



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

April 6, 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. LARRY JENT
SEN. LYNDA MOSS
SEN. JIM SHOCKLEY
REP. BOB EBINGER
REP. DAVID HOWARD
REP. KEN PETERSON

COMMITTEE MEMBERS ABSENT/EXCUSED

SEN. CAROL JUNEAU
REP. MIKE MENAHAN

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 drafting letters of thanks to Bill Mickelson and to South Dakota's Attorney General for their assistance in researching the 24/7 Sobriety Program.

CALL TO ORDER AND ROLL CALL

- 00:00:01 REP. AUGARE reconvened the meeting to order at 8:00 a.m. The Secretary took roll, (ATTACHMENT #3). SEN. JUNEAU and REP. MENAHAN were excused.
- 00:01:08 **Sheri Heffelfinger, Research Analyst, Legislative Division Services (LSD)**, said that Jani McCall, Yellowstone Boys and Girls Ranch, would not be able to participate in the Juvenile Justice/Parenting with Love and Limits panel discussion.

RULE REVIEW ACTIVITIES

- 00:01:36 **Valencia Lane, Staff Attorney, LSD**, reported that no rules pertinent to the Law and Justice Interim Committee's purview have been submitted for review.

JUVENILE JUSTICE - Parenting with Love and Limits

- 00:02:24 REP. EBINGER introduced the Parenting with Love and Limits (PLL) program for justice-involved youth. He said the program has been operating successfully in Park County in cooperation with the Yellowstone Boys and Girls Ranch (YBGR).
- 00:03:01 **Jeremy Shields, Parenting with Love and Limits (PLL) Project Director, 6th Judicial District**, said that YBGR partnered with the 6th Judicial District to better serve Montana youth and their families.
- 00:04:01 **Dr. Scott Sells, Ph.D., author, Parenting with Love and Limits**, discussed a PowerPoint presentation explaining his model for working with justice-involved youth and their parents. Dr. Sells discussed four challenges facing Montana families in dealing with a justice-involved youth and discussed goals of the program (**EXHIBIT 1**). Dr. Sells also discussed a cost containment report by Sue Chvilicek, Chief Juvenile Parole Officer, 6th Judicial District (**EXHIBIT 2**). In conclusion, Dr. Sells said that the program outcomes to date have been very good and that the recidivism rate is very encouraging. In addition, he said, the cost per family is much less than traditional treatment programs. The LJIC viewed a short a video depicting a family dealing with a troubled youth through the PLL program.
- 00:23:29 REP. PETERSON asked how families are placed in the program. Mr. Shields said that two families have been court-ordered to attend but that most come from school referrals, probation referrals, or referrals from mental health programs. He said that PLL works with the families to show them how their family can be strengthened. REP. PETERSON asked how long the course lasts. Mr. Shields said it depends on the circumstances of each family but that the minimum course

runs for 6 weeks. He said that PLL checks back with families at 30, 60, and 90 days to see how they are doing and to provide any needed assistance.

00:25:18 REP. EBINGER said that Dr. Sells' PLL program is being used nationwide and that he has personally observed how well the program works.

SJR 39 - STUDY OF DUI LAWS

• Shuttle Service for Bar Patrons

00:28:53 **Tobias Bonfiglio, Capt'n Trips, LLC, Missoula**, presented his "Designated Drives Shuttle Project" proposal for providing bus transportation to bar patrons who don't wish to drive themselves home (**EXHIBIT 3**). Mr. Bonfiglio said the project is one piece of the solution to Montana's DUI problem. He explained how his company was started and that he has expanded his services to five bus lines all over Missoula and the surrounding area because the demand has grown so significantly. He explained his mission statement, pilot project and expected outcome, proposed budget, and other relevant information.

00:41:19 REP. STOKER said that some may view the proposal as facilitating drinkers but that bar owners are very supportive of the proposal because of the reduced liability concerns.

00:43:17 SEN. SHOCKLEY asked how the service is currently being funded. Mr. Bonfiglio said that he and his business partner fund the service and that he is requesting assistance from the LJIC to expand the program.

00:44:18 REP. PETERSON asked several questions regarding the shuttle schedule and how the shuttle operates. Mr. Bonfiglio responded. REP. PETERSON said that a bar's business is to sell alcohol and asked if the shuttle's availability promotes this. Mr. Bonfiglio said that people are going to drink regardless of the shuttle but that his proposal would limit liability

00:48:44 REP. PETERSON said that if the tavern owners are going to be protected from liability, then they should be the ones paying for the service. Mr. Tobias said that he has approached them and that they have indicated that they would support the project to a certain extent. He said that his proposal is more focused on safely moving people throughout the area, not just to service a particular establishment.

Public Comment on preliminary bill draft ideas for SJR 39 DUI laws - LCIj01 - LJIj05

00:51:00 **Kris Minard, citizen**, said that shuttle services are showing up statewide and that while prevention people are not supportive of the concept, lives will be saved. Ms. Minard also discussed her opinions of the proposed bill drafts:

- LCIj01 - sanction youth driver licenses - Ms. Minard said this will be an effective deterrent to youth.
- LCIj02 - allow game wardens to issue drug or alcohol citations to youth - Ms. Minard said the more people working to prevent youth drinking, the better and that adding sanctions for adults who host underage drinking would be even better.

- LC1j03 - mandatory alcohol server and sales training - Ms. Minard said this is an effective deterrent. The Department of Revenue has proposals also. Montana's fines for this are low and should be increased
- LC1j04 - on-call judge for blood alcohol test search warrant - Ms. Minard said this good idea and is a positive step but would still prefer not allowing the right of refusal.
- LC1j05 - any amount of dangerous drug is impaired driving per se - Ms. Minard said she supports this but that the Committee should not forget that alcohol is still the biggest reason for deaths on Montana highways.

Ms. Minard said there is still a need for additional prevention and treatment, education, and enforcement. She said that it always seems to come down the cost of programs and that if the beer tax was doubled, another \$4.3 million in revenue would be brought in that would fund many of the programs that are needed.

00:56:00

Rebecca Sturdevant, Mothers Against Drunk Driving (MADD), said that MADD strongly supports LC1j03 - mandatory alcohol server and sales training. She said that server training is critical and noted both her son and Montana Highway Patrol Trooper Michael Haynes were killed by drunk drivers who had been drinking at taverns. She said she would also support higher sanctions against bar owners and requiring bar owners to have a transportation plan for intoxicated patrons. She applauded Mr. Bonfiglio for his shuttle business and said that federal funding may be available for these types of programs through the Montana Transit Authority. Ms. Sturdevant said MADD supports LC1j04 - on-call judge for blood alcohol search warrant. She recommended adding an interlock device to refusals as part of the driver license sanction. She MADD also supports LC1j05 - any amount of dangerous drug is impaired driving per se.

00:58:37

Niki Zupanic, Public Policy Director, American Civil Liberties Union of Montana (ACLU), spoke about two of the proposed LJIC bill drafts:

- LC1j04 - on-call judge for blood alcohol test search warrant - Ms. Zupanic said that ACLU members have been impacted by drunk drivers like all Montanans and support measures to reduce impaired driving but also are concerned that civil liberties not be compromised. She said that LC1j04 is a good compromise because it respects the right to refuse but gives law enforcement officers another alternative to gather evidence. She referred to page 11 of LC1j04 and said that the language in new subsection (6) is of concern because of potential implications regarding medical confidentiality requirements.
- LC1j05 - any amount of dangerous drug is impaired driving per se - Ms. Zupanic said that there are concerns regarding whether or not the presence of metabolite necessarily would indicate impairment.

01:04:15

Julie Fischer, Montana Board of Crime Control (MBCC), presented a copy of a federal request for proposal (RFP) to address underage drinking in Montana (**EXHIBIT 4**).

- 01:05:06 **David Carter, Senior Yellowstone County Deputy County Attorney, DUI Task Force Chair**, said that overall, Yellowstone County supports LJIj04 and LJIj05:
- LCIj04 - on-call judge for blood alcohol test search warrant - Mr. Carter said it is a solid and well-written bill draft but that his office does have concerns about unintended consequences. He explained that it could present a procedural bar that could end up limiting other ways to legally obtain evidence for DUI charges.
 - LCIj05 - any amount of dangerous drug is impaired driving per se - Mr. Carter said the proposed bill draft provides for a defense for an offender so it won't punish someone for using legally prescribed drugs.
- 01:08:26 SEN. SHOCKLEY asked if Mr. Carter could suggest language for addressing his concerns in LCIj04. Mr. Carter said he could and would provide it to the LJIC. He suggested that language similar to that on page 7, Section 5, subsection (10) be used in New Section 4. - Refusal to submit to test - on page 3. He said similar language would ensure that other legal means of obtaining evidence would not be affected. He cited case law from the Supreme Court decision in *State of Montana v. Shaw*.
- 01:11:11 **Jim Smith, Montana Sheriffs and Peace Officers Association (MSPOA) and Montana County Attorney Association**, said that both associations would provide comment soon. Mr. Smith said that there is preliminary support for LCIj01 - sanction youth driver licenses but that the MSPOA will likely not support LCIj02.
- 01:14:00 REP. AUGARE said that all proposed bill drafts will be available online and that there would be ample opportunity for additional public comment on the website.

PRELIMINARY BILL DRAFT RECOMMENDATIONS AND COMMITTEE DISCUSSION

Underage Drinking

- 01:14:52 LCIjc01 - Driver's license sanctions for youthful drug or alcohol offenders (**EXHIBIT 5**). Ms. Lane explained the provisions of the bill draft.
- 01:19:57 REP. PETERSON supported suspending a license of a youth offender until the age of 21 and granting the youth an occupational license only until then. SEN. JENT said juveniles occupy a special place in the justice system and are treated differently until the age of 18, at which time they are considered a legal adult.
- 01:23:02 REP. PETERSON asked if there is a provision in the bill draft or any other law that would allow an occupational license to be granted. Ms. Lane said that page 9 - 61-5-105, MCA, would address the issue of occupational licenses for minors who need to drive. **REP. PETERSON moved to increase the age to 21, on the condition that there is a provision in the law that will allow an occupational license to be issued.** REP. MENAHAN asked that the motion be clarified. REP. PETERSON said that the intent of his motion was to allow a provisional license for any youth with a revoked license who needs to drive for occupational purposes. REP. MENAHAN said he would vote against the bill because it would allow too many exceptions and would not have the certainty that makes a law meaningful. He said the amendment would make LCIj01 meaningless.

- 01:28:53 SEN. ESP said he would not support the amendment. Ms. Lane said that the amendment goes beyond the scope of bill and would require the bill to be redrafted to apply to anyone under the age of 21, and not just minors. **REP. PETERSON withdrew his motion.**
- 01:30:51 LCJ02 - allow game wardens to issue drug or alcohol citations to youth (**EXHIBIT 6**). Ms. Lane explained the provisions of the bill draft.
- 01:32:11 SEN. SHOCKLEY proposed, in response to concerns voiced by the MSPOA and other law enforcement agencies, that the bill draft language be changed to reflect that if a warden issues a citation, that warden would be required to follow through and perform all duties associated with the citation.
- 01:33:49 REP. PETERSON said he supports the concept and doesn't understand why agencies can't work together on an issue such as this.
- 01:36:55 SEN. JENT said the issue of a game warden coming across youth consuming alcohol but not having the authority to deal with the situation has been a problem for a long time. He said he would support the bill. REP. AUGARE said, that as a member of law enforcement family, this is a common sense solution, particularly in rural areas of Montana.
- 01:38:33 It was agreed that SEN. SHOCKLEY would work with Ms. Lane to incorporate his suggested language into LCJ02.

SALES AND SERVICE

- 01:39:53 LCJ03 - mandatory alcohol server and sales training. Ms. Heffelfinger said that she is in the process of drafting the bill and that the members were given a progress report in the meeting binder (**EXHIBIT 7**). Ms. Heffelfinger reviewed the progress report, which included information on the current program, current costs and penalties, and two different options for training laws.
- 01:43:45 SEN. ESP and SEN. JENT did not like the permit proposal (Option 2). SEN. SHOCKLEY didn't like the idea of creating another license and licensing board.
- 01:44:54 REP. MENAHAN said he would support licenses for servers and that the responsibility should be on those actually serving the alcohol. REP. PETERSON said he did not support creating another bureaucracy and permitting process.
- 01:47:26 SEN. MOSS said she and SEN. JUNEAU would like more information on both options, including more details on the cost and what other states are doing. She asked staff to look at models and ball park figures at how it would play out in Montana.
- 01:48:48 REP. EBINGER said he is against permitting because it would create another layer of bureaucracy. SEN. HINKLE agreed that more permitting or another bureaucracy should not be created and that it ultimately is the personal responsibility of the person ordering the drinks. REP. AUGARE noted that the

Blackfeet Tribal Business Council passed a mandatory server training resolution and that the program works well.

EVIDENCE AND DETERMINATION OF IMPAIRMENT

- 01:51:35 LClj04 - on-call judge for blood alcohol test search warrant (**EXHIBIT 8**). Ms. Lane said that LClj04 is a complicated bill draft and that there are two parts of the bill to consider: 1. creation of an on-call judge and 2. implied consent laws. She reviewed the provisions of the bill draft. REP. AUGARE asked how law enforcement and tribal nations would interact under the provisions of LClj04, specifically, how the MOUs already in place would be affected. Ms. Lane said because she doesn't know what the MOUs include, she couldn't answer that; but that LClj04 would apply the same as any other state law.
- 02:03:10 **Larry Epstein, Glacier County Attorney**, said that there are only a few MOUs in existence currently. He said that LClj04 would probably not apply to tribal law on reservation.
- 02:05:19 SEN. SHOCKLEY said that Mr. Carter pointed out that unintended consequences may be a problem in New Section 4 and recommended that it be taken care of. REP. STOKER asked for clarification of current law and how blood drawn at a hospital, for example, could be used for blood test. Ms. Lane explained how the current law works and said that this would be a major policy change for the State of Montana.
- 02:07:31 REP. PETERSON said that while he is skeptical of the proposal, he would support LClj04. He said that the proposal was touted as an incentive to blow and wondered, if a person changes their mind and agrees to blow with negative results, what would be done to detect what the impairment is. Ms. Lane said that the tests involved in this proposal would apply only after the person has been arrested. She referred to 61-8-402, MCA, and said that at this point, the officer would have reasonable cause to stop and arrest the person.
- 02:11:13 SEN. JENT read from 61-8-402, MCA, and said that the language there addresses the issue of an impaired driver who has a clean blow. He said under this statute, a blood test is rarely requested unless the person is incapable of blowing. He discussed several gradations of the implied consent law. SEN. SHOCKLEY said that he wants the law to be crystal clear for the Supreme Court.
- 02:14:18 LClj05 - any amount of dangerous drug is impaired driving per se (**EXHIBIT 9**). Ms. Lane reviewed the provisions of the bill draft.
- 02:16:40 REP. PETERSON thought the bill draft needed clarification regarding the use of legally prescribed prescription drugs. Ms. Lane explained how people taking drugs as legally prescribed are handled under current statutes. She also referred to a National Highway Traffic Safety Administration (NHTSA) report on breath test refusals as part of her discussion (**EXHIBIT 10**).
- 02:18:54 SEN. JENT discussed his concerns relating to abuse of medical marijuana and prescription drug abuse in Montana. He suggested that the term, "dangerous

drugs" be defined to add clarity to the issue. Ms. Lane said that the reason current per se law was drafted to apply only to alcohol is because of the controversy over the effect of drugs that may linger in a person's bloodstream.

02:23:40 The Committee members held a detailed discussion on the issue of drug use and impaired driving. Topics discussed included drug detection through the use of blood tests, what drugs are defined as "dangerous drugs", the implications of drug residue in a person's blood stream, what is considered safe and therapeutic drug levels, and the lack of federal and state standards for defining impairment. SEN. JENT referred the LJIC to Title 50, chapter 32, part 2, relating to dangerous drugs.

02:27:58 REP. MENAHAN said that an investigative subpoena has been used to get records of a person's prescription drug use and that it is possible to determine if a person is taking more than the legally prescribed amount, which can be used to determine impairment. For dangerous drugs, while the Crime Lab can determine the level of a particular drug, there is no defined standard to determine impairment. REP. MENAHAN said that LC1j05 would help prosecute these cases.

02:29:53 **BREAK** for 15 minutes

02:47:21 REP. AUGARE called the meeting back to order.

Public Comment on preliminary bill draft ideas for SJR 39 DUI laws - LC1j06 - LC1j11

02:48:17 **Rebecca Sturdevant, MADD**, said that MADD supports funding for DUI courts. She said that MADD is also in support of LC1j11 - eliminating the 5-year look back.

02:49:50 **Kris Minard, citizen**, said that she supports all of the remaining bill draft proposals.

02:51:07 **David Carter, Yellowstone County Attorney Office**, said that the Yellowstone County Attorney's Office supports all of the bill draft proposals. He said he knows that funding is an important issue but that it is time to create some serious treatment programs and that the proposed bills would go along way in addressing the current problems.

WORK SESSION: COURTS AND SENTENCING ALTERNATIVES - LC1j06 - LC 1j11

02:55:23 LC1j06 - support and funding for drug courts - REP. MENAHAN. Ms. Heffelfinger said that she is working on this bill draft and that a progress report is in the notebook (**EXHIBIT 11**). She reviewed the progress report and discussed current statutes on drug courts (**EXHIBIT 12**).

03:01:58 REP. MENAHAN said that he wants to continue pursuing the DUI court model but acknowledged that funding will be an issue. He said that some federal funding is available but that it is not sustainable.

03:03:47 REP. PETERSON said that he strongly supports the concept and has personally observed the success of the Billings DUI Court. He said it must be clear that this

would not be establishing another court, but is increasing the function of an existing court. He agreed that funding will be an issue.

- 03:06:14 SEN. ESP said that he also supports the DUI court model and said that it could be possible to find a way to fund it by shifting funding from existing programs.
- 03:07:01 SEN. MOSS stated her support for the DUI court and said that it is an opportunity to create policy in which state and local governments can work together for families and communities. She agreed that existing resources may be a source of funding that can be redirected to DUI courts.
- 03:08:36 REP. PETERSON discussed a recent telephone call with the National Traffic Safety Board regarding Montana's low excise tax on alcohol and the effectiveness of signage in educating the public on the dangers of drinking and driving.
- 03:10:34 LCJ07 - establish city court as court of record (**EXHIBIT 13**). Ms. Lane reviewed the provisions of the bill draft.
- 03:12:58 LCJ08 - strengthen substance abuse. Ms. Heffelfinger said that the bill draft is still in progress and discussed a progress report is in the binder (**EXHIBIT 14**). Ms. Heffelfinger referred to several other documents in the binder as part of her discussion:
- a document from the Addictive and Mental Disorder Division (AMDD) of the Department of Public Health and Human Services (DPHHS) outlining the levels of care (**EXHIBIT 15**);
 - a court referral form used by the Billings DUI Court (**EXHIBIT 16**);
 - AMDD DUI client admission statistics (**EXHIBIT 17**); and
 - Assessment, Course, Treatment (A.C.T.) program statutes (**EXHIBIT 18**).
- 03:18:29 REP. MENAHAN said that LCJ08 has the potential to address what he sees as the biggest failure in Montana law. He said that testimony has been repeatedly given on the ineffectiveness of the A.C.T. program and that if legislators are serious about addressing the problem, treatment must have the "teeth" to force people into treatment. He said treatment needs to be graduated in order to address the severity of each person's individual treatment needs.
- 03:20:09 SEN. ESP agreed and said that people have testified that they drive drunk many times before being stopped.
- 03:21:14 SEN. SHOCKLEY discussed his recommendation that an independent evaluation be done to determine if an offender is chemically dependent. REP. AUGARE said that staff will provide additional data on assessments.
- 03:22:47 LCJ09 - allow more judicial discretion to mandate residential treatment. Ms. Heffelfinger verbally updated the LJIC on the status of the bill draft proposal and said that, after conversations with REP. PETERSON, her understanding is that the bill draft would require mandatory residential treatment for second DUI offenders with a blood alcohol content (BAC) of .15 and above and for all third-

time DUI offenders regardless of BAC. She said the type of residential treatment would not be specified in the bill draft.

03:24:57 LClj10 - extend court jurisdiction (**EXHIBIT 19**). Ms. Lane reviewed the provisions of the bill draft.

03:26:16 SEN. JENT discussed his concern about the court's jurisdiction and suggested that a court's jurisdiction be extended by providing for a longer term of suspension. SEN. SHOCKLEY said he shares SEN. JENT's concern.

03:29:14 REP. MENAHAN said the people looking to the LJIC hope that the Committee will recognize DUI as the serious offense that it is and that the Committee's work should reflect that. He said that the many exceptions to DUI penalties have made it very difficult to prosecute drunk drivers and that the legal niceties that allow individuals to avoid prosecution and punishment should be eliminated. REP. MENAHAN said that any driver convicted of a first offense DUI should be sentenced to one year in jail, suspended on condition of treatment. He discussed the many exceptions and said he would like to eliminate all of them.

03:31:55 SEN. HINKLE said that REP. MENAHAN's comments were among the best he has heard to date and that he agrees that the exceptions need to be closely looked at. He said that the threat of punishment with no exceptions will be a deterrent. REP. AUGARE said judges need leeway to address each legal circumstance and said he would continue to urge the LJIC to support that.

03:32:56 SEN. ESP said he thought the proposed bill draft is the right approach. REP. PETERSON agreed that every case should be decided on its own facts and basis and that the judges should have the discretion to make decisions, based on the facts. He said that legislative exceptions should be left out of the process and that the judges should have the discretion to make decisions.

03:33:58 REP. EBINGER said the discussion has mostly revolved around treatment in lieu of punishment because it is the person's behavior that must be changed. He said that punishment alone is not going to be an effective solution.

03:34:24 LClj11 - eliminate 5-year look back (**EXHIBIT 20**). Ms. Lane reviewed the provisions of the bill draft.

03:36:08 The LJIC discussed the issue of a retroactive applicability date and potential issues that may arise. It was noted that the proposed bill could have a significant fiscal impact, particularly on counties.

03:40:55 REP. AUGARE recessed the LJIC for lunch until 1 p.m.

LUNCH BREAK

05:04:41 REP. AUGARE reconvened the meeting at 1:05 p.m.

PANEL - SEXUAL OFFENDERS - PRE-RELEASE, COMMUNITY PLACEMENT, AND TREATMENT

- 05:06:09 **Pam Bunke, Community Corrections Division Administrator, Department of Corrections (DOC)**, read a statement (**EXHIBIT 21**) regarding societal views of sexual offenders, the treatment needs of this population, barriers and obstacles that prevent rehabilitation and release, the cost of incarcerating this population, and more. Ms. Bunke also discussed in detail a DOC factsheet about sex offenders (**EXHIBIT 22**) that included the following points: numbers and statistics relating to the sex offender population, location of sex offender, sex offenders by type, sentencing, risk designation, age demographics, treatment options, treatment outcomes, prison population numbers of sex offenders, and placement options for offenders released from prison.
- 05:20:55 **Dawn Handa, Regional Administrator, Probation and Parole, DOC, Great Falls**, read a statement regarding the great need for sex offender treatment programs and placement options and the many considerations and obstacles that must be dealt with, particularly with issues related to the offender's reentry into society (**EXHIBIT 23**).
- 05:27:31 **Sue Wilkins, Executive Director, Missoula Correctional Services /Pre-release Center**, explained how a sex offender may be placed into a community pre-release program, beginning with a rigorous screening process. She reviewed the requirements for placement; the importance of public safety balanced with the needs of the offender, the importance of not lumping all sex offenders in one category, obstacles in a sex offenders recovery, such as housing, employment, treatment options, and support; the need of public education. Ms Wilkins said the two biggest concerns in Missoula are future treatment options and housing. Ms. Wilkins suggested that each committee member examine the number of sex offenders in their own communities and the services available there as a starting point for dealing with this issue.
- 05:36:37 **Mike Sullivan, sex offender therapist, Licensed Clinical Social Worker, Director, South Central Treatment Associates, Billings**, listed all facilities and programs in which his association provides treatment services. Mr. Sullivan discussed PowerPoint slides (**EXHIBIT 24**) relating to the following points: incidence of sex crimes, facts regarding sexual offenders, caveat regarding risk assessment, types and recidivism, clinically adjusted actuarial risk assessment, "low risk" designation, average age of sex offenders, and groups of sexual offenders who are of concern.
- 05:46:20 **Dave Armstrong, Executive Director, Alternatives, Inc., Billings**, said his program is a pre-release center that has worked with sex offenders for many years. He said the right thing to do is to offer treatment and programs for this population and discussed the difficulties encountered in trying to establish pre-release and treatment programs in communities. He said that there is usually a lot of resistance to programs dealing with sex offenders and referred to a Billings Gazette article about sex offenders in Billings. He said that facilities for sex offenders should not be looked at as a "gateway" for sex offenders to gain access to communities but agreed that bringing these programs into communities is a big risk from a public relations standpoint. Mr. Armstrong discussed other factors that have to be considered when dealing with sex offenders, such as

providing financial incentive for sex offender treatment and management programs, that sexual offenders do pose a risk because of public attitudes, security issues that include alcohol and drug testing and internet access, and limited employment and housing opportunities. He asked, when considering legislation relating to sex offenders, that care be taken to consider whether the legislation would limit an offender's ability to get a job or find housing, because that would worsen an already significant problem. Conversely, he said, sex offenders must not be forced upon a community and that public education is an essential element of breaking down resistance. Mr. Armstrong closed his comments by stating that he believes that pre-release is the appropriate place to supervise sex offenders.

05:59:34 **Dawn Spencer, Sex Offender Registry, Department of Justice**, related Montana sex offender statistics: as of April 2, 2010, there are 1,946 sexual offenders living in Montana communities. Of those, 67 are sexual and violent offenders and 98 are registered as juvenile offenders. There are 245 Tier Two offenders and 77 Tier Three offenders.

Committee Questions

06:00:43 REP. STOKER asked about the 1 parole officer per 40 offender ratio mentioned by Ms. Handa, and if a higher level of supervision is needed for sex offenders. Ms. Handa said that sex offender case loads are limited because of the supervisory needs.

06:01:57 SEN. ESP asked about recidivism rates for child molesters. Mr. Sullivan said that it has been found that that type of offender is generally less criminally motivated and adapts better to communities, so has a lower recidivism rate. He said that they also are less apt to be pedophiles and that their offenses are usually motivated by other factors.

06:03:38 SEN. SHOCKLEY said that the DOC is in a bind because there are only two pre-release programs in the state that take sex offenders. He said that these offenders are going to show up in cities and towns all over the state with or without supervision. He said his opinion is that the only remedy is legislation siting pre-release centers and requiring communities to accept a certain percentage of sex offenders. Ms. Bunke said she puts much credence into the pre-release screening committees because they are the people in the communities that take these offenders and that forcing communities to take sex offenders would be counterproductive. She said that encouraging community support and buy-in is a much better approach. SEN. SHOCKLEY said he understands those concerns but that the testimony is that if a sex offender doesn't go through a transition period, the offender is more likely to reoffend. He said that communities may not like the idea, but it would be for their own good.

06:09:04 SEN. SHOCKLEY asked about how tier level designations are made and about the backlog in getting these designations made. Ms. Bunke said that this has been a problem and that a Task Force was created to deal with it. She explained what is being done but noted that there are ongoing problems with getting offender levels assigned to offenders.

- 06:12:22 SEN. SHOCKLEY recalled that a judges panel meets at the prison to do sentence review. He asked if perhaps this panel could assist with the designation backlog. Ms. Bunke said that using VisionNet has also been considered.
- 06:13:40 SEN. HINKLE asked if sex offenders are free to move about once they are eligible to come off the registry. Ms. Spencer said that certain low level offenders are able to petition the District Court to be relieved from registering as a sexual offender after ten years and that and that they are not under supervision, they are not tracked by the DOJ.
- 06:14:49 REP. PETERSON asked if a sex offender can be considered "cured". Mr. Sullivan said no, but that it can be indicated that the offender successfully completed a specialized sex offender treatment program. If the offender is able to manage his life using what has been learned and developed in treatment, the risk of reoffending is much lower.
- REP. PETERSON asked how many offenders have completed their sentence and have been granted parole but have no place go. Ms. Bunke said that there are 130 offenders that have been recommended for parole but have no placement. She said that the Parole Board has jurisdiction over these offenders and that a step-down process is much preferred, rather than just releasing them. She said there is no requirement that mandates that an offender be placed in a step-down program before being released. REP. PETERSON said that placement opportunities need to be broadened out to more communities. He asked Ms. Bunke to tell the LJIC how that could be done.
- 06:23:18 REP. MENAHAN discussed Title 46 and the issue of evaluating sex offenders for the purpose of sentencing. REP. MENAHAN said that there may be an inherent conflict in the procedure because the professionals conducting the evaluations and assigning a tier level designation are also the treatment providers. He asked if it would be better if the designation was ordered by the Court. Mr. Sullivan said that while he agrees that evaluation and treatment need to be separate procedures. the current procedure is working and that evaluations have been very professional. He noted that many of them are already court ordered. Ms. Handa said that when she writes a sex offender PSI, she relies on the Montana Sex Offender Treatment Association (MSOTA) provider recommendation and that on occasion, she has recommended that the Court consider additional factors also.
- 06:29:31 In response to a question from SEN. SHOCKLEY about commitments to DOC and how they are handled when it comes time to release them, Ms. Bunke explained that there is a process for an offender who has been recommended for release. She said they try to place them either in Billings or Missoula pre-release centers but that if everything fails, the offender will likely go to Montana State Prison because the DOC will not release them without some type of step-down program. She said some of these offenders can be considered for the intensive supervision program but only if certain programs and agreements for supervision are in place.

- 06:32:42 SEN. MOSS commented that, as a member of a community that does take sex offenders, she knows that the programs work diligently with the community to address community fears and concerns. She said that it is a delicate balance but that the whole community was invited to be a part of the process, which led to what has been a good working relationship between the city and the programs. She emphasized that public perception is very important.
- 06:38:53 Ms. Wilkins said that she feels very strongly that sex offender programs must not be forced on a community and that a program will not be successful unless the communities are on board.
- 06:44:11 Mr. Armstrong said the best course of action is to continue the education process and that the great strides made to date would be taken away, should the Legislature force sex offender programs on communities.
- 06:47:25 REP. PETERSON said that he agreed with the panelists' positions but in the meantime, many inmates are piling up in prison and then dumped out into community with no structure or supervision.
- 06:48:11 **BREAK** - 10 minutes.

Public comment

- 07:00:34 **Jim Smith, Mayor, City of Helena**, said that the pre-release center in Helena has been a tremendous success. The agreement reached for being able to build the prerelease in Helena was that no sexual or violent offenders would be placed in the center. He said a lot has been learned in the last eight years and that he would be willing to revisit that issue because of the additional information that is now known. He offered to work with the local contractors and provider and the public to see if the program could be expanded. REP. STOKER said that he considered Mr. Smith's statement to be an open and public invitation to Director Ferriter to work with Mr. Smith on the issue.
- 07:03:28 **John Ward, retired legislator**, said that other communities besides Missoula and Billings ought to be working to create transitional programs for sexual and violent offenders. Testimony was given that shows that if these offenders are not accepted into a transitional program, they are ten times less likely to be successful. It must be emphasized to the public that not only must programs be responsible for public safety but also to ensure the best odds for these offenders to succeed and not reoffend.
- 07:05:48 **Craig Thomas, Executive Director, Board of Pardons and Parole**, referred to page 5 of Ms. Bunke's report (EXHIBIT 22). He explained that not all of the sexual offenders eligible for parole are released and that the Parole Board considers many factors in addition to the offender's completion of treatment requirements. Factors considered include citizen comment; victim comment; an appropriate release plan; comments from the judge, attorney, and law enforcement; and prior history. He said that approximately 60 offenders are ready for release. Mr. Thomas said that once an offender is denied parole, he received regular reviews. If the offender is approaching release without

supervision, the Board looks very carefully to find a way to release him into the community with supervision.

WRAP UP / NEXT MEETING / INSTRUCTIONS TO STAFF

- 07:10:10 **REP. PETERSON moved to have staff draft letters of thanks to Mr. Mickelson for his assistance to the LJIC and to South Dakota's Attorney General for his assistance to Attorney General Bullock. The motion passed on a unanimous voice vote.**
- 07:11:14 The next meeting date was changed to June 29 and 30 in order to possibly hold a joint meeting between the Children and Families and Health and Human Services Interim Committee (CFHHS) to review implementation of HB 130, HB 131, and HB 132, the LJIC's mental health diversion bills from last session.
- 07:13:09 SEN. SHOCKLEY asked to have the issue of the alleged illicit sexual activity between a Montana State Prison guard and a prisoner as an agenda item. He also asked to have the Legislative Audit Report on the Department of Corrections on the agenda. SEN. ESP asked to have the issue of medical marijuana as an agenda topic. REP. STOKER asked that Mark Kemp be invited to address the LJIC on the medical marijuana issue. Ms. Heffelfinger noted that the CFHHS is looking at the medical marijuana issue and said LJIC members could visit the CFHHS website for updates on that committee's work. REP. MENAHAN said that if Mr. Kemp is to be invited to address the LJIC, then the DOC should be invited also.
- 07:17:39 REP. STOKER asked that DOC Director Ferriter be invited to attend the LJIC meeting for the reasons previously discussed.

ADJOURNMENT

- 07:19:10 With no further business before the Law and Justice Interim Committee, REP. STOKER adjourned the meeting 3:20 p.m. The next meeting is scheduled for June 29 and 30, 2010, in Helena.

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Information provided to Committee members but not discussed at the meeting included:

- *Myths and Facts about Sex Offenders (DOC) - Exhibit 25;*
- *Information from Bill Mickelson on the South Dakota 24/7 Sobriety Program - Exhibit 26; and*
- *Vote Sheets on the preliminary DUI bill draft ideas from the Feb.9, 2010 meeting - Exhibit 27.*