

SJ 24: Study of Sexual Assault in Montana

Draft Study Plan

Prepared by Rachel Weiss
for the Law and Justice Interim Committee
for discussion on June 25, 2015

INTRODUCTION

The 2015 Legislature recommended an interim study of sexual assault in Montana when it enacted Senate Joint Resolution No. 24 (SJ 24). Legislators ranked the study seventh out of 15 study resolutions in the postsession poll of interim studies. The Legislative Council met in May 2015 and assigned the study to the Law and Justice Interim Committee (LJIC).

Although recent discussions of sexual assault tend to revolve around assaults that occur on university campuses or involve university students, the study resolution emphasizes that sexual assault is a problem that affects more than just students. A 2010 Centers for Disease Control and Prevention survey found that nearly 1 in 5 women and 1 in 71 men have been raped at some point in their lives. The United States Department of Justice reports that American Indians (who make up approximately 8% of the Montana population) are 2.5 times more likely to experience sexual assault crimes than other races and that 1 in 3 American Indian women report having been raped or having been the victim of an attempted rape in her lifetime.

Along with these statistics, the study resolution points out that Montana's sexual assault laws, regulations, and policies have evolved piecemeal over the years, making a comprehensive, thorough review important. The resolution also emphasizes that cooperation between many governmental agencies, other organizations, and citizens is necessary to prevent and respond to sexual assault in communities.

STUDY TASKS

SJ 24 asks that the LJIC consider a broad list of topics as part of this study:

- current state and federal sexual assault statutes, including those governing the criminal justice process of investigating, charging, and sentencing of sexual assault-related crimes;
- current policies and practices of local, state, and university law enforcement agencies and of county attorneys that are related to investigating and prosecuting sexual assault crimes and whether the agencies and county attorneys have adequate resources to investigate and prosecute these crimes;
- societal attitudes and myths related to sexual assault and education that might help the public to overcome these attitudes and myths;
- if and to what extent best-practices training is available to stakeholder

- agencies and sexual assault response units;
- best practices and policies for treatment, incarceration, registration, and supervision of sexual offenders and for treatment for victims;
- measures to improve understanding of the difficulties inherent in the criminal justice system in responding to sexual assault, measures to prevent sexual assaults, and education and/or tools to improve communities' responses to sexual assault;
- jurisdictional factors that hinder responses to sexual assault, including assaults on Indian reservations and Montana university campuses; and
- information-sharing and data-collection challenges related to the analysis of sexual assault in Montana.

The resolution also requests that the Montana Attorney General's Office update the LJIC on the office's agreement with the U.S. Department of Justice and how changes resulting from that agreement might be translated into opportunities for statewide programs.

STUDY RESOURCES

The SJ 24 study is broad, but the LJIC will have several resources to draw upon during the course of the interim. First, the Montana Department of Justice (DOJ) will be a key resource and partner for the LJIC. A DOJ representative spoke as a proponent of the study at each hearing and expressed interest in participating in the study, noting that the SJ 24 study was "in step" with what DOJ wanted to explore during the interim. In addition, House Bill No. 75, requested by the DOJ and enacted in 2015, created a sexual assault prosecution unit within the DOJ's prosecution services bureau. The perspectives of the attorneys assigned to the unit will be valuable to the LJIC.

The study resolution lists other stakeholders that the LJIC should strive to involve and whose resources the LJIC should make use of, including local, university, and state agencies, tribal and federal governments and law enforcement agencies, advocacy organizations that work to prevent sexual assault, and victims' advocacy groups. Representatives of several of these stakeholder groups spoke as proponents to the SJ 24 study and also offered to help as possible and needed. Their participation and expertise will be integral to the success of this study. The Board of Crime Control (BOCC) will be an important resource during several parts of the SJ 24 study, including the review of data-collection and information-sharing challenges and the review of available or needed resources for victims of sexual assault.

In addition, legislative staff can use resources provided by organizations such as the National Conference of State Legislatures, Council on State Governments, and other research organizations that work in the criminal justice arena.

OUTLINE OF STUDY ACTIVITIES

The study tasks listed in the SJ 24 study resolution can be broadly grouped into four overarching themes that might help organize the LJIC's work on this study.

- Theme A: current laws, policies, procedures, and best practices related to investigation and prosecution of sexual assault crimes
- Theme B: jurisdictional issues that hinder investigation and prosecution of these crimes
- Theme C: data-collection and information-sharing challenges
- Theme D: laws, policies, procedures, and best practices related to treatment of victims, treatment of offenders, and community education measures (including societal attitudes and myths surrounding sexual assault)

The study will include the following basic activities during the time periods noted:

- **Compile background information: June 2015 through January 2016.** This stage includes several steps to provide LJIC members with information about Montana sexual assault laws, policies, and procedures, especially as those relate to the themes noted above. This stage should set the foundation for the rest of the LJIC's work in this policy area. Activities or work products could include:
 - for Theme A:
 - a review of current sexual assault laws, both state and federal;
 - updates from the DOJ on its agreement with the U.S. Department of Justice;
 - updates from the DOJ on the sexual assault prosecution unit established in HB 75 (2015); and
 - other presentations by stakeholders and possibly staff briefing papers to outline current policies, procedures, and best practices guiding investigation and prosecution of sexual assault cases.
 - for Theme B:
 - presentations from stakeholders or other experts designed to help the LJIC understand jurisdictional challenges that hinder the investigation and prosecution of sexual assault crimes.
 - for Theme C:
 - presentations and/or information from the DOJ, BOCC, local law enforcement and prosecutorial agencies, and victims' advocates on data-collection and information-sharing challenges.
 - for Theme D:
 - presentations from stakeholders and possibly staff briefing papers on existing laws, policies, procedures, and best practices related to resources for and treatment of victims and treatment of offenders; and
 - presentations from stakeholders on societal attitudes and myths surrounding sexual assault.
 - other information as requested by the LJIC.

- **Identify issues: January 2016 through April 2016.** Study activities during this period will include a review of information presented previously and papers or presentations on topics selected by the LJIC to provide additional information. The focus of activities during this stage will be identification by the LJIC of problems it would address through further analysis, legislation, or other action.
- **Review and decide on legislative options: April 2016 through September 2016.** After compiling background information, identifying issues, and researching options, the LJIC will discuss and act on recommendations it wants to make to the 2017 Legislature and to address through legislation or other methods.

The table on the following page provides a list of anticipated study activities and resources, as well as tentative dates for the activities. It also includes an estimate of the amount of LJIC meeting time each activity might entail. **The time estimates in the table are based on the assumption that the LJIC will adopt the proposal in the Draft Work Plan to devote approximately 40% of its meeting time (or 25 hours) to the SJ 24 study.** If the LJIC chooses a different allocation of time or a different level of involvement in the study, the activities would be revised accordingly.

Action Item: Review, discuss, revise, and adopt the proposed study activities and allocation of committee time.

| Study Process | Source | Actions | Meeting Date | Committee Time |
|---|--|---|---|-----------------|
| (1) Review of current sexual assault laws; update from DOJ on agreement with U.S. DOJ; HB 75 update; revise/adopt study plan | DOJ staff, LJIC members | DOJ staff presentation; public comment | June 2015 | 1 hour |
| (2a) Gather background data on prevalence of sexual assault in Montana and further review of sexual assault statutes, as needed | LJIC staff, BOCC, DOJ | Staff materials; other reports and possible presentations | September 2015 | 10 hours |
| (2b) Gather and review information to provide LJIC background themes outlined on page 3: <ul style="list-style-type: none"> • A: investigation/prosecution of sexual assault; • B: jurisdictional challenges; • C: data collection and sharing; • D: resources for victims, treatment for offenders, attitudes/myths | LJIC and DOJ staff, stakeholder input, BOCC | Panel presentations; LJIC staff materials; public comment | September 2015 through December 2015 | |
| (3) Identify possible gaps in existing laws, policies, processes; identify areas of interest to LJIC members for further research, information gathering | Stakeholder input, DOJ, LJIC members | Panel presentations; LJIC staff materials; public comment | Ongoing but especially February 2016/April 2016 | 8 hours |
| (4) Examine implications of possible policy changes or alternatives | Stakeholder input, DOJ, LJIC members and staff | Presentations; public comments; staff materials; discussion during meetings | April/June 2016 | |
| (5) Develop recommendations and, if requested, bill drafts for the 2017 Legislature | Committee members, staff | Committee work sessions; public comment | April through August 2016 | 6 hours |
| | | | Total | 25 hours |

TEXT OF SENATE JOINT RESOLUTION 24

SENATE JOINT RESOLUTION NO. 24

INTRODUCED BY D. SANDS, K. DUDIK

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING AN INTERIM STUDY OF SEXUAL ASSAULT IN MONTANA; AND REQUIRING THAT THE FINAL RESULTS OF THE STUDY BE REPORTED TO THE 65TH LEGISLATURE.

WHEREAS, the Centers for Disease Control and Prevention reported in a 2010 survey of intimate partner and sexual violence that nearly 1 in 5 women and 1 in 71 men have been raped at some time in their lives and the United States Department of Justice reports that American Indians are 2.5 times more likely to experience sexual assault crimes than other races and that 1 in 3 American Indian women reports having been raped or having been the victim of an attempted rape in her lifetime; and

WHEREAS, the Montana Legislature has not had the opportunity to conduct a comprehensive and thorough review of Montana's sexual assault criminal code, regulations, and policies as individual statute changes have been made over the years by each legislative body; and

WHEREAS, the Montana Legislature recognizes the importance of agency, organizational, and citizen cooperation in preventing and responding to sexual violence in our communities.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Legislative Council be requested to designate an appropriate interim committee, pursuant to section 5-5-217, MCA, or direct sufficient staff resources to examine sexual assault in Montana. The study should consider:

- (1) current sexual assault criminal statutes, including state and federal code related to the investigation of, charging of, criminal proceedings related to, and sentencing of sexual assault-related crimes;
- (2) current policies and practices of local, state, and public university law enforcement entities and the county attorneys' offices concerning investigating and prosecuting sexual assault crimes, as well as whether the entities and offices have adequate resources to investigate and prosecute sexual assault;
- (3) societal attitudes and myths surrounding sexual assault and ways to better educate the public and potential jurors to overcome improper societal attitudes, improve victim experience, and promote a corresponding rise in convictions;
- (4) whether and to what extent best-practices training is available to responding agencies, including but not limited to law enforcement, prosecution, corrections, judicial, and victim advocate

agencies, as well as the opportunity to develop specialized training for sexual assault response units, the use of multidisciplinary teams, and the information-sharing challenges that teams face and possible solutions to those challenges;

(5) current corrections and law enforcement agency policies and practices concerning the treatment, incarceration, registration, and supervision of offenders and emerging research on treatment for victims of sexual assault;

(6) measures to improve understanding of the inherent difficulties within the criminal justice system in responding to sexual assault; measures dedicated to reducing the prevalence of sexual assault; and tools to educate and improve community response to the issue of sexual assault;

(7) continuing jurisdictional factors in the system's response to sexual assault crimes on Montana's American Indian reservations, including coordination of the agencies involved;

(8) current jurisdictional factors in the system's response to sexual assault in state educational institutions, including an examination of how the requirements of Title IX of the United States Education Amendments of 1972 (codified at 20 U.S.C. §§ 1681-1688) interact with Montana's response; and

(9) the need for consistent data collection and analysis related to sexual assault in Montana, as compared to other jurisdictions within the United States.

BE IT FURTHER RESOLVED, that the study include updates from the Montana Attorney General's Office on its agreement with the United States Department of Justice and how the benefits resulting from the implementation of that agreement might translate into opportunities for statewide programming.

BE IT FURTHER RESOLVED, that the study involve the participation of local, university, and state agencies, tribal and federal governments and law enforcement agencies, advocacy organizations that work to prevent sexual assault, victims' advocacy groups, and other relevant stakeholders.

BE IT FURTHER RESOLVED, that if the study is assigned to staff, any findings or conclusions be presented to and reviewed by an appropriate committee designated by the Legislative Council.

BE IT FURTHER RESOLVED, that all aspects of the study, including presentation and review requirements, be concluded prior to September 15, 2016.

BE IT FURTHER RESOLVED, that the final results of the study, including any findings, conclusions, comments, or recommendations of the appropriate committee, be reported to the 65th Legislature.

- END -

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