

LAW & JUSTICE INTERIM COMMITTEE

Draft Work Plan for the 2017-2018 Interim

Updated from June 2017
For discussion on September 21, 2017

Published By



Legislative Services Division
PO Box 201706
Helena, MT 59620-1706
PHONE: (406) 444-3064
FAX: (406) 444-3036
<http://leg.mt.gov/>

INTRODUCTION AND OVERVIEW

The Law and Justice Interim Committee (the LJIC) is one of several interim committees established by law and required to meet in the months between regular legislative sessions. Interim committees provide oversight for the various state agencies, perform interim studies as needed and as assigned by the Legislative Council, and propose legislation for consideration at the next legislative session. The interim committees also give Montana's citizens an opportunity to provide testimony about their experiences with state government.

LJIC Membership

There are 12 members of the LJIC. The six Senate members are selected by the Senate Committee on Committees, and the six House members are selected by the Speaker of the House. The committee is bi-partisan, meaning each chamber is represented by equal numbers of both political parties.

Interim committees typically elect officers at the first meeting. State law provides that the presiding officer and vice presiding officer may not be members of the same party (5-5-213, MCA).

The LJIC is subject to the Legislative Council's Rules, Procedures, and Guidelines for Interim Committees. The rules and guidelines provide much of the structure and requirements for the interim's work, including public notice and participation requirements, parliamentary procedures, legislative reimbursement, and the use of staff. The Council also requires that interim committees complete their work by September 15, 2018.

Members for the 2017-2018 interim are:

Senate Members

- Sen. Jen Gross (D-Billings)
- Sen. Margaret "Margie" MacDonald (D-Billings)
- Sen. Keith Regier (R-Kalispell)
- Sen. Scott Sales (R-Bozeman)
- Sen. Diane Sands (D-Missoula)
- Sen. Nels Swandal (R-Wilsall)

House Members

- Rep. Jessica Karjala (D-Billings)
- Rep. George Kipp III (D-Heart Butte)
- Rep. Ryan Lynch (D-Butte)
- Rep. Jimmy Patelis (R-Billings)
- Rep. Lola Sheldon-Galloway (R-Great Falls)
- Rep. Barry Usher (R-Billings)

Proxy Voting

The Legislative Council's Rules, Procedures, and Guidelines also provide guidance on the use of proxy votes in interim committees. Generally, the use of proxies is discouraged. However, the guidance also states that: "For the exercise of a proxy to be valid, the deputized member shall hold a written proxy from the absent member." Unless the LJIC approves a different policy, the Legislative Council policy will apply.

During the 2015-2016 interim, the LJIC used the Legislative Council policy. Written proxies were given to the deputized member, the presiding officer, and staff, often by email.

LJIC Duties

The LJIC is responsible for monitoring the activities of the Office of the State Public Defender (OPD), the Department of Corrections (DOC), the Department of Justice (DOJ), and any entities attached to those agencies for administrative purposes. The administratively attached entities that the LJIC monitors are:

- the Board of Pardons and Parole (attached to DOC);
- the Board of Crime Control (attached to DOJ until January 1, 2018, when it will transfer to DOC);
- the Gaming Advisory Council (attached to DOJ); and
- the Public Safety Officer Standards and Training (POST) Council (attached to DOJ).

The committee also serves as the liaison to the Judicial Branch.

The Legislative Council assigned two studies to the LJIC for the 2017-2018 interim:

- House Joint Resolution 6 (HJ 6), a study of the effects of methamphetamine and opioid use on state and local services; and
- Senate Joint Resolution 25 (SJ 25), a study of the extent of the use of solitary confinement.

Purpose of This Work Plan

This work plan outlines the study and agency oversight duties assigned to the LJIC and proposes a meeting schedule from June 2017 to September 2018. Once revised and adopted by the LJIC, the work plan will serve as a general "road map" of the committee's priorities for the interim. The work plan includes:

- a matrix to help the committee determine the level of involvement it would like to have in its oversight duties and the interim studies. The matrix is attached as a separate document; and
- a proposed schedule of activities for each committee meeting, beginning on page 7. Staff will update the schedule after the organizational meeting to reflect committee decisions.

The LJIC members should be prepared to discuss and revise the work plan at its organizational meeting. Staff will then revise the plan as needed, and the committee can adopt the final plan at its second meeting.

AGENCY OVERSIGHT

Agency monitoring duties are set out in section 5-5-215, MCA, and are discussed below. The LJIC should perform these duties for each of the agencies assigned to it.

Rule Review

The LJIC's staff attorney routinely reviews and summarizes the administrative rulemaking notices for the agencies monitored by the committee and will provide members with information on this process. Staff pays particular attention to any rules considered to be out of compliance with legislative intent or with the rulemaking process set out in law. The Montana Administrative Procedure Act (MAPA) allows interim committees to:

- obtain an agency's rulemaking records to review them for compliance;
- submit written recommendations to the agency for the adoption, amendment, or rejection of a rule;
- require that a rulemaking hearing be held;
- participate in proceedings; and
- review the conduct of administrative proceedings.

For the 2017-2018 interim, the LJIC has been assigned an additional duty related to rule review. A provision in Senate Bill No. 64, which revises the structure of the Board of Pardons and Parole, requires the board members to review administrative rules adopted before the bill took effect on May 19. The board must then update the LJIC on the progress and results of the review, as well as on any information requested by the committee. This requirement will likely mean the LJIC will spend more time on administrative rule review than it has in past interims.

Program Monitoring, Required Reports, and Advisory Councils

The LJIC is required to monitor the operations of the agencies under its jurisdiction and should give specific attention to:

- identifying issues likely to require further legislative action;
- identifying opportunities to improve existing laws that govern an agency's operation and programs;
- determining whether the experiences Montanans have had with an agency can be improved through legislative action; and
- reviewing proposed agency legislation.

In addition to program monitoring, certain statutes require agencies under the jurisdiction of the LJIC to present to the committee or the Legislature reports on various topics. Those reports can be presented to the committee in several ways, depending on the committee's interest. Options for the level of review are contained in the matrix handout, and members can also be specific about to which reports, if any, the committee wants to dedicate meeting time.

If requested by a committee member, the LJIC may also review a statutorily established advisory entity or a required report to determine if the entity or report should be retained or eliminated from statute.

A list of the required reports and the various advisory councils and commissions attached to the agencies can be found on pages 8 through 10 of this work plan.

Review of Draft Legislation

Using the procedures set out in the Joint Rules, the LJIC should review legislative proposals from the agencies for the 2019 legislative session. This review typically happens in the late spring or early summer of the final year of the interim. Interim committees may then authorize legislative staff to draft the agencies' legislation. The review and authorization process *is not* an endorsement by the LJIC of the agency proposals. Instead, this process allows staff to get an early start on drafting bills so their time is free after the November elections to work on bills for the newly elected legislators. Agency bills drafted as a result of this process must be pre-introduced before the next legislative session and will be among the first bills heard by the new Legislature.

EMERGING ISSUES AND TOPICS OF LJIC MEMBER INTEREST

Typically, the LJIC members allocate committee and staff time to receive information or updates on topics that were the subject of recent legislation or recent LJIC attention or issues that may emerge during the interim.

During the previous interim, the LJIC received regular updates on the work of the Commission on Sentencing, the Task Force on State Public Defender Operations, and the Judicial Redistricting Commission. Members also asked to learn about challenges posed to local governments by individuals who are intoxicated in public, best practices for eyewitness identification, attorney fees and court costs, innocence commissions, the state's DNA database, and offender programming at the Montana State Prison (MSP) and private or regional prisons. The members also visited MSP in Deer Lodge and the Crossroads Correctional Center in Shelby.

Due to the recent flurry of legislative activity in the criminal-justice realm, there are numerous topics the LJIC could choose to designate committee time to study. Many of the issues will also overlap with the committee's routine agency oversight duties, so there might be more flexibility in terms of the committee's choice of what issues of interest should be covered and in what manner.

A list of possible issues is provided as a part of the decision matrix. The initial issue list was created from member ideas and staff suggestions. However, the committee is not limited to choices on that list. It is merely a selection of possibilities. Members should discuss and decide upon their actual priorities during the organizational meeting. Should additional issues emerge over the course of the interim, the LJIC is free to review and revise its work plan to accommodate those changing needs.

Individual members of the committee may seek additional information on issues that fall under the jurisdiction of the LJIC. These issues may be raised by constituents, may be emerging problems or solutions in Montana or other states, or may be of interest to a particular member. If the committee chooses not to pursue information on a topic, the individual committee member may submit a research request. Under rules adopted by the Legislative Council, a staff member may provide up to 16 hours of research for a request that is not included in a committee's work plan unless the presiding officer of the interim committee approves additional research time.

MEETING SCHEDULE

The following meeting dates provide a tentative schedule for the interim. This work plan proposes 10 meeting days, including the organizational meeting. If the LJIC forms a subcommittee, money must be allocated from the budget to cover these costs, and the number of meeting days for the full committee may be reduced. A more specific outline of potential tasks for each meeting is available in a separate meeting chart document.

June 28, 2017	Organizational meeting. <ul style="list-style-type: none">• Interim work plan prioritization and other organizational tasks• Selection of studies and topics
September 21, 2017	1-day meeting. <ul style="list-style-type: none">• Adoption of detailed work plans for each study and topic• Start studies and agency oversight
November 15-16, 2017	2-day meeting (Could change based on timing of the SUD Summit)
January 29, 2018	1-day meeting
March 19-20, 2018	2-day meeting (possibility for travel)
May 21, 2018	1-day meeting (possibility for travel) <ul style="list-style-type: none">• Discuss/review/revise draft recommendations• Topics for final reports
July 16, 2018	1-day meeting <ul style="list-style-type: none">• Review and revise draft study documents• Review recommendations, proposed legislation• Authorize agency bill draft requests
September 11, 2018	Final LJIC meeting <ul style="list-style-type: none">• Final approval of recommendations, report(s), proposed legislation• Selection of bill sponsors• Authorize agency bill draft requests

Committee members may change the dates or number of meetings as their schedules and the budget allow to better reflect their needs for the interim and any changing priorities as the interim progresses. However, because LJIC members are also assigned to other interim committees and LJIC shares staff with other commissions and committees, the LJIC must be careful when scheduling and rescheduling meetings to reduce conflicts with other interim commitments.

APPENDIX A: Required Reports

Department of Justice

- ✓ Domestic Violence Fatality Review Commission report -- prior to each regular session
 - Authority: section 2-15-2017, MCA
- ✓ Statewide Public Safety Communications System report -- by September 1 each year
 - Authority: Chapter 346, Laws of 2017 (HB 604)
- ✓ Montana False Claims Act report -- by February 1 of each year
 - Authority: section 17-8-416, MCA

Department of Corrections

- ✓ Multiagency Reentry Task Force Report -- before July 1 of each even-numbered year
 - Authority: section 46-23-902, MCA
- ✓ Criminal Justice Oversight Council -- as requested by the LJIC
 - Authority: Chapter 390, Laws of 2017 (SB 59)
- ✓ Criminal justice reinvestment legislation impacts -- by January 1 of each year on the amount of savings generated and prison population impact from legislation
 - Authority: Chapter 390, Laws of 2017 (SB 59)
- ✓ Montana Incentives and Interventions Grid (MIIG) report -- each biennium
 - Authority: Chapter 390, Laws of 2017 (SB 59)
- ✓ Quality Assurance Unit correctional program evaluation results and deficiencies -- each interim
 - Authority: Chapter 390, Laws of 2017 (SB 59)
- ✓ Board of Crime Control transition report -- at least 3 times during the 2018-2019 biennium
 - Authority: Chapter 416, Laws of 2017 (SB 95)

Board of Crime Control

- ✓ Status and performance of restorative justice grant programs -- annually
 - Authority: section 2-15-2013, MCA (will be recodified in Title 2, chapter 15, part 23 in 2018)

Board of Pardons and Parole

- ✓ Governor's report on executive clemency -- before the start of a legislative session
 - Authority: section 46-23-316, MCA
 - The report is made to the Legislature by the Governor, but is included in this section because of subject matter relevance.

- ✓ Administrative rule review -- as requested by the LJIC (2017-2018 interim only)
 - Authority: Chapter 392, Laws of 2017 (SB 64)

Judicial Branch

- ✓ Report results of evaluations of out-of-home placements/programs/services of juveniles involved with youth probation
 - Authority: section 41-5-2003, MCA
- ✓ Child abuse and neglect court diversion pilot project report
 - Authority: section 41-3-305, MCA

Office of the State Public Defender

- ✓ Director's report -- each interim
 - Authority: Chapter 358, Laws of 2017 (HB 77)
- ✓ Report on the termination of the Public Defender Advisory Commission -- by September 1, 2018
 - Authority: Chapter 358, Laws of 2017 (HB 77)
- ✓ Report on holistic defense pilot project status, evaluation plan, and outcomes -- no time line (2017-2018 interim only)
 - Authority: Chapter 35, Laws of 2017 (HB 89)

APPENDIX B: Advisory Councils or Commissions

Department of Justice

- ✓ Domestic Violence Fatality Review Commission (section 2-15-2017, MCA)
- ✓ Gaming Advisory Council (section 2-15-2021, MCA)
- ✓ Criminal Intelligence Information Advisory Council (section 44-5-501, MCA)
- ✓ Advisory Council on Concealed Weapons Permit Issues (section 45-8-329, MCA)
- ✓ Statewide Public Safety Communications System Advisory Council (Chapter 346, Laws of 2017)

Board of Crime Control

- ✓ None

Department of Corrections

- ✓ None

Board of Pardons and Parole

- ✓ None

Judicial Branch

- ✓ District Court Council (section 3-1-1602, MCA)
- ✓ Pretrial Supervision Advisory Committee (Chapter 390, Laws of 2017 [SB 59])
- ✓ The Judicial Branch also includes other Commissions and Boards established by the Supreme Court but not created by a specific statute. A list of those Commissions and Boards is available at: <http://courts.mt.gov/supreme/boards/default.mcp>

Office of the State Public Defender

- ✓ Public Defender Advisory Commission (Chapter 358, Laws 2017 [HB 77])