

**Interim Committee Recommendations
for the Future of Certain Statutorily
Required Agency Reports and Citizen
Advisory Councils**

2011-2012

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Executive Summary

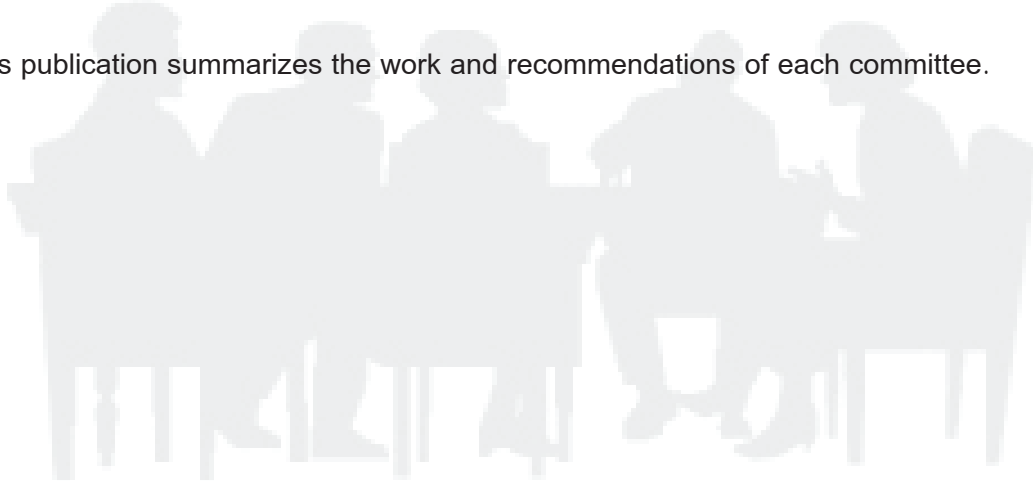
House Bill No. 142 (Chapter 126, Laws of 2011) (Appendix A) directs legislative interim committees to review the statutorily required reports and advisory councils of their assigned agencies and make recommendations regarding the retention or elimination of each report or council to the next legislature.

Since there are numerous agency advisory councils, boards, committees, commissions, and citizen panels known by other names in statute, an initial staff guideline suggested that interim committees focus on those entities specifically called an “advisory council”. A list of these councils is available in Appendix B.

Meanwhile, executive agencies, the governor, and other statewide elected officials may establish advisory councils as deemed necessary pursuant to 2-15-122, MCA. Some legislative interim committees opted to review councils created under this authority; others did not.

Interim committees determined the scope of their HB 142 review on an individual basis in consideration with other statutory duties, assigned studies, priorities, and interests. In all, the 2011-2012 interim committees reviewed 55 advisory councils and citizen panels and 84 agency reports. Of those, the committees recommended that four advisory councils and eight reports be eliminated and that statutes regarding two advisory councils and seven reports be amended.

This publication summarizes the work and recommendations of each committee.



Advisory Council Summary

	Recommended retention or not reviewed		Recommended elimination but no action taken
	Recommended draft legislation to eliminate		Recommended draft legislation to add or revise

Committee	Advisory Council	Statute/Authority	Draft Bill No.
CFHHS 1	Advisory Council on Aging	2-15-2206	
2	Advisory Council on Food Safety	50-50-103	
3	Board of Public Assistance	2-15-2203 and 53-2-606	
4	Child Support Enforcement Advisory Board*	40-5-906	
5	Children's System of Care Planning Committee	52-2-303 and 52-2-304	
6	Children's Trust Fund Board	2-15-2214 and Title 52, chapter 7, part 1	
7	Commission on Provider Rates and Services*	40-5-906	
8	Committee on Telecommunications Access Services	2-15-2212, MCA, and Title 53, chapter 19, part 3	
9	Community Health Center Advisory Group*	50-4-810 and 50-4-811	
10	Medicaid Managed Care Advisory Council*	53-6-710	
11	Mental Health Oversight Advisory Council	53-21-702	
12	Montana 2-1-1 Community Coalition*	53-1-703, 53-1-704, 53-1-710, and 53-1-711	
13	Montana Health Coalition	53-2-215	
14	Regional Trauma Care Committees	50-6-411	
15	Service Area Authorities	Title 53, chapter 21, part 10	
16	Tobacco Prevention Advisory Board*	17-6-610	
17	Trauma Care Committee	2-15-2216	
18	Traumatic Brain Injury Advisory Council	2-15-2217	
*Had not met in more than a year and were considered inactive for purposes of the HB 142 review.			
EAIC 1	Advisory Council on Continuing Education for Insurance Licensees	33-17-1204	
2	Advisory Council on Risk Management Activities+	33-22-520	
3	Economic Development Advisory Council++	2-15-1820	
4	Montana Heritage Preservation and Development Commission	Chapter 469, Laws of 1997	
5	Montana Noxious Weed Seed Free Forage Advisory Council	80-7-804	
6	Noxious Weed Management Advisory Council	80-7-805	

Committee	Advisory Council	Statute/Authority	Draft Bill No.
7	Organic Commodity Advisory Council	80-11-601	
8	Tourism Advisory Council	2-15-1816	
+Requested bill draft to remove requirement—not approved after public comment. ++Recommended for review.			
ELG 1	Certification Standards and Practices Advisory Council	2-15-1522	
2	Fire Services Training Advisory Council	2-15-1519	
3	Governor's Postsecondary Scholarship Advisory Council	2-15-1524	
4	Student Loan Advisory Council	2-15-1520	LC0184
ETIC	No Advisory Councils to review		
EQC 1	Air Pollution Control Advisory Council	2-15-2106	LC0361
2	Alternative Livestock Advisory Council	87-4-432	LC0360
3	Boating Advisory Council	23-2-536	
4	Small Business Compliance Assistance Advisory Council	2-15-2110	
5	Upland Game Bird Citizens' Advisory Council	87-1-251	
6	Water and Wastewater Operators' Advisory Council	2-15-2105	
7	Water Pollution Control Advisory Council	2-15-2107	
8	Wetlands Protection Advisory Council	2-15-3405	
LJIC 1	Concealed Weapons Advisory Council	45-8-329	
2	Corrections Advisory Council (new)		LC0300
3	Criminal Intelligence Information Advisory Council	44-5-501	LC0444
4	District Court Council	3-1-1602	
5	Domestic Violence Fatality Review Commission	2-15-2017	LC0242
6	Fire Prevention and Investigation Advisory Council	2-15-2005	LC0242
7	Gaming Advisory Council	2-15-2021	
8	Youth Justice Advisory Council	Executive Order	
RTIC 1	Multistate Tax Compact Advisory Council	2-15-1311	
2	Scenic-Historic Byways Program Advisory Council	60-2-601	
SAVA 1	9-1-1 Advisory Council	10-4-102(2)	
2	Capitol Complex Advisory Council	2-17-803	
3	Electronic Government Advisory Council	2-17-1105	
4	Employee Investment Advisory Council	19-3-2133	
5	Information Technology Board	2-15-1021	
6	Land Information Advisory Council	90-1-405	
7	State Employee Group Benefits Advisory Council	2-15-1016	

Agency Report Summary

	Recommended retention or not reviewed		Recommended elimination but no action taken
	Recommended draft legislation to eliminate		Recommended draft legislation to add or revise

Committee	Report	Statute/Authority	Draft Bill No.
CFHHS 1	Children's Mental Health Services Received Out-of-State	52-2-311	
2	Commission on Provider Rates and Services Recommendations*	53-10-212	
3	Community Health Center Grants*	50-4-805	
4	Marijuana Use for Debilitating Medical Conditions Registry Information	50-46-303	
5	Medicaid Analysis	53-6-110	
6	Medicaid Managed Care Advisory Council	53-6-710	
7	Medicaid Managed Care Standards Effectiveness*	53-6-705	
8	Medicaid Section 1115 Requests	53-2-215	
9	Mental Health Services for Children with Serious Emotional Disturbance	53-21-1002	
10	Older Montanans Trust Fund	52-3-115	
11	Prescription Drug Plus Discount Program*	53-6-1005	
12	Statewide 2-1-1 Calling System*	53-1-714	
13	Suicide Reduction Plan	53-21-1102	
14	TANF Parents as Scholars Program	53-4-209	
15	Trauma Care System Report	50-6-402	
*Report not currently being submitted.			
EAIC 1	Apprenticeship and Training Program Biennial Report	39-6-101 and 5-11-210	
2	Board of Investments Report	17-6-230 pursuant to 5-11-210	
3	Board of Research and Commercialization Technology Report	90-3-1006	
4	Board of Housing Veterans' Home Loan Mortgage Program Report	90-6-604	
5	Coal Leasing Laws Jobs Report+	Chapter 332, Laws of 2011	
6	Distressed Wood Industry Report	90-1-503 and 5-11-210	
7	Federal Land Management Reviews for Local Governments	90-1-182	
8	Licensing Board Biennial Report++	37-1-106	
9	Livestock Loss Reduction Report	2-15-3113	

Committee	Report	Statute/Authority	Draft Bill No.
10	Montana Prescription Drug Registry	37-7-1514	
11	Montana State Fund Budget Report+	39-71-2363	
12	Quality Schools Facility Grant Program Report	90-6-810	
13	State Agency-County Weed District Biennial Noxious Weed Report	7-22-2151	
14	State Tribal Economic Development Commission Biennium Report	90-1-131	
15	Unemployment Benefits for Victims of Domestic Violence, Sexual Assault, or Stalking	39-51-2111 and 5-11-210	
+Not part of committee's responsibilities per se.			
++Not required to report to committee, but under committee's responsibilities.			
ELG 1	American Indian Achievement Gap Report	20-9-330	LC0183
2	At-Risk Students Report	20-9-328	LC0183
3	Biennial Report of the Superintendent of Public Instruction	20-3-105	LC0183
4	Carl D. Perkins Career and Technical Education Improvement Act	20-7-330	
5	Education Commission of the States	20-2-501	
6	Montana Historical Society Biennial Report to the Governor and the Legislature	22-3-107	
7	State Agency Heritage Properties	22-3-423	
8	Western Regional Higher Education Compact Report	20-25-801	
ETIC 1	DNRC Report on Small-Scale Hydro Potential on State Water Projects	85-1-501	
2	MBMG Geothermal Research Update and Funding Report	90-3-1301	
3	Renewable Energy Credit Use Reports	69-3-2009	
4	Universal System Benefits Report	69-8-402	
EQC 1	Clark Fork River Basin Task Force Report	85-2-350	
2-4	Compliance and Enforcement Reports - DEQ, DNRC and FWP	75-1-314	
5	Future Fisheries Improvement Program	87-1-272	
6	Good Neighbor Policy State Water and Land Maintenance Account Report	87-1-230	
7	Coal Leasing Laws Jobs Report	Chapter 332, Laws of 2011	
8	Instream Flow Report	85-2-436	
9	Land Banking Program Report	77-2-366	
10	Numeric Nutrient Standards Report	75-5-313	

Committee	Report	Statute/Authority	Draft Bill No.
11	Private Land-Public Wildlife Council Report to Legislature	87-1-269	
12	Renewable Resource Grant and Loan Program Report	85-1-621	
13	Solid Waste Management and Resource Recovery Plan	75-10-111	
14	Total Maximum Daily Load Report	75-5-703	
15	Upland Game Bird Enhancement Activities Report	87-1-250	
16	Water Adjudication Progress Report	85-2-281	
17	Wildland-Urban Interface Parcel Designation Report	76-13-145	LC0362
LJIC 1	Attorney License Tax Revenue Report	37-61-211	LC0301
2	Cigarette Standards Report	50-65-102	LC0242
3	District Court Council Report (upon request)*	3-1-1602	
4	Domestic Violence Fatality Review Commission Report	2-15-2017	
5	Judicial Branch Information Technology Status Report	3-1-702	
6	Judicial Standards Commission Annual Report*	Chapter 441, Laws of 1981	
7	Juvenile Delinquency Intervention Program Evaluation Report	41-5-2003	
8	Medical Parolee Health Care Costs Report	46-23-210	LC0302
9	Public Defender Commission Report	47-1-105	
10	Racial Profiling Report	44-2-117	LC0243
*Not reviewed this interim.			
RTIC 1	Department of Revenue Biennial Report	15-1-205	
SAVA 1	Board of Investments Report on Retirement System Trust Fund Investments and Benefits	17-6-230	LC0334
2	Board of Veteran's Affairs Biennial Report	10-2-102(1)(i)	LC0334
3	Capitol Complex Advisory Council Report	2-17-804(3)	LC0334
4	Electronic Government Advisory Council Report	2-17-1105(2)(f)	
5	Employee Incentive Program Report	2-18-1103(3)	LC0334
6	Information Technology Report	2-17-512(1)(x) and 2-17-515	
7	Montana Land Information Report	90-1-404(l)	
8	Public Employee's Retirement System (PERS) Annual Report	19-2-407	
9	PERS Actuarial Valuation	19-2-405	LC0334
10	PERS Experience Study	5-11-210 and 19-2-405(5)	
11	Teachers' Retirement Board Annual Report	5-11-120(11) and 19-20-201(1)(d) and (4)	

Committee	Report	Statute/Authority	Draft Bill No.
12	Teachers' Retirement System Actuarial Valuation	19-20-201(1)(f) and (4)	
13	Teachers' Retirement System Experience Study	see MPERA reporting requirement 19-2-405(5)	LC0334
14	Uniform Commercial Code Secured Transactions Report	30-9A-527	LC0334

Children, Families, Health, and Human Services Interim Committee

The Children, Families, Health, and Human Services Interim Committee oversees the Department of Public Health and Human Services (DPHHS) and identified 18 related advisory councils, coalitions, boards, and committees for review, including the:

- Advisory Council on Aging
- Advisory Council on Food Safety
- Board of Public Assistance
- Child Support Enforcement Advisory Board*
- Children's System of Care Planning Committee
- Children's Trust Fund Board
- Commission on Provider Rates and Services*
- Committee on Telecommunications Access Services
- Community Health Center Advisory Group*
- Medicaid Managed Care Advisory Council*
- Mental Health Oversight Advisory Council
- Montana 2-1-1 Community Coalition*
- Montana Health Coalition
- Regional Trauma Care Committees
- Service Area Authorities
- Tobacco Prevention Advisory Board*
- Trauma Care Committee
- Traumatic Brain Injury Advisory Council

(Councils marked with an asterisk had not met in more than a year and were considered inactive for purposes of the HB 142 review.)

In addition, DPHHS is required by law to submit 15 different reports to the Legislature. The reports cover topics ranging from suicide prevention to Medicaid to details on the placement of children with mental health needs in out-of-state treatment facilities.

Information provided to the committee indicated that several of the councils have been inactive in recent years, while several reports have not been provided to the Legislature. The reasons for the inaction varied for both the councils and the reports. In some instances, the underlying reason for creating a council no longer existed. In others, the department was waiting for council members to provide direction on council activities.



DPHHS recommended that the statutory language requiring the following councils be repealed because the groups have been inactive:

- Child Support Enforcement Advisory Board
- Community Health Center Advisory Group
- Montana 2-1-1 Community Coalition

The agency also recommended:

- repeal of the Advisory Council on Food Safety because it is not being used as intended; and
- repeal of the requirements for the Mental Health Oversight Advisory Council and the Children's System of Care Planning Committee. DPHHS said it would instead create one board to provide public input on both adult and children's mental health matters.

Finally, DPHHS suggested that requirements for 7 of the 12 reports be eliminated and that information related to the items be presented to the Legislature in another manner. These included:

- Trauma Care System Report, 50-6-402, MCA. DPHHS says it is unaware of anyone requesting the report or taking any action as a result of the report.
- Report on expenditures made from the Older Montanans Trust Fund, 52-3-115, MCA. DPHHS says the trust fund has not been funded as originally contemplated so no expenditures have been made from it. DPHHS also says the statute is unclear on whether the agency must provide the report to each legislature or provide the report only if expenditures are made from the trust fund.
- Report on Mental Health Services for Children with Serious Emotional Disturbance, 53-21-1002, MCA. DPHHS says it is unaware of any legislators reviewing this report in recent years.
- Suicide Reduction Plan, 53-21-1102, MCA. DPHHS recommends this plan be produced every 5 years with a biennial update of statistics and data.
- Report on Community Health Center Grants, 50-4-805, MCA. DPHHS says the report is not needed because the Legislature has not appropriated funds for the grant program since 2007 and the advisory group is inactive.
- Report on the Statewide 2-1-1 Calling System, 53-1-714, MCA. DPHHS says it coordinated a group of local 2-1-1 call center providers between 2005 and 2007 to create the last report on this issue. The 2007 Legislature took no further action to fund the project but did not change or repeal the statute. DPHHS says it has not been contacted by anyone about additional work on 2-1-1 since the last report was submitted.
- Report on the Prescription Drug Plus Discount Program, 53-6-1005, MCA. DPHHS says this one-time-only report was made in September 2006 and could be eliminated without any effect.

At its June 2012 meeting, the committee decided against introducing any HB 142-related legislation. Some members suggested that DPHHS was in a better position to determine which advisory councils and reports were unnecessary. They noted that the agency could propose legislation of its own to accomplish any desired changes.

More information about the committee's work is available at leg.mt.gov/cfhhs.

Economic Affairs Interim Committee

The Economic Affairs Interim Committee (EAIC) has monitoring responsibility over the following state agencies: the Departments of Agriculture, Commerce, Labor and Industry, and Livestock. The EAIC also monitors the Governor's Office of Economic Development, the State Auditor's Office, and Montana State Fund.

For its HB 142 review, the EAIC identified eight statutory advisory councils, including the:

- Advisory Council on Continuing Education for Insurance Licensees
- Advisory Council on Risk Management Activities
- Economic Development Advisory Council
- Montana Noxious Weed Seed Free Forage Advisory Council
- Noxious Weed Management Advisory Council
- Organic Commodity Advisory Council
- Tourism Advisory Council
- Montana Heritage Preservation and Development Commission

The only advisory council that raised an issue for the EAIC was one that had not yet met but also has not been created because its creation is contingent on lack of a competitive market for medical malpractice insurance. After requesting that a bill draft be made available for review, the committee took public comment and decided not to introduce any changes to the 2005 statute providing for creation of that advisory council.

The EAIC also reviewed 15 agency reporting requirements, although some reports were not yet published. At the committee's September 2012 meeting, members said the agency reports were informative and helpful to legislators and made a blanket recommendation to retain all of the reporting requirements.

A full list of the agency reports and advisory councils reviewed by the EAIC is available in Appendix C. More information about the committee's work is available at leg.mt.gov/eaic.



Education and Local Government Interim Committee

The Education and Local Government Interim Committee (ELG) provides legislative monitoring of the State Board of Education, the Board of Public Education, the Board of Regents of Higher Education, the Office of Public Instruction, and the entities that are administratively attached to those agencies, including the Historical Society, the Montana Arts Council, and the State Library Commission.

In its HB 142 work, the ELG identified four advisory councils for review, including the:

- Certification Standards and Practices Advisory Council
- Governor's Postsecondary Scholarship Advisory Council
- Fire Services Training Advisory Council
- Student Loan Advisory Council

Staff of the Office of the Commissioner of Higher Education and members of the Student Loan Advisory Council recommended that council's elimination. As a result, the ELG forwarded LC0184 to the 2013 Legislature.

In response to the eight agency reports reviewed by the ELG, the committee has drafted LC0183, asking the Legislature to eliminate three reporting requirements for the Office of Public Instruction. Those include:

- ☒ At-Risk Students Report, 20-9-328, MCA. OPI provided the report in September 2010 and statute indicates that this was intended to be a one-time-only report.
- ☒ American Indian Achievement Gap Report, 20-9-330, MCA. OPI provided the report in the Fall of 2010 and statute indicates that this was intended to be a one-time-only report.
- ☒ Biennial Report of the Superintendent of Public Instruction, 20-3-105, MCA. The Superintendent's preparation of the report is discretionary.

A full list of agency reports and more information about the advisory councils reviewed by the ELG are available in Appendix D. More information about the committee's work is available at leg.mt.gov/elgic.



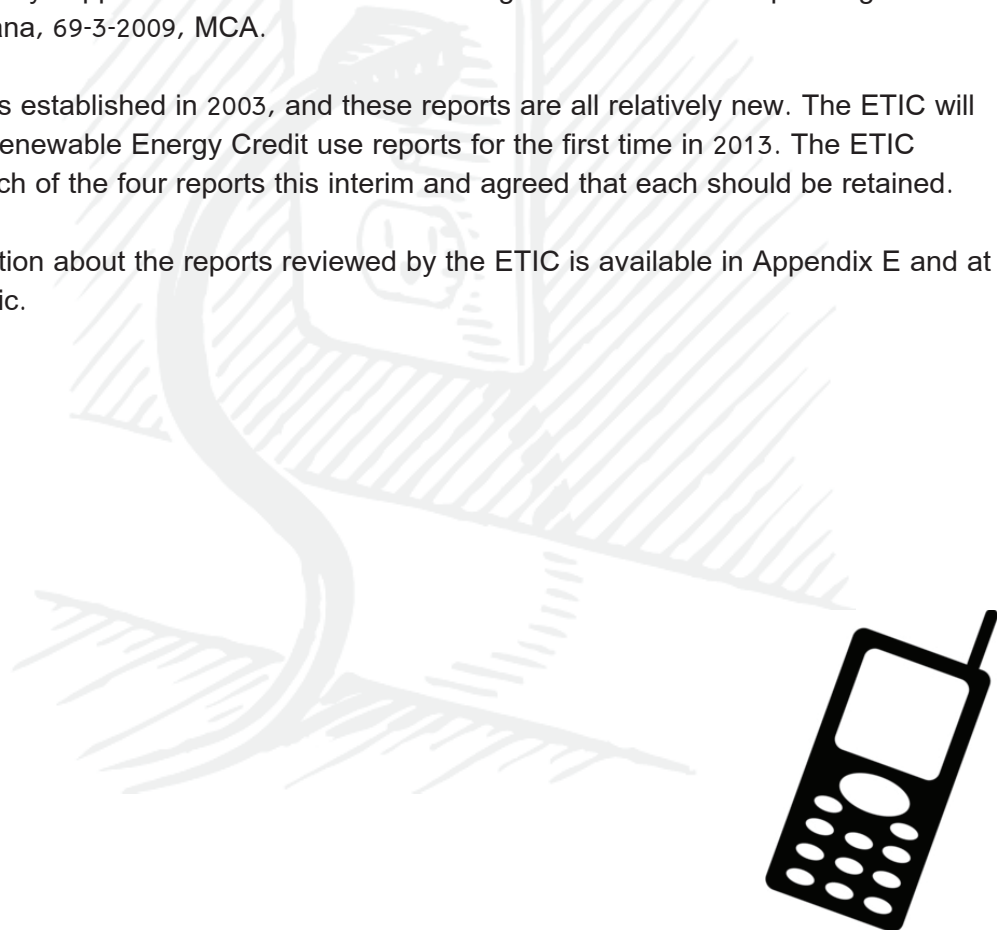
Energy and Telecommunications Interim Committee

The Energy and Telecommunications Interim Committee has oversight of the Public Service Commission (PSC) to which no advisory councils are attached. The PSC is also not required to provide any specific reports to the ETIC, but there are four reports the ETIC is required to review each interim:

- Universal System Benefits (USB) reports from utilities, rural electric cooperatives, and large customers. The ETIC must also review the USB program in its entirety, 69-8-402, MCA.
- Montana Bureau of Mines and Geology geothermal research update and funding report, 90-3-1301, MCA;
- Department of Natural Resources and Conservation update on the economic and environmental feasibility of constructing and operating potential small-scale hydroelectric power generating facilities on state water projects, 85-1-501, MCA;
- Renewable Energy Credit use reports from most Montana utilities, competitive electricity suppliers, and owners of electrical generation facilities operating in Montana, 69-3-2009, MCA.

The ETIC was established in 2003, and these reports are all relatively new. The ETIC will receive the Renewable Energy Credit use reports for the first time in 2013. The ETIC discussed each of the four reports this interim and agreed that each should be retained.

More information about the reports reviewed by the ETIC is available in Appendix E and at leg.mt.gov/etic.



Environmental Quality Council

The Environmental Quality Council has statutory oversight of the Department of Environmental Quality (DEQ), the Department of Fish, Wildlife, and Parks (DFWP), and the Department of Natural Resources and Conservation (DNRC).

The EQC opted to review only advisory councils that were specifically named as such in statute. DEQ and DFWP each have four advisory councils. DEQ's include the:

- Water and Wastewater Operators' Advisory Council
- Air Pollution Control Advisory Council
- Water Pollution Control Advisory Council
- Small Business Compliance Assistance Advisory Council

DFWP's advisory councils include the:

- Wetlands Protection Advisory Council
- Boating Advisory Council
- Upland Game Bird Citizens' Advisory Council
- Alternative Livestock Advisory Council

Upon recommendations from the agencies, the EQC opted to draft bills that would eliminate the:

- ☒ Alternative Livestock Advisory Council (LC0360), which DFWP says has become obsolete with the passage of I-143 in 2000 that prohibited the transfer or issuance of new alternative livestock ranch licenses; and
- ☒ Air Pollution Control Advisory Council (LC0361), which DEQ describes as ineffective due to the complex nature of air regulatory issues. DEQ says it favors streamlining stakeholder involvement through the Montana Administrative Procedure Act and the Clean Air Act Advisory Committee.

The EQC also reviewed 17 agency reports but recommended the elimination of only one. LC0362 would eliminate the requirement that the DNRC report on progress to designate wildland-urban interface parcels because that work has been completed.

A full listing of reports and advisory councils reviewed by the EQC is available in Appendix F. More information about the Council's work is available at leg.mt.gov/eqc.



Law and Justice Interim Committee

The Law and Justice Interim Committee (LJIC) monitors the activities of the Department of Corrections, the Department of Justice (DOJ), the Office of State Public Defender, the Judicial Branch, and the entities attached to these agencies, including the Board of Crime Control and the Board of Pardons and Parole.

The LJIC ultimately identified seven existing advisory councils for review and 10 reports. The LJIC reviewed all seven advisory councils and eight of the 10 reports.

The advisory councils included the:

- Fire Prevention and Investigation Advisory Council
- Domestic Violence Fatality Review Commission
- Gaming Advisory Council
- Criminal Intelligence Information Advisory Council
- Youth Justice Advisory Council
- Concealed Weapons Advisory Council
- District Court Council

As a result of its review, the LJIC made several recommendations through the following bill drafts:

- ☒ LC0242 would affect advisory councils and reports affiliated with the DOJ by eliminating the Fire Prevention and Investigation Advisory Council, clarifying the duties of the Domestic Violence Fatality Review Commission, and eliminating the requirement for a cigarette standards report;
- ☒ LC0243 would eliminate the racial profiling report also currently required of the DOJ;
- ☒ LC0301 would eliminate the Judicial Branch's report on expenditures of attorney license tax revenue;
- ☒ LC0302 would eliminate the Board of Pardons and Parole's report on medical parolee health care costs; and
- ☒ LC0444 would update statutes related to the Criminal Intelligence Information Advisory Council.

The LJIC proposed one more bill draft, LC0300, which would create a corrections advisory council. In 2011, Governor Brian Schweitzer dissolved a similar council that was established under executive authority pursuant to 2-15-122, MCA.

Background papers prepared for the LJIC on these advisory councils and reports are available in Appendix G. More information on the committee's work is available at leg.mt.gov/ljic.



Revenue and Transportation Interim Committee

The Revenue and Transportation Interim Committee (RTIC) has legislative oversight of the Department of Revenue (DOR) and the Department of Transportation. Both agencies are required to submit a variety of reports to the RTIC.

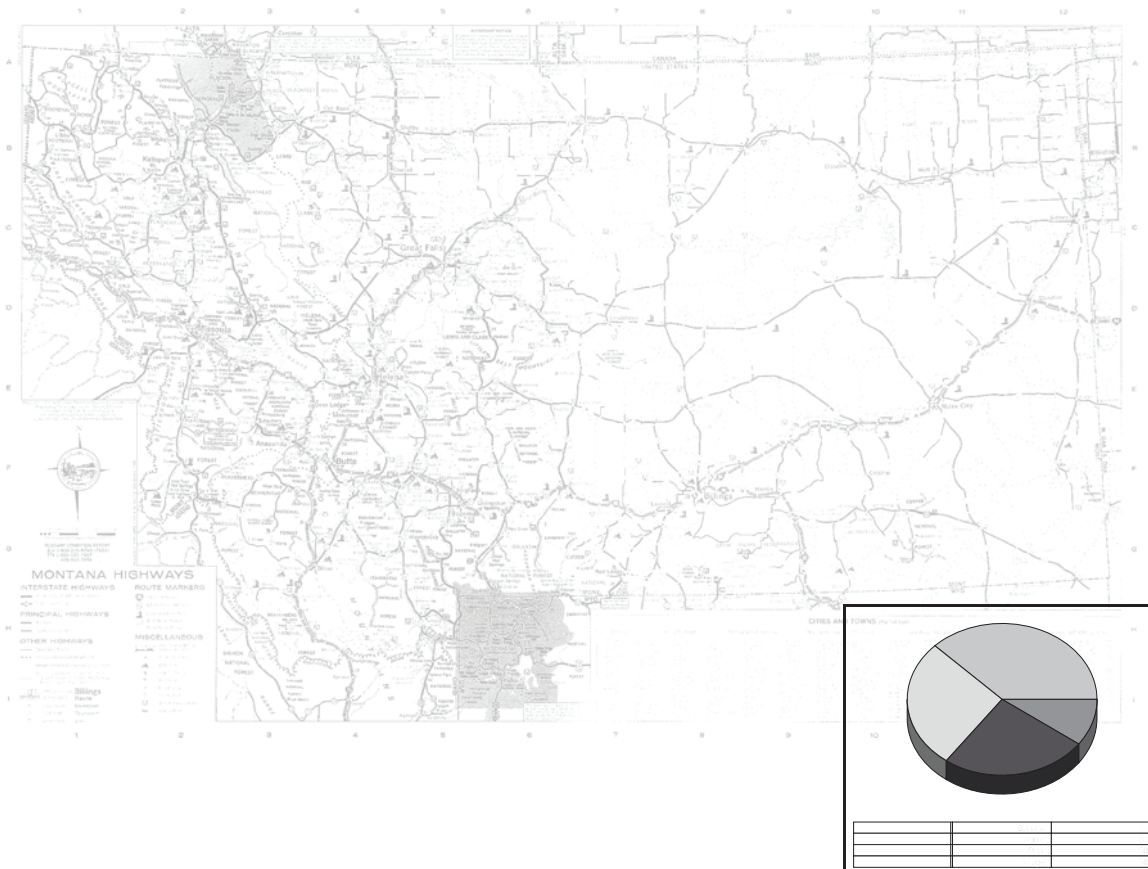
In developing its work plan, the RTIC determined most of its related agency reports fell outside the scope of HB 142's requirements. While still receiving those other reports, the RTIC reviewed only one under the auspices of HB 142 -- the Department of Revenue's biennial report, which is required by 15-1-205, MCA.

The RTIC also reviewed two advisory councils:

- Advisory Council for the Scenic-Historic Byways Program, 60-2-601, MCA
- Multistate Tax Compact Advisory Council, 2-15-1311, MCA

In its HB 142 review, the RTIC determined both advisory councils and the DOR's biennial report should be retained and did not propose any legislation to alter their statutory requirements.

More information on the committee's work is available at leg.mt.gov/rtic.



State Administration and Veterans' Affairs Interim Committee

The State Administration and Veterans' Affairs Interim Committee (SAVA) monitors the activities of the Department of Administration, the Department of Military Affairs, the Office of the Secretary of State, the Office of the Commissioner of Political Practices, the Board of Veterans Affairs, the Teachers' Retirement Board, and the Public Employees' Retirement Board.

SAVA identified 7 advisory councils for review, including the:

- State Employee Group Benefits Advisory Council
- Capitol Complex Advisory Council
- Electronic Government Advisory Council
- Information Technology Board
- 9-1-1 Advisory Council
- Land Information Advisory Council
- Employee Investment Advisory Council

SAVA agreed that all 7 advisory councils should be retained.

In addition, SAVAs reviewed 14 agency reports and made recommendations in LC0334 to revise several of those reporting requirements, including:

- ☒ requiring the Capitol Complex Advisory Council to report to SAVA by September 15 of the year immediately preceding a legislative session;
- ☒ requiring the Employee Incentive Program Report to be made to SAVA by September 15 of the year immediately preceding a legislative session;
- ☒ revising the content of the Veterans' Affairs Division biennial report;
- ☒ requiring the Secretary of State to make a secured transactions report to SAVA by September 15 of the year immediately preceding a legislative session only if there are changes to filing office rules;
- ☒ requiring the Teachers' Retirement System experience study to be conducted and reported to SAVA and the legislature;
- ☒ requiring that a copy of actuarial valuations of each of the public pension systems be made available to the legislature; and
- ☒ requiring the Board of Investments to present an annual report to SAVA by September 15 of the year immediately preceding a legislative session.

More information about the advisory councils and agency reports reviewed by SAVA are available in Appendix H. More information about this committee's work is available at leg.mt.gov/sava.





AN ACT REVISING LAWS RELATING TO LEGISLATIVE INTERIM COMMITTEES AND REPORTS TO THE LEGISLATURE; REQUIRING INTERIM COMMITTEES TO REVIEW STATUTORILY ESTABLISHED ADVISORY COUNCILS AND REQUIRED REPORTS OF THEIR ASSIGNED AGENCIES TO MAKE RECOMMENDATIONS REGARDING RETENTION OR ELIMINATION; REVISING REQUIREMENTS RELATING TO REPORTS TO THE LEGISLATURE; AND AMENDING SECTIONS 5-5-215 AND 5-11-210, MCA.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 5-5-215, MCA, is amended to read:

"5-5-215. Duties of interim committees. (1) Each interim committee shall:

- (a) review administrative rules within its jurisdiction;
- (b) subject to 5-5-217(3), conduct interim studies as assigned;
- (c) monitor the operation of assigned executive branch agencies with specific attention to the following:
 - (i) identification of issues likely to require future legislative attention;
 - (ii) opportunities to improve existing law through the analysis of problems experienced with the application of the law by an agency; and
 - (iii) experiences of the state's citizens with the operation of an agency that may be amenable to improvement through legislative action;
- (d) review statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210;
- ~~(d)~~(e) review proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and
- ~~(e)~~(f) accumulate, compile, analyze, and furnish information bearing upon its assignment and relevant to existing or prospective legislation as it determines, on its own initiative, to be pertinent to the adequate completion of its work.

(2) Each interim committee shall prepare bills and resolutions that, in its opinion, the welfare of the state may require for presentation to the next regular session of the legislature.

(3) The legislative services division shall keep accurate records of the activities and proceedings of each interim committee."

Section 2. Section 5-11-210, MCA, is amended to read:

"5-11-210. Clearinghouse for reports to legislature. (1) For the purposes of this section, "report" means a written report required by law to be given to or filed with the legislature.

(2) On or before September 1 of each year preceding the convening of a regular session of the legislature, an entity required to report to the legislature shall provide, in writing, to the appropriate interim or statutory committee:

(a) the final title of the report;

(b) an abstract or description of the contents of the report, not to exceed 100 words;

(c) if the report is available electronically, its location on the internet; and

~~(e)(d)~~ a recommendation on how many paper copies of the report, if any, should be provided to the legislature;

~~———(d) the reasons why the number of copies recommended is, in the opinion of the reporting entity, the appropriate number of copies; and~~

~~———(e) an estimated cost for each copy of the report.~~

(3) After considering all of the information available about the report, including the number of legislators requesting copies of the report pursuant to subsection (7), the appropriate interim or statutory committee shall, in writing, direct the reporting entity to provide a specific number of paper copies. The number of copies required is at the sole discretion of the appropriate interim or statutory committee. The appropriate interim or statutory committee may require the reporting entity to mail the copies of the report.

(4) The appropriate interim or statutory committee may require that the report be submitted in an electronic format that is usable on the legislature's current computer hardware; or in a microform, such as microfilm or microfiche, or in a CD-ROM format, meaning compact disc read-only memory digital form.

(5) Costs of preparing and distributing a report to the legislature, including writing, printing, postage, distribution, and all other costs, accrue to the reporting agency. Costs incurred in meeting the requirements of

this section may not accrue to the legislative services division.

(6) The executive director of the legislative services division shall cause to be prepared a list of all reports required to be presented to the legislature from the list of titles received under subsection (2).

(7) The executive director shall, as soon as possible following a general election, ~~mail~~ provide to each holdover senator, senator-elect, and representative-elect a list of the titles of the reports, along with the abstracts prepared pursuant to subsection (2)(b), and the location of electronic copies. ~~The list must include a form on which each member or member-elect receiving the list may indicate the report or reports that the member or member-elect would like to receive.~~

(8) The executive director of the legislative services division shall ~~make~~ provide copies of reports requested pursuant to subsection (7) ~~available~~ to those members or members-elect by either requiring that copies be mailed pursuant to subsection (3) or by delivering copies of the reports during the first week of the legislative session.

(9) The executive director of the legislative services division may keep as many copies of a report as are necessary and discard the rest or return them to the agency.

(10) The procedure outlined in this section may also be used for a report required to be made to the legislature under the Multistate Tax Compact contained in 15-1-601, the Vehicle Equipment Safety Compact contained in 61-2-201, the Multistate Highway Transportation Agreement contained in 61-10-1101, or the Western Interstate Nuclear Compact contained in 90-5-201.

(11) Each report to the legislature required under 17-6-230, 19-2-405, 19-2-407, and 19-20-201 must be provided to the legislative services division as soon as the report is published. The legislative services division shall ensure that legislators are notified pursuant to this section of the report's availability. During the interim, the legislative services division shall ensure that members of the state administration and veterans' affairs interim committee and the legislative finance committee receive copies of the reports."

- END -

I hereby certify that the within bill,
HB 0142, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2011.

President of the Senate

Signed this _____ day
of _____, 2011.

HOUSE BILL NO. 142
INTRODUCED BY D. SANDS

AN ACT REVISING LAWS RELATING TO LEGISLATIVE INTERIM COMMITTEES AND REPORTS TO THE LEGISLATURE; REQUIRING INTERIM COMMITTEES TO REVIEW STATUTORILY ESTABLISHED ADVISORY COUNCILS AND REQUIRED REPORTS OF THEIR ASSIGNED AGENCIES TO MAKE RECOMMENDATIONS REGARDING RETENTION OR ELIMINATION; REVISING REQUIREMENTS RELATING TO REPORTS TO THE LEGISLATURE; AND AMENDING SECTIONS 5-5-215 AND 5-11-210, MCA.

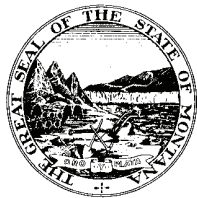
Statutorily Created Advisory Councils* Reference for HB 142 interim work

(*does not include advisory councils created by the executive branch pursuant to 2-15-122, which requires the creating authority to file a record of each council created with the governor's and secretary of state's offices)

MCA	Council Name	Affiliated Agency
2-15-1016	State Employee Group Benefits Advisory Council	DOA
2-15-1311	Advisory Council for Multistate Tax Compact	DOR
2-15-1519	Fire Services Training Advisory Council	Board of Regents
2-15-1520	Student Loan Advisory Council	Board of Regents
2-15-1522	Certification Standards and Practices Advisory Council	Board of Public Ed
2-15-1524	Governor's Postsecondary Scholarship Advisory Council	Administratively attached to Commissioner of Higher Ed
2-15-1816	Tourism Advisory Council	Commerce
2-15-1820	Economic Development Advisory Council	Commerce
2-15-2005	Fire Prevention and Investigation Advisory Council	DOJ
2-15-2021	Gaming Advisory Council	DOJ
2-15-2105	Water and Wastewater Operators' Advisory Council	DEQ
2-15-2106	Air Pollution Control Advisory Council	DEQ
2-15-2107	Water Pollution Control Advisory Council	DEQ
2-15-2110	Small Business Compliance Assistance Advisory Council	DEQ

2-15-2206	Advisory Council on Aging	DPHHS
2-15-2217	Traumatic Brain Injury Advisory Council	DPPHS
2-15-3405	Wetlands Protection Advisory Council	FWP
2-17-803	Capitol Complex Advisory Council	DOA
2-17-1105	Electronic Government Advisory Council	DOA
10-4-102	9-1-1 Advisory Council	DOA
19-3-2133	Employee Investment Advisory Council	Public Employees' Retirement Board
23-2-536	Boating Advisory Council	FWP
33-17-1204	Advisory Council on continuing education for insurance licensees	Commissioner of Insurance
33-23-520	Advisory Council on risk management activities	Commissioner of Insurance
44-5-501	Criminal Intelligence Information Advisory Council	DOJ
45-8-329	Advisory Council on concealed weapon permit issues	DOJ
50-50-103	Advisory Council (or task force) on food safety	DPHHS
53-6-710	Medicaid Managed Care Advisory Council	DPHHS
53-21-702	Mental Health Oversight Advisory Council	DPHHS
60-2-601	Advisory Council for the scenic-historic byways program	MDT
80-7-805	Noxious Weed Management Advisory Council	Ag
80-7-904	Montana Noxious Weed Seed Free Forage Advisory Council	Ag
80-7-1104	Vertebrate Pest Management Advisory Council	Ag

80-8-108	Advisory Council on special pesticide problems	Ag
80-11-601	Organic Commodity Advisory Council	Ag
87-1-251	Upland Game Bird Citizens' Advisory Council	FWP
87-4-432	Alternative Livestock Advisory Council	FWP
90-1-405	Land Information Advisory Council	DOA



Economic Affairs Interim Committee

62nd Montana Legislature

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CLAUDIA (CJ) JOHNSON, Secretary

as of Sept. 12, 2012

Tally Sheet for HB 142 Reviews of Statutory Advisory Councils and Statutory Reports and HB 525 Reviews of Licensing Boards

The Economic Affairs Interim Committee has monitoring responsibility over the following state agencies: the Departments of Agriculture, Commerce, Labor and Industry, and Livestock. The EAIC also monitors the Governor's Office of Economic Development, the State Auditor's Office, and Montana State Fund.

The EAIC heard directly from the statutory advisory councils that are attached to these agencies and reviewed reports from most of the attached entities. Some reports were not yet published. At the EAIC's Sept. 11, 2012, meeting members said the reports were informative and helpful to legislators. There was a blanket recommendation to retain all the reports.

The only advisory council that raised an issue for the EAIC was one that had not yet met but also has not been created because its creation is contingent on lack of a competitive market for medical malpractice insurance. After requesting that a bill draft be made available for review, the committee took public comment and decided not to introduce any change to the statute requiring an advisory council.

HB 142 Reviews

Statutory Advisory Councils	Review Date	Decision
• Advisory Council on Continuing Education for Insurance Licensees, created under 33-17-1204, MCA	April 20, 2012	continue as is
• Advisory Council on Risk Management Activities, created under 33-22-520, MCA	April 20, 2012	Requested bill draft to remove requirement. But draft not approved after public comment.
• Economic Development Advisory Council, created under 2-15-1820, MCA	Oct. 6, 2011	continue as is but review
• Montana Noxious Weed Seed Free Forage Advisory Council, created under 80-7-804, MCA	Jan. 20, 2012	continue as is
• Noxious Weed Management Advisory Council, created under 80-7-805, MCA	Jan. 20, 2012	continue as is
• Organic Commodity Advisory Council, created under 80-11-601, MCA	Jan. 20, 2012	continue as is
• Tourism Advisory Council, created under 2-15-1816, MCA	Oct. 5, 2011	continue as is
• Montana Heritage Preservation and Development Cmsn.	Sept. 11, 2012	continue as is

Statutorily Required Reports (some required to the EAIC and some to the legislature)		
• Apprenticeship and Training Program Biennial Report, required under 39-6-101 in conjunction with 5-11-210, MCA	Oct. 5, 2011 Sept. 11, 2012	no vote in October. September vote to continue as is
• State Agency-County Weed District Biennial Noxious Weed Report, required under 7-22-2151, to be posted.	Sept. 11, 2012	continue as is
• Board of Investments Report (must be made to the legislature as provided in 17-6-230 pursuant to 5-11-210)	Oct. 5, 2011	continue as is
• Board of Housing Veterans' Home Loan Mortgage Program report to the legislature, provided for in 90-6-604, MCA	Sept. 11, 2012	continue as is
• Livestock Loss Reduction Report, required to Legislature and Board of Livestock under 2-15-3113, MCA	Sept. 11, 2012	continue as is
• Dept. of Commerce report on federal land management reviews for local governments required by 90-1-182, MCA. Oral and written update provided.	Sept. 11, 2012	continue as is
• Distressed Wood Industry Report, required under 90-1-503 to EAIC in conjunction with 5-11-210, MCA	Sept. 11, 2012	continue as is
• Quality Schools Facility Grant Program Report, required under 90-6-810, MCA, as a report "to the legislature"	Sept. 11, 2012	continue as is
• Montana State Fund budget report (must be given to Legislative Finance Committee as provided in 39-71-2363)	Sept. 11, 2012	not part of committee's responsibilities per se
• Unemployment benefits for victims of domestic violence, sexual assault, or stalking. 39-51-2111 requires report, as provided in 5-11-210, regarding benefits. Paper report.	Sept. 11, 2012	continue as is
• Report required under HB 533 by Dept. of Labor and Industry on number of jobs created by state board of land commissioners through coal leasing. Report for EQC and governor's office but also provided to EAIC.	Sept. 11, 2012	not part of committee's responsibilities per se
• Montana Prescription Drug Registry, to report under 37-7-1514, to the appropriate interim committee. The Dept. of Labor and Industry notified the committee of availability of report by Dec. 31, 2012.	Sept. 11, 2012, notice of pending availability	continue as is
• Licensing board biennial report, required under 37-1-106, MCA, to be submitted to the Office of Budget and Program Planning.	Sept. 11, 2012, notice of pending availability	not required to report to committee, but under committee's responsibilities
• State Tribal Economic Development Commission biennium report, administratively attached to the Dept. of Commerce, to provide a biennial report to the governor and Legislative Council under 90-1-131, MCA.	Sept. 11, 2012, written report	continue as is

• Board of Research and Commercialization Technology, attached to the Dept. of Commerce. Under 90-3-1006, the executive director is responsible for reporting to the legislature on investments, research, and activities.	Sept. 11, 2012, draft report made available	continue as is
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HB 525 Reviews of Licensing Boards Scheduled for Review 2011-2012

Licensing Board	Review Date	Decision
Chiropractors	Aug. 24, 2011	continue as is
Dentistry	Aug. 23, 2011 Jan. 20, 2012	review again in January 2012 with proposal to split boards January vote: continue as is, endorse committees of denturists/dental hygienists; try to resolve problems among practitioners
Electrical	April 20, 2012	continue as is
Professional Engineers and Professional Land Surveyors	April 20, 2012	continue as is
Funeral Service	Oct. 6, 2011 Jan. 20, 2012	decision postponed to January 2012 January vote: continue as is
Hearing Aid Dispensers	Oct. 5, 2011	decision postponed to April 2012 April vote: continue as is
Medical Examiners	Oct. 6, 2011	continue as is
Nursing	Jan. 20, 2012	continue as is
Nursing Home Administrators	Oct. 6, 2011	continue as is
Optometry	Jan. 20, 2012	continue as is
Outfitters	Jan. 19, 2012	continue as is
Pharmacy	Aug. 23, 2011	continue as is
Plumbers	April 20, 2012	continue as is
Psychologists	June 12, 2012	continue as is
Public Accountants	Jan. 19, 2012	continue as is
Veterinary Medicine	Aug. 24, 2011	continue as is

HB 525 Reviews of Licensing Boards Scheduled for Review 2013-2014

Alternative Health Care, Architects and Landscape Architects, Athletic Trainers, Barbers and Cosmetologists, Clinical Laboratory Science Practitioners, Occupational Therapy Practice, Physical Therapy Examiners, Private Alternative Adolescent Residential or Outdoor Programs, Private Security, Radiologic Technologists, Real Estate Appraisers, Realty Regulation, Respiratory Care Practitioners, Sanitarians, Social Workers/Professional Counselors, Massage Therapists, and Speech Language Pathologists and Audiologists.

Summary of Reports Required by Statute Relevant to Education and Local Government Committee Presented to ELG June 2012

HB 142, enacted in 2011, amends 5-5-215, MCA, to include among all interim committees' duties the review of statutorily-established advisory councils and required reports of assigned agencies and to make recommendations to the next legislature on retention or elimination of any advisory council or required report.

The following reports, arranged by the entity responsible for reporting, are relevant to ELG's subject-area jurisdiction or are required of the agencies that ELG must monitor.

1. **Reporting Entity:** Office of Public Instruction
Report Title: At-Risk Students Report
Citation: 20-9-328, MCA
Statute Text: . . . (3) On or before September 15, 2010, the office of public instruction shall report to the governor and the legislature on the change in status of standardized test scores, graduation rates, and drop-out rates of at-risk students using fiscal year 2006 data as a baseline.

Comments: OPI provided the report in September 2010. The introduction reads, in part:

Beginning in FY 2007, the Montana Legislature provided \$5 million annually to local school districts for educational services for at-risk students (see Appendix 1). The at-risk payment is distributed in the same manner as federal Title I monies. If a district is not eligible for Title I funding, it does not receive an at-risk payment. The funding was provided for three years, but was not funded for FY 2010 and FY 2011. The law which establishes the at-risk student payment also requires the Office of Public Instruction to report to the Governor and the Legislature on the change in status of standardized test scores, graduation rates, and dropout rates of at-risk students using fiscal year 2006 data as a baseline (20-9-328, MCA). This report provides that status.

Statute text indicates that this was intended to be a one-time-only report.

Link to Report: <http://leg.mt.gov/css/Services%20Division/Reference%20Center/>

2. **Reporting Entity:** Office of Public Instruction
Report Title: American Indian Achievement Gap Report
Citation: 20-9-330, MCA
Statute Text: . . . (4) On or before September 15, 2010, the office of public instruction shall report to the governor and the legislature on the change in status of standardized test scores, graduation rates, and drop-out rates of American Indian students using fiscal year 2006 data as a baseline.
- Comments:** OPI provided the report in the Fall of 2010. The introduction reads, in part:
- In 2007, the Montana State Legislature passed Montana Code Annotated 20-9-330, appropriating \$200 per American Indian child, totaling over \$3 million dollars per year, to provide funding to school districts for the purpose of closing the educational achievement gap that exists between American Indian students and non-Indian students. According to MCA 20-9-330 (2) (a), funds were to be determined by "...using the number of American Indian students enrolled in the district based on the count of regularly enrolled students on the first Monday in October of the prior school year as reported to the Office of Public Instruction" and deposited into the district's general fund.
- Statute text indicates that this was intended to be a one-time-only report.
- Link to Report:** <http://leg.mt.gov/content/Publications/services/agency-reports/Indian-Student-Data.pdf>
3. **Reporting Entity:** Office of Public Instruction
Report Title: Biennial Report of the Superintendent of Public Instruction
Citation: 20-3-105, MCA
Statute Text: In administering the affairs of the office, the superintendent of public instruction has the power and it is the superintendent's duty to: . . . (7) if considered necessary, publish a biennial report of the superintendent of public instruction; . . .

	Comments:	The Superintendent of Public Instruction's preparation of the report is discretionary.
4.	Reporting Entity: Report Title: Citation: Statute Text:	Education Commission of the States Education Commission of the States 20-2-501, MCA (10) The commission annually shall make and provide to the governor and legislature of each state that has entered into the compact a report covering the activities of the commission for the preceding year. The commission may make any additional reports as it considers desirable.
	Comments:	Montana's membership is provided for in 20-2-502 and includes the Governor, one senator appointed by the Committee on Committees, one representative appointed by the Speaker of the House, the Superintendent of Public Instruction, and three persons appointed by the Governor, including one educator engaged in the field of higher education and two educators engaged in the field of K-12 education. Members listed on the ECS website are: Denise Juneau, Superintendent of Public Instruction; Jane Karas, President, Flathead Valley Community College; Sue Malek, State Representative; Linda McCulloch, Secretary of State; Brian Schweitzer, Governor; Carmen Taylor, Academic Vice President, Salish Kootenai College. This reporting requirement is part of an interstate compact that should not be revised without concurrence of compact states.
	Link to Report:	A variety of reports are available on the ECS website: http://www.ecs.org/
5.	Reporting Entity: Report Title: Citation: Statute Text:	Board of Regents Carl D. Perkins Career and Technical Education Improvement Act, 2006 -- Legislative Report 20-7-330, MCA (1) The superintendent of public instruction and the commissioner shall each appoint three people from their respective advisory boards to serve on a committee to review and update the 5-year state plan for career and technical education as required by 20 U.S.C. 2323. Two members appointed from each advisory board must be educators, and the remaining member appointed from

each advisory board must be a representative of a business or community interest.

(2) At least four times a year, the board of regents shall meet with the superintendent of public instruction, teachers, students, labor organizations, businesses, and institutions or agencies involved in vocational and technical education to:

(a) discuss the state plan;

(b) identify any issues or concerns with the administration of the Carl D. Perkins Career and Technical Education Improvement Act of 2006 in Montana;

(c) identify the needs of technical students and programs in Montana and determine the best way to meet those needs; and

(d) if necessary, make changes in the administration and operation of the Carl D. Perkins Career and Technical Education Improvement Act of 2006 in Montana.

(3) The board of regents shall report the results of the meetings required in subsection (2) to the legislature in accordance with the provisions of 5-11-210.

Comments:

This report was last provided on August 31, 2010. An introductory paragraph states:

This report provides a summary of the Carl D. Perkins legislation reauthorized in 2006 and the steps taken during the years 2008-2010 to advance the vision and goals of the Montana State Plan for Career and Technical Education. The report provides background on Montana's State Plan, changes of direction since the plan was implemented, and a progress report on each of the plan's major goal areas.

Link to Report:

<http://leg.mt.gov/content/Publications/services/agency-reports/Carl-D-Perkins.pdf>

6. Reporting Entity:

Western Interstate Commission for Higher Education (WICHE)

Report Title:

Western Regional Higher Education Compact Report

Citation:

20-25-801, MCA

Statute Text:

(6) On or before January 15 of each year, the commission shall submit to the governors and legislatures of the compacting states and territories a report of its activities for the preceding calendar year.

Comments:

This reporting requirement is part of an interstate compact that should not be revised without concurrence of compact states.

- Link to Report:** <http://www.wiche.edu/info/publications/WICHEar2011.pdf>
7. **Reporting Entity:** Montana Historical Society
Report Title: Biennial Report to the Governor and the Legislature
Citation: 22-3-107, MCA
Statute Text: The powers and duties of the trustees are as follows : . . .(8) to report to the governor and, as provided in 5-11-210, the legislature biennially. The report must include a statement of all important transactions and acquisitions, with suggestions and recommendations for the better realization of the purposes of the society and the improvement of its collections and services.
- Link to Report:** <http://leg.mt.gov/content/Publications/services/agency-reports/Montana-Historical-Society.pdf>
8. **Reporting Entity:** State Historic Preservation Office
Report Title: State Agency Heritage Properties
Citation: 22-3-423, MCA
Statute Text: The State Historic Preservation Officer must report information gathered under 22-3-422: the status and stewardship of state agencies' and the university system's heritage properties as required in 22-3-424, along with recommendations regarding management of the properties.
- Comments:** SB 3, enacted during the 2011 Legislature, initiated this reporting requirement. The information is being collected and compiled and the first report from the SHPO is scheduled to be presented to ELG at the September meeting.
- Link to Report:** SHPO's website contains comprehensive information about the properties and the reporting requirements:
<http://www.montanahistoricalsociety.com/shpo/State-owned%20Heritage%20Properties.asp>



Education and Local Government Interim Committee

62nd Montana Legislature

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TOM FACEY
BOB HAWKS
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BOB LAKE
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LEANNE KURTZ, Lead Staff
DANIEL WHYTE, Staff Attorney
CLAUDIA (CJ) JOHNSON, Secretary

TO: Education and Local Government Committee members
FROM: Leanne Kurtz
DATE: May 30, 2012
RE: Advisory councils created by statute

Section 5-5-215(1)(d) requires all interim committees to "review statutorily-established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210."

At your meetings held in September 2011, November 2011, January 2012, and March 2012, you heard presentations from members of advisory councils that are attached to agencies that ELG is assigned to monitor. Those councils were the Certification Standards and Practices Advisory Council, the Governor's Postsecondary Scholarship Advisory Council, the Fire Services Training School Advisory Council, and the Student Loan Advisory Council.

At your March meeting, staff of the Office of the Commissioner of Higher Education and Student Loan Advisory Council members recommended elimination of that advisory council. A bill draft to do so (LCEd06) is included in this mailing. Below is a summary of the information you were provided regarding each of the other advisory councils in ELG's purview.

Certification Standards and Practices Advisory Council (2-15-1522)

The Certification Standards and Practices Advisory Council (CSPAC), created in 1987, is attached to the Board of Public Education (BPE). It consists of seven members appointed by BPE and the members must include classroom teachers, a K-12 specialist, a faculty member from an accredited teacher education institution, a school administrator, and a school district trustee.

CSPAC's mission is to "study and to make recommendations to the Board of Public Education on certification issues concerning teachers, administrators and specialists; professional standards and ethical conduct; the status and efficacy of approved teacher education programs in Montana; and policies related to the denial, suspension, and revocation of educator certification and the appeals process."

CSPAC's funding source is described on the Council's website as follows:

In 1989 an act of the Montana legislature designated \$4 of each yearly certification fee for the operation of the Council. In 1991, the legislature raised the

yearly certification fee to \$6 and statutorily appropriated the remaining \$2 of the fee for a research fund. This fund is to be used by the Council to provide research on the issues before the Council.

At ELG's September 2011, meeting, presenters were Pete Donovan, CSPAC administrative officer; Sharon Applegate, chair; John Runnalls, vice-chair; and Tammy Lacey, member. The panelists discussed CSPAC's annual report, revising the teacher code of ethics, improving education in Montana, teacher training and preparation, and teacher salaries.

CSPAC's budget for FY 2013 is \$113,320.

CSPAC's website is: <http://bpe.mt.gov/cspac.mcp>

Governor's Postsecondary Scholarship Advisory Council (2-15-1524)

The council is attached to the Office of the Commissioner of Higher Education (OCHE) for administrative purposes. The Governor appoints the members of the council and among the members there must be at least one person with experience in financial aid at a postsecondary institution and one person with experience in secondary or postsecondary education. The council shall "advise the Board [of Regents] on issues related to the governor's postsecondary scholarship program and other student assistance programs; and report to the governor annually or at any time upon request by the governor."

The Montana Guaranteed Student Loan Program handles the day-to-day operations of the scholarship program, also called the "Best and Brightest" program, with policy advice from the advisory council.

At ELG's November 2011, meeting, presenters were Bruce Marks, director, Student Financial Services, OCHE, and LeRoy Schramm, chair. Topics of discussion included merit scholarships compared to merit-at-large and need-based scholarships, scholarships for nontraditional students attending 2-year institutions, and whether scholarship recipients stay in Montana to work. Mr. Marks distributed the council's Annual Report for the 2009-2010 academic year. The report's Executive Summary states, in part:

During academic year 2010, 1,828 students received Best and Brightest Scholarships with a total value of \$2,396,500. This includes 1,191 students who renewed their scholarships and 637 students that were awarded new scholarships. Since its creation in 2005 by the Montana Legislature, the total amount of scholarships now exceeds \$8 million to almost 6,700 Montana students. Of the \$2,396,500 awarded in 2010, \$848,500 were new scholarship awards and \$1,548,000 were for renewals of existing scholarships.

One hundred and sixty seven (167) graduating high school students received merit scholarships. Of those 167 recipients, 19 students chose 2-year schools and 148 students chose 4-year schools.

More information about the scholarship program, including the annual report, is available on the program's website:

http://www.mus.edu/Prepare/Pay/Scholarships/Governors_Best_and_Brightest_Scholarship.asp

Fire Services Training Advisory Council (2-15-1519)

The Board of Regents appoints the members of the advisory council and the members must include a fire chief, a volunteer firefighter, a paid firefighter, a fire service instructor, a person involved in fire prevention, an insurance industry representative, and an educator. Ex officio members include a representative of the State Fire Prevention and Investigation Section of the Department of Justice, a fire control officer designated by the Department of Natural Resources and Conservation, and the director of the Fire Services Training School (FSTS).

The school itself offers direct training, curriculum development, certification, emergency incident support, consulting, and a resource center and library.

At ELG's January 2012, meeting, presenters were Butch Weedon, retired fire chief and former director of the FSTS, and Gar Wood, chair of the advisory council. Mr. Weedon distributed a handout stating the purpose of the advisory council is to "advise the board [of Regents] and director of the fire services training school on planning, coordination, governance, management, and control of the fire services training school to promote the purposes of the school." The FSTS website states that the advisory council is "very active in providing direction for the school's programs and its members are also involved in leadership roles with other organizations."

The presenters told the committee that it costs less than \$1,500 per year to operate the advisory council.

More information about the school and the advisory council is available on the FSTS's website: <http://www.montana.edu/wwwfire/profile.php>.

A report to the 63rd Legislature of the State of Montana

Interim Committee Reporting Requirements

House Bill No. 142: Review of advisory councils and statutorily
required reports

Prepared for
THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE
By
Sonja Nowakowski, Research Analyst

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***Legislative
Services
Division***

ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE (ETIC) MEMBERS

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the ETIC, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee.

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* This information is included in order to comply with Senate Bill No. 120 (Chapter 236, Laws of 2011).

Introduction

House Bill No. 142 (Chapter 126, Laws of 2011) requires all interim committees to review statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210, MCA.

HB 142 requires the Energy and Telecommunications Interim Committee (ETIC) to examine statutorily established advisory councils and required reports of the Public Service Commission and to make recommendations to the next Legislature on retention or elimination of those advisory councils or reports. At its January 2012 meeting, the ETIC voted to retain the reports it is statutorily required to review.

✓ The ETIC approved retaining all reporting requirements.

There are no advisory councils under the ETIC's purview. The PSC also is not required to provide any specific reports to the ETIC.

However, there are a number of reports that the ETIC is required to review each interim. Those reports are all relatively new, with the oldest reporting requirement approved by the 1997 Legislature. The ETIC also will not receive one of the four reports until 2013. The ETIC opted to discuss each of the four reports and decide on its retention or elimination.

Background and Conclusions

Because the ETIC is required to review only four individual reports each interim, the ETIC voted separately on each requirement. The vote to retain each report was unanimous.

USB Reports: 69-8-402, MCA

A universal system benefits (USB) charge is assessed on electricity and natural gas customers in Montana to pay for certain public purpose programs. In 1997 the Montana Legislature established the USB charge for all electric distribution utilities at 2.4 percent of 1995 electric utility revenues to begin January 1, 1999.

The USB supports cost-effective energy conservation, low-income customer weatherization, renewable energy projects and applications, research and development programs related to energy conservation and renewable energy, market transformation designed to encourage competitive markets for public purpose programs, and low-income energy assistance.

All utilities and rural electric cooperatives are required to file an annual report with the Department of Revenue and with the ETIC detailing their USB expenditures. Large customers claiming credit for USB activities also must file a report. The ETIC is statutorily required to "review the universal systems benefits programs, and, if necessary, submit recommendations regarding these programs".

This report is due before September 15 of the year preceding a legislative session. It was provided to the ETIC in November 2011.

Finding:

✓ Retain Reporting Requirement

Geothermal Research: 90-3-1301, MCA

Legislation approved by the 2009 Legislature directed and allowed the Montana Bureau of Mines and Geology to conduct geothermal research that characterizes the geothermal resource base in Montana, tests high-temperature and high-pressure drilling technologies benefiting geothermal well construction, and determines reservoir characterization, monitoring, and modeling necessary for commercial application in Montana.

If a utility with a service area nearest the research site intends to develop the site for future commercial use, the utility is required to contribute, at a minimum, 25% of the research costs as determined by the Bureau for research at the site and to have an agreement in place with the surface property owner and any owners of the geothermal resource where the research site is located for future development of the geothermal resource.

The law also requires the Bureau, prior to each legislative session, to update the ETIC on geothermal research conducted by the Bureau and funding received by the Bureau for geothermal research.

This report is due prior to September 1 of even-numbered years. This report will be provided by the deadline and presented to the ETIC in September 2012.

Finding: ✓ Retain Reporting Requirement

Hydro Development: 85-1-501, MCA
SB 327, 2011

The Department of Natural Resources and Conservation (DNRC) is required to study the economic and environmental feasibility of constructing and operating small-scale hydroelectric power generating facilities on water projects under its control. The DNRC also must consider whether small-scale hydroelectric generation is economically feasible on a particular project by reviewing the estimated cost of construction, the estimated cost of maintaining, repairing, and operating a facility, the estimated cost of tying into an existing power distribution channel, the ability of public utilities or rural electric cooperatives to lease and operate a facility, the revenue and debt related to the facility, and the potential impacts on water supply and streamflows.

The DNRC, prior to the end of each interim, is required to update the ETIC on studies it has done to review the economic and environmental feasibility of constructing and operating these potential small-scale hydroelectric power generating facilities.

This report is due prior to September 1 of even-numbered years. The ETIC will receive this report, for the first time, in September 2012.

Finding: ✓ Retain Reporting Requirement

Energy Credits: 69-3-2009, MCA
SB 7, 2011

Most utilities, competitive electricity suppliers, and owners of electrical generation facilities operating in Montana that buy or sell renewable energy credits are required to file an annual renewable energy credit report. The reports generally include the price of any renewable energy credit bought or sold by the facility or utility and whether electrical energy and renewable energy credits were bought or sold together or separately as a bundled or unbundled product. If a utility, a competitive electricity supplier, or an owner of an electrical generation facility operating in Montana buys or sells a renewable energy credit in a market where the price of a renewable energy credit is not publicly disclosed, the utility, competitive electricity supplier, or owner of the electrical generation facility is not required to disclose the price in the report.

The reports must be filed with the Department of Revenue. Because the reporting requirements apply to renewable energy credits bought or sold after January 1, 2012, the first filing with the Department of Revenue is not required until March 1, 2013.

Each interim, the ETIC is required to review the reports and, if necessary, submit recommendations to the Legislature regarding the use of renewable energy credits in Montana. The recommendations are due before September 15 of the year preceding a legislative session.

Finding: ✓ Retain Reporting Requirement



ENVIRONMENTAL QUALITY COUNCIL

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DESIGNATED REPRESENTATIVE
MIKE VOLESKY

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SONJA NOWAKOWSKI, Research Analyst
HOPE STOCKWELL, Research Analyst
HELEN THIGPEN, Staff Attorney
KEVIN MCCUE, Secretary

May 24, 2011 (Updated August 19, 2011)

To: EQC Members
From: Hope Stockwell, Research Analyst
Re: HB 142 requirements of EQC

HB 142 requires the EQC to review the statutorily established advisory councils and required reports of DEQ, DNRC, and DFWP to make recommendations to the next legislature on retention or elimination of any advisory council or required report. HB 142 does not impose a deadline for this work.

Advisory councils under EQC's purview include:

DEQ

- Water and Wastewater Operators' Advisory Council, 2-15-2105, MCA
- Air Pollution Control Advisory Council, 2-15-2106, MCA
- Water Pollution Control Advisory Council, 2-15-2107, MCA
- Small Business Compliance Assistance Advisory Council, 2-15-2110, MCA

FWP

- Wetlands Protection Advisory Council, 2-15-3405, MCA
- Boating Advisory Council, 23-2-536, MCA
- Upland Game Bird Citizens' Advisory Council, 87-1-247, MCA
- Alternative Livestock Advisory Council, 87-4-432, MCA

Required reports by agencies to the EQC:

DEQ

- 75-5-313, MCA, requires a report on numeric nutrient standards, nutrient standards variances, and their implementation, including estimated economic impacts.
Due: On or before July 1 of each year
- 75-5-703, MCA, requires a report on the DEQ's progress in completing TMDLs (total maximum daily load) and the current schedule for completion of TMDLs.
Due: On or before July 1 of each even-numbered year
- 75-10-807, MCA, requires the department to adopt, through rulemaking, a solid waste management and resource recovery plan and to evaluate and update the plan as necessary every 5 years. 75-10-111, MCA, requires that within 3 days

after the notice of the proposed rulemaking to adopt the plan is published, a copy of the notice and plan be mailed to the EQC and other entities.

Due: every 5 years

- 85-2-350, MCA, requires the Clark Fork River Basin task force to report to the DEQ on a periodic basis, to the EQC annually, and to the joint appropriations subcommittee on natural resources each legislative session.

Due: to the EQC annually

FWP

- 85-2-436, MCA, requires a biennial progress report to DNRC, the FWP Commission, and the EQC, summarizing all appropriation rights changed to instream flow purposes in the last 2 years

Due: by December 1 of odd-numbered years

- 87-1-230, MCA, requires a report on deposits into and withdrawals from the account established for maintenance of land or water acquired by FWP under 87-2-209(1) and funds dedicated for wildlife habitat under 87-1-242. Must describe types of maintenance completed and maintenance plans for the subsequent fiscal year. (Requirement terminates June 30, 2013)

Due: by September 1 following the end of each fiscal year

- 87-1-250, MCA, requires a report to the fish and game committee of each house of the legislature concerning upland game bird enhancement activities in the preceding biennium, including copies of reports made to the upland game bird citizens' advisory council and any recommendations concerning operation of the program.

Due: each regular legislative session

- 87-1-269, MCA, requires that a review committee (the Private Land/Public Wildlife Council) report to each legislature regarding the success of various elements of the hunting access enhancement program, including annual landowner participation, the number of acres annually enrolled, hunter harvest success on enrolled lands, the number of qualified applicants who were denied enrollment because of a shortfall in funding, and an accounting of program expenditures, and make recommendations for funding, modification, or improvement needed to achieve the objectives of the program. The review committee shall also report to each legislature regarding the success of the fishing access enhancement program and make recommendations for funding, modification, or improvement needed to achieve the objectives of the program.

Due: each regular legislative session

- 87-1-272, MCA, requires a report to each regular session of the legislature on the progress of the future fisheries improvement program, including program activities and expenses since the last report and the project schedules and anticipated expenses for the ensuing 10 years' implementation of the program

Due: each regular legislative session

DNRC

- 76-13-145, MCA, requires a report on progress in designating parcels within the Wildland-Urban Interface.
Due: not specified
- 77-2-366, MCA, requires a report describing the results of the land banking program, including a summary of the sale and purchase transactions by type, location, acreage, value, and trust beneficiary.
Due: by the July 1 prior to each regular legislative session
- 85-1-621, MCA, requires a report describing the status of the renewable resource grant and loan program, including ongoing projects and projects completed during the biennium. Must identify and rank in order of priority the projects for which the department has received applications. Must describe proposed projects and activities for the coming biennium and recommendations for necessary appropriations.
Due: biennially
- 85-2-281, MCA, requires a status report on the progress of water adjudication on a basin-by-basin basis and the number of basins for which examination has been completed.
Due: at each meeting of the EQC during the legislative interim

Department of Labor and Industry

- Chapter 332, Laws of 2011, requires that the Dept. of Labor and Industry report quarterly to the EQC on jobs created by changes to coal leasing laws.
Due on or before: September 1, 2011, January 1, 2012, April 1, 2012, June 1, 2012, September 1, 2012, and January 1, 2013

Compliance and Enforcement Reports

- 75-1-314, MCA, requires DEQ, DNRC, and the Department of Agriculture to submit to the EQC environmental compliance and enforcement reports detailing the activities and efforts taking place to promote compliance assistance and education, the size and description of the regulated community and the estimated proportion of that community that is in compliance, the number, description, method of discovery, and significance of noncompliances, including those noncompliances that are pending, and a description of how the department has addressed the noncompliances identified and a list of the noncompliances left unresolved. When practical, reporting should include quantitative trend information.
Due: biennially

Compliance and enforcement reports received by the EQC include information from the following:

- DEQ Bureaus:
Air Resources Management, Environmental Management, Hazardous Waste Site Cleanup, Industrial and Energy Minerals, Public Water Supply and Subdivisions, Waste and Underground Tank Management, and Water Protection.
- DNRC programs and boards:
The Forestry Assistance Program, the Board of Oil and Gas Conservation, the Dam Safety Regulatory Program, the Board of Water Well Contractors, the Montana Water Measurement Program, and the Floodplain Management Program.
- Dept. of Agriculture programs:
Pesticide and Ground Water Enforcement Programs.



Decision Brief
for the
Law and Justice Interim Committee

December 2011

**Decisions for the Law and Justice Interim Committee Under
HB 142 - Review of Advisory Councils and Reports**

Prepared by Sheri Scurr, Staff Research Analyst

HB 142

Adopted by the 2011 Legislature, House Bill No. 142 added the following duty to the statutory duties of each interim committee.

"...(d) review statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210;...."

As part of this review, the Law and Justice Interim Committee may also wish to consider whether an advisory council or report that is not in statute, should be.

Assigned agencies

The Law and Justice Interim Committee is assigned by statute to monitor the following agencies and entities administratively attached to these agencies:

- Department of Justice
- Montana Board of Crime Control (DOJ)
- Department of Correction
- Board of Pardons and Parole (DOC)
- Judicial Branch
- Office of State Public Defender

December 16 decision points

At the December 16, 2011, meeting, the LJIC only needs to decide (1) does the committee want to consider changes to current statutes for the listed agencies - yes or no; and (2) are there advisory councils or reports the LJIC would like to see in statute that are not currently in statute.

Decision points for next meetings

Based on the committee's December 16 decisions, staff will schedule time at subsequent meetings for additional discussion and testimony. Then, the LJIC will decide what legislation to request be drafted for introduction in the next session.

Organization of materials

Table 1	lists relevant advisory councils or commissions
Table 2	lists reports required by statute
Attachment A	provides statutes referenced in Table 1 in numerical order
Attachment B	provides statutes referenced in Table 2 in numerical order

Copies of reports

A link to each of the reports listed in Table 2 as been posted to the LJIC's website. On the LJIC's main page, scroll down to Statutory Duties and click on HB 142 duties - advisory councils and reports.

Table 1 - Advisory Councils or Commissions

ADVISORY COUNCIL OR COMMISSION	MCA SECTION	MEMBERSHIP	LEGISLATIVE MEMBER(S)?	NUMBER OF MEETINGS REQUIRED	SHOULD LJIC CONSIDER CHANGES?
Department of Justice					
Fire Prevention and Investigation Advisory Council	2-15-2005	determined by executive order under 2-15-122	no	at least annually	
Domestic Violence Fatality Review Commission	2-15-2017	18 max	yes	as necessary	
Gaming Advisory Council	2-15-2021	9	yes	as necessary	
Criminal Intelligence Information Advisory Council	44-5-501	6	yes	at least annually	
Advisory Council on Concealed Weapons Permit Issues (to advise governor)	45-8-329	interested persons appointed by governor	not specified	not specified	
Department of Corrections					
Department of Corrections Advisory Council	2-15-122 discretionary	dissolved by governor in 2011	n/a	no longer meets	
Victim's Advisory Council	2-15-122 discretionary	dissolved by governor in 2011	n/a	no longer meets	
Judicial Branch					
District Court Council	3-1-1602	9	no	not specified	
Office of State Public Defender					
None	n/a	n/a	n/a	n/a	

QUESTION FOR LJIC: Should any new statutory advisory councils be considered? If so, explain.

Table 2 - Statutorily-Required Reports to the Legislature

AGENCY AND REPORT	STATUTE	SUMMARY	SHOULD THE LJIC CONSIDER CHANGES ?
Department of Justice			
Cigarette standards	50-65-102	Provides the number of residential fire deaths, the amount of property loss, and the activities of the Fire Prevention and Investigations section of the Division of Criminal Investigation	
Racial profiling	44-2-117	Analyzes the Montana law enforcement community's implementation of and compliance with the state law prohibiting racial profiling.	
Domestic violence fatality review commission	2-15-2017	Findings and recommendations are to be made to the legislature in writing no later than the third Tuesday in January of each year the legislature meets in regular session. Reference is made to periodic reports in addition to the biennial report.	
Board of Crime Control			
None	n/a	n/a	
Department of Corrections			
None	n/a	n/a	
Board of Pardons and Parole			
Medical parole	46-23-210	The Department of Corrections and the Board of Pardons and Parole are required in the statute to make a report to the CFHHS interim committee and the LJIC on the "outcome related to" medical parolees, including health care costs and payments related to the care of a person released on parole.	

AGENCY AND REPORT	STATUTE	SUMMARY	SHOULD THE LJIC CONSIDER CHANGES ?
Judicial Branch			
Judicial Branch Information Technology Status Report	3-1-702	The Office of Court Administrator must provide to the LJIC an overview and progress report on recent information technology projects.	
Evaluation of out-of-home placements of juveniles involved with youth probation	41-5-2003	The Office of Court Administrator must do an evaluation (which has been contracted out) on selected out-of-home placements of juveniles to determine whether juvenile delinquency intervention program (JDIP) placements are fulfilling program purposes. This report must go to the DOC, the cost containment review panel, and the District Court Council and the LJIC.	
Report on Annual License Tax on Attorneys	37-61-211	The Office of Court Administrator must present to the LJIC a report on the collection and expenditures of the license tax on attorneys. The report is to be made annually to the LJIC at its first meeting after the end of each fiscal year.	
Office of Public Defender			
Biennial report	47-1-105	Required to be sent to the governor, supreme court, and legislature, and to the LJIC in particular. The statute provides an (a) through (k) list of information to be included in the report.	

QUESTION FOR LJIC: Should any new reports be required by statute? If so, explain.

Appendix A

MCA References for Table 1 - Advisory Councils

2-15-122. Creation of advisory councils. (1) (a) A department head or the governor may create advisory councils.

(b) An agency or an official of the executive branch of state government other than a department head or the governor, including the superintendents of the state's institutions and the presidents of the units of the state's university system, may also create advisory councils but only if federal law or regulation requires that the official or agency create the advisory council as a condition to the receipt of federal funds.

(c) The board of public education, the board of regents of higher education, the state board of education, the attorney general, the state auditor, the secretary of state, and the superintendent of public instruction may create advisory councils, which shall serve at their pleasure, without the approval of the governor. The creating authority shall file a record of each council created by it in the office of the governor and the office of the secretary of state in accordance with subsection (9).

(2) Each advisory council created under this section must be known as the ".... advisory council".

(3) The creating authority shall:

(a) prescribe the composition and advisory functions of each advisory council created;

(b) appoint its members, who shall serve at the pleasure of the creating authority; and

(c) specify a date when the existence of each advisory council ends.

(4) Advisory councils may be created only for the purpose of acting in an advisory capacity, as defined in 2-15-102.

(5) (a) Unless an advisory council member is a full-time salaried officer or employee of this state or of any political subdivision of this state, the member is entitled to be paid in an amount to be determined by the department head, not to exceed \$50 for each day in which the member is actually and necessarily engaged in the performance of council duties and to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503, incurred while in the performance of council duties. The maximum daily pay rate must be adjusted for inflation annually using the formula provided in 15-6-134(2)(b)(ii) and (2)(b)(iii), except that the base income level and appropriate dollar amount must be \$50 a day.

(b) Members who are full-time salaried officers or employees of this state or of any political subdivision of this state are not entitled to be compensated for their service as members but are entitled to be reimbursed for travel expenses, as provided for in 2-18-501 through 2-18-503.

(6) Unless otherwise specified by the creating authority, at its first meeting in each year, an advisory council shall elect a presiding officer and other officers that it considers necessary.

(7) Unless otherwise specified by the creating authority, an advisory council shall meet at least annually and shall also meet on the call of the creating authority or the governor and may meet at other times on the call of the presiding officer or a majority of its members. An advisory council may not meet outside the city of Helena without the express prior authorization of the creating authority.

(8) A majority of the membership of an advisory council constitutes a quorum to do business.

(9) Except as provided in subsection (1)(c), an advisory council may not be created or appointed by a department head or any other official without the approval of the governor. In order for the creation or approval of the creation of an advisory council to be effective, the governor shall file in the governor's office and in the office of the secretary of state a record of the council created showing:

(a) the council's name, in accordance with subsection (2);

(b) the council's composition;

(c) the appointed members, including names and addresses;

(d) the council's purpose; and

(e) the council's term of existence, in accordance with subsection (10).

(10) An advisory council may not be created to remain in existence longer than 2 years after the date of its creation or beyond the period required to receive federal or private funds, whichever occurs

later, unless extended by the appointing authority in the manner set forth in subsection (1). If the existence of an advisory council is extended, the appointing authority shall specify a new date, not more than 2 years later, when the existence of the advisory council ends and file a record of the order in the office of the governor and the office of the secretary of state. The existence of any advisory council may be extended as many times as necessary.

2-15-2005. State fire prevention and investigation section -- advisory council. (1) There is a state fire prevention and investigation section in the department of justice and under the supervision and control of the attorney general.

(2) A person appointed to administer the fire prevention and investigation section shall represent the state of Montana as the state fire marshal and must be a person qualified by experience, training, and high professional competence in matters of fire service and safety.

(3) The attorney general shall create a fire prevention and investigation advisory council in accordance with procedures provided in 2-15-122.

2-15-2017. Domestic violence fatality review commission -- confidentiality of meetings and records -- criminal liability for unauthorized disclosure -- report to legislature. (1) There is a domestic violence fatality review commission in the department of justice.

(2) The commission shall:

- (a) examine the trends and patterns of domestic violence-related fatalities in Montana;
- (b) educate the public, service providers, and policymakers about domestic violence fatalities and strategies for intervention and prevention; and
- (c) recommend policies, practices, and services that may encourage collaboration and reduce fatalities due to domestic violence.

(3) The members of the commission, not to exceed 18, are appointed by the attorney general from among the following disciplines:

- (a) representatives from state departments that are involved in issues of domestic abuse;
- (b) representatives of private organizations that are involved in issues of domestic abuse;
- (c) medical and mental health care providers who are involved in issues of domestic abuse;
- (d) representatives from law enforcement, the judiciary, and the state bar of Montana;
- (e) representatives of Montana Indian tribes;
- (f) other concerned citizens; and
- (g) a member of the legislature who serves on either the house judiciary committee or the senate judiciary committee.

(4) The members shall serve without compensation by the commission but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503, and members who are full-time salaried officers or employees of this state or of any political subdivision of this state are entitled to their regular compensation. The provisions of 2-15-122 do not apply to the commission.

(5) The commission shall review fatalities that are not under investigation and fatalities in cases that have been adjudicated and have received a final judgment.

(6) Upon written request from the commission, a person who possesses information or records that are necessary and relevant to a domestic violence fatality review shall, as soon as practicable, provide the commission with the information and records. A person who provides information or records upon request of the commission is not criminally or civilly liable for providing information or records in compliance with this section.

(7) The meetings and proceedings of the commission are confidential and are exempt from the provisions of Title 2, chapter 3.

(8) The records of the commission are confidential and are exempt from the provisions of Title 2, chapter 6. The records are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal action unless the records are reviewed by a district court judge and ordered to be provided to the person seeking access. The commission shall disclose conclusions and recommendations upon request

but may not disclose information, records, or data that are otherwise confidential. The commission may not use the information, records, or data for purposes other than those designated by subsections (2)(a) and (2)(c).

(9) The commission may require any person appearing before it to sign a confidentiality agreement created by the commission in order to maintain the confidentiality of the proceedings. In addition, the commission may enter into agreements with nonprofit organizations and private agencies to obtain otherwise confidential information.

(10) A member of the commission who knowingly uses information obtained pursuant to subsection (6) for a purpose not authorized in subsection (2) or who discloses information in violation of subsection (8) is subject to a civil penalty of not more than \$500.

(11) The commission shall report its findings and recommendations in writing to the legislature, the attorney general, the governor, and the chief justice of the Montana supreme court no later than the third Tuesday in January of each year in which the legislature meets in regular session. The report must be made available to the public through the office of the attorney general. The commission may issue data or other information periodically, in addition to the biennial report.

2-15-2021. Gaming advisory council -- allocation -- composition -- compensation -- biennial report. (1) There is a gaming advisory council.

(2) The gaming advisory council is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The gaming advisory council consists of nine members. One member must be from the senate, and one member must be from the house of representatives. The senate committee on committees and the speaker of the house of representatives shall appoint the legislative members of the council. The seven remaining members must be appointed by the department, with one representing the public at large, two representing local governments, one being a Native American, and three representing the gaming industry.

(4) Each gaming advisory council member is appointed to a 3-year term of office. A member of the council may be removed for good cause by the appointing body provided for in subsection (3).

(5) The gaming advisory council shall appoint a presiding officer from its members.

(6) Members of the gaming advisory council are entitled to travel, meals, and lodging expenses as provided for in 2-18-501 through 2-18-503. A member who is not a full-time salaried officer or employee of the state or of a political subdivision of the state is also entitled to be paid \$25 for each day during which the member is actually and necessarily engaged in the performance of council duties. Expenses of the council must be paid from licensing fees received by the department.

(7) The gaming advisory council shall, within its authorized budget, hold meetings and incur expenses as it considers necessary to study all aspects of gambling in the state.

(8) (a) The gaming advisory council shall submit a biennial report to the department, at a time designated by the department, with recommendations for amendments to the gambling statutes, the need for additional or modified department rules, the clarification of existing rules, and other recommendations on the operation of the department or any other gambling-related matter.

(b) The biennial report required under subsection (8)(a) must be affixed to the report on gambling in the state that the department submits that year.

(c) The council may submit interim reports to the department as the council considers necessary.

(d) The council shall meet with the department upon request of the department.

(e) The department shall meet with the council upon request of the council.

(9) The department shall give each council member notice and a copy of each proposed change in administrative rules relating to gambling. The notice and copy must be given at the time a notice of proposed rules changes is filed with the secretary of state. The council shall review the proposal, may comment on it, and may attend any hearing on the proposal. The department shall consider any comment by any council member or by the council as a whole prior to adopting the proposed change.

3-1-1602. District court council -- appointment -- composition -- duties -- staggered terms -- staff. (1) There is a district court council. The council must be composed of nine members as follows:

- (a) the chief justice of the supreme court or a designee of the chief justice;
- (b) four district court judges elected by district court judges, one of whom must be from a judicial district that does not contain a first-class city as provided in 7-1-4111; and
- (c) the following ex officio, nonvoting members appointed by the supreme court:
 - (i) one chief juvenile probation officer nominated by the Montana juvenile probation officers association;
 - (ii) one clerk of the district court nominated by the Montana association of clerks of district courts;
 - (iii) one county commissioner nominated by the Montana association of counties; and
 - (iv) one court reporter nominated by the Montana court reporters association.

(2) The chief justice or the chief justice's designee shall serve as the presiding officer of the council and shall appoint a vice presiding officer to act in the absence of the presiding officer.

(3) The district court council shall develop and adopt policies and procedures, subject to review by the supreme court, to administer the state funding of district courts. The policies and procedures must address but not be limited to the following issues related to district courts:

- (a) workload;
- (b) resource allocation among the district courts;
- (c) hiring policies;
- (d) court procedures;
- (e) information technology;
- (f) for court reporters, work schedules, transcript fees, and equipment; and
- (g) other issues regarding the state funding of district courts.

(4) Each district court judge shall retain the inherent power to select and appoint the judge's own necessary assistants and employees and to direct the performance of their duties.

(5) The chief justice of the supreme court shall serve on the council during the term of election or appointment. Other members shall serve staggered 3-year terms.

(6) The court administrator shall provide sufficient support to the council to allow it to carry out its statutory duties.

(7) The council shall provide reports to the legislature and supreme court upon request.

Appendix B

MCA References for Table 2 - Reports

2-15-2017. Domestic violence fatality review commission -- confidentiality of meetings and records -- criminal liability for unauthorized disclosure -- report to legislature. (1) There is a domestic violence fatality review commission in the department of justice.

(2) The commission shall:

- (a) examine the trends and patterns of domestic violence-related fatalities in Montana;
- (b) educate the public, service providers, and policymakers about domestic violence fatalities and strategies for intervention and prevention; and
- (c) recommend policies, practices, and services that may encourage collaboration and reduce fatalities due to domestic violence.

(3) The members of the commission, not to exceed 18, are appointed by the attorney general from among the following disciplines:

- (a) representatives from state departments that are involved in issues of domestic abuse;
- (b) representatives of private organizations that are involved in issues of domestic abuse;
- (c) medical and mental health care providers who are involved in issues of domestic abuse;
- (d) representatives from law enforcement, the judiciary, and the state bar of Montana;
- (e) representatives of Montana Indian tribes;
- (f) other concerned citizens; and
- (g) a member of the legislature who serves on either the house judiciary committee or the senate judiciary committee.

(4) The members shall serve without compensation by the commission but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503, and members who are full-time salaried officers or employees of this state or of any political subdivision of this state are entitled to their regular compensation. The provisions of 2-15-122 do not apply to the commission.

(5) The commission shall review fatalities that are not under investigation and fatalities in cases that have been adjudicated and have received a final judgment.

(6) Upon written request from the commission, a person who possesses information or records that are necessary and relevant to a domestic violence fatality review shall, as soon as practicable, provide the commission with the information and records. A person who provides information or records upon request of the commission is not criminally or civilly liable for providing information or records in compliance with this section.

(7) The meetings and proceedings of the commission are confidential and are exempt from the provisions of Title 2, chapter 3.

(8) The records of the commission are confidential and are exempt from the provisions of Title 2, chapter 6. The records are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal action unless the records are reviewed by a district court judge and ordered to be provided to the person seeking access. The commission shall disclose conclusions and recommendations upon request but may not disclose information, records, or data that are otherwise confidential. The commission may not use the information, records, or data for purposes other than those designated by subsections (2)(a) and (2)(c).

(9) The commission may require any person appearing before it to sign a confidentiality agreement created by the commission in order to maintain the confidentiality of the proceedings. In addition, the commission may enter into agreements with nonprofit organizations and private agencies to obtain otherwise confidential information.

(10) A member of the commission who knowingly uses information obtained pursuant to subsection (6) for a purpose not authorized in subsection (2) or who discloses information in violation of subsection (8) is subject to a civil penalty of not more than \$500.

(11) The commission shall report its findings and recommendations in writing to the legislature, the attorney general, the governor, and the chief justice of the Montana supreme court no later than the third Tuesday in January of each year in which the legislature meets in regular session. The report must be made available to the public through the office of the attorney general. The commission may issue data or other information periodically, in addition to the biennial report.

3-1-702. Duties. The court administrator is the administrative officer of the court. Under the direction of the supreme court, the court administrator shall:

(1) prepare and present judicial budget requests to the legislature, including the costs of the state-funded district court program;

(2) collect, compile, and report statistical and other data relating to the business transacted by the courts and provide the information to the legislature on request;

(3) **report annually to the law and justice interim committee and at the beginning of each regular legislative session report to the house appropriations subcommittee that considers general government on the status of development and procurement of information technology within the judicial branch, including any changes in the judicial branch information technology strategic plan and any problems encountered in deploying appropriate information technology within the judicial branch.** The court administrator shall, to the extent possible, provide that current and future applications are coordinated and compatible with the standards and goals of the executive branch as expressed in the state strategic information technology plan provided for in 2-17-521.

(4) recommend to the supreme court improvements in the judiciary;

(5) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;

(6) administer state funding for district courts, as provided in chapter 5, part 9;

(7) administer the judicial branch personnel plan; and

(8) perform other duties that the supreme court may assign.

37-61-211. Annual license tax -- municipal tax prohibited. (1) Every attorney or counselor at law admitted by the supreme court of the state to practice within the state is required to pay a license tax of \$25 a year. The tax is payable to and collected by the clerk of the supreme court on or before April 1 of each year.

(2) Upon the payment of the tax, the clerk shall issue and deliver a certificate to the person paying the tax, certifying to the payment of the license tax and stating the period covered by the payment.

(3) (a) The tax collections must be allocated to the supreme court for operations of the following commissions or other entities:

(i) commission on code of judicial conduct;

(ii) commission on courts of limited jurisdiction;

(iii) commission on practice;

(iv) commission on technology;

(v) district court council;

(vi) judicial nomination commission;

(vii) judicial standards commission;

(viii) sentence review division; and

(ix) uniform district court rules commission.

(b) The court administrator shall, as provided in 3-1-702(2), report annually on expenditures authorized in subsection (3)(a) of this section at the first meeting of the law and justice interim committee after the end of each fiscal year.

(4) A license tax may not be imposed upon attorneys by a municipality or any other subdivision of the state.

41-5-2003. Establishment of program -- department duties -- office of court administrator duties.

(1) There is a juvenile delinquency intervention program. Each judicial district shall participate in the program.

(2) The department and the judicial district shall monitor the judicial district's annual allocation provided for in 41-5-130 to ensure that the judicial district does not exceed its allocation.

(3) The department shall provide technical assistance to each judicial district for the monitoring of its annual allocation.

(4) The office of court administrator shall assist each youth court in developing placement alternatives and community intervention and prevention programs and services.

(5) (a) Except as provided in subsection (6), each fiscal year, the office of court administrator shall select out-of-home placements, programs, and services to be evaluated for their effectiveness in achieving the purposes provided in 41-5-2002. The cost containment review panel shall provide recommendations to the office on out-of-home placements, programs, and services to be evaluated and on the scope of the evaluation. Before conducting any evaluation, the office shall obtain approval from the district court council established in 3-1-1602.

(b) ***The office shall report the results of any evaluation conducted under subsection (5)(a) each year to the department, cost containment review panel, district court council, and law and justice interim committee.***

(6) On or before June 30 in fiscal years 2011 and 2012, the office of court administrator shall transfer \$25,000 in each fiscal year from the youth court intervention and prevention account to the general fund in lieu of conducting the evaluation required by subsection (5) for fiscal years 2011 and 2012.

44-2-117. Racial profiling prohibited -- definitions -- policies -- complaints -- training. (1) A peace officer may not engage in racial profiling.

(2) The race or ethnicity of an individual may not be the sole factor in:

(a) determining the existence of probable cause to take into custody or arrest an individual; or

(b) constituting a particularized suspicion that an offense has been or is being committed in order to justify the detention of an individual or the investigatory stop of a motor vehicle.

(3) Each law enforcement agency shall adopt a policy on race-based traffic stops that:

(a) prohibits the practice of routinely stopping members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law;

(b) provides for periodic reviews by the law enforcement agency and collection of data that determine whether any peace officers of the law enforcement agency have a pattern of stopping members of minority groups for violations of vehicle laws in a number disproportionate to the population of minority groups residing or traveling within the jurisdiction of the law enforcement agency;

(c) if the review under subsection (3)(b) reveals a pattern, requires an investigation to determine whether any peace officers of the law enforcement agency routinely stop members of minority groups for violations of vehicle laws as a pretext for investigating other violations of criminal law.

(4) (a) Each municipal, county, consolidated local government, and state law enforcement agency shall adopt a detailed written policy that clearly defines the elements constituting racial profiling. Each agency's policy must prohibit racial profiling, require that all stops are lawful under 46-5-401, and require that all stops are documented according to subsection (3) of this section.

(b) The policy must include a procedure that the law enforcement agency will use to address written complaints concerning racial profiling. The complaint procedure must require that:

(i) all written complaints concerning racial profiling be promptly reviewed;

(ii) a person is designated who shall review all written complaints of racial profiling;

(iii) the designated person shall, within 10 days of receipt of a written complaint, acknowledge receipt of the complaint in writing; and

(iv) after a review is completed, the designated person shall, in writing, inform the person who submitted the written complaint and the head of the agency of the results of the review.

(c) The policy must be available for public inspection during normal business hours.

(5) Each municipal, county, consolidated local government, and state law enforcement agency shall require for all of its peace officers cultural awareness training and training in racial profiling. The training program must be certified by the Montana public safety officer standards and training council established in 2-15-2029.

(6) Each law enforcement agency may provide for appropriate counseling and training of any peace officer found to have engaged in race-based traffic stops within 90 days of the review. The course or courses of instruction and the guidelines must stress understanding and respect for racial and cultural differences and development of effective, noncombative methods of carrying out law enforcement duties in a racially and culturally diverse environment.

(7) If an investigation of a complaint of racial profiling reveals that a peace officer was in direct violation of the law enforcement agency's written policy prohibiting racial profiling, the law enforcement agency shall take appropriate action against the peace officer consistent with applicable laws, rules, ordinances, or policies.

(8) For the purposes of this section, the following definitions apply:

(a) "Minority group" means individuals of African American, Hispanic, Native American, Asian, or Middle Eastern descent.

(b) "Peace officer" has the meaning provided in 46-1-202.

(c) "Racial profiling" means the detention, official restraint, or other disparate treatment of an individual solely on the basis of the racial or ethnic status of the individual.

(9) ***The department of justice shall make periodic reports to the law and justice interim committee regarding the degree of compliance by municipal, county, consolidated local government, and state law enforcement agencies with the requirements of this section.***

(10) Each law enforcement agency in this state may use federal funds from community-oriented policing services grants or any other federal sources to equip each vehicle used for traffic stops with a video camera and voice-activated microphone.

46-23-210. Medical parole. (1) The board may release on medical parole by appropriate order any person confined in a state prison or adult community corrections facility or any person sentenced to a state prison and confined in a prerelease center who:

(a) is not under sentence of death or sentence of life imprisonment without possibility of release;

(b) is unlikely to pose a detriment to the person, victim, or community; and

(c) (i) has a medical condition requiring extensive medical attention; or

(ii) has been determined by a physician to have a medical condition that will likely cause death within 6 months or less.

(2) A person designated ineligible for parole under 46-18-202(2) must have approval of the sentencing judge before being eligible for medical parole. If the court does not respond within 30 days to a written request from the department, the person is considered to be approved by the court for medical parole. The provisions of this subsection do not apply to a person who is ineligible for medical parole under subsection (1)(a).

(3) Medical parole may be requested by the board, the department, an incarcerated person, or an incarcerated person's spouse, parent, child, grandparent, or sibling by submitting a completed application to the administrator of the correctional institution in which the person is incarcerated. The application must include a detailed description of the person's proposed placement and medical care and an explanation of how the person's medical care will be financed if the person is released on medical parole. The application must include a report of an examination and written diagnosis by a physician licensed under Title 37 to practice medicine. The physician's report must include:

(a) a description of the medical attention required to treat the person's medical condition;

(b) a description of the person's medical condition, any diagnosis, and any physical incapacity; and

(c) a prognosis addressing the likelihood of the person's recovery from the medical condition or diagnosis and the extent of any potential recovery. The prognosis may include whether the person has a

medical condition causing the likelihood of death within 6 months.

(4) The application must be reviewed and accepted by the department before the board may consider granting a medical parole.

(5) Upon receiving the application from the department, a hearing panel shall hold a hearing. Any interested person or the interested person's representative may submit written or oral statements, including written or oral statements from a victim. A victim's statement may be kept confidential.

(6) The hearing panel shall require as a condition of medical parole that the person agree to placement in an environment approved by the department during the parole period, including but not limited to a hospital, nursing home, hospice facility, or prerelease center, to intensive supervision, to some other appropriate community corrections facility or program, or to a family home. The hearing panel may require as a condition of parole that the person agree to periodic examinations and diagnoses at the person's expense. Reports of each examination and diagnosis must be submitted to the board and department by the examining physician. If either the board or department determines that the person's medical condition has improved to the extent that the person no longer requires extensive medical attention or is likely to pose a detriment to the person, victim, or community, a hearing panel may revoke the parole and return the person to the custody of the department.

(7) A grant or denial of medical parole does not affect the person's eligibility for nonmedical parole.

(8) Sections 46-23-203, 46-23-205 through 46-23-207, and 46-23-215 through 46-23-218 apply to medical parole.

(9) ***Before July 1 of each even-numbered year, the board and the department shall report to the children, families, health, and human services interim committee and the law and justice interim committee regarding the outcome related to any person released on medical parole since the last report, including health care costs and payments related to the care of the person released on medical parole.***

47-1-105. Commission -- duties -- report -- rules. The commission shall supervise and direct the system. In addition to other duties assigned pursuant to this chapter, the commission shall:

(1) (a) establish the qualifications, duties, and compensation of the chief public defender, as provided in 47-1-201, appoint a chief public defender after considering qualified applicants, and regularly evaluate the performance of the chief public defender; and

(b) establish the qualifications, duties, and compensation of the chief appellate defender, as provided in 47-1-205, appoint a chief appellate defender after considering qualified applicants, and regularly evaluate the performance of the chief appellate defender;

(2) establish statewide standards for the qualification and training of attorneys providing public defender services to ensure that services are provided by competent counsel and in a manner that is fair and consistent throughout the state. The standards must take into consideration:

(a) the level of education and experience that is necessary to competently handle certain cases and case types, such as criminal, juvenile, abuse and neglect, civil commitment, capital, and other case types, including cases on appeal, in order to provide effective assistance of counsel;

(b) acceptable caseloads and workload monitoring protocols to ensure that public defender workloads are manageable;

(c) access to and use of necessary professional services, such as paralegal, investigator, and other services that may be required to support a public defender in a case;

(d) continuing education requirements for public defenders and support staff;

(e) practice standards;

(f) performance criteria; and

(g) performance evaluation protocols.

(3) review and approve the strategic plan and budget proposals submitted by the chief public defender, the administrative director, and the chief appellate defender;

(4) review and approve any proposal to create permanent staff positions;

(5) establish and oversee a conflicts office with a conflicts manager responsible for conflicts of interest and for ensuring that cases involving a conflict of interest are handled according to professional ethical standards;

(6) establish policies and procedures for handling excess caseloads;

(7) establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded, and reported to support strategic planning efforts for the system;

(8) adopt administrative rules pursuant to the Montana Administrative Procedure Act to implement the provisions of this chapter; and

(9) submit a biennial report to the governor, the supreme court, and the legislature, as provided in 5-11-210. Each interim, the commission shall also specifically report to the law and justice interim committee established pursuant to 5-5-202 and 5-5-226. The report must cover the preceding biennium and include:

(a) all policies or procedures in effect for the operation and administration of the statewide public defender system;

(b) all standards established or being considered by the commission, the chief public defender, or the chief appellate defender;

(c) the number of deputy public defenders and the region supervised by each;

(d) the number of public defenders employed or contracted with in the system, identified by region;

(e) the number of attorney and nonattorney staff supervised by each deputy public defender;

(f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;

(g) the total number of persons represented by the office and the office of appellate defender, identified by region, court, and case type;

(h) the annual caseload and workload of each public defender, except for the chief public defender, and of the office of appellate defender, identified by region, court, and case type;

(i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;

(j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and

(k) detailed expenditure data by court and case type.

50-65-102. Cigarette test method and performance standard -- conditions on sale -- alternative test method and performance standard. (1) Except as provided in subsection (8), cigarettes may not be sold or offered for sale in this state or sold or offered for sale to persons located in this state unless:

(a) the cigarettes have been tested in accordance with the test method provided in this section;

(b) the cigarettes meet the performance standard specified in this section;

(c) the manufacturer has filed a written certification with the state fire marshal in accordance with 50-65-103; and

(d) the cigarettes have been marked in accordance with 50-65-104.

(2) (a) Testing of cigarettes must be conducted in accordance with the American society for testing and materials standard E2187-04, the standard test method for measuring the ignition strength of cigarettes.

(b) Testing must be conducted on 10 layers of filter paper.

(c) No more than 25% of the cigarettes tested in a test trial in accordance with this section may exhibit full-length burns. Forty replicate tests compose a complete test trial for each cigarette used.

(d) The performance standards required in subsection (2)(c) may be applied only to a complete test trial.

(e) Written certifications must be based upon testing conducted by a laboratory that has been

accredited pursuant to standard ISO/IEC 17025 of the international organization for standardization or another comparable accreditation standard required by the state fire marshal.

(f) Laboratories conducting testing in accordance with this section shall implement a quality control and quality assurance program that includes a procedure for determining the repeatability of the testing results. The repeatability value may not be greater than 0.19.

(g) This section does not require additional testing if cigarettes are tested for any other purpose in a manner that is consistent with this chapter.

(h) Testing performed or sponsored by the state fire marshal to determine a cigarette's compliance with the required performance standard must be conducted in accordance with this section.

(3) Each cigarette listed in a certification submitted pursuant to 50-65-103 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard provided in this section must have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band must be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least two bands fully located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or, for nonfiltered cigarettes, 10 millimeters from the labeled end of the tobacco column.

(4) (a) A manufacturer of a cigarette that the state fire marshal determines cannot be tested in accordance with the test method prescribed in subsection (2)(a) shall propose a test method and performance standard for the cigarette to the state fire marshal.

(b) Upon approval of the proposed test method and a determination by the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection (2)(c), the manufacturer may employ that test method and performance standard to certify a cigarette pursuant to 50-65-103.

(c) If the state fire marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those contained in 50-65-102 and the state fire marshal determines that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under provisions comparable to this section, the state fire marshal shall authorize the manufacturer to employ the alternative test method and performance standard to certify the cigarette for sale in this state unless the state fire marshal demonstrates a reasonable basis why the alternative test is unacceptable. All other applicable provisions of this section apply to the manufacturer even if the alternative test method and performance standard are authorized.

(5) Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of 3 years and shall make copies of these reports available to the state fire marshal and the attorney general upon written request. A manufacturer who fails to make copies of the reports available within 60 days of receipt of a written request is subject to a civil penalty not to exceed \$10,000 for each day after the 60th day that the manufacturer does not make the copies available.

(6) The state fire marshal may adopt a subsequent American society for testing and materials standard test method for measuring the ignition strength of cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns that the same cigarette would exhibit when tested in accordance with the standard provided in subsection (2)(a) and the performance standard in subsection (2)(c).

(7) The department of justice shall review the effectiveness of this section and report every 4 years to the legislature the state fire marshal's findings and, if appropriate, submit recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations may be submitted no later than January 1 of each 4-year period.

(8) The requirements of subsection (1) do not prohibit a wholesale dealer or retail dealer from selling the wholesale dealer's or retail dealer's existing inventory of cigarettes on or after May 1, 2008, if the wholesale dealer or retail dealer can establish that state tax stamps were affixed to the cigarettes prior to May 1, 2008, and if the wholesale dealer or retail dealer establishes that the inventory was purchased prior to May 1, 2008, in comparable quantity to the inventory purchased during the same period of the prior year.

(9) Because this chapter is based on New York law, it is the intent of the legislature that this chapter be implemented in accordance with the implementation and substance of the New York executive law section 156-c, fire safety standards for cigarettes.



HB 142 - REVIEW OF ADVISORY COUNCILS & REPORTS

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Part 1 - Montana Department of Justice

Purpose & Organization of Brief

This paper is the first installment of the additional information on advisory councils and agency reports requested by the Law and Justice Interim Committee at its December 15-16, 2011, meeting. A December 2011 Decision Brief presented a complete at-a-glance chart and copies of the statutes for the statutory advisory councils and agency reports that the LJIC is required to review under HB 142.

Section A of this brief provides additional information and recommendations on the Department of Justice's statutory advisory councils, which are the:

- Fire Prevention and Investigation Advisory Council;
- Domestic Violence Fatality Review Commission;
- Gaming Advisory Council; and
- Criminal Intelligence Information Advisory Council.

Section B of this brief provides additional information and recommendations on the statutorily required reports by the Department of Justice, which are the:

- Cigarette Standards Report;
- Racial Profiling Report; and
- Domestic Violence Fatality Review Commission Report.

The **Executive Summary** lists only the staff recommendations.

EXECUTIVE SUMMARY OF STAFF RECOMMENDATIONS

Section A - Advisory Councils

Recommendation #1 - Fire Prevention & Investigation Advisory Council

The Fire Prevention and Investigation Advisory Council created in subsection (3) of section 2-15-2005, MCA, should be stricken from statute.

Recommendation #2 - Domestic Violence Fatality Review Commission

Section 2-15-2017, MCA, establishing the domestic violence fatality review commission should be amended. Subsection (5) should state that the commission shall review "closed domestic homicide cases selected by the attorney general to provide the commission with the best opportunity to fulfill its duties under this section."

Recommendation #3 - Gaming Advisory Council

Unless primary stakeholders bring up additional issues or considerations not discussed in this brief, section 2-15-2021, MCA, need not be amended. However, the committee may wish to amend the statute to provide that the maximum compensation per day of council business be the same as provided under section 2-15-122, MCA, for other advisory councils.

Recommendation #4 - Criminal Intelligence Information Advisory Council

The statutes concerning the criminal justice intelligence information advisory council should be revised or stricken. If the advisory council is stricken, the attorney general may appoint an advisory council pursuant section 2-15-122, MCA. However, if the advisory council would need to have duties regarding multiple agencies or duties or membership defined by the legislature rather than the attorney general, then the advisory council statutes should be revised accordingly.

Section B - Statutory Reports

Recommendation #5: Racial Profiling Report

The statute requiring periodic reports to the Law and Justice Interim Committee about compliance with the law prohibiting racial profiling serves a useful purpose and should not be eliminated. The committee could coordinate with the State-Tribal Relations Interim Committee to recommend bill amending the reporting requiring to provide that the report also be made to the State-Tribal Relations Committee. Also, there is no standardized format for this report. It may be helpful if the Department of Justice could work toward a standardized format that ensures each aspect of the racial profiling law is analyzed in each report, for example: (1) policies; (2) training; (3) complaint procedures; (4) corrective actions and investigations of complaints; and (5) traffic stop data collection and reporting.

Recommendation # 6 - Cigarette Standards Report

The reporting requirement in section 50-65-102(7), MCA, for a report on how a particular section of law on cigarette standards is working should be stricken. However, it would probably be useful for the State Fire Marshal's Report to include annual data on the causes of the fires investigated, which would include a category for cigarette-caused fires. The Fire Marshal's Report is not required by statute. Thus, the committee could also consider making such a report mandatory, or part of a comprehensive annual report by the Attorney General that would cover all programs under the Department of Justice.

Recommendation #7: Domestic Violence Fatality Review Commission Report

Subsection (11) of section 2-15-2017, MCA, which requires the report by the Domestic Violence Fatality Review Commission to the legislature should be amended to specify that the report must be made to the Law and Justice Interim Committee each interim and made available to the full legislature prior to each regular session. The language specifying that the report must be made "no later than the third Tuesday in January of each year in which the legislature meets in regular session" is unnecessarily specific and should be stricken.

FIRE PREVENTION & INVESTIGATION ADVISORY COUNCIL

Statutory authority:	Section 2-15-2005, MCA, establishes the state fire prevention and investigation section and specifies that the Attorney General <i>shall</i> create the advisory council pursuant to section 2-15-122, MCA.
Initial enactment:	Sec. 1, Ch 148, L. 1911
Membership:	Not defined in statute, determined pursuant to section 2-15-122, MCA.
Duties:	Not specified in statute, determined pursuant to section 2-15-122, MCA.
Meetings:	Not specified in statute, determined pursuant to section 2-15-122, MCA, which states that unless otherwise specified by the creating authority, the council must meet at least annually.
Biennial cost:	Under section 2-15-122, MCA, a member would be entitled to \$50 a day (unless they are a salaried public employee) and travel, meals, and lodging expenses for council business.
Latest activities:	According to the department, the council has not met in some time and all council member terms have expired. The department reports that historically, the council provided recommendations to the attorney general about the adoption of fire codes and to provide guidance on the disbursement of federal fire-related grant money. However, the department has not received federal grant money in many years and the fire service organizations already provide input to fire codes through their professional organizations.
Analysis:	The current statute <i>requires</i> that the advisory council exist, thus does not leave it's creation to the discretion of the attorney general. There are no other statutes and there are no administrative rules that relate to the advisory council. The purpose of HB 142 was to clean up statutes that were no longer serving a purpose. Staff is not aware of any

Section A - Department of Justice Statutory Advisory Councils

significant legislative interest in mandating this advisory council. Striking subsection (3) of 2-15-2005, MCA, will allow the attorney general to decide whether or not to continue the advisory council under the discretionary language of section 2-15-122, MCA.

Recommendation #1:

The Fire Prevention and Investigation Advisory Council created in subsection (3) of section 2-15-2005, MCA, should be stricken from statute.

DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION

Statutory authority:	Section 2-15-2017, MCA, establishes the commission, specifies its duties, membership, and compensation. The statute also specifies the confidentiality of meetings and records, but requires disclosure of conclusions and recommendations, including a biennial report to the legislature, which is due no later than the third Tuesday in January during a regular session.
Initial enactment:	Sec. 1, Ch. 81, L. 2003
Membership:	The statute specifies there shall be no more than 18 members appointed by the attorney general and representing relevant state agencies, private organizations, medical and mental health care providers, law enforcement, the judiciary, state bar, the tribes, concerned citizens, and a member of the legislature who serves on either the house or senate judiciary committee.
Duties:	The commission's statutory duties are to examine trends and patterns, educate the public, service providers and policymakers, recommend policies, practices and services to encourage collaboration and reduce domestic violence fatalities. The department's website states the commission's reviews are to identify gaps in Montana's system for protecting battered women and to better coordinate multi-agency efforts to protect those most at risk of domestic homicide.
Meetings:	The statute implies that the commission will meet as necessary to review fatalities not under investigation and fatalities in cases which involved adjudication and a final judgement. Meetings and proceedings are exempt from open meeting laws. The department's website states the commission meets twice a year and reviews closed domestic homicide cases.

Section A - Department of Justice Statutory Advisory Councils

Biennial cost:	Members serve without compensation, but are entitled to travel expenses. If the member is a full-time public employee, the member is entitled to receive regular compensation.
Latest activities:	See January 2011 Report to the Legislature.
Analysis:	The details of the statute enacting the commission indicate a significant interest by the legislature in the membership, duties, and findings of the commission. The latest report by the commission also seems to provide good information. For example, the report highlighted 8 trends and offered 11 detailed recommendations. Based on a simple review of the statute, the department's website information, and the biennial report, the commission seems to be very active and productive. Nevertheless, although the statute mandates that the commission "shall review fatalities that are not under investigation and fatalities in cases that have been adjudicated and have received a final judgement", in practice, the commission is reviewing only a select group of intimate partner homicides due to the commission's limited time and resources.

Recommendation #2:

Section 2-15-2017, MCA, establishing the domestic violence fatality review commission should be amended. Subsection (5) should state that the commission shall review "closed domestic homicide cases selected by the attorney general to provide the commission with the best opportunity to fulfill its duties under this section."

GAMING ADVISORY COUNCIL

Statutory authority:	Section 2-15-2021, MCA, establishes the council and allocates it to the Department of Justice for administrative purposes only. The statute further establishes membership, duties, compensation of members, and reporting requirements. The statute also establishes duties for the department with respect to the council.
Initial enactment:	Sec. 64, Ch. 642, L. 1989
Membership:	The statute sets membership at nine and specifies one member from the senate, one from the house, and the seven remaining members to be appointed by the department as follows: one representing the public at large, two representing local governments, one being a Native American, and three representing the gaming industry. Members are appointed to a 3-year term.
Duties:	The council is directed to "study all aspects of gambling in the state", "submit a biennial report to the department" with "recommendations for amendments to the gambling statutes, the need for additional or modified department rules, the clarification of existing rules, and other recommendations on the operation of the department or any other gambling-related matter". The council may submit interim reports it considers necessary and is required to meet with the department upon request. The department is directed to meet with the council upon the council's request and to provide each council member notice and a copy of each proposed change in administrative rules relating to gambling. The council must review the rules and may comment on the proposed rule and may attend any hearing on the proposed rule. The department is required to consider the comments of individual members or of the council as a whole before adopting the proposed change.

Section A - Department of Justice Statutory Advisory Councils

Meetings:	The statute provides that the council shall hold meetings as it considers necessary. In practice, the council met twice in 2010 and twice in 2011. Detailed summary minutes of each meeting are posted to the department's website.
Biennial cost:	Members are entitled to meals, travel, and lodging expenses, and if they are not salaried public employees, to \$25 a day. Expenses are to be paid from the licensing fees paid by the department. The statute authorizes the council to incur expenses for meetings as it considers necessary to study all aspects of gaming in the state. In practice, the council met twice in 2010 and twice in 2011.
Latest activities:	The council's last meeting was September 16, 2011 and its next meeting is scheduled for March 2, 2012.
Analysis:	Based on the nature of the duties specified in the statute, the regular meetings and detailed minutes of each meeting, and the significant impact of gaming regulations in the state, it seems that the council performs an important role in developing gaming laws and regulations. Furthermore, the advisory council's review of administrative rules is unique in that the statute requires the department to consider the council's comments. In order to fulfill this role, the advisory council should remain an independent body created by statute. The maximum daily compensation for members of advisory councils created under section 2-15-122, MCA, who are not a full-time salaried public employee is \$50 a day, adjusted for inflation. The Gaming Advisory Council members are receiving less compensation (\$25 a day) than would a non-statutory advisory council, so the legislature should consider increasing that amount to the standard level.

Recommendation #3:

Unless primary stakeholders bring up additional issues or considerations not discussed in this brief, section 2-15-2021, MCA, need not be amended. However, the committee may wish to amend the statute to provide that the maximum compensation per day of council business be the same as provided under section 2-15-122, MCA, for other advisory councils.

CRIMINAL INTELLIGENCE INFORMATION ADVISORY COUNCIL

Statutory authority: Sections 44-5-501, 44-5-506, and 44-5-511, MCA.

Initial enactment: Chapter 145, Laws of 1985.

Membership: Subsection (2) of 44-5-501, MCA states that membership must be as follows: "... one representative from the Montana chiefs of police association, one representative from the Montana sheriffs and peace officers association, one representative from the Montana county attorneys association, one member of the department of justice, a member of the judiciary committee of either the house of representatives or the senate, and a citizen at large."

Duties: Section 44-5-504, MCA, states: "The advisory council shall: (1) recommend general policies for the operation of the section; (2) recommend the approval or denial of an application from an eligible agency for participation in the section; (3) recommend the suspension of a participant agency for due cause; and (4) recommend, if appropriate, the reinstatement of a suspended participant agency."

Section 44-5-506, MCA, states: "(1) Agencies eligible for participation in the section are: (a) municipal police departments; (b) sheriff's offices; and (c) sections of the department of justice engaged in criminal investigation. (2) A participant in the section must be an eligible agency that has been authorized by the attorney general to receive criminal intelligence information from the section under this part."

Section 44-5-515, MCA, states: The advisory council shall review and evaluate the implementation of the section's safeguards of individual privacy rights adopted pursuant to 44-5-504 and periodically inspect all records relating to dissemination of information to determine whether they are in compliance with this part and with the standards and

Section A - Department of Justice Statutory Advisory Councils

procedures adopted by the section. The advisory council shall make an annual report to the attorney general.

Meetings:	The number of meetings is not specified in statute, but the Department of Justice reports that the council meets quarterly.
Biennial cost:	Under section 2-15-122, MCA, which is the general statute authorizing the governor and department heads to create advisory councils, members are entitled to meals, travel, and lodging expenses, and if they are not salaried public employees, to \$50 a day.
Latest activities:	The department reports that the advisory council reviews the policies of the Montana All Threat Intelligence Center (MATIC) as they are proposed. The Attorney General has already established and adopted, with the advisory council's input, a privacy policy for the MATIC.
Analysis:	<p>According to the department, the council was formed with the primary mission of safeguarding privacy rights. Legislative history shows that the advisory council statute was enacted in conjunction with statutes authorizing the attorney general to establish a Criminal Intelligence Information Section within the Department of Justice. The enacting legislation stated that <u>if</u> the attorney general established such as section, then the attorney general <u>must</u> establish the advisory council. The membership criteria set out in statutes suggests concern by outside associations and the legislature that there be some sort of outside oversight during the establishment of the section. The duties specified for the advisory council under section 44-5-506, MCA, relate only to the denial, acceptance, suspension, or reinstatement of a "participant agency". However, a participant agency is already defined in statute, under section 44-5-511, MCA.</p> <p>This statutory language has not been updated since 1985 and it seems out-of-step with actual practice. For example, the DOJ website states that the "MATIC is a multi-agency entity that involves the Division of Criminal Investigation,</p>

Section B - Department of Justice Statutory Reports

Department of Corrections, Department of Military Affairs, and the Rocky Mountain Information Network. " It also states that the "MATIC has been designated by the governor's office as the state's fusion center." The department website further states that there is an "advisory board" created by the attorney general in 2003 that oversees the MATIC and "adopts, implements, and complies with policy regarding safeguarding an individual's right to privacy."

Thus, there are three basic flaws in the current statutory language compared to practice. First, the participating agencies in MATIC appear to include more than the "participant agencies" listed in section 44-5-506, MCA. Second, the provisions of section 44-5-511, MCA, which relate to the duties of the advisory council to determine who is a participant agency is not consistent with the language in section 44-5-504, MCA, which suggests the council is also supposed to advise the attorney general on section standards and procedures. Third, an advisory council is, by definition, advisory and so should not be acting as a governing board or adopting or implementing policies.

Recommendation #4:

The statutes concerning the criminal justice intelligence information advisory council language should be revised or stricken. If the advisory council is stricken, the attorney general may appoint an advisory council pursuant section 2-15-122, MCA. However, if the advisory council would need to have duties regarding multiple agencies and duties or membership defined by the legislature rather than the attorney general, then the advisory council statutes should be revised accordingly.

RACIAL PROFILING REPORT

Statutory authority:	Section 44-2-117(9), MCA.
Initial enactment:	Ch. 302, L. 2003. (HB 293, Rep. Frank Smith)
Amendments:	Ch. 243, L. 2005 added reporting. (SB 282, Sen. Frank Smith) Ch. 287, L. 2007 added data collection. (HB 781, Rep. Jonathan Windy Boy)
Background:	Section 44-2-117, MCA, prohibits racial profiling and specifies that race or ethnicity may not be the sole factor in determining probable cause to arrest someone or in constituting a particularized suspicion to justify the detention or an investigatory stop of a motor vehicle. The subsection on reporting was not added until 2005. The language requiring written policies and data collection by law enforcement agencies was added in 2007.
Statutory language:	Subsection (9), requiring the report to the legislature states: "The department of justice shall make periodic reports to the law and justice interim committee regarding the degree of compliance by municipal, county, consolidated local government, and state law enforcement agencies with the requirements of this section."
Last report:	Provided by the Department of Justice Highway Patrol for this meeting of the LJIC, February 2012. A report covering challenges local law enforcement agencies have in collecting data was provided to the LJIC last interim, September 2010. (See attached.)
Cost:	Because the report is a printed handout provided to the LJIC, and not a formal publication produced through state printing services, the cost of producing the report is assumed to be negligible.
Analysis:	The last two reports have highlighted continuing efforts by law enforcement agencies, particularly the Highway Patrol, to comply with all the requirements of section 44-2-114,

Section B - Department of Justice Statutory Reports

MCA. The reports note positive efforts in recruitment and training. The reports have also highlighted on-going challenges, particularly with data collection at the local level due to a lack of a uniform methodology for capturing and reporting data. Each year, there are numerous legislative and public requests for copies of the racial profiling report, indicating there is significant legislative concern and public interest in tracking this issue.

Recommendation #5:

The statute requiring periodic reports to the Law and Justice Interim Committee about compliance with the law prohibiting racial profiling serves a useful purpose and should not be eliminated. The committee could coordinate with the State-Tribal Relations Interim Committee to recommend bill amending the reporting requiring to provide that the report also be made to the State-Tribal Relations Committee. Also, there is no standardized format for this report. It may be helpful if the Department of Justice could work toward a standardized format that ensures each aspect of the racial profiling law is analyzed in each report, for example: (1) policies; (2) training; (3) complaint procedures; (4) corrective actions and investigations of complaints; and (5) traffic stop data collection and reporting.

CIGARETTE STANDARDS REPORT

Statutory authority:	Section 50-65-102(7), MCA.
Initial enactment:	Chapter 318, Laws of 2007. (HB 461, Rep. Bob Ebinger)
Background:	Section 50-65-102, MCA, concerns cigarette test methods, performance standards, conditions of sale, and alternative test methods and performance standards. This section was enacted as part of a 13-section bill establishing requirements about how cigarette paper burns on cigarettes sold in the state. The bill was offered as a fire safety bill modeled on law enacted in New York concerning reduced ignition standards for cigarettes. Six other states were identified during the session hearings as having similar laws with 16 additional states considering similar legislation. Opponents argued that manufactures could not meet 50 different state criteria and that a federal law with technically achievable standards was preferable.
Statutory language:	Subsection (7), requiring the report to the legislature states: "The department of justice shall review the effectiveness of this section and report every 4 years to the legislature the state fire marshal's findings and, if appropriate, submit recommendations for legislation to improve the effectiveness of this section. The report and legislative recommendations may be submitted no later than January 1 of each 4-year period."
Last report:	August 2010 covering data from 2007, 2008, and 2009. Attached.
Cost:	Because the report is a one-page PDF document linked on a web page and not a part of a publication produced through state printing services, the cost of producing the report is not necessary for the department to report and it may be assumed the cost is negligible.

Section B - Department of Justice Statutory Reports

Analysis: The initial hearing on HB 461 did not involve testimony or questions on the required report to the legislature. Because the bill was drafted based on New York law, it may be assumed that the language requiring a report to the legislature every four years is also based on New York law. The Department of Justice website does have a link to the one-page PDF document constituting the report. However, there is no indication that this report is something that the legislature as a whole has a significant interest in receiving directly. It should be noted that the State Fire Marshal does produce a report entitled "State Fire Marshal's Report". This report provides annual data on fires investigated by region, the number of fire deaths statewide, the number of fire inspections by type of inspection statewide, and an overview of the National Fire Incident Reporting System. However, the report's data does not break out cigarette-caused fires or related deaths.

Recommendation #5:

In accordance with the intent of HB 142 to clean up unnecessary, miscellaneous, or redundant reporting requirements and given the lack of a clearly articulated interest by the legislature in receiving this very specialized report, the reporting requirement in section 50-65-102(7), MCA, should be stricken. However, it would probably be useful for the State Fire Marshal's Report to include annual data on the causes of the fires investigated. The Fire Marshal's Report is not required by statute. Thus, the committee could also consider making such a report mandatory, or part of a comprehensive annual report by the Attorney General that would cover all programs under the Department of Justice.

DOMESTIC VIOLENCE FATALITY REVIEW COMMISSION

Statutory authority:	Section 2-15-2017(11), MCA.
Initial enactment:	Ch. 81, L. 2003. (HB 116, Rep. Christine Kaufman, by Request of the Department of Justice) No amendments since enactment.
Background:	Section 2-15-2017, MCA, was enacted through a bill requested by the Department of Justice. The hearing on the bill emphasized that the purpose of bill was to ensure that the Commission would have access to the information it needed in order to review closed cases concerning domestic violence fatalities, look for trends, and issue recommendations that would help law enforcement agencies. The reporting requirement was not discussed in detail, except to provide that the report also be provided to DPHHS.
Statutory language:	Subsection (11) requiring the report to the legislature states: "The commission shall report its findings and recommendations in writing to the legislature, the attorney general, the governor, and the chief justice of the Montana supreme court no later than the third Tuesday in January of each year in which the legislature meets in regular session. The report must be made available to the public through the office of the attorney general. The commission may issue data or other information periodically, in addition to the biennial report."
Last report:	January 2011. Attached.
Cost:	The cost of the report is not specified on the report. However, there is a notation that it was paid for through a federal grant awarded through the Montana Board of Crime Control from the Office of Justice Programs, U.S. Department of Justice.

Section B - Department of Justice Statutory Reports

Analysis: The report produced by the Commission is comprehensive. It covers the legislative history of the Commission and the purpose of the report, a discussion of Commission findings, data on homicides, fatality statistics, fatality maps, a detailed time line of the Commission's activities, and guides and forms that help combat domestic violence. The report also provides a detailed summary of data, trends, and recommendations.

Recommendation #7:

Subsection (11) of section 2-15-2017, MCA, which requires the report by the Domestic Violence Fatality Review Commission to the legislature should be amended to specify that the report must be made to the Law and Justice Interim Committee each interim and made available to the full legislature prior to each regular session. The language specifying that the report must be made "no later than the third Tuesday in January of each year in which the legislature meets in regular session" is unnecessarily specific and should be stricken.

BIENNIAL REPORT?

The Department of Justice does not produce a biennial report covering the operations or activities of its various divisions, sections, and programs. It may be helpful to the legislature and the public to require the Department of Justice to produce a biennial report similar to what is produced by the Department of Corrections. The Department of Corrections' biennial report consolidates information about its various programs and divisions into an accessible reference book that includes information about each program's purpose, staff, expenditures, and relevant data. Much of this information is already provided on the Department of Justices' website. Still, a consolidated report, that included an organizational chart and a staff directory would be very helpful. However, the production of such a report would require additional staff time and incur an administrative cost.



HB 142 - REVIEW OF ADVISORY COUNCILS & REPORTS

*Prepared by Sheri Scurr,
Legislative Research Analyst
for the Law and Justice Interim Committee
February 2011*

Part 2 - Montana Board of Crime Control

Purpose & Organization of Brief

This paper is the first installment of the additional information on advisory councils and agency reports requested by the Law and Justice Interim Committee at its December 15-16, 2011, meeting. A December 2011 Decision Brief presented a complete at-a-glance chart and copies of the statutes for the statutory advisory councils and agency reports that the LJIC is required to review under HB 142. The recommendations contained in this report are numbered in sequence to follow the HB 142 briefing paper for Part 1 A - Department of Justice. Thus, the recommendations in this paper start with #8.

Montana Board of Crime Control

This brief covers advisory councils and reports under the Montana Board of Crime Control (MBCC). The MBCC is statutorily established in section 2-15-206, MCA. By statute, it is attached to the Department of Justice for administrative purposes only. However, it may hire its own staff. The board's 18 members are appointed by the governor.

The MBCC is a state entity, but it is required under federal law in order to manage federal grants to the state. Section 44-4-301(1), MCA states:

"(1) As designated by the governor as the state planning agency under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the board of crime control shall perform the functions assigned to it under that act. The board shall also provide to criminal justice agencies technical assistance and supportive services that are approved by the board or assigned by the governor or legislature."

Youth Justice Advisory Council

One of the advisory councils attached to the MBCC is the Youth Justice Advisory Council. This council must be established by the state in order to comply with the federal requirements of the Juvenile Justice and Delinquency Prevention Act of 2002. However, the council is not a statutorily-created. It is created by executive order pursuant to section 2-15-122, MCA, so must be re-authorized by the governor every two years. Although it is not established by statute, there is one MCA reference to the "youth justice council": section 52-2-303, MCA. Section 52-2-303, MCA establishes the Children's System of Care Planning Committee. Subsection (h) provides that an appointee from the "youth justice council" must be a member of the planning committee. It is not typical nor is it good practice to reference an entity in statute that is not somehow defined in statute. Even if it is an entity required pursuant to federal law, the statute should reference the applicable federal law.

Recommendation #8 - Youth Justice Advisory Council

Section 2-15-206, MCA, should be amended to include the establishment of the Youth Justice Advisory Council pursuant to the Juvenile Justice Delinquency Prevention Act of 2002, as amended, and placed under the MBCC. Section 52-2-303, MCA, should be amended to reference the Youth Justice Advisory Council established in 2-15-206, MCA.

Concealed Weapons Advisory Council

The Concealed Weapons Advisory Council has been attached by executive order to the MBCC. This advisory council is established in section 45-8-329, MCA. This statute was originally enacted in 1995. As originally enacted the section directed the governor to negotiate reciprocity agreements with other states and the advisory council was to advise the governor during this process. However, this approach was revised by the legislature in 1999 so that the statute currently reads:

45-8-329. Concealed weapon permits from other states recognized -- advisory council.

(1) A concealed weapon permit from another state is valid in this state if:

- (a) the person issued the permit has the permit in the person's immediate possession;
- (b) the person bearing the permit is also in possession of an official photo identification of the person, whether on the permit or on other identification; and
- (c) the state that issued the permit requires a criminal records background check of permit applicants prior to issuance of a permit.

(2) The attorney general shall develop and maintain a list of states from which permits are recognized under this section for the use by law enforcement agencies in this state.

(3) A determination or declaration of a Montana government entity, official, or employee is not necessary to the existence and exercise of the privilege granted by this section.

(4) The governor shall establish a council, composed of interested persons, including law enforcement personnel and gun owners, to advise the governor on and pursue concealed weapon permit issues.

The 1999 revisions included some changes in the language used in subsection (4) concerning the advisory council so that instead of advising the governor on reciprocity issues, the council would advise the governor on and pursue concealed weapon permit issues. The statute does not specify membership. Nor does the statute reference section 2-15-122, MCA, which would normally be referenced in order to ensure members receive compensation and travel expenses as an advisory council. Finally, the statute does not provide for the attachment of the council to a department or other agency.

Staff reviewed the minutes of the last meeting of the advisory council, which was September 17, 2010. Based on that review, it seems that the advisory council is struggling to determine its identity, purpose, and duties. The discussion did not seem guided by a particular agenda or by goals and objectives and ranged from training, to public education, to comments about session legislation, to identification cards and permit forms.

Recommendation #9 - Concealed Weapons Advisory Council

Subsection (4) of section 45-8-329, MCA, should be stricken. The governor would still retain the discretion of creating the advisory council by executive order under section 2-15-122, MCA.

MBCC Reports

The MBCC produces several very useful reports, including:

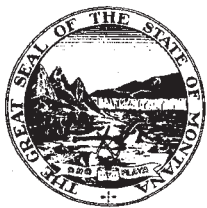
- Montana Board of Crime Control Triennial (or Biennial) Report;
- Crime in Montana -an annual report of crime statistics and trends;
- Law Enforcement Personnel - an annual report detailing the number of personnel by agency, and providing information on gender, salary, incidents, and arrests; and
- Montana Hate Crimes - an annual statistical report.

The MBCC website also offers access to numerous other resources about grants, crime data, and plans and projects. The website also contains links to other resources.

There is no statutory requirement for the MBCC to report to the legislature. However, MBCC reports have been made available on the MBCC's website and to the Law and Justice Interim Committee upon request. Nevertheless, the legislature and members of the public would be well-served by more exposure to the wealth of information available through the MBCC.

Recommendation #10 - Montana Board of Crime Control Reports

Section 2-14-206, MCA, or section 44-4-301, MCA, should be amended to require it to submit its reports to the Law and Justice Interim Committee each interim in order to keep the legislature and the public aware of the information available from the MBCC.



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June 12, 2012

To: Law and Justice Interim Committee members
From: Jason Mohr, LSD *JM*
Re: HB142 review of advisory councils, reports

Please find a summary and review of advisory councils and reports from the Judicial Branch, Department of Corrections, Board of Pardons and Parole, and the Office of the State Public Defender.

This review is related to HB 142, which requires interim committees to review statutorily required agency reports and statutorily established advisory councils. The most-recent reports should also be attached.

Please note that only the table of contents and the executive summary have been attached for the Juvenile Delinquency Program report, as that report is 33 pages long. And the first four pages of the Report to the Public Defender Commission have been attached, as that report is 432 pages long. Please let me know if you need electronic access to complete versions of either report.

In addition, the last two medical parole reports have been attached, so the committee can see the difference in format and substance.

Clo429 2164omxa.

HB 142 - Review of Advisory Councils and Reports

*Prepared by Jason Mohr, Legislative Research Analyst for the Law and Justice Interim committee
June, 2012*

House Bill 142 requires interim committees to review statutorily established advisory councils and required reports. The interim committee must recommend retention or elimination of these councils and reports.

This document reviews councils and reports from the Judicial Branch, Department of Corrections, Board of Pardons and Parole, and Office of the State Public Defender. The councils and reports under review are:

Judicial Branch

District Court Council

Annual report of the Judicial Standards Commission

Judicial Branch information technology status report

Juvenile Delinquency Program report

Report on expenditures authorized by annual attorney license tax

Department of Corrections

none

Board of Pardons and Parole

Report on health care costs for medical parolees

Office of the State Public Defender

Report to the Public Defender Commission

Judicial Branch

District Court Council

Statutory authority: Section 3-1-1601, MCA, creates council. Council shall provide reports to the legislature and Supreme Court "upon request" (Section 3-1-1602, MCA)

Initial enactment: Ch. 585, L. 2001

Membership: Supreme Court chief justice or designee, four district court judges elected by district court judges, and four non-voting members appointed by Supreme Court (juvenile probation officer, district court clerk, county commissioner, court reporter). (Section 3-1-1602, MCA)

Duties: Section 3-1-1601, MCA, defines council role to "adopt policies and procedures to administer the state-funded district court program." Council policies and procedures must address: workload; resource allocation among district courts; hiring policies; court procedures; information technology; work schedules, transcript fees, and equipment for court reporters; and other issues regarding state funding of district courts. Council recommendations are subject to review by the Supreme Court.

Meetings: Statute requires quarterly meetings

Biennial cost: Travel expenses of council members

Latest activities: The council met in January, when the council considered budget requests from the district courts for the next biennium. The council meets again July 20.

Analysis: After the state assumed the costs of district courts, the District Court Council's central role is to administer the system. Its 56 district courts – with 43 judges – handle more than 44,000 cases annually. Eliminating this council would likely produce the need to create similar centralized administrative function.

Judicial Branch

Annual report from Judicial Standards Commission

Statutory authority: Article VII, section 11 of the Montana Constitution establishes the commission. Section 3-1-1126, MC A, requires the commission to submit a report to the legislature.

Initial enactment: Ch. 441, L. 1981 (for reporting requirement)

Background: The five-member commission, which includes two district court judges, an attorney appointed by the Supreme Court, and two citizens who are neither attorneys nor judges (appointed by the governor) to investigate complaints about any state judicial officer. Complaints must be related to: disability that interferes with job performance, willful misconduct in office, failure to perform duties, breaking judicial ethics rules and "habitual intemperance" (Article VII, section 11, Montana Constitution). Commission makes recommendations to the Supreme Court for any further action. Commission must file an annual report to the legislature. Commission meets every other month; next meeting is in July.

Statutory language: The annual report must: identify each complaint, date of the complaint, nature of the complaint, previous complaints against the same judge, status of complaints, and final disposition of complaints.

Last report: Issued in January 2011.

Cost: No additional cost to produce report, as it would be produced for the Supreme Court and the commission.

Analysis: Montana Constitution established the commission. The legislature subsequently required reports from the commission. As the proceedings of commission meetings are confidential, these reports provide the legislature a measure of judicial branch oversight, specifically related to judicial misconduct. (Public access must be allowed to records related to hearings before the Supreme Court.)

Judicial Branch

Information technology status report

Statutory authority: Section 3-1-702, MCA

Initial enactment: Ch. 396, L. 1977 created court administrator duties

Amendments: Ch. 704, L. 1991 required court administrator to administer state funding for district courts
Ch. 585, L. 2001 added administration of judicial branch personnel plan
Ch. 445, L. 2005 added reporting requirement

Background: Section 3-1-702, MCA, outlines the duties of the court administrator. In addition to other duties, the court administrator must report annually to the LJIC and a House Appropriations subcommittee on "the status of development and procurement of information technology within the judicial branch." This requirement came after the 2005 Legislature altered the funding mechanism for IT in the state's 218 courts. In 2005, the Legislature changed the source of IT funding from a court surcharge to general fund dollars. Proponents said this would assure adequate, stable, long-term IT infrastructure funding for the courts.

Statutory language: Section 3-1-702, MCA, requires the information technology status report, including "any changes to the judicial branch information technology strategic plan and any problems encountered in deploying appropriate information technology..." This strategic plan must be coordinated and compatible with executive branch standards and goals, as possible.

Last report: The court administrator filed an information technology status report with the Joint Appropriations Subcommittee on Judicial Branch, Law Enforcement and Justice in January 2011. Two major projects are essentially completed – installation of modern case management system and improving courtroom technology, including sound, data and interactive video. The final major priority of an electronic filing system for all court documents is in its early stages. Work continues on electronic filing of citations, complaints and information from law enforcement and prosecutors, according to the last report.

Cost: No additional cost to produce, as report is created for appropriations committees and the branch's Commission on Technology.

Analysis:

The question may be if the LJIC wants to continue receiving this report during the years a joint appropriations subcommittee does not. Branch staff indicated a report on their IT projects is integral to their appropriations process.

If this report is retained, statute may need to be altered to accurately reflect where the report is filed during the appropriations process. Current statute directs the report to the "house appropriations subcommittee that considers general government," when, in fact, it is heard by the Joint Appropriations Subcommittee on Judicial Branch, Law Enforcement and Justice.

Judicial Branch

Juvenile Delinquency Intervention Program evaluation report

Statutory authority: Section 41-5-2003, MCA

Initial enactment: Ch. 587, L. 2001

Amendments: Ch. 398, L. 2007 altered the development of the evaluation report

Background: Juvenile Delinquency Intervention Act (Part 41-5-20, MCA) was established in 2001 to: provide funding method for juvenile out-of-home placements, programs, and services; create early intervention and expanded community alternatives; control youth court costs; enhance community safety; hold youth accountable and promote youth development; use local resources for placement of troubled youth; reduce out-of-state placements; and use state youth correction facilities when appropriate. In 2007, the act was amended, primarily to give authority over the budget to the Office of the Court Administrator. The 2007 amendment also changed the evaluation process of juvenile delinquency intervention programs.

Statutory language: Section 41-5-2003, MCA, establishes the juvenile delinquency intervention program and outlines program duties. As part of this, the court administrator selects certain out-of-home placements, programs and services for an evaluation. The cost containment review panel recommends what is to be evaluated. (The cost containment panel is comprised of three members appointed by the Department of Corrections, three members appointed by the Supreme Court, and one mental health professional appointed by the administrator of the Department of Public Health and Human Services.) The District Court Council must approve this evaluation. A report on this evaluation must be reported to the LJIC, Department of Corrections, the cost containment review panel and the District Court Council.

Last report: This report was last issued in August 2009. The report stated that the data collected was sufficient to predict placement in residential treatment facilities, out-of-state placement, length of stay, and recidivism. The report also stated that continued data collection and analysis will make it possible to further analyze and predict the key outcome of recidivism.

In 2010, the evaluation was cut during voluntary budget reductions. In 2011, the legislature transferred \$25,000 each fiscal year from the youth court intervention and prevention account to the state general fund in lieu of conducting the evaluation in fiscal years 2011 and 2012.

Cost: \$25,000 annually. The evaluation is funded from the youth court intervention and prevention account. This account statutorily appropriated as a transfer of Department of Corrections' juvenile placement funds. The University of Montana School of Social work completed the research and evaluation for the 2009 report.

Analysis: This evaluation and report process will resume this fiscal year. Branch staff said this evaluation is necessary for them to determine what placements, programs or services work in the juvenile delinquency program.

Judicial Branch

Report on expenditures authorized by annual license tax on attorneys

Statutory authority: Section 37-61-211, MCA.

Initial enactment: Ch. 90, L. 1917

Amendments: Ch. 379, L. 1989 increased to \$25 annually
Ch. 420, L. 2005 added allocation and annual report

Background: Section 37-61-211, MCA, levies a \$25 license tax on attorneys. Amendments in 2005 to this section directed this collection to these Supreme Court commissions: Commission on Code of Judicial Conduct, Commission on Courts of Limited Jurisdiction, Commission on Practice, Commission on Technology, District Court Council, Judicial Nomination Commission, Sentence Review Division, and Uniform District Court Rules Commission. While debate during the 2005 session indicated there are Constitutional questions about the legislature's ability to levy this tax, the legislature specifically allocated the money to the above commissions and to receive an accounting of expenditures.

Statutory language: Section 37-61-211, MCA, requires an annual report on expenditures authorized by this section of law to the LJIC at that committee's first interim meeting after the end of each fiscal year.

Last report: August 2011 report reported \$113,355 collected from attorney license tax in fiscal year 2011. Because no state special revenue account was created for deposit of tax, money was deposited into the general fund. "Therefore, no expenditures for the operation of judicial commissions were made directly from the tax revenue generated," according to the report. The commissions were funded by general fund and certain fees approved by the Commission on Courts of Limited Jurisdiction.

Cost: No additional cost to produce.

Analysis: This report does not appear to meet the standards anticipated in law, due to an inability to track the allocation of the license tax dollars. General fund dollars fund the commissions mentioned in Section 37-61-211, MCA.

Board of Pardons and Parole

Report on health care costs for medical parolees

Statutory authority: Section 46-23-210, MCA

Initial enactment: Ch. 248, L. 1991

Amendments: Ch. 250, L. 2007 revised criteria for medical parole and added reporting requirement
Ch. 102, L. 2011 added Department of Corrections role in reporting requirement

Background: Section 46-23-210, MCA, allows the Board of Pardons and Parole (BOPP) to release on medical parole anyone confined to state prison, an adult community corrections facility or a prerelease center due to a "medical condition requiring extensive medical attention" or "has been determined by a physician to have a medical condition that will likely cause death within 6 months or less." In certain instances, the sentencing judge must approve of the medical parole.

Statutory language: Section 46-23-210, MCA, required the BOPP and the Department of Corrections to report to the LJIC, the Children, Families, Health and Human Services Interim Committee "regarding the outcome related to any person released on medical parole since the last report, including health care costs and payment related to the care of the person released on medical parole." This report must be released before July 1; staff at BOPP said they are finishing the 2012 report.

Last report: The 2010 report detailed the health care condition and care for two inmates. This report also estimated health care costs.

Cost: BOPP staff estimates 3-4 hours of staff time. This would increase if the number of medical parolees increased.

Analysis: The legislature has received this report twice, in 2008 and 2010. The formats for each differ. The 2008 report summarized dispositions, outcomes the two persons released on medical parole, and a summary of health care costs and payments. Individuals were not identified by name. The 2010 report, which board staff labeled "confidential," identified individuals, their medical conditions, and specifics about health care costs. There may be privacy concerns regarding this information, according to LSD legal staff. The committee may wish to fine tune this report's final form if it chooses to retain this report.

Office of the State Public Defender

Public Defender Commission Report

Statutory authority: Section 47-1-105, MCA

Initial enactment: Ch. 449, L. 2005

Amendments: Ch. 24, L. 2011 and Ch. 344, L. 2011 added additional reporting requirements.

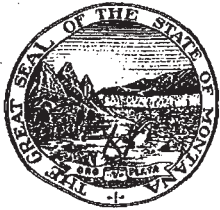
Background: MCA Title 47, Chapter 1 creates the statewide public defender system, whose primary goal is to “provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitle by law to assistance of counsel at public expense.” The 11-member Public Defender Commission appoints a chief public defender and a chief appellate defender; sets statewide standards for public defender services attorneys, regarding qualification and training; review and approve the chief public defender’s strategic plan and budget proposals; and establish other policies and procedures. The Office of the State Public Defender (OPD) is administratively attached to the Department of Administration. The commission must submit a biennial report to the governor, Supreme Court and the legislature. During the interim, the commission must report to the LJIC. The 2005 Legislature overhauled the state’s public defender system, assuming administration of the system from Montana’s cities and counties. The intent of the Public Defender Commission report is to give lawmakers and others a public accounting of the office’s policies, workload and costs.

Statutory language: Section 47-1-105, MCA, requires the following in reports: all policies and procedures in effect for the operation; all standards established or being considered by the commission; the number of deputy public defenders and the region supervised by each; the number of public defenders employed or contracted; the number of attorney and non-attorney staff supervised by each deputy public defender; the number of new cases; the number of persons represented; annual caseload and workload of each public defender; training programs; continuing education courses; detailed expenditure data by court and case type.

Last report: The last Public Defender Commission report was issued in January 2011. This 432-page report includes information required by statute, plus other data, such as commission membership, commission contact information, assessment and collection of legal fees, etc.

Cost: Much of the information is continually updated, so it is readily available without additional production costs. The major exception is "expenditure data by court and type." OPD hires temporary employees and spends \$7,000-\$15,000 to compile this information during the six months after the end of the fiscal year.

Analysis: This report is a primary document allowing legislative oversight of the state's extensive public defender system, which includes approximately 120 attorneys, 55 support staff, 20 investigators, and 200 contracted attorneys who handled an estimated 27,000 cases annually.



JUDICIAL STANDARDS COMMISSION

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March 21, 2011

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Mike Milburn, Speaker of the House
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Sixty-Second Legislature
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Dear President Peterson and Speaker Milburn:

JOHN MURPHY
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Great Falls, MT 59404
Telephone: 771-4838

As required by §3-1-1126, MCA, the Montana Judicial Standards Commission (Commission) submits this report to the legislature for the preceding biennium covering calendar years 2009 and 2010.

SUE SCHLEIF
427 Dupuyer Avenue, Box 434
Valler, MT 59486
Telephone: 279-3343

Article VII, Section 11, of the 1972 Montana Constitution directs the legislature to create a five member Judicial Standards Commission to accept and consider complaints against Montana judicial officers. The 1973 legislature created the Commission and it is attached to the Montana Supreme Court for administrative purposes. The work, investigations, and recommendations of the Commission are independent of the Supreme Court. Access to Commission records is limited to the Commission and staff.

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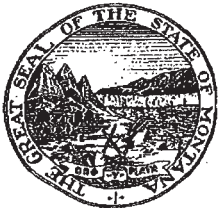
ADMIN. SECRETARY

SHELLY HINSON
Telephone: 444-2634

The Commission's report to the sixty-first legislature (2009 session) showed that 11 complaints were still pending at the close of 2008. Of those pending complaints, seven were reviewed and dismissed, two were closed with letters of admonition, and two resulted in private reprimands.

As shown in the attached spreadsheet, 59 complaints were filed against judicial officers in calendar year 2009. After consideration and investigation, 39 of those complaints were dismissed, one resulted in the judge's voluntary resignation, and two resulted in letters of admonition. There were 17 complaints pending as of December 31, 2009.

Of those 17 pending complaints, 13 were dismissed, one complaint was withdrawn by the complainant, one resulted in a letter of admonition, and two resulted in private reprimands.



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Biannual Legislative Report
March 21, 2011
Page 2

For calendar year 2010, 66 complaints were filed against judicial officers. After consideration and investigation, 33 complaints were dismissed, two resulted in the judge's voluntary resignation, one resulted in a letter of admonition, and three resulted in private reprimands. There were 27 complaints pending as of December 31, 2010.

Should any member of the legislature, or staff, have questions or need additional information, they may contact Shauna Ryan, the Commission's executive secretary, or any member of the Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read "Ed McLean".

Hon. Ed McLean, Chairman
JUDICIAL STANDARDS COMMISSION

/sr

Attachment

cc: Jeff Essmann, Senate Majority Leader
Carol Williams, Senate Minority Leader
Marilyn Miller, Secretary of the Senate
Tom McGillvray, House Republican Leader
Jon Sesso, House Democratic Leader
Beth Cargo, Chief Clerk of the House
Hon. Mike McGrath, Chief Justice of the Supreme Court
Sheri Heffelfinger, Lead Staff, Law and Justice Interim Committee

2009

<u>Case #</u>	<u>Date Filed</u>	<u>Type of Complaint</u>	<u>Disposition</u>	<u>Date of Disposition</u>
07-001	1/19/2009	Delay	Letter of Admonition	11/5/2009
08-010	7/31/2008	Delay	Letter of Admonition	11/5/2009
08-011	7/31/2008	Judicial Opinion	Dismissed	2/23/2009
08-012	8/11/2008	Judicial Opinion	Private Reprimand	2/23/2009
08-013	8/12/2008	Ex Parte Communication	Dismissed	2/23/2009
08-014	8/12/2008	Court Organization	Dismissed	2/23/2009
08-019	10/7/2008	Constitutional Obligations	Dismissed	3/3/2009
08-019	10/7/2008	Constitutional Obligations	Dismissed	8/17/2009
08-032	12/1/2008	Essential Conduct	Dismissed	2/23/2009
08-032	12/1/2008	Essential Conduct	Private Reprimand	2/23/2009
08-034	12/12/2008	Judicial Opinion	Dismissed	2/23/2009
09-001	1/22/2009	Constitutional Obligations	Dismissed	2/23/2009
09-002	2/4/2009	Judicial Opinion	Dismissed	2/23/2009
09-003	2/4/2009	Essential Conduct	Dismissed	5/8/2009
09-004	2/4/2009	Judicial Opinion	Dismissed	2/23/2009
09-005	2/6/2009	Judicial Opinion	Dismissed	5/8/2009
09-006	2/12/2009	Conflict of Interest	Dismissed	5/8/2009
09-007	2/12/2009	Delay	Dismissed	8/17/2009
09-008	2/7/2009	Judicial Opinion	Dismissed	5/8/2009
09-009	2/25/2009	Judicial Opinion	Dismissed	5/8/2009
09-010	2/27/2009	Conflict of Interest	Dismissed	8/17/2009
09-011	2/12/2009	Judicial Opinion	Dismissed	5/8/2009
09-012	3/5/2009	Judicial Opinion	Dismissed	5/8/2009
09-013	3/5/2009	Judicial Opinion	Dismissed	5/8/2009
09-014	3/9/2009	Judicial Opinion	Dismissed	5/8/2009
09-015	3/26/2009	Judicial Opinion	Dismissed	5/8/2009
09-016	3/30/2009	Judicial Opinion	Dismissed	5/8/2009
09-017	4/2/2009	Judicial Opinion	Dismissed	5/8/2009
09-018	3/10/2009	Constitutional Obligations	Dismissed	12/30/2010
09-019	5/8/2009	Conflict of Interest	Dismissed	8/17/2009
09-020	5/8/2009	Ex Parte Communication	Letter of Admonition	11/5/2009
09-021	5/12/2009	Judicial Opinion	Dismissed	8/17/2009
09-022	5/15/2009	Conflict of Interest	Dismissed	11/5/2009
09-023	5/15/2009	Conflict of Interest	Dismissed	11/5/2009
09-024	5/27/2009	Judicial Opinion	Dismissed	11/5/2009
09-025	5/29/2009	Delay	Private Reprimand	3/26/2010
09-026	6/19/2009	Avoidance of Impropriety	Letter of Admonition	11/5/2009
09-027	6/24/2009	Judicial Opinion	Dismissed	8/17/2009
09-028	7/20/2009	Judicial Opinion	Dismissed	8/17/2009
09-029	7/20/2009	Judicial Opinion	Dismissed	8/17/2009
09-030	6/25/2009	Judicial Opinion	Dismissed	8/17/2009
09-031	7/21/2009	Judicial Opinion	Dismissed	8/17/2009
09-032	7/27/2009	Judicial Opinion	Dismissed	11/5/2009
09-033	8/4/2009	Judicial Opinion	Dismissed	11/5/2009
09-034	8/6/2009	Judicial Opinion	Dismissed	11/5/2009

09-035	8/11/2009	Judicial Opinion	Dismissed	11/5/2009
09-036	8/14/2009	Judicial Opinion	Dismissed	11/5/2009
09-037	8/3/2009	Conflict of Interest	Dismissed	11/5/2009
09-038	8/24/2009	Essential Conduct	Dismissed	3/9/2010
09-039	8/25/2009	Judicial Opinion	Dismissed	11/5/2009
09-040	9/11/2009	Judicial Opinion	Dismissed	11/5/2009
09-041	9/8/2009	Judicial Opinion	Dismissed	11/5/2009
09-042	9/15/2009	Judicial Opinion	Dismissed	11/5/2009
09-043	9/29/2009	Judicial Opinion	Dismissed	11/5/2009
09-044	9/23/2009	Judicial Opinion	Dismissed	11/5/2009
09-045	9/23/2009	Judicial Opinion	Dismissed	3/9/2010
09-046	9/23/2009	Ensuring the Right to be Heard	Private Reprimand	3/30/2010
09-047	9/15/2009	Avoidance of Impropriety	Resigned	12/31/2009
09-048	10/7/2009	Judicial Opinion	Dismissed	3/9/2010
09-049	10/7/2009	Judicial Opinion	Dismissed	3/9/2010
09-050	10/27/2009	Judicial Opinion	Dismissed	3/26/2010
09-051	11/9/2009	Judicial Opinion	Dismissed	3/26/2010
09-052	11/24/2009	Judicial Opinion	Dismissed	3/26/2010
09-053	11/24/2009	Judicial Opinion	Dismissed	3/26/2010
09-054	11/30/2009	Delay	Dismissed	3/26/2010
09-055	12/1/2009	Judicial Opinion	Complaint Withdrawn	4/3/2010
09-056	12/10/2009	Judicial Opinion	Dismissed	3/26/2010
09-057	12/18/2009	Avoidance of Impropriety	Letter of Admonition	3/26/2010
09-058	12/22/2009	Judicial Opinion	Dismissed	3/26/2010
09-059	12/4/2009	Judicial Opinion	Dismissed	3/26/2010

2010

<u>Case #</u>	<u>Date Filed</u>	<u>Type of Complaint</u>	<u>Disposition</u>	<u>Date of Disposition</u>
10-001	1/6/2010	Delay	Dismissed	3/26/2010
10-002	1/7/2010	Judicial Opinion	Dismissed	3/26/2010
10-003	1/12/2010	Ex-parte Comm./Conflict of Interest	Private Reprimand	3/22/2010
10-004	1/12/2010	Judicial Opinion	Dismissed	3/26/2010
10-005	1/14/2010	Judicial Opinion	Dismissed	3/26/2010
10-006	1/22/2010	Conflict of Interest	Private Reprimand	7/12/2010
10-007	2/11/2010	Avoidance of Impropriety	Letter of Admonition	7/12/2010
10-008	2/11/2010	Judicial Opinion	Dismissed	7/12/2010
10-009	2/22/2010	Judicial Opinion	Dismissed	3/26/2010
10-010	2/22/2010	Judicial Opinion	Dismissed	3/26/2010
10-011	2/24/2010	Judicial Opinion	Dismissed	3/26/2010
10-012	3/1/2010	Delay	Private Reprimand	7/12/2010
10-013	2/25/2010	Judicial Opinion	Dismissed	3/26/2010
10-014	2/25/2010	Judicial Opinion	Dismissed	3/26/2010
10-015	3/1/2010	Judicial Opinion	Dismissed	7/12/2010
10-016	3/8/2010	Essential Conduct	Dismissed	10/29/2010
10-017	3/8/2010	Essential Conduct	Dismissed	10/29/2010
10-018	3/8/2010	Judicial Opinion	Dismissed	7/12/2010
10-019	3/8/2010	Judicial Opinion	Dismissed	7/12/2010
10-020	1/7/2010	Judicial Opinion	Dismissed	7/15/2010
10-021	12/28/2009	Delay	Dismissed	7/12/2010
10-022	3/17/2010	Avoidance of Impropriety	Resigned	6/2/2010

10-023	3/25/2010	Judicial Opinion	Dismissed	
10-024	4/8/2010	Judicial Opinion	Dismissed	7/12/2010
10-025	4/12/2010	Judicial Opinion	Dismissed	7/12/2010
10-026	4/22/2010	Judicial Opinion	Dismissed	10/29/2010
10-027	4/23/2010	Judicial Opinion	Dismissed	7/12/2010
10-028	4/28/2010	Public Interest	Dismissed	7/12/2010
10-029	5/11/2010	Judicial Opinion	Dismissed	10/29/2010
10-030	5/24/2010	Judicial Opinion	Dismissed	7/12/2010
10-031	6/24/2010	Relations of the Judiciary	Dismissed	10/29/2010
10-032	6/25/2010	Political and Campaign Activity	Pending	10/29/2010
10-033	6/25/2010	Judicial Statements on Pending Cases	Pending	
10-034	7/9/2010	Avoidance of Impropriety	Resigned	
10-035	7/16/2010	Avoidance of Impropriety	Pending	9/3/2010
10-036	7/19/2010	Judicial Opinion	Dismissed	
10-037	7/26/2010	Essential Conduct	Pending	10/29/2010
10-038	8/3/2010	Judicial Opinion	Dismissed	
10-039	8/26/2010	Compliance with the law	Pending	10/29/2010
10-040	8/30/2010	Judicial Opinion	Dismissed	
10-041	9/20/2010	Avoidance of Impropriety	Pending	10/29/2010
10-042	9/20/2010	Judicial Opinion	Dismissed	
10-043	9/21/2010	Judicial Opinion	Dismissed	10/29/2010
10-044	9/21/2010	Compliance with the law	Pending	10/29/2010
10-045	9/21/2010	Judicial Opinion	Dismissed	
10-046	9/21/2010	Essential Conduct	Pending	10/29/2010
10-047	9/21/2010	Judicial Opinion	Dismissed	
10-048	9/24/2010	Essential Conduct	Pending	10/29/2010
10-049	9/30/2010	Delay	Pending	
10-050	10/7/2010	Constitutional Obligations	Pending	
10-051	10/12/2010	Constitutional Obligations	Pending	
10-052	10/12/2010	Judicial Opinion	Pending	
10-053	10/13/2010	Essential Conduct	Pending	
10-054	10/14/2010	Court Organization	Pending	
10-055	10/25/2010	Essential Conduct	Pending	
10-056	10/27/2010	Essential Conduct	Pending	
10-057	11/3/2010	Essential Conduct	Pending	
10-058	11/8/2010	Political and Campaign Activity	Pending	
10-059	11/12/2010	Ensuring the Right to Be Heard	Pending	
10-060	11/16/2010	Bias and prejudice	Pending	
10-061	12/1/2010	Ex-parte Communications	Pending	
10-062	12/8/2010	Ensuring the Right to Be Heard	Pending	
10-063	12/13/2010	Bias and prejudice	Pending	
10-064	12/13/2010	Giving Precedence to the Duties of Judicial Office	Pending	
10-065	12/23/2010	Ensuring the Right to Be Heard	Pending	
10-066	12/20/2010	Ensuring the Right to Be Heard	Pending	

JUDICIAL BRANCH INFORMATION TECHNOLOGY STATUS REPORT

**Submitted by Office of Court Administrator
Montana Supreme Court
February 2011**

This report is submitted in compliance with section 3-1-702, MCA, which requires the court administrator to report to the General Government and Transportation Subcommittee on the "status of development and procurement of information technology within the judicial branch." The report provides a Judicial Branch IT profile and a progress report on recent IT projects.

Judicial Branch IT Profile

The Office of Court Administrator (OCA) provides technology services through the Court Technology Program to 994 users within the Supreme Court, the Water Court, 56 District Courts, 7 Municipal Courts, 65 Justices Courts, and 90 City Courts. This support includes the purchase, installation, networking, and maintenance of computers and office software and the deployment, training, and maintenance of court case management systems. In addition, the OCA provides support for courtroom technology, including interactive video, court reporting and recording equipment, sound systems, and other technologies found in the courtroom.

The Supreme Court's Commission on Technology provides guidance and oversight to the court technology program. The Commission prepares the information technology strategic plan and monitors performance of the plan throughout the year. The current plan is available at: <http://www.courts.mt.gov/cao/technology/default.mcpix>.

The following table lists the major IT projects for the Judicial Branch during the 2011 biennium.

Judicial Branch IT Projects and Accomplishments – 2011 Biennium

<p>strategic Goal Courtroom Technology & Interactive Video</p>	<p>The Judicial Branch added interactive video conferencing in the Chouteau, Big Horn, McCone, Judith Basin, Prairie, Sheridan, Powder River, Garfield, Carter and Wheatland County Courthouses. The new interactive video sites use the state's enhanced SummitNet II network allowing data and video to be transmitted over the same network. The Department of Administration greatly assisted in this effort.</p> <p>Sound systems were upgraded in three courtrooms in Dawson, Richland and Beaverhead Counties.</p> <p>Courtroom technology preparation for the new judges and support staff approved by the 2009 Legislature was completed in January 2011.</p>
<p>strategic Goal Justice Integration</p>	<p>Working together with the Departments of Justice, Corrections and Transportation, pilot projects were implemented to improve the electronic exchange of information (e.g., citations, dispositions, hearings and other court orders) between justice agencies.</p>
<p>strategic Goal Court Case Management</p>	<p>The initial rollout of the FullCourt case management system for courts of limited jurisdiction and district courts was completed in April 2009. Since that time, Court IT staff have worked with the Automation Committees of the Courts of Limited Jurisdiction and Clerks of District Court to improve and standardize jury, document, reporting and case management processes in Montana courts.</p> <p>A central reporting system was deployed for drug court personnel to report and conduct program evaluations.</p>
<p>strategic Goal Electronic Filing</p>	<p>The Electronic Filing Workgroups completed their functional requirement reports for the Electronic Filing Task Force. A request for proposals for implementing an e-filing system is being developing. Work continues on the electronic filing of citations, complaints and informations by law enforcement and prosecutors.</p>
<p>strategic Goal Public Access</p>	<p>The Clerk of the Supreme Court led an effort to provide public access to the Supreme Court's docket through the Judicial Branch website. The docket includes the full public docket and associated documents for Supreme Court cases dating back to 2006.</p> <p>The State Law Librarian was a lead member of the steering committee that created the Indian Law Portal (http://indianlaw.mt.gov), which provides electronic access to a wide range of information including tribal court opinions, constitutions, water rights and gaming compacts, fish and game regulations, and codes.</p>



The University of
Montana

JUVENILES ON PROBATION IN MONTANA:
ASSESSING FACTORS ASSOCIATED WITH THE USE OF
THERAPEUTIC TREATMENT FACILITIES
Fiscal Year 2008

Timothy B. Conley, Ph.D.

Megan Dunlavey, M.S.W. Candidate

Elisabeth Stoeckel, M.S.W.

Meghan Gallagher, M.S.W.



Montana Supreme Court
Office of the Court Administrator

August 31, 2009

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Executive Summary

INTRODUCTION

This report is the result of a contract between the Montana Supreme Court Office of the Court Administrator (OCA), Youth and District Court Services, and The University of Montana (UM) School of Social Work. UM provided the services of Dr. Tim Conley and his graduate student research assistants, Megan Dunlavey, Elisabeth Stoeckel and Meghan Gallagher to complete research and evaluation pertaining to certain OCA records. Specifically, Dr. Conley and his assistants utilized quantitative research and program evaluation methods to analyze the electronic records of juvenile offenders who were referred to and used residential treatment facilities (RTF), therapeutic group homes (TGH), chemical dependency facilities (CDF) and therapeutic foster homes (TFH), both within and outside of the state of Montana, during the 2008 fiscal year (July 1, 2007 through June 30, 2008).

Ultimately, the researchers sought to establish predictor models regarding youth placed in therapeutic treatment facilities. The primary purpose of this study was to determine what predicts placement in RTF, the highest level of therapeutic care for juvenile offenders with primarily psychological disorders. The researchers also investigated what predicts placement in an out-of-state facility, length of stay and recidivism. Four predictor models were constructed for this study to determine which demographic, diagnostic, service-related and offense-related variables predict these outcomes. All collected variables were explored as predictors for these models and subjected to statistical testing in order to establish a more quantitative basis for understanding patterns of placement in therapeutic treatment facilities among juvenile offenders in Montana. This work was approved by the OCA and UM's Institutional Review Board for the Protection of Human Subjects (UM IRB Proposal 116-08).

This study included 251 juvenile offenders who were placed in therapeutic treatment facilities during the fiscal year 2008. These youth had a total of 367 admissions to facilities, representing 367 "cases" for the purposes of this study. Since a single case in this study was defined as an admission to a facility, a single youth may have constituted more than one case, having been admitted more than once during the fiscal year. Throughout this report, unless otherwise noted, the term "case" refers to an admission rather than an offender. Of the 367 cases in the study, 48.0 percent had only one placement during the fiscal year; 25.0 percent had two placements; 18.0 percent had three placements; and 9.0 percent had four or five placements (Figure 1). Of the juvenile offenders who constituted more than one case in RTF and/or TGH, 26.3 percent had one or more placements in RTF before being placed once or more in TGH and 23.1 percent had one or more placements in TGH before being placed once or more in RTF.

In fiscal year 2008, juvenile offenders with mental health and/or substance dependence issues were placed across 72 different therapeutic treatment facilities. Table 1 lists the facilities that received the majority of placements in this study; each type of facility includes an "other" category which is composed of the remaining facilities. The facilities in the "other" category received only one to three placements each. The percentage of cases within each facility type is also presented. TFH placements represented only eight cases and are not listed in Table 1.

Figure 1. Number of Placements

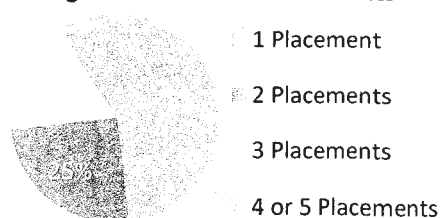


Table 1	Percentage of Cases in Facility	Number of Cases in Facility	Location: In-state or out-of-state
FACILITY NAME BY TYPE			
RTF			
Shodair Children's Hospital	43.7%	62	In-state
Acadia	26.8%	38	In-state
Other (19 facilities with 1-3 cases)	29.6%	42	Varies
TGH			
Normative Services	18.1%	27	Out-of-state, WY
Alternative Youth Adventures, Journey Boys Group Home	8.1%	12	In-state
YDI Rivers Edge	6.0%	9	In-state
New Day Unit 1	5.4%	8	In-state
Sinopah Group Home	5.4%	8	In-state
A.W.A.R.E. Alpine Group Home	4.0%	6	In-state
Kairos Youth Services, Portage Place Group Home	4.0%	6	In-state
Other (32 facilities with 1-3 cases)	49.0%	73	Varies
CDF			
Teen Recovery Center	41.2%	28	In-state
Rimrock Foundation	22.1%	15	In-state
Other (10 facilities with 1-3 cases)	36.8%	25	Varies

KEY FINDINGS

Juvenile offenders identifying as White were overrepresented in RTF, and American Indians were significantly overrepresented in CDF relative to other programs. There was a slight difference between the average age of cases in RTF (14.1 years) and cases in TGH (14.4 years). Cases in CDF and TGH initially appeared older but this was not a significant difference. Cases with a learning disability represented 35.4 percent of the sample.

With regards to diagnostic variables, bipolar disorder was significantly associated with placement in RTF, and oppositional defiant disorder was significantly associated with placement in TGH. Nearly 30 percent of cases in RTF and TGH had a primary diagnosis of bipolar disorder (Table 2), almost twice as many as the next most frequent diagnosis (oppositional defiant disorder). In a statistical model simultaneously considering several potential predictors of placement in RTF, bipolar disorder emerged as a significant predictor; cases with this disorder were

Table 2	Number of cases with diagnosis	Percent of cases with diagnosis
DIAGNOSTIC VARIABLES		
Bipolar Disorder	83	27.8%
Oppositional Defiant Disorder	47	15.7%
Major Depressive Disorder	41	13.7%
Dysthymic Disorder	29	9.7%
Posttraumatic Stress Disorder	29	9.7%
ADHD	19	6.4%
Other	15	5.0%
Intermittent Explosive Disorder	12	4.0%
Reactive Attachment Disorder	7	2.3%
Substance Use Disorder	6	2.0%
Mood Disorder	6	2.0%
Conduct Disorder	5	1.7%

2.96 times more likely to be placed in RTF than in TGH. A diagnosis of bipolar disorder was also a significant predictor of shorter length of stay relative to all other possible diagnoses.

Across the board, RTF and TGH populations in this study differed very little with regards to most variables. There were no statistically significant differences between the following variables with regards to placement in RTF versus TGH: average total number of prior placements; average number of prior therapeutic placements; average number of prior non-therapeutic placements; average number of offenses prior to placement; average number of intakes prior to placement; average number of services received prior to placement; and average score for the most recent Back On Track (BOT) assessment prior to placement. However, the average length of stay (number of days in placement) differed significantly between RTF (104 days) and TGH (228 days).

The risk of being placed in RTF was 3.33 times higher for juvenile offenders whose most serious offense was partner or family member assault.

Cases placed in CDF had significantly fewer prior therapeutic placements than those placed in either RTF or TGH. Cases placed in CDF also committed significantly more offenses prior to placement, had significantly more intakes prior to placement, and received significantly more services prior to placement than those placed in RTF.

The researchers found that type of offense significantly predicted placement in RTF; the risk of being placed in RTF was 3.33 times higher for juvenile offenders whose most serious offense was partner or family member assault (PFMA) than for those with another most serious offense. Cases where the most serious offense was assault were 2.90 times more likely to be placed in RTF than those with another most serious offense. Those convicted of burglary were 2.89 times more likely to be placed in RTF than those with a different most serious offense.

Juvenile sex offenders were 4.69 times more likely to be placed in an out-of-state facility.

Type of offense also predicted out-of-state placement. The researchers found that the risk of being placed out of state was 4.69 times higher for cases where the most serious offense was sexual in nature than for those with a non-sexual crime. For further discussion of this finding, see Appendix 4. Forty-two total cases reported a conviction for a sex-related crime. The percentage of cases with a sex crime as the most serious offense that were placed in out-of-state facilities was 38.1 percent (16 of the 42 cases). Of those 16 cases placed out of state, 68.8 percent (11 cases) were placed at Normative Services in Wyoming.

With regards to predicting days in placement, the researchers found that sex offense, number of prior therapeutic placements, out-of-state placement and bipolar disorder significantly predicted number of days in placement.

What predicts days in placement?

- * Sex offense
- * Number of prior therapeutic placements
- * Out-of-state placement
- * Bipolar disorder diagnosis

For the purposes of this study, recidivism is defined as an offense committed by a juvenile offender after the most recent discharge from a therapeutic treatment facility. Preliminary testing showed statistically significant differences with regards to recidivism. At the time this data was extracted from the Juvenile Court Assessment and Tracking System (JCATS), on February 23, 2009, 335 cases had been discharged from the facilities in which they had been placed. Of these, 53.7 percent had re-offended, or recidivated (Table 3). The recidivism rate for RTF (60.4%) was significantly

higher than that for TGH (43.3%). The highest recidivism rate was for CDF cases in which 65.7 percent of the 67 discharged cases had re-offended. Of primary concern, however, was understanding recidivism for RTF and TGH cases. For these cases, 136 of 268 discharged cases recidivated (50.7%). The average number of days between discharge and re-offense was 104 days with 25 percent of these cases recidivating within one month of discharge (29 days). Fifty percent of cases that recidivated did so at 77 days or less.

Table 3	RTF	TGH	CDF	TFH	Total
RECIDIVISM					
Yes	81 60.4%	55 43.3%	44 65.7%	0 0.0%	180 53.7%
No	53 39.6%	72 56.7%	23 34.3%	7 100.0%	155 46.3%

The recidivism rate for RTF (60.4%) was significantly higher than that for TGH (43.3%).

Number of youth court intakes prior to placement significantly predicted recidivism for all cases in this study. The researchers found that each additional intake increased the likelihood of recidivism 1.24 times. In addition, a case with fewer days in placement had a slight, but significant, increase in risk for recidivism. A more powerful finding,

however, was that cases that were placed in RTF were 2.10 times more likely to recidivate than those placed in TGH. Considered together, these findings indicate that cases with a higher number of intakes, a shorter number of days in placement and placement in RTF were at highest risk to recidivate. Cases whose most serious offense prior to placement was assault were at higher risk to commit an assault when they recidivated. Of the eight cases that recidivated by committing a PFMA, seven had committed the same crime as the most serious offense prior to placement. A diagnosis of oppositional defiant disorder was significantly associated with a post-placement assault offense, and these youth must also be considered at increased risk.

25% of RTF & TGH cases who recidivated did so within one month of discharge.

IMPLICATIONS FOR PRACTICE AND POLICY

Of the youth placed in therapeutic treatment facilities, those at risk for the highest level of care (RTF) are those with a diagnosis of bipolar disorder who commit crimes consistent with conduct disorder, such as assault, aggravated assault or PFMA; they are also more likely to recidivate. The primary reason for referring a youth to RTF is the presence of a mental illness, however, the connection between specific mental health diagnoses and specific criminal behaviors is less clear. Bipolar disorder, oppositional defiant disorder, major depressive disorder and most other diagnoses, as described in the Diagnostic and Statistical Manual of the American Psychological Association, do not list symptoms consistent with the level of aggression or violence evident in the criminal history of this population. Therefore, it is apparent from this study that these juvenile offenders are not only mentally ill, but are also prone to assaultive, sexually-offending, anti-social behaviors more consistent with a diagnosis of conduct disorder (see Appendix 8). It is highly unlikely that only 1.7 percent of any subset of juvenile offenders would be diagnosed with conduct disorder (Shufelt & Cocozza, 2006), yet that is the case in this study. Medicaid reimbursement policy in Montana may be complicit in this, as conduct disorder is not a reimbursable diagnosis. At the very least, it seems that conduct

It is highly unlikely that only 1.7% of any subset of juvenile offenders would be diagnosed with conduct disorder.

disorder should apply as a secondary diagnosis to all youth with this behavioral history. The OCA is advised to consider and further explore reasons why this diagnosis is apparently being avoided.

Key decision-makers must consider the degree to which a youth's assaultive behavior is being interpreted as mental illness. There may be a tendency on the part of mental health professionals to inaccurately attribute behaviors consistent with conduct disorder to a different mental illness. If a significant percentage of the population exhibits symptoms consistent with conduct disorder but are not diagnosed with that disorder, then it is likely they are receiving inappropriate treatment. Evidence-based treatment utilizing best practices for conduct disorder differs substantially from treatment for disorders such as bipolar disorder, depression or post traumatic stress disorder (PTSD). It is conceivable that treatment recidivism (the multiple placements seen in 52 percent of the cases studied) is at least, in part, attributable to the dearth of conduct disorder diagnoses and related treatment.

The possibility that conduct disorder cases are being misdiagnosed as bipolar and sent to the more restrictive level of care (RTF) should be further examined. Inappropriate treatment based on an inappropriate mental health diagnosis may cause recidivism both to another treatment facility and/or to additional criminal behavior. The degree to which conduct disorder and its treatment or non-treatment impact the overall criminal recidivism rate (53.7 percent of the cases in this study) should be explored. RTF cases have a higher criminal recidivism rate (60.4%) than TGH cases (43.3%), and those placed in RTF who did recidivate had shorter lengths of stay. We interpret the high recidivism rate as an indication that RTF treatment is not sufficiently mitigating future conduct-disordered behavior. Examining treatment practices and medication protocols in RTF was beyond the scope of this study; it should be included in future research efforts.

Corroborating a diagnosis of bipolar disorder, the most prevalent diagnosis in this sample, could be accomplished by reviewing the details of the certificates of need for these cases to

"Bipolar" is not a unitary disorder; it is a complex and multifaceted category of related diagnoses with many sub-types.

determine whether specific criteria for the diagnosis are met and, if so, which criteria are most frequent. It would also be useful to determine whether juvenile offenders with a preadmission diagnosis of bipolar disorder are being discharged with the same diagnosis. Additionally, there is a fairly narrow formulary of medications used to treat this mood disorder. To further differentiate true mood disorders from conduct disorders, one could examine the medication history of these cases to see if, in fact, their pharmacotherapy is consistent with their diagnosis.

Resolving complex questions about youth on probation with a mental health diagnosis requires accurate and detailed data. "Bipolar" is not a unitary disorder; it is a complex and multifaceted category of related diagnoses with many sub-types and different features. More diagnostic detail would be beneficial for further study.

Given that a large percentage of this population likely has both conduct disorder and another mental illness, it is concerning that Medicaid and/or other payers do not reimburse for inpatient therapeutic treatment for juvenile offenders with a primary diagnosis of conduct disorder. De-stigmatization of conduct disorder is necessary for effecting positive, systemic change. Diagnosing a juvenile offender with bipolar disorder when their actual diagnosis should be conduct disorder is doing them a disservice, as well. A diagnosis of bipolar disorder provides them a treatment opportunity, though not the appropriate type, potentially victimizing the youth as well as their family and society. Moreover, it is an inefficient use of Medicaid funds to treat a youth with an inappropriate diagnosis of bipolar disorder. It is advised that the OCA consider collaborating

with Medicaid administrators in the state to reform policy and facilitate the most prudent disbursement of treatment funds.

With a violent juvenile offender, the first consideration for the courts is the protection of society. For safety concerns, some of these offenders cannot be allowed to reside in the community, but *they must be placed somewhere*. At present, only four percent of Montana's 6,244 juvenile offenders are placed in therapeutic treatment facilities (see Appendix 7). Currently, the

Montana Department of Corrections may not incarcerate a severely mentally-ill juvenile offender. Therefore, many of these youth are placed in a therapeutic treatment facility where, without a conduct disorder diagnosis, they likely receive no treatment designed to prevent further criminal behavior. A juvenile offender who is placed in RTF and "acts out" (i.e., exhibits violent, aggressive and/or assaultive behavior) may be discharged due to an inability by that facility to deal with such behavior. However, a diagnosis of a severe mental illness, like bipolar disorder, will prevent their admission to a correctional facility. At this time, there is a need for either a mental health treatment facility or correctional facility that Montana may rely on to properly treat criminal, severely mentally-ill youth.

At this time, there is a need for either a mental health treatment facility or correctional facility that Montana may rely on to properly treat criminal, severely mentally-ill youth.

DATA CONSIDERATIONS

In general, the quality of the information retrieved from the JCATS system was very good, though there is room for improvement. The system is capable of tracking every form of treatment in a juvenile offender's case history leading up to placement in a therapeutic treatment facility; however, not all information is being tracked consistently, and electronic documentation does not always support the assumption that all juvenile offenders receive treatment at a lower level of care prior to placement in RTF, TGH or TFH. Probation should be required to document pre-intake

For half of the juvenile offenders, there was no record of the number of services received prior to placement in a therapeutic treatment facility.

treatment history, particularly RTF history. To have been admitted to RTF or TGH, juvenile offenders must have been issued a formal certificate of need signed by a licensed professional, mental health case manager and medical doctor. An appropriate prior authorization form must also be completed and approved by First Health Services of Montana, a healthcare management company that assists with utilization management and prior authorization of services as required by the Medicaid program. This certificate is not needed in order for juvenile offenders to enter CDF, though a diagnostic report by a licensed professional is required. In this

study, for half of the sample of juvenile offenders, there was no record of the number of services received prior to placement in a therapeutic treatment facility. It is unlikely that this large group of juvenile offenders received no services, but with no record in JCATS, there was no way to capture this data, rendering the variable inconclusive. This also affected the researchers' ability to fully understand the case histories leading up to placement in RTF. While this is clearly not indicative of a widespread data collection problem, the OCA is advised to continue insuring that quality, accurate data is recorded in JCATS by individual officers.

JCATS includes a risk assessment system called "Back on Track" (BOT), which may currently be underutilized. BOT measures a youth's risk and protective factors in ten domains, including

alcohol, drugs and mental health. It is currently unknown if this instrument is valid with rural youth and further validation study should be considered. BOT holds a potential wealth of information that could be of more use to the OCA.

RECOMMENDATIONS FOR FURTHER STUDY

Several areas of further study would enhance the findings of the initial research effort and provide useful information to the OCA. Comparing juvenile offenders placed in therapeutic treatment facilities to the rest of the juvenile offender population in the state would better determine if this is a unique group. This would require extracting data from JCATS on a representative sample of all juvenile offenders in the state against which youth placed in therapeutic treatment facilities could be compared across a series of variables. This would establish whether or not juvenile offenders placed in therapeutic treatment facilities have a different criminal profile than the rest of the population of juvenile offenders. Moreover, it would determine if those placed in therapeutic treatment facilities (4% of all juvenile offenders in the state) are more prone to violent, aggressive and/or assaultive behaviors than those who are not placed in this level of care. Exploring similarities and differences across a wide range of variables would inform policy and practice decisions throughout the OCA juvenile probation system.

Creating a data set representative of all juvenile offenders in the state would allow for further examination of the placement practices of judicial districts. Appendix 7 illustrates both the total number of juvenile offenders in each district and the number and percentage of juvenile offenders in each district placed in therapeutic treatment facilities. Districts that appear to refer a disproportionately high percentage of juvenile offenders to therapeutic treatment facilities should be further compared to districts that appear to refer a disproportionately low percentage of juvenile offenders. For example, what are district 19 (11.0%) and district 6 (1.5%) doing differently with regards to generating referrals for therapeutic placement? It may be that those districts with fewer therapeutic treatment facility referrals are under-identifying mental health issues in their juvenile population, or it may be that their communities are richer in alternative programs such as intensive outpatient treatment. Similarly, explanations should be sought concerning those districts that are referring more juvenile offenders than average for therapeutic placement. The significant differences between districts should be viewed with caution as these findings relied on a single univariate statistic; more complex analysis is needed.

Further study should also explore whether or not juvenile offenders are discharged because they have successfully completed treatment. Reason for discharge was not explicit in the data available to the researchers for the purposes of this study. Other factors may contribute to discharge, such as funding, "aging out" (i.e., turning 18) or disciplinary reasons. Exploring the discharge status of both recidivists and non-recidivists would be useful for informing further predictive models.

CONCLUSION

This report prepared by UM for the OCA clearly demonstrates that the data collection capacity of the OCA is sufficient to use quantitative methods to predict placement in RTF, out-of-state placement, length of stay and recidivism. Useful information was available for demographic, diagnostic, service-related and offense-related variables. Determining the need for placement is infinitely complex; this study relied primarily on quantitative methods and provides answers for select research questions. It certainly does not answer all questions about the process of placing juvenile offenders in therapeutic treatment facilities, and further research efforts are encouraged.

The Supreme Court of Montana
Office of Court Administrator

Beth McLaughlin
Court Administrator
e-mail: bmclaughlin@mt.gov



301 South Park Avenue, Room 328
PO Box 203005
Helena, Montana 59620-3005
Phone: (406) 841-2966
Fax: (406) 841-2955

TO: Members of the Law and Justice Interim Committee

FROM: Beth McLaughlin, Court Administrator
Montana Supreme Court

DATE: August 29, 2011

SUBJECT: Report on Annual License Tax on Attorneys

Section 37-61-211, MCA, requires that an attorney admitted by the Montana Supreme Court to practice law within the state pay a license tax of \$25 a year. Upon receipt of the tax revenue, the Clerk of the Supreme Court deposits the revenue into the general fund.

In 2005, section 37-61-211, MCA, was amended to require that revenue from the attorney license tax be allocated to the Supreme Court for the operations of certain commissions and entities (e.g., Commission on Practice, Commission on Courts of Limited Jurisdiction). The 2005 legislation further required the court administrator to report annually on expenditures authorized in section 37-61-211, MCA, to the Law and Justice Interim Committee.

For fiscal year 2011, \$113,355 was collected from the attorney license tax. Because the 2005 legislation did not create a state special revenue account for deposit of the attorney license tax revenue, this money was deposited into the general fund, as it had been in prior years. Therefore, no expenditures for the operation of judicial commissions were made directly from the tax revenue in fiscal year 2011. The commissions were funded through a general fund appropriation and an appropriation from a state special revenue account for certain fees approved by the Commission on Courts of Limited Jurisdiction.

Please let me know if you have any questions or need additional information.

STATE OF MONTANA BOARD OF PARDONS AND PAROLE

Medical Parole Report July 2008 (Section 46-23-210, MCA)

Dispositions

- (7) medical parole applications were heard at Montana State Prison in FY 2008
- (4) applications were approved (57.1%)
- (3) applications were denied (42.9%)
- (1) medical parole applicant that was denied in FY 08 was granted standard parole at his initial appearance in June 2008

Outcome of Offenders Released on Medical Parole

- (2) offenders were released on medical parole in January 2008
- (1) offender was released on medical parole in February 2008
- (1) offender was released June 2008
- (2) offenders remain on active supervision in Montana
- (2) offenders remain on active supervision and have been transferred in accordance interstate compact agreement to the states of North Dakota and Washington
- No violations of the rules of supervision have been reported

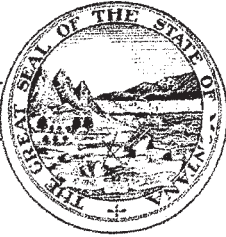
Healthcare Costs and Payments Related to the Care of the Offender

- (1) offender is covered by Medicare and his wife's private insurance. The Medicare premium has been \$126.00 per month beginning January 2008. The Humano Program supplements the cost.
- (1) offender
- No reports were received to date regarding costs and payments from the interstate cases.

Montana Public Defender Commission
Fiscal Year 2011 Report
to the Governor, Supreme Court and
Legislature
December, 2011

- Letter from Chairman Richard E. "Fritz" Gillespie
- Commission Membership
- Mission Statement
- Assessments and Collections
- FTE vs. Contractor Hourly Rates
- Regional Statistics
- Required Reports
 - Staffing Report
 - Training Report
 - Case Counts
 - Caseload and Workload
 - Expenditure Data
 - Legislative Finance Committee Reporting
 - Policies and Procedures
 - Standards

MONTANA PUBLIC DEFENDER COMMISSION



BRIAN SCHWEITZER
GOVERNOR

RICHARD E. GILLESPIE
CHAIR

STATE OF MONTANA

(406) 496-6080
Fax: (406) 496-6098

44 WEST PARK STREET
BUTTE, MONTANA 59701

December 1, 2011

Governor Brian Schweitzer
P.O. Box 200801
Helena, MT 59620-0801

The Montana Supreme Court
P.O. Box 203001
Helena, MT 59620-3001

The Montana Legislature
c/o Kevin Hayes
Legislative Services Division
P.O. Box 201706
Helena, MT 59620-1706

Dear Governor Schweitzer, Supreme Court Justices, and Legislators:

RE: Montana Public Defender Commission Report
to the Governor, Supreme Court and Legislature

Pursuant to 47-1-105 (9), MCA, the Montana Public Defender Commission must provide a biennial report to the Governor, Supreme Court and Legislature. Each interim, the Commission also specifically reports to the Law and Justice Interim Committee.

Description of Report

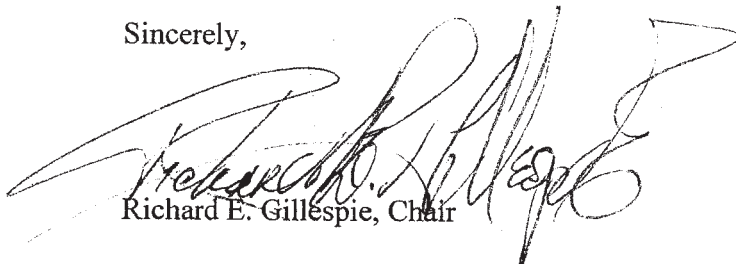
1. All policies and procedures in effect for the operation and administration of the statewide public defender system and all standards established or being considered by the Commission or the chief public defender.
2. The number of deputy public defenders and the region supervised by each; the number of public defenders employed or contracted within the system, identified

- by region; and the number of attorney and non attorney staff supervised by each deputy public defender.
3. The number of new cases in which counsel was assigned to represent a party, identified by region, court and case type; and the total number of persons represented by the office, identified by region, court and case type.
 4. The annual caseload and workload of each public defender, identified by region, court and case type.
 5. The training programs conducted by the office and the number of attorney and non-attorney staff who attended each program; and the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted within the system.
 6. Detailed expenditure data by court and case type.

This report is also available at
<http://www.publicdefender.mt.gov/2011GovReport/TOC.asp>.

Please feel free to contact our Administrative Director, Harry Freebourn, if you have any questions regarding the information in this report. Mr. Freebourn can be reached at 496-6084, or hfreebourn@mt.gov.

Sincerely,



Richard E. Gillespie, Chair

cc: Montana Public Defender Commission
Dave Stenerson, Interim Chief Public Defender
Harry Freebourn, Administrative Director

Public Defender Commission Membership

as of December, 2011

Richard "Fritz" Gillespie, Chair
P.O. Box 598
Helena, MT 59624
(406) 442-0230
REGillespie@kellerlawmt.com

Term ends July 1, 2013
Qualification: attorney nominated by State Bar, who represents criminal defense lawyers

Kenneth R. Olson, Vice-Chair
417 Central Ave. #4
Great Falls, MT 59401
(406) 727-6263
olsonlaw@mt.net or tish@kenolsonlaw.com

Term ends July 1, 2014
Qualification: attorney nominated by the Montana Supreme Court

Alfred F. Avignone
504 W Main St.
Bozeman, MT 59715
(406) 582-8822
avignone@qwestoffice.net

Term ends July 1, 2013
Qualification: attorney nominated by the Supreme Court

Christopher Daem
(406) 656-6621

Term ends July 1, 2014
Qualification: member of organization advocating on behalf of people with mental illness and developmental disabilities

Caroline Fleming
jackncaroline@yahoo.com

Term ends: July 1, 2011
Qualification: public representative nominated by House Speaker

Terry Jessee
TJessee@co.yellowstone.mt.gov

Term ends July 1, 2012
Qualification: public representative nominated by Senate President

Margaret Novak
P.O. Box 720
Chester, MT 59522
margaretmnovak@gmail.com

Term ends July 1, 2013
Qualification: member of organization advocating on behalf of indigent persons

Charles Petaja
615 S. Oaks
Helena MT 59601
(406) 442-3625
haloffices@qwestoffice.net

Term ends July 1, 2012
Qualification: attorney nominated by State Bar, experienced in felony defense with one year as full-time public defender

Majel Russell
Mrussell@elkriverlaw.com

Term ends July 1, 2012
Qualification: member of organization advocating on behalf of racial minorities

Ann Sherwood
P.O. Box 278
Pablo, MT 59855
(406) 675-2700 ext. 1125
annsherwood@hotmail.com

Term ends July 1, 2014
Qualification: attorney nominated by State Bar, experienced in defense of juvenile delinquency and federal Indian Child Welfare Act

William F. Snell Jr.
3122 Brayton St.
Billings MT 59102
(406) 652-3640
psf@180com.net

Term ends July 1, 2013
Qualification: employee of organization providing addictive behavior counseling



Revised Background Brief
for the
State Administration and Veterans' Affairs
Interim Committee

Revised as of **August 10, 2012**

HB 142 - Review of Statutory Advisory Councils and Reports

Prepared by Sheri Scurr, Staff Research Analyst

Overview

Adopted by the 2011 Legislature, House Bill No. 142 added the following duty to the statutory duties of each interim committee.

"...(d) review statutorily established advisory councils and required reports of assigned agencies to make recommendations to the next legislature on retention or elimination of any advisory council or required reports pursuant to 5-11-210;...."

Assigned agencies

The State Administration and Veterans' Affairs Interim Committee (SAVA) is assigned by statute to monitor the following agencies and administratively attached agencies:

- Department of Administration *(6 statutory advisory bodies, 5 statutory reports)*
- Secretary of State *(no statutory advisory councils, 1 statutory report)*
- Commissioner of Political Practices *(no statutory advisory councils, no statutory reports)*
- Department of Military Affairs *(no statutory advisory councils, no statutory reports)*
- Board of Veteran's Affairs *(no statutory advisory councils, 1 statutory report)*
- Teachers' Retirement Board *(no statutory advisory councils, 2 statutory reports)*
- Public Employees' Retirement Board *(1 statutory advisory councils, 2 statutory reports)*

Decision points

The question before SAVA is whether to recommend a committee bill to eliminate or revise the governing statutory language. Absent a committee bill, current statutory language will be retained.

Committee action

The last column in the summary tables provided in the report show the committee's action on whether to eliminate, revise, or retain the current statutory language. These recommendations are based only on a technical perspective.

Organization of materials

Table 1 - Statutory advisory councils, boards, or commissions

Table 2 - Statutorily-required reports

Appendix A - MCA sections for statutory advisory councils under the Department of Administration

Table 1 - Statutory Advisory Councils, Boards, or Commissions

	Statute	Members	Purpose	Date Reviewed	Committee Action Aug 8, 2012
Department of Administration *(MCA sections attached as Appendix A)					
1 - State Employee Group Benefits Advisory Council	2-15-1016	Statute does not specify number. States "diverse group" at least one must be retired public employee, each union with more than 1,000 members entitled to one member. Currently, 12 members appointed by governor.	To review the existing state employee group benefit plans, to review claims problems, and to advise the department on state employee group benefit matters.	10/20/11	Retain
2 - Capitol Complex Advisory Council	2-17-803	9 members specified in statute	To review proposals for long-term placement of displays of art or memorials and the naming of state buildings, spaces, or rooms in the Capitol Complex.	1/27/12	Retain
3 - Electronic Government Advisory Council	2-17-1105	12 members specified by statute	To advise on the creation, management, and administration of electronic government services and information on the internet.	4/19/12	Retain
4 - Information Technology Board	2-15-1021	19 members appointed by various authorities	To provide an advisory forum for executive, judicial, and legislative branch agencies and local governments when the department is setting IT standards and policies.	6/11/12	Retain
5 - 911 Advisory Council	10-4-102(2)	Appointed by the governor; various public safety organizations may submit recommendations for membership.	To provide representatives of 9-1-1 jurisdictions with the opportunity to participate in the development, implementation and management of the State of Montana's 9-1-1- Program.	1/27/12	Retain
6 - Land Information Advisory Council	90-1-405	22 members as specified by statute	To advise on geographic information system and land information priorities; promote coordination; and advocate for the development of consistent policies, standards, and guidelines for land information.	8/9/12	Retain

	Statute	Members	Purpose	Date Reviewed	Committee Action Aug 8, 2012
Public Employees' Retirement Board					
1 - Employee Investment Advisory Council	19-3-2133	Not specified by statute. Appointed by the PERB Currently 13 members.	<p>19-3-2133. Employee investment advisory council.</p> <p>(1) The board shall create an employee investment advisory council. The advisory council shall meet at least four times a year to:</p> <ul style="list-style-type: none"> (a) advise the board concerning the operation of the defined contribution plan, including the selection of the initial investment alternatives to be provided pursuant to 19-3-2122; (b) advise the board about negotiating, contracting, or modifying services for the state deferred compensation plan provided for in chapter 50; and (c) review existing deferred compensation plans and to advise the board on the administration of the program. 	4/19/12	Retain

Table 2 - Statutory Reports to the Legislature

	Statute	Statutory Language Requiring the Report	Date Reviewed	Committee Action Aug 8, 2012
Department of Administration				
1 - Capitol Complex Advisory Council Report	2-17-804(3)	"(3) By November 15 of each year preceding a legislative session, the council shall report to the legislature on requests that the council has reviewed for naming buildings, spaces, and rooms and for placing items in the capitol complex or on the capitol complex grounds. The report must include a recommendation to the legislature on whether reviewed requests meet the criteria established by this part. If a request meets the criteria, the council shall recommend a timeframe during which the project should be authorized."	1/27/12	<u>Revise</u> Require the report to be provided to SAVA by September 15 prior to session
2 - Electronic Government Advisory Council Report	2-17-1105(2)(f)	The department shall... "(2) (f) prepare reports upon the request of the governor or the legislature regarding the growth, performance, and use of electronic government services and other measurements that the advisory council considers necessary to implement and enhance the functioning of electronic government services;"	4/19/12	Retain
3 - Employee Incentive Program Report	2-18-1103(3)	The department shall... "(3) prepare and submit, in the manner provided in 5-11-210, a list of awards granted under 2-18-1106 and the corresponding savings to the state and improvements in the effectiveness of state government".	6/11/12	<u>Revise</u> Require the report be provided to SAVA by September 15 prior to session
4 - Information Technology Report	2-17-512(1)(x) and 2-17-515	2-17-512: The department shall "(x) shall report to the appropriate interim committee on a regular basis and to the legislature as provided in 5-11-210 on the information technology activities of the department; 2-17-515: Regarding exceptions to the state's information technology policies.... "The department shall inform the board, the office of budget and program planning, and the legislative finance committee of all exceptions that are granted and of the rationale for granting the exceptions. The department shall maintain written documentation that identifies the terms and conditions of the exception and the rationale for the exception."	6/11/12	Retain
5 - Montana Land Information Report	90-1-404(l)	(l) report to the governor and the legislature, as provided for in 5-11-210, on the progress made in the ongoing collection, maintenance, standardization, and dissemination of land information;	8/9/12	Retain

	Statute	Statutory Language Requiring the Report	Date Reviewed	Committee Action Aug 8, 2012
Board of Veteran's Affairs *(Appendix B provides the full statute in order to compare the Board's duties with the Board's report)				
Biennial Report	10-2-102(1)(i)	The board shall... "(i) prepare a biennial report to the governor, the department of military affairs, the appropriate legislative interim committee, and veterans' service organizations. The report must include but is not limited to the latest information about the demographics of Montana's veteran population, a needs assessment, annual summaries of the veterans' special revenue accounts established in 10-2-112 and 10-2-603, and a review of the veterans' affairs budget."	6/11/12	<u>Revise</u> Amend in manner requested by MVAD
Office of Secretary of State				
Uniform Commercial Code Secured Transactions Report	30-9A-527	<p>30-9A-527. Duty to report. The secretary of state shall report to each session of the legislature on the operation of the filing office. The report must contain a statement of the extent to which:</p> <p>(1) the filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and</p> <p>(2) the filing-office rules are not in harmony with the most recent version of the model rules promulgated by the international association of corporate administrators or any successor organization and the reasons for these variations.</p>	8/9/12	<u>Revise</u> Report to SAVA by Sept 15 of year preceding session, but only if there have been any changes affecting filing-office rules.

	Statute	Statutory Language Requiring the Report	Date Reviewed	Committee Action Aug 8, 2012
Teachers' Retirement Board				
1 - Annual report - CAFR	5-11-120(11) 19-20-201(1)(d) and (4)	<p>5-11-210, MCA. (11) Each report to the legislature required under 17-6-230, 19-2-405, 19-2-407, and 19-20-201 must be provided to the legislative services division as soon as the report is published. The legislative services division shall ensure that legislators are notified pursuant to this section of the report's availability. During the interim, the legislative services division shall ensure that members of the state administration and veterans' affairs interim committee and the legislative finance committee receive copies of the reports.</p> <p>19-20-201(1) and (4), MCA: (1)(d) submit a report to the office of budget and program planning detailing the fiscal transactions for the 2 fiscal years immediately preceding the report due date, the amount of the accumulated cash and securities of the retirement system, and the last fiscal year balance sheet showing the assets and liabilities of the retirement system;... (4) The board shall make available to the legislature pursuant to 5-11-210 copies of the annual actuarial valuation and report required pursuant to subsections (1)(d) and (1)(f).</p>	1/27/12	Retain
2- Actuarial valuation of TRS	19-20-201(1)(f) and (4)	19-20-201: (f) prepare an annual valuation of the assets and liabilities of the retirement system that includes an analysis of how market performance is affecting the actuarial funding of the retirement system; ... (4) The board shall make available to the legislature pursuant to 5-11-210 copies of the annual actuarial valuation and report required pursuant to subsections (1)(d) and (1)(f).	10/20/11	Retain
3 - Experience study of TRS	none	none (See MPERA reporting requirement under 19-2-405(5))	n/a	<u>Revise</u> For consistency, add requirement for experience study and report to the legislature - similar to what is in the MPERA statute

	Statute	Statutory Language Requiring the Report	Date Reviewed	Committee Action Aug 8, 2012
Public Employees' Retirement Board				
1 - Annual report - CAFR	19-2-407	<p>19-2-407. Reports. (1) As soon as practical after the close of each fiscal year, the board shall file with the governor and with the legislature pursuant to 5-11-210 a report of its work for that fiscal year. The report must include but is not limited to:</p> <p>(a) a statement as to the accumulated cash and securities in the pension trust funds as certified by the state treasurer and the board of investments;</p> <p>(b) a summary of the most recent information available from the actuary concerning the actuarial valuation of the assets and liabilities of each system or plan; and</p> <p>(c) an analysis of how market performance is affecting actuarial funding of each of the retirement systems or plans.</p> <p>(2) The report required under subsection (1) must also provide information concerning the defined contribution plan, including a description of the plan, the number of members in the plan, plan contribution rates, the total amount of money invested by members, investment performance, administrative costs and fees, determinations on the plan choice rate made pursuant to 19-3-2121, and other information required under applicable governmental accounting standards and as determined by the board.</p>	4/19/12	Retain
2 - Actuarial valuation of each system administered by MPERA	19-2-405	(2) The board shall require the actuary to make an annual actuarial investigation into the suitability of the actuarial tables used by the retirement systems and an actuarial valuation of the assets and liabilities of each defined benefit plan that is a part of the retirement systems. <i>(actuarial valuation not required to be reported to the legislature)</i>	10/20/11	<u>Revise</u> Require copy of the report to be made available to the legislature
3 - Experience study report of each system administered by MPERA	5-11-210 19-2-405(5)	<p>5-11-210 (11): Each report to the legislature required under 17-6-230, 19-2-405, 19-2-407, and 19-20-201 must be provided to the legislative services division as soon as the report is published.</p> <p>19-2-405(5): The board shall require the actuary to conduct a periodic actuarial investigation into the actuarial experience of the retirement systems and plans. Copies of the report must be provided to the legislature pursuant to 5-11-210.</p>		

	Statute	Statutory Language Requiring the Report	Date Reviewed	Committee Action Aug 8, 2012
Board of Investments *(Board is attached to the Department of Commerce and monitored by the Economic Affairs Interim Committee)				
Report on retirement system trust fund investments and benefits	17-6-230	<p>17-6-230. Reports on retirement system trust fund investments and benefits. (1) As soon as practical after the end of each calendar year, the board of investments shall publish a report on each retirement system trust fund invested by the board. The report may be part of an annual report required pursuant to Article VIII, section 13, of the Montana constitution or 17-5-1650 but must summarize the following with respect to each retirement system trust fund:</p> <ul style="list-style-type: none"> (a) asset allocation; (b) past and expected investment performance; (c) investment goals and strategies; and (d) Montana public employees' retirement system investments and performance compared with the public employees' retirement system investments and performance in other states. <p>(2) The board of investments shall annually at a public meeting present the report described in subsection (1) to the public employees' retirement board provided for in 2-15-1009 and the teachers' retirement board provided for in 2-15-1010. The board shall also provide the report to the legislature pursuant to 5-11-210.</p>		<p>Revise</p> <p>Require presentation of report to SAVA. Consider whether to eliminate requirement under (1)(d) for comparison with other states or request that the Board's report comply.</p>

APPENDIX A - MCA SECTIONS

Advisory Councils, Commissions, or Boards Under the Department of Administration

1 - STATE EMPLOYEE GROUP BENEFITS ADVISORY COUNCIL

2-15-1016. State employee group benefits advisory council -- composition. (1) The department shall create a state employee group benefits advisory council under 2-15-122.

(2) The members of the advisory council must be selected from a diverse group in order to adequately represent the interests of state employees and retirees.

(3) One member of the advisory council must be a retired state employee.

(4) Each labor organization, as defined in 39-31-103, representing more than 1,000 employees of the state of Montana is entitled to one representative on the advisory council.

2 - CAPITOL COMPLEX ADVISORY COUNCIL

2-17-803. Capitol complex advisory council established -- membership -- staff services -- compensation. (1) There is a capitol complex advisory council.

(2) The council consists of nine members as follows:

(a) two members of the house of representatives appointed by the speaker on a bipartisan basis;

(b) two members of the senate appointed by the committee on committees on a bipartisan basis;

(c) a public representative appointed by the governor; and

(d) the director or the director's designee of each of the following agencies:

(i) the Montana historical society established in 22-3-101;

(ii) the Montana arts council established in 2-15-1513;

(iii) the department of administration established in 2-15-1001; and

(iv) the department of fish, wildlife, and parks established in 2-15-3401.

(3) The council shall select a presiding officer, who may call meetings to conduct council business. The department of administration shall provide staff services to the council.

(4) (a) The council member appointed under subsection (2)(c) is entitled to compensation not to exceed the daily allowance provided for in 5-2-301(3) for compensation of legislators for each day in which the member is actually and necessarily engaged in performing council duties and to travel expense reimbursement as provided in 2-18-501 through 2-18-503.

(b) A council member designated under subsection (2)(d) is not entitled to compensation for services as a member of the council.

(c) A council member appointed under subsection (2)(a) or (2)(b) is entitled to compensation and expenses as provided in 5-2-302.

2-17-804. Council duties and responsibilities. (1) The council shall:

(a) adopt an art and memorial plan for the placement of art and memorials in the capitol complex and on the capitol complex grounds;

(b) review proposals for long-term displays of up to 50 years, subject to renewal, in the capitol complex and on the capitol complex grounds and for the naming of state buildings, spaces, and rooms in the capitol complex;

(c) advise the legislature on the placement of busts, plaques, statues, memorials, monuments, or art displays of a long-term nature in public areas of the capitol complex and on the capitol complex grounds, including the executive residence and the original governor's mansion; and

(d) advise the department of administration on interior decoration of the capitol, grounds maintenance, and grounds displays.

(2) In advising the legislature on long-term displays, the council shall consider whether the bust, plaque, statue, memorial, monument, or art display:

(a) reasonably fits the long-range master plan for the capitol and adjacent grounds developed under 2-17-805;

(b) adversely alters the appearance of the capitol complex;

(c) unreasonably affects foot traffic on the capitol complex;

(d) adversely impacts existing maintenance programs or the utility infrastructure;

(e) recognizes a person or event of statewide significance and relevance;

(f) has artistic merit in design and construction;

(g) will be safely and aesthetically suited to the installation site; and

(h) has adequate funding for design, installation, and maintenance.

(3) By November 15 of each year preceding a legislative session, the council shall report to the legislature on requests that the council has reviewed for naming buildings, spaces, and rooms and for placing items in the capitol complex or on the capitol complex grounds. The report must include a recommendation to the legislature on whether reviewed requests meet the criteria established by this part. If a request meets the criteria, the council shall recommend a timeframe during which the project should be authorized.

3 - ELECTRONIC GOVERNMENT ADVISORY COUNCIL

2-17-1105. Electronic government advisory council. (1) There is an electronic government advisory council. The council consists of the following members:

(a) the director of the department, who serves as presiding officer;

(b) the secretary of state or the secretary of state's designee;

(c) the attorney general or the attorney general's designee;

(d) the director of the department of commerce or the director's designee;

(e) the director of the department of revenue or the director's designee;

(f) the state librarian or the state librarian's designee;

(g) a member of the house of representatives, appointed by the speaker of the house;

- (h) a member of the senate, appointed by the president of the senate;
 - (i) an elected local government official, appointed by the governor;
 - (j) two representatives from state agencies that are not represented on the council, appointed by the governor;
 - (k) two members of the public, appointed by the governor; and
 - (l) the administrator of the information services division of the department.
- (2) The advisory council shall:
- (a) advise the department with regard to the creation, management, and administration of electronic government services and information on the internet;
 - (b) advise the department with regard to the administration of any electronic government services contract;
 - (c) advise the department on the priority of government services to be provided electronically;
 - (d) advise the department on convenience fees, if needed, for any electronic government service;
 - (e) review and advise the department on financial reports, management reports, or other data as requested by the department;
 - (f) prepare reports upon the request of the governor or the legislature regarding the growth, performance, and use of electronic government services and other measurements that the advisory council considers necessary to implement and enhance the functioning of electronic government services;
 - (g) assist in identifying, evaluating, and prioritizing potential departmental and interagency electronic government services;
 - (h) serve as a central coordination point for electronic government services provided by the department or other state agencies; and
 - (i) study, propose, develop, or coordinate any other activity in furtherance of electronic government services as requested by the governor or the legislature.
- (3) Each member of the advisory council shall serve a 2-year term and may be reappointed.
- (4) Vacancies on the advisory council must be filled in the same manner as the original appointment, and the person appointed to fill the vacancy is appointed for the remainder of the unexpired term.
- (5) Members of the advisory council who are not state employees are reimbursed and compensated as provided in 2-15-124. Members who are state employees are not entitled to compensation but are entitled to be reimbursed for expenses as provided in Title 2, chapter 18, part 5. Legislative members of the advisory council are reimbursed and compensated as provided in 5-2-302. The department shall provide support to and pay the expenses of the advisory council.

4 - INFORMATION TECHNOLOGY BOARD

2-15-1021. Information technology board -- membership -- qualifications -- vacancies -- compensation. (1) There is an information technology board. The board consists of 19 members who are appointed as follows:

- (a) the director of the department of administration, who serves as presiding officer of the board;
 - (b) the chief information officer provided for in 2-17-511;
 - (c) the director of the office of budget and program planning;
 - (d) six members who are directors of state agencies and who are appointed by the governor;
 - (e) two members representing local government, appointed by the governor;
 - (f) one member representing the public service commission, appointed by the public service commission;
 - (g) one member representing the private sector, appointed by the governor;
 - (h) one member of the house of representatives, appointed by the speaker of the house of representatives;
 - (i) one member of the senate, appointed by the president of the senate;
 - (j) one member representing the legislative branch, appointed by the legislative branch computer system planning council;
 - (k) one member representing the judicial branch, appointed by the chief justice of the supreme court;
 - (l) one member representing the university system, appointed by the board of regents; and
 - (m) one member representing K-12 education, appointed by the superintendent of public instruction.
- (2) Appointments must be made without regard to political affiliation and must be made solely for the wise management of the information technology resources used by the state.
- (3) A vacancy occurring on the board must be filled by the appointing authority in the same manner as the original appointment.
- (4) The board shall function in an advisory capacity as defined in 2-15-102.
- (5) Members of the board must be reimbursed and compensated in the same manner as members of quasi-judicial boards under 2-15-124(7), except that legislative members are reimbursed and compensated as provided in 5-2-302.

2-17-513. Duties of board. The board shall:

- (1) provide a forum to:
 - (a) guide state agencies, the legislative branch, the judicial branch, and local governments in the development and deployment of intergovernmental information technology resources;
 - (b) share information among state agencies, local governments, and federal agencies regarding the development of information technology resources;
- (2) advise the department in the development of cooperative contracts for the purchase of

information technology resources;

(3) review and advise the department on:

(a) statewide information technology standards and policies;

(b) the state strategic information technology plan;

(c) major information technology budget requests;

(d) rates and other charges for services established by the department as provided in 2-17-512(1)(t);

(e) requests for exceptions as provided for in 2-17-515;

(f) notification of proposed exemptions by the university system and office of public instruction as provided for in 2-17-516;

(g) action taken by the department as provided in 2-17-514(1) for any activity that is not in compliance with this part;

(h) transfer of information technology funds, resources, and employees as provided for in 2-17-531; and

(i) the implementation of major information technology projects and advise the respective governing authority of any issue of concern to the board relating to implementation of the project;

(4) study state government's present and future information technology needs and advise the department on the use of emerging technology in state government; and

(5) request information and reports that it considers necessary from any entity using or having access to the statewide telecommunications network or central computer center.

5 - 911 ADVISORY COUNCIL

10-4-102. Department of administration duties and powers. (1) The department shall assist in the development of basic and enhanced 9-1-1 systems in the state. The department shall:

(a) establish procedures for determining and evaluating requests for variations from basic or enhanced 9-1-1 service;

(b) upon request of a 9-1-1 jurisdiction, assist in planning a basic or enhanced 9-1-1 system;

(c) establish criteria for evaluating basic and enhanced 9-1-1 system plans;

(d) monitor implementation of approved basic and enhanced 9-1-1 system plans for compliance with the plan and use of funding; and

(e) as it finds necessary, report to the legislature the progress made in implementing statewide basic and enhanced 9-1-1 systems and in implementing wireless enhanced 9-1-1 services.

(2) The department shall obtain input from all 9-1-1 jurisdictions by creating an advisory council to participate in development and implementation of the 9-1-1 program in the state. The council must be established pursuant to 2-15-122. The highway patrol, emergency medical services organizations, telephone companies, the associated public safety communicators, the department of emergency services, police departments, sheriff's offices, local citizens, organizations, and other public safety organizations may submit recommendations for membership on the advisory council.

(3) The department may request information from a specific 9-1-1 jurisdiction as determined necessary for the department to fulfill its duties under this chapter. If a 9-1-1 jurisdiction does not

comply with the request, the department may suspend distributions to the 9-1-1 jurisdiction as provided in 10-4-302(4).

6 - LAND INFORMATION ADVISORY COUNCIL

90-1-405. Land information advisory council -- appointments -- terms -- vacancies -- compensation. (1) There is a land information advisory council.

(2) The council is composed of the following members:

(a) the director of the department or the director's designee who shall:

(i) serve as the presiding officer of the council; or

(ii) appoint the presiding officer from among the other members of the council;

(b) the state librarian or the state librarian's designee;

(c) to be appointed by the governor:

(i) the directors of four other departments established in Title 2, chapter 15. A director may designate a person to act in the director's absence.

(ii) three persons who represent county or municipal government, at least one of whom is active in land information systems;

(iii) two persons who are employed by the U.S. department of agriculture;

(iv) two persons who are employed by the U.S. department of the interior;

(v) two persons who are active in land information systems and represent public utilities or private businesses;

(vi) one person who represents Indian tribal interests;

(vii) one person who represents the Montana university system;

(viii) two persons who are members of a Montana association of GIS professionals; and

(ix) one person who represents the interests of a Montana association of registered land surveyors;

(d) one member of the Montana state senate, appointed by the committee on committees, who must be appointed prior to the appointment of the member described in subsection (2)(e); and

(e) one member of the Montana house of representatives, appointed by the speaker of the house of representatives, who may not be a member of the same political party as the member of the senate appointed under subsection (2)(d).

(3) Each council member is appointed for a 2-year term that begins on July 1 of the odd-numbered year and ends on June 30 of the succeeding odd-numbered year. A member may be reappointed to the council.

(4) A vacancy on the council must be filled in the same manner as the original appointment, and the person appointed to fill the vacancy shall serve for the remainder of the unexpired term.

(5) (a) A member of the council who is not a legislator or an employee of the state or a political subdivision of the state is eligible to be reimbursed and compensated, as provided in 2-15-124.

(b) A member of the council who is not a legislator but is an employee of the state or a political subdivision of the state is not entitled to compensation but is entitled to be reimbursed for

expenses, as provided in 2-18-501 through 2-18-503.

(c) A legislator who is a member of the council is eligible to be compensated and reimbursed, as provided in 5-2-302.

90-1-406. Land information advisory council -- duties -- advisory only. (1) The council shall:

(a) advise the department with regard to issues relating to the geographic information system and land information;

(b) advise the department on the priority of land information, including data layers, to be developed;

(c) review the land information plan described in 90-1-404 and advise the department on any element of the plan;

(d) advise the department on the development and management of the granting process described in 90-1-404(1)(e);

(e) advise the department on the management of and the distribution of funds in the account;

(f) assist in identifying, evaluating, and prioritizing requests received from state agencies, local governments, and Indian tribal government entities to provide development of and maintenance of services relating to the GIS and land information;

(g) promote coordination of programs, policies, technologies, and resources to maximize opportunities, minimize duplication of effort, and facilitate the documentation, distribution, and exchange of land information; and

(h) advocate for the development of consistent policies, standards, and guidelines for land information.

(2) The council functions in an advisory capacity, as defined in 2-15-102.

APPENDIX B - DUTIES OF THE BOARD OF VETERAN'S AFFAIRS

10-2-102. Duties of board -- employee qualifications. (1) The board shall establish a statewide service for veterans and their families as provided in this section. The board shall:

(a) actively cooperate with local, state, and federal agencies whose services encompass the affairs of veterans and their families;

(b) promote the general welfare of all veterans and their families;

(c) assist veterans and their families who are residents of this state in filing claims for the benefits to which they are entitled. In carrying out this duty, the board and its accredited employees shall, upon the request of an eligible claimant, act as agents for the claimant in developing and presenting claims for benefits provided under Title 38 of the United States Code. The board shall seek to secure speedy and just action for each claimant. A board employee officially acting as an agent on behalf of a claimant must be properly accredited and recognized pursuant to 38 CFR 14.628 and 14.629.

(d) officially advocate for the fair treatment of Montana's veterans and their families by the U.S. department of veterans affairs with respect to claims processing, health care services, and other veteran-related programs and inform veterans and their family members of all available grievance procedures;

(e) develop and implement an information and communication program to keep veterans and their family members informed about available federal, state, and community-based services and benefits. The program may include but is not limited to:

(i) development and distribution of a services and benefits directory;

(ii) regular public service announcements through various media;

(iii) information to assist veterans and their family members in obtaining federal benefits and treatment services related to depleted uranium exposure, including a best practice health screening of any veteran who:

(A) has been identified pursuant to department of defense policy as having possible level I, II, or III exposure to depleted uranium;

(B) is referred for a health screening by a military physician; or

(C) may have been exposed to depleted uranium during service in a combat zone.

(iv) an internet website with information and links relevant to veterans and their families and including information about board meetings and activities related to veterans' affairs; and

(v) a quarterly newsletter, which may be printed or electronically distributed by e-mail or by posting it to an appropriate website.

(f) seek grants to help fund veterans' programs established pursuant to this section;

(g) develop a memorandum of understanding with the federal veterans' employment and training service and with other appropriate entities to facilitate interagency cooperation, such as resource sharing, cross-training, data and information sharing, and service delivery coordination;

(h) establish management tools, including but not limited to needs assessments, policy statements, program goals and objectives, performance measures, and program evaluation criteria;

(i) prepare a biennial report to the governor, the department of military affairs, the appropriate

legislative interim committee, and veterans' service organizations. The report must include but is not limited to the latest information about the demographics of Montana's veteran population, a needs assessment, annual summaries of the veterans' special revenue accounts established in 10-2-112 and 10-2-603, and a review of the veterans' affairs budget.

(j) request legislation responsive to identified needs.

(2) Employees of the board must be residents of this state. Whenever possible, all employees of the board must have served in the military forces of the United States during World War I, World War II, the Korean war, the Vietnam conflict, or other period of conflict involving the United States military overseas and must have been honorably discharged. Preference for employment must be given to disabled veterans.

(3) The board shall hire an administrator to implement board policy and carry out the duties of the board.

