



## Law and Justice Interim Committee

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### 65th Montana Legislature

#### SENATE MEMBERS

DIANE SANDS--Chair  
JEN GROSS  
MARGARET (MARGIE) MACDONALD  
KEITH REGIER  
SCOTT SALES  
NELS SWANDAL

#### HOUSE MEMBERS

JIMMY PATELIS--Vice Chair  
JESSICA KARJALA  
GEORGE KIPP III  
RYAN LYNCH  
LOLA SHELDON-GALLOWAY  
BARRY USHER

#### COMMITTEE STAFF

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

# MINUTES LOG

September 21, 2017  
Room 102, 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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Please contact the Legislative Services Division at 406-444-3064 for more information.

#### **COMMITTEE MEMBERS PRESENT**

SEN. DIANE SANDS, Chair  
REP. JIMMY PATELIS, Vice Chair

SEN. JEN GROSS  
SEN. MARGARET (MARGIE) MACDONALD  
SEN. KEITH REGIER  
SEN. NELSWANDAL

REP. JESSICA KARJALA  
REP. GEORGE KIPP III  
REP. RYAN LYNCH  
REP. LOLA SHELDON-GALLOWAY  
REP. BARRY USHER

#### **COMMITTEE MEMBERS EXCUSED**

SEN. SCOTT SALES

## **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. Sand called the meeting to order 8:31 a.m. The committee secretary took roll ([Attachment 3](#)).

### **ADMINISTRATIVE MATTERS: COMMITTEE ORGANIZATIONAL TASKS -- Rachel Weiss, Research Analyst, Legislative Services Division (LSD)**

#### **Review of draft work plan, SJ 25 study plan, and HJ6 outline**

00:01:05 Ms. Weiss reviewed the committee's draft work plan, SJ 25 study plan, and HJ 6 study outline and recommended setting meeting dates for their work plan ([Exhibit 1](#)), ([Exhibit 2](#)), ([Exhibit 3](#)), and ([Exhibit 4](#)).

00:03:34 Rep. Kipp arrived to the meeting at 8:35 a.m.

#### **Review of agency oversight documents**

00:05:19 Ms. Weiss updated the committee on documents related to track agency oversight updates, and meeting topics ([Exhibit 5](#)) and ([Exhibit 6](#)).

#### **Questions/discussion from the committee**

00:07:48 Sen. Sands asked that the committee regularly receive an update on the implementation of Marsy's Law.

00:08:29 Sen. Sands commented on the budget matters that have affected the agencies.

00:09:27 Rep. Patelis spoke to the implications of funding cuts.

00:10:19 Sen. Regier commented on the public safety aspect of the funding cuts.

00:10:45 Rep. Usher spoke about the budget cuts affecting the Department of Motor Vehicles and Law Enforcement.

00:11:28 Sen. Gross commented on the importance of the state budget legislation passed and recommended continuing to monitor the cuts.

00:12:27 Sen. Sands commented on the proposed budget cuts and impacts on local government.

#### **Review of agency oversight documents continued**

00:12:57 Ms. Weiss responded to the committee's comments and continued her presentation ([Exhibit 7](#)) and ([Exhibit 8](#)).

### **AGENCY OVERSIGHT: ADMINISTRATIVE RULE REVIEW -- Julianne Burkhardt, Staff Attorney, LSD**

00:15:44 Ms. Burkhardt updated the committee on the administrative rule review ([Exhibit 9](#)).

### **Questions from the committee**

- 00:17:40 Sen. Regier asked for clarification about giving public comment on the agencies' rule changes.
- 00:18:32 Sen. Gross asked for the cost of holding a public comment meeting.
- 00:19:04 Sen. Swandal asked what the proposed rule change is regarding the use of checks for gambling.
- 00:19:28 Sen. Sands asked for clarification regarding the Governor's action and ability to cut funding from various programs.

### **AGENCY OVERSIGHT: PUBLIC SAFETY OFFICER STANDARDS AND TRAINING COUNCIL (POST) INTRODUCTION AND UPDATE -- Perry Johnson, Executive Director**

- 00:20:46 Mr. Johnson introduced the committee to the staff of the council and provided updates on the council's work.

### **Questions from the committee**

- 00:31:24 Rep. Patelis asked if there is training available in other cities and states for public safety officers to shadow other officers.
- 00:32:51 Sen. Gross asked where temporary staff is pulled from to assist with phone and reception coverage.
- 00:34:11 Sen. MacDonald asked about the types of training the officers undergo.
- 00:36:00 Sen. Swandal asked if the complaints received involve the newer officers.
- 00:37:22 Rep. Karjala asked Mr. Johnson to comment on the increased amount of complaints that the department is receiving.
- 00:40:33 Rep. Lynch asked for clarification on the council's investigation process.
- 00:44:11 Rep. Lynch asked how many of the 60 terminated officers lost their certification.
- 00:44:51 Rep. Regier asked how the officer complaints were resolved, dropped, and/or pursued by the council.

### **JUDICIAL BRANCH AND OFFICE OF COURT ADMINISTRATOR INTRODUCTION AND UPDATE -- Beth McLaughlin, Court Administrator**

- 00:46:42 Ms. McLaughlin updated the committee on the branch's budget reductions and ongoing work.

### **Questions from the committee**

- 00:55:14 Rep. Patelis spoke on the branch's work and the previous lack of a pre-trial system in the state.
- 00:59:22 Sen. Sands commented on the implementation of the pre-trial program.
- 00:59:39 Rep. Lynch thanked Ms. McLaughlin for the work on the pre-trial program.
- 01:00:07 Sen. MacDonald asked Ms. McLaughlin to comment on the pilot program for pre-trial services.
- 01:03:22 Sen. Sands asked if cases are being delayed due to the discontinuation of contracting retired judges.
- 01:06:30 Sen. Sands commented on the timeliness of prosecuting cases.
- 01:07:11 Rep. Karjala commented on the implementation and cost savings of HB 70: *Strengthening guardianship services and creating a WINGS group.*
- 01:10:28 Sen. Sands commented on the budget cuts suggested to the branch.

**AGENCY OVERSIGHT: DEPARTMENT OF JUSTICE UPDATE -- Jon Bennion, Chief Deputy Attorney General**

01:11:20 Mr. Bennion introduced DOJ staff member Sarah Garcia, Motor Vehicle Division Administrator, DOJ.

01:12:06 Ms. Garcia updated the committee on the implementation of the REAL ID Act.

**Questions from the committee**

01:20:40 Sen. Regier asked if individuals applying for the REAL ID can apply online.

01:22:05 Sen. Regier asked for clarification on renewing the REAL ID card and if there is a cost to public for renewal.

01:23:40 Sen. Regier asked if a passport would suffice as identification for an individual in replacement of the REAL ID card until the renewal date of their drivers license.

01:24:02 Sen. Gross asked if legislators from the Billings area could attend the MSU-B Marketing instructional training.

01:24:48 Sen. MacDonald asked for clarification of contingency language regarding the REAL ID Act ([Exhibit 10](#)).

01:27:50 Rep. Sheldon-Galloway asked what the identifying requirements that are on the REAL ID card and if money could be saved by adding the needed information to the current state driver's license.

01:30:42 Rep. Sheldon-Galloway asked for clarification on the amount of identifying cards an individual will need to carry.

01:31:43 Rep. Sheldon-Galloway asked for clarification on the difference of information between a state driver's license versus the REAL ID card.

01:33:09 Sen. Regier asked what additional information is needed on a REAL ID card.

**PUBLIC SAFETY COMMUNICATIONS ADVISORY COUNCIL**

01:34:47 Tom Butler, Highway Patrol, updated the committee on the implementation of the Public Safety Communications Advisory Council.

**HJ 6 STUDY: UPDATE ON AID MONTANA -- Jon Bennion, DOJ**

01:35:47 Mr. Bennion updated the committee on AID Montana, which is the AG's initiative to look at substance abuse in Montana ([Exhibit 11](#)).

**Public comment**

02:07:10 Dr. Greg Holzman, Department of Public Health and Human Services State Medical Officer

02:16:10 Patti Jacques, Helena

02:17:39 May Simmons, Polson

**Questions from the committee**

02:21:14 Sen Sands commented on the department's work and asked the committee members who will attend the AID Montana Summit.

**BREAK** (Reconvened at 11:06 a.m.)

**AGENCY OVERSIGHT: OFFICE OF STATE PUBLIC DEFENDER INTRODUCTION AND UPDATE --- Harry Freebourn, Interim Director, and Peter Ohman, Public Defender Division Administrator**

- 02:35:35 Mr. Freebourn introduced himself and Peter Ohman, Public Defender Division Administrator, and discussed the Office of the State Public Defender's ongoing work ([Exhibit 12](#)).
- 02:44:08 Mr. Ohman spoke on the implementation and department's work with HB 89: *Establish holistic defense pilot project within state public defender system*, and HB 133: *Generally revise sentencing laws*.

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

- 02:48:10 Rep. Patelis asked Mr. Ohman if a financial affidavit is included when a public defender is appointed.
- 02:51:17 Rep. Karjala asked Mr. Ohman that he keep the committee informed on the outcome of the case workers' ongoing work within HB 89.
- 02:52:42 Sen. Sands asked Mr. Freebourn to address the information given to the committee about the department's budget cuts (see Exhibit 12).
- 02:53:56 Sen. Sands asked Mr. Freebourn if the department plans to discontinue contracting attorneys.

#### **AGENCY OVERSIGHT: BOARD OF PARDONS AND PAROLE (BOPP) INTRODUCTION AND UPDATE -- Scott Cruse, Presiding Officer, BOPP**

- 02:55:55 Mr. Cruse updated the committee on the work of the new Board of Pardons and Parole ([Exhibit 13](#)).

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

- 03:09:29 Sen. Sands commented on the presentation and thanked Mr. Cruse for updating the committee.
- 03:09:48 Sen. Swandal asked for clarification of the board's parole process.
- 03:12:25 Sen. Swandal asked how quickly participants can be accepted and entered into programs they need for parole.
- 03:13:04 Sen. Regier asked if the board checks that its recommendations are carried out and if the DOC follows the recommendations.
- 03:15:56 Sen. Gross asked Mr. Cruse to report back to the committee regarding the number of individuals in the native population that are granted parole versus the nonnative population.
- 03:17:18 Rep. Patelis asked Mr. Cruse to comment on the funding and expenses for the parole board.
- 03:20:55 Rep. Usher asked if there are individuals in BOPP custody that are not in secured care.
- 03:21:58 Rep. Usher asked Mr. Cruse to comment on the experience and background of the BOPP's board members.
- 03:25:04 Rep. Sheldon-Galloway commented on the importance that the BOPP considers the victim in a crime and discussed the proper use of parole.
- 03:32:16 Sen. Sands asked Mr. Cruse to address Marsy's Law.
- 03:33:48 Sen. Sands responded to Mr. Cruse comments and the importance of BOPP.

**LUNCH** (Reconvened at 1:04 p.m.)

**AGENCY OVERSIGHT: INTRODUCTION OF NEW DEPARTMENT OF CORRECTIONS  
DIRECTOR AND DOC UPDATE -- Reginald Michael, Director, and Adrienne Cotton,  
Government Relations Director**

04:33:59 Mr. Michael ([Exhibit 14](#))

**Questions/discussion from the committee for Mr. Michael**

04:47:46 Sen. Gross asked Mr. Michael to comment on the department's plan to make SB 63: *Revise laws related to supervision of offenders/defendants* retroactive. The question was referred to Rep. Patelis.

04:51:36 Rep. Lynch asked Ms. Weiss to comment on the previous question.

04:54:55 Rep. Lynch commented on the legislative history of SB 63.

04:57:32 Sen. Sands commented on the importance of the legislative intent behind SB 63.

04:58:03 Sen. Swandal asked about the patients in the Lewistown infirmary. The question was referred to Loraine Wodnik, DOC.

05:00:00 Sen. Swandal asked if the patient's from the Lewistown infirmary would return to Deer Lodge.

05:00:52 Rep. Usher asked about the medical sources available to the patients.

05:03:04 Sen. MacDonald commented on the funding cuts to DOC and how that will affect the department's work.

05:07:23 Rep. Patelis asked Mr. Michael to discuss the funding appropriation for housing.

05:10:46 Rep. Patelis spoke to the DOC take over of the Board of Crime Control in January and the funding cuts made to the housing appropriations.

05:12:02 Rep. Sheldon-Galloway asked if there are budget savings if more patients were placed into treatment facilities.

05:14:49 Rep. Sheldon-Galloway asked for a cost break down of an incarcerated person.

05:16:18 Mr. Michael continued his presentation.

05:33:25 Rep. Patelis commented on the use of long suspended sentences.

05:36:30 Kathy Wilkins, Data Unit Manager, Board of Crime Control ([Exhibit 15](#))

05:45:04 Sen. Swandal asked if the data as accurate as the individuals who collect it.

05:46:53 Sen. Swandal asked if there has been any resistance in the state on reporting.

**Public comment**

05:49:35 Patti Jacques, Helena

05:50:47 May Simmons, Polson

05:55:16 Mark Murphy, Montana Association of Chiefs of Police, Montana Police Protection Association, & Montana County Attorney Association

06:03:59 Nanette Gilbertson, Montana Sheriffs and Peace Officers Association

06:08:09 Erin McGowan, Montana Community Corrections Association

**BREAK** (Reconvened at 3:02)

**SJ 25 STUDY OF SOLITARY CONFINEMENT: STAGE 1 - BACKGROUND AND  
INFORMATION GATHERING**

**Overview of terms and numbers, national standards, and best practices -- Rachel Weiss,  
LSD**

06:31:27 Ms. Weiss ([Exhibit 16](#)) and ([Exhibit 17](#))

**Eldon Vail, former Secretary of the Washington State Department of Corrections (via videoconference)**

06:37:16 Mr. Vail

**Questions from the committee**

06:54:29 Sen. MacDonald asked Mr. Vail if he handled staffing issues and overpopulation in the Washington prisons.  
06:55:23 Sen. Swandal left the meeting at 3:26 p.m.  
06:55:52 Sen. Sands asked Mr. Vail to speak on the impacts of segregation in the prisons on different populations of women.  
06:57:39 Sen. Sands asked what is the current best practice for segregation in the prisons with juveniles.  
06:59:19 Sen. Sands asked Mr. Vail if he had insight on how the Native American population might respond to segregation in the prisons.

**Committee discussion**

07:01:45 Ms. Weiss reviewed the committee's options on the SJ 25 study.

**Public comment on the SJ 25 study**

07:05:20 Dr. Gary Mihelish, NAMI (**Exhibit 18**) and (**Exhibit 19**) Note: Exhibits 18 and 19 are available in the Legislative Services Division's office upon request.  
07:14:25 May Simmons, Polson  
07:21:32 Sara Kahn, self  
07:26:49 Bernadette Franks-Ongoy, Disability Rights Montana  
07:29:41 Patti Jacques, self

**Committee discussion continued**

07:33:31 Sen. Regier commented on the total custodial population numbers presented to the committee by staff (see Exhibit 16).  
07:34:58 Rep. Kipp spoke on solitary confinement and how it affects the individual.  
07:38:02 Rep. Karjala commented on Mr. Vail's presentation and the importance of involving the custody officers before implementing changes.  
07:39:31 Sen. Gross commented on the material given out during public comment.  
07:40:02 Sen. Sands spoke on the use of medications in the prisons.  
07:40:40 Rep. Usher asked what was the highest year in the state mental hospital and how the transition went with hospitals across the country when they closed their state mental hospitals.  
07:41:28 Rep. Patelis spoke on the public comments given regarding the training aspect of correction officers.  
07:42:09 Ms. Weiss responded to the committee's comments and recommended adopting a study plan for the SJ 25 study.  
07:43:28 Sen. MacDonald recommended looking at legislation in other states that limited the use of solitary confinement and segregation and the budgetary commitments made alongside those policies.

**PUBLIC COMMENT ON ANY ITEM WITHIN THE COMMITTEE'S JURISDICTION BUT NOT ON THIS AGENDA**

07:44:31 Nancy Schwend, self (**Exhibit 20**)

07:57:13 Heidi Nuttall, Campaign for Youth Justice ([Exhibit 21](#))  
08:01:39 May Simmons, Polson  
08:06:43 Patti Jacques, self  
08:08:28 Sunny Mahseelah, self

## **COMMITTEE WORK SESSION**

### **Administrative matters**

08:09:06 Sen. Sands (see Exhibits 4 and 6)

### **Next meeting: November 15-16 -- Helena**

08:09:45 Ms. Weiss reviewed the committee's November meeting agenda topics.  
08:12:48 Sen. Sands commented on the importance that the committee allot time to focus on the state budget and how it affects the agencies under LJIC oversight.

### **Committee discussion**

08:13:31 Rep. Lynch commented on the PREA allegations and asked for an update on PREA and its reporting requirements.  
08:14:30 Sen. Gross asked the committee if they would like to receive updates from the State-Tribal Relations Committee regarding the implementation of SJ 3: *Interim study of tribal resources for tribal members involved in criminal justice system.*

### **Review work plan meeting chart**

08:15:03 Sen. Sands recommended that the committee discuss the work plan, agree upon the study topics, and adopt the work plan by the end of the meeting.  
08:16:42 Ms. Weiss reviewed the work plan for the committee and the optional studies and time allowance for each study.  
08:19:54 Committee discussion about the LJIC committee work plan.

### **MOTION**

08:35:55 Rep. Patelis moved to adopt the first page of the draft LJIC committee work plan.

### **VOTE**

08:36:10 The motion passed unanimously on a voice vote.

### **MOTION**

08:36:41 Rep. Lynch moved to adopt the statutory duties of the draft LJIC committee work plan.

### **VOTE**

08:36:45 The motion passed unanimously on a voice vote.  
08:36:58 Ms. Weiss reviewed the remaining work plan yet to be decided. Ms. Weiss also summarized the committee's requests for topics to be considered "committee issues."

### **MOTION**

08:38:09 Rep. Usher moved to adopt the time assignments for committee issues as Ms. Weiss stated.



**VOTE**

08:38:16 The motion passed unanimously on a voice vote.

**MOTION**

08:38:38 Sen. Gross moved to adopt the LJIC work plan.

**VOTE**

08:38:40 The motion passed unanimously on a voice vote

08:39:02 Ms. Weiss reviewed the proposed committee meeting dates (see Exhibit 1).

08:39:34 Rep. Sheldon-Galloway commented that she will not be available for the proposed November 2017 meeting dates.

**MOTION**

08:39:56 Rep. Lynch moved to adopt the LJIC meeting agenda.

**VOTE**

08:40:00 The motion passed on a 10-1 voice vote, with Rep. Sheldon-Galloway voting 'no'.

08:40:04 Sen. Sands asked the committee for feedback on how the meetings and committee are being handled and if the members have any further comments.

08:40:28 Sen. Gross commented on Sen. Sands chairmanship and the committee's participation.

08:40:45 Rep. Usher alerted the committee to possible conflict of interest regarding a work relationship with a public commenter.

**Other directions to staff**

08:41:22 Sen. Sands thanked the committee staff for their assistance.

08:41:33 Ms. Weiss encouraged the committee members to reach out to her with any possible study topics or general questions regarding the committee.

**ADJOURNMENT****MOTION**

08:42:04 Rep. Lynch moved to adjourn the meeting.

**VOTE**

08:42:06 The motion passed unanimously on a voice vote and Sen. Sands adjourned the meeting at 5:13 p.m.

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