



## Law and Justice Interim Committee

### 64th Montana Legislature

#### SENATE MEMBERS

SCOTT SALES--Chair  
DIANE SANDS--Vice Chair  
DOUG KARY  
SUE MALEK  
MARY SHEEHY MOE  
NELS SWANDAL

#### HOUSE MEMBERS

JENNY ECK  
ELLIE BOLDMAN HILL  
SARAH LASZLOFFY  
STEVE LAVIN  
DALE MORTENSEN  
CAROLYN PEASE-LOPEZ

#### COMMITTEE STAFF

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

# MINUTES LOG

April 21, 2016  
Room 172, 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.

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#### **COMMITTEE MEMBERS PRESENT**

SEN. SCOTT SALES, Chair  
SEN. DIANE SANDS, Vice Chair

SEN. DOUG KARY  
SEN. MARY SHEEHY MOE  
SEN. NELLS SWANDAL

REP. JENNY ECK  
REP. ELLIE BOLDMAN HILL (BY PHONE IN AFTERNOON)  
REP. SARAH LASZLOFFY  
REP. STEVE LAVIN  
REP. CAROLYN PEASE-LOPEZ

#### **COMMITTEE MEMBERS EXCUSED**

SEN. SUE MALEK

#### **COMMITTEE MEMBERS ABSENT**

REP. DALE MORTENSEN

## **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**

00:00:01 Sen. Sales called the meeting to order at 8:01 a.m. The committee secretary called roll ([Attachment 3](#)).

### **PUBLIC COMMENT RELATED TO MONTANA STATE PRISON AND MONTANA CORRECTIONAL ENTERPRISES TOUR**

None

### **AGENCY OVERSIGHT: MULTI-AGENCY REENTRY TASK FORCE REPORT**

**Adrienne Slaughter, Department of Corrections (DOC) Government Relations Director**

**Moe Wosepka, Diocese of Helena, President of Helena Community Reentry Program & Statewide Reentry Task Force Member**

**Stacy Collette, Department of Commerce Operations Manager, Board of Housing & Statewide Reentry Task Force Member**

00:01:24 Ms. Slaughter ([Exhibit 1](#))  
00:05:49 Sen. Pease-Lopez joined the meeting at 8:06 a.m.  
00:07:36 Mr. Wosepka  
00:23:57 Ms. Collette  
00:28:05 Ms. Slaughter

### **Questions from the committee**

00:33:10 Sen. Swandal asked Ms. Collette if the housing is public or private in the First Housing Model.  
00:33:44 Sen. Kary asked if the ten-day furlough period is in agency rule or law.  
00:34:44 Ed Foley, DOC Lead Institutional Probation and Patrol Officer  
00:36:11 Sen. Kary asked if the inmates are housed in the prison during the ten-day furlough.  
00:37:36 Sen. Kary commented about the housing search for inmates and asked what the DOC does to help the housing process.  
00:39:20 Sen. Kary asked how long it takes the parole-department to verify housing.  
00:40:07 Sen. Kary asked if the ten-day furlough includes the time it takes the department to process the housing search.  
00:40:57 Sen. Kary asked if the housing search is verified by the field agent.  
00:41:10 Mr. Wosepka commented on the ten-day furlough.  
00:43:16 Rep. Eck asked how many inmates end up serving out their sentence in prison if their parole is denied or acceptance in the reentry program is denied.

00:45:39 Rep. Eck asked for the number of inmates that could have been paroled but were not released because they could not meet requirements.

00:46:07 Sen. Moe asked what the state is doing and what it could do better to assist reentry programs.

00:50:25 Sen. Sands asked the panel to address the Native American and female populations in the Montana prisons.

00:53:26 Sen. Sands asked if the recidivism rate is similar between the men's and the women's prison.

00:55:13 Rep. Pease-Lopez asked if trauma-based treatment is being used in the men's prison.

00:56:56 Rep. Pease-Lopez commented on racism and the trauma it can cause. Rep. Pease-Lopez also asked Mr. Wosepka about the job service assistance in Helena.

### **Public comment**

00:59:08 Rudy Stock, Helena

01:07:23 Jana Staton, Missoula ([Exhibit 2](#))

01:09:18 Randy VanOsdol, Bozeman ([Exhibit 3](#))

01:16:36 Gary Mihelish, Helena

01:21:55 Darren Ashby, Missoula ([Exhibit 4](#))

01:25:32 Joe Loos, Missoula ([Exhibit 5](#))

## **SJ 24: REVIEW OF PRELIMINARY DRAFT LEGISLATION**

### **Overview of Draft Legislation -- Julianne Burkhardt, Staff Attorney**

#### **LCIj01 -- Revision of consent definition; create aggravated SIWOC crime**

01:26:16 Ms. Burkhardt ([Exhibit 6](#))

01:33:27 Sen. Swandal asked about the consenting age in the bill draft language.

01:34:05 Ms. Burkhardt continued her presentation.

01:38:23 Sen. Sales asked Sen. Swandal if the LCIj01 bill draft will increase the prison population.

#### **LCIj02 -- Unlawful distribution of sexual images or recordings (new section -- original draft)**

##### **LCIj02a -- Unlawful distribution of sexual images or recordings (new section -- revised draft)**

##### **LCIj02b -- Unlawful distribution of sexual images or recordings (incorporated into 45-8-213, MCA)**

01:39:02 Ms. Burkhardt continued her presentation ([Exhibit 7](#)).

#### **LCIj03 -- Revision of mandatory minimums for statutory rape; 18 years old do not have to register as sex offenders**

##### **LCIj03a -- No registration as sex offenders for 18 year olds convicted of statutory rape**

##### **LCIj03b -- Provides maximum penalty for 18 year olds convicted of statutory rape**

01:43:11 Ms. Burkhardt continued her presentation ([Exhibit 8](#)).

01:46:32 Sen. Moe asked about the language of 'force involved'.

#### **LCIj04 -- Elimination of statute of limitations for sex crimes perpetrated against victims under the age of 18**

- 01:47:10 Ms. Burkhardt continued her presentation ([Exhibit 9](#)).
- 01:47:58 Rep. Eck asked for the current law on statute of limitations.
- 01:49:04 Sen. Sands asked if the draft changes the standard of proof required under law for the conviction of these crimes.
- 01:49:52 Sen. Sands asked Sen. Swandal how these drafts could change the prosecution charges of these crimes.
- 01:52:31 Sen. Sands asked Sen. Swandal if a person could use the civil remedy to prosecute their case.

#### **Questions from the committee**

- 01:53:28 Rep. Eck commented on the Ravalli County rape case and the statute of limitations and how the bill draft language effects the statute.
- 01:55:42 Rep. Eck asked if the bill drafts will be discussed and actions will be taken later in the meeting.
- 01:56:19 Sen. Moe asked if the discussion later will allow public comment or if public comment could be taken now.

#### **Public comment on the drafts**

- 01:56:58 Patty Grubb read a letter from Tracy Velazquez ([Exhibit 10](#))
- 02:03:32 Robin Turner, Public Policy and Legal Director, Montana Coalition Against Domestic and Sexual Violence
- 02:13:21 Jordan Kilby, Missoula County Deputy Attorney
- 02:17:16 Melinda Reed, Helena, Executive Director, Friendship Center ([Exhibit 11](#))
- 02:18:59 Rebecca Weston, Missoula
- 02:22:50 Christina Powell, Bozeman, Sexual Assault Resource Center

**BREAK** (Reconvened at 10:59 a.m.)

#### **COMMITTEE ISSUE: DNA DATABASE OVERVIEW -- Joe Pasternak, DNA section supervisor, Department of Justice**

- 02:59:07 Mr. Pasternak ([Exhibit 12](#))

#### **Questions from the committee**

- 03:14:58 Sen. Swandal asked how long the DNA samples last.
- 03:16:11 Sen. Moe asked if a DNA file been created for each perpetrator that has committed a crime since 1995.
- 03:17:17 Sen. Sales asked if it is just DNA from violent offenders that is being collected.

#### **Public comment**

None

#### **COMMITTEE ISSUE: UPDATE ON JUDICIAL REDISTRICTING COMMISSION -- Rachel Weiss, Research Analyst**

- 03:18:24 Ms. Weiss ([Exhibit 13](#))([Exhibit 14](#))

#### **Questions from the committee**

- 03:21:52 Sen. Sands asked what the final decision was regarding the proposals.

**Public comment**

- 03:23:39 Mark Murphy  
03:25:23 Sen. Sands asked if there will be a followup presentation from the Judicial Redistricting Commission.  
03:26:35 Rep. Eck asked if a packet of information can be given to the committee on updates from the Commission on Sentencing.

**AGENCY OVERSIGHT: ADMINISTRATIVE RULE REVIEW AND REQUIRED REPORTS**

**Julianne Burkhardt, Staff Attorney**

- 03:27:48 Ms. Burkhardt ([Exhibit 15](#))

**Questions from the committee**

None

**Public comment**

None

**LUNCH** (Reconvened at 12:30 p.m.)

- 04:30:15 Rep. Hill joined the meeting via phone.

**SJ 24: SEXUAL AND VIOLENT OFFENDER REGISTRY PANEL**

**Jon Bennion, Deputy Attorney General, Montana Department of Justice**

**Andy Hudak, Montana Sex Offender Treatment Association**

- 04:31:00 Mr. Bennion  
04:46:06 Mr. Hudak ([Exhibit 16](#))

**Questions from the committee**

- 05:15:41 Sen. Moe asked if the Montana Sex Offender Treatment Association's risk assessment are equal to the Montana DOJ risk assessments.  
05:17:10 Sen. Moe asked Mr. Hudak to clarify his comments about the personality types of sexual offenders.  
05:18:54 Sen. Swandal asked Mr. Bennion how the state is handling homeless sexual and violent offenders.  
05:20:19 Butch Huseby, Crime Information Bureau Chief, DOJ  
05:21:18 Sen. Swandal asked Mr. Hudak if there is a 'cure' in the sexual offender field.  
05:23:32 Sen. Swandal commented on the under staffing at the Montana State Prison and recommended that the Montana Sex Offender Treatment Association discuss ways to get sexual offenders through the program and onto parole.  
05:25:03 Rep. Eck asked Mr. Hudak if the licensing requirements for psychosexual evaluators could be lowered to raise the staffing at the prison.  
05:27:56 Sen. Sands asked if priority is given to juvenile inmates for treatment.  
05:32:16 Sen. Sands asked Mr. Bennion what ideas they plan to propose to the legislature regarding the lack of staff.  
05:33:38 Sen. Sands asked if the legislature should look into licensing requirements for mental health providers and recruiting options to help increase staff.  
05:34:57 Rep. Eck asked Mr. Bennion to comment on the driver licensing procedure at the Montana Motor Vehicle Division.

**Public comment**

05:38:45 Patricia Grubb, Bozeman ([Exhibit 17](#))  
05:46:25 Darren Ashby, Missoula ([Exhibit 18](#))  
05:50:00 Mr. Hudak

**COMMITTEE ISSUE: PUBLIC INTOXICATION ORDINANCE OPTION (LCIj99)**

**Overview of draft language -- Rachel Weiss, Research Analyst**

05:52:23 Ms. Weiss ([Exhibit 19](#))

**Questions from the committee**

05:56:46 Sen. Kary asked if the bill draft language could be worded to include other substance abuse rather than just alcohol abuse.

**Public comment**

05:57:53 Officer Joel Simpson, Billings, Police Department  
06:01:16 Officer Matt Lennick, Billings, Police Department  
06:04:17 Brent Brooks, Billings, Police Department City Attorney

**BREAK** (Reconvened at 2:22 p.m.)

**COMMITTEE ISSUE: UPDATE ON EYEWITNESS IDENTIFICATION TRAINING AND SURVEY RESULTS**

**Michelle Feldman, State Policy Advocate, Innocence Project  
Perry Johnson, Executive Director, Montana Public Safety Officer Standards & Training Council**

06:22:17 Ms. Feldman ([Exhibit 20](#))  
06:27:57 Mr. Johnson ([Exhibit 21](#))

**Questions from the committee**

06:33:06 Sen. Swandal asked Mr. Johnson how many agencies have adopted the eyewitness identification policy.  
06:33:53 Rep. Eck asked for a list of the agencies that have participated.

**Public comment**

None

**PUBLIC COMMENT ON ANY ITEM WITHIN LJIC JURISDICTION BUT NOT ON THIS AGENDA**

06:34:57 Deb Matteucci, Executive Director, Board of Montana Crime Control  
06:40:18 Sen. Sands asked for clarification of child custody involving a sexual offender.  
06:40:53 Sen. Sands asked if there is an option to support the agency bill.

**COMMITTEE WORK SESSION**

**Review of Required or Requested June Agenda Items**

06:42:54 Ms. Weiss ([Exhibit 22](#))([Exhibit 23](#))

## **SJ 24 Study of Sexual Assault: Committee Discussion on LCJ01**

06:46:08 Sen. Sands commented on the need of a discussion on sentencing.

06:48:10 Sen. Moe asked if the bill drafts will be discussed.

### **Motion**

06:48:34 Sen. Sales moved that the Law & Justice Interim Committee drafts a committee bill addressing the issues presented by the Montana Board of Crime Control.

### **Vote**

06:48:50 The motion passed unanimously on a voice vote.

06:49:23 Sen. Moe discussed her proposed changes to LCJ01([Exhibit 24](#)).

06:53:54 Sen. Sands asked Ms. Burkhardt if the language proposed by Sen. Moe was clear and within legislative draft language standards.

06:55:32 Sen. Swandal agreed to the addition of the wording in the draft bill.

06:55:43 Rep. Eck asked Sen. Moe why she wanted to eliminate the word 'control'.

06:56:35 Ms. Burkhardt made recommendations to the draft bill language.

### **Motion**

06:56:53 Sen. Sands moved to have the language draft changed as stated by Ms. Burkhardt.

### **Vote**

06:57:12 The motion passed unanimously on a voice vote.

06:57:17 Sen. Moe made further recommendations about language change in the bill draft.

06:58:36 Sen. Sands asked Ms. Burkhardt if the language change proposed by Sen. Moe was within legislative draft language standards.

### **Motion**

06:59:28 Sen. Moe moved to have the proposed language changed as stated.

### **Discussion on the motion**

06:59:39 Sen. Sands clarified that the motions they are making relate to the bill draft language and do not mean final support of a bill.

### **Vote**

06:59:57 The motion passed unanimously on a voice vote.

07:00:07 Sen. Moe made further recommendations on the language on the bill draft.

07:02:44 Sen. Kary discussed the implications of the language change.

07:03:38 Sen. Kary asked if the power differential could be applied to any business.

07:03:53 Sen. Swandal commented on the power differential that is already covered by the current statute in the definition of consent.

07:04:44 Sen. Moe commented on the previous sections that do not have the level of status that are within the bill draft.

07:05:18 Sen. Sands asked if the power differential is already covered in the education statutes.

07:05:53 Rep. Eck asked Sen. Swandal how the power differential is already covered by the previous definition of consent.

07:07:19 Sen. Sands asked Sen. Swandal about simplifying the draft language.

**Motion**

07:08:27 Sen. Moe moved to make language changes to the power differential definition.

**Vote**

07:08:36 The motion failed with a voice vote 5-5, with Sen. Kary, Sen. Sales, Sen. Sands, Rep. Lavin, and Rep. Laszloffy voting 'no'. Sen. Malek was excused and Rep. Hill was not present.

**Motion**

07:09:39 Sen. Moe moved to eliminate the bill draft section (H) (I) & (II) regarding the power differential.

**Discussion on the motion**

07:09:52 Sen. Sands commented on the language being present in other statutes.

07:10:20 Rep. Pease-Lopez asked if keeping the language would make the bill stronger.

07:11:04 Sen. Sands commented about the current language of the bill draft.

07:11:24 Sen. Swandal commented on the current power differential bill language.

07:11:57 Ms. Weiss made a clarification on the motion.

**Vote**

07:12:17 Motion passed unanimously on a voice vote.

07:12:43 Sen. Kary asked for clarification of on the word 'surprise' on page 19 of the LCij01 bill draft.

07:14:06 Ms. Burkhardt commented on public comment regarding the bill draft language.

07:14:52 Sen. Moe commented on the public comment that has been given regarding the bill draft language 'surprise'.

07:15:33 Sen. Swandal commented on having bill draft language removed regarding mandatory sentence minimums.

07:16:24 Sen. Sands commented on Sen. Swandal statement on mandatory sentence minimums.

**SJ 24 Study of Sexual Assault: Committee Discussion on LCij02, LCij02a, and LCij02b**

07:17:38 Sen. Moe commented on the language in the bill drafts.

07:22:33 Sen. Swandal added to Sen. Moe's comments.

07:24:09 Sen. Sands discussed the parameters of the right to privacy with self-distributed imagery.

**Motion**

07:25:53 Sen. Moe moved that LCij02b to edited with the recommended language changes.

**Vote**

07:26:13 The motion passed unanimously with a voice vote.

**SJ 24 Study of Sexual Assault: Committee Discussion on LCij03, LCij03a, and LCij03b**

07:26:56 Sen. Moe discussed the language in the bill draft.



07:27:31 Ms. Burkhardt discussed the revisions made to the original bill draft.  
07:28:08 Sen. Sales asked Ms. Burkhardt to discuss the difference between the three drafts.  
07:29:47 Sen. Sands made recommendations to the bill draft language.  
07:32:26 Ms. Burkhardt asked the committee about the work group and its involvement in the bill drafts.  
07:34:15 Sen. Swandal commented about getting the work group together to make the recommended edits to the bill draft language.  
07:34:30 Rep. Eck asked for clarification on the bill draft language.  
07:35:50 Rep. Eck asked that a different definition be used in the draft language regarding sexual assault without consent.  
07:37:12 Sen. Sands asked Ms. Turner to give advice about the new proposed definition of consent.  
07:38:48 Ms. Burkhardt commented about the changes that will be made in the bill drafts.  
07:39:21 Sen. Sands asked Ms. Burkhardt to draft a reversal of the current statute on juvenile sex offenders on the registry.  
07:41:11 Ms. Burkhardt asked Sen. Swandal to clarify his comment on the bill language of the evaluation requirement on psychosexual assessments.

#### **SJ 24 Study of Sexual Assault: Committee Discussion on LC1j04**

07:42:58 Sen. Sands discussed the bill draft.  
07:44:26 Rep. Eck discussed extending the statute of limitations.  
07:45:16 Sen. Kary commented on the recommended time span.  
07:46:02 Sen. Moe asked for clarification of the bill language.  
07:46:40 Rep. Pease-Lopez commented on the statute of limitations.  
07:49:06 Sen. Sands commented about removing the statute of limitations.  
07:50:29 Sen. Swandal commented about the implications of removing the statute of limitations.  
07:50:55 Rep. Pease-Lopez asked for clarification of the discussion.  
07:51:21 Ms. Burkhardt clarified Sen. Swandal's comments.  
07:52:13 Sen. Sales commented on the statute of limitations and the possible implications of changing the statute to a longer time span.

#### **Motion**

07:53:57 Sen. Sands moved to amend the bill draft to a 20 year statute of limitations for a felony and retain the 5 year statute of limitations for a misdemeanor.

#### **Discussion on the motion**

07:54:12 Rep. Eck clarified the motion.

#### **Vote**

07:54:28 The vote passed with a 9-1 vote, with Sen. Sales voting 'no'.  
07:54:43 Rep. Eck commented on the requests for draft legislation.  
07:55:48 Sen. Sands clarified the use of staff by the committee members.

#### **ADJOURNMENT**

07:56:03 With no more work before the committee, Sen. Sales adjourned the meeting at 3:57 p.m.

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