



Law and Justice Interim Committee

63rd Montana Legislature

SENATE MEMBERS

SHANNON AUGARE
SCOTT BOULANGER
ROBYN DRISCOLL
LARRY JENT
TERRY MURPHY
SCOTT SALES

HOUSE MEMBERS

JENNY ECK
ELLIE BOLDMAN HILL
SARAH LASZLOFFY
STEVE LAVIN
DENNIS LENZ
MARGARET (MARGIE) MACDONALD

COMMITTEE STAFF

RACHEL WEISS, Lead Staff
JULIANNE BURKHARDT, Staff Attorney
DAWN FIELD, Secretary

MINUTES LOG

July 10, 2013
Room 137, 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. SCOTT BOULANGER
SEN. ROBYN DRISCOLL
SEN. LARRY JENT (via teleconference)
SEN. TERRY MURPHY
SEN. SCOTT SALES

REP. JENNY ECK
REP. ELLIE BOLDMAN HILL
REP. STEVE LAVIN
REP. DENNIS LENZ
REP. MARGARET (MARGIE) MACDONALD

COMMITTEE MEMBERS EXCUSED/ABSENT

SEN. SHANNON AUGARE
REP. SARAH LASZLOFFY

STAFF PRESENT

RACHEL WEISS, Lead Staff
JULIANNE BURKHARDT, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

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

COMMITTEE ACTION

The Law and Justice Interim Committee:

- approved a motion to not allow absent members to use a proxy vote on a motion to allow proxy votes;
- did not approve a motion to not allow proxy votes;
- elected Sen. Margie MacDonald as Chair;
- elected Sen. Terry Murphy as Vice Chair;
- approved the SJ 3 study plan, as discussed and amended;
- approved the SJ 22 as discussed;
- approved the draft Work Plan, as discussed; and
- approved the proposed meeting calendar.

CALL TO ORDER AND ROLL CALL

00:00:01 SEN. MURPHY called the Law and Justice Interim Committee (LJIC) to order at 9:00 a.m. The Secretary took roll, Sen. Jent, Sen. Augare, and Rep. Laszloffy were excused ([Attachment 3](#)). SEN. JENT *joined the meeting via teleconference later in the meeting.*

00:01:20 Law and Justice Interim Committee members and staff introduced themselves.

LEGISLATIVE DISTRICTS OVERVIEW

00:08:52 **Rachel Weiss, Research Analyst, Legislative Services Division (LSD)**, discussed an overview of the Final Legislative Districting Plan, adopted by the Districting and Apportionment Commission (DAC) in February 2013. Ms. Weiss demonstrated how to access and view the maps and other materials posted on the Districting webpage. She distributed a list of the materials and information on the DAC website ([EXHIBIT 1](#)).

Committee Questions and Discussion

00:14:55 There were no questions.

ADMINISTRATIVE MATTERS

● **Review of Committee Duties and Staff Roles**

00:15:25 Ms. Weiss explained staff roles and basic LJIC duties as outlined in the draft work plan ([EXHIBIT 2](#), page 2).

● **Interim Committee guidelines from Legislative Council**

00:18:34 Ms. Weiss discussed interim committee rules and guidelines ([EXHIBIT 3](#)).

● **Committee budget and travel claims**

00:19:56 Ms. Weiss discussed LJIC budget and reimbursement/expenses allowed.

00:22:19 Ms. Weiss asked members to provide contact information indicating their preferred method of contact.

Committee Questions and Discussion

- 00:23:03 REP. HILL asked how ancillary topics will be addressed. Ms. Weiss referred to Appendix B in the Work Plan (page 9, [EXHIBIT 2](#)) and explained how she compiled the draft study plan. She said that member-suggested study topics are welcome.
- 00:26:19 SEN. DRISCOLL discussed a conflict for the December 5, 2013, meeting, saying that the Legislative Council is scheduled to meet that day also. Ms. Weiss said she would look into it.

AGENCY OVERVIEWS

● Department of Justice

- 00:27:33 **Jon Bennion, Deputy Attorney General, Department of Justice (DOJ)**, discussed an overview of the DOJ ([EXHIBIT 4](#)), which included a legislative summary of the DOJ 2013 legislation, DOJ divisions, DOJ objectives and initiatives, and topics of interest to the LJIC that the DOJ would provide assistance with.

Committee questions

- 00:50:54 REP. ECK asked if copies of Mr. Bennion's presentation were available. He confirmed that copies were available.

● Montana Board of Crime Control

- 00:51:22 **Brooke Marshall, Executive Director, Montana Board of Crime Control (MBCC)**, discussed the history of the MBCC, its purpose, duties, and statutory authority, MBCC grant program highlights, an organizational chart, and an update on HB 71([EXHIBIT 5](#)).

- 01:01:26 Ms. Marshall also provided a brief update on the HAVEN shelter program in Gallatin County.

Committee Questions

- 01:11:17 SEN. SALES referred to the map on page 4 of HB 71 ([EXHIBIT 5](#)) and asked how grant monies are awarded. Ms. Marshall said the vast majority of the money is awarded through grants to individual counties.
- 01:11:57 REP. MACDONALD asked where the Center for Restorative Youth Justice (CRYJ) funding originated. Ms. Marshall said it originated from a federal grant and explained further.
- 01:12:57 REP. MACDONALD asked if the funding will continue or if it will decrease, due to federal funding concerns. Ms. Marshall wasn't sure but predicted that a decrease in funding is likely. She thought the amount of the decrease would vary, depending on the particular program.
- 01:14:10 REP. MACDONALD asked if funding for drug task forces would decrease, too. Ms. Marshall said yes and discussed why she thought so.

01:14:38 REP. HILL asked Ms. Marshall to come back with a more detailed breakdown of the MBCC budget, including a complete list of MBCC staff, a breakdown of state and federal funds, and list of specific appropriations. Ms. Marshall said she would work with Ms. Weiss to make sure all LJIC questions are answered.

● **Judicial Branch**

01:16:56 **Beth McLaughlin, Supreme Court Administrator**, discussed an overview of the Judicial Branch ([EXHIBIT 6](#)).

01:20:41 Ms. McLaughlin discussed the 2012 *Youth Court At-A-Glance* report ([EXHIBIT 7](#)).

01:27:18 Ms. McLaughlin discussed District Court and Supreme Court case processing performance measures reports. She said all of the reports are available on the DOJ website.

01:29:38 Ms. McLaughlin discussed an E-filing Project Update.

01:31:06 Ms. McLaughlin discussed Senate Joint Resolution 22 and a table listing the case weight load on various judicial districts (page 3, [EXHIBIT 6](#)). She said that domestic relations case loads are very heavy and that these cases are often very difficult and time-consuming because of their complicated nature.

01:35:26 Ms. McLaughlin discussed the steps the courts have taken to address the difficulties, including the *Court Help Program*, Standing Masters in 2 districts and *Limited Scope Representation* (LSR). She provided the Montana Supreme Court *Court Help Program* map of self-help law service locations ([EXHIBIT 8](#)), a *Court Help Program* brochure ([EXHIBIT 9](#)), and a brochure explaining *Limited Scope Representation* (LSR) ([EXHIBIT 10](#)).

Committee Questions

01:38:35 REP. HILL asked if the LJIC should study the Supreme Court backlog issue. Ms. McLaughlin said the Court's opinion is that funding isn't the problem so much as work load management. She suggested that the LJIC could consider looking at how to tweak the statutes in order to provide relief that would not require additional funding. She noted that additional resources are needed at the Youth Court and trial court level.

01:44:05 SEN. MURPHY recessed the meeting for a 10-minute break.

BREAK

01:53:34 SEN. MURPHY called the meeting back to order at 10:55 a.m.

● **Department of Corrections**

01:53:44 **Mike Batista, Director, Department of Corrections (DOC)**, discussed his professional background and thanked the LJIC for the opportunity to address the committee in order to provide additional insight into Montana's correctional system. He said that the system is very complex and is much more than incarceration. He said that the system also includes victims, restitution, and

rehabilitation of offenders. He discussed additional information and statistics relating to the DOC.

- 01:58:14 Director Batista discussed a handout on the flow of adult offenders ([EXHIBIT 11](#)).
- 02:01:14 Director Batista briefly reviewed Montana Department of Corrections 2011-12 At-A-Glance brochure ([EXHIBIT 12](#)) listing the mission of the DOC and highlights of DOC programs and accomplishments.
- 02:03:09 Director Batista discussed challenges to DOC, including crime trends and other factors.
- 02:05:39 Director Batista discussed DOC's re-entry initiative, noting that the Billings program has been very successful to date.
- 02:06:33 Director Batista reviewed the goals of re-entry, which include helping offenders with education needs, housing, treatment, family support, employment, and more.
- 02:08:08 Director Batista discussed DOC goals and plans and invited the LJIC to visit DOC facilities. He discussed his recent attendance at the PEW Conference on Sentencing and Corrections Reform in South Dakota.

Committee Questions

- 02:15:03 SEN. SALES and Director Batista reviewed average length-of-stay costs as compared with DOC Boot Camp costs, as well as questions regarding the effectiveness of the DOC Boot Camp.
- 02:19:36 SEN. SALES asked for additional information on what types of offenders are sent to Boot Camp or other alternative programs. Director Batista said he would provide the additional information.
- 02:20:13 SEN. DRISCOLL asked if the DOC plans to set up restorative justice programs. Director Batista said yes.
- 02:20:52 REP. ECK said she would like information on tours of DOC facilities and asked how many offenders are moving in and out of Montana DOC facilities on a daily basis. Director Batista said he would keep the LJIC apprised of tours and would provide the information requested by REP. ECK.

● Board of Pardons and Parole

- 02:22:07 **Fern Osler Johnson, Executive Director, Montana Board of Pardons and Parole (BOPP)**, said that BOPP Chairman Mike McKee and Board Member Darrel Dupuis were present at the meeting and available for questions. Ms. Johnson reviewed BOPP staff, budget information, and board members.
- 02:23:36 Ms. Osler Johnson discussed major accomplishments and changes that have taken place since the last report to LJIC.. She said the primary goal of the BOPP for the upcoming interim is to assist the LJIC with SJ 3: Study of Parole Board.

She encouraged LJIC members to attend BOPP hearings and said that Board members are conscientious and concerned citizens and serve as a necessary part of the criminal justice system.

02:26:46 Ms. Osler Johnson discussed upcoming legislative issues which the BOPP hopes to address and also related Fiscal Year 2013 data.

Committee Questions and Discussion

02:28:29 REP. ECK asked that copies of the BOPP's 2013 Report be provided to the LJIC. Ms. Osler said she would provide the copies and that the report will be posted the BOPP website later in the day.

● **Office of the Public Defender**

02:29:01 **Fritz Gillespie, Chair, Public Defender Commission**, provided a brief overview of the Office of the State Public Defender (OPD). He discussed ongoing efforts to develop an operational plan to implement the appropriations approved by the 2013 Legislature. He also discussed a Legislative Audit Division letter listing nine recommendations and said that due to a lack of resources, it would be very difficult to implement the recommendations. Mr. Gillespie also discussed the difficulty of paying contract attorneys an adequate wage and other problems related to budget limitations.

02:32:25 **Bill Hooks, Chief Public Defender, OPD**, explained the structure, role, and purpose of the OPD. He discussed the reactive nature of the OPD which, he said, has resulted in the fundamental issue of excessive case loads. He said that case load numbers continue to increase and that contract attorneys are used whenever warranted. Mr. Hooks said that the pay increases approved by the 2013 Legislature were very much appreciated. He discussed the OPD's effort (SB 53) to take jail time out of the misdemeanor offense statute as a means to reduce case load.

02:39:50 Mr. Hooks said that the OPD Annual Report is available, as is the June 2012 response to the American University Report. He said he would provide one or both, should the LJIC wish to have copies.

02:40:29 **Wade Zolynski, Chief Appellate Defender, OPD**, explained his role in OPD. He referred to a high turnover rate for attorneys and support staff and said that was not an efficient use of state money. He said that while OPD staff is very appreciative of the pay increase, the ever increasing case load makes it very difficult to keep up with the work. He emphasized the direness of the situation.

02:44:32 **Kristina Neal, Conflict Coordinator, OPD**, explained her role as conflict coordinator and how she works with private attorneys to resolve conflict issues. She also noted the challenges in finding attorneys willing to take OPD cases.

02:47:16 Mr. Gillespie said that the OPD Commission plans to ask for LJIC assistance in changing certain statutes.

Committee Questions

- 02:47:33 REP. HILL asked Mr. Gillespie to review the 2004 lawsuit and the possibility of another lawsuit being filed if pressure on the public defender system is not alleviated. Mr. Gillespie reviewed *White v. Martz*, which resulted in the creation of the OPD in the 2005 Legislature. He said that the entire system has been underfunded from the start, which is why the OPD is not able to keep up with the case load. He stated that Montana's public defender system is on the verge of failure. Mr. Gillespie said he is working with OPD staff to identify what help the OPD will ask for in the 2015 session.
- 02:55:20 REP. HILL asked Mr. Zolynski to respond to Mr. Gillespie's statement that the OPD is on the verge of failure and to include an explanation of the statutory and constitutional requirements put on the OPD. Mr. Zolynski explained OPD's state and constitutional obligations, saying that those obligations are also intertwined with ethical obligations required by the Montana State Bar. He discussed the effect of this burden on OPD attorneys and staff, saying that because these are complicated cases which require review time, representation is being delayed and individuals are sitting in jails, the costs for which the State is paying.
- 03:01:53 REP. HILL said she wants to set aside an afternoon at a future meeting to pursue this issue further. She asked Mr. Hooks to describe what kinds of additional support are needed and if he thought an afternoon would be sufficient to address his concerns. Mr. Hooks said that because so much of what the OPD does is interconnected to other programs it would be very difficult to address the issue in one afternoon. He said that fundamental problem is that OPD resources not keeping up with demand.
- 03:04:47 SEN. SALES agreed that the issue is complicated and said he did not find fault with OPD. He discussed a historical perspective of the issue as a member of the 2005 Legislature which created the OPD, saying that the legislation was a "field of dreams" bill and that his opinion is that the individuals who use the system should be responsible for at least some of the costs. He didn't think that simply throwing money at the OPD would solve the problem and said that reform and restructuring of the system is needed.
- 03:08:12 REP. HILL suggested that the LJIC request formal opinions from the Attorney General, Chief Justice Mike McGrath and the Judicial Branch, Montana Prosecuting Attorneys Association, and others in response to Mr. Gillespie's comments, and that she would like to have the opinions in advance of the September meeting. SEN. MURPHY asked REP. HILL to make a motion in the afternoon work session on the LJIC Work Plan.
- 03:10:15 SEN. MURPHY asked Mr. Zolynski to discuss the OPD's deciding factors in considering whether or not to go forward on an appeal. Mr. Zolynski explained the process used, which includes reviewing records, discussion with the client, and other factors.

COMMITTEE WORK SESSION

- **Discussion/action on proxy voting procedures**

- 03:12:54 Ms. Weiss noted that the Legislative Council discourages the use of proxy voting but said that if it is allowed, that the proxy be in writing. She asked that a formal motion be made on the issue of proxies. She suggested that if the committee chooses to accept proxy votes, they could be either emailed or provided to the staff in some written form. SEN. MURPHY announced that SEN. JENT had joined the meeting via polycom phone. He then discussed the history of LJIC's chair rotation ([EXHIBIT 13](#)).
- 03:15:30 **SEN. DRISCOLL moved to allow proxy votes for the 2013-14 interim.** SEN. SALES spoke against motion, saying he thought it was important the committee members participate in the meetings and be present to vote in order to be fully informed on the issues. He reiterated that the Legislative Council discourages use of proxy voting.
- 03:16:32 REP. MACDONALD spoke in support of SEN. DRISCOLL's motion and said that there are times when a committee member can not be present which should not preclude the member from participating in the meeting, including casting a vote.
- 03:17:21 REP. HILL said that because it is likely that she and other members of the LJIC will not be able to attend all of the scheduled meetings she would support a motion to allow written proxies. She stated that she is confident that the LJIC can work together to make sure proxy voting is done properly and effectively. Ms. Weiss noted that she received written proxies from REP. LASZLOFFY and SEN. AUGARE in advance of the meeting.
- 03:19:51 SEN. BOULANGER asked if the proxy votes would be used to vote on the motion to allow proxy votes. Regarding use of proxy votes and member attendance, he wondered how the decision would be made that a member had missed too many meetings and would be removed from the committee. REP. HILL responded to his questions.
- 03:21:31 SEN. MURPHY discussed the difference between proxy voting and voting by telephone. He offered the possibility of a substitute motion to settle the question of proxy votes for this particular vote.
- 03:22:40 **REP. MACDONALD moved, as a substitute motion, that any member not present at the meeting would not be allowed to cast a proxy vote on the question of allowing proxy votes. The motion passed on a 10-0 roll call vote.**
- 03:24:19 SEN. MURPHY said that committee would now consider the original motion to allow proxy voting. REP. LAVIN opposed allowing proxy votes because he thought certain members abused their use in the last interim. He said he would support allowing voting via telephone.
- 03:25:04 REP. LENZ also opposed allowing proxy votes, saying that members have the option of participating in meetings and voting via telephone.

- 03:25:39 REP. ECK asked if certain sideboards could be put in place to allow proxy voting under certain circumstances. She said that exceptions could be created to prevent abuse.
- 03:26:11 REP. MACDONALD referred to the controversy encountered in the previous interim involving proxy votes and said that the interim would get off to a contentious start if proxy votes are not allowed. She thought that the committee should assume that its members will operate under a good faith effort and strongly urged the members to support the motion to accept proxy voting.
- 03:27:51 **SEN. DRISCOLL's motion to allow proxy votes failed on 5-5 roll call vote. Sen. Boulanger, Sen. Murphy, Sen. Sales, Rep. Lavin, and Rep. Lenz voted no.**
- 03:30:05 REP. HILL discussed her concerns about the status of Sen. Shannon Augare's membership on the LJIC. She stated that Sen. Augare is presumed innocent until proven guilty but that she has concerns that the work of the LJIC may be jeopardized, should he remain a member.
- 03:32:05 SEN. BOULANGER and SEN. SALES each responded that it would be premature and inappropriate to suggest or request that Sen. Augare resign from the LJIC.
- 03:34:31 **Julianne Burkhardt, Staff Attorney, LSD**, said that Sen. Augare may be concerned about perceptions of him withdrawing. SEN. DRISCOLL and SEN. SALES agreed that Sen. Augare would remain a member of the LJIC and would be free to participate and vote as he wished.

Election of Chair and Vice Chair

- 03:36:18 **REP. ECK nominated REP. MACDONALD as LJIC Chair. REP. MACDONALD was elected on a unanimous roll call vote.**
- 03:38:31 **SEN. BOULANGER nominated SEN. MURPHY as LJIC Vice Chair. The motion passed on a unanimous roll call vote.**
- 03:39:50 SEN. MURPHY recessed the meeting at 12:42 p.m. for a 45-minute lunch break.
LUNCH BREAK
- 04:32:27 REP. MACDONALD called the meeting back to order at 1:35 p.m.

UPDATE ON PEW CONFERENCE ON SENTENCING & CORRECTIONS REFORM

- 04:32:34 REP. MACDONALD reported on her attendance at the PEW Conference on Sentencing and Corrections Reform in South Dakota, including the purpose and goals of the conference. She noted that other states have seen enormous success in corrections reform.

Committee Questions

- 04:38:41 There were no questions.

PUBLIC COMMENT

04:39:21 **Brian Gootkin, Sheriff, Gallatin County, and Montana Sheriffs and Peace Officers Association (MSPOA)**, stated that he also attended the PEW Conference. He offered his support to the LJIC.

OVERVIEW OF DRAFT WORK PLAN

04:40:16 Ms. Weiss said Work Plan is mainly a decision making tool to help the LJIC focus on its priorities and identify goals and objectives. She said the Work Plan can be revised as the interim progresses to include emerging issues. Ms. Weiss reviewed the Work Plan in detail ([EXHIBIT 2](#)).

Committee Questions

04:47:50 There were no questions.

INTERIM STUDIES AND DRAFT STUDY PLANS

Overview of SJR 3 draft study plan - Montana Board of Pardons and Parole

04:48:49 Ms. Weiss discussed a draft study plan for the SJR 3 study ([EXHIBIT 14](#)).

Committee questions

04:52:53 There were no questions.

Public Comment related to SJR 3 Study Plan

04:53:27 **Hugh Gwynn, citizen**, read a letter relating to inmate 3004256 at the Crossroads Correctional Facility in Shelby and discussed his concerns about the Parole Board ignoring staff recommendations to parole the inmate.

04:56:14 REP. MACDONALD said that the purpose of SJ 3 is not to deal with individual cases but to consider the broader issue of how the Parole Board operates. Mr. Gwynn said that his main concern is that the Parole Board ignored the Crossroads staff recommendations for parole.

04:56:42 **Matt Kuntz, Executive Director, NAMI-Montana**, said that due to the nature of the human brain, working with the criminal justice system is a basic reality in NAMI's line of work. He said that he is looking forward to working with the LJIC on the SJ 3 study. He suggested that the LJIC look at the interface between what the Parole Board orders and what resources are actually available, saying that he would like to know how the Board can release an inmate without knowing what resources are available for that inmate and if the inmate is able to comply.

04:58:23 **Amber Kackley**, related her husband's history in Montana's criminal justice system. Her comments included specific details of his offenses and convictions, including the cost to the State of Montana for his incarceration and child care, SNAP, and housing assistance provided to her as a single mother to help with care for their two children. Ms. Kackley reported that the expenses total over \$329,000 just for her family alone and that she is just one of many.

05:02:16 **Steve Cape, Director, Montana Coalition for Safety and Justice**, discussed several recommendations for changes to administrative rules pertaining to offenders coming off of probation and parole. Mr. Cape said that certain rules are impossible to follow and that a more "common sense" approach is needed in

order to help offenders transition more easily. Mr. Cape discussed several specific rules and his recommendations for changes.

- 05:10:01 **Shirley Wirth, Helena**, read a statement regarding her incarcerated grandson (EXHIBIT 15). REP. MACDONALD reiterated that the LJIC would not engage in addressing individual cases or discuss a person's innocence or guilt. SEN. JENT spoke in support of REP. MACDONALD's ruling and said that because Ms. Wirth's documents contained very personal information, the Committee would read them at a later time.
- 05:17:49 **Patti Jacques, Helena**, asked the LJIC to consider looking at requirements and conditions by the Parole Board and to consider that a mentally ill person may not be capable of fulfilling all requirements.
- 05:20:01 **Marciana Garay, Helena**, distributed a letter regarding her concerns about her incarcerated son and his appearances before the Parole Board (EXHIBIT 16). REP. MACDONALD emphasized that personal information or individual case information must not be discussed as a part of public comment, only the broader issue of Parole Board operations.
- 05:22:09 **Fern Osler Johnson, Executive Director, BOPP**, pointed out that many people don't understand the difference between the probation system and the parole system and that the misunderstanding affects the BOPP. She asked that the LJIC keep in mind that there are two sides to every story and that the BOPP is anxious to provide the LJIC with its perspective and factual information regarding parole hearings in order for the LJIC to base its decisions on factual information and not just emotional testimony. She also discussed the history and philosophy of parole boards. Ms. Osler Johnson suggested that crime victims be included in the scope of the SJ 3 study.
- 05:27:45 **Mike McKee, Chair, BOPP**, strongly encouraged the LJIC to expand step 3 of the study process significantly (page 4, [EXHIBIT 14](#)) so that the full LJIC could attend a parole hearing in order to observe the Board at work. He said that doing so would allow the committee time to develop a full understanding of the parole process and how the Board conducts itself. Mr. McKee suggested that the SJ 3 research how paroling authorities operate in other states because it would highlight the strengths and progressive nature of the BOPP. He concluded his statement by asking the LJIC to please come to observe firsthand what the Board does in order to determine the validity of some the claims made before the LJIC.
- 05:32:20 **Melissa Gardipee** spoke in support of expunging youth records.
- 05:32:41 **Jim Cox, Billings**, discussed his objection to using paid contractors to supervise parolees. He discussed examples of problems inmates have encountered in working to meet their parole requirements.
- 05:35:57 **John Wilkinson, family member of Montana State Hospital forensic unit inmate**, said he is deeply concerned about the high recidivism rate for parolees

and that he would like that issue included in the SJ 3 study. He said it is a question of interface between the BOPP and probation and parole services and is of particular concern for seriously mentally ill offenders. He commented on his concerns further.

Committee Questions

- 05:39:18 SEN. DRISCOLL asked Ms. Osler Johnson if she could attend a Parole Board hearing at the Women's Prison in Billings. Ms. Osler Johnson said that she would send SEN. DRISCOLL the hearing dates.
- 05:39:56 REP. HILL thought Mr. Cox's request to expand the SJ 3 study to include the requirements made by outside contractors in the parole process was warranted.

Overview of SJR 22 draft study plan

- 05:40:53 Ms. Weiss reviewed the SJR 22 draft study plan ([EXHIBIT 17](#)) to evaluate current court practices in addressing family law cases and to identify alternatives.

Committee Questions

- 05:43:54 There were no questions.

Public Comment related to SJR 22 Study Plan

- 05:44:14 **Supreme Court Justice Beth Baker** spoke in support of the SJ 22 study, saying that it has purposes: to serve families better and to ensure better and more efficient use of court resources. She noted that there has been phenomenal growth in family law case loads in the last several years and the Court is anxious to offer its support to the LJIC.
- 05:46:36 **Mark Parker, Montana State Bar Association**, said that attorneys are very supportive of the SJ 22 study and on behalf of the Bar, he wholeheartedly endorsed the well-written study plan.
- 05:48:35 **P. Mars Scott, Chair, Family Law Section, Montana State Bar**, spoke in support of the SJ 22 study. He discussed 1997 changes in family law that have made a difference and said he is hopeful that this study will result in more improvements. He reviewed several of the changes made and said that Montana's parenting laws are already quite progressive but that the good system can be made better. Mr. Scott said that the Montana State Bar Family Law Section stands ready to assist the LJIC.
- 05:53:05 **Michele Snowberger, Belgrade City Court Judge, Access to Justice Commission**, thanked the Legislature for taking on the critical and complex issue of family law. She asked that the LJIC pay particular attention to those using the system without lawyers, saying that the system is complex and difficult to navigate which makes it even more difficult for judges to resolve these cases. She offered her assistance to the LJIC.
- 05:54:36 **Lynda Gryczan, President, Montana Mediation Association**, asked that the LJIC consider five aspects in its consideration of family law cases in Montana: 1. parental education, 2. how to handle mediation cases, 3. look at the different

types of domestic violence, 4. consider how to streamline the *pro se* document, and 5. how to pay the mediation costs. She noted that Oregon pays for eight hours of family mediation and also offered her services to the LJIC.

05:57:55 **Abigail St. Lawrence, Montana State Bar, Justice Initiative Committee**, discussed the Justice Initiatives Committee work to increase pro bono participation among attorneys practicing law in Montana. She encouraged the LJIC to take into consideration the cost to the court system in general and to litigants not involved in domestic relations and family law cases, saying that having a large number of unrepresented litigants in family law cases clogs up and slows down the court system for everyone. She asked that the LJIC consider alternatives such as expanding pro bono representation for pro se litigants through the Montana Legal Services. She offered the Justice Initiatives Committee as a resource to the LJIC in its work.

06:01:20 REP. MACDONALD recessed the meeting for a short break.

BREAK

06:19:25 REP. MACDONALD called the meeting back to order at 3:18 p.m.

ADMINISTRATIVE RULE REVIEW

06:19:37 Julianne Burkhardt, Staff Attorney, LSD, said that the committee members received a memorandum regarding administrative rules and rule review ([EXHIBIT 18](#)). She discussed her role in the administrative rule review process as the LJIC staff attorney.

06:21:55 REP. MACDONALD asked Ms. Burkhardt to discuss the proxy vote issue. Ms. Burkhardt referred to the Legislative Council Interim Committee Rules and Guidelines ([EXHIBIT 3](#)) and read language relating to the use of proxy votes (page 3). She said that while the Council discourages the use of proxy votes, they are allowed but must be provided in writing. She said that a motion would be necessary to ban the use of proxy votes. REP. MACDONALD said that written proxies will be allowed unless an affirmative motion is passed to ban their use.

PUBLIC COMMENT ON ANY OTHER ITEM WITHIN THE LJIC'S JURISDICTION

06:25:25 **Dr. Gary Mihelish, Helena**, stated that as a long-time advocate for people with serious mental illness and having served on the DOC Re-entry Task Force, he is struck by the tremendous difference in cultures between the corrections system and the mental health community. He said that the two systems clash and don't work very well together. He said that there are too many people in prisons, that the recidivism rate is too high, and that if Montana wants to reduce recidivism, it must do a better job with re-entry programs. Dr. Mihelish noted that there are approximately 370 inmates receiving psychiatric medications at the MSP who will be discharged with little support. Accountability and responsibility are very important components of offender rehabilitation programs, he said, but without appropriate support and treatment, mentally ill offenders will recidivate mostly due to technical violations. Dr. Mihelish said that with effective community services and support, including probation and parole officers who truly understand mental illness, these offenders can successfully reintegrate back into their communities and save money for the State. He suggested that a forensic

prison would also keep mentally ill offenders from revolving through the criminal justice system.

- 06:30:56 Patti Jacques, Helena, discussed several DOC administrative rules regarding mental health provisions that she would like to have changed. She also discussed a number of other concerns relating to how the mentally ill are dealt with in the criminal justice system and made suggestions on how to improve the system.
- 06:39:33 Matt Kuntz, Executive Director, NAMI-Montana, said he would like the LJIC to monitor HJ 16 (study of state-operated institutions) assigned to the Children and Families and Health and Human Services Interim Committee (CFHHS).

COMMITTEE WORK SESSION

● Draft SJ 3 study plan

- 06:41:52 SEN. DRISCOLL said she is interested in pursuing additional information on mental health issues as related to gun ownership, as discussed by Deputy Attorney General Jon Bennion in his earlier presentation.
- 06:43:07 REP. ECK thought that the victim's perspective is missing from the SJ 3 study, as is information on how the lack of resources and community services prevent the Parole Board from granting parole.
- 06:46:29 SEN. MURPHY and REP. ECK discussed how to best include victims in the study process.
- 06:49:11 REP. ECK explained further her request to look at the lack of resources and/or community support, and the extent to which that prevents parole from being granted. REP. MACDONALD thought that staff could put together panels to discuss the issue.
- 06:50:20 REP. HILL said, regarding public comment from Mr. Cox about the use of private contractors as part of the corrections system, that she wants to know who the private contractors are and the level of the participation and involvement.
- 06:51:33 REP. MACDONALD noted that LJIC members have been invited by the BOPP to attend parole board hearings. She asked if resources are available to do that and how it might be arranged. Ms. Weiss discussed the budget, saying that members can attend hearings in their local area for little cost but that another option would be to attend BOPP hearings as a full committee. REP. MACDONALD said that she would prefer that members attend local hearings, both for efficiencies in time and for budgetary concerns.
- 06:54:47 REP. LENZ agreed, saying that members can't begin to craft solutions until they have had the opportunity to attend hearings.
- 06:55:25 REP. LAVIN asked to add extra time to Step 1 of the study plan in order to learn more about the BOPP. Ms. Weiss explained how his request could be

accommodated. It was agreed that additional time would be allocated to the study of the BOPP.

06:58:08 **SEN. MURPHY moved to approve the SJ 3 study plan, as discussed. The motion passed on a unanimous voice vote.**

- **Draft SJR 22 study plan**

06:59:58 **REP. HILL moved to approve the SJ 22 study plan. The motion passed on a unanimous voice vote.**

- **Draft interim work plan**

07:02:15 REP. MACDONALD referred the members to the member-suggested study topics in the draft interim work plan (page 9, [EXHIBIT 2](#)) and discussed SEN. DRISCOLL's suggestion to study mental health issues as related to gun ownership and Montana's lack of compliance with federal reporting requirements for background checks in weapons purchases.

07:03:19 REP. LAVIN spoke in support of SEN. DRISCOLL's request.

07:04:36 SEN. SALES asked for clarification of the request. SEN. DRISCOLL asked Deputy Attorney General Bennion to discuss the compliance issues and reporting requirements on background checks for people deemed "mentally deficient". Mr. Bennion explained federal government reporting requirements for people deemed mentally defective as related to background information checks and why Montana is not in compliance and is at risk of losing federal funding.

07:08:00 SEN. SALES and Deputy AG Bennion discussed what Montana would have to do to be compliant. Deputy AG Bennion noted that Montana statute prevents sharing of certain information and that only the Legislature, as Montana's policy makers, could change statute. At REP. HILL's request, the LJIC agreed to defer the topic until the September meeting at which time the Attorney General's Office could present additional information on the topic and also discuss DOJ priorities and potential bill draft requests. REP. HILL asked that the DOJ also give an update on Montana's 24/7 DUI prevention program.

07:11:44 Ms. Weiss discussed how the Work Plan would be structured to accommodate all of the study topics. REP. MACDONALD added that she would like a report from the DOC on the re-entry program (HB 68) at the September meeting.

07:16:05 SEN. JENT discussed his interest in the OPD issues, the large number of unrepresented litigants as discussed in SJ 22, and the grant of authority and oversight of administrative rules regarding the BOPP. He discussed his concerns regarding each issue and what information he would like to pursue in discussions at future meetings.

07:19:54 SEN. MURPHY said as a strong advocate of protecting privacy rights, he hoped the AG's Office would be prepared to discuss that part of the law as it applies to the mentally ill; and if that law is changed, how it could affect others. SEN. SALES stated that he shares SEN. MURPHY's concerns.

- 07:21:53 REP. HILL said, regarding Chairman Gillespie's comments on the public defender situation, that she would like to formally request responses from the DOJ, the Judicial Branch, and the Prosecuting Attorney's Association. She said she would also like the LJIC members to receive copies of the 2004 lawsuit for review in advance of the September meeting. She discussed the stipulated settlement reached between the State of Montana and the ACLU and suggested that the committee members read the settlement.
- 07:25:25 REP. MACDONALD asked Ms. Weiss to share the settlement and other background information for the September meeting. She said the LJIC would then have a more robust discussion on how it wishes to proceed on this issue and that formal requests for information could be made at that time.
- 07:26:56 REP. MACDONALD said the LJIC has identified additional agenda items for the September meeting: an update on the DOC re-entry project and additional information from the DOJ regarding background information system and the interface between federal and state law regarding privacy and mental illness. Ms. Weiss said that the work plan can be modified as needed through out the interim. She said that she would make the changes as discussed today and mail out a revised work plan soon. She noted that SEN. MURPHY also serves on the Children and Families Interim Committee and could report on the HJ 16 study.
- 07:29:52 **REP. HILL moved to adopt the draft work plan with the proviso that it can be revised at a later date if needed. The motion passed on a unanimous voice vote.**

Meeting dates

- 07:32:17 The LJIC briefly discussed the proposed meeting dates. **SEN. DRISCOLL moved to adopt the meeting calendar as currently proposed. The motion passed on a unanimous voice vote.**

Other instructions to staff

- 07:34:07 SEN. MURPHY asked that the LJIC meetings be scheduled in large meeting rooms. He said that due to the controversial study topics he expected them to be well attended. Ms. Weiss said she would look into that issue.

ADJOURN

- 07:36:15 With no further business before the Law and Justice Interim Committee, the meeting was adjourned at 4:37 p.m. The next meeting is scheduled for September 19 and 20, 2013, in Helena.

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