

STUDY OUTLINE AND COMMITTEE WORK PLAN

As Adopted by the Law and Justice Interim Committee -- October 12, 2001
Prepared by Dave Bohyer, LSD Research Director

INTRODUCTION

The Law and Justice Interim Committee (LJIC or Committee) is commissioned in Title 5, MCA, and has statutorily described duties and authority.

5-5-226. Law and justice interim committee. The law and justice interim committee has administrative rule review, draft legislation review, program evaluation, and monitoring functions for the department of corrections and the department of justice and the entities attached to the departments for administrative purposes. The committee shall act as a liaison with the judiciary.

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 proposed legislation of assigned agencies or entities as provided in the joint legislative rules; and
- (e) 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.

To most effectively approach the statutory duties and responsibilities, the Committee should identify priority projects within its purview and design a blueprint to accomplish them. This "proposed study outline and work plan" is the basis for such a blueprint. As with any plan, however, the real value lies in the planning itself. The LJIC members, and others, should anticipate that changes will be made to the plan over the course of the

interim. As changes to the plan are proposed, discussed, and adopted,

the Committee and interested parties should be aware of what they entail, in terms of resource (money and committee and staff time) reallocation, focus, scheduling, and related factors.

ASSIGNED INTERIM STUDY

House Joint Resolution No. 39

The Legislative Council assigned House Joint Resolution No. 39 (HJR 39) to the Committee¹ In general, HJR 39 is a continuation of prior studies² that have examined various aspects of "criminal sentencing". As with the prior studies, HJR 39 casts a relatively wide net.

The components of HJR 39 can be distinguished as: (1) examining or re-examining those components calling for on-going review, e.g., existing law, sentencing practices, and judicial and corrections data; and (2) elements that require the compilation of additional information, analysis of the information, and synthesis of what is known with what is intended or contemplated, whether in the law, academic theory, practical application, or elsewhere.

Given the broad, two-category framework of HJR 39, the Committee can undertake the study in two phases: (1) a review phase wherein the Committee can examine current law as directed by subsections (1) through (4) of HJR 39; and (2) a simultaneous-to-subsequent phase that involves the collection and analysis of additional information and synthesis of that information through contemplation and judgment.

¹ Under 5-5-217, MCA, the Legislative Council has statutory authority to assign interim study requests among the several interim committees.

² See: Ch. 306, L. 1995, that established the Montana Sentencing Commission; HJR 19, L. 1997 that established the Correctional Standards and Oversight Committee; and SJR 14, L. 1999.

Phase I: Review

The first four subsections of HJR 39 request further legislative review of existing criminal statutes, both to continue efforts by previous study committees that left prior reviews somewhat unfinished and to assess relevant actions by the 57th Legislature during the 2001 Session. As stated in HJR 39, the continuing study should:

- (1) review current criminal sentencing and criminal procedure statutes in Titles 45 and 46 and statutes in other titles of the Montana Code Annotated that contain criminal sentences and determine the extent to which the sentence ranges and penalties conform to Article II, section 28, of the Montana Constitution, the correctional and sentencing policy in section 46-18-101, MCA, and the crime seriousness ranking;
- (2) review and update the sentencing tools and the crime seriousness ranking adopted by the Law, Justice, and Indian Affairs Interim Committee in 2000;
- (3) compare the criminal statutes with the crime seriousness ranking to determine how closely the statutes reflect the ranking and recommend changes as necessary;
- (4) build on the progress accomplished by the Correctional Standards and Oversight Committee during the 1997-98 interim, which culminated in revisions to Title 46, chapter 18, in Chapter 52, Laws of 1999, based on an analysis that sought to streamline the criminal procedure statutes and to eliminate redundancies and conflicts;

At the August 2, 2001 Committee meeting, the LJIC members were referred to *JUDICIARY COMMITTEE: Title 45 Felony Sentencing Statutes Analysis Tool and Reference Guide 2001* (hereafter, "Guide"), by Susan Fox.³ That Guide can be used as the foundation for continued study of criminal statutes as contemplated in subsections (1) through (4) of HJR 39. Relevant changes, including statutes that have been enacted, revised, terminated, or repealed, can be added to complete the listings. This effort is fairly straightforward and can be accomplished largely by staff, with assistance from others.

Updating the Guide as requested by HJR 39 will take focused effort by the Committee

³ The Guide was excerpted from the LJIC's final report from 1999-2000, *Jurisdictions*, Leanne Kurtz, ed., pub. by Legislative Services Division, 2000. See specifically pp. A-69 through A-112.

members. By necessity, the members will need to make a variety of value judgments, e.g.:

- ? the extent to which the sentence ranges and penalties conform to Article II, section 28, of the Montana Constitution, the correctional and sentencing policy in section 46-18-101, MCA, and the crime seriousness ranking;
- ? determin[ing] how closely the statutes reflect the ranking and recommend changes as necessary; and
- ? eliminat[ing] redundancies and conflicts.

Staff can assist the Committee by developing discussion/decision tools, but the judgments and recommendations, if any, must be made by the members.

Phase II: Analysis and Synthesis

Attempting to accomplish the goals of subsections (5) through (7) of HJR 39 require a different approach than the first four subsections. Subsections (5) and (7) are related, whereas subsection (6) may be able to stand alone. More specifically, subsection (5) has several different elements, including:

- a. determining if there exist in the statutes obsolete or inconsistent sentences or related procedures;
- b. identifying and analyzing the effects, if any, of mandatory minimum sentences, truth in sentencing, two and three strikes provisions, and sentences for violations of 61-8-401 and 61-8-406 (DUI offenses);
- c. determining the effects of the elimination of good time credits on inmate population;
- d. compiling and analyzing the use of and determining the effects of deferred sentences;
- f. determining the use and effect of sentences for offenses that must be committed multiple times to reach felony status;
- g. identifying and determining the effects of sentencing enhancements for use of certain weapons or ammunition or for persistent felony offenders;
- h. identifying and determining the effects of intermediate and alternative sanctions;
- i. determining the effects on the correctional system of the commitment of certain offenders to the Department of Corrections; and

- k. investigating the effects of different types of sentences on criminal justice and correctional resources.

Arguably, any one of the subsection (5) items listed above, in and of itself, could be an interim study. That there are at least nine separate items that interact in various ways suggests a clearly daunting task, particularly given the time and resources available. Nevertheless, the Committee may be able to consider each of the items, to a lesser or greater degree. The operative word is "may" because consideration by the LJIC depends on the types and amount of data available from the Departments of Corrections, Justice, and Health and Human Services, the different courts and local law enforcement agencies throughout the state, and entities involved in providing or enforcing alternative sanctions.

The addition of subsection (7) will require further involvement of LJIC members, in that a number of more-or-less factual elements must be compared to and reconciled with a number of subjective criteria. By breaking-down the concepts identified in subsection (7), the Committee is asked to establish a variety of thresholds with respect to criminal sentencing. The resolution asks the Committee to recommend statutory changes that are necessary or advisable to:

1. carry out a consistent, effective, humane, and rational correctional and sentencing policy that is within the available resources of the state; and
2. address recidivism and the growth of the populations in secure facilities.

Thus, the Committee is asked to articulate a "correctional and sentencing policy" that is "consistent, effective, humane, and rational".⁴ Once the policy is articulated by the Committee, the members must evaluate each of the criminal sentencing statutes against the policy to determine whether or not the criteria are met. Subsequently, the Committee can propose changes that would bring the statutes into conformity with the standards contained in the policy.

At the same time, the proposed changes to criminal sentencing statutes must also address:

1. recidivism; and
2. the growth of populations in secure facilities.

⁴ The policy must also comply with Art. II, sec. 28, Montana Constitution and 46-18-101, MCA.

Finally, the corrections and sentencing policies to be articulated in revisions to the statutes must be within "the available resources of the state", which the Committee also must discuss and define.

Subsection (6) of HJR 39 requests investigation into data base development by the DOC, DOJ, and other entities. This subject had been a concern of prior legislative inquiries and remains an ongoing concern. As stated in a previous report:

... Although progress is being made, there have been delays in the development and integration of these databases for information sharing, research, and analysis. From the information gathered to date, it is not possible to evaluate the quality of the data being gathered, the extent to which the data systems are being integrated, and whether the resources that have been invested have resulted in the most appropriate use of technology. Also, the statutes regarding public and confidential criminal justice data may not reflect the recent case law rendered in this area; however, they are still being followed by some agencies in the development of their systems and in providing information to the public. The current staff and PRO-Files plan changes within the DOC have major ramifications on integration with the DOJ and other agencies. Further development and integration should be monitored very closely.⁵

Summary of HJR 39 Study Outline

The study requested in HJR 39 continues the efforts begun at least 14 years ago and pursued most recently by the LJIC's immediate predecessor last interim. Clearly, some progress has been made since the late 1980s. Just as clear, however, is the legislature's desire to establish "consistency" -- whatever that is -- in criminal sentencing. Somewhat less clear but still evident is the legislature's desire to ascertain the effects of sentencing on state resources, the effects of various correctional and sentencing policies, a range of data relating to sentencing, corrections populations and programs, resource use, and related matters. The elements in the proposed study outline, if executed, can result in additional progress toward those goals.

Proposed Work Schedule for HJR 39

⁵ *Jurisdictions*, A Report of the Law, Justice, and Indian Affairs Interim Committee, Nov. 2000, Leanne Kurtz, ed., pp. A-75 and A-76.

September - December 2001

Focus on Subsections (1) through (4) of HJR 39. Research will be conducted by LJIC staff, et al., and presented to the LJIC at the December meeting. Staff anticipates updating the "Analysis Tool and Reference Guide 2001" (the Guide) to reflect legislative and judicial changes to Title 45, MCA. The update will include:

- ? felony offenses that were omitted by the Commission or that have been enacted since 1995 and were not included in the Guide;
- ? felony offenses dispersed throughout MCA Titles other than Title 45;
- ? offenses that rise to the level of a felony on a second or subsequent conviction; and
- ? felony drug offenses.

December 2001 - March 2002

Focus on Subsection (5) of HJR 39 as directed; begin work on Subsection (7). LJIC staff will work with DOC staff and others to develop preliminary information similar to the information contained in the Guide. The underlying objective stated in Subsection (5), i.e., a determination of "obsolete or inconsistent" statutory provisions, can only be accomplished by the Committee, and ties in with the elements of Subsection (7) of HJR 39.

Focus on Subsection (6) of HJR 39. Staff will work to identify: (a) sentencing and corrections data that are statutorily required; (b) sentencing and corrections data that are readily available (e.g., integrated, searchable, electronic databases); (c) sentencing and corrections data that are less-readily available (e.g., paper records or nonintegrated/nonsearchable electronic databases); and (d) data that would be useful for legislative decision-making, but that are not statutorily required. Reports will be solicited from DOC, DOJ, DPHHS, et al., with respect to the status of database development and integration.

March - June 2002

Focus on Subsection (7) of HJR 39. The Committee: (a) articulates a "corrections and sentencing policy" in light of the HJR 39 criteria; and (b)

determines what resources are available. Subsequent to completing items (a) and (b), the Committee examines each statutory felony in the context of:

the HJR 39 criteria; the Committee's "corrections and sentencing policy"; available resources; and other standards (including Art. II, sec. 28, Const.) and proposes changes to statutes.

June 2002 - September 2002

Staff prepares draft final report for Committee review and approval. The report will include draft findings and conclusions and may include draft legislation, if any is requested by the Committee.

MONITORING, REVIEW, AND LIAISON FUNCTIONS

The Committee also has authority and responsibility to evaluate programs and monitor the activities of the Department of Commerce and Department of Justice. The LJIC is statutorily obligated to act as a liaison with the Judiciary. At a minimum, these functions require the LJIC to regularly:

- ? review relevant administrative rules;
- ? examine relevant statutes that could be revised to:
 - ? improve their application by government agencies; or
 - ? enhance the experience of citizens with the agency(ies) that administer the statutes;
- ? review ideas under consideration by agencies that may result in a request for legislation; and
- ? compile, analyze, and distribute relevant information that the committee considers pertinent to its work.

Therefore, as part of the proposed work plan, staff anticipates and will schedule time on agendas at each meeting of the committee for regular reports from the following:

- ? representatives of the Montana Supreme Court, including the Supreme Court Clerk and the Office of the Supreme Court Administrator. If the Committee considers it to be advisable, regular reports from representatives of the District Court Council may

also be solicited and scheduled.

- ? representatives of the Department of Justice, including the Attorney General; and
- ? representatives of the Department of Corrections, including the Director, prison wardens, and others.

Proposed Work Schedule For Monitoring And Liaison Functions

For each meeting of the LJIC, staff will work with interested parties and the LJIC Chair and Vice Chair to identify issues of current interest and appropriate individuals to present relevant information. In general, the Committee will anticipate regular dialog with or reports from: the Montana Supreme Court and Judiciary in general; the Department of Justice, and the Department of Corrections. Individual presenters and the topics to be discussed will be determined well in advance of LJIC meetings.

December 6-7, 2001

Briefings from:

- ? the Montana Supreme Court, Chief Justice Karla M. Gray or designee(s).
[Possible topics: Court Overview/Tour; progress of District Court Council.]
- ? the Montana Department of Justice, Honorable Mike McGrath or designee(s);
- ? the Montana Department of Corrections, Mr. Bill Slaughter, Director, or designee(s). [Possible topic: Department reorganization.]

March 28-29, 2002

Briefings from:

- ? the Montana Supreme Court, Chief Justice Karla M. Gray or designee(s).
[Possible topics: District Court Council update; Observe oral arguments.]
- ? the Montana Department of Justice, Honorable Mike McGrath or designee(s). [Possible topic: Database development and integration.]
- ? the Montana Department of Corrections, Mr. Bill Slaughter, Director, or designee(s). [Possible topic: Database development and integration.]

June 6-7, 2002

Briefings from:

? the Montana Supreme Court, Chief Justice Karla M. Gray or designee(s).
[Topic: Ideas for legislative consideration/draft legislation, particularly in re SB 176, district court assumption/transition.]

? the Montana Department of Justice, Honorable Mike McGrath or designee(s). [Topic: Ideas for legislative consideration/draft legislation.]

? the Montana Department of Corrections, Mr. Bill Slaughter, Director, or designee(s). [Topic: Ideas for legislative consideration/draft legislation.]

Under the provisions of 5-5-215(1)(d), MCA, Joint Rule 40-40(5), and Legislative Council Rules and on behalf of the Departments of Corrections and Justice and the Judiciary, the Committee may request draft legislation to be prepared regarding any of the issues identified by the DOC, DOJ, or Judiciary that can be addressed only or most effectively through statutory changes.

September 9-10, 2002

Briefings from:

? the Montana Supreme Court, Chief Justice Karla M. Gray or designee(s).
[Possible topic: Status report on District Court Council; Court automation.]

? the Montana Department of Justice, Honorable Mike McGrath or designee(s). [Possible topics: (1) Status report on "dial up" system for electronic gaming. (2) Major budget issues/initiatives for the 58th Legislature.]

? the Montana Department of Corrections, Mr. Bill Slaughter, Director, or designee(s). [Possible topic: Major budget issues/initiatives for the 58th Legislature.]

NOTE: The Committee may request comments regarding the draft final report of the Committee, draft legislation, or other matters, from representatives of the Departments of Corrections and Justice and the Judiciary, including the Supreme Court, District Courts, Courts of Limited Jurisdiction, the Supreme

Court Clerk, Court Administrator, and District Court Council, among others.

OTHER TOPICS THAT MAY COMPETE FOR ATTENTION

The Committee has the authority to study other matters within its purview. Under the category of "other matters", the following topics might be included:

- ? SB 176, state assumption of district court costs;
- ? SB 386, making permanent the intervention in delinquency pilot program;
- ? HB 146, generally revising laws relating to the detention and placement of youth;
- ? HB 124, general revision of the state/local fiscal relationship;
- ? the items identified by Sen. Jerry O'Neil in his letter of July 28, 2001, to the LJIC;
- ? the implications of (criminal) sanctions/sentences on state mental health resources, proposed by Ms. Bonnie Adee, State Mental Health Ombudsman and Mr. Gene Haire, Executive Director, Mental Disabilities Board of Visitors. (This issue may relate to the HJR 39 study.)
- ? repeal of 46-18-604, requiring the compilation and reporting of certain sentencing information from the courts, proposed by the Honorable Ed Smith, Clerk of the Supreme Court. (This issue may relate to the HJR 39 study.)
- ? a parallel, HJR 39-type study focusing on the Montana Women's Prison.

Committee members, individually or as a committee, may also identify issues that the Committee decides deserve examination. What these issues may be cannot be known at this time. However, the Committee may deal with them as they arise, which will require adjustments to previously established priorities, schedules, deliverables, and so on.

OVERVIEW OF PROPOSED WORK SCHEDULE

The proposed work schedule demands a considerable investment of time and energy on the part of Committee members and staff, Executive Branch staff, and members and employees of the Judiciary, among other interested parties. The chart on the following page illustrates Committee activities as proposed in the study outline and work schedule.

CONCLUSION

The Committee has a relatively full agenda given its statutory responsibilities and authority and HJR 39. Committee meetings are scheduled to allow time for staff and

others to complete work products and prepare information for the Committee and to allow Committee members to undertake and complete the work that is exclusively the members'. As the study outline and work plan take their final shapes, everyone involved should keep in mind that finances are finite and that time -- of Committee members, staff, and others -- is limited and valuable as well. Whatever plan is ultimately adopted by the Committee should reflect the members' priorities and must balance the Committee's goals with the resources available.

Page 12 is in a different file: LJIC\study plan A-2.wpd. A facsimile is shown on the following page.

Gantt Chart Showing Proposed Work Schedule for LJIC for 2001-02 Interim

Requirement or Activity	2001					2002								
	Aug.	Sept.	Oct.	Nov.	Dec.	Jan.	Feb.	Mar.	Apr.	May	June	July	Aug.	Sept.
SJR 39														
Background and Planning	Horizontal lines		Checkered	Diagonal lines										
Subsections (1) - (4)			Horizontal lines	Horizontal lines		Checkered	Diagonal lines	Diagonal lines						
Subsections (5) & (6)						Horizontal lines	Horizontal lines	Checkered						
Subsection (7)						Vertical lines	Vertical lines	Vertical lines	Vertical lines	Vertical lines	Vertical lines	Vertical lines	Vertical lines	Checkered
Findings, conclusions, recommendations			Horizontal lines	Horizontal lines										Checkered
Adopt: Final Report & Draft Legislation													Vertical lines	Checkered
MONITORING, REVIEW, LIAISON														
Regular reports to Committee			Vertical lines		Vertical lines	Vertical lines	Vertical lines	Vertical lines			Vertical lines			Vertical lines
Legislation concepts/proposals								Vertical lines	Checkered					
Administrative Rule Review	Horizontal lines		Horizontal lines	Horizontal lines										

- Primarily LJIC-staff work
- Post-Committee Decision, LJIC-staff work
- Primarily agency-staff work
- Committee work, analysis, synthesis
- Committee decision points