



Law and Justice Interim Committee

61st Montana Legislature

SENATE MEMBERS

JOHN ESP
GREG HINKLE
LARRY JENT
CAROL JUNEAU
LYNDA MOSS
JIM SHOCKLEY

HOUSE MEMBERS

SHANNON AUGARE--Chair
RON STOKER--Vice Chair
BOB EBINGER
DAVID HOWARD
MIKE MENAHAN
KEN PETERSON

COMMITTEE STAFF

SHERI HEFFELFINGER, Research Analyst
VALENCIA LANE, Staff Attorney
DAWN FIELD, Secretary

MINUTES

June 29, 2010

Room 137, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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COMMITTEE MEMBERS PRESENT

REP. SHANNON AUGARE, Chair
REP. RON STOKER, Vice Chair

SEN. JOHN ESP
SEN. GREG HINKLE
SEN. LYNDA MOSS
SEN. JIM SHOCKLEY

REP. BOB EBINGER
REP. DAVID HOWARD
REP. MIKE MENAHAN
REP. KEN PETERSON

COMMITTEE MEMBERS EXCUSED

SEN. LARRY JENT
SEN. CAROL JUNEAU

STAFF PRESENT

SHERI HEFFELFINGER, Research Analyst
VALENCIA LANE, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Law and Justice Interim Committee:

- approved the April 5 and 6, 2010, meeting minutes, as written;
- approved, through a consensus vote with the Children, Families, Health and Human Services Interim Committee, sending a letter to Governor Schweitzer and the Department of Health and Human Services urging continued support for House Bills 130, 131, and 132;
- approved requesting a preliminary bill draft for a study resolution to study jail standards and suicide prevention;
- approved requesting a performance audit of the Department of Justice' Motor Vehicle Division and its system for licensing vehicles, MERLIN, including collection of fees and other issues of concern; and
- established a subcommittee to continue work on SJR 29 study and a preliminary bill draft to increase the time period biological evidence must be retained.

CALL TO ORDER AND ROLL CALL

00:00:01 REP. AUGARE called the meeting to order at 8:00 a.m. The Secretary took roll, SEN. JUNEAU was excused (ATTACHMENT 3). REP. AUGARE welcomed members of the Children and Families, Health and Human Services Interim Committee (CFHHS).

00:01:43 **SEN. ESP moved to approve the April 5 and 6, 2010, meeting minutes, as written. The motion passed on a unanimous voice vote.**

COMMITTEE BILLS LAST SESSION

- **Staff Review of 2007-2008 interim work by LJIC on HB 130, 131, and 132, review of session actions, administrative rules, and funding**

00:02:24 **Sheri Heffelfinger, Research Analyst, Legislative Services Division (LSD)**, reviewed the legislative history of House Bills 130, 131, and 132, which resulted from study resolutions HJR 26, HJR 50, SJR 6 and SJR 24, assigned to the 2007-2008 Law and Justice Interim Committee (LJIC). Ms. Heffelfinger briefly reviewed the study task of each study and referred to the executive summary from the 2007 LJIC's Final Report (**EXHIBIT 1**).

00:07:07 **Lisa Mecklenberg Jackson, staff attorney, LSD**, discussed administrative rules relating to the implementation of House Bills 130 and 131. Her discussion points included a June 17, 2010, memo to the LJIC (**EXHIBIT 2**) and two documents relating to proposed administrative rules (**notice of public hearing - EXHIBIT 3 and notice of adoption - EXHIBIT 4**).

00:16:45 **Lois Steinbeck, Fiscal Analyst, Legislative Fiscal Division (LFD)**, reviewed a table showing the status of the 2011 biennium appropriations to implement

mental health jail diversion crisis services for House Bills 130-132, including the effect of the spending reductions required by 17-7-140, MCA, **(EXHIBIT 5)**. Ms Steinbeck noted that the reductions totaled \$619,986.

00:21:17 REP. PETERSON discussed his dissatisfaction with the pro rata distribution of the funding for HN 130 and asked where, in the rules, that was allowed. Ms. Jackson said that the legislative language is general and gives a fair amount of discretion to the DPHHS. REP. PETERSON asked about the change of wording (changing from "commitment" to "admissions") in the rules and if the DPHHS has the legal authority to make that type of change. Ms. Jackson said that the CFHHS Committee discussed the choice of wording at length and concluded that the change did not violate legislative intent. REP. STOKER said that as the bill's sponsor, he was contacted about the change and that he concurred with the change.

00:25:08 **Sen. Trudi Schmidt, CFHHS Committee member**, said that both words are used in the bill and that the CFHHS spent a great deal of time discussing the legislative intent. She said it was the Committee's decision to make the change because the change would more clearly represent the intent of the bill. REP. PETERSON said neither an interim committee nor the DPHHS has the right to change a law.

00:26:49 **Sen. Rick Laible, CFHHS Committee member**, said that the CFHHS authorized a bill draft to change the language and that the change would not be official until the 2011 Legislature approved the bill draft.

00:28:56 Ms. Heffelfinger said the intent of bill was to divert people from being committed to the state hospital as an emergency detention, which is considered an admission, not a commitment. She said that session amendments used the word "commitment" inadvertently and that the CFHHS bill draft would clarify intent.

● **Panel: Implementation, budget cuts, future plans**

00:31:22 **Lou Thompson, Administrator, Addictive and Mental Disorders Division (AMDD), DPHHS, and Deb Matteucci, Program Officer and Behavior Health Facilitator, DPHHS and Department of Corrections (DOC)**, updated the LJIC regarding the implementation of House Bills 130, 131, and 132 and referred to a list of three questions submitted by the LJIC and the DPHHS' response **(EXHIBIT 6)** and a list of counties that have submitted letters of intent and counties that have submitted grant applications **(EXHIBIT 7)**.

00:41:37 **Anna Whiting Sorrell, Director, DPHHS**, said that HB 130 has the largest amount of funding attached and that the Department looked at ways it could be implemented as intended. She discussed the mandatory budget reductions, requested by Governor Schweitzer in January of 2010, and the steps that have been taken to date.

00:46:12 **Rep. Diane Sands, Chair, CFHHS**, said that approximately \$1 million of the funding would remain in the base budget. She asked if the Department intends to request that the current funding be restored if the programs prove to be

successful. Director Whiting Sorrell said she does not anticipate restoring any one-time-only (OTO) funding at this point. She explained the budget cuts requested to date, including permanent reductions based on FTE positions. Rep. Sands asked if the remaining money in the program will be cut as a part of the budget reduction process. Director Whiting Sorrell said no, that the ongoing money would be retained in AMDD and that the Department would look at going out with another RFP to determine how best that money could be spent.

- 00:49:24 SEN. ESP noted that the OTO funding is approximately \$500,000 and asked how much Ravalli County is putting up for its matching funds. Ms. Matteucci explained that the county match amounts were determined by a sliding scale formula and that Ravalli County's match rate was about 65% to qualify them to receive roughly \$310,000.
- 00:50:42 SEN. SHOCKLEY said it was important to the 2009 Legislature to address mental health issues. He said that these services should be the last to be cut because then, not only is the individual not well-served, but county governments, law enforcement agencies, jails, and the correctional system would also be negatively impacted.
- 00:52:13 REP. PETERSON said that when bills were promoted to the 2009 Legislature, the Billings Crisis Center was used as the "poster child". He said the Yellowstone County disagrees with the pro rata funding and that after the additional budget cuts are made, the amount of funding the Crisis Center received will be even less. He said that the Crisis Center serves the entire eastern Montana area. Ms. Whiting Sorrell said that the proposal submitted by the Billings Crisis Center was funded and pointed out that Yellowstone County recently approved a mill levy for additional support of the Center. She agreed that the Center does help the census at the MSH and said she would continue to monitor that. She said that an amazing continuum of care for the mentally ill has been developed in Montana and discussed work remains to be done regarding the mental health needs in the correctional and forensic patients.
- 00:57:10 SEN. ESP asked, under the HB 131 contract, what the daily rate is for the empty beds. Ms. Thompson said the rate is \$500 per day per bed when empty. She said that Butte has three beds, Bozeman has two secure beds and one isolation bed. SEN. ESP asked what the average daily cost is per day for the MSH. Ms. Thompson said it averages about \$500 per day.
- 00:58:15 REP. EBINGER asked what is to be done about HB 132 since it was not funded and likely will not be. Ms. Matteucci explained that HB 132 provides authority for commitment proceedings to be suspended in order to allow the person to seek voluntary treatment. She said that funding was attached in the initial fiscal note but was removed before the bill was passed. She explained that the authority for commitment proceedings to be suspended was passed and remains in statute.
- 00:59:52 REP. AUGARE asked how many of the seven tribal nations in the state are in existing contracts. Ms. Matteucci explained how tribal nations are to be dealt with

and said that the Yellowstone County contract is the only one that includes a tribal nation because of the tribal lands that lie within the county boundaries.

- **Panel: Local county grant applicant concerns - strategic plans, prospects for the future**

01:02:56 **MarCee Neary, Billings Crisis Center, Billings**, explained how the grant process was different than the Crisis Center anticipated it would be. She said that the Crisis Center was led to believe that funds would be available in September of 2009 but that they were not received until January 2010, that it was a cumbersome process, and that the Center was at risk of closing its doors due to the lack of funding. However, since then, the Center has stabilized and has developed great working relationships with the other counties involved in the contract. Overall, there has been a strong collaborative effort among the counties and the focus has remained on providing the best services possible to all in need.

01:05:39 **Kathleen Driscoll, Ravalli County Commissioner**, said that the programs have made a huge difference in her county because of the services provided and money saved. She said that Ms. Thompson, DPHHS, has provided a great deal of assistance to Ravalli County and that the collaborative efforts have paid off with the donation of land from the local hospital, securing a loan, and lining up of builders. Ms. Driscoll discussed additional details of the process and facility to be built in Ravalli County.

01:11:15 **Scott Malloy, Director, Bozeman/Gallatin County Mental Health Center**, said there has been an amazing transformation in crisis services available in Gallatin County in the last year. He said that a land donation from Bozeman Deaconess Hospital, a \$1 million donation from the Gallatin County Commissioners, and a private donation from the Gehlhausen Foundation got the crisis system moving forward. He said the goal is to provide voluntary treatment and increase access points. He thanked the Legislature for its commitment. Mr. Malloy said that his program opened up in late April and that statistics to date are very positive. He said that there has been a substantial decrease in emergency detentions and tremendous increase in voluntary crisis admissions in Gallatin County.

01:14:37 SEN. ESP asked how the operating expenses for the Ravalli County program will be funded. Ms. Driscoll said that a long-held contract with the Mental Health Center will be reworked to include the new program. SEN. ESP asked what the anticipated annual operating expenses will be. Ms. Driscoll said the expenses are anticipated to be about \$650,000 a year. She said that costs will be mitigated by the fact that people are being kept out of county jails and in their own community to be taken care of by their own. She discussed several specific incidents involving local individuals that cost Ravalli County a great deal of money and said that had the Crisis Center been available, the cost of care would have been much lower.

01:18:39 SEN. MOSS asked Ms. Neary to discuss Yellowstone County's application process in more detail. Ms. Neary said that part of the difficulty was due to the large number of participating counties, which caused the flow of information to be

slowed down. She said there were several other unexpected requests for additional information and subcontracting difficulties also complicated the process. Ms. Neary said the process was difficult and that the Center was disappointed that the 70% match was not obtained but that the Center worked through that.

- 01:21:52 SEN. MOSS asked Commissioner Driscoll to comment on if the process is a good way for state agencies to learn from local governments. Ms. Driscoll said that she feels strongly that most people don't realize the bottom line of mental illness and how to use their tax dollars most effectively and efficiently. She said she plans to assist other counties in getting their programs up and going so they will be more aware of how money and lives.
- 01:24:54 SEN. ESP said that the LJIC is also studying the DUI issue and asked if there is a connection between the services offered at the Crisis Center and the DUI issue. Ms. Neary said yes, that most of the people who come into the Crisis Center have co-occurring diagnoses, and that there is a need for more services to deal with this population. SEN. ESP asked her to provide her suggestions or model in writing to the LJIC.
- 01:26:50 Rep. Sands asked about the importance of treating an individual in the community, versus sending that person to the MSH. Ms. Driscoll said that community care keeps the family committed to helping that person, saves lives and money, decreases anxiety, and is less likely to accelerate the person's problems.
- 01:29:36 REP. STOKER asked if the threat by the two Billings hospitals to no longer fund the Crisis Center contributed to the angst over the funding. Ms. Neary said yes, but that the hospitals did end up contributing funding. REP. STOKER asked Commissioner Driscoll to briefly describe Ravalli County's work with the surrounding counties and commissioners to get Ravalli County's facility operational. Ms. Driscoll said that Ravalli County actively worked with other counties and with the Western Montana Mental Health Center to help get the surrounding counties involved.

Public comment - HB 130, HB 131, and HB 132

- 01:34:16 **Mike Foster, Catholic Hospitals of Montana**, said that federal funding was used to establish the Billings Crisis Center and the hospitals stepped in to help when the federal funding was lost. He said the hospitals never envisioned permanently funding the Crisis Center and that the funding should be a shared responsibility between local governments and the state. He said that the recently approved mill levy would help ensure its stability. Mr. Foster noted that the Crisis Center serves approximately 30 counties, many of which do not contribute to the funding; that the numbers at MSH are down, which is a savings to the state; and that the work of the Crisis Center is largely responsible for the population decrease at the MSH. Mr. Foster said the Catholic hospitals will continue to provide funding to the Crisis Center but suggested that the federal government also has a stake in the issue. He related that nearly 50% of the Center's clients are American Indian and approximately 10% are veterans, yet the Indian Health

Service and the Veteran's Administration contribute virtually no funding. He said that if everyone pitches in, the system will work.

01:37:47 **Anita Roessman, Disability Rights Montana (DRM)**, thanked the LJIC for its support of the bills, saying that the committee's work has helped to change attitudes toward the mentally ill, as indicated by the panelists' discussion. She said that even though less money than anticipated was allocated, the funding is being spent carefully and well. She acknowledged that this is a difficult time to find the financial resources to fund these programs but pointed out that the system is still underfunded and that people deteriorate quickly while waiting for services.

01:42:04 Ms. Roessman said that HB 132 created a means by which people could voluntarily enter services, but that it wasn't funded. She discussed the Oregon model for funding mental health services and said that Montana needs a similar program. She said she is hopeful that eventually, every person with a mental illness can determine the services provided to them by making a voluntary decision to commit themselves if they need that level of service.

01:44:56 **Amy Grmoljez, Billings Clinic**, thanked the LJIC for its vigilance in keeping up with this issue. She said that the mill levy passed in Yellowstone County was a huge step and was fully supported by law enforcement and the mental health care professionals in Yellowstone County. She said that the Billings Clinic is often referred to as the Warm Springs of eastern Montana and that it works hard to provide its patients the treatment they need. She said that she looks forward to working with LJIC on this issue.

01:46:24 **Natalie Macmillan, Butte, Western Montana Mental Health Center**, reviewed statistics from her programs and thanked the LJIC for the bills. She said that the funding legislation has sustained her program so that she can make emergency detention beds available.

Staff review of statutory jurisdiction of Law and Justice and Children, Families, Health and Human Services Interim Committees

01:47:52 Ms. Heffelfinger said the purpose of this agenda item was to discuss future oversight of these bills and to clarify the statutory jurisdiction between CFHHS and LJIC. She explained that the CFHHS has jurisdiction for monitoring DPHHS.

01:50:10 REP. PETERSON said that while he supports the idea of community crisis centers, he disagrees with the pro rata funding approach. He said that the Billings Crisis Center was used as the "poster child" for the bills and should have received more funding.

01:53:05 REP. MENAHAN disagreed with REP. PETERSON's position, saying that making mental health crisis services available all across the state is the best avenue for helping people and that the bills recognize that. He said that the funding was properly used to establish several programs and to the extent community-based treatment programs can be sustained, that should be the approach used.

- 01:56:21 **Rep. Penny Morgan, CFHHS Committee member**, said that she understands the LJIC's interest in the issue but her opinion is that legislative oversight of the program should be under the CFHHS and possibly the Legislative Finance Committee (LFC) because funding will be allocated to and administered by the DPHHS.
- 01:58:57 SEN. ESP agreed that the program should remain under the DPHHS but said that because there is a certain degree of intersect of policy issues between the LJIC and the CFHHS, both committees should have oversight.
- 02:00:08 Sen. Laible said that he also supports providing local mental health crisis services across the state and that the bills passed because the Legislature felt that the Billings Crisis Center model could be applied to many communities. He said that he applauds the Billings program because it demonstrated that the program can save money and lives but that this is about all of the state, not just a particular community or program.
- 02:03:25 Rep. Sands stated that this issue has brought legislators together as few others have. She said that the DPHHS has done a good job with limited resources and that these programs must be a priority item in the 2011 Legislative session. She proposed that the two committees write a joint letter of appreciation to Governor Schweitzer and the DPHHS for the support given to date to these programs, to emphasize the importance of the programs, and the Legislature's strong support of continued funding for the programs as a part of the Governor's budget.
- 02:05:38 REP. AUGARE said he supports Rep. Sand's suggestion. He added that the Diagnostic and Statistical Manual of Mental Disorders (DSM) does not recognize alcoholism as a mental health issue but that the Legislature could change that. He said if that was done, he believed that additional funding could be obtained for treatment programs.
- 02:08:45 SEN. SHOCKLEY agreed that the bills are helping people but said the cost savings must be emphasized in order to ensure continued support and funding. He said that treating a mental health issue as a law enforcement issue is very costly and that the treatment dollars, as being currently spent, are saving money.
- 02:09:52 SEN. ESP said that success over time and community commitment over time must be the deciding factors in whether or not to continue funding. He said that the Legislature must monitor the commitment by the communities and that the conundrum faced by the Legislature is how to spend the money in such a way that it will provide the most and best services.
- 02:11:34 SEN. MOSS said that a joint letter is a great idea and asked to add that the legislators acknowledge that this is an opportunity to support success and to foster innovation and alignment of resources at all levels of government while serving the most needy people in their local communities. She said the partnership between the two interim committees should also be referenced in the letter.

- 02:12:42 Sen. Laible said another component of the letter should be the "return on the investment" as an argument for continued funding. He said that money invested in this program will save the state money and that the savings should be clearly articulated in the letter.
- 02:13:49 An unofficial consensus vote to write a letter of support to the Governor and the DPHHS was taken. **The motion passed on a unanimous voice vote.** Ms. Heffelfinger will work with Sue O'Connell, Lisa Jackson, Valencia Lane, and the committee chairs to draft the letter.
- 02:14:49 Sen. Schmidt thanked the LJIC for the opportunity to work together on this issue and agreed that it is important for the committees to work together for continued support for mental health crisis services. Ms. Heffelfinger reviewed that the letter will be sent to the Governor and to the DPHHS and will thank both for the support and work provided to date, will acknowledge the work of communities that have come together to provide crisis services, will request that the Governor's budget include full funding for all three bills, and will emphasize that it is investment spending because of the cost savings that will result from continued funding. REP. AUGARE asked that the letter also be sent to the Legislative Finance Committee, as requested by Rep. Morgan. It was agreed.
- 02:16:56 SEN. ESP questioned whether HB 132 should be included, considering that it has not been funded or implemented in any manner. **He moved to exclude HB 132.**
- 02:20:01 A brief discussion was held. **The motion to exclude HB 132 from the letter failed on a tie vote.**
- 02:21:44 Sen. Laible asked for clarification that the letter would be to urge funding for the next biennium but said that restoration of the current funding is still an issue. He asked if that should be addressed, considering that is the amount that will be in the base budget.
- 02:22:26 SEN. ESP asked that he be recorded as a no vote, for the record. Duly noted.
- 02:22:45 REP. AUGARE thanked the CFHHS for joining the LJIC and said he looked forward to continued work on shared interests. Rep. Sands thanked the LJIC for the invitation and agreed that a collaboration between the two interim committees is a valuable experience and would serve the legislature well.
- BREAK until 10:45 a.m.**
- 02:43:58 REP. AUGARE called the Committee back to order at 10:46 a.m.
- **LJIC work on HB 60 - jail suicide prevention, session actions,**
- 02:44:11 Ms. Heffelfinger presented a brief review of the issue and the previous LJIC's work (**EXHIBIT 1 - pages 17 - 24**). Ms. Heffelfinger also discussed a June 18, 2010, legal memo prepared by David Niss, Staff Attorney, regarding the Montana Sheriffs and Peace Officers Association's (MSPOA) peer review program (**EXHIBIT 8**).

- 02:50:13 REP. AUGARE said the LJIC is interested in finding out if the MSPOA's jail inspection program has been implemented and is working, and if there are other issues that the Committee needs to be aware of. REP. AUGARE said he is very displeased that LJIC staff has not been given appropriate data and other information that was requested. He referred to Mr. Niss's memorandum to further discuss his concerns regarding the issue, saying that jail suicides have continued to occur and are a serious issue. REP. AUGARE noted that the LJIC first requested information from the MSPOA in December of 2009 and he expressed his displeasure at the lack of response and lack of information provided by the MSPOA.
- 02:55:23 **David Niss, Staff Attorney, LSD**, passed out an *Errata* page (**EXHIBIT 9**) to be added to his June 18 memo (EXHIBIT 8). Mr. Niss discussed his memo, as updated with the *Errata* sheet information. His discussion also included staff emails (**EXHIBIT 10**) not yet responded to and an April 5, 2010, memorandum of understanding prepared by the Montana Jail Standards Peer Review Advisory Committee (**EXHIBIT 11**).
- 03:02:46 Mr. Niss noted that in the footnote on page 9 of his memo (EXHIBIT 8), a list of nine federal determinations recommended for use in jail screenings is incomplete. He asked that the members add a new 7. - *Has a family member or close friend every attempted or committed suicide?* and change the current number 7 to the number 8.

Committee Questions on jail suicide prevention progress report

- 03:04:30 REP. STOKER asked about the difficulty of determining jail suicides. Mr. Niss said that the only way he knows to find the number of jail suicides (not prison) is to request an electronic query from the Vital Statistics Bureau in the DPHHS, which can conduct an electronic search of death certificates. He said that the wording used on the death certificate is critical to the search results and make the information difficult to retrieve.
- 03:09:41 REP. MENAHAN said that if an inmate dies in a custodial setting, the county coroner is statutorily required to order an inquest. He asked if Mr. Niss obtained copies of the inquest transcripts. Mr. Niss said that he did but explained that in order to know which coroners to contact, either all of them must be contacted or the name of the individual who committed suicide had to be known. He said that the four coroner's transcripts he obtained revealed a great deal about the practices of the county jails.
- 03:12:44 SEN. ESP asked what questions the LJIC should ask the MSPOA in order to gather the information needed. Mr. Niss suggested that the questions address cell checks, screening procedures, mental health checks, and if policies are being followed. He said that in the transcripts he received, he marked all of the places where policy was not followed.
- 03:18:06 REP. MENAHAN said that the purpose of a coroner's inquest is to determine whether or not the person died by criminal means, not to determine negligence by detention staff and said he questioned the usefulness of a coroner's inquest in

this instance. Mr. Niss said that the transcripts are an acceptable source of information, if one studies only the policies or MSPOA standards that bear directly upon when the individual dies and the cause of death.

03:22:27 SEN. HINKLE asked if there is lack of manpower or negligence in applying suicide prevention policies in county jails. Mr. Niss discussed the example of Linda Wilson's jail suicide in 2007, saying that even though Ms. Wilson was put on a suicide watch, the detention officers were very busy getting meals to other prisoners when she committed suicide. He said that similar instances have shown up in other transcripts, which indicates the inability of staff to do cell checks during meal time.

03:30:23 SEN. HINKLE said this appears to be a serious problem and asked how many jails responded to Mr. Niss's requests. Mr. Niss said he has not yet contacted any of the six jails that completed the peer review process because he wanted help from the MSPOA in locating the peer review CD that MSPOA policy states is made upon a jail's completion of the review (see MSPOA Peer Review Process and Policies - EXHIBIT 11). He said that he wanted to review the CDs before contacting the sheriffs directly.

Montana Sheriffs and Peace Officers' Association (MSPOA) response

03:35:27 **Dennis McCave, Captain, Yellowstone County Sheriff's Department, past president and current board member, MSPOA**, thanked Mr. Niss for his detailed discussion of the jail peer review process and said that the peer review is ongoing and evolving. He suggested that Mr. Niss' memo be referred to the DPHHS, which has the statewide suicide prevention program.

03:37:37 Captain McCave reviewed jail standards and peer review process:

- jail standards in Montana have existed since 1978;
- it has been a struggle to keep them updated and relevant to jail operations;
- the standards have been updated several times, most recently in 2006;
- the peer review process was developed in 2008, training and test reviews were conducted in 2009; and
- the validity of the process will be evaluated before finalizing the process and reviews conducted to date should not be construed as valid because they are considered part of the training process.

Captain McCave said that in order to make the inspection process sustainable, a Peer Review Advisory Committee was formed to oversee the review process, which is where he directed Mr. Niss's requests for information. He said that the sheriffs who participated in the peer reviews were given their respective review results and should be the contact point to find out about the review. He noted Mr. Niss was given a complete copy of all of materials used in jail reviews. Captain McCave discussed Utah's web-based review program and said that the MSPOA is studying the program and may opt for a similar program. He said he is hopeful that full jail reviews will be going by the end of 2010.

03:47:31 REP. EBINGER asked how a web-based program would work. Captain McCave explained that a sheriff and certain others would be allowed access to the review

website using a code and how assessments would be made and tracked. He said it would allow departments to take responsibility to comply with standards and to self-report.

- 03:50:07 REP. AUGARE said that Mr. Niss' memo (EXHIBIT 8) discussed a number of areas for which no standards have been created or are not very specific, and that there are no sanctions for not adhering to the voluntary policies and practices. Captain McCave said that the standards can't be too specific because of the variation and differences between each jail facility and the resources available to them. Regarding sanctions, Captain McCave said that issue has been debated for many years and that it is not clear who has the authority to impose sanctions. He said that no sheriff wants a suicide to occur in his jail and that he believes Montana is on the right path to a better jail system.
- 03:53:23 REP. AUGARE said he remains concerned about the lack of response. Captain McCave said he is concerned also. He said that he drafted his responses to the LJIC's 16 questions and forwarded them to the chair of the Peer Review Advisory Committee. He said that as far as he knows, every question was responded to, with the exception of the final document from the peer reviews. REP. AUGARE asked Captain McCave which of the Committee responses he would prefer, as listed in Mr. Niss' memo (pages 10 and 11, EXHIBIT 8). Captain McCave asked that Option B be chosen (staff followup on the peer review process and report to LJIC at next meeting).
- 03:55:42 REP. AUGARE said that whatever the committee decides, there is only one meeting left and that he hopes that the MSPOA will work with the LJIC to make sure the information is provided.
- 03:56:19 SEN. SHOCKLEY said that a hanging event can take place in less than five minutes, so an hourly check is not sufficient. Captain McCave said that is correct but that protocol language must be carefully written because there are differences between someone who is a suicide risk, on suicide watch, and a suicidal person. He said that when standards refer to a "suicide watch", it is regarding a person who is actively trying to harm themselves and in need of continuous observation.
- 03:57:57 SEN. ESP asked if the facilities tested have been found to be in compliance with the voluntary standards. Captain McCave said it is his understanding that most jail facilities are in compliance. SEN. ESP asked if he has looked at the national standards, as addressed in Mr. Niss' memo. Captain McCave said yes, and said the MSPOA left materials at each facility. He said that the MSPOA intends to compile a binder of every conceivable form that may be needed by a jail facility, which reviewers will take to each facility. He said the reviewer would make certain that the facility is given copies of forms that it may not have. Regarding suicides, Captain McCave said that there are other organizations that can help with mental health, psychiatric evaluations, and screening forms that will be useful to jails.

04:00:46 SEN. ESP asked if jails are usually sued when a jail suicide occurs. Captain McCave said yes, that legal action is filed about 70-80% of the time. SEN. ESP asked if he had information on settlements or court decisions. Captain McCave said he did not.

04:01:27 REP. EBINGER said the issue seems to boil down to too little time, too little staff, and too much cost; and said he wonders how many lives could have been saved had HB 60 passed. He said it is the Legislature's responsibility to make sure that what is being done is being done efficiently and on a schedule that will save lives. He said he wanted the MSPOA to take action and is very disappointed by its lack of action.

Public comment related to jail suicide prevention

04:03:16 **Niki Zupanic, Public Policy Director, American Civil Liberties Union (ACLU)** - **Montana**, said that there are severe deficiencies in the current jail system for screening for suicide risk and for treating that risk, as well as other mental health issues in county jails. Relevant data is not easily obtained and there is an inability to get data regarding the actual suicide incident itself. There is a lack of priority for suicide prevention and mental health issues in the voluntary standards and most importantly, there is no sanction for noncompliance. Ms. Zupanic said that she attended a coroner's inquest for a jail suicide and said the transcript indicated a lack of compliance with the voluntary standards. She said she is not testifying to the actions of the deputy but that deputies are under a tremendous amount of stress with their many duties in running a jail. She thanked the LJIC for monitoring this issue and said that five deaths are far too many. Ms. Zupanic said that when a person has been denied their liberty because the determination was made that jail was the appropriate place for them, it then becomes the duty of the state and county to provide whatever is needed to make sure they are not a risk to themselves. She said it is within the purview of the Legislature to make certain that standards are being implemented and followed and that her opinion is that the option to allow a nongovernmental entity to set the standards and the pace of compliance is no longer an option.

04:07:16 Anita Roessman, Disability Rights Montana, thanked Mr. Niss for his outstanding work and asked the LJIC to at least create a system for reporting jail suicides. She said statistics indicate that the most dangerous place for suicide is jail and that Montana is way above the national average. Most people who attempt suicide don't complete it so it is very important to interrupt it. The key is to identify what the means for suicide are in a jail and to eliminate access to those means. Most suicides could be prevented if most jailers were aware of all of the risks present in their jails. Ms. Roessman said it would be interesting to know how soon after a person is booked that they commit suicide. She said she supports most of Mr. Niss' recommendations listed in the memo.

Committee discussion

04:11:29 REP. AUGARE asked the members to discuss the MSPOA's suggestion to follow Option B of the Niss recommendations or to take other action, such as a committee bill draft. He asked Mr. Niss to comment.

- 04:12:36 Mr. Niss did not recommend pursuing Option B and explained his reasons for his position. He recommended that the Committee draft a study resolution in accordance with Option C.
- 04:14:40 SEN. ESP asked Cascade County Sheriff David Castle if he would provide the results of the peer review conducted in the Cascade County jail. **Sheriff Castle** said he would, as well as Department of Corrections and federal audit information. SEN. ESP said that the LJIC must ask the other sheriffs who have had peer reviews done to share their results also.
- 04:16:27 **REP. MENAHAN moved that staff draft a study resolution for the 2011 Legislature to study the matter further. The motion passed on a voice vote, SEN. ESP voted no.**
- 04:19:32 **LUNCH recess: 12:22 until 1:30 p.m.**
- 05:30:20 REP. AUGARE called the LJIC back to order 1:32 p.m.

SJR 29 - PRESERVATION AND STORAGE OF BIOLOGICAL EVIDENCE

Staff review of working group discussions - preliminary bill draft LCdna1

- 05:30:55 Ms. Heffelfinger said that while the working group was not able to reach consensus on a bill draft, the LJIC could use LCdna1 (**EXHIBIT 12**) as a starting point for its discussion. She reviewed key provisions of the bill draft.

Panel: Defense attorney and victim advocate recommendations

- 05:38:22 **Jessie McQuillan, Executive Director, Montana Innocence Project**, said that LCdna1 responds to many of her concerns and improves because it lengthens standards for evidence preservation but does not require evidence to be preserved indefinitely, does not apply to all crimes, and includes a bulk evidence provision. Ms. McQuillan noted that many of the stakeholders were not able to attend the meetings, which may have been a factor in not being able to reach a consensus, as well as opinions that the Legislature should not address this issue.
- Ms. McQuillan discussed the impact that LCdna1 would have on current state law, specifically on the crime categories of deliberate homicide, mitigated homicide, negligent homicide, sexual assault, and sexual intercourse without consent. The enhanced preservation is sound policy and would help to bring consistency across the state and the bulk evidence provision will decrease costs and space issues for many evidence rooms. Ms. McQuillan said that a cost work-up has not been done but predicted that the cost would be minimal because many agencies already follow similar procedures for evidence preservation.
- 05:48:06 **Kelsen Young, Executive Director, Coalition Against Domestic and Sexual Violence**, said that overall, she supports LCdna1 and would continue to work with the LJIC and stakeholders. She said the Coalition strongly supports new subsection (1)(c) (page 3, EXHIBIT 12), which adds language to address unsolved crimes; and subsection (2)(a)(ii) regarding notification of victims and the

county attorney regarding disposal of evidence in unsolved cases (page 4, EXHIBIT 12).

05:52:42 **Jon Moog, Office of State Public Defender (OPD)**, said that the OPD supports LCdna1. He said, regarding the expansion of notification of evidence disposal to include the victim and prosecutor (page 4, EXHIBIT 12), that acknowledgment of service or certificate of mailing should be required in order to ensure that the defendant is notified. Mr. Moog said similar notification procedures should be followed for bulk items as well. He agreed that whatever is put forward, it should be uniform across the state.

05:54:13 **Wendy Holton, Montana Association of Criminal Defense Lawyers, Helena**, said that the Association also supports LCdna1 and the suggestions made by Mr. Moog to strengthen notification requirements.

Committee questions

05:54:50 SEN. SHOCKLEY questioned Ms. McQuillan about the intent of the changes made to 45-1-205, MCA, and said that as he reads subsection (1)(c), if a conviction is not obtained, the evidence would have to be retained forever. Ms. McQuillan said that is correct, but that the following subsection (2)(a) allows an agency to petition to dispose of the evidence.

05:59:07 REP. MENAHAN asked Ms. Holton if the proposed language is comparable to federal law. Ms. Holton said that the proposed language models federal law. Ms. McQuillan said that she has a copy of federal preservation law and offered to provide it to the LJIC for study purposes. She briefly described the preservation requirements of federal law.

06:00:36 REP. MENAHAN asked Ms. Holton if there is a process in the federal system that allows for disposal of bulky evidence, with DNA samples taken before the bulk evidence is destroyed. Ms. Holton said she has not been involved in such a case.

06:02:01 REP. PETERSON said that he objects to subsection (1)(c), even with the "escape clause" provided in subsection (2)(a) because it could place an inordinate burden on the agency to find people. He suggested adding, after the last word in subsection (1)(c), "*or fifty years, which ever is earlier*". Ms. McQuillan said she would be amenable to the proposed language because the goal is to retain evidence for a significant period of time. Ms. Young concurred. REP. PETERSON said it would not necessarily have to be 50 years, and could be another agreed upon length of time.

06:04:42 SEN. SHOCKLEY said he is concerned about the notification requirements on page 4 of LCdna1 (EXHIBIT 12). He asked to add language to clarify what a "reasonable" notification attempt to find a person would entail, in order to not unduly burden an agency in its efforts to notify a victim or offender.

Panel: Law enforcement and county perspectives

06:07:11 **Mark Murphy, Montana County Attorney Association (MCAA)**, discussed areas of concern mostly relating to the fact that in many cases, the victim is deceased. He said because of that, notification of the victim would be impossible and suggested that notification of the victim's family be added. He said another problem is that the victim's body is often a primary source of DNA evidence and that the proposed language would prevent the agency from releasing the victim's body to the family. Mr. Murphy said the MCAA fundamentally disagrees with LCdna1 and discussed the MCAA's concerns.

06:10:35 Mr. Murphy distributed copies of an alternative bill draft, as drafted by the MCAA **(EXHIBIT 13)** and discussed the provisions of the proposed bill draft. He disagreed with Ms. McQuillan's earlier statement that the cost would be minimal and said that if the state mandates that evidence be stored, it should provide a funding mechanism to do so. Mr. Murphy said his opinion of LCdna1 is that a lot of money will be spent and nothing will be accomplished.

06:14:30 **Sheriff David Castle, MSPOA**, said from a law enforcement perspective, work load and other expectations have grown phenomenally over the years. He said that a significant role of law enforcement is to collect evidence, not to prove people guilty or innocent. There is little sympathy from citizens for spending money on criminals or jail issues and because times are tough, there is little hope of additional funding. Sheriff Castle agreed that if evidence is to be preserved long term, it should be the State's responsibility to pay the costs of doing so.

06:18:55 **Anne Jacobsen, evidence technician, Helena**, testified that the Lewis and Clark County evidence locker is full and predicted that most counties are in the same situation. She said she appreciates the bulk evidence provision in LCdna1, that she would support a 50-year retention period, and that having uniform state requirements is a good idea. Ms. Jacobsen reviewed Lewis and Clark County's procedure for disposing of evidence and said that neither the victim nor the defendant are contacted, and that it is all done through the County Attorney.

06:22:06 **Megan Ashton, DNA analyst, CODIS Administrator, Montana State Crime Lab**, discussed evidence preservation and storage from a lab perspective, including how the new requirements would impact the state crime lab using a shirt containing DNA evidence as an example. She said that samples would be stored indefinitely and that there are some circumstances in which an entire piece of evidence must be used. She said as written, LCdna1 would not significantly affect how the State Crime Lab operates. Regarding the statute of limitations for sexual assault and sexual intercourse without consent, Ms. Ashton said that recent changes could contradict provisions of LCdna1.

REP. AUGARE said that written comments are expected from the Montana Association of Counties.

Committee questions

06:25:33 SEN. SHOCKLEY asked Mr. Murphy how he would handle an alford plea or nolo contendere plea. Mr. Murphy said it was SEN. SHOCKLEY's bill that created the nolo contendere plea in Montana law and that changing that is not part of the bill.

He pointed out that neither plea is allowed in sexual assault cases. He said they are a waiver of rights, so in those cases, the evidence would be destroyed after the time for appeal passes. SEN. SHOCKLEY and Mr. Murphy discussed the nuances of alford and nolo contendere pleas.

06:30:12 SEN. SHOCKLEY said it is his understanding that before evidence is destroyed, the opposing counsel always notified, and he asked if that is customary practice throughout the state. Mr. Murphy said yes.

06:33:23 REP. HOWARD said he is not in favor of "fixing" something that may not be broken. He asked if a bill is needed to fix a problem. Mr. Murphy said his opinion is that if the State Crime Lab was fully funded and could perform tests as needed, any current problems would be resolved.

06:36:09 REP. MENAHAN asked if the MCAA bill draft requires the agency to preserve the evidence as long as the person is incarcerated or on parole. He asked if probation should be included also. Mr. Murphy said he didn't know if defendants have expressed an opinion but thought they would want the evidence preserved as long as possible.

06:44:36 REP. PETERSON asked if the MCAA bill draft covers the situations intended to be covered in paragraph (1)(c). Mr. Murphy said the MCAA is not as broad as LCdna1 and explained how victim services programs vary in different counties. He said that the MCAA bill draft encompasses a smaller number of cases but a wider number of crimes.

06:47:33 SEN. MOSS asked Ms. Jacobsen to discuss physical storage needs, such as cabinets or equipment needs. Ms. Jacobsen said her storage facility is mostly shelving and that most evidence is kept in paper bags, unless it needs to be refrigerated. SEN. MOSS said that storage costs would be mostly for the building, rather than equipment. Ms. Jacobsen said yes and that her evidence locker has both heat and air conditioning.

06:49:26 SEN. MOSS said that thanks to technological advances, increased amounts of DNA can be collected now. Ms. Ashton said that is correct. SEN. MOSS asked if the State Crime Lab is able to keep up with the technological advances and budget for them accordingly. Ms. Ashton said the Lab is always looking at new technology, if it fits the needs of the Lab, and if it is fiscally responsible to implement.

Public Comment

06:52:24 **David Carter, Deputy Yellowstone County Attorney**, said he attended the working group meetings and that it is important to understand what the intention is behind the study bill in amending 46-11-221, MCA. He said that no one wants a innocent person to be imprisoned but that there are two divergent views on how best to achieve and keep that principal and that his opinion is that LCdna1 does not achieve that principal. He said his biggest concern is that litigation will occur if the bill becomes law and discussed the William Guy Hart and Steven

Ross cases as examples of one case that would benefit from the bill and one case that would not.

- 06:57:40 **Ron Waterman, Attorney, Helena**, said his testimony was intended to put a public face on the process being discussed. Mr. Waterman reviewed the case of Jimmy Ray Bromgard, who spent 14 1/2 years of a 40-year sentence in prison for a crime he did not commit. He said that the evidence, under current statute, should have been destroyed but by fortuitous events, it was not and eventually resulted in Mr. Bromgard being exonerated of the charges. Mr. Waterman discussed details of the case and the argument for longer preservation requirements for evidence (**EXHIBIT 14**).
- 07:02:11 SEN. SHOCKLEY and Mr. Waterman discussed preservation of evidence when a person pleads guilty. Mr. Waterman said the people plead guilty to a lesser crime all of the time in order to avoid jail time and that he is a strong advocate for keeping evidence.
- 07:04:12 **Ali Bovingdon, Attorney General's Office, Department of Justice (DOJ)**, thanked Ms. Heffelfinger for her work on SJR 29 but said the DOJ has concerns about LCdna1 and that it is too broad, in terms of preserving evidence. She discussed several potential problems that could occur, even with an "escape clause" written into the bill. She said another problem is that the bill does not distinguish between misdemeanor or felony sexual assault, with regard to DNA evidence. Ms. Bovingdon said that the provision to allow clippings taken from bulk items would be helpful to law enforcement but that the notification requirement for evidence disposal suggestions given by Jon Moog may be burdensome and costly.
- 07:09:14 **Jim Smith, MSPOA and MCAA**, discussed two suggested changes to LCdna1:
- bottom of page 2 and top of page 3 - (1)(a) - revert to the original 2009 language to read, "The state shall preserve", rather than, "A law enforcement agency shall preserve"; and
 - middle of page 3 - (1)(b)(ii) - add vehicular homicide while under the influence to crimes, as recommended by David Carter and Mark Murphy.
- 07:11:49 Mr. Smith noted that the City of Helena recently built a new evidence storage facility for a cost of \$205,000 and said that type of cost is difficult for any local government to absorb.
- 07:13:17 Jessie McQuillan, Montana Innocence Project, discussed her concerns regarding the MCAA bill draft (EXHIBIT 13). She said it is not clear to her what types of evidence would have to be preserved for what crimes, nor is it clear how the MCAA proposal is less burdensome than LCdna1. In fact, she said, it could exacerbate the problem of evidence preservation and storage. Another issue of concern is that it doesn't have an escape valve for agencies to dispose of evidence in certain cases. Ms. McQuillan said the MCAA bill draft proposal doesn't deal with evidence in a case in which a conviction is not obtained and that a goal of the working group was to establish consistent standards. She noted

that LCdna1 is modeled on other states' and federal laws, which have been proven to be effective.

07:19:42 REP. AUGARE said the committee work session would be delayed until SEN. JENT arrived.

Pat Gervais, Fiscal Analyst, review of Legislative Finance Committee initiatives related to agency budget reductions that affect the Department of Corrections, the Department of Justice, Office of the Public Defender, and the Judicial Branch

07:19:52 **Pat Gervais, Legislative Fiscal Analyst, LFD**, reviewed a memo regarding the Legislative Finance Committee's (LFC) work in identifying and reviewing options for addressing the anticipated structural imbalance in the 2013 biennium budget (**EXHIBIT 15**). Ms. Gervais said that the LFC formed three subcommittees to meet with certain interim committees, including the LJIC, to solicit feedback, ideas, and public comment intended to assist the LFC in its work regarding the 2013 budget. She said that the LFC has requested that four members of the LJIC be appointed to work with the LFC Subcommittee on the budgetary issues and explained what the Subcommittee work would entail. She said that information from the "Reference Book" (**EXHIBIT 16**) is attached to the memorandum. REP. AUGARE appointed SEN. ESP, SEN. MOSS, REP. PETERSON, and himself to serve on the joint subcommittee with the LFC.

REP. MENAHAN asked if the ideas in the Reference Book came from members of the LFC, staff, or both. Ms. Gervais said ideas were gathered from legislators, staff, and others.

Legislative Audit of MERLIN - Chairman's letter of request

07:28:46 Ms. Heffelfinger said that a copy of the letter from Chairman Augare (to the Legislative Audit Committee) along with public comment and agency briefing materials was in the LJIC meeting materials (**EXHIBIT 17**). Ms. Heffelfinger reported that the decision was made that the Legislative Audit Division (LAD) would decide what type of audit would be conducted.

Rule review report

07:31:54 Valencia Lane, Staff Attorney, LSD, discussed a June 16, 2010, rule review memo dealing with Department of Justice proposed rules for juvenile driving records, release of driving records, and gambling license transfers (**EXHIBIT 18**).

07:35:30 SEN. SHOCKLEY asked to return to the MERLIN issue. He said that the entire system of dispensing licenses is not working and that something needs to be done. Ms. Heffelfinger said that if the internal LAD audit is not sufficient, the LJIC can vote to send another letter. **SEN. SHOCKLEY moved to support Chairman Augare's request of an audit of MERLIN, the license plate distribution system, titles, information system, and revenue tracking.**

07:38:14 REP. EBINGER said Stacy Bragg, Citizens for Balanced Use, sent him an accounting and spread sheet of all of the problems with specialty license plates. He said it is additional proof that the system is far from perfect.

07:38:56 SEN. ESP said that communication and management problems also need to be resolved. **SEN. SHOCKLEY said he would consider SEN. ESP's comments a friendly substitute motion to request a performance audit. The motion passed on a unanimous voice vote.**

07:39:48 REP. HOWARD said that officials in Stillwater County and Sweetgrass County say that the new system has taken local authority away in solving problems locally. The county officials would like to have the authority back because it would solve many of the problems.

07:40:53 **Angie Grove, Deputy for Performance Audits, Legislative Audit Division,** clarified that the LJIC's request for an audit was not put on the audit list because it will be incorporated into the fall internal audit schedule and that LAD's opinion is that the issue will be best addressed through that route. She emphasized that the LAC and LAD took the LJIC's request very seriously and agree there are areas that need to be audited. On the issue just voted on, the LAD would be happy to incorporate that into the audit request.

Committee discussion and action on SJR 29

07:43:27 SEN. MOSS said the discussion on the issue to date has focused on technology and policy direction and that it is clear to her that there is a need to do things differently. She said that DNA preservation is a valuable tool to law enforcement and to citizens and asked the LJIC to support a bill draft, and to incorporate comments heard today. **SEN. MOSS moved to work with a bill draft to combine the provisions of LCdna1 and the comments and discussion heard at the day's meeting.**

07:45:08 SEN. SHOCKLEY asked to remove the WHEREAS clauses in LCdna1 and said he would support certain elements of the MCAA bill draft proposal. He said he would like to investigate the possibility of preserving the test results, rather than the actual DNA evidence. Ms. Ashton said that all test results are retained in the State Crime Lab, as well as the evidence itself, for an indefinite period of time.

07:48:46 SEN. SHOCKLEY said there is the potential to argue that the correct item or sample was not tested. Ms. Ashton said the Crime Lab performs tests on whatever is requested by the defense and the prosecution.

07:49:34 SEN. ESP said will he will resist the motion because the testimony was there was no consensus on the bill. He said that either more work is needed or the process needs to start over.

07:50:03 REP. PETERSON said that he likes the Yellowstone County bill better as a starting point and that the LJIC could add to it. He said that Mr. Waterman's comments also need to be considered.

07:52:07 REP. AUGARE said that he was disappointed that the working group could not reach consensus and with only one meeting left, it will reflect poorly on the LJIC if nothing is resolved. He asked if the Committee would prefer to move forward with

a vote or to form a subcommittee to work on a bill. SEN. MOSS said that was the intent of her motion.

07:53:56 REP. STOKER thought that Jim Smith's suggestions should be considered also.

07:54:55 SEN. SHOCKLEY said there is no point in passing legislation that has a cost to it. He volunteered to serve on the subcommittee and suggested conducting the meeting via teleconference.

07:56:14 REP. HOWARD said that the LJIC's work could be considered successful if it looked at the issue and concluded that a bill is not needed. He said he does not see the need to approve a bill draft.

07:57:15 SEN. MOSS withdrew her motion and asked that the Committee discuss formation of a subcommittee to continue work on a bill draft under SJR 29 concerning preservation of DNA evidence.

07:57:59 **REP. HOWARD moved to not approve a bill draft. The motion failed on an 8-4 roll call vote, SEN. ESP, REP. HOWARD, REP. PETERSON, and REP. STOKER voted yes.** REP. AUGARE appointed a subcommittee to continue work on SJR 29: SEN. MOSS (Chair), SEN. SHOCKLEY, REP. PETERSON, and REP. MENAHAN.

08:02:19 SEN. ESP asked that Ms. Lane clarify the wording change in a bill draft from last session amending the preservation of biological evidence (i.e. the change from "state" to "law enforcement agency") and the state versus county responsibility. Ms. Lane recalled that the bill was not to change responsibility, simply to clarify the language.

AGENCY OVERSIGHT

• Department of Corrections

08:04:10 **Ross Johnson, Performance Auditor, LAD**, discussed a legislative audit of DOC contract management and six audit recommendations (**EXHIBIT 19**). He said that full copies of the audit report are available at the LAD office.

08:10:17 **Mike Ferriter, Director, Department of Corrections (DOC)**, distributed a DOC response to the audit recommendations:

- DOC corrective action plan status (**EXHIBIT 20**);
- DOC policy directive - contracts (**EXHIBIT 21**);
- DOC policy directive - procurement (**EXHIBIT 22**); and a
- DOC contract liaisons' quarterly report bar graph (**EXHIBIT 23**).

Director Ferriter said he is optimistic that improvements will be made and that no fraud or illegal activities occurred. He pledged to continue to work with the LJIC and the LAD.

08:16:52 SEN. SHOCKLEY asked Director Ferriter a series of questions relating to some of the issues of concern, as addressed in the performance audit. Director Ferriter responded.

- 08:32:37 SEN. ESP asked Mr. Johnson to discuss further the Boulder land deal issue. Mr. Johnson said the LAD felt that the land transfer was completed under the law but had a problem with the DOC's lack of notification. He said the recommendation was to make future land transfers known through due process and that he thought the DOC is making changes accordingly.
- 08:34:13 REP. PETERSON asked about recommendation #2 to amend ARM 20.7.501-511 regarding prerelease center site approval and procurement steps. Director Ferriter said that the DOC has been engaged with the Kalispell community in trying to establish a prerelease center there and that there was some confusion about the siting. He explained the circumstances and said the DOC is re-establishing the administrative rules in order to clarify the process.
- 08:37:31 REP. MENAHAN asked about who can legally gather signatures for an initiative and said he believed that an inmate in a prerelease program could not be prohibited from doing so, so long as the person is a resident of the state and not paid by the signature. Director Ferriter said the DOC is looking into the matter and that policy decision would be made.

RECESS UNTIL 8:00 A.M., WEDNESDAY, JUNE 30, 2010

- 08:39:22 REP. AUGARE recessed at 4:43 p.m. until 8:00 a.m., Wednesday, June 30, 2010.

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