



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 20, 2013 - Day 2
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

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

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

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

COMMITTEE MEMBERS ABSENT/EXCUSED

SEN. SHANNON AUGARE

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 took no official action in the course of the meeting.

CALL TO ORDER AND ROLL CALL

00:00:10 REP. MACDONALD reconvened the Law and Justice Interim Committee (LJIC) meeting at 8:00 a.m. The Secretary took roll, SEN. AUGARE was excused ([Attachment 3](#)). REP. MACDONALD reviewed the meeting agenda and process to be followed for public comment.

SJ 3 STUDY: Background on Criminal Justice Process

00:02:14 **Julianne Burkhardt, Staff Attorney, Legislative Services Division (LSD)**, discussed an overview of the criminal justice process following a conviction ([EXHIBIT 1](#)).

Throughout all of the SJ 3 presentations, members referred to meeting materials prepared by LJIC and Department of Corrections (DOC) staff:

- *SJ 3: Study of the Board of Pardons and Parole*, a background paper on Parole Board philosophy - prepared by Rachel Weiss, LJIC Staff ([EXHIBIT 2](#));
- *SJ 3: Study of the Board of Pardons and Parole*, a background paper on Parole Board structure, duties, and operations - prepared by Rachel Weiss, LJIC Staff ([EXHIBIT 3](#));
- *Parole Board files and Board Packets* - provided by the Board of Pardons and Parole (BOPP) ([EXHIBIT 4](#));
- *Contents of Montana State Prison Offender Records File* - provided by Janet Cox, Records Manager, Montana State Prison (MSP) ([EXHIBIT 5](#));
- a DOC flow chart: Male Offenders ([EXHIBIT 7](#));
- a DOC flow chart: Female Offenders ([EXHIBIT 8](#));
- Department of Corrections/Board of Pardons and Parole community parole process ([EXHIBIT 9](#));
- Department of Corrections/Board of Pardons and Parole prison parole process ([EXHIBIT 10](#)); and
- Department of Corrections/Board of Pardons and Parole parole sanction options ([EXHIBIT 11](#)).

Public Comment

00:09:07 **James Cox, Billings**, submitted a packet of letters and other documents regarding his work and involvement with Montana's corrections system and the Parole Board, on behalf of probationers and parolees ([EXHIBIT 6](#)). Mr. Cox commented on his position regarding the Department of Correction's practice of using private contractors, saying that the DOC's actions appear to be driven more by economic considerations than the law.

00:13:21 **Patti Jacques, Helena**, discussed the significant influence a pre-sentence investigation report (PSI) can have on how a judge sentences and places an offender. She specifically referenced her son's situation as a mentally ill person who has been placed in a correctional facility with no treatment. She suggested that a

family service coordinator position be created to help families help their incarcerated family members.

00:16:07 **Pat Keim, Alternatives, Inc.**, responded to previous comments intimating that prison system contractors want to make money off prisoners. He discussed his work at Alternatives, Inc., saying that the goal of the program is to successfully reintegrate an offender back into the community. He said there are not enough placements available for prisoners who are eligible for parole or probation, which has created the backlog of prisoners waiting to get out.

Committee Questions

00:18:30 There were no committee questions.

SJ 3 STUDY: Background on Department of Corrections Commitments

00:18:42 **Pam Bunke, Administrator, Adult Community Corrections Division, DOC**, explained what a DOC commitment is, how it differs from a sentence to the Montana State Prison or Women's Prison, and how the DOC places and supervises a DOC commit. She reviewed the history of the DOC commit process, which was established in 1993 mainly to relieve overcrowding at the Montana State Prison (MSP).

00:23:53 Ms. Bunke explained how offenders are screened by probation and parole officers for placement in a community corrections program.

00:26:37 Ms. Bunke discussed how offenders who are difficult to place are handled.

00:29:08 Ms. Bunke explained the differences between DOC commits, probationary offenders, and parolees; and that each are managed differently. She explained what rules and conditions apply to each and the jurisdictional authority that comes into play when an offender violates their conditions of supervision.

00:33:02 REP. MACDONALD reviewed the guidelines for giving public comment at the meeting ([EXHIBIT 12](#)).

Public Comment

00:35:52 James Cox, Billings, commented on the many requirements that parolees must meet and the difficulties that some parolees have in meeting those requirements.

Committee Questions and Discussion

00:44:46 SEN. MURPHY asked what percentage of criminal sentences passes by judges are actually commitments to the DOC. Ms. Bunke said she didn't know but would find out. She estimated that there are 11,000 offenders on probation, 1,600 on parole, and 1,500 on conditional release or DOC commit. She said she would find out what the actual sentences per year are.

SJ 3 PANEL PRESENTATION: Pre-Parole Process at Board of Pardons and Parole (Board) and DOC

00:47:29 **Meaghan Shone, Parole Board Analyst**, thanked the LJIC for the opportunity to discuss the Board of Pardons and Parole (BOPP) and the parole process. She noted that the LJIC members were given informational binders from the BOPP

(EXHIBIT 13). (The binders were divided into the following topics: pre-parole hearing, parole hearing and BOPP philosophy, post parole hearing, research regarding states' sentencing laws and releasing authorities, and feedback letters.)

- 00:48:50 **Janet Cox, Records Manager, MSP**, explained the Records Management Department's statutory responsibilities, which include extensive record keeping and calculating parole dates. She discussed all of the requirements that must be met for parole eligibility and the timeline followed for the parole eligibility process. Ms. Cox also discussed court-imposed restrictions that can affect parole eligibility and other factors that can influence parole decisions.
- 00:52:25 **Greg Budd, Case Manager, MSP**, explained the classification process for offenders in DOC, saying it is based on an objective points system and is a nationally recognized classification system. Mr. Budd listed factors considered in placement and said that when the placement report is done, it is shared with the offender and then serves as a "roadmap" of what the offender needs to do.
- 00:54:38 Mr. Budd discussed how offenders are placed in treatment programs, if needed, and noted that placement on the list is based on the offender's parole eligibility date. He said that offenders in regional or contract facilities are brought back to MSP for treatment programs and that the MSP monitors and tracks who is ready for treatment and who is next on the list.
- 00:56:25 Ms. Shone added that because the Board is concerned about offenders not knowing what to do to obtain a parole, a pre-parole process has been created to help them. She said the program helps the offenders have a better idea of what needs to be accomplished before parole and she listed the factors and considerations necessary to get paroled.
- 00:58:09 Ms. Shone said that if an offender is not eligible for parole, he or she is made aware of that at the initial classification so they know right away. She discussed a BOPP-provided orientation handbook ([EXHIBIT 14](#)) designed to help offenders understand each step and requirement of the process.
- 00:59:17 Mr. Budd discussed the time period between classification and the offender's first parole hearing. Mr. Budd listed the information that is included in the parole report, which is forwarded to the Board.
- 01:02:23 Ms. Shone discussed pre-parole "school" which is intended to enhance the offender's chance of getting paroled. She said that assistance is given in completing the parole application, which includes a parole plan for living, employment, training, or treatment programs that may be needed.
- 01:08:51 Mr. Budd discussed the specifics of a release plan as part of parole process and how it is fine-tuned for each offender. He said that the offender reads and signs each page of the report before turning it in to the Board.
- 01:09:42 Ms. Shone reviewed the contents of a BOPP parole packet that the members receive for each offender coming before the Board for consideration ([EXHIBIT 13](#), Tab 2: Parole Hearing & Board Philosophy).

01:12:06 Ms. Shone noted that offenders, in addition to viewing their parole packet, also have the right to review their entire DOC file. She said that over 200 requests to do so have been received since 2012, which has been challenging to DOC staff because of staff limitations.

01:12:54 Mr. Budd discussed the preparation that takes place in the final stages before the actual parole hearing, such as setting up mock hearings to help the offender be better prepared for the hearing and to help them emphasize their accomplishments and accountability for their actions. He said that after the actual hearing and disposition, staff communicates with the offenders about what the next steps are, whether or not the offender was granted parole. He said that staff takes every opportunity to work with offenders in order to help them be their best in their appearance before the Board.

Public Comment

01:16:26 Patti Jacques, Helena, commented that the process appears to be very complicated and difficult, particularly for mentally ill persons, and that it would be easier if minimal flat sentences were handed down to nonviolent offenders.

01:19:03 James Cox, Billings, related his personal experience as volunteer to assist prisoners working to get parole and with prisoners granted parole. He referred to the packet of documents previously submitted to the LJIC ([EXHIBIT 6](#)).

01:23:18 **Steve Cape, Montana Coalition for Safety and Justice**, discussed his work with probationers and parolees who come into his programs. He praised the DOC for providing funding for housing, saying that the two biggest factors for an offender's successful transition back into a community is employment and housing. Mr. Cape suggested that 46-23-1031, MCA, be amended to allow a portion of the fees collected to be allocated for housing. He also discussed his concern regarding a requirement that an offender pay for housing before employment is secured.

01:26:29 **Craig Thomas, former Executive Director, Board of Pardons and Parole**, spoke in support of the comments made previously by DOC prison staff. He urged the LJIC to look at the history of how the processes have been developed, saying it has taken decades and that they are based on the needs of offenders. He said that the BOPP, with the DOC, have focused on addressing the needs of offenders when entering the system so the offender can be more successful in obtaining parole.

01:28:17 Mr. Thomas discussed the efforts of Mr. Hank Burgess, former BOPP chair, to create treatment programs at the MSP. He said that prisoners are now able to get the treatment and guidance they need to put them in the best possible position to succeed when released.

01:29:33 Mr. Cox commented on the problems encountered in trying to help a prisoner whose parole plan requested being paroled to another state.

Committee Questions

01:31:54 SEN. SALES asked when the State started the bureaucracy and procedures to get people ready for parole. Mr. Thomas said that there has always been a classification system in prison to determine where inmates will be placed but no

treatment programs were established until the late 1970s; so inmates who had not dealt with the issues that landed them in prison were appearing before the Board. He said that it didn't take Mr. Burgess long to figure out that these people need treatment as part of their incarceration program.

- 01:34:01 SEN. SALES asked if recidivism rates have decreased, increased, or stayed the same. Mr. Thomas said that he didn't have specific numbers but thought the DOC could provide that information. He said that offenders going into communities today are much better equipped to succeed than they were in the 1970s and that if their needs aren't addressed while incarcerated, offenders will continue to commit crimes and create victims. He said that public safety is of the utmost importance to the BOPP but that the Board is also very concerned about offender success in a parole program.
- 01:35:25 SEN. SALES said he would like information on recidivism rates for the last 40 years. Ms. Bunke said she wasn't sure how far back DOC records went but would check to see what information is available.
- 01:36:12 SEN. JENT said he would like to know how many people are granted parole the first or second time they appear before the BOPP and the percentage of sentences actually served. He asked if there is a statistical database that the LJIC could access to get clear information on how the current system is working. Ms. Bunke deferred the question to BOPP staff.
- 01:37:45 **Christine Slaughter, Board Analyst**, reported that in fiscal year 2012, the BOPP granted parole to 49% of offenders at their first appearance before the Board and that 78% of offenders who appeared before the Board had subsequent hearings. She provided additional statistical data.
- 01:39:40 SEN. JENT said that he wants exact statistics on first and second time appearances before the Board and information on why offenders are denied parole. Ms. Slaughter explained that the Board renders its decision right at the hearing. If denied parole, the offender is instructed on the reasons and is given a road map on how to earn parole in the future.
- 01:41:21 SEN. JENT asked about situations in which parole can be denied. Ms. Slaughter said that because some crimes are so severe or heinous, the Board is not comfortable releasing this type of offender into the community.
- 01:42:27 SEN. JENT commented that it appeared to him that there may be a point where the BOPP crosses over the line between executive and judiciary authority which, he said, troubles him. He asked why the Board should have the discretion to designate an offender as "dangerous" if the judge didn't sentence the offender that way. He asked if there is data compiled on these types of cases. Ms. Slaughter said that she could provide additional information to the LJIC.
- 01:44:48 Ms. Shone said that the BOPP packet has specific information on parole granted for nonviolent, violent and sexual offenders, which could give SEN. JENT more insight on his concerns ([EXHIBIT 13](#)).

01:45:21 Ms. Cox discussed changes made in April 1995 that changed classification of offenders.

01:46:16 Mr. Budd said that the current focus is on re-entry efforts and how to make offenders more successful upon release. He said that the DOC is doing a lot to add to the process and predicted that recidivism rates will eventually decrease.

01:47:12 SEN. DRISCOLL asked for clarification on how hearings are scheduled, for instance, if an offender is paroled but waives his right to a hearing. Ms. Shone said that a hearing would be automatically set for 6 months ahead and explained further.

01:48:06 SEN. SALES said that he also is interested in seeing statistics to see what has changed over time and what the trends are.

01:48:56 SEN. BOULANGER asked if it is possible to find out how Montana's programs compare with other states. Mr. Thomas said that each state is unique in how it addresses probation and parole issues, but that Montana is quite progressive in its support for offenders. He explained further.

01:50:58 REP. LENZ asked Mr. Thomas to comment on Montana's liberal sentencing guidelines and if they are appropriate. Mr. Thomas thought that the guidelines are appropriate. He said that the programs have been developed over decades by professionals in the corrections system and in conjunction with the Legislature and the LJIC. He said that despite swings in trends or philosophies, the Board has been consistent in its consideration of an offender's crime, behavior, past history, and other factors that go into the parole process.

01:53:47 REP. LENZ said he finds it curious that the prisoner is responsible for coming up with their own parole plan. Mr. Budd said it is a collaborative process between the DOC and the offender and that the goal is to craft the best plan possible for that particular offender.

01:56:07 REP. MACDONALD asked how or if the BOPP can deny parole to an offender and add additional classes or requirements if the offender has completed all of the criteria in his parole plan. Mr. Budd said if parole is denied, he meets with the offender after the hearing and would make sure the offender is signed up for whatever classes or treatment is needed. He said that in a case like this, the offender would be placed high on the list in order to keep the process moving.

01:58:49 Ms. Shone said the Board does not make additional requirements very often if an offender has abided by the treatment plan. She explained what other factors may enter in to this type of decision, saying that it would be most likely to happen with sexual offenders.

02:01:39 REP. MACDONALD asked how long offenders have to wait to get into a treatment program. Mr. Budd said he would provide information on waiting lists. He noted that the number of chemical dependency program slots have been increased and that there are different types of chemical dependency programs available.

- 02:03:12 Ms. Shone added information about how offenders are prioritized for treatment, particularly if the BOPP has ordered the treatment.
- 02:03:56 SEN. MURPHY, Ms. Shone, and Mr. Budd discussed the issue of prison capacity and how or if capacity affects the pre-parole process. Ms. Shone discussed several options available for transitioning low-risk offenders out of the system in order to alleviate capacity problems at the MSP and said that another factor that needs to be addressed is the struggle to find housing and employment for offenders who are eligible to get out. Mr. Budd said that getting offenders to "buy in" to their plan, whether it be education or treatment, is another important factor in the offender's successful release. SEN. MURPHY said that did not answer his question.
- 02:08:14 REP. MACDONALD asked how many offenders have been granted parole but not released due to housing or parole plan issues. Ms. Shone reported that as of April 2013, 200 offenders are incarcerated who have been granted a parole.
- 02:09:50 REP. MACDONALD thanked the panelists and recessed the meeting for a 15-minute break at 10:10 a.m.
- BREAK**
- 02:31:09 REP. MACDONALD called the meeting back to order. She welcomed current and former BOPP members to the meeting.

SJ 3: PANEL PRESENTATION - Parole Board Philosophy

- 02:32:01 **Sam Lemiach, former BOPP member**, read his statement into the record ([EXHIBIT 15](#)). Mr. Lemiach's comments included his background and experience as a DOC staff member and his perspective on the work done by the BOPP.
- 02:43:00 **Margaret "Binky" Bowman, current BOPP member**, discussed her personal approach and philosophy to dealing with parole board duties, saying that the most important point to remember is that the process deals with a human being. She said that as a member of the Confederated Salish-Kootenai Tribe (CSKT), she is able to add additional perspective to the process. Ms. Bowman said it is important to keep in mind that there is a big difference between being eligible for parole and actually deserving parole, and that she wanted that distinction on the record. She said that BOPP does solid work, treats offenders with respect, and works hard to do a good job. She stated that it may not be a perfect system but that it is one that she believes in.
- 02:49:26 **Don Hargrove, former legislator and former BOPP member**, said that while the parole system may not be well understood by the citizens, it is a very valuable piece of the system. He said that as a BOPP member, he always strove to remember that the decisions made by the Board would affect the life of a human being and as such, he researched each case carefully in order to make the best possible decision. Mr. Hargrove discussed other considerations that influenced his decisions as a BOPP member.
- 03:02:20 **Darryl Dupuis, current BOPP member**, stated that the BOPP is doing an outstanding job for the State of Montana. He discussed the training provided and responsibilities as a parole board member, saying it is time-consuming to prepare for hearings and that many factors must be considered for each prisoner's hearing.

He discussed the BOPP's provisions for dealing with mental health, saying that the BOPP goes to the MSH to conduct hearings for offenders. Mr. Dupuis stated that public safety is the primary concern, not money or prison issues. He said that if an inmate has earned parole, it will be granted and if not, clear direction will be given on what needs to be done.

Public comment

- 03:18:56 **Mike McKee, Chair, BOPP**, in reference to SEN. BOULANGER's question about how Montana compares to other states, discussed a 2-week training he recently attended as the BOPP Chair. He said that parole members from almost every state were in attendance and that many were struck by how progressive Montana's programs are in comparison with other states. He noted that Montana is only one of six accredited paroling authorities in the nation.
- 03:24:03 Patti Jacques, Helena, commented on her concerns about mentally ill offenders not being able to get the treatment they need in the DOC system.
- 03:25:42 Steve Cape said that while he is appreciative of the BOPP's work, he still has concerns about the number of offenders who are approved for parole but not being released. He said more treatment and housing is needed. Mr. Cape also discussed revocation numbers.
- 03:29:15 **Mark Murphy, Montana County Attorney Association (MCAA)**, spoke in strong support of the work of BOPP. He said that he has been involved in corrections since 1975 and can attest to the many changes and improvements made in the process. He said that it is actually fairly difficult to be sent to prison and he spoke about the reality of those who are, saying that many of the inmates are uneducated and functionally illiterate, have severe drug or alcohol addictions, and have children for whom they take no responsibility. Mr. Murphy stated that these individuals need "habilitation", not "rehabilitation". He related his experience of attending a BOPP hearing and said he is confident that the Board members take their duties very seriously and are correct in making public safety the number one consideration.
- 03:36:29 **Rudy Stock** discussed his son's situation as an MSP inmate, and said he hasn't seen the kinds of positive situations discussed by others in regard to the work of the BOPP.

Committee Questions

- 03:38:02 REP. HILL said she is interested in finding out about alternatives to parole boards. She said that the meeting materials indicate that about 15 states have abolished their parole boards and asked Mr. McKee to comment. Mr. McKee said that some of the states that did away with their Boards have since brought them back. REP. HILL said the BOPP has a great deal of discretionary power. She referred to the itemized criteria used with the inmates ([EXHIBIT 13](#)) and asked if that criteria is codified in the MCAs or is inherent in the BOPP. Mr. McKee thought it was a combination of both. He said that parole is a privilege, not a right, and that parole eligibility, as set forth by statute and court decisions, simply establishes a benchmark for consideration. He said that the BOPP considers many factors and criteria in each hearing and that while the members don't always agree, he feels the Board usually comes to the right decision. He agreed that the BOPP has a great deal of discretion.

03:44:14 REP. MACDONALD said that Ms. Weiss' staff report ([EXHIBIT 2](#)) addresses the crux of REP. HILL's questions regarding the BOPP's authority as established in code and through administrative rule.

03:44:58 REP. HILL said that she would like to know where exactly the discretionary criteria is codified in the MCAs and if there is a codified appeals process for BOPP decisions. **Fern Osler Johnson, Executive Director, BOPP**, said that the criteria is both in statute and administrative rules, and that the reconsideration process is laid out in administrative rules.

03:46:23 REP. MACDONALD asked for additional discussion on what types of training the Board members received, in addition to their life experience. Ms. Bowman said that she prepared for her membership by attending hearings as an observer, she BOPP read reports, and discussed cases with other members. She said that she did not attend any sort of formal training.

03:48:01 Mr. Lemiach said his experience was similar to that of Ms. Bowman's. He added that he attended some DOC training and also took training on sexual offenders.

03:49:01 Mr. Hargrove said he did not have any formal training but that his military experience proved to be very useful.

03:49:17 REP. MACDONALD asked about the requirement for a mental health professional as a member of the BOPP. Ms. Weiss said that requirement was added in the 2013 legislature and thought it became effective January 1, 2014. Ms. Johnson confirmed that date and said that formal orientation has been held for the new appointments made in May 2013.

03:50:51 REP. HILL said that the criteria is not codified. Ms. Johnson said that she was referring to 46-23-202, MCA, includes information that the BOPP would consider in a hearing.

03:52:19 REP. HILL asked what current criteria for BOPP membership is and if that is in statute. Ms. Johnson said there are statutory requirements for the Board makeup.

03:53:18 Ms. Weiss said that BOPP is established in 2-15-2302, MCA. She read the requirements for membership and explained how the newly added requirement for a mental health professional was provided for in the statutory language.

03:54:29 REP. HILL said that in her research, she has found that some states have, codified some distinctions between violent and nonviolent offenders in their parole criteria. She suggested that Montana codify language to clearly establish guidelines, or at the very least, provide for guidelines through administrative rule.

03:55:30 SEN. MURPHY referred to page 18 of the BOPP Orientation Manual ([EXHIBIT 14](#)) asked about the process for executive clemency, how it involves the Board, and what role the Governor has in the process. Mr. Lemiach explained the duties of the BOPP and role of the Governor in the process, saying that procedures differ for capital and non-capital offenses. He said only in cases where the death penalty is involved can the Governor overrule a BOPP decision.

- 03:57:57 REP. ECK asked for additional discussion on how the BOPP handles mentally ill offenders and what the Board's options are. Ms. Bowman said the BOPP members discuss these issues with DOC prison staff, particularly those involved in mental health care, and that the Board carefully considers the offender's records. She said that BOPP tries to get in-house staff to work on a mental health plan with the offender to create a plan that will allow them go get back to their community safely. She said that the DOC works with many community agencies to ensure that treatment and services are available for that offender. She said that families can also provide assistance.
- 04:00:48 REP. ECK asked for clarification on if inmates have to pay for treatment or classes and what happens if they can't afford to pay. Mr. Lemiach said that inmates do not pay for treatment but that once on parole, they do have to pay for certain types of treatment if it isn't offered by the DOC in that area. He said that sexual offender treatment is an example of one type of treatment that an offender may be expected to pay for as a part of their parole.
- 04:02:11 REP. ECK asked if there have been instances in which a parolee ends up back in prison because of a financial inability to pay for classes or treatment. Mr. Lemiach said that in most cases, programs for low cost or no cost can be found. He said, in his experience in Montana, that he has never seen anyone returned for noncompliance based solely on the failure to meet a financial obligation. He said that it almost always takes more of an accumulation of violations to send an offender back to prison.
- 04:06:39 REP. ECK asked if an inmate can choose to serve out his entire sentence and refuse parole. Ms. Bowman said that is an option. REP. ECK asked if the Board members would agree that parole provides an incentive to improve one's self. Mr. Dupuis said he would agree. He said that there must be a significant number of write-ups for violations before being sent back before the Parole Board and cautioned that it is important to know the whole story. He said stories of an offender being written up on a minor offense and being sent back to prison are suspect, in his opinion.
- 04:10:56 Mr. Lemiach agreed that parole does provide an incentive to participate in programs.
- 04:11:30 REP. MACDONALD said that the LJIC has heard that there are a significant number of persons who are eligible to be paroled but that community placements are not available. She said it is very expensive to keep these offenders in prison and asked the Board to comment. Mr. Dupuis explained how an ISP (intense supervision program) may be an option for certain offenders. Ms. Bowman commented that it is very difficult for some offenders to find work or employment so they choose to sit it out in prison.
- 04:14:43 REP. MACDONALD recessed the meeting for lunch. She said the meeting would reconvene at 1:15 p.m.
- LUNCH BREAK**
- 05:18:08 REP. MACDONALD called the meeting back to order at 1:20 p.m. *SEN. JENT and REP. LASZLOFFY departed the meeting.*

SJ 3: PANEL PRESENTATION - Post-Parole Process and Supervision

- 05:19:07 **Christine Slaughter, BOPP Analyst**, introduced the panelists and said they would explain the procedures that happen after the BOPP has rendered its decision.
- 05:20:53 Ms. Slaughter said that immediately following a hearing, the Board renders its decision to grant or deny parole. If parole is denied, the Board makes recommendations on what is needed to fulfill or complete consideration for parole. If parole is granted, additional considerations or conditions may be imposed. Either way, the offender is advised.
- 05:22:02 **Ed Foley, Supervisor, Institutional Probation and Parole Officers, MSP**, listed all of his duties in working with parole officers and offenders in making sure that all elements of the offender's parole plan have been attended to. Mr. Foley said that once a parole certificate and release conditions are issued, he reviews it with the offender and each page is initialed by the offender. At that point, the offender is given copies of the documents, a travel permit, and a plan for reporting to his parole officer. Mr. Foley stressed that the DOC does have a mental health discharge planner who coordinates with the planning for release.
- 05:25:59 **Kim Lahiff, Missoula and Hamilton Probation Offices**, explained the investigation process for community placements for offenders. She said once the investigation is complete and placement plans are made, the offender continues to receive assistance in completing whatever requirements there are, such as AA meetings, housing and employment needs, or skills training. She also explained how violations are dealt with, including onsite hearings and subsequent BOPP action, if warranted.
- 05:33:32 Ms. Lahiff discussed the complexities of community supervision and the duties of the supervising parole officer. She said it is almost an impossible mandate because it involves community protection, victim restoration, and offender rehabilitation, and is very difficult to make happen. She discussed the need for contract service providers because the large degree of indigency and said that if the offender can't maintain his parole program, action is taken, particularly in cases where the offender may be a danger to the community.
- 05:36:48 Ms. Lahiff discussed resident plans for parolees and security access issues.
- 05:38:29 Ms. Lahiff said that the DOC takes mental health issues very seriously and that there is a specialized mental health officer in each of 6 areas. She discussed the role of mental health officers and the training they receive.
- 05:40:05 Pam Bunke, Supervisor, Adult Community Corrections Division, DOC, discussed interstate compact requirements and offenders who want to go out-of-state to serve out their parole requirements, including how fees are assessed. Ms. Bunke noted that three DOC flow charts were provided to better illustrate the different processes: community parole process ([EXHIBIT 9](#)), prison parole options ([EXHIBIT 10](#)), and parole sanction options ([EXHIBIT 11](#)).
- 05:43:02 Ms. Slaughter explained recision hearings for offenders who have been granted parole but not yet released on parole. She said that if the offender has not been able to meet the mandates of his parole requirements, the Board will determine

what action is needed. She also discussed offenders who get writeups in the pre-release centers and the consequences for negative behavior.

05:44:57 Ms. Slaughter discussed the basic requirements for parole: residence, employment, and treatment, if needed. She said that BOPP understands that it is difficult for an offender to obtain these requirements while still incarcerated so furloughs may be granted. Ms. Slaughter also explained the furlough process. She said that once an offender has fulfilled the requirements, they are placed on parole. She also discussed what happens when an offender violates while on parole, including return to custody if community safety is a concern.

Public Comment

05:50:42 James Cox, Billings, commented on a situation in which an inmate lived in his house on furlough in order to establish employment and his difficulties in obtaining employment. Mr. Cox also discussed a situation in which a parole officer ordered him to disable his electronic video system in his own home. Mr. Cox also discussed the trouble in finding housing for offenders.

05:56:53 **Dr. Gary Mihelish, Helena, NAMI**, said that he has a family member with a serious disabling mental illness (SDMI) and has been involved with mental health issues and Montana's public health system for 28 years. Dr. Mihelish said that he has recently become involved with mental health issues within the corrections system as a member of the Re-entry Task Force. He recognized that corrections issues are difficult to work with and agreed that public safety must be the primary consideration.

05:58:39 Dr. Mihelish discussed what he termed the "staggering" cultural differences between the mental illness and corrections communities. He said while he likely would never agree with DOC medication policies and other protocols, he agreed that the prisons have become a dumping ground for persons with mental illness.

06:00:39 Dr. Mihelish related Montana statistics on mental illness, saying that about 6% suffer from a SDMI and that a significant number of SDMI people end up in the MSP. He noted that about 370 inmates are on psychiatric medications, a drastic decrease from 1,400. He said he didn't know why there was such a large decrease.

06:04:20 Dr. Mihelish said it is the DOC's job to put the offenders in a position to succeed and the offender's job to succeed; if that was done, recidivism would decrease. He distributed a handout, "*Functions of the Frontal Cortex and Temporal Lobes*" ([EXHIBIT 16](#)) and discussed a comparison of symptoms of mental illness to those of temporal lobe epilepsy; saying the symptoms are strikingly similar. Dr. Mihelish discussed the difficulty an SDMI offender would have in dealing with all of the tasks required for discharge and that it is unrealistic to expect these types of offenders to be able to be accountable and responsible for their lives as parolees. Dr. Mihelish said he was a strong advocate for adding a mental health professional to the BOPP and that he would like much more mental health education for parole and probation officers.

- 06:08:06 Dr. Mihelish related two anecdotal stories in which he intervened on behalf of mentally ill offenders, saying that the stories serve as examples of why mental health education is so important for probation and parole staff.
- 06:12:25 Ms. Osler said that annual training is provided for BOPP members, which will include mental health training. In reference to REP. HILL's previous questioning about appeals, she said there is no appeal to a higher entity but there is a reconsideration process provided for in administrative rule (20-25-5017a).
- 06:13:28 **Ryan Lynch, Development Director, Community Counseling and Correctional Services (CCCS), Butte**, said that people working in this field are very passionate about their work even though they deal with difficult issues and situations. He said that offenders who have reached the parole process have committed serious crimes and must realize that parole is a privilege. He said that the parole board must always consider public safety as its top priority and as such, must make difficult decisions. He said that these members serve on a voluntary basis and are owed a huge debt of gratitude for their service. Mr. Lynch said the question he asks is what is needed to make the offenders successful in their parole. He said there are opportunities to make improvements, such as in housing. Mr. Lynch distributed a letter from CCCS' CEO, Mike Thatcher ([EXHIBIT 17](#)).
- 06:19:58 **Moe Wosepka, Director, Montana Catholic Conference**, commented as an advocate for prisoners, and suggested the LJIC may want to study, as a public policy issue, that people are being sentenced to prison for longer and longer periods of time and the difficulty in releasing them back into society. Mr. Wosepka discussed the great need for housing, particularly for sexual offenders. He said that he works with inmates and that it is very difficult to find housing for offenders and related anecdotal information on a handicapped sexual offender and the impossible task of finding housing for him. He also discussed the aging prison population and said that assisted living and special housing will become necessary, which will be extremely costly.
- 06:23:55 Mr. Wosepka said that the day's discussion has great value because it will begin the process of communicating between entities that have not communicated well in the past. He said that if the problems can be talked about, solutions can be found. He said that the private sector must become involved and offered a suggestion of subsidizing private property owners to supply housing for offenders as a possibility of dealing with the housing problem.

Committee Questions

- 06:26:26 SEN. MURPHY asked if the BOPP has the authority to reduce a sentence in the case of an offender who has an exemplary record. Ms. Slaughter said the only option would be for the offender to request a commutation or executive clemency.
- 06:28:48 REP. HILL discussed her concerns regarding if there is an appeal process for BOPP decisions. Ms. Osler Johnson said that the appeal is made to the BOPP but noted that by the time an appeal is made, the membership may have changed.
- 06:30:35 REP. HILL discussed her grave concerns about housing for offenders and where statutory language could be codified to better provide for housing and other needs

of offenders. Ms. Lahiff said her office is also very passionate about the housing issue. She said it is the largest issue in the supervision field, particularly for sexual offenders. She said that good news is that there is funding available in Missoula but that more options are needed. She discussed the difficulty of supervising offenders who are residing under a bridge and said that if the offender is able to remain successful in all other areas, the offender is allowed to remain as is. She discussed work with local organizations and others who are willing to provide housing and other assistance to offenders. She said that another solution would be DOC-built housing in communities. She said that property managers present the most opposition to offender housing, which results in low risk offenders living in high risk areas.

06:40:16 REP. HILL asked, regarding attorney representation, if there are any rules or statutes regarding an inmate having attorney representation during a hearing. Ms. Slaughter said that inmates can have attorneys present and speak on their behalf but that the attorney is subject to the security clearance requirements.

06:41:20 REP. ECK asked Dr. Mihelish for his suggestions on what to do about the problems he discussed and how the problems relate to the BOPP. Dr. Mihelish said that mentally ill offenders have a very high anxiety level, making it more difficult to treat them and to be successful on re-entry, and noted that their recidivism rate is much higher. He said he would like to see parole officers with a greater understanding of mental illness and what it requires to deal with them.

06:45:49 REP. ECK asked Ms. Lahiff to discuss what Dr. Mihelish's recommendations would look like in the DOC. Ms. Lahiff listed the types of training provided and said that basic mental health training is part of it. She agreed that aptitude for dealing with mental illness is important and that some officers are better at it than others. She said that the DOC can try to nurture the desire to help and understanding of human nature and that the agency could reach out more to organizations such as NAMI, in order to make needed improvements.

06:48:45 Ms. Bunke said that the DOC is interested in mental health. She said that there are six regional probation and parole offices across the state and that each one is trying to get a specialized mental health officer. She agreed that more resources are needed and that all probation and parole would benefit from more training. She explained further.

PUBLIC COMMENT ON ANY MATTER WITHIN THE JURISDICTION OF LJIC BUT NOT ON AGENDA

06:52:01 **Gene Massaro**, testified on his personal experience as an offender who was repeatedly denied parole, in spite of doing everything that the BOPP asked of him.

06:54:39 Patti Jacques, thanked the LJIC for taking on the SJ 3 study. She said it has been difficult for her to come forward as the family member of a mentally ill person to explain how Montana's laws and processes are preventing mentally ill people from getting the treatment they need.

06:57:56 **John Ward** asked to correct several glaring errors he heard in comments made at the meeting. Mr. Ward clarified that parole officers are the responsibility of the DOC,

not the BOPP. He said that the BOPP has never had the authority to increase any one's punishment or sentence, nor has the it ever sought to do so. He said the BOPP does have the authority to decide whether or not an offender has earned an earlier release and can insist on treatment, in order to make the offender more likely to succeed in his parole. He said it is an absolute falsehood to say that the Board has ever exceeded a judge's authority or tried to.

07:00:08 James Cox, Billings, discussed his concerns about sentencing authority and his efforts to get information, saying that public records have been withheld from him with no consequence. Mr. Cox also discussed his position that the DOC engages in for-profit contracts with outside contractors in dealing with its supervision of offenders.

07:05:09 Mark Murphy, MCAA, commented on the passage of SB 11 in 2013, which redefined the definition of mental disease or defect, which is a core concept in the criminal justice system to define how people will be treated. He said the effect could be more people designated guilty but mentally ill.

COMMITTEE WORK SESSION

07:07:38 Julianne Burkhardt, LJIC Staff Attorney, discussed a memo prepared by former LJIC Staff Attorney David Niss ([EXHIBIT 18](#)) relating to the administrative rulemaking authority of the BOPP. REP. MACDONALD said that SEN. JENT has requested that the memo be discussed at a future LJIC meeting and she thought it would also address some of REP. HILL's questions also.

07:09:57 REP. HILL listed four areas in the MCAs that she would like to look at and discussed each one:

- 2-15-2302, MCA, - the overall criteria for parole board;
- 46-23-218, MCA, - criteria for release;
- 20-25-501, MCA, - appeals process needs; and
- 43-23-1021, MCA, - parole plans and how to deal with housing. specifically housing needs. REP. HILL listed several Supreme Court cases that may have valuable information to aid with this issue.

07:15:53 REP. LENZ said it has become clear that the BOPP has a passion to do a good job but that the absence of clarity is adding to the pressure of their job. He said that there are public perception problems about parole eligibility as a result.

07:18:16 REP. ECK said she has concerns about mentally ill offenders and how the BOPP can deal with them more effectively. She said there may be instances in which a mentally ill offender should not be appearing before the BOPP and that measures to deal with these offenders need to be a part of the conversation.

07:19:04 REP. MACDONALD said that the passage of SB 11 and the changes that bill will cause should be monitored.

07:19:38 SEN. MURPHY commented that there may be the perception that he is an enemy of the BOPP, as the sponsor of SJ 3. He said that is not the case but that he is concerned that the BOPP's authority may need clarification, both for the BOPP's sake and for the public. REP. HILL concurred with SEN. MURPHY's comments.

07:21:41 Ms. Weiss summarized what her understanding is of the LJIC's thoughts on the day's meeting and agenda topics for the next meeting: work with the DOC and BOPP to collect information on statistics on recidivism and first-time parolees, look at other states' experience with parole boards and where codified, look at BOPP rulemaking authority and LJIC oversight of those rules, legal review of several particular cases, HJ 16 and the Re-entry Task Force Study, particularly regarding mental illness, an update on the OPD issue and an October 1 hearing, more information on the issue of gun ownership and mental illness. Ms. Weiss said that some of the topics may have to wait until the February meeting or can be handled through staff briefing papers.

07:24:58 REP. HILL asked for clarification on if the Attorney General plans to work to put Montana in compliance with federal law. REP. MACDONALD said that the motion passed by the LJIC at the previous day's meeting was clear on the process the committee will use to address this issue.

ADJOURN

REP. MACDONALD thanked everyone for their contributions to the meeting. The meeting was adjourned at 3:30 p.m. The Law and Justice Interim Committee will meet next on December 5, 2013, in Helena.

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