



Commission on Sentencing

64th Montana Legislature

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LEGISLATORS

SEN. CYNTHIA WOLKEN - CHAIR
SEN. KRISTIN HANSEN - VICE CHAIR
REP. MATTHEW MONFORTON
REP. MARGARET MacDONALD

PUBLIC MEMBERS

HON. INGRID GUSTAFSON
MIKE BATISTA
DEREK GIBBS
DAN GUZYNSKI
JENNIE HANSEN
ROXANNE KLINGENSMITH

PUBLIC MEMBERS

LEANN MONTES
PETER OHMAN
MARY ANN RIES
MAJEL RUSSELL
DONNA WHITT

COMMITTEE STAFF

RACHEL WEISS, RESEARCH ANALYST
JULIANNE BURKHARDT, ATTORNEY
KATYA GROVER, SECRETARY

MINUTES

June 22, 2016
Room 152, Capitol Building
Helena, Montana

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

COMMISSION MEMBERS PRESENT

SEN. CYNTHIA WOLKEN - CHAIR
SEN. KRISTIN HANSEN - VICE CHAIR
REP. MARGARET "MARGIE" MacDONALD
HON. INGRID GUSTAFSON
MIKE BATISTA
DEREK GIBBS
DAN GUZYNSKI
JENNIE HANSEN
ROXANNE KLINGENSMITH
LEANN MONTES
PETER OHMAN
MARY ANN RIES
DONNA WHITT

COMMISSION MEMBERS EXCUSED

REP. MATTHEW MONFORTON
MAJEL RUSSELL

STAFF PRESENT

RACHEL WEISS, Research Analyst
JULIANNE BURKHARDT, Attorney
KATYA GROVER, Committee Secretary

VISITORS' LIST (Attachment 1)

AGENDA (Attachment 2)

CALL TO ORDER and ROLL CALL

00:00:01 Sen. Wolken called the commission to order at 9:01 a.m. Sen. Wolken discussed the agenda items for this meeting.
00:01:36 The commission secretary called roll. **(Attachment 3)**
00:02:14 Sen. Wolken reviewed the commission rules for providing public comment.

UPDATES ON THE TASK FORCE ON PUBLIC DEFENDER OPERATIONS, JUDICIAL REDISTRICTING COMMISSION, AND LAW AND JUSTICE INTERIM COMMITTEE

Rep. Kimberly Dudik, Presiding Officer, Task Force on Public Defender Operations (via phone conference)
Sen. Cynthia Wolken, Task Force on Public Defender Operations
Sen. Kristin Hansen, Judicial Redistricting Commission
Sen. Mary Sheehy Moe, Law and Justice Interim Committee

00:03:24 Rep. Dudik provided updates to the commission members with respect to bills that the Task Force on Public Defender Operations are considering.
00:05:43 Sen. Wolken provided additional information on the Task Force's work.
00:10:19 Rep. Dudik concluded the report.
00:11:11 Sen. Hansen reported on background information on judicial districts in Montana **(Exhibit 1)**, as well as proposals that the Judicial Redistricting Commission considered **(Exhibit 2)**, and the Judicial Branch recommendation for new judges. **(Exhibit 3)**.

Commission Questions of Sen. Hansen

00:22:23 Commissioner Ohman asked about costs associated with employing a standing master.
00:23:06 Sen. Moe reported on preliminary bill drafts that the Law and Justice Interim Committee has been working on associated with SJ 24 Study of Sexual Assault in Montana. **(Exhibit 4)**

Commission Questions of Sen. Moe

00:31:00 Sen. Wolken referred to several recent cases where an offender convicted of rape was assigned punishment other than incarceration and asked whether the Law and Justice Interim Committee looked at length or type of sentence for a rape.
00:31:54 Commissioner Ohman asked whether the working group that Sen. Moe represents looked at treating, for example, 15-year old children and adults

00:32:55 differently when it comes to sexual intercourse.
Commissioner Ohman asked whether it is considered a crime for 15-year olds to distribute sexual images but not considered a crime for adults.

BREAK (reconvened at 9:42 a.m.)

00:43:05 Sen. Wolken provided a correction on behalf of Sen. Moe from her presentation.

BEHAVIORAL HEALTH PRESENTATION

00:43:34 Steve Allen, Council of State Governments (CSG) Justice Center (via video conferencing) ([Exhibit 5](#))

Commission Questions of Mr. Allen

01:37:49 Commissioner Gibbs asked whether CSG evaluated services provided by the prerelease centers.

01:38:55 Commissioner Gibbs referred to slide 8 of Exhibit 5 and asked how many facilities in Montana only target one need or one criminogenic factor.

01:39:56 Commissioner Gibbs referred to slide 9 of Exhibit 5 and asked how many facilities in Montana are strictly punishment-oriented.

01:41:52 Commissioner Gibbs referred to slide 13 of Exhibit 5 and asked whether the 90-day cap only applies to the prerelease centers or to treatment centers as well.

01:47:10 Sen. Hansen referred to slide 7 of Exhibit 5 and asked whether CSG discovered any areas regarding the existing treatment programs that are not being effective and that do not have proven curricula. Sen. Hansen expressed her concern about offenders being sent from one program to another and requested information about pathways that the offenders go through. Sen. Hansen also asked why current programs are not evidence-based.

01:58:10 Rep. MacDonald asked how many people with addictions, who need mental help, actually get the help.

01:59:39 Rep. MacDonald asked about traffic flow of the individuals in the intersection between the criminal justice system and mental health.

02:02:32 Rep. MacDonald asked about licensing for residential treatment centers and about what it would entail.

02:03:40 Rep. MacDonald referred to slide 14 of Exhibit 5 and asked Mr. Allen to elaborate on the system being fairly arbitrary in terms of placing individuals where they are placed.

02:06:07 Commissioner Klingensmith referred to slide 11 of Exhibit 5 and asked how the expansion of Medicaid is going to contribute to expanding the healthcare services.

02:08:28 Commissioner Guzynski referred to what Sen. Hansen brought up and asked whether CSG would be recommending any specific programs to the Montana Legislature.

02:10:36 Commissioner Guzynski asked to confirm that, according to CSG, the screening process for offenders' placement into programs is not sufficient in Montana.

02:11:58 Commissioner Guzynski asked about the screening process when the Department of Corrections (DOC) is determining a placement for an individual.

02:12:55 Commissioner Guzynski asked Mr. Allen to elaborate on the ability of offenders

- with violent history to engage in community corrections programs.
- 02:15:34 Commissioner Guzynski asked whether there are people who committed violent offenses or sexual offenses who are being released directly from Montana State Prison into the community without going through a prerelease treatment center.
- 02:16:06 Sen. Wolken added to Mr. Allen's reply saying that Missoula, Billings, and, recently, Helena have prerelease centers that accept people who committed sex offenses.

Commission Discussion of Evidence-Based Practices and Programs

- 02:17:54 Mr. Allen provided follow-up comments on the evidence-based practice question raised earlier and commission members had a further discussion about the topic.
- 02:18:25 Sen. Hansen
- 02:20:28 Judge Gustafson
- 02:21:34 Sen. Hansen
- 02:22:48 Commissioner Gibbs

Public Comment

- 02:27:08 Dr. Tim Conley, Senior Research Consultant, Clinical Research Consulting, PLLC, Missoula, addressed Commissioner Klingensmith's question regarding the expansion of Medicaid and providing healthcare services, including mental services, to offenders.
- 02:29:44 Patti Jacques, family member of an offender, provided comments on several topics: on keeping offenders in prerelease centers for long periods of time being ineffective, on housing for people coming out of prerelease centers, on disparity in criminal charges between those who are mentally ill and those who are not mentally ill, and on mentally ill offenders in general.
- 02:33:04 Steve Cape, Montana Coalition for Safety and Justice, spoke in support of the peer-support model but noted that there are no guidelines for peer-support specialists in the state. Mr. Cape also said that education should be encouraged among the offenders as it greatly reduces recidivism.
- 02:39:56 Gary Mihelish, National Alliance of Mental Illness, advocated for the mentally ill. Mr. Mihelish expressed his agreement that there needs to be an evaluation of whether the programs that have been discussed today are effective. Mr. Mihelish noted that a reason for offenders to be moved to different programs might be that some people are failing despite the quality of a program.
- 02:42:31 Andy Hudak, Montana Sex Offender Treatment Association, spoke about the following topics: more efficient use of available resources, placing offenders in the community, the organization he represents, peer-support, educating the community regarding sex offenders, and differentiating between different types of sex offenders. He advocated for allowing companies and centers to develop their own standards and their own way of dealing with curing patients.
- 02:49:46 Mike Thatcher, CEO, Community, Counseling and Correctional Services, Inc., talked about the organization he represents and about the WATCH Program being successful and evidence-based. Mr. Thatcher also spoke against reducing treatment duration. ([Exhibit 6](#))
- 02:59:02 Sue Wilkins, Executive Director, Missoula Correctional Services, talked about what constitutes a prerelease center. Ms. Wilkins also talked about Medicaid, sex offenders, and addiction treatment.

- 03:03:55 Erin McGowan, Executive Director, Montana Community Corrections Association, talked about the prerelease centers and services they provide. Ms. McGowan noted that all of the organizations represented today by those providing public comments want to be part of the solution regarding offenders' treatment.
- 03:05:50 Mr. Allen addressed the public comment.

LUNCH (reconvened at 1:20 p.m.)

PAROLE DECISION-MAKING PRESENTATION

- 04:19:07 Sen. Wolken introduced the presenter.
- 04:19:47 Cathy McVey, Senior Policy Advisor, CSG ([Exhibit 7](#))

Commission Questions of Ms. McVey

- 04:33:55 Commissioner Ohman asked whether members of the parole boards serve limited terms and thus new members come in at certain intervals.
- 04:35:00 Commissioner Ohman asked Ms. McVey whether board members should be able to serve multiple terms or whether the number of terms should be limited.
- 04:35:50 Ms. McVey resumed her presentation.
- 04:44:49 Carl Reynolds, CSG, added to Ms. McVey's discussion of slide 8 of Exhibit 7.
- 04:45:12 Commissioner Ohman referred to slide 8 and said that 1995 was the last year when the "good time credit" was used, when if a prisoner accumulated enough good time points, he or she could be released early.
- 04:46:24 Ms. McVey continued her presentation.

Commission Questions of Ms. McVey

- 04:49:32 Commissioner Hansen asked whether convicts in other states would see the same parole board members or whether they would see different members when applying for parole multiple times.
- 04:50:33 Ms. McVey continued her presentation.

Commission Questions of Ms. McVey

- 05:25:11 Sen. Wolken asked about classifying offenders by the type of offense (whether it is severe or not) and a chance of re-offending.
- 05:30:21 Commissioner Guzynski asked Ms. McVey to elaborate on inconsistent or disparate sentencing practices and whether Ms. McVey is satisfied with the parole scheme. Commissioner Guzynski asked for a recommendation about minimum parole eligibility.
- 05:35:32 Commissioner Guzynski asked Ms. McVey to elaborate on the idea that a lot is controlled by the parole boards and little by the judges when it comes to serving sentences.
- 05:36:39 Mr. Reynolds also addressed Commissioner Guzynski's question.
- 05:40:09 Commissioner Guzynski addressed Mr. Reynolds' points.
- 05:40:32 Mr. Reynolds replied to Commissioner Guzynski's comment.

05:40:48 Commissioner Klingensmith talked about the issues that she sees with the parole board in Montana, which largely were addressed in Ms. McVey's presentation. Commissioner Klingensmith read to the commission members excerpts from her letter addressed to Craig Thomas, Former Executive Director, Board of Pardons and Parole, which she compiled after being present in approximately 30 parole board hearings.

REPORT ON OFFENDER FOCUS GROUPS

Ann Sherwood, Managing Attorney, Tribal Defenders Office, The Confederated Salish and Kootenai Tribes of the Flathead Nation

Dr. Jana Staton, Co-Chair, Missoula Partners for Reintegration

Landee Holloway, Co-Chair, Missoula Partners for Reintegration

05:45:58 Ms. Sherwood (**Exhibit 8**)
06:02:59 Ms. Staton
06:05:15 Ms. Holloway
06:06:56 Ms. Staton
06:08:07 Ms. Sherwood
06:08:47 Ms. Holloway
06:10:13 Ms. Staton
06:13:35 Ms. Holloway
06:15:50 Ms. Staton
06:18:45 Ms. Holloway
06:20:56 Ms. Staton

Commission Questions of Panelists

06:21:22 Commissioner Guzynski asked how the panel members would respond to CSG's recommendation to restrict employers in asking about prior criminal history on job applications.
06:23:32 Commissioner Gibbs asked about peer support and whether Medicaid will accept treatment for substance use disorders.
06:25:57 Commissioner Guzynski asked about housing options for offenders.
06:27:28 Sen. Wolken asked whether the for-profit model in Missoula that has been discussed by the panelists is successful and whether this model can be replicated.
06:29:02 Sen. Wolken concluded this part of the agenda.

Public Comment

06:29:25 Steve Cape, Executive Director, Montana Coalition for Safety and Justice, addressed points about community services and sentencing with respect to parole eligibility.

RECESS

With no further business before the committee, Sen. Wolken announced recess at 3:39 p.m.