtain that information. He said that he could say that the rate has increased dramatically. REP. MACDONALD said she would like a full analysis of the data.
- 01:23:41 REP. PETERSON asked Captain McCave how Yellowstone County funds its jail suicide prevention programs. Captain McCave said funding sources include tax revenue, the inmate benefit fund, and commissary profits.
- 01:27:00 REP. PETERSON asked about the relationship between mental health providers and the jail in Billings. Captain McCave said they work together, usually through a contract employee structure.
- 01:28:50 REP. PETERSON asked if MACo could add a surcharge to counties and cities to fund it's insurance pool. Mr. Jackson said it is an option and that surcharges have been used by MACo before to reduce liability.
- 01:31:44 REP. PETERSON said he is concerned about county participation and shortage of resources, particularly in small and rural counties. He asked if the screening process could be handled over the telephone. Captain McCave agreed that small and rural counties would present the biggest challenges because they do not have the resources to pay for jail suicide prevention programs. He said that Yellowstone County often "hosts" offenders from these counties.
- 01:34:31 Mr. Olson said that while the Academy has provided officer training in remote areas of the state, there are no facilities located within a reasonable distance to take people who are experiencing a mental health crisis.
- 01:35:53 REP. PETERSON asked Mr. Rosston to comment. Mr. Rosston agreed that the Kentucky model is a great model but also agreed that Montana's geographic and population issues are also significant factors. He said he didn't think Montana has the resources to provide the necessary services, particularly mental health crisis centers.
- 01:37:06 REP. MENAHAN said that there a number of Community Mental Health Centers (CMHCs) around Montana. He asked if a crisis response team from a CMHC could go to a rural jail, rather than having the sheriff transport an individual to the Montana State Hospital for an evaluation. Captain McCave said that not only is it very difficult to get a mental health provider to a rural jail to evaluate a prisoner, but that on-call mental health counselors don't always understand the dynamics of jails. He said what officers need is a call center through which they could discuss different risk levels, proper restraint methods, and when and where to transport.
- 01:41:57 Mr. Olson added that in some cases, medication or detox is needed, which requires a treatment bed facility with physician or psychiatric care.

- 01:42:36 REP. MORE asked Captain McCave about current jail populations in eastern Montana. Captain McCave said that he didn't have exact numbers but could say that many jails are reaching capacity.
- 01:43:54 SEN. SHOCKLEY asked about the effectiveness of training in reducing county liability. Mr. Jackson said training does decrease the risk but that it is difficult to measure in risk management programs. He said that main thing is to look at the number and severity of claims.

Public Comment

- 01:47:23 **Kathy McGowan, Community Mental Health Centers**, commented on the locations of and services provided by CMHCs, including services available to county jails. She also discussed CMHC's budgetary concerns regarding the Kentucky program and training issues for law enforcement officers; and said she is available to work with the LJIC however she can to help build community resources.
- 01:55:09 **Brian Gootkin, Gallatin County Undersheriff**, commented on the effects of jail suicide on not only the victim's family but the jail staff and system. He discussed the need to get suicidal prisoners out of jails and to mental health professionals.
- 01:57:26 **Matt Kuntz, Executive Director, NAMI-Montana**, said that mental illness is a major cause of suicide. He said that he is pleased with the Montana's effort to deal with mental illness but that there a need for a centralized program to provide 24-hour assistance to rural communities that will never be able to have a mental health center. He discussed the need for funding and commented that many mental health issues are related to drug and alcohol addiction.
- 01:59:58 **Ruben Mckinney, citizen**, apologized for presenting unvetted information to the LJIC at the previous days' meeting. He referred to two jail suicides and how both were investigated, and suggested that jail suicide investigations be required to use an out-of-town investigator in order to ensure an unbiased investigation.

Committee discussion and action

- 02:01:34 REP. MORE said that he supported HB 60, sponsored by Rep. Bob Ebinger in the 2009 Legislative Session, and that the issue of community mental health is of critical importance. He said he would like to consider legislation to combine the issue of mandatory video teleconferencing to identify critical cases and to establish locales to which people can be transferred to receive treatment at a modest cost to the state. He said that with twelve jail suicides since 2009, it is time to take action to address what he considers a crisis situation.
- 02:05:02 REP. MENAHAN agreed that a comprehensive state-wide policy is badly needed. He said he liked the Kentucky model but is concerned about funding. He said that general fund money may be the best option since court surcharges may be close to maximum capacity.
- 02:07:11 SEN. GALLUS encouraged the committee to think broadly, saying that if there was a state-wide crisis intervention policy, people in crisis wouldn't end up in jail

in the first place, which would decrease jail suicide and the burden on law enforcement.

02:08:28 REP. PETERSON thought a surcharge on insurance companies could provide a source of funding.

02:10:25 REP. MORE agreed with REP. PETERSON's suggestion but said he thought that imposing a nominal fee to those people using the public defender system would also be a potential source of funding.

02:11:17 **REP. MACDONALD moved for the LJIC pursue a committee bill for a jail suicide prevention program and to continue to look at funding options.** She said she was not convinced that an insurance mandate is needed but that a coordinated effort is needed to help counties develop the services and tools needed to deal with the issue.

02:12:33 The committee members discussed the motion. SEN. SHOCKLEY said that staff would draft two bills, one for a pilot project program only and the other as a more comprehensive program that would apply to all county jails.

02:17:14 **REP. MACDONALD's motion passed on a 10-0 unanimous voice vote. Sen. Moss voted aye by proxy (MacDonald).** (Sen. Augare and Rep. Hill were excused and did not vote.)

02:17:31 SEN. SHOCKLEY recessed the LJIC at 10:20 a.m. for a short break.

BREAK

02:23:52 SEN. SHOCKLEY called the meeting back to order.

EMERGENCY DETENTION STANDARDS

Panel - recommendations on changing emergency detention standards

Panelists based their remarks on Ms. Scurr's legislative background brief on HB 365 (revising statutes related to involuntary commitments), sponsored by REP. MENAHAN in the 2011 session (EXHIBIT 6).

02:28:36 Matt Kuntz, Executive Director, NAMI-Montana, said that NAMI-Montana supports the recommended changes to emergency detention standards. He said the changes won't give NAMI-Montana everything it wants but is a critical step forward. Regarding costs, Mr. Kuntz said that it costs about \$100,000 for one year of care in Montana State Hospital forensic unit and implementing the emergency detention standards would cost much less.

02:32:06 **Anita Roessmann, Staff Attorney, Disability Rights Montana (DRM),** said that overall, DRM supports clarification of the current wording of the emergency detention standards but that it does have concerns that abuses could occur. She discussed her concerns and several of recommendations for wording as included in her written testimony (EXHIBIT 7).

02:39:25 **Greg Hood, Public Defender, Missoula,** said the Office of the Public Defender opposes the proposal as currently written, specifically the health and safety

language. Mr. Hood said the health and safety provisions are too broad, which increases the pool of people who can be detained. He discussed his concerns.

02:45:24 **Andy Hunthausen, Lewis and Clark County Commissioner**, said he supports the proposed changes and discussed several issues forming the basis of his opinion.

02:50:04 **Lou Thompson, Administrator, Addictive and Mental Disease Disorders (AMDD), Department of Public Health and Human Services (DPHHS)**, said that the Department neither supports nor opposes the recommendations. Ms. Thompson discussed statistics relating to emergency detentions at Montana State Hospital and said that the reason for the decrease in emergency detentions can be attributed to four factors: better training, creation of the 72-hour presumptive eligibility for uninsured and underinsured individuals, increase in crisis stabilization beds, and secure crisis stabilization beds as authorized in HB 131.

02:54:33 Brian Gootkin, Gallatin County Undersheriff, discussed training programs sponsored by the Law Enforcement Academy on crisis intervention. Undersheriff Gootkin also discussed the difficulty of law enforcement officers dealing with inmates who are not considered incapacitated but are unable to care for themselves.

02:57:24 **Lewis Smith, Powell County Attorney**, said that it is difficult for law enforcement officers to deal with a case in which no crime has been committed but is obvious the person is in trouble. He said it is especially difficult for rural counties to deal with these types of situations. Mr. Smith said that these people can usually be convinced to go back on their medications and be stabilized while waiting for an evaluation at MSH, but that it would be less stressful to be able to do that without having to transport them to Warm Springs.

03:04:46 **John Glueckert, Administrator, Montana State Hospital**, discussed population and emergency detention statistics from MSH. He noted that most individuals brought to the hospital have drug or alcohol issues at the time of admission and that it is challenging to sort out what is creating the crisis.

Committee Questions

03:08:15 REP. MENAHAN asked if law enforcement should be allowed an opportunity to intervene earlier in cases in which a person is not necessarily a danger to self or others, but in which it is obvious that their health and/or safety is compromised. He said his bill would change the definition of emergency detention in order to allow law enforcement the opportunity to intervene earlier to evaluate a person to determine whether or not they meet the criteria for emergency detention. Mr. Hood said there is not good answer for borderline cases such as described by Rep. Menahan but that his concern is to ensure that the conversation will take into consideration curtailment of personal liberty and expansion of executive branch power.

03:12:22 Ms. Roessman said she supported redefining the emergency detention standard in order to clarify that it is an emergency situation. She discussed her position further.

03:14:54 Mr. Kuntz said that because mental illness is a disruption to the brain circuits which prevent a person from functioning properly, civil rights is not an issue. He said he understands Mr. Hood's concerns but thinks the proposed language is a good fix.

Public Comment

03:20:01 **Mark Murphy, County Attorney Association and Montana Association of Chiefs of Police**, discussed the impact of the *Donaldson V. O'Connor* decision in the treatment for the mentally ill. He said that while it is difficult to think of spending money to save money in the long run, diversion programs work and save untold dollars.

03:25:08 **Jerry Williams, Executive Director, Montana Police Protective Association**, said his association supports the re-drafting of HB 365 because law enforcement has become the first responder and gate keeper to the mental health system. Mr. Williams said the proposed change would be another resource for law enforcement to help people.

03:26:59 **Scott Crichton, American Civil Liberties Union (ACLU)**, said that he agreed with concerns discussed by Mr. Hood and Ms. Roessmann and was available to answer committee questions.

03:27:42 SEN. SHOCKLEY asked Mr. Jessee what the cost of HB 60 would have been. Mr. Jessee said the fiscal note said that the pilot program would cost \$240,000 the first year and \$180,000 the second year.

Committee discussion and action

03:28:13 SEN. HINKLE said that Mr. Hood's comments were enlightening and agreed that caution would have to be used when expanding mental health definitions.

03:28:51 **REP. MENAHAN moved to re-draft HB 365 as committee bill for the 2013 legislative session.** REP. PETERSON said he would support it so long as a certain amount of discretion was given to law enforcement.

03:31:21 REP. LAVIN said he would also support it because it would give law enforcement officers more ability to help people. He noted that the fiscal note was minimal.

03:32:40 Ms. Scurr asked REP. MENAHAN if the technical issues addressed in David Niss' legal memo (EXHIBIT 8) would be included in the motion. REP. MENAHAN said yes. **The motion passed 10-0 on a unanimous roll call vote, SEN. MOSS voted aye by proxy (MacDonald).** Sen. Augare and Rep. Hill were excused and did not vote.

- 03:34:13** REP. MORE asked to return to the discussion of jail suicide and said he could not support REP. MACDONALD's proposals for jail suicide bills. He discussed his concerns in more detail.
- 03:36:25** **REP. MORE moved to adopt draft legislation for a jail suicide prevention bill, which include three specific facets: video and skype conferencing ability between jails and mental health professionals; training for all law enforcement agencies to allow Montana to utilize the Kentucky model standards, and authorization for law enforcement officers to transport detainees in crisis situations to the closest secure mental health facility when the county jail lacks the adequate standards to meet the Kentucky model.**
- 03:41:24 REP. MACDONALD thought her previous motion to draft jail suicide bills would address REP. MORE's concerns. REP. MORE said that he wants a bill draft that is more specific and narrow than HB 60 with clearly defined steps and costs.
- 03:43:35 REP. PETERSON asked about funding. **REP. MORE amended his motion to include specific funding sources, which would include a surcharge on county insurance pools through JPIA and MMIA, a public defender fee, and possibly a court surcharge fee.**
- 03:44:54 Mr. Niss discussed several concerns. REP. MORE said he would meet with Mr. Niss to clarify the components to be included in the bill draft.
- 03:46:50 **REP. MORE's motion passed on 9-1 roll call vote. SEN. GALLUS voted no by proxy (Menahan) and SEN. MOSS votes yes by proxy (MacDonald). Sen. Augare and Rep. Hill were excused and did not vote.**
- 03:48:41 SEN. SHOCKLEY recessed the LJIC for lunch at 11:50 a.m..
- LUNCH BREAK**
- 04:49:57 SEN. SHOCKLEY called the meeting back to order at 12:51 p.m.

RETENTION OF DNA EVIDENCE

- 04:52:12 Panelists based their remarks on Ms. Scurr's background brief on storage of biological evidence, including a legislative history of SB 58 (EXHIBIT 9).
- 04:52:21 **Jessie McQuillan, Montana Innocence Project**, discussed a summary of other states requirements for preservation of biological evidence (EXHIBIT 10) and reported on the work of a national technical working group that is compiling research-based recommendations and guidelines on DNA preservation (EXHIBIT 11). Ms. McQuillan suggested that the LJIC hold off on making a decision until the national recommendations become available later in the year.
- 05:00:05 **Mike Linder, Sheriff, Yellowstone County**, said the main concerns of law enforcement agencies are: deprivation of property; storage concerns, including for items that need refrigeration or for bulk items; the amount of evidence that may need to be kept; and evidence requirements for uncontested cases. Sheriff

Linder said that suggestions he received included: keeping evidence in contested cases only, choose what evidence to preserve and have uniform collection and storage procedures, and limited sample size requirements and limited retention times.

- 05:05:25 **Ed Sheehy Public Defender**, said he was not speaking as a public defender but from his own experience and perspective. He discussed 46-21-110 and 46-21-111, MCA, regarding a post-conviction relief, which includes the ability to request DNA testing of evidence.
- 05:09:55 **Pat Dringman, Sweetgrass County Attorney**, discussed the issue of evidence preservation from a small county perspective. He said that the financial and physical requirements would be a huge burden on small counties and predicted that it would be undoable for the smallest counties. Mr. Dringman said his opinion is that there is not a problem because remedies are already in place under the post-conviction relief statutes, as discussed by Mr. Sheehy.
- 05:19:34 **Kelsen Young, Coalition Against Domestic and Sexual Violence**, said that the Coalition appreciates and supports the LJIC efforts to deal with this issue but that the Coalition may pursue its own proposal if the LJIC's action is not satisfactory. She also discussed concerns relating to unsolved crimes and unprocessed rape kits, SB 365, and Coalition's goal of a collaborative consensus solution.
- 05:22:08 **Commissioner Bill Barron, Lake County Commissioner, Montana Association of Counties (MACo)**, discussed the counties' overwhelming opposition to an evidence storage bill. Commissioner Barron submitted written comments which included results from a MACo survey regarding each county's evidence storage facilities and policies (EXHIBIT 12).
- 05:26:17 **Phil Kinsey, State Crime Lab**, suggested that the committee postpone a decision until the national panel completes its work because the recommendations would likely address many of the concerns discussed. He discussed current space of the crime lab and said that there is room for expansion but that additional staff and equipment needed to analyze evidence will impact costs. He agreed that there are major concerns and that funding will be an issue but that a statewide policy is needed to ensure consistency.

Committee questions

- 05:32:47 REP. PETERSON asked Sheriff Linder about the manpower required to harvest, catalog, and store evidence samples and swatches. Sheriff Linder said his concern is that his officers are already overworked and that it would be difficult to do even more. He said manpower, organization, and storage are great concerns.
- 05:35:48 REP. MENAHAN asked if the public defender can request the Crime Lab to test any biological evidence found at the scene of a crime. Mr. Kinsey said yes. REP. MENAHAN reviewed all of the processes that have to be completed before a conviction is declared final and asked if the defense would have identified evidence that needed to be tested for DNA prior to that point. Mr. Sheehy said

there have been cases in which key evidence was not tested because evidence collection and testing procedures can differ between law enforcement agencies.

05:40:36 In response to a question from REP. MACDONALD about the victim concerns, Ms. Young said that currently, there is no existing law or standard of practice to deal with unsolved cases and preservation of evidence in unsolved cases. She said that she would like that issue to be addressed in any future legislation.

PUBLIC COMMENT

05:45:42 **David Stenerson, Acting Chief Public Defender**, said the OPD does accept post conviction relief applications, with certain exceptions.

Committee discussion and action

05:47:06 SEN. SHOCKLEY suggested that the LJIC not take action now, but wait until the national work group report becomes available in June. **REP. PETERSON moved to not approve a biological evidence retention bill. The motion passed on a unanimous voice vote. Sen. Moss voted yes by proxy (MacDonald).**

MOTOR VEHICLE REGISTRATION

05:48:22 **Tim Burton, Deputy Director, Department of Justice**, said that the MERLIN system is working and noted that the County Treasure's Association had sent a letter to the LJIC supporting that statement (EXHIBIT 13).

WRAP-UP - NEXT MEETING - ADJOURNMENT

05:50:52 Ms. Scurr reviewed agenda items for the February 23 and 25 meeting.

05:53:51 SEN. HINKLE requested staff research on restitution and restorative justice alternatives to incarceration; obstacles to parole and parole eligibility; probation and parole violations and policy options for reducing violations; DOC grievance policies for handling inmate family concerns; and data and information on inmate medical issues.

05:57:50 SEN. SHOCKLEY said he plans to go to MSP to meet with inmate Ronnie Harriman regarding his medical condition. He said he has discussed his plan with the DOC and that Director Ferriter will be in attendance.

05:58:17 SEN. GALLUS expressed his concern that the LJIC may be overstepping its bounds by voting to place the allegations involving the Lake County Sheriff's Office and ongoing POST investigation on a future meeting agenda. He requested that the Code Commissioner provide a legal opinion regarding LJIC's oversight of this issue.

ADJOURNMENT

06:08:22 With no further business before the Law and Justice Interim Committee, SEN. SHOCKLEY adjourned the meeting at 2:10 p.m. The next LJIC meeting is scheduled for February 23 and 24, 2012, in Helena.