



## 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

## SJR 29 DNA Bill Draft Subcommittee

August 3, 2010

Room 137, Capitol Building  
Helena, Montana

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

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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#### **SUBCOMMITTEE MEMBERS PRESENT**

SEN. LYNDA MOSS - via teleconference call  
SEN. JIM SHOCKLEY - via teleconference call  
REP. MIKE MENAHAN - on site  
REP. KEN PETERSON - via teleconference call

#### **STAFF PRESENT**

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

## **COMMITTEE ACTION**

The DNA Subcommittee of the Law and Justice Interim Committee approved LCdna2, as amended, for consideration by the full LJIC at its September 2010 meeting.

## **CALL TO ORDER AND ROLL CALL**

- 00:00:01 SEN. MOSS welcomed members and stakeholders to the conference call meeting. Those present in the room and via teleconference introduced themselves: Jon Moog, Office of Public Defender; Jessie Mcquillan, Montana Innocence Project; Shantil Siaperas, Montana Association of Counties; Sheryl Wood, Montana Association of Counties; Scott Twito, Yellowstone County Attorney's Office; Rod Sousa, Yellowstone County Attorney's Office; David Carter, Yellowstone County Attorney's Office; Kelson Young, Coalition Against Sexual and Domestic Violence; Valencia Lane, Staff Attorney; Sheri Heffelfinger, Research Analyst; and Dawn Field, committee secretary. SEN MOSS explained that the purpose of the meeting was to consider amendments, prepared by SEN. SHOCKLEY, to LCdna1 (**EXHIBIT 1**), which was discussed but not acted on at the LJIC's June meeting.
- 00:02:46 **Sheri Heffelfinger, Research Analyst, Legislative Services Division (LSD)**, reviewed the agenda. She noted that the meeting would be conducted as an executive work session and that as such, public comment would be taken only at the invitation of a subcommittee member.
- 00:04:12 SEN. SHOCKLEY reviewed LCdna2 (**EXHIBIT 2**) and noted that his changes appear in capital letters.
- 00:12:05 The Subcommittee members discussed the bill draft, including concerns about preserving evidence in cases in which a plea bargain is reached, how alford pleas affect preservation requirements, whether or not a defendant should be able to waive certain rights and how to keep statutory language consistent.
- 00:23:04 **REP. MENAHAN moved to amend Section 1, subsection(1)(b)(iii) by striking, "The subject of a plea agreement, or any other understanding between the prosecution and the defense." (page 3, lines 6 and 7), and substituting the words, "waived or forfeited."; and to strike the last sentence (lines 8-11 - "The convicted person's attorney.....provided for in subsection (1)(b)(i) expires.". The motion passed on a unanimous voice vote.**
- 00:26:48 **SEN. SHOCKLEY moved to formally adopt LCdna2, as amended. The motion passed on a unanimous voice vote.**

## **General Comment on Draft Bill**

- 00:27:36 REP. PETERSON discussed minor wording concerns on lines 10 and 11 on page 2. He asked REP. MENAHAN, as a prosecuting attorney, if he thought there would be a problem. REP. MENAHAN explained his understanding of the language and said he did not think the wording was problematic.

- 00:30:25 REP. PETERSON referred to line 4 on page 5 regarding permanent preservation. He asked if a time limit could be put in place and offered 50 years as a potential preservation period. REP. MENAHAN said that the State Crime Lab has indicated that the current language does not create a problem because the lab can store a sample of the evidence on a slide, which doesn't take up much space. SEN. SHOCKLEY said that he didn't like that requirement for permanent preservation of certain evidence, but the language has not caused problems to date. He said that if problems do occur, the statute could be changed.
- 00:33:00 REP. MENAHAN said that he appreciated SEN. SHOCKLEY's efforts to clean up the uncertainties and concerns raised in LCdna1 and that the amendments in LCdna2 went a long way in addressing law enforcement's concerns. He said that he is comfortable with the bill draft as amended but does still have certain concerns.
- 00:34:48 REP. PETERSON and SEN. SHOCKLEY discussed the issue of when a conviction becomes final and if it is defined clearly enough in statute. **David Carter, Yellowstone Deputy County Attorney**, offered comment on the issue.
- 00:37:51 Ms. Heffelfinger asked if there were any further motions on the bill draft. SEN. MOSS asked in any of the stakeholders listening to the teleconference meeting wished to comment. Mr. Carter discussed Yellowstone County's concerns regarding the final amendment adopted by the Subcommittee. SEN. SHOCKLEY responded to the concerns and said he supports the amended language.
- 00:45:56 **SEN. SHOCKLEY moved to forward LCdna2, as amended, to the full Law and Justice Interim Committee for consideration at its September meeting. The motion passed on a 3-1 voice vote, REP. PETERSON voted no.**

#### **ADJOURNMENT**

- 00:47:42 With no further business before the Subcommittee, SEN. MOSS adjourned the meeting at 11:03 a.m.

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