



Law and Justice Interim Committee

63rd Montana Legislature

SENATE MEMBERS

TERRY MURPHY--Vice Chair
SHANNON AUGARE
SCOTT BOULANGER
ROBYN DRISCOLL
LARRY JENT
SCOTT SALES

HOUSE MEMBERS

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

COMMITTEE STAFF

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

MINUTES LOG

September 19 & 20, 2013 - Day 1
Room 102, 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.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select *Committees*, then *Interim*. Once on the page for *Interim Committees*, scroll down to the appropriate committee. The written minutes summary, along with the audio and video recordings, are listed by meeting date on the interim committee's web page.

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

REP. MARGARET (MARGIE) MACDONALD, Chair
SEN. TERRY MURPHY, Vice Chair

SEN. SCOTT BOULANGER
SEN. ROBYN DRISCOLL
SEN. LARRY JENT

REP. JENNY ECK
REP. ELLIE BOLDMAN HILL
REP. STEVE LAVIN
REP. SARAH LASZLOFFY
REP. DENNIS LENZ

COMMITTEE MEMBERS EXCUSED/ABSENT

SEN. SHANNON AUGARE
SEN. SCOTT SALES

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 continue discussion and study of gun ownership rights for the mentally ill.

CALL TO ORDER AND ROLL CALL

00:00:04 REP. MACDONALD called the meeting to order at 9:33 a.m. The Secretary took roll, SEN. AUGARE and SEN. SALES were excused ([Attachment 3](#)).

OVERVIEW OF MEETING AGENDA

00:01:29 **Rachel Weiss, Research Analyst, Legislative Services Division (LSD)**, briefly reviewed the two-day meeting agenda for the Law and Justice Interim Committee (LJIC).

00:04:21 REP. MACDONALD read into the record a letter from Robert Stevens, Billings, Montana, addressing Parole Board and Department of Corrections (DOC) issues as part of the SJR 3 Study ([EXHIBIT 1](#)).

AGENCY UPDATE: Public Safety Officer Standards and Training Council (Post) -- Introduction of New Executive Director

00:05:06 **Hal Harper, Chair, Public Safety Officer Standards and Training Council (POST)**, discussed the importance and purpose of the POST Council. He also introduced Mr. Perry Johnson as the new executive director of the Council and reviewed Mr. Johnson's professional credentials. (SEN. MURPHY joined the meeting at 9:38 a.m.)

00:10:54 **Perry Johnson, Executive Director, POST Council**, discussed the Mission Statement and Vision Statement of the Council ([EXHIBIT 2](#)). He also reviewed a list of POST Council members and encouraged LJIC members to contact himself or other POST Council members with questions or concerns. Mr. Johnson discussed POST Council concerns regarding the cost of recent and upcoming Council hearings and thanked the LJIC for the opportunity to address the committee.

PUBLIC COMMENT

00:14:15 **Jim Smith, Montana Sheriffs and Peace Officers Association (MSPOA)**, commented on his support for Hal Harper as Chair and Perry Johnson as Executive Director of the POST Council.

Committee Questions

00:16:31 REP. MACDONALD asked Mr. Johnson to clarify his concerns about hearings costs. Mr. Johnson discussed the funds allocated to the Council specifically for litigation expenses and expressed his appreciation for the additional funding.

00:17:58 SEN. BOULANGER asked about new cases filed against peace officers. Mr. Johnson discussed allegations against peace officers and the hearing process used in investigating these allegations.

COMMITTEE ISSUE: Background on Mental Illness and Gun Ownership Issues Related to the National Instant Criminal Background Check System (NICS)

00:19:37 **Jon Bennion, Deputy Attorney General, Department of Justice (DOJ)**, presented background information on the issue of mental illness and gun ownership via a Powerpoint presentation ([EXHIBIT 3](#)). Mr. Bennion's discussion topics included:

00:21:32 the federal Gun Control Act of 1968;

00:23:09 the terms in the federal mental defective prohibition and commitment to a mental institution;

00:24:11 the Brady Handgun Violence Prevention Act of 1993 which created the National Instant Criminal Background Check System (NICS), the NICS Improvement Act of 2007, and NICS database information;

00:26:27 a list of states in compliance with the requirements of NICS and other compliance information;

00:27:38 Montana laws relating to persons treated for mental illness and the legislative history of these laws, including attempts to amend them;

00:31:00 concealed weapons permit issues; and

00:32:31 suggestions for who should be involved in continued study of this issue and three legislative considerations for discussion.

Public Comment

00:35:32 **Dr. Gary Mihelish, President, Helena Chapter of the National Alliance for the Mentally Ill (NAMI)**, discussed NAMI's position on violence, mental illness, and gun reporting laws ([EXHIBIT 4](#)). Dr. Mihelish said that the best way to reduce risk is through treatment and that the term, "mentally defective" is offensive and wrong, as is criminalizing mental illness. He said that early intervention, treatment, and education would significantly decrease the effects of mental illness.

00:43:02 **Patti Jacques, Member, NAMI-Montana, Helena**, agreed that the "mentally defective" term is insulting and offensive and said that mental illness would be better characterized as a brain disorder in need of treatment. She said that if a mentally ill person has been treated and is stabilized, that person should be allowed the same rights as any other citizen.

00:46:38 **Jim Taylor, Legal Director, ACLU-Montana**, pointed out significant differences regarding ownership of firearms under federal law and Montana law. He said that Montana law has a significant due process problem which could be fixed by the Legislature.

00:49:01 **Janice Reichelt, nurse, parent of mentally ill son**, asked about the legal ramifications of having firearms in a home where a person who is being treated for mental illness is residing.

00:50:09 Jim Smith, MSPOA, commented that because the Legislature delegated oversight of concealed weapons permits to local sheriffs, the MSPOA has quite a lot of information available. He asked that the MSPOA be included in any discussion of this topic since it is local sheriffs who deal first hand with concealed weapons permits and many other issues involving firearms.

Committee Questions

00:52:50 REP. LENZ referred to NAMI's position paper (Advocacy Priorities, Page 2, [EXHIBIT 4](#)) and asked Dr. Mihelish to further discuss NAMI's position on the intersection of violence and mental illness, considering that a mentally ill person may not be able to appreciate their own conduct. Dr. Mihelish said that most seriously mentally ill people are not violent and that even though law enforcement officers often know who they are, they are unable to do anything about the mentally ill person until they become violent. He said by the time that happens, it's often too late to help the mentally ill individual because a tragedy has already occurred. He said he would contact the author of the position paper for a better answer.

00:56:20 REP. LENZ commented further on the complicated question of allowing the mentally ill to possess firearms due to the fact that many of them may not be able to appreciate their own conduct. Dr. Mihelish agreed that it is a dilemma. He stated that he is not advocating for the mentally ill to the extent that they should not be held accountable for their actions but that early intervention and diagnosis will prevent violence. He said he would like to get back to REP. LENZ with more information.

00:58:08 REP. HILL discussed several questions related to other states' full compliance and Montana's partial compliance with federal law, which agency would be responsible for Montana's compliance, and her concern that Montana will lose out on federal funding and grants. Mr. Bennion explained the federal law further and said it would be federal DOJ that would determine compliance. He thought it was likely that if current state and federal laws remain the same Montana would not be eligible for federal grants. REP. HILL asked if the Montana DOJ is seeking a legislative solution in order to become eligible. Mr. Bennion said that Montana has never had a discussion in this context and that as policy makers, it is important that the legislators be aware of this. He thought an interim committee would be a great place to start the discussion.

01:02:55 SEN. BOULANGER asked, on behalf of constituents diagnosed with Post Traumatic Stress Disorder (PTSD) who are also avid hunters and shooters, how their diagnosis affects their ability to purchase and own firearms. Mr. Bennion said that was a good question and encouraged the LJIC to include veterans' groups in its discussion, should the committee pursue this issue further.

01:04:50 SEN. MURPHY asked Mr. Taylor to discuss any concerns in Montana's Constitution that would be an impediment to Montana working to comply with the federal requirements. Mr. Taylor said he could not answer that question without additional research and consideration. He did suggest that including restoration as part of Montana law would help.

- 01:06:27 REP. HILL noted that Montana's gun ownership laws are very broad and that other states have additional stipulations to gun ownership, such as commitment to a mental health facility, either voluntarily or involuntarily. She said that approach makes sense to her, so long as there is a restoration process. She asked if the ACLU has a position on the more stringent laws in other states. Mr. Taylor said he could not take a position on other states' laws but did discuss his concern, regarding voluntary commitment, that people who voluntarily seek treatment could then be stigmatized and denied gun ownership.
- 01:08:02 REP. HILL asked if people convicted of domestic violence should be included also. Mr. Taylor said that he could not comment on domestic violence but did say that hunting and gun ownership is a huge part of Montana's culture and that if people have received done what they were supposed to do and received treatment, they shouldn't have the issue of gun ownership hanging over them.
- 01:08:52 REP. MACDONALD asked Mr. Bennion to include the MSPOA as stakeholders in this issue. Mr. Bennion said he would do so and was open to suggestions for others to include in future discussions.

Committee Discussion

- 01:09:52 REP. MACDONALD asked the LJIC if additional information is needed before committee action is taken. **SEN. DRISCOLL moved to continue with the study and get answers to the questions posed by Mr. Bennion; and that the discussion include, but not be limited to, those listed in Mr. Bennion's presentation.**
- 01:10:43 REP. MACDONALD asked about allocation of staff resources. Ms. Weiss thought there was adequate time available to continue work on this issue.
- 01:11:42 SEN. JENT spoke in support of motion, saying it is important for states to take the lead on this issue before federal intervention occurs. He said it is important that the LJIC make the effort to look at this issue and decide if legislation is needed.
- 01:12:21 **SEN. DRISCOLL restated her motion, which was to continue discussion on gun ownership and mental illness in Montana, and that the discussion group would include but not be limited to the stakeholders listed in Mr. Bennion's presentation. The motion passed on a unanimous voice vote, SEN. AUGARE voted yes by proxy (MacDonald).**
- 01:13:38 REP. MACDONALD recessed the meeting until 11:00 a.m.
- BREAK**
- 01:28:03 REP. MACDONALD called the meeting back to order at 11:00 a.m.

COMMITTEE ISSUE: Public Defender Commission Oversight

Overview of 2012 Performance Audit of OPD

- 01:28:32 **Megan Coy, Senior Performance Auditor, Legislative Audit Division (LAD),** discussed the May 2012 LAD performance audit of the Office of Public Defender (*Improving Statewide Consistency of Key Processes for the Office of the State*

Public Defender, [EXHIBIT 5](#)), including a summary of the audit's objectives and recommendations ([EXHIBIT 6](#)).

Overview of Commission decisions limiting acceptance of new case assignments

01:34:55 **Fritz Gillespie, Chair, Public Defender Commission**, reviewed the background information that resulted in the Public Defender Commission Resolution giving the Chief Public Defender the authority to file the motion to limit acceptance of new cases ([EXHIBIT 7](#)). Mr. Gillespie noted that the motion was filed in the Helena Municipal Court on September 5, 2013, and that the LJIC has copies of the motion ([EXHIBIT 8](#)). He said that Mr. Hooks would provide details on the motion.

01:39:40 **Bill Hooks, Chief Public Defender, OPD**, reviewed the details of the motion requesting the court to grant the OPD the authority to limit acceptance of new case assignments in Region 4 courts ([EXHIBIT 8](#)). He said that an October 1, 2013, hearing date has been set. He discussed the direness of the situation and said that the long-time problem of case overload has reached a breaking point in the Helena area. Mr. Hooks listed issues that have contributed to the problem, such as chronic shortage of FTEs and resources, lack of funding, high staff turnover, and more. He said that the pay plan approved by the 2013 Legislature was greatly appreciated and that it should help with the high turnover rate but that results would not be seen overnight.

01:43:24 Mr. Hooks discussed efforts to remediate and shift work loads to make them more manageable. He referred to the failed SB 53 (to remove jail as punishment for certain misdemeanors) as one attempt to help. Mr. Hooks said that because OPD attorneys are so overworked, performance obligations are not being met and clients are suffering, which is why he advised the Commission as he did.

Public Comment

01:46:05 Patti Jacques, Helena, commented on concerns regarding presentence investigative reports (PSI) and said that incorrect information in those reports are difficult to correct which can affect an offender's sentence, particularly for indigent offenders.

01:49:06 Janice Reichelt discussed difficulties her family encountered with her son's sentence to the Montana State Hospital (MSH) and the gap in service between the OPD and the Board of Visitors. She asked the LJIC to consider fixing that issue.

01:50:52 **Mark Murphy, Montana County Attorneys Association, MCAA**, said that he supported the OPD's budget requests in the 2013 session but did testify against SB 53 and would be happy to discuss those concerns with the LJIC. Mr. Murphy discussed a Yellowstone County experimental program to decriminalize traffic and parking offenses and its intersection with public defender services. He said he would be happy to answer questions on this issue also.

Committee Questions

- 01:52:28 SEN. DRISCOLL asked if results are available yet on Yellowstone County's experimental program and how fees are being collected under the experimental program. Mr. Murphy said that results are just beginning to come in. He explained how fees are being collected and said he would visit with the Billings City Attorney to get additional information for the LJIC. SEN. DRISCOLL said she would appreciate having that information as soon as possible.
- 01:54:25 REP. HILL commented that the performance audit did not appear to take into consideration the Public Defender Commission's past requests for funding. Ms. Coy said that the audit did not look at case loads or work load studies. REP. HILL asked why it didn't. Ms. Coy said the audit focused only on contract management issues and the indigency determination process.
- 01:56:14 REP. HILL asked if the LJIC could request that the Legislative Audit Committee look at the issue of case loads and work load studies. Ms. Weiss said that the LJIC could make the request but that the Legislative Audit Committee is an independent committee and controls its own work load.
- 01:57:16 REP. HILL asked Mr. Hooks if there was anything he would like the LJIC to do in terms of immediate or emergency relief or for the 2015 legislative session. Mr. Hooks said he didn't know what he could request but that he wanted to be certain that the OPD has answered all of the LJIC's questions and that the LJIC fully understands the scope of the problem.
- 01:58:23 SEN. MURPHY discussed the difference in opinions he has heard regarding pay raises for OPD attorneys. Mr. Hooks assured SEN. MURPHY that a pay raise would not inspire busy work for the sake of more billable hours and explained the positive effect of increasing OPD attorney pay. Mr. Hooks also addressed the concerns of inmates regarding adequate representation by OPD attorneys, as discussed by SEN. MURPHY.
- 02:04:15 REP. ECK asked Mr. Hooks to explain the practical effect of the motion, if granted, and how it will help the caseload situation. Mr. Hooks said the intent of the motion, if granted, is to give OPD attorneys time to handle the cases they have and no more. He explained further.
- 02:06:46 REP. MACDONALD questioned Ms. Coy about the scope of the audit and role of the Legislative Audit Committee in the process. She also asked Ms. Coy to discuss further the possible followup to the OPD performance audit, specifically if the LAC would direct auditors to pursue questions on caseload and the OPD's ability to provide effective counsel. Ms. Coy explained how the LAC ranks and prioritizes audit topics, the actual audit process, and what followup steps have been taken regarding the OPD performance audit.

Committee Discussion

- 02:10:22 REP. HILL asked that the LJIC be updated on the outcome of the hearing at its December meeting. REP. MACDONALD agreed that an update would be appropriate.

02:12:15 REP. MACDONALD recessed the meeting for lunch at 11:45 a.m., to reconvene at 1:00 p.m.

LUNCH BREAK

03:29:31 REP. MACDONALD called the Law and Justice Interim Committee meeting back to order at 1 p.m.

SJ 22 STUDY: Family Law in Montana Today

The LJIC received, in advance of the meeting, a background report titled, "SJ 22: Study of Family Law Procedures and Alternatives", prepared by Ms. Weiss (EXHIBIT 9).

03:30:03 **P. Mars Scott, Chairman, Family Law Section of the State Bar of Montana, Missoula**, discussed the history of family law procedures in Montana, including the work of the *Montana Domestic Relations Study Commission* and the 1997 legislation put forth by the Commission. Mr. Scott discussed three problems with Montana's parenting statutes and offered solutions for consideration, such as more education on the needs of children at each stage of development and standardized parenting plans. Mr. Mars submitted a copy of his testimony at the conclusion of his discussion (EXHIBIT 10).

03:40:28 **Judge David Ortley, 11th Judicial District, Flathead County**, stated that Ms. Weiss' background paper was very accurate and encapsulated the issue very well. Judge Ortley said that he did not have answers but could say that because the problem is so vast, any solution will have to be multifaceted and will require a coordinated and cooperative effort to solve. Judge Ortley discussed the efforts of the Supreme Court Access to Justice Commission, of which he is a member, and the six areas of concern that need to be a part of any solution: 1. examination of the system itself: legislature, judiciary, bar association; 2. cultural changes in what is an adversarial justice system, 3. improved and expanded use of technology; 4. recognize and accommodate societal changes, especially concerning self-representation; 5. recognize that the nature of families is changing; and 6. deal with the economic reality that many people can't afford to get the help they need and that parents often need guidance to be an effective parent. Judge Ortley stated that he is not a counselor but is often expected to be. He left a copy of a draft report from the Commission with Ms. Weiss to share with the LJIC (EXHIBIT 11).

03:53:40 **Judge Kurt Krueger, 2nd Judicial District, Butte, Montana**, thanked the LJIC for the opportunity to discuss the problem. He said because Mr. Scott and Judge Ortley had discussed many of the issues, he would focus his discussion on what he is doing, as a judge, to deal with the problems. Judge Krueger discussed the pro bono program established in 1996; a *pro se* program established in 2006 which include a coordinator and use of "Hot Docs" technology; and mandatory mediation.

03:58:49 Judge Krueger also discussed the increase in case loads, particularly for *pro se* cases. He said that family law is very complex and time consuming so that it is important to streamline the process to the extent possible.

- 04:00:52 Judge Krueger offered several potential solutions, such as self-help programs, use of electronic technology to aid those residing in rural areas, funding for counseling or other types of intervention.
- 04:03:05 **Brenda Desmond, Standing Master, 4th Judicial District, Missoula**, read a statement into the record ([EXHIBIT 12](#)) which contained an overview of how the 4th Judicial Court handles family law matters. Ms. Desmond also provided a copy of parenting guidelines used in the 4th Judicial Court ([EXHIBIT 13](#)).
- 04:07:52 Ms. Desmond discussed important considerations to ensure that the court system does not undermine the co-parenting relationship, discussed effective strategies to move cases along more quickly, and ways to respond effectively to the large number of parties who represent themselves.
- Ms. Desmond recommended that LJIC explore establishing a family court as a subdivision of the district court system and explained how doing so would help progress the system in the three areas she discussed.
- 04:17:58 **Lori Maloney, District Court of Clerk, 2nd Judicial District**, discussed the important role that Clerks of Court play as the front line of the process. Ms. Maloney also discussed the dramatic rise in *pro se* litigants and echoed Judge Krueger's comments about the value of having a *pro se* coordinator. Ms. Maloney said that statewide, Clerks of Court would agree that the number of *pro se* litigants is a major problem, particularly in dealing with family law cases.

Public Comment

- 04:21:03 There was no public comment.

Committee Questions

- 04:21:08 SEN. DRISCOLL referred to the parenting guidelines document (1.9, page 3, [EXHIBIT 13](#)), and asked Ms. Desmond to clarify how child support abatement is handled in the 4th Judicial District Court. Ms. Desmond explained several options the Courts have for ordering child support.
- 04:22:53 SEN. DRISCOLL asked how changes can be made in child support payments, as the child grows and the needs change. Ms. Desmond said that changes can be made in several ways but that the first stop is usually the Court, with involvement from the Child Support Enforcement Division.
- 04:24:16 REP. HILL asked why Montana would want to be the first to establish a statewide parenting plan. Mr. Scott said that Montana has the most progressive parenting laws in the entire nation and has the ability to discuss and talk things out. He said he saw no reason why Montana shouldn't establish such a program.
- 04:26:07 REP. HILL said, in reference to Mr. Scott's discussion of the Spokane guidelines, asked how a child's primary attachment figure is considered in family law procedures. Mr. Scott said that a child's primary attachment figure is an important consideration but that other factors are considered also.

- 04:27:55 REP. ECK thought that a child's primary attachment figure may change over time and asked if that is considered in the process. Mr. Scott agreed that children change as they grow and said that the law allows changes to parenting plans for that reason.
- 04:30:28 REP. HILL said she is interested in Judge Krueger's comments regarding the significant increase in *pro se* cases in Montana. She asked if judges have discussed allowing Montana attorneys to engage in limited representation of clients. Judge Krueger said that Montana has adopted rules for limited representation and that while it would help, there would still be problems to deal with, such as presentation to the court.
- 04:34:16 REP. HILL asked what the Legislature's role would be in creating a family court. Ms. Desmond said there are unlimited possibilities, such as approving a pilot project. She discussed the potential for long-term benefits, such as cost savings or minimizing the effect of "warring" parents because the process would be shorter.
- 04:37:18 REP. MACDONALD asked what the differences are between the work done at a self help law center and what a *pro se* coordinator would do. Judge Krueger explained how the coordinator is shared among several positions in his court. He said that Billings staff its self help program using Vista volunteers.

SJ 22 STUDY: Overview of District Court Workload Tracking

- 04:41:21 **Beth McLaughlin, Court Administrator, Montana Supreme Court**, provided a brief overview of how the District Court workloads are tracked. Ms. McLaughlin referred to a color map showing Montana's 22 judicial districts ([EXHIBIT 14](#)) and discussed the workload of each district.
- 04:43:47 Ms. McLaughlin discussed a spreadsheet table ([EXHIBIT 15](#)) with more detailed information on the different categories of cases and number of cases filed. She noted that child abuse and neglect cases and criminal review top the list and are the most time consuming cases.

Committee Questions

- 04:49:14 SEN. MURPHY asked what percentage of criminal cases are pled out, rather than going to jury trial. Ms. McLaughlin said she did not have specific numbers. She asked that the question be redirected to Judge Krueger.
- 04:50:56 Judge Krueger said that would be difficult to say because of a number of different factors that come into play. He explained further, saying that the majority of cases don't go to trial but that those cases still consume a massive amount of court resources.
- 04:52:40 SEN. JENT asked about the number and use of standing masters as a judicial resource in Montana. Ms. Desmond explained how they are used, including that standing masters are significantly less expensive than judges. She noted that the lack of clerical support for standing masters is a problem. SEN. JENT asked what a standing master salary is, as opposed to a judge's salary. Ms. McLaughlin said

judge will be paid an annual salary of approximately \$116,000 and a standing master is paid \$70-75,000.

- 04:55:26 REP. HILL asked for more information on the types of efficiencies that can be looked into to improve the situation, such as family law courts and standardized guidelines. She said she would like a chart or graph on court illustrating how courts are funded through fees collected, general fund appropriations, or other funding sources; and that information for each judicial district be provided and for the overall system. Ms. McLaughlin said that approximately 95% of the district courts budgets are state general fund appropriations, clerks of court salaries are paid by the counties, and that counties provide courtroom and office space for judges and their staff.
- 04:57:49 REP. MACDONALD referred to the court case spreadsheet ([EXHIBIT 15](#)) and asked which categories of cases would fall under the family law study. Ms. McLaughlin said that the domestic relations cases, including the subtypes such as divorce and parenting, would be included in SJ 22.
- 04:59:36 REP. MACDONALD recessed the meeting until 2:45 p.m.
- BREAK**
- 05:17:52 REP. MACDONALD called the meeting back to order at 2:50 p.m.

SJ 22 STUDY: Pro Se Litigants - Challenges and Available Resources

- 05:18:16 Beth McLaughlin, Court Administrator, Montana Supreme Court, said a big issue facing the court system is the number of people who are representing themselves. She explained that citizens have a right to do this and can't be turned away but that the court's experience is that most of these people would prefer an attorney but can't afford it. The less complicated cases are handled without too much trouble, so long as the people use the resources available. There are about 11,000 family law cases every year and each of those cases have a minimum of two parties involved so there are at least 20,000 coming before the court. Of these, about 60% represent themselves.
- 05:21:25 Ms. McLaughlin used an analogy of a three-legged stool to explain how the system tries to address the needs of these litigants. She said the first "leg" is the private bar and its efforts to provide assistance to litigants. Ms. McLaughlin provided copies of the *2012 Pro Bono Final Report* executive summary ([EXHIBIT 16](#)) and discussed what attorneys have self-reported as pro bono work in 2012.
- 05:24:44 Ms. McLaughlin said the second "leg" is work done by nonprofits to provide assistance to self-represented litigants. She introduced Alison Paul of the Montana Legal Services Association. **Alison Paul, Executive Director, Montana Legal Services Association (MLSA)**, said that the Association is an independent nonprofit agency primarily funded by federal funds. She discussed a fact sheet on the services provided through the MLSA ([EXHIBIT 17](#)).
- 05:28:03 Ms. McLaughlin said the third "leg" is the services provided through the Judicial Branch, primarily the Supreme Court Administrator's Office. She said that direct services are provided for self-represented people via the *Court Help Program*

and she discussed a color-coded map indicating service locations across the state ([EXHIBIT 18](#)) and how the program is funded.

- 05:32:58 Ms. McLaughlin distributed copies of and discussed the COURT HELP PROGRAM brochure ([EXHIBIT 19](#)).
- 05:33:31 Ms. McLaughlin said another area that the courts provide significant assistance is with forms and filling them out. She said that information is posted on the Judicial Branch website with instructions and tips, as well as the forms themselves. She discussed the two most commonly used forms (dissolution with parenting plan form and parenting plan) (*Introduction to Family Law in Montana, Montana Legal Services Association* - [EXHIBIT 20](#)) and noted that the MLSA has automated these forms for ease of use.
- 05:36:43 Ms. Paul explained how "Hot Docs" are used at the self-help centers. Ms. McLaughlin encouraged LJIC members to visit a self-help center in their area in order to see first-hand how the process works. She said that beyond the forms, the biggest difficulty is trying to explain to people what they can and can't do in court. She said it often falls to the judge to explain and is the area most difficult to deal with, in spite of the training videos and other information provided.
- 05:38:12 Ms. McLaughlin said that most District Courts require parenting education programs before a case can go to court. She explained why this is beneficial.
- 05:39:03 Ms. Paul said that she strongly supports the suggestions made by Mr. Scott for parenting plan guidelines, particularly for *pro se* litigants. She explained further.

Public comment

- 05:40:21 There was no public comment.

Committee Questions

- 05:40:29 SEN. BOULANGER asked how the process works when parents reside in different states with different requirements. Ms. Paul said that Mr. Scott would have good information on that question.
- 05:41:35 Mr. P. Mars Scott said there is a *Uniform Child Custody Disposition Act* used by all states and said that the state that has jurisdiction of the children determines the parenting plan.
- 05:42:34 REP. MACDONALD asked why parenting education is not required by all District Courts and if that is area that might be considered for legislation. Ms. McLaughlin said that not all courts have the caseload to justify setting up these programs. She discussed online resources that can be used instead of court-directed programs.
- 05:44:17 REP. MACDONALD asked how statewide parenting plan guidelines might be implemented and if there would be any impediments to doing so through the judiciary. Ms. McLaughlin said that one possibility could be that the Legislature establish a framework for what the guidelines should look like. She said the key

would be to make the process simpler. REP. MACDONALD said that the Legislature could set policy and establish the program, and that the Courts could create and implement the process through rulemaking and the Judicial Branch.

05:46:11 Ms. McLaughlin provided a list of legal resources outside of family law matters that she said that may be of interest to the LJIC, such as the Child Support Enforcement Division in the Department of Public Health and Human Services ([EXHIBIT 21](#)).

SJ 22 STUDY: Mediation - What it is and how it works

05:47:19 **Linda Gryczan, Mediator**, discussed a number of recommendations in response to the questions she heard during the meeting. Ms. Gryczan suggested that it would be very helpful to overwhelmed parents going through a dissolution to have all forms available electronically and interactively.

05:49:23 Ms. Gryczan discussed the benefits of parenting plan guidelines and said the most important consideration is if the plan fits the need of the child.

05:52:34 Ms. Gryczan discussed the use of mediation as a means to satisfy family concerns. She explained different styles and methods of mediation.

05:55:34 Ms. Gryczan said that if parents are able to have a fair and balanced discussion on their own, there are [websites](#) to which they can look for assistance and guidance, such as [uptoparents.org](#). She explained how the free programs work, saying that they can help parents communicate more effectively and be more aware of their children's emotional needs.

06:03:37 Ms. Gryczan discussed how she handles the issue of domestic violence in a mediation process.

Public Comment

06:04:39 There was no public comment.

Committee Questions

06:04:46 REP. HILL referred to the two models of mediation (evaluative/attorney versus facilitative/nonattorney) discussed by Ms. Gryczan and asked if qualifications, standards, and definitions should be put into statute. She also wondered if judges should be given more discretion in ordering mediation for families.

06:07:02 **Cindy Thiel, attorney**, discussed how attorneys use mediation, saying that it is more a settlement conference procedure than a mediation. She provided additional details, including the function of settlement masters and statutory and local rules that must be adhered to.

06:10:28 REP. MACDONALD asked if the MLSA has plans to further automate its forms for cases of joint filings. Ms. Paul said there is currently no funding for the automation of those documents. She explained how grants were used to automate current MLSA forms. REP. MACDONALD asked if there is a "ball park"

figure on what the cost might be. Ms. Paul said she did not but could get that figure for REP. MACDONALD.

06:12:12 REP. MACDONALD asked Ms. Gryczan to what extent her services are being used by courts. Ms. Gryczan said she could not say exactly because it is usually parents who contact her.

06:13:13 REP. MACDONALD asked Ms. Gryczan to expand on her discussion of the Oregon law that requires 8 hours of mediation in separation/dissolution cases. Ms. Gryczan said the information came from one person who had experience with the court and that she would have to do additional research on the Oregon law.

06:14:12 REP. MACDONALD asked Ms. Thiel to comment further. Ms. Thiel said that she has anecdotal information on Missoula County attorneys who conduct settlement conferences indicating they are incredibly effective at settling family law matters before they get to court.

COMMITTEE ISSUE: Re-entry Task Force Update (HB 68)

06:15:15 **Adrian Slaughter, Department of Corrections (DOC)**, thanked the LJIC for approving HB 68 as a committee bill. She reviewed the provisions of the bill and discussed the short and long term goals of the program. She also listed the members of the Re-entry Task Force.

Public Comment

06:20:03 Dr. Gary Mihelish, NAMI, Helena, said, as a member of the Re-entry Task Force, that his initial impression is that the members of the Task Force are dedicated professionals who are attempting to make a difference. He said he would discuss this issue in more detail at the next day's meeting.

06:22:34 Janice Reichelt, mother of mentally ill person, nurse, said that the DPHHS is working hard to establish programs that will stabilize the mentally ill and will reduce recidivism; and that appropriations from the 2013 session for treatment and medications were helping. She agreed that the best way to help a mentally ill patient was to treat them before they break the law. Ms. Reichelt discussed her son's story as a case study of why treatment is so necessary.

Committee Questions

06:26:15 There were no questions.

COMMITTEE ISSUE: Update on HB 16 Study

06:26:44 REP. MACDONALD noted that the Children and Families and Health and Human Services (CFHHS) Interim Committee recently toured facilities and programs and that LJIC staff and members (SEN. MURPHY and REP. ECK) accompanied the CFHHS on the tours.

06:27:29 Ms. Weiss gave a brief update and summary of the tours and ensuing discussion. Ms. Weiss also reviewed the study topics contained in the HJ 16 study of state institutions and noted that there is a great deal of overlap between

the CFHHS and the LJIC on this issue. She said that the CFHHS is still gathering information at this point and will keep the LJIC updated on its work.

06:30:48 SEN. MURPHY said that the tours were time well spent and that he now fully appreciates the importance of providing treatment to the mentally ill before the person reaches the point of becoming violent and/or breaking the law. He said he was encouraged by all of the good things going on and the dedicated staff, and that he hoped that "win-win" solutions could be found to get people out of institutions and to decrease recidivism.

Public Comment

06:34:39 Patti Jacques, Helena, said that she went on the tours and while she was encouraged by the many state employees who are very dedicated to what they do, there are also significant deficiencies that need to be addressed. She commented on several of the deficiencies she is most concerned about.

06:41:59 Janice Reichelt commented on sentence requirements for mentally ill offenders and said that improved medications have made these requirements obsolete. She asked the LJIC to consider changing statutory requirements regarding this and other laws that prevent mentally ill people from recovering.

Committee Questions

06:44:29 REP. ECK expressed her concern about the lack of electronic medical records in the DOC system and said it would be an easy fix. SEN. JENT said that he had sponsored legislation to do that and that the process of transferring to electronic medical records should be underway. *REP. MACDONALD noted that SEN. SALES had joined the meeting.*

AGENCY OVERVIEW

06:46:50 **Julianne Burkhardt, Staff Attorney, LSD**, said that a rule review memo ([EXHIBIT 22](#)) was included in the meeting materials and would be posted on the LJIC website soon.

Committee Questions

06:47:44 There were no committee questions

PUBLIC COMMENT

06:48:17 **Rudy Stock** commented in support of restorative justice. Mr. Stock's testimony included information on Minnesota's restorative justice programs.

06:51:20 Janice Reichelt commented on concerns about her son's experience in the criminal justice system as a person suffering from a mental illness.

06:54:45 **Jennifer Brown**, read a statement ([EXHIBIT 23](#)) on behalf of her friend addressing frustrations with the Parole Board (SJ 3 study). REP. MACDONALD noted that Ms. Brown could not appear before the committee at the time scheduled on the following day for the SJ 3 study so she was given permission to address the committee at this time.

COMMITTEE WORK SESSION: SJ 22 STUDY

- 07:00:48 SEN. JENT discussed a number of recommendations on how to proceed which included:
- prioritizing the Supreme Court's backlog regarding the preponderance of unrepresented litigants;
 - requesting input and assistance from judges and the Montana Bar Association to craft potential solutions;
 - request assistance from the Legislative Finance Committee and the Governor's Budget Office;
 - consideration of a "quickie" divorce statute;
 - streamline statutes in Title 40 regarding parenting plans; and
 - request input and suggestions from people who have gone through the process.
- 07:05:56 Ms. Weiss said that after reviewing the Study Plan, she thought the committee could set aside about 2 hours for this issue at the one-day December meeting. She reminded the LJIC that it would have a two-day meeting in February 2014.
- 07:09:02 Ms. Weiss asked that the committee members think about the discussion topics they found most interesting and relay their thoughts to her and Chair MacDonald. REP. MACDONALD agreed that thoughts and suggestions are welcome, from the committee and the public.

MEETING IN RECESS

- 07:10:37 With no further business before the committee, REP. MACDONALD recessed the meeting until 8 a.m on Friday, September 20, 2013.

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