



Law and Justice Interim Committee

62nd Montana Legislature

SENATE MEMBERS

JIM SHOCKLEY--Chair
SHANNON AUGARE
STEVE GALLUS
GREG HINKLE
LYNDA MOSS
TERRY MURPHY

HOUSE MEMBERS

MIKE MENAHAN--Vice Chair
ELLIE BOLDMAN HILL
STEVE LAVIN
MARGARET MACDONALD
MICHAEL MORE
KEN PETERSON

COMMITTEE STAFF

SHERI SCURR, Lead Staff
DAVID NISS, Staff Attorney
DAWN FIELD, Secretary

MINUTES

December 15, 2011

Room 152, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

SEN. JIM SHOCKLEY, Chair
REP. MIKE MENAHAN, Vice Chair

SEN. STEVE GALLUS
SEN. GREG HINKLE
SEN. TERRY MURPHY

REP. STEVE LAVIN
REP. MARGARET MACDONALD
REP. MICHAEL MORE
REP. KEN PETERSON

COMMITTEE MEMBERS EXCUSED/ABSENT

SEN. SHANNON AUGARE
SEN. LYNDA MOSS
REP. ELLIE BOLDMAN HILL

STAFF PRESENT

SHERI SCURR, Lead Staff

DAVID NISS, 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 hold a hearing on the Supreme Court's Rules of Civil Procedure and to request a summary from Jim Goetz;
- approved a motion to put Public Safety Officer Standards and Training Certification and issues surrounding the Lake County Sheriff's Office on the April meeting agenda; and
- approved a motion to have a summary of each advisory council and a report or comment from each council and agency.

CALL TO ORDER AND ROLL CALL

00:00:03 SEN. SHOCKLEY called the Law and Justice Interim Committee to order at 8:04 a.m. The Secretary took roll, SEN. AUGARE, SEN. GALLUS, SEN. MOSS, and REP. HILL were excused (Attachment 1).

00:01:07 REP. PETERSON noted that as discussed on page 12 of the September 9 minutes, he had requested that Joan Daly provide information on federal payment for tribal commitments. He said that he has not received the information and that he still would like to receive it. **He moved to approve the September 9, 2011, meeting minutes. The motion passed on a unanimous voice vote.**

RULE REVIEW

00:05:11 **David Niss, Staff Attorney, LSD**, said he was available to answer questions relating to his Nov. 28, 2011, memorandum on agency rulemaking actions (EXHIBIT 1).

00:09:22 REP. PETERSON asked if future rule review memos could be more specific about the intent of the proposed rule and law affected. Mr. Niss agreed.

00:10:23 REP. MORE asked Mr. Niss to clarify paragraph three (rulemaking issue). Mr. Niss explained further.

00:15:26 REP. MORE asked if the deficiencies mentioned in the DOJ's review were clearly articulated. Mr. Niss said they were and provided additional information.

00:15:59 Mr. Niss discussed an Oct. 6, 2011, memorandum regarding the Legislature's constitutional authority to disapprove Rules of the Montana Supreme Court -- New Rules of Civil Procedure and other rules (EXHIBIT 2). As part of his discussion, Mr. Niss also distributed copies of a letter from attorney Jim Goetz, Bozeman, who reviewed the proposed rule changes (EXHIBIT 3) and copies of the Supreme Court hearing docket. Mr. Niss noted that copies of two orders issued by the Supreme Court relating to the proposed rules were attached to his

memo (EXHIBIT 2). After additional discussion on the proposed rules, Mr. Niss asked the LJIC if it wished to hold a hearing on the issue.

- 00:31:53 REP. MORE asked questions relating to the need for a legislative response. Mr. Niss responded to his questions and said that should the committee wish to schedule a hearing, he would recommend that the committee request testimony from Mr. Goetz, members of the Court's Advisory Commission on the Rules of Civil and Appellate Procedure, the Montana Bar Association, and others; and to address the issues of whether there were any parts of any rule that they were unhappy with. The LJIC could then base its response on the testimony received.
- 00:41:29 The LJIC discussed the issue. SEN. SHOCKLEY said a decision would be postponed until after the public comment portion of the meeting. REP. MACDONALD asked to consult the committee work plan to determine how the plan could be adjusted, should a hearing be approved.
- 00:42:30 SEN. SHOCKLEY discussed a situation in Lake County alleging misconduct by Flathead County law enforcement officers. He said that the Public Safety Officer Standards and Training (POST) agency has been looking into the allegations and that he would like the LJIC to also look into the matter.
- 00:44:45 SEN. HINKLE and REP. PETERSON also agreed that the LJIC should look into the matter.
- 00:47:34 REP. MACDONALD questioned the LJIC's authority to investigate and what agency may have jurisdiction. She said that while she appreciates the concerns raised, she would not support a motion.
- 00:50:34 **REP. PETERSON moved to schedule a hearing at the LJIC's next meeting to look into issue; and to invite the Attorney General, chief law enforcement officials of Lake and Flathead Counties, and the head of FWP to appear before LJIC to give testimony.** Mr. Niss suggested delaying action until after public comment has been taken. **REP. PETERSON withdrew his motion.**
- 00:52:49 REP. MACDONALD restated her concern about the precedence of LJIC oversight of an ongoing criminal investigation. She asked Mr. Niss to respond. Mr. Niss said he is not aware of any precedence. SEN. SHOCKLEY said the LJIC would not be interfering with an ongoing investigation but simply requesting information.

REVIEW OF ADVISORY COUNCILS AND REPORTS

- 00:57:17 Ms. Scurr referred members to the *Decision Brief for HB 142 - Review of Advisory Councils and Reports* (EXHIBIT 4) and reviewed the decision points and tables contained in the brief. She said that each Executive Branch agency was invited to speak at the meeting.
- 01:02:33 SEN. HINKLE asked why the Department of Correction's (DOC) Advisory Council and Victim's Advisory Council were dissolved. Ms. Scurr said the decision was

related to budget concerns. SEN. SHOCKLEY said Director Ferriter could answer the question.

01:03:35 REP. PETERSON said the Committee members should know what the councils do before voting to eliminate them.

01:04:37 **Harry Freebourn, Administrative Director, Office of State Public Defender (OPD)**, distributed copies of the Montana Public Defender Commission Fiscal Year 2011 Report (EXHIBIT 5) and introduced Fritz Gillespie, Chair, Montana Public Defender Commission. Mr. Freebourn discussed relevant information in the report and said it is also available online at www.publicdefender@mt.gov or by calling him at (406)-496-6080.

01:19:22 **Tim Burton, Deputy Director, Department of Justice (DOJ)**, reviewed the DOJ advisory councils, commissions, and statutorily-required reports and the staff who oversee each council. He noted that the Fire Prevention and Investigation Advisory Council has not been active for a number of years and that the State Fire Marshall's Office has taken over the duties. He said that for the most part, everything is working well and that no changes are needed.

01:23:37 **Beth McLaughlin, Court Administrator, Office of the Supreme Court Administrator**, reviewed the Court's required reports as listed in Ms. Scurr's report. She noted that the Legislature suspended the evaluation of out-of-home placements of juveniles involved with youth probation report (41-5-2003, MCA).

01:27:20 **Mike Ferriter, Director, DOC**, said that the DOC advisory councils were dissolved by the governor in 2001 due to budget constraints.

PUBLIC COMMENT

01:29:22 **Jim Smith, Montana Sheriff's and Peace Officers Association (MSPOA) and Montana County Attorney's Association (MCAA)**, responded to the LJIC's discussion of the POST investigation ongoing in Lake County. He offered his assistance to the committee and strongly advised the LJIC to invite the POST Council to attend the hearing.

01:32:36 **Jim Cox, citizen, Billings**, discussed a lawsuit in which he represented himself against Yellowstone County involving Yellowstone County's unlawful seizure of Mr. Cox's trailer. SEN. SHOCKLEY said he would like to consult with LJIC staff about Mr. Cox's concerns during a break.

01:37:27 **Barbara Rose, inmate family member**, asked to discuss establishing an inmate family council. SEN. SHOCKLEY asked her to come back for the DOC portion of the meeting later in the afternoon. Ms. Rose agreed.

01:39:26 Ms. Scurr pointed out that a letter from Mardi Elford that supported re-establishing the Victim's Advisory Council, DOC, was included in the meeting materials (EXHIBIT 6).

COMMITTEE DISCUSSION AND WORK SESSION

- 01:40:11 **REP. PETERSON moved to hold a hearing to review the Supreme Court's proposed changes to the Rules of Civil Procedure, to ask Mr. Goetz to explain the rationale for the changes, and to allow public comment.** REP. MACDONALD said that process has already allowed for public comment and that the LJIC must be mindful of its time restrictions. REP. PETERSON said the Montana Constitution says the Legislature has the authority to disapprove the proposed rules and ought to at least look at them.
- 01:44:03 REP. MORE said that the scope of the Court's changes are the greatest made since the 1972 Constitutional Convention and agreed that the LJIC should examine them.
- 01:44:40 REP. MENAHAN asked how the hearing would be formatted and cautioned that if each rule is to be discussed it would be a very time consuming effort. REP. PETERSON said he did not anticipate reviewing each rule but that Mr. Goetz would outline the major changes and answer questions.
- 01:48:30 **REP. PETERSON's motion to passed on 7-1 voice vote. REP. MENAHAN voted no.** SEN. MOSS, SEN. AUGARE, SEN. GALLUS, and REP. HILL were not present and did not vote.
- 01:49:04 **REP. PETERSON renewed his motion to hold a hearing to look into the alleged incidents involving law enforcement officers in Lake County. He said his motion would include an invitation to POST and others who wish to comment.** REP. MACDONALD said the nature of the hearing needs to be clarified and asked staff to discuss what would be required.
- 01:50:49 SEN. SHOCKLEY supported the motion, saying this appears to be a serious issue and warrants action.
- 01:52:19 REP. MENAHAN opposed the motion.
- 01:54:22 SEN. HINKLE supported the motion.
- 01:55:59 REP. PETERSON said that he didn't anticipate the hearing being investigatory in nature but would simply get an explanation from the relevant people involved.
- 01:56:49 REP. MORE agreed that the LJIC should look into the issue. **REP. PETERSON's motion passed on a 6-3 roll call vote. REP. MACDONALD and REP. MENAHAN voted no. SEN. MOSS voted no by proxy (MacDonald).** SEN. GALLUS, SEN. AUGARE, and REP. HILL were not present and did not vote.
- 01:58:55 After a brief discussion, it was agreed that the LJIC would request each agency to provide a summary of the councils and reports required, for review before the next meeting. SEN. SHOCKLEY said the committee would postpone action until the February meeting.

- 02:01:40 **REP. PETERSON moved to request agency reports regarding statutorily assigned councils and commissions, and to postpone action until the next meeting.**
- 02:02:20 REP. MACDONALD asked if the motion would include only councils and commissions, or if it also included statutorily-required reports. After discussion, **REP. PETERSON amended his motion to request summaries for each advisory council and report (as relevant to the assigned executive branch agencies) and to take agency comment.** The committee discussed the motion.
- 02:06:40 **REP. PETERSON's motion passed on a 9-0 unanimous voice vote. SEN. MOSS voted aye by proxy (MacDonald).**
- 02:07:10 SEN. SHOCKLEY recessed the LJIC for a break at 10:08 until 10:30.
BREAK
- 02:31:09 SEN. SHOCKLEY called the meeting back to order at 10:32 a.m.

PUBLIC DEFENDER SYSTEM

LJIC members were provided copies of the American Civil Liberties Union's (ACLU) evaluation of the first five years of Montana's Public Defense system in the meeting materials (EXHIBIT 7).

- 02:32:47 **Scott Crichton, Executive Director, American Civil Liberties Union of Montana (ACLU)**, distributed bookmarks commemorating the 210th anniversary of the Bill of Rights. He then reviewed the evolution of Montana's public defender system, including the litigation that was the catalyst for the creation of the office. Mr. Crichton distributed copies of the American Bar Association's Ten Principles for a Competent and Efficient Public Defense System (EXHIBIT 8), which he said, was the basis for Montana's public defender system.
- 02:56:56 **Fritz Gillespie, Chair, Montana Public Defender Commission**, said that the LJIC needs to know that the Commission has taken the American University (AU) report on Montana's State Office of the Public Defender very seriously. He said the Commission has studied the findings and recommendations and agreed that some of the findings were alarming. Commissioner Gillespie discussed the Commission's response to the AU report. He also addressed several of Mr. Crichton's concerns. He said that the Commission is preparing an 88-page draft response to the AU report that will also incorporate the findings of ACLU. He said he would provide the report to the LJIC in advance of the February meeting.

Committee Questions and Discussion

- 03:15:38 SEN. MURPHY asked how the 27,000 current case load compare with the case load 25 years ago. Commissioner Gillespie recalled, as a former public defender, that he never had more than 30 cases. He noted that in the last six months, the number of dependent neglect cases has tripled in Great Falls due to more oversight and concern by the Department of Health.
- 03:17:50 SEN. MURPHY asked Mr. Crichton to discuss his opinion on case load. Mr. Crichton said no one knows the exact case load of each attorney because there was not an accounting system in place to track cases.

- 03:20:35 SEN. MURPHY asked Mr. Crichton if he thought pressure from counsel to plead guilty is less in the current system than it was in the past. Mr. Crichton said it would be pure conjecture to answer that but said he would guess that it does happen.
- 03:21:52 REP. MORE asked Mr. Gillespie if it is possible to determine the number of cases resolved to the satisfaction of the defendant. Mr. Gillespie said that issue is one of the concerns of the AU report and of the ACLU. He said the short answer is "no" and that data collection issues, including a shortage of FTE's to compile the information, are the main cause for the lack of information.
- 03:25:00 REP. MORE asked if the OPD might consider a brief polling of each defendant at the closure of a case. Commissioner Gillespie said he has not given that a lot of thought and noted that a defendant who is convicted is not going to be satisfied. He discussed the OPD's ethical obligation to provide effective assistance.
- 03:26:40 REP. PETERSON asked Commissioner Gillespie if he disagrees with any of the seven recommendations listed in the ACLU evaluation (EXHIBIT 7). Mr. Gillespie said no. REP. PETERSON and Commissioner Gillespie discussed each of the ACLU recommendations in detail.
- 03:51:28 REP. MENAHAN noted that Commissioner Gillespie volunteers his time to serve on the Commission and is to be commended for his service. He said, regarding the ACLU recommendations, that he finds limited value in asking a defendant to critique the public defender system. Mr. Crichton acknowledged REP. MENAHAN's concerns and agreed that the report must be read in the proper context but said that loss of liberty must be kept at the center of the issue. He said the purpose of the report was to investigate contradictions and to get a sampling of what is going on. He emphasized that the report also highlighted what is right with the public defender system. Commissioner Gillespie said that as a consequence of the ACLU report, the performance evaluation process is being studied and modified, in order to make them more meaningful.
- 03:59:40 REP. MENAHAN commented on case load management for OPD regional managers versus case load management issues for county attorneys and said expectations should be similar. He discussed his opinion on case load management as it related to the ACLU recommendations.
- 04:01:50 REP. MACDONALD asked if the OPD was fully funded by the 2011 Legislature or if the Legislature reduced the OPD's request. Commissioner Gillespie said the Legislature appropriated more funding than requested and explained why.
- 04:04:24 SEN. SHOCKLEY said that the AU and ACLU reports both focus on management concerns. He agreed that it is an important issue and discussed his concern further. He discussed a number of other concerns addressed in the ACLU report, including allegations of clients being pressured to plead guilty and the ripple effect of clients not paying for public defender services. Commissioner Gillespie said that while he does take exception to several points in the ACLU

report, he accepts the spirit of the report. He said he would provide a response at the next meeting to his concerns regarding the ACLU recommendations.

04:10:01 SEN. SHOCKLEY said that he planned to appoint a subcommittee to work with the OPD to craft recommendations for statutory changes that will improve the efficacy of the office.

04:11:04 SEN. SHOCKLEY recessed the LJIC for lunch break until 1:10 p.m.

LUNCH BREAK

05:11:33 SEN. SHOCKLEY called the LJIC back to order at 1:12 p.m.

SJR 29 - RESTORATIVE JUSTICE STUDY

Panel -- Youth Restorative Justice Programs

05:14:19 **Nick Nyman, Juvenile Probation Officer, Kalispell Center for Restorative Youth Justice (CRYJ)** discussed a leadership agenda for the Flathead County Youth Court (EXHIBIT 9). Mr. Nyman reviewed three core principals of the program: stewardship, accountability, and competency development.

05:32:18 **Shareen Springer, Executive Director, CRYJ**, discussed CRYJ's mission and purpose, its seven program areas, recidivism rates, tracking mechanisms, and funding (EXHIBIT 10). (*SEN. GALLUS joined the meeting at 1:38 p.m.*)

05:42:46 **Dave Balion, Board of Directors member and volunteer, Kalispell, CRYJ**, discussed his experience as a board member and volunteer, including the real and positive effects of the program he has observed in his community. Mr. Balion also discussed three core values of restorative justice programs.

05:52:57 **Rosalie Roy, Missoula Community Restorative Justice, Inc. (CRJ)**, provided an overview of CRJ, including program details, mission, goals and objectives, program components, and funding sources (EXHIBIT 11).

06:04:49 **Jon Flynn, Helena Youth Court Restorative Justice program**, provided an overview of Helena's restorative justice program for youth (EXHIBIT 12). Mr. Flynn emphasized the success of the program and that offenders are much more accountable for their actions and have a good sense of the impacts of their actions after participating in the program.

Committee Questions

06:09:30 SEN. HINKLE asked how restitution is handled. Mr. Nyman explained the process through which he works to try to come to an agreement with the victim on what is satisfactory. Ms. Roy and Ms. Springer also responded to the question.

06:13:46 REP. MACDONALD asked about recidivism rates. Ms. Roy said that the rate has increased in the last few years but that it is still significantly lower than the statewide recidivism rates.

- 06:15:18 REP. MENAHAN disclosed that he and Mr. Flynn have worked together professionally and that Mr. Nyman once served as his fire crew boss. He asked the panelists if there are legislative changes that could be made to give youth court judges more authority or to allow more participation in restorative justice programs than is allowed in current statutes. Mr. Nyman thought that youth court judges have the authority they need but said that he would like judges to be more aware of the restorative justice programs and to use them more in sentencing.
- 06:17:12 Ms. Roy said that she would like to see more referrals from county attorneys and District Court and to see restorative justice programs used more formally. She said that currently, approximately 99% of referrals come from probation officers.
- 06:17:45 REP. PETERSON asked about the effectiveness of a victim and an offender meeting face-to-face, versus a victim surrogate meeting with the offender. Ms. Springer said that recidivism rates do go down when the youth offender meets the victim. She said that her program also provides support for youth during the entire restorative process and that the youth is held accountable until restitution is complete.
- 06:19:26 REP. PETERSON asked if specific changes are needed to enhance the youth programs. Ms. Springer said that additional staffing at the state level and opportunities for information sharing and training among different programs would help. She said that a state data center for tracking data and measuring outcomes would help also.

Public Comment

- 06:22:00 **Cil Robinson, Juvenile Justice Planner, Montana Board of Crime Control (MBCC)**, said she believes that youth data is tracked through the Juvenile Courts Assessment and Tracking System (JCATS) and would be available from Bob Peake, Office of Administrator of the Supreme Court.
- 06:23:15 **Janee Webber, Montana Cares Network**, thanked the panelists for their work and the legislators for their attention to this matter. She encouraged the LJIC to expand the Youth Court Act to include youth into their twenties. Ms. Webber discussed the effect of incarceration and the high rate of recidivism for youth, and how that can affect not only the youth but also the community. Ms. Webber said it is time to consider restorative, rather than punitive, measures to more effectively help offenders. Ms. Webber said that the Montana Cares Network would like to act as a liaison between the DOC and communities to establish a volunteer base who want to share their time, talent, and expertise to find solutions. Ms. Webber said while restorative justice may cost a bit more on the front end, the long-term savings would be significant because youth offenders will not end up in the adult corrections systems.
- 06:29:55 Mr. Cox commented that he believes there is a correlation between a failure rate of restorative justice programs and keeping the corrections system profitable and full.

06:30:40 **Katie McKeown, Montana Family and Friends of Homicide Victims,** applauded the panelists and LJIC for examining restorative justice programs. She said that restorative justice is larger than the offender and that it must also include the victim.

Committee Discussion

06:32:15 REP. MACDONALD asked if youth could be defined more broadly than to just to 18 years of age. She agreed that 18 is too young to cut off from youth and other intervention programs and said she would support changing the statutory definition to include up to 21 years of age.

06:33:21 Mr. Nyman said that the Montana Youth Court Act defines a youth as a person under the age of 18. He went on to further discuss the age restrictions in the Act. REP. MACDONALD asked about the availability of services funded by the MBCC and who can be served. Ms. Robinson explained the funding mechanisms used to fund youth restorative justice and youth court programs.

06:37:25 REP. PETERSON said that there are exceptions for youth in the Constitution and thought that other exceptions may be able to be made for juvenile restorative justice purposes.

06:38:38 SEN. HINKLE said he would like staff to find out if adult restitution programs are as effective as youth programs are, as an alternative to incarceration. He predicted that it would not be as successful for adults as it is for youth but thought it would be worth looking into.

06:39:44 REP. MACDONALD said she would like staff to research raising the age for eligibility of services for restorative justice.

Public Comment

06:40:23 **Donna Wilson, mother of a MSP inmate,** said that access to a restorative justice program would have greatly benefitted her son. She discussed in detail her son's situation and the problems he has encountered in Montana's correctional system as submitted to Ms. Scurr (EXHIBIT 13).

06:48:39 SEN. SHOCKLEY discussed with Mrs. Wilson the issue of her son's medications being taken away by prison staff. Ms. Wilson said that doctors and nurses can identify medications and properly administer them, and that there was no need to take her son's medications away. She said her son was medically compliant and deteriorated rapidly after his medications were taken away.

06:51:06 SEN. SHOCKLEY recessed the meeting at 2:51 p.m. for a 15-minute break.

BREAK

07:07:20 SEN. SHOCKLEY called the LJIC back to order at 3:08 p.m.

AGENCY OVERSIGHT

07:07:21 Ms. Scurr referred the LJIC to an agency overview report on the Board of Pardons and Parole (EXHIBIT14). Ms. Scurr discussed BOPP's statutory requirements and policies. A staff research memo on DOC policies, the Prison

Issues Board, probation and parole grievances and visitation was mailed to the committee prior to the meeting (EXHIBIT 15).

Board of Pardons and Parole

07:16:17 **Fern Osler, Executive Director, Board of Pardons and Parole**, discussed the BOPP's mission statement and hearing process. Ms. Osler provided a handout on one month's statistics relating to inmates being granted or denied parole in July 2011 (EXHIBIT 16). She invited the LJIC to attend a BOPP hearing.

07:29:21 SEN. HINKLE asked questions regarding "technical violations", how parole decisions are made, and the grievance procedure available to inmates. Ms. Osler responded to each of his questions. SEN. SHOCKLEY said the grievance procedure would be fully addressed later in the meeting.

Department of Corrections ASK SHERI ABOUT OTHER MATERIALS - exhibits?

07:36:19 **Mike Ferriter, Director, Department of Corrections (DOC)**, said that LJIC members were welcome to visit the MSP at any time. He distributed copies of a recent DOC newsletter (EXHIBIT 17).

07:38:05 Director Ferriter encouraged the LJIC members to review statutes (53-1-201 through 204, MCA) relating to the DOC in order to fully understand the foundation of the DOC and said that the DOC takes its responsibilities very seriously. He also discussed statistics relating to DOC offender population and said it is very challenging to work with this population. He discussed the goals and objectives of DOC programs and the Department's expectation that each offender be held accountable for his actions and work to become functional adults, which includes learning the proper way to approach and deal with grievances.

07:42:15 Director Ferriter discussed the issue of dealing with grievances. He said that he plays an active role in the grievance process and that he personally responds to phone calls and letters from unhappy family members but that it is very difficult to satisfy everyone. He said that Billie Reich, DOC Grievance Officer, would discuss the topic further.

07:43:24 **Billie Reich, Grievance and Classification Officer, MSP**, provided copies of a grievance information sheet (EXHIBIT 18) that is provided to each offender upon intake into MSP, the 2010 Annual Grievance Report (EXHIBIT 19), and DOC and MSP grievance policies and procedures (EXHIBIT 20). Ms. Reich provided a brief overview of the grievance procedure and how complaints are handled at MSP and other secure facilities.

07:47:44 Director Ferriter said allegations raised regarding Crossroads Correctional Center at Shelby at the LJIC September meeting were very concerning because the DOC has not had an opportunity to appear before the LJIC until now. He said that while the DOC responded to the LJIC in writing (EXHIBIT 21) as soon as it became aware of the allegations, the situation has impacted DOC staff. He noted that the review recently completed by the Legislative Audit Division indicates the

allegations were unfounded. He said that review did suggest followup on the issue of staffing and agreed that it has been a concern.

07:50:37 **Pat Smith, Bureau Chief, Contract Placement Officer, DOC**, said that he oversees all privatization efforts within the DOC. Mr. Smith reviewed his professional qualifications and work experience. He explained how the state's correctional contracts are set up and administered.

07:55:56 **Martin Frink, Warden, Crossroads Correctional Center (CCC), Shelby**, discussed staffing challenges at the Shelby facility and said that he is aggressively recruiting in an effort to hire qualified staff. Warden Frink invited the LJIC members to tour the facility.

07:59:06 Director Ferriter distributed a memorandum on prison protocol regarding the September 5, 2011, homicide at the MSP (EXHIBIT 22) and said that he could not provide additional comment at this time.

08:00:17 Director Ferriter discussed the DOC's proposal for expansion of secure beds.

Committee Questions

08:03:48 SEN. HINKLE asked Ms. Reich if there is procedure for informal grievances. Ms. Reich said DOC has a policy and procedure in place regarding how an inmate may bring forth a complaint. SEN. HINKLE said he is concerned about the phone calls and emails that the LJIC has received from inmates who are worried about retaliation from other inmates and staff. Ms. Reich said that retaliation is specifically addressed in DOC protocol.

08:05:49 SEN. HINKLE asked Mr. Smith to respond to the concerns heard about food safety. Mr. Smith said he has heard similar rumors for years and that he has personally looked into the issue and has yet to find any basis to the allegations.

08:07:21 SEN. GALLUS commented that legislators hear many complaints about different issues and that it is very important that they ask pertinent questions in order to be certain they are receiving accurate information.

08:08:15 SEN. SHOCKLEY asked Director Ferriter to respond to Ms. Wilson's testimony that her son's medications were taken away, and said he would like to know what the DOC's policy is regarding medications. Director Ferriter said that 41% of inmates have mental health problems, which is a problem. He said that DOC staff knows the importance of proper medications and keeps an inmate on prescribed medications whenever possible. Director Ferriter discussed the issue further, including psychotropic medications, qualified medical staff at DOC, and DOC medical facilities.

08:11:47 SEN. SHOCKLEY asked Director Ferriter to comment on inmate Ronnie Allen Harriman's medical condition (in reference to photographs of Mr. Harriman's medical condition that were provided to the LJIC at a previous meeting and to Director Ferriter in advance of this meeting). Director Ferriter said he has seen the photographs and is aware of Mr. Harriman's medical condition. He said that a

physician has examined Mr. Harriman and that the DOC understands it's responsibility to provide appropriate medical care but that he could not discuss specific details.

- 08:14:35 SEN. SHOCKLEY said the LJIC would be very disturbed to learn that Mr. Harriman is not receiving medical treatment. Director Ferriter said the DOC has resources for medical care but noted that there are many challenges in providing medical care to inmates.
- 08:15:27 REP. PETERSON said that doctors and nurses are in the best position to evaluate medical conditions. Director Ferriter agreed. He said that patients may receive care from outside providers if treatment can't be provided onsite.
- 08:16:31 REP. MORE referred to the 2010 DOC Grievance Report (EXHIBIT 19) and asked Ms. Reich to discuss specific instances of resolved grievances. Ms. Reich described an actual grievance procedure. In response to additional questions from REP. MORE, she said that grievances are tracked and said she is not aware of any impact a grievance may have on a parole hearing.
- 08:19:45 SEN. SHOCKLEY asked Warden Frink questions regarding allegations made about lack of adequate staffing at Crossroads Correctional Center (CCC) and if inmates are being allowed adequate exercise periods,. Warden Frink explained the contractual obligations for staffing and how the positions are being filled. He also explained the exercise rotation schedule at the Center.
- 08:23:25 **Niki Zupanic, Public Policy Director, ACLU Montana**, discussed an overview of the ACLU's Montana Prison Project, which is intended to monitor and ensure compliance at all detention facilities in the state. Ms. Zupanic's discussion of the Project included staffing, specific components of the Project, and an overview of ACLU's "*Know your Rights*" resource guide for prisoners (EXHIBIT 23).
- 08:34:58 SEN. SHOCKLEY asked if the MSP sweat lodge participants are strip searched. Ms. Zupanic said that particular complaint was specific to the Shelby prison and that she has not heard complaints about the MSP.
- 08:36:28 **Ross Johnson, Performance Auditor, Legislative Audit Division**, updated the LJIC on it's request for a performance audit of contract oversight and compliance at the CCC. Mr. Johnson said that based on the results of his review, a performance audit is not warranted at this time (EXHIBIT 24) but he did suggest that the LJIC request specific updates on the staffing concerns and follow up on five internal DOC audit recommendations made regarding the inmate welfare fund.

Committee Questions

- 08:52:21 SEN. SHOCKLEY questioned Mr. Johnson about the shop closure and contract compliance. Mr. Johnson said that the vocational and hobby supervisors are not required contracts so he could not conclude that the CCC was not in compliance. SEN. SHOCKLEY asked about training requirements for security positions and those positions are being filled by untrained staff to cover the shortages. Mr.

Johnson responded. He said that overall, required positions were filled but that there is potential for that to happen. SEN. SHOCKLEY questioned Mr. Johnson about the outdoor exercise schedule for inmates. Mr. Johnson responded to his questions.

08:57:19 REP. PETERSON asked Warden Frink if staff recruitment efforts have included nearby reservations. Warden Frink said yes, that CCC Human Resource personnel has posted information at the Blackfoot Community College and in surrounding communities.

09:00:24 REP. MORE thanked Mr. Johnson and LAD for addressing the concerns of the LJIC. He asked Mr. Johnson to comment on the recommendation on page three to strengthen the biennial audit process of contract facilities. Mr. Johnson said that recommendation was made in a 2009 audit and that the DOC has indicated that it is taking steps to improve that process.

09:01:57 SEN. SHOCKLEY asked Director Ferriter to update the LJIC on CCC staffing at the June meeting. Director Ferriter said he would do so.

PUBLIC COMMENT

09:03:31 **Ruben McKinney**, commented that he is frustrated with DOC staff denials regarding allegations made about prison conditions. Mr. McKinney also discussed concerns about the Board of Pardons and Parole.

09:06:55 **Mr. Cox, Billings**, commented on issues of concern regarding the Board of Pardons and Parole.

09:09:32 **Joy Wellington, Red Lodge**, discussed concerns related to prisoner Clive Kinlock. *Ms. Wellington submitted written comment in advance of the meeting (EXHIBIT 25).*

09:12:16 **Ken Curtis, retired state employee**, discussed his visits to MSP and CCC. Mr. Curtis said he has considerable concerns about the Shelby facility, specifically difficulty in checking into the facility, limited visitation hours, and other related staffing issues.

09:15:19 **Steve Cape, Montana Coalition of Safety and Justice**, requested that the LJIC inquire about certain concerns regarding conditional discharge and disposition of supervision fees collected between 2003 through 2011 (EXHIBIT 26).

09:18:55 **Barbara Rose**, discussed concerns regarding the grievance process and suggested the LJIC consider a statute to establish inmate family councils in the DOC. Ms. Rose provided a large packet of information related to her husband's concerns (EXHIBIT 27).

09:22:12 **Zanna Westfield, business owner and tax payer**, discussed concerns related to her visits to the MSP. Ms. Westfield provided documents which included her speaking points and other related information (EXHIBIT 28).

- 09:25:10 **Casey Rudd, Connections, Bozeman**, asked that LJIC look into mandatory parole for good time. She said that about many prisoners have been paroled but are still waiting for release, which is costing Montana taxpayers a great deal of money. She discussed additional recent parole board data.
- 09:28:37 Ms. Rudd also discussed the medical condition of inmate Ronnie Harriman, saying that Mr. Harriman has given permission for the LJIC to have access to his medical records.
- 09:29:49 SEN. SHOCKLEY stated that he would personally visit Mr. Harriman.
- 09:30:03 **Janee Webber, Billings**, commented that statistics prove that current incarceration methods are not working and said that the LJIC has the power to initiate change. Ms. Webber also spoke in opposition to the DOC's expansion proposal.

Committee Discussion

- 09:32:39 REP. PETERSON responded to public comments made regarding the makeup of the Probation and Parole Board. He said that statute requires that one member of the Board must be an enrolled member of an American Indian tribe and that all members must be educated on Indian culture and issues.
- 09:34:04 REP. MORE asked Ms. Rose what her motivation was to compile the information she did. Ms. Rose said her husband is incarcerated and that the document she handed out is an overview of what has happened to him while in prison.
- 09:36:26 SEN. SHOCKLEY commented that while the Shelby facility appears to be in compliance, the contract wording could be improved. He also commented that visitation schedules should be the same at CCC as it is at MSP. Director Ferriter said he would look into that issue.

UPDATE ON LEGISLATIVE FINANCE COMMITTEE PERFORMANCE MEASURE

- 09:43:17 **Greg DeWitt, Legislative Fiscal Analyst, Legislative Fiscal Division (LFD)**, discussed SJR 26 - performance measurement and Law and Justice Interim Committee assigned agencies (EXHIBIT 29).
- 09:47:46 SEN. SHOCKLEY recessed the meeting at 5:42 p.m. He said the LJIC would reconvene the next morning at 8:00 a.m.

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