



Law and Justice Interim Committee

65th Montana Legislature

SENATE MEMBERS

DIANE SANDS--Chair
JEN GROSS
MARGARET (MARGIE) MACDONALD
KEITH REGIER
SCOTT SALES
NELS SWANDAL

HOUSE MEMBERS

JIMMY PATELIS--Vice Chair
JESSICA KARJALA
GEORGE KIPP III
RYAN LYNCH
LOLA SHELDON-GALLOWAY
BARRY USHER

COMMITTEE STAFF

RACHEL WEISS, Lead Staff
JULIANNE BURKHARDT, Staff Attorney
LAURA SHERLEY, Secretary

MINUTES LOG

January 29, 2018
Room 102, Capitol Building
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The 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 Log, along with the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the Exhibits is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed.

Please contact the Legislative Services Division at 406-444-3064 for more information.

COMMITTEE MEMBERS PRESENT

SEN. DIANE SANDS, Chair
REP. JIMMY PATELIS, Vice Chair

SEN. JEN GROSS
SEN. MARGARET (MARGIE) MACDONALD
SEN. KEITH REGIER
SEN. SCOTT SALES

REP. RYAN LYNCH
REP. LOLA SHELDON-GALLOWAY
REP. BARRY USHER

COMMITTEE MEMBERS EXCUSED

SEN. NELSWANDAL
REP. JESSICA KARJALA
REP. GEORGE KIPP III

STAFF PRESENT

RACHEL WEISS, Lead Staff
JULIANNE BURKHARDT, Staff Attorney
LAURA SHERLEY, Secretary

VISITORS' LIST (Attachment 1)

AGENDA (Attachment 2)

COMMITTEE ACTIONS

CALL TO ORDER AND ROLL CALL

00:00:02 Sen. Sands called the meeting to order at 9:00 a.m. The committee secretary took roll call ([Attachment 3](#)).

ADMINISTRATIVE MATTERS: MEETING OVERVIEW, COMMITTEE BUDGET -- Rachel Weiss, Legislative Services Division (LSD)

00:00:57 Ms. Weiss reviewed the meeting agenda and the committee budget update.
00:03:29 Sen. Sands commented on the importance of maintaining the committee budget and reminded the committee of the anticipated tour of the Montana Women's Prison in Billings.

ADMINISTRATIVE RULE REVIEW -- Julianne Burkhardt, Staff Attorney, LSD

00:03:47 Ms. Burkhardt reviewed the administrative rule review update ([Exhibit 1](#)).
00:05:05 Sen. Sands commented on the importance of the committee members staying updated on the administrative rules and also stressed the importance of committee questions and comments during the meeting.

Questions from the committee

None

AGENCY OVERSIGHT: BOARD OF PARDONS AND PAROLE UPDATE -- Scott Cruse, Presiding Officer

00:06:28 Mr. Cruse introduced the other Board of Pardons and Parole members and reviewed the board's work highlights and goals for their clients ([Exhibit 2](#)).
00:20:40 Kristina Lucero, Parole Board Member
00:21:52 Mr. Cruse continued his presentation regarding board staffing.

Questions from the committee

00:24:42 Sen. Regier asked if there were mission and vision statements for the board before the update and, if there were, how have the statements changed.
00:25:45 Sen. Regier asked how the board's mission and vision statements are used.
00:27:44 Sen. Regier asked if the board feels pressured to meet the Council of State Governments parole percentages.
00:29:26 Rep. Patelis asked for clarification on the issue of waiting lists in parole programming.
00:32:41 Rep. Patelis asked if the board uses a 'risk and needs' form in their program placement process.
00:34:36 Rep. Sheldon-Galloway asked what has changed for the board with the transfer of its oversight to the Department of Corrections (DOC).

Public comment

00:37:15 May Simmons, New Hope Center
00:41:01 Tonya Winger, self
00:44:35 Rudy Stock, self ([Exhibit 3](#))

AGENCY OVERSIGHT: DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION REPORT

-- Matthew Dale, Executive Director, Office of Victim Services, Department of Justice (DOJ)

00:47:13 Director Dale updated the committee on the work of the Domestic Violence Fatality Review Commission, ([Exhibit 4](#)) and ([Exhibit 5](#)).

Questions from the committee

01:12:51 Sen. Gross asked when a homicide is determined to be an 'intimate partner' homicide.
01:13:33 Sen. Gross asked how the data may change if more homicide suspects were identified in Indian Country.
01:14:55 Sen. Gross asked if the creation of the Native American Fatality Review Commission is a step in the right direction towards collaboration and transparency in domestic violence issues in Indian Country.
01:16:50 Rep. Usher asked if recent changes within the Board of Crime Control have affected the commission's budget.
01:17:41 Rep. Usher asked how much of the commission's budget comes from federal vs. state funding.
01:19:25 Rep. Usher asked if funeral expenses are split between federal and state funding based on where the crime occurred.

Public comment

01:21:42 May Simmons, New Hope Center

BREAK (Reconvened at 10:45 a.m.)

ACCESS TO JUSTICE COMMISSION PRESENTATION

Justice Beth Baker, Montana Supreme Court
Nolan Harris, Director, Court Help Program
Patricia Fain, Statewide Pro Bono Coordinator, Judicial Branch
Judge Leslie Halligan, Fourth Judicial District (Missoula/Mineral Counties)
Angie Wagenhals, Montanan Legal Services Association
Paul Kirgis, Dean, Alexander Blewett III School of Law, University of Montana

01:45:10 Justice Baker ([Exhibit 6](#))
01:59:13 Mr. Harris
02:04:24 Ms. Fain
02:10:57 Judge Halligan, via video conference
02:17:33 Ms. Wagenhals
02:22:05 Mr. Kirgis
02:25:18 Justice Baker

Questions from the committee

02:25:49 Sen. Regier asked Ms. Wagenhals what is the main occupation of program contributors.

02:26:39 Sen. Regier asked Justice Baker what amount of funding the Supreme Court is asking for to increase their number of staffed attorneys.

02:28:10 Sen. Regier asked Justice Baker if the funding would supplant the Montana Legal Services Association or add to its work.

02:29:21 Sen. Gross asked Justice Baker if there is a timeline for the recommended solutions.

02:31:14 Sen. Gross asked Justice Baker if there is marketing for the available services.

02:32:37 Rep. Usher asked Ms. Fain and Justice Baker if there was a Montana Bar Association (MBA) requirement for pro bono hours per year and how many of the MBA members in the Montana Legal Services Association are not fulfilling that requirement and how this issue is handled.

02:35:47 Sen. Sands asked Judge Halligan if attorneys are allowed to use pro bono work as a tax deduction.

02:36:56 Sen. Sales asked Justice Baker what the long term solution is for pro bono work and what amount of funding will be sufficient to solve the issue.

02:41:39 Sen. Sales asked Justice Baker what funding is needed for a long term solution.

02:44:50 Sen. Sales commented on the amount of funding being requested and how that may correspond with the quality of attorneys.

Public comment

02:46:37 May Simmons, New Hope Center

JUDICIAL BRANCH UPDATE -- Beth McLaughlin, Court Administrator

02:48:19 Ms. McLaughlin gave the committee a brief update on the work of the Judicial Branch ([Exhibit 7](#)).

02:56:05 Sen. MacDonald asked Ms. McLaughlin to speak on the decrease of civil cases.

02:57:44 Rep. Usher asked about a legislative review of child abuse and neglect investigation cases in 2015 which was updated Oct 2017.

02:59:34 Rep. Usher asked how long a child abuse and neglect case takes to come before a judge.

03:01:55 Sen. Regier asked if the court assigned an asbestos claims judge from the Flathead area.

03:02:29 Ms. McLaughlin continued her presentation.

03:07:20 Rep. Lynch asked if child abuse and neglect case outcomes can be tracked.

03:08:06 Ms. McLaughlin continued her presentation ([Exhibit 8](#)).

Questions from the committee

03:18:05 Rep. Patelis asked for clarification of Judge Eddy's status as a small claims judge for the Asbestos Claims Court.

03:20:48 Rep. Patelis asked why there was no funding requested for a small justice claim court judge for the Asbestos Claims Court.

03:22:43 Rep. Patelis asked if small claims court statistics in the Kalispell area were requested by the legislature to evaluate needs.

03:24:50 Sen. Regier asked if the Supreme Court is doing a preliminary claims court to evaluate the need regarding asbestos claims.

03:25:25 Sen. Regier asked if the case load in Kalispell is too high to assign Judge Eddy to the Asbestos Claims Court.

03:26:32 Rep. Usher asked for an estimate of the current cost to the courts of attorneys acquiring pro bono hours.

Public comment

None

LUNCH (Reconvened at 1:17 p.m.)

AGENCY OVERSIGHT: DEPARTMENT OF CORRECTIONS UPDATE -- Adrienne Cotton, Government Relations Director, DOC

- 04:16:40 Ms. Cotton updated the committee on the Department of Corrections' ongoing work and staff updates ([Exhibit 9](#)).
- 04:34:50 Ms. Cotton introduced DOC's new deputy director Cynthia Wolken.

Questions from the committee

- 04:36:01 Rep. Sheldon-Galloway asked Ms. Cotton to define the term 'clear conduct', and what facilities follow these requirements.
- 04:37:27 Rep. Sheldon-Galloway asked how DOC acquires its numbers on recidivism.
- 04:38:48 Rep. Sheldon-Galloway asked how the department is helping screen for specific drugs in the prerelease centers.
- 04:40:34 Sen. Regier asked if the position of DOC Deputy Director is new, how long the position was vacant, what was the hiring process, and if the Governor was involved in the hiring progress. The question was redirected to Reginald Michael, DOC Director.
- 04:43:04 Rep. Lynch asked Director Michael to speak on the process of attaining PREA requirements in the Montana Women's Prison. Sen. Sands also asked Director Michael speak on the decrease in PREA reports from 2015 to 2016 and the reporting process.
- 04:47:27 Rep. Lynch commented on the department's work and the new staff.
- 04:48:31 Sen. Sands asked Director Michael for a copy of the PREA audit report on the Montanan Women's Prison.
- 04:49:22 Rep. Usher asked Director Michael why correctional facility parking lots have higher reported drug offenses.
- 04:52:07 Rep. Patelis asked Director Michael if the department can refer PREA policy violators for prosecution.
- 04:54:43 Rep. Patelis commented on the importance of prosecuting PREA violations.
- 04:56:25 Sen. Sands asked Director Michael to produce information on previous PREA violations in recent years and the outcomes.
- 04:56:52 Rep. Patelis commented on the importance that a PREA violation being reported and handled.
- 04:58:09 Sen. Sands asked what expectations were not met with Warden Flecher and why he was fired.
- 05:00:58 Sen. Sands asked if there are managerial issues in the state prison that the legislature needs to be aware of and needs to handle.
- 05:02:36 Sen. Gross asked if there are any updates on human trafficking in the DOC report.

Public comment

- 05:04:10 Nancy Schwend, self ([Exhibit 10](#))
- 05:13:05 Tonya Winger, self
- 05:19:22 May Simmons, New Hope Center

SJ 25 STUDY: OVERVIEW OF LOCKED HOUSING UNIT AT MSP -- UNIT PROCEDURES AND PRACTICES, INSTITUTIONAL DISCIPLINE, MENTAL HEALTH TREATMENT

**Sam Jovanovich, Locked Housing Unit Manager, MSP
Colleen Ambrose, Chief Legal Counsel, DOC**

05:25:39 Ms. Ambrose
05:29:31 Mr. Jovanovich ([Exhibit 11](#)), ([Exhibit 12](#)), ([Exhibit 13](#)), ([Exhibit 14](#)), and ([Exhibit 15](#)).
05:47:45 Ms. Ambrose

Questions from the committee

05:50:24 Sen. MacDonald asked Mr. Jovanovich if the Montana State Prison is using performance-based standards for locked housing and if they have staff training and preparation for de-escalation, trauma informed care, motivational interviewing, and conflict resolution.
05:53:50 Rep. Patelis asked Mr. Jovanovich how protection measures are being handed.
05:56:28 Rep. Lynch asked Mr. Jovanovich what the bed capacity is in units one and two of the Montana State Prison.
05:57:47 Rep. Lynch asked Mr. Jovanovich what percentage of inmates have serious mental illness or have taken medications.
05:59:18 Rep. Lynch asked Mr. Jovanovich how inmates at other facilities are handled if transferred to MSP.
06:01:00 Sen. Gross asked Mr. Jovanovich to discuss the use of restraints and padding isolation cells in MSP.
06:03:45 Sen. Gross asked Mr. Jovanovich how often restraints are used and how often they are used on inmates with mental illness.
06:05:07 Sen. Gross asked Mr. Jovanovich if the majority of inmates restrained have mental illness.
06:06:15 Sen. Sands asked the panel how the issue of overbunking in the Women's Prison relates with inmate removal due to behavioral issues.
06:07:37 Sen. Sands asked how the Shelby facility handles overbunking and behavioral issues. The question was redirected to Ms. Cotton.
06:09:04 Sen. Sands asked that the committee be briefed on the Shelby facility issues.
06:09:24 Sen. Sands asked Ms. Cotton to address the Montana Women's Prison overbunking issue.
06:11:20 Rep. Usher commented on Mr. Jovanovich's work.

BREAK (Reconvened at 3:33 p.m.)

SJ 25 STUDY: YOUTH FACILITIES -- OVERVIEW OF YOUTH DETENTION FACILITY LICENSING BY DOC; OPERATION AND HOUSING PRACTICES AT DOC OPERATED OR CONTRACTED YOUTH FACILITIES -- Cindy McKenzie, Youth Services Division

Administrator, DOC

06:33:04 Ms. McKenzie reviewed the licensing of youth detention facilities and reviewed the DOC youth correctional facilities and the use of solitary confinement ([Exhibit 16](#)), ([Exhibit 17](#)), ([Exhibit 18](#)), and ([Exhibit 19](#)).

Questions from the committee

06:58:53 Rep. Sheldon-Galloway asked for the difference in definition between a DOC commit and an inmate.

06:59:40 Rep. Sheldon-Galloway asked for clarification on who can be labeled a DOC commit or an inmate.
07:01:04 Sen. Regier asked what happens to a youth if they cannot be placed back into the community.
07:02:41 Rep. Lynch asked when the female youth who are sent to Idaho are brought back in state.
07:04:46 Rep. Lynch asked if the Pine Hills facility is still for youth male offenders.
07:05:34 Sen. Gross asked if restraints are used in youth facilities.
07:06:18 Sen. Gross asked if involuntary medication is given to youth in youth facilities.
07:08:08 Sen. Gross asked for the proportion of youth inmates who have mental illness.
07:09:29 Sen. MacDonald asked if performance-based standards and isolation is used as a sanction in Idaho youth correctional facilities.
07:10:04 Rep. Sheldon-Galloway asked if there is a correlation in the increase of foster care numbers and youth in youth correctional facilities.

SJ 25 STUDY: PUBLIC COMMENT ON STUDY AND PREVIOUS PANELS

07:12:29 Gary Mihelish, self
07:16:57 Beth Brenneman, Disability Rights of Montana ([Exhibit 20](#))
07:23:12 May Simmons, New Hope Center
07:26:49 Abigail St. Lawrence, Montana Association of Christians

PUBLIC COMMENT ON ANY TOPIC WITHIN THE COMMITTEE'S JURISDICTION BUT NOT ON THIS AGENDA

07:29:08 Art Heffelfinger, self ([Exhibit 21](#))
07:41:03 May Simmons, New Hope Center ([Exhibit 22](#))

RECESS

07:49:34 Sen. Sands asked the committee members if they plan to attend the tour in Boulder hosted by the Department of Corrections.
07:50:16 Sen. Sands recessed the meeting at 4:51 p.m. until January 30, 2018, at 8:00 a.m.

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