



Commission on Sentencing

64th Montana Legislature

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SEN. KRISTIN HANSEN - VICE CHAIR
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PUBLIC MEMBERS

LEANN MONTES
PETER OHMAN
MARY ANN RIES
MAJEL RUSSELL
DONNA WHITT

COMMITTEE STAFF

RACHEL WEISS, RESEARCH ANALYST
JULIANNE BURKHARDT, ATTORNEY

MINUTES

November 18, 2015
Room 152, 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. CYNTHIA WOLKEN - CHAIR
SEN. KRISTIN HANSEN - VICE CHAIR

REP. MATTHEW MONFORTON
REP. MARGARET "MARGIE" MacDONALD

HON. INGRID GUSTAFSON
MIKE BATISTA
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JENNIE HANSEN
ROXANNE KLINGENSMITH
LEANN MONTES
PETER OHMAN
MARY ANN RIES
MAJEL RUSSELL
DONNA WHITT

STAFF PRESENT

RACHEL WEISS, RESEARCH ANALYST
JULIANNE BURKHARDT, ATTORNEY
NADINE SPENCER, COMMITTEE SECRETARY

VISITORS' LIST ([Attachment 1](#))

AGENDA ([Attachment 2](#))

COMMITTEE ACTION

- The Commission on Sentencing scheduled its next meeting for March 1 and 2, 2016

CALL TO ORDER and ROLL CALL

- 00:00:01 Sen Wolken called the meeting to order at 8:03 a.m. The secretary called the roll. ([Attachment 3](#))
- 00:00:46 Sen. Wolken said Rep. Eric Hutchings, Utah, is unable to participate in the meeting via telephone conference, but can present in person at a future meeting.

JUSTICE REINVESTMENT IN OTHER STATES

- 00:02:14 Kevin Thom, sheriff, Pennington County, Rapid City, discussed the criminal justice reinvestment process in South Dakota. He said SB 70 (2013) established an oversight council to monitor results of reforms that were made.
- 00:10:51 Mr. Thom said there are three goals that were adhered to during the reinvestment process: to improve public safety, to hold offenders more accountable, and to reduce spending. ([EXHIBIT 1](#))

Commission Questions

- 00:11:41 Carl Reynolds, senior legal and policy advisor, Council of State Governments (CSG) Justice Center, asked Mr. Thom what lead to the decision that courts will do some of the policymaking in addition to the legislature.
- 00:14:34 Commissioner Klingensmith asked Mr. Thom if any offenders were included as members of the stakeholder group.
- 00:15:22 Sen. Wolken referenced data indicating that 81% of offenders going into the prison system in 2012 were non-violent and asked Mr. Thom if any sentencing modifications or reforms have been made to the criminal code.
- 00:16:43 Rep. MacDonald asked Mr. Thom if there are any results from the tribal pilot project that was part of SB 70.
- 00:18:27 Rep. MacDonald requested copies of the last annual report from the South Dakota Public Safety Improvement Act Oversight Council.
- 00:18:53 Commissioner Whitt asked Mr. Thom about funding for services in smaller, rural communities.
- 00:21:27 Commissioner Whitt asked Mr. Thom what the recidivism rate is for offenders placed back in the community on probation.

00:23:02 Commissioner Batista asked Mr. Thom if South Dakota did anything to provide funding for local counties to increase jail capacity in order to implement swift and certain sanctions or pre-sentence alternatives.

00:26:35 Commissioner Batista asked Mr. Thom to describe the make-up of the South Dakota Board of Pardons and Parole and how it works.

00:27:23 Commissioner Klingensmith asked Mr. Thom if Board members are paid for their work or are volunteers.

00:28:10 Sen. Wolken thanked Mr. Thom for his participation.

00:29:02 Recess

00:56:15 Reconvene

TREATMENT COURTS

00:56:57 Mike McGrath, chief justice, Montana Supreme Court, discussed why treatment courts and drug courts are an appropriate alternative and diversion program for sentencing.

01:03:57 Beth McLaughlin, court administrator, Court Services, Judicial Branch, provided an overview of treatment courts ([EXHIBIT 2](#)) and discussed funding. She provided a list of treatment courts in Montana. ([EXHIBIT 3](#))

01:12:25 Ingrid Gustafson, district court judge, 13th Judicial District, gave a PowerPoint presentation on drug courts. ([EXHIBIT 4](#))

Commission Questions

01:47:40 Commissioner Gibbs asked Judge McGrath if there are obstacles preventing all of the counties in Montana from setting up a drug court.

01:49:28 Commissioner Gibbs asked Judge Gustafson where misdemeanor offenses are handled.

01:51:07 Commissioner Ohman asked Judge Gustafson if it is possible to expand drug courts to accept all offenders and not just violent offenders.

01:53:41 Commissioner Ohman asked Judge Gustafson how often records are expunged after an offender has completed a drug treatment program.

01:55:40 Commissioner Russell asked Judge Gustafson if an offender is responsible for the cost of their treatment once they are referred by the drug court.

01:57:00 Ms. McLaughlin discussed funding sources for treatment programs.

01:58:20 Commissioner Ries said when an offender graduates from the drug court in the 8th judicial district the judge immediately runs the paperwork to expunge the offense from their record.

01:58:49 Commissioner Hansen asked Ms. McLaughlin if there has been any discussion to have all of the treatment courts use the same risk and needs assessment that the Department of Corrections uses.

02:00:35 Commissioner Batista asked the CSG what its view is on drug courts.

02:01:07 Steve Allen, CSG, commented on drug courts and treatment courts.

02:03:43 Judge Gustafson commented on drug courts and treatment programs for drug abusers versus drug addicts.

02:06:57 Mr. Reynolds commented on drug courts and asked about available resources for drug courts.

02:08:46 Ms. McLaughlin said part of their strategic planning initiative is how to continue to grow drug courts where appropriate.

02:11:26 Sen. Wolken commented on the potential for Medicaid expansion to help build capacity for community based treatment.

02:12:06 Sen. Hansen asked about the constitutional and judicial authority that creates a drug court or veteran's court and treatment programs.

02:15:06 Judge McGrath commented on constitutional authority.

02:16:42 Judge Gustafson commented on constitutional authority.

02:18:18 Sen. Hansen asked if all misdemeanor drug courts are voluntary. Judge McGrath said they are.

02:18:38 Sen. Hansen asked Judge Gustafson about employment statistics for drug court graduates.

02:20:05 Sen. Hansen asked Judge Gustafson about cost avoidance and what is included in the calculation for criminal justice costs.

02:23:10 Commissioner Ohman asked Ms. McLaughlin if treatment courts are tracking participation and graduation rates for American Indians.

02:24:37 Commissioner Klingensmith asked about recommendations for legislation on treatment courts.

02:25:22 Judge McGrath said drug courts are an efficient way to spend money.

02:28:15 Mr. Reynolds commented on judicial authority as it relates to drug courts and said they are not courts, but dockets within an existing court.

02:29:39 Commissioner Russell read the statute on drug treatment court structure, 46-1-1104, MCA.

02:30:23 Commissioner Gibbs asked Judge Gustafson to explain what recovery maintenance entails in her court.

02:34:06 Judge McGrath thanked the Commission for its participation.

02:34:26 Recess

02:44:14 Reconvene

LOCAL GOVERNMENT AND LAW ENFORCEMENT PERSPECTIVES

02:44:35 Karen Chung, policy analyst, CSG, introduced Lindsey Carlson and Andrew Page from the PEW Charitable Trust. She said PEW's funding makes CSG's work possible in Montana. She gave a PowerPoint presentation on how justice reinvestment has impacted local governments in other states. ([EXHIBIT 5](#))

02:59:36 Leo Gallagher, attorney, Lewis and Clark County, discussed the intersection between county jails from a prosecutor's perspective and managing the jail population. He provided data on jail population. ([EXHIBIT 6](#))

03:12:59 Donna Whitt, sheriff, Toole County, discussed the detention center detainees, available jail space, and services available for offenders in Toole County and Beaverhead County.

- 03:16:48 Chuck Curry, sheriff, Flathead County, discussed the jail population and problems in Flathead County because of a lack of jail space and community services.
- 03:31:05 Mike Batista, director, Department of Corrections (DOC), discussed challenges managing the offender population.

Commission Questions

- 03:40:36 Sen. Wolken asked the panel participants what types of resources they would like to see the legislature put into the county jail system.
- 03:41:23 Mr. Curry
- 03:44:35 Mr. Gallagher
- 03:50:39 Rep. MacDonald asked Mr. Batista for his assessment of justice reinvestment and the ability to offer different levels of supervision.
- 03:54:15 Commissioner Gibbs asked what Missoula County is doing to maintain its jail capacity.
- 03:54:59 Mr. Curry
- 03:55:32 Sen. Wolken
- 03:56:38 Sen. Wolken thanked the panel participants.

Public Comment

- 03:57:24 Brian Gootkin, sheriff, Gallatin County, thanked the Commission and discussed jail capacity and treatment programs in Gallatin County.
- 04:03:19 Mike Linder, sheriff, Yellowstone County, thanked Mr. Batista and Kevin Olson for working with the county to keep the jail population down. He provided an article from the *Billings Gazette* about the jail facilities in Yellowstone County. (EXHIBIT 6)
- 04:06:36 Jana Staton, legislative chair, Montana Association of Christians, discussed what the association is doing to help support people impacted by the criminal justice system. (EXHIBIT 7)
- 04:11:04 Marvin Colman spoke about his experience at the Nexus Treatment Center.
- 04:13:15 John Lytle spoke about his experience at the Nexus Treatment Center.
- 04:14:49 Mark Murphy, Montana County Attorneys Association, spoke about crime in Montana and the impact of legislation on jail population and community treatment programs.
- 04:21:06 Deb Matteucci, executive director, Montana Board of Crime Control, thanked the Commission for its work. She spoke about the need for resources in the law enforcement and criminal justice community.
- 04:24:12 Sen. Wolken said the Commission is invited to the Justice Reinvestment Launch at 1:00 p.m. in the Governor's reception room.
- 04:24:55 Recess for lunch
- 06:02:42 Reconvene

**PUBLIC COMMENT ON ANY ITEM WITHIN THE JURISDICTION OF THE COMMISSION
BUT NOT ON THIS AGENDA**

- 06:02:59 Sen. Jim Keane, SD 38, spoke about the cost of jail holds. (EXHIBIT 8)
06:07:51 Mary Ann Welbank provided her recommendations for the Commission.
06:12:37 Jim Smith, representing Montana Peace Officers Association, said he is looking forward to working with the Commission and is available to answer any questions.

COMMISSION WORK SESSION

- 06:13:57 Chris Fisher, CSG, said CSG will be taking the data it has received and putting together an analysis highlighting different trends to bring back to the Commission.
06:18:44 Sen. Wolken requested that CSG contact commissioners to join them when it is doing site visits in their areas of the state.
06:18:57 Mr. Reynolds recognized the work being done by Mr. Fisher.
06:19:09 Commissioner Klingensmith asked Mr. Fisher if CSG will be looking at problems that could result because data systems are not well connected.
06:21:32 Mr. Allen said CSG will be looking at how the justice system can use Medicaid expansion most effectively for people who did not have access to health care in the past.
06:22:25 Commissioner Russell requested that CSG look at the kinds of sentences people are receiving and said it will be helpful to have a statutory review to identify offenses that have mandatory minimum jail time. Mr. Reynolds said CSG will be looking at both issues.
06:24:46 Commissioner Russell recommended that the Commission consider working in collaboration with the Public Defender Commission.
06:25:55 Commissioner Gustafson asked if CSG has looked at research on the impact of mandatory minimum jail time in jurisdictions and if it is effective. Mr. Fisher said it has, but information is limited.
06:28:25 Commissioner Gustafson said Montana also has Persistent Felony Offender status and asked Mr. Fisher if CSG has looked at that data.
06:29:52 Commissioner Klingensmith said she has concerns about the Board of Pardons and Parole and is an area that still needs to be examined. Sen. Wolken and Mr. Reynolds said data will be made available to the Commission.
06:31:38 Commissioner Russell said she also has some concerns about the Board of Pardons and Parole and recommended looking at available data to try to improve its function. She said treatment plans need to take into consideration differences in culture and values for someone living on a reservation verses off-reservation.
06:34:22 Sen. Wolken said she looks forward to looking at statistics on revocation rates for native versus non-native Americans in Montana
06:35:11 Mr. Allen said it is important to consider cultural differences when looking at program effectiveness.

06:35:45 Rep. MacDonald said part of SB 70 (South Dakota) was to develop a supervision role for a pilot project on a reservation and said it would be helpful to track that data.

06:37:10 Sen. Wolken said Rachel Weiss, research analyst, Legislative Services Division, will forward information to the Commission electronically.

06:37:32 Ms. Weiss said updated versions of individual volumes of the criminal justice MCA titles and the corrections and health and human services titles are available.

06:37:56 The Commission scheduled their next meeting for March 1 and 2, 2016.

06:40:31 Commissioner Hansen requested that staff look at the Health Insurance Portability and Accountability Act (HIPAA) laws and how they apply to the prison system.

06:41:11 Mr. Allen

06:41:57 Commissioner Hansen

06:42:18 Mr. Allen

06:42:36 Sen. Hansen

06:43:47 Commissioner Montes requested that tribal governments be invited to attend the next Commission meeting in order to share their data on treatment courts to find out what is working and what is not.

06:44:34 Sen. Wolken said it will be helpful to have information on tribal entities and what courts they are operating.

06:44:50 Commissioner Russell said it will be helpful if the state can coordinate a good working relationship with tribes in terms of supervision.

ADJOURN

06:46:01 Sen. Wolken adjourned the meeting at 2:49 p.m.

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