



Decision Brief

*for the
Law and Justice Interim Committee*

December 2011

Decisions for the Law and Justice Interim Committee Under HB 142 - Review of Advisory Councils and Reports

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HB 142

Adopted by the 2011 Legislature, House Bill No. 142 added the following duty to the statutory duties of each interim committee.

"...(d) review statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210;...."

As part of this review, the Law and Justice Interim Committee may also wish to consider whether an advisory council or report that is not in statute, should be.

Assigned agencies

The Law and Justice Interim Committee is assigned by statute to monitor the following agencies and entities administratively attached to these agencies:

- Department of Justice
- Montana Board of Crime Control (DOJ)
- Department of Correction
- Board of Pardons and Parole (DOC)
- Judicial Branch
- Office of State Public Defender

December 16 decision points

At the December 16, 2011, meeting, the LJIC only needs to decide (1) does the committee want to consider changes to current statutes for the listed agencies - yes or no; and (2) are there advisory councils or reports the LJIC would like to see in statute that are not currently in statute.

Decision points for next meetings

Based on the committee's December 16 decisions, staff will schedule time at subsequent meetings for additional discussion and testimony. Then, the LJIC will decide what legislation to request be drafted for introduction in the next session.

Organization of materials

Table 1	lists relevant advisory councils or commissions
Table 2	lists reports required by statute
Attachment A	provides statutes referenced in Table 1 in numerical order
Attachment B	provides statutes referenced in Table 2 in numerical order

Copies of reports

A link to each of the reports listed in Table 2 as been posted to the LJIC's website. On the LJIC's main page, scroll down to Statutory Duties and click on HB 142 duties - advisory councils and reports.

Table 1 - Advisory Councils or Commissions

ADVISORY COUNCIL OR COMMISSION	MCA SECTION	MEMBERSHIP	LEGISLATIVE MEMBER(S)?	NUMBER OF MEETINGS REQUIRED	SHOULD LJIC CONSIDER CHANGES?
Department of Justice					
Fire Prevention and Investigation Advisory Council	2-15-2005	determined by executive order under 2-15-122	no	at least annually	
Domestic Violence Fatality Review Commission	2-15-2017	18 max	yes	as necessary	
Gaming Advisory Council	2-15-2021	9	yes	as necessary	
Criminal Intelligence Information Advisory Council	44-5-501	6	yes	at least annually	
Advisory Council on Concealed Weapons Permit Issues <i>(to advise governor)</i>	45-8-329	interested persons appointed by governor	not specified	not specified	
Department of Corrections					
Department of Corrections Advisory Council	2-15-122 discretionary	dissolved by governor in 2011	n/a	no longer meets	
Victim's Advisory Council	2-15-122 discretionary	dissolved by governor in 2011	n/a	no longer meets	
Judicial Branch					
District Court Council	3-1-1602	9	no	not specified	
Office of State Public Defender					
None	n/a	n/a	n/a	n/a	

QUESTION FOR LJIC: Should any new statutory advisory councils be considered? If so, explain.

Table 2 - Statutorily-Required Reports to the Legislature

AGENCY AND REPORT	STATUTE	SUMMARY	SHOULD THE LJIC CONSIDER CHANGES ?
Department of Justice			
Cigarette standards	50-65-102	Provides the number of residential fire deaths, the amount of property loss, and the activities of the Fire Prevention and Investigations section of the Division of Criminal Investigation	
Racial profiling	44-2-117	Analyzes the Montana law enforcement community's implementation of and compliance with the state law prohibiting racial profiling.	
Domestic violence fatality review commission	2-15-2017	Findings and recommendations are to be made to the legislature in writing no later than the third Tuesday in January of each year the legislature meets in regular session. Reference is made to periodic reports in addition to the biennial report.	
Board of Crime Control			
None	n/a	n/a	
Department of Corrections			
None	n/a	n/a	
Board of Pardons and Parole			
Medical parole	46-23-210	The Department of Corrections and the Board of Pardons and Parole are required in the statute to make a report to the CFHHS interim committee and the LJIC on the "outcome related to" medical parolees, including health care costs and payments related to the care of a person released on parole.	

AGENCY AND REPORT	STATUTE	SUMMARY	SHOULD THE LJIC CONSIDER CHANGES ?
Judicial Branch			
Judicial Branch Information Technology Status Report	3-1-702	The Office of Court Administrator must provide to the LJIC an overview and progress report on recent information technology projects.	
Evaluation of out-of-home placements of juveniles involved with youth probation	41-5-2003	The Office of Court Administrator must do an evaluation (which has been contracted out) on selected out-of-home placements of juveniles to determine whether juvenile delinquency intervention program (JDIP) placements are fulfilling program purposes. This report must go to the DOC, the cost containment review panel, and the District Court Council and the LJIC.	
Report on Annual License Tax on Attorneys	37-61-211	The Office of Court Administrator must present to the LJIC a report on the collection and expenditures of the license tax on attorneys. The report is to be made annually to the LJIC at its first meeting after the end of each fiscal year.	
Office of Public Defender			
Biennial report	47-1-105	Required to be sent to the governor, supreme court, and legislature, and to the LJIC in particular. The statute provides an (a) through (k) list of information to be included in the report.	

QUESTION FOR LJIC: Should any new reports be required by statute? If so, explain.

Appendix A MCA References for Table 1 - Advisory Councils

2-15-122. Creation of advisory councils. (1) (a) A department head or the governor may create advisory councils.

(b) An agency or an official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, may also create advisory councils but only if federal law or regulation requires that the official or agency create the advisory council as a condition to the receipt of federal funds.

(c) The board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, the secretary of state, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. The creating authority shall file a record of each council created by it in the office of the governor and the office of the secretary of state in accordance with subsection (9).

(2) Each advisory council created under this section must be known as the ".... advisory council".

(3) The creating authority shall:

(a) prescribe the composition and advisory functions of each advisory council created;

(b) appoint its members, who shall serve at the pleasure of the creating authority; and

(c) specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity, as defined in 2-15-102.

(5) (a) Unless an advisory council member is a full-time salaried officer or employee of this state or of any political subdivision of this state, the member is entitled to be paid in an amount to be determined by the department head, not to exceed \$50 for each day in which the member is actually and necessarily engaged in the performance of council duties and to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of council duties. The maximum daily pay rate must be adjusted for inflation annually using the formula provided in 15-6-134(2)(b)(ii) and (2)(b)(iii), except that the base income level and appropriate dollar amount must be \$50 a day.

(b) Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year, an advisory council shall elect a presiding officer and other officers that it considers necessary.

(7) Unless otherwise specified by the creating authority, an advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the presiding officer or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (1)(c), an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor shall file in the governor's office and in the office of the secretary of state a record of the council created showing:

(a) the council's name, in accordance with subsection (2);

(b) the council's composition;

(c) the appointed members, including names and addresses;

(d) the council's purpose; and

(e) the council's term of existence, in accordance with subsection (10).

(10) An advisory council may not be created to remain in existence longer than 2 years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs

later, unless extended by the appointing authority in the manner set forth in subsection (1). If the existence of an advisory council is extended, the appointing authority shall specify a new date, not more than 2 years later, when the existence of the advisory council ends and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary.

2-15-2005. State fire prevention and investigation section -- advisory council. (1) There is a state fire prevention and investigation section in the department of justice and under the supervision and control of the attorney general.

(2) A person appointed to administer the fire prevention and investigation section shall represent the state of Montana as the state fire marshal and must be a person qualified by experience, training, and high professional competence in matters of fire service and safety.

(3) The attorney general shall create a fire prevention and investigation advisory council in accordance with procedures provided in 2-15-122.

2-15-2017. Domestic violence fatality review commission -- confidentiality of meetings and records -- criminal liability for unauthorized disclosure -- report to legislature. (1) There is a domestic violence fatality review commission in the department of justice.

(2) The commission shall:

(a) examine the trends and patterns of domestic violence-related fatalities in Montana;

(b) educate the public, service providers, and policymakers about domestic violence fatalities and strategies for intervention and prevention; and

(c) recommend policies, practices, and services that may encourage collaboration and reduce fatalities due to domestic violence.

(3) The members of the commission, not to exceed 18, are appointed by the attorney general from among the following disciplines:

(a) representatives from state departments that are involved in issues of domestic abuse;

(b) representatives of private organizations that are involved in issues of domestic abuse;

(c) medical and mental health care providers who are involved in issues of domestic abuse;

(d) representatives from law enforcement, the judiciary, and the state bar of Montana;

(e) representatives of Montana Indian tribes;

(f) other concerned citizens; and

(g) a member of the legislature who serves on either the house judiciary committee or the senate judiciary committee.

(4) The members shall serve without compensation by the commission but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503, and members who are full-time salaried officers or employees of this state or of any political subdivision of this state are entitled to their regular compensation. The provisions of 2-15-122 do not apply to the commission.

(5) The commission shall review fatalities that are not under investigation and fatalities in cases that have been adjudicated and have received a final judgment.

(6) Upon written request from the commission, a person who possesses information or records that are necessary and relevant to a domestic violence fatality review shall, as soon as practicable, provide the commission with the information and records. A person who provides information or records upon request of the commission is not criminally or civilly liable for providing information or records in compliance with this section.

(7) The meetings and proceedings of the commission are confidential and are exempt from the provisions of Title 2, chapter 3.

(8) The records of the commission are confidential and are exempt from the provisions of Title 2, chapter 6. The records are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal action unless the records are reviewed by a district court judge and ordered to be provided to the person seeking access. The commission shall disclose conclusions and recommendations upon request

but may not disclose information, records, or data that are otherwise confidential. The commission may not use the information, records, or data for purposes other than those designated by subsections (2)(a) and (2)(c).

(9) The commission may require any person appearing before it to sign a confidentiality agreement created by the commission in order to maintain the confidentiality of the proceedings. In addition, the commission may enter into agreements with nonprofit organizations and private agencies to obtain otherwise confidential information.

(10) A member of the commission who knowingly uses information obtained pursuant to subsection (6) for a purpose not authorized in subsection (2) or who discloses information in violation of subsection (8) is subject to a civil penalty of not more than \$500.

(11) The commission shall report its findings and recommendations in writing to the legislature, the attorney general, the governor, and the chief justice of the Montana supreme court no later than the third Tuesday in January of each year in which the legislature meets in regular session. The report must be made available to the public through the office of the attorney general. The commission may issue data or other information periodically, in addition to the biennial report.

2-15-2021. Gaming advisory council -- allocation -- composition -- compensation -- biennial report. (1) There is a gaming advisory council.

(2) The gaming advisory council is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The gaming advisory council consists of nine members. One member must be from the senate, and one member must be from the house of representatives. The senate committee on committees and the speaker of the house of representatives shall appoint the legislative members of the council. The seven remaining members must be appointed by the department, with one representing the public at large, two representing local governments, one being a Native American, and three representing the gaming industry.

(4) Each gaming advisory council member is appointed to a 3-year term of office. A member of the council may be removed for good cause by the appointing body provided for in subsection (3).

(5) The gaming advisory council shall appoint a presiding officer from its members.

(6) Members of the gaming advisory council are entitled to travel, meals, and lodging expenses as provided for in 2-18-501 through 2-18-503. A member who is not a full-time salaried officer or employee of the state or of a political subdivision of the state is also entitled to be paid \$25 for each day during which the member is actually and necessarily engaged in the performance of council duties. Expenses of the council must be paid from licensing fees received by the department.

(7) The gaming advisory council shall, within its authorized budget, hold meetings and incur expenses as it considers necessary to study all aspects of gambling in the state.

(8) (a) The gaming advisory council shall submit a biennial report to the department, at a time designated by the department, with recommendations for amendments to the gambling statutes, the need for additional or modified department rules, the clarification of existing rules, and other recommendations on the operation of the department or any other gambling-related matter.

(b) The biennial report required under subsection (8)(a) must be affixed to the report on gambling in the state that the department submits that year.

(c) The council may submit interim reports to the department as the council considers necessary.

(d) The council shall meet with the department upon request of the department.

(e) The department shall meet with the council upon request of the council.

(9) The department shall give each council member notice and a copy of each proposed change in administrative rules relating to gambling. The notice and copy must be given at the time a notice of proposed rules changes is filed with the secretary of state. The council shall review the proposal, may comment on it, and may attend any hearing on the proposal. The department shall consider any comment by any council member or by the council as a whole prior to adopting the proposed change.

3-1-1602. District court council -- appointment -- composition -- duties -- staggered terms

- staff.** (1) There is a district court council. The council must be composed of nine members as follows:
- (a) the chief justice of the supreme court or a designee of the chief justice;
 - (b) four district court judges elected by district court judges, one of whom must be from a judicial district that does not contain a first-class city as provided in 7-1-4111; and
 - (c) the following ex officio, nonvoting members appointed by the supreme court:
 - (i) one chief juvenile probation officer nominated by the Montana juvenile probation officers association;
 - (ii) one clerk of the district court nominated by the Montana association of clerks of district courts;
 - (iii) one county commissioner nominated by the Montana association of counties; and
 - (iv) one court reporter nominated by the Montana court reporters association.
- (2) The chief justice or the chief justice's designee shall serve as the presiding officer of the council and shall appoint a vice presiding officer to act in the absence of the presiding officer.
- (3) The district court council shall develop and adopt policies and procedures, subject to review by the supreme court, to administer the state funding of district courts. The policies and procedures must address but not be limited to the following issues related to district courts:
- (a) workload;
 - (b) resource allocation among the district courts;
 - (c) hiring policies;
 - (d) court procedures;
 - (e) information technology;
 - (f) for court reporters, work schedules, transcript fees, and equipment; and
 - (g) other issues regarding the state funding of district courts.
- (4) Each district court judge shall retain the inherent power to select and appoint the judge's own necessary assistants and employees and to direct the performance of their duties.
- (5) The chief justice of the supreme court shall serve on the council during the term of election or appointment. Other members shall serve staggered 3-year terms.
- (6) The court administrator shall provide sufficient support to the council to allow it to carry out its statutory duties.
- (7) The council shall provide reports to the legislature and supreme court upon request.

Appendix B MCA References for Table 2 - Reports

2-15-2017. Domestic violence fatality review commission -- confidentiality of meetings and records -- criminal liability for unauthorized disclosure -- report to legislature. (1) There is a domestic violence fatality review commission in the department of justice.

(2) The commission shall:

- (a) examine the trends and patterns of domestic violence-related fatalities in Montana;
- (b) educate the public, service providers, and policymakers about domestic violence fatalities and strategies for intervention and prevention; and
- (c) recommend policies, practices, and services that may encourage collaboration and reduce fatalities due to domestic violence.

(3) The members of the commission, not to exceed 18, are appointed by the attorney general from among the following disciplines:

- (a) representatives from state departments that are involved in issues of domestic abuse;
- (b) representatives of private organizations that are involved in issues of domestic abuse;
- (c) medical and mental health care providers who are involved in issues of domestic abuse;
- (d) representatives from law enforcement, the judiciary, and the state bar of Montana;
- (e) representatives of Montana Indian tribes;
- (f) other concerned citizens; and
- (g) a member of the legislature who serves on either the house judiciary committee or the senate judiciary committee.

(4) The members shall serve without compensation by the commission but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503, and members who are full-time salaried officers or employees of this state or of any political subdivision of this state are entitled to their regular compensation. The provisions of 2-15-122 do not apply to the commission.

(5) The commission shall review fatalities that are not under investigation and fatalities in cases that have been adjudicated and have received a final judgment.

(6) Upon written request from the commission, a person who possesses information or records that are necessary and relevant to a domestic violence fatality review shall, as soon as practicable, provide the commission with the information and records. A person who provides information or records upon request of the commission is not criminally or civilly liable for providing information or records in compliance with this section.

(7) The meetings and proceedings of the commission are confidential and are exempt from the provisions of Title 2, chapter 3.

(8) The records of the commission are confidential and are exempt from the provisions of Title 2, chapter 6. The records are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal action unless the records are reviewed by a district court judge and ordered to be provided to the person seeking access. The commission shall disclose conclusions and recommendations upon request but may not disclose information, records, or data that are otherwise confidential. The commission may not use the information, records, or data for purposes other than those designated by subsections (2)(a) and (2)(c).

(9) The commission may require any person appearing before it to sign a confidentiality agreement created by the commission in order to maintain the confidentiality of the proceedings. In addition, the commission may enter into agreements with nonprofit organizations and private agencies to obtain otherwise confidential information.

(10) A member of the commission who knowingly uses information obtained pursuant to subsection (6) for a purpose not authorized in subsection (2) or who discloses information in violation of subsection (8) is subject to a civil penalty of not more than \$500.

(11) The commission shall report its findings and recommendations in writing to the legislature, the attorney general, the governor, and the chief justice of the Montana supreme court no later than the third Tuesday in January of each year in which the legislature meets in regular session. The report must be made available to the public through the office of the attorney general. The commission may issue data or other information periodically, in addition to the biennial report.

3-1-702. Duties. The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature, including the costs of the state-funded district court program;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide the information to the legislature on request;

(3) **report annually to the law and justice interim committee and at the beginning of each regular legislative session report to the house appropriations subcommittee that considers general government on the status of development and procurement of information technology within the judicial branch, including any changes in the judicial branch information technology strategic plan and any problems encountered in deploying appropriate information technology within the judicial branch.** The court administrator shall, to the extent possible, provide that current and future applications are coordinated and compatible with the standards and goals of the executive branch as expressed in the state strategic information technology plan provided for in 2-17-521.

(4) recommend to the supreme court improvements in the judiciary;

(5) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;

(6) administer state funding for district courts, as provided in chapter 5, part 9;

(7) administer the judicial branch personnel plan; and

(8) perform other duties that the supreme court may assign.

37-61-211. Annual license tax -- municipal tax prohibited. (1) Every attorney or counselor at law admitted by the supreme court of the state to practice within the state is required to pay a license tax of \$25 a year. The tax is payable to and collected by the clerk of the supreme court on or before April 1 of each year.

(2) Upon the payment of the tax, the clerk shall issue and deliver a certificate to the person paying the tax, certifying to the payment of the license tax and stating the period covered by the payment.

(3) (a) The tax collections must be allocated to the supreme court for operations of the following commissions or other entities:

(i) commission on code of judicial conduct;

(ii) commission on courts of limited jurisdiction;

(iii) commission on practice;

(iv) commission on technology;

(v) district court council;

(vi) judicial nomination commission;

(vii) judicial standards commission;

(viii) sentence review division; and

(ix) uniform district court rules commission.

(b) The court administrator shall, as provided in 3-1-702(2), report annually on expenditures authorized in subsection (3)(a) of this section at the first meeting of the law and justice interim committee after the end of each fiscal year.

(4) A license tax may not be imposed upon attorneys by a municipality or any other subdivision of the state.

41-5-2003. Establishment of program -- department duties -- office of court administrator duties.

(1) There is a juvenile delinquency intervention program. Each judicial district shall participate in the program.

(2) The department and the judicial district shall monitor the judicial district's annual allocation provided for in 41-5-130 to ensure that the judicial district does not exceed its allocation.

(3) The department shall provide technical assistance to each judicial district for the monitoring of its annual allocation.

(4) The office of court administrator shall assist each youth court in developing placement alternatives and community intervention and prevention programs and services.

(5) (a) Except as provided in subsection (6), each fiscal year, the office of court administrator shall select out-of-home placements, programs, and services to be evaluated for their effectiveness in achieving the purposes provided in 41-5-2002. The cost containment review panel shall provide recommendations to the office on out-of-home placements, programs, and services to be evaluated and on the scope of the evaluation. Before conducting any evaluation, the office shall obtain approval from the district court council established in 3-1-1602.

(b) ***The office shall report the results of any evaluation conducted under subsection (5)(a) each year to the department, cost containment review panel, district court council, and law and justice interim committee.***

(6) On or before June 30 in fiscal years 2011 and 2012, the office of court administrator shall transfer \$25,000 in each fiscal year from the youth court intervention and prevention account to the general fund in lieu of conducting the evaluation required by subsection (5) for fiscal years 2011 and 2012.

44-2-117. Racial profiling prohibited -- definitions -- policies -- complaints -- training. (1) A peace officer may not engage in racial profiling.

(2) The race or ethnicity of an individual may not be the sole factor in:

(a) determining the existence of probable cause to take into custody or arrest an individual; or

(b) constituting a particularized suspicion that an offense has been or is being committed in order to justify the detention of an individual or the investigatory stop of a motor vehicle.

(3) Each law enforcement agency shall adopt a policy on race-based traffic stops that:

(a) prohibits the practice of routinely stopping members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law;

(b) provides for periodic reviews by the law enforcement agency and collection of data that determine whether any peace officers of the law enforcement agency have a pattern of stopping members of minority groups for violations of vehicle laws in a number disproportionate to the population of minority groups residing or traveling within the jurisdiction of the law enforcement agency;

(c) if the review under subsection (3)(b) reveals a pattern, requires an investigation to determine whether any peace officers of the law enforcement agency routinely stop members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law.

(4) (a) Each municipal, county, consolidated local government, and state law enforcement agency shall adopt a detailed written policy that clearly defines the elements constituting racial profiling. Each agency's policy must prohibit racial profiling, require that all stops are lawful under 46-5-401, and require that all stops are documented according to subsection (3) of this section.

(b) The policy must include a procedure that the law enforcement agency will use to address written complaints concerning racial profiling. The complaint procedure must require that:

(i) all written complaints concerning racial profiling be promptly reviewed;

(ii) a person is designated who shall review all written complaints of racial profiling;

(iii) the designated person shall, within 10 days of receipt of a written complaint, acknowledge receipt of the complaint in writing; and

(iv) after a review is completed, the designated person shall, in writing, inform the person who submitted the written complaint and the head of the agency of the results of the review.

(c) The policy must be available for public inspection during normal business hours.

(5) Each municipal, county, consolidated local government, and state law enforcement agency shall require for all of its peace officers cultural awareness training and training in racial profiling. The training program must be certified by the Montana public safety officer standards and training council established in 2-15-2029.

(6) Each law enforcement agency may provide for appropriate counseling and training of any peace officer found to have engaged in race-based traffic stops within 90 days of the review. The course or courses of instruction and the guidelines must stress understanding and respect for racial and cultural differences and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

(7) If an investigation of a complaint of racial profiling reveals that a peace officer was in direct violation of the law enforcement agency's written policy prohibiting racial profiling, the law enforcement agency shall take appropriate action against the peace officer consistent with applicable laws, rules, ordinances, or policies.

(8) For the purposes of this section, the following definitions apply:

(a) "Minority group" means individuals of African American, Hispanic, Native American, Asian, or Middle Eastern descent.

(b) "Peace officer" has the meaning provided in 46-1-202.

(c) "Racial profiling" means the detention, official restraint, or other disparate treatment of an individual solely on the basis of the racial or ethnic status of the individual.

(9) ***The department of justice shall make periodic reports to the law and justice interim committee regarding the degree of compliance by municipal, county, consolidated local government, and state law enforcement agencies with the requirements of this section.***

(10) Each law enforcement agency in this state may use federal funds from community-oriented policing services grants or any other federal sources to equip each vehicle used for traffic stops with a video camera and voice-activated microphone.

46-23-210. Medical parole. (1) The board may release on medical parole by appropriate order any person confined in a state prison or adult community corrections facility or any person sentenced to a state prison and confined in a prerelease center who:

(a) is not under sentence of death or sentence of life imprisonment without possibility of release;

(b) is unlikely to pose a detriment to the person, victim, or community; and

(c) (i) has a medical condition requiring extensive medical attention; or

(ii) has been determined by a physician to have a medical condition that will likely cause death within 6 months or less.

(2) A person designated ineligible for parole under 46-18-202(2) must have approval of the sentencing judge before being eligible for medical parole. If the court does not respond within 30 days to a written request from the department, the person is considered to be approved by the court for medical parole. The provisions of this subsection do not apply to a person who is ineligible for medical parole under subsection (1)(a).

(3) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's spouse, parent, child, grandparent, or sibling by submitting a completed application to the administrator of the correctional institution in which the person is incarcerated. The application must include a detailed description of the person's proposed placement and medical care and an explanation of how the person's medical care will be financed if the person is released on medical parole. The application must include a report of an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The physician's report must include:

(a) a description of the medical attention required to treat the person's medical condition;

(b) a description of the person's medical condition, any diagnosis, and any physical incapacity; and

(c) a prognosis addressing the likelihood of the person's recovery from the medical condition or diagnosis and the extent of any potential recovery. The prognosis may include whether the person has a

medical condition causing the likelihood of death within 6 months.

(4) The application must be reviewed and accepted by the department before the board may consider granting a medical parole.

(5) Upon receiving the application from the department, a hearing panel shall hold a hearing. Any interested person or the interested person's representative may submit written or oral statements, including written or oral statements from a victim. A victim's statement may be kept confidential.

(6) The hearing panel shall require as a condition of medical parole that the person agree to placement in an environment approved by the department during the parole period, including but not limited to a hospital, nursing home, hospice facility, or prerelease center, to intensive supervision, to some other appropriate community corrections facility or program, or to a family home. The hearing panel may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's medical condition has improved to the extent that the person no longer requires extensive medical attention or is likely to pose a detriment to the person, victim, or community, a hearing panel may revoke the parole and return the person to the custody of the department.

(7) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

(8) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to medical parole.

(9) ***Before July 1 of each even-numbered year, the board and the department shall report to the children, families, health, and human services interim committee and the law and justice interim committee regarding the outcome related to any person released on medical parole since the last report, including health care costs and payments related to the care of the person released on medical parole.***

47-1-105. Commission -- duties -- report -- rules. The commission shall supervise and direct the system. In addition to other duties assigned pursuant to this chapter, the commission shall:

(1) (a) establish the qualifications, duties, and compensation of the chief public defender, as provided in 47-1-201, appoint a chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender; and

(b) establish the qualifications, duties, and compensation of the chief appellate defender, as provided in 47-1-205, appoint a chief appellate defender after considering qualified applicants, and regularly evaluate the performance of the chief appellate defender;

(2) establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types, including cases on appeal, in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) review and approve the strategic plan and budget proposals submitted by the chief public defender, the administrative director, and the chief appellate defender;

(4) review and approve any proposal to create permanent staff positions;

(5) establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;

(6) establish policies and procedures for handling excess caseloads;

(7) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system;

(8) adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter; and

(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:

(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(b) all standards established or being considered by the commission, the chief public defender, or the chief appellate defender;

(c) the number of deputy public defenders and the region supervised by each;

(d) the number of public defenders employed or contracted with in the system, identified by region;

(e) the number of attorney and nonattorney staff supervised by each deputy public defender;

(f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(g) the total number of persons represented by the office and the office of appellate defender, identified by region, court, and case type;

(h) the annual caseload and workload of each public defender, except for the chief public defender, and of the office of appellate defender, identified by region, court, and case type;

(i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;

(j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(k) detailed expenditure data by court and case type.

50-65-102. Cigarette test method and performance standard -- conditions on sale -- alternative test method and performance standard. (1) Except as provided in subsection (8), cigarettes may not be sold or offered for sale in this state or sold or offered for sale to persons located in this state unless:

(a) the cigarettes have been tested in accordance with the test method provided in this section;

(b) the cigarettes meet the performance standard specified in this section;

(c) the manufacturer has filed a written certification with the state fire marshal in accordance with 50-65-103; and

(d) the cigarettes have been marked in accordance with 50-65-104.

(2) (a) Testing of cigarettes must be conducted in accordance with the American society for testing and materials standard E2187-04, the standard test method for measuring the ignition strength of cigarettes.

(b) Testing must be conducted on 10 layers of filter paper.

(c) No more than 25% of the cigarettes tested in a test trial in accordance with this section may exhibit full-length burns. Forty replicate tests compose a complete test trial for each cigarette used.

(d) The performance standards required in subsection (2)(c) may be applied only to a complete test trial.

(e) Written certifications must be based upon testing conducted by a laboratory that has been

accredited pursuant to standard ISO/IEC 17025 of the international organization for standardization or another comparable accreditation standard required by the state fire marshal.

(f) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure for determining the repeatability of the testing results. The repeatability value may not be greater than 0.19.

(g) This section does not require additional testing if cigarettes are tested for any other purpose in a manner that is consistent with this chapter.

(h) Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the required performance standard must be conducted in accordance with this section.

(3) Each cigarette listed in a certification submitted pursuant to 50-65-103 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard provided in this section must have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band must be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or, for nonfiltered cigarettes, 10 millimeters from the labeled end of the tobacco column.

(4) (a) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in subsection (2)(a) shall propose a test method and performance standard for the cigarette to the state fire marshal.

(b) Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection (2)(c), the manufacturer may employ that test method and performance standard to certify a cigarette pursuant to 50-65-103.

(c) If the state fire marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in 50-65-102 and the state fire marshal determines that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under provisions comparable to this section, the state fire marshal shall authorize the manufacturer to employ the alternative test method and performance standard to certify the cigarette for sale in this state unless the state fire marshal demonstrates a reasonable basis why the alternative test is unacceptable. All other applicable provisions of this section apply to the manufacturer even if the alternative test method and performance standard are authorized.

(5) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of 3 years and shall make copies of these reports available to the state fire marshal and the attorney general upon written request. A manufacturer who fails to make copies of the reports available within 60 days of receipt of a written request is subject to a civil penalty not to exceed \$10,000 for each day after the 60th day that the manufacturer does not make the copies available.

(6) The state fire marshal may adopt a subsequent American society for testing and materials standard test method for measuring the ignition strength of cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns that the same cigarette would exhibit when tested in accordance with the standard provided in subsection (2)(a) and the performance standard in subsection (2)(c).

(7) The department of justice shall review the effectiveness of this section and report every 4 years to the legislature the state fire marshal's findings and, if appropriate, submit recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations may be submitted no later than January 1 of each 4-year period.

(8) The requirements of subsection (1) do not prohibit a wholesale dealer or retail dealer from selling the wholesale dealer's or retail dealer's existing inventory of cigarettes on or after May 1, 2008, if the wholesale dealer or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to May 1, 2008, and if the wholesale dealer or retail dealer establishes that the inventory was purchased prior to May 1, 2008, in comparable quantity to the inventory purchased during the same period of the prior year.

(9) Because this chapter is based on New York law, it is the intent of the legislature that this chapter be implemented in accordance with the implementation and substance of the New York executive law section 156-c, fire safety standards for cigarettes.