



Law and Justice Interim Committee

61st Montana Legislature

SENATE MEMBERS

JOHN ESP
GREG HINKLE
CAROL JUNEAU
JESSE LASLOVICH
LYNDA MOSS
JIM SHOCKLEY

HOUSE MEMBERS

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

COMMITTEE STAFF

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

MINUTES

August 3, 2009

Room 102, State Capitol
Helena, MT

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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To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

COMMITTEE MEMBERS PRESENT

SEN. JOHN ESP
SEN. GREG HINKLE
SEN. CAROL JUNEAU
SEN. JESSE LASLOVICH
SEN. JIM SHOCKLEY

REP. SHANNON AUGARE
REP. BOB EBINGER
REP. DAVID HOWARD
REP. MIKE MENAHAN
REP. KEN PETERSON
REP. RON STOKER

COMMITTEE MEMBERS EXCUSED/ABSENT

SEN. LYNDA MOSS

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:

- elected Rep. Shannon Augare to serve as Presiding Officer for the 2009-2010 interim;
- elected Rep. Ron Stoker to serve as Vice Presiding Officer for the 2009-2010- interim;
- decided that the SJR 39 study of DUI laws would be its top priority;
- decided that the SJR 29 study of DNA evidence would be limited to retention and storage issues only;
- identified statutory oversight of the public defender system and implementation of the LJIC's mental health diversion bills as priorities;
- chose to examine placement of sex offenders in prerelease centers and community correction programs;
- decided to examine the problem of pet hoarding, including appropriate penalties, mental health considerations, and other related issues;
- decided not to hold any committee meetings outside of Helena; and
- adopted the proposed meeting schedule, with the exception of the next meeting, which was rescheduled for September 28 and 29, 2009.

CALL TO ORDER AND ROLL CALL

00:00:02 SEN. ESP called the meeting of the Law and Justice Interim Committee (LJIC) to order at 10:00 a.m. The Secretary took roll, SEN. MOSS was excused (ATTACHMENT #3).

00:00:51 The Committee members and staff introduced themselves.

OVERVIEW OF COMMITTEE STATUTORY DUTIES AND ASSIGNED STUDIES

00:07:45 **Sheri Heffelfinger, Research Analyst, Legislative Services Division (LSD)**, reviewed the statutory duties of interim committees and those specific to the LJIC (EXHIBIT #1). She noted that oversight of the Office of the State Public Defender will have to be undertaken by the State Administration and Veterans' Affairs Interim Committee (SAVA) until oversight can be statutorily designated to the LJIC (EXHIBIT #2).

00:18:19 Ms. Heffelfinger reviewed *Legislator Claims for Reimbursement of Interim Activities* (EXHIBIT #3) and pointed out several changes that took effect since the last interim. Ms. Heffelfinger reviewed interim committee history of presiding officer and vice presiding officer (EXHIBIT #4).

OVERVIEW OF ADMINISTRATIVE RULE REVIEW PROCESS AND COMMITTEE DUTIES

00:20:50 **Valencia Lane, Staff Attorney, LSD**, reviewed the procedure and process for dealing with administrative rules (EXHIBIT #5). Ms. Lane also discussed a memo regarding recent Department of Justice rule submissions (EXHIBIT #6).

00:25:21 SEN. SHOCKLEY asked to revisit the issue of oversight of the Office of the State Public Defender (OPD) and requested that all LJIC members receive a copy of

the draft report from American University on the public defender system. He said his opinion is that there are problems with the program.

- 00:27:06 REP. PETERSON agreed and said that the LJIC needs to watch the OPD. He expressed surprise that the program was attached to the Department of Administration, rather than the Judicial Branch.
- 00:28:54 SEN. ESP asked how the LJIC should proceed, under the circumstances. Ms. Heffelfinger said it is clear that the LJIC has topical jurisdiction of public defender issues and that the Committee can request that the OPD report to the LJIC regularly. She said the LJIC may not do formal rule review or review proposed legislation until the issue is statutorily resolved. She suggested that the LJIC bring the matter to the attention of the Legislative Council and ask that legislation be proposed to resolve the matter. After a brief discussion, it was agreed that the LJIC would send a letter to the Legislative Council.
- 00:37:03 REP. PETERSON asked Ms. Lane for additional explanation and discussion regarding administrative rules. Ms. Lane explained how she is notified of a proposed rule and her criteria for deciding if it warrants committee attention. REP. PETERSON asked additional questions regarding oversight of boards and commissions, specifically for physical therapists. Ms. Lane said that all proposed rules are reviewed by an attorney and explained how the attorney responds, as well as the process for objecting to a proposed rule.
- 00:41:10 REP. STOKER asked Ms. Lane to explain how administrative rules are noticed and to whom they are noticed. Ms. Lane explained the requirements for public notice and how the rules are reviewed, and that it is not required that interim committees with oversight be noticed.

ELECTION OF OFFICERS

- 00:45:49 SEN. ESP discussed the LJIC's officer rotation history (EXHIBIT #7) and the officer rotations of other interim committees (EXHIBIT #4). He said that he would like the LJIC to consider making changes in order to allow a House Democrat or Senate Republican to serve as a presiding officer.
- 00:48:05 SEN. SHOCKLEY argued for keeping the LJIC tradition in place.
- 00:50:07 SEN. LASLOVICH said that he supports a change in the future.
- 00:53:38 REP. PETERSON said that he agreed with SEN. SHOCKLEY but also with SEN. LASLOVICH with respect to future officers. He nominated REP. AUGARE as Presiding Officer. **REP. PETERSON moved to cast a unanimous vote. The motion passed on a unanimous voice vote.**
- 00:54:25 SEN. SHOCKLEY nominated REP. STOKER as Vice Presiding Officer. **He moved to cast a unanimous vote. The motion passed on a unanimous voice vote.**

00:55:41 Ms. Heffelfinger pointed out that the LJIC had copies of the Legislative Council's Rules, Procedures, and Guidelines for Interim Committees (EXHIBIT #8) and said it provided guidelines on the question of proxy votes.

STAFF BRIEFINGS OF ASSIGNED STUDIES

SJR 29: A Primer - Background and Study Tasks for the Study of the Retention and Preservation of Biological Evidence

01:02:21 Ms. Heffelfinger reviewed key points from her report, "*SJR 29: A Primer - Background and Study Tasks for the Study of the Retention and Preservation of Biological Evidence*" (EXHIBIT #9). The LJIC also viewed a video clip from the *Denver Post* web page on evidence rooms and DNA storage. Ms. Heffelfinger said more of series is available, if members wished to view more.

01:23:34 REP. PETERSON asked if the study would encompass all biological evidence or be limited to DNA. Ms. Heffelfinger said that the language in SJR 29 refers to all biological evidence. REP. PETERSON said that he is also concerned that the study is limited to convicted felons and wondered if it should be broadened.

01:25:42 SEN. JUNEAU asked how or if youth are involved in the study. Ms. Heffelfinger said that if a youth is charged with a sexual offense or as an adult in a felony case, DNA evidence would be collected.

SJR 39: A Primer - Background and Study Tasks for the Study of DUI Laws and Enforcement

01:28:03 Ms. Heffelfinger reviewed her report: "*SJR 39: A Primer - Background and Study Tasks for the Study of DUI Laws and Enforcement*" (EXHIBIT #10), briefly reviewed information appearing in the media recently (EXHIBIT #11), and a Department of Corrections DUI fact sheet (EXHIBIT #12).

01:41:16 REP. PETERSON said that there is a concern among attorneys about a person's ability to continue working if the person is convicted of DUI. He said that it is important to keep such drivers off the roads but that it makes no sense to prevent them from working. He agreed that DUI is a very serious problem in Montana.

01:43:09 SEN. JUNEAU asked to look at current laws governing alcohol sales to people. Ms. Heffelfinger that a list will be compiled and that decisions on what to include in the work plan will be made in the work session.

01:44:45 SEN. HINKLE encouraged the LJIC to include both legal and illegal drugs in the study, in addition to alcohol. REP. STOKER agreed, saying that police officers he has spoken with have said that drug use is a big problem for them because they can't test for that in the field.

01:47:03 **LUNCH BREAK**

02:52:27 **RECONVENE**

PUBLIC COMMENT

- 02:53:09 REP. AUGARE noted that copies of public comment were submitted by individuals not able to attend the meeting (EXHIBIT #13):
- Randy Lowder, Madco Safe Community Task Force;
 - Kris Minard, Clancy, private citizen;
 - Officer Ryan Berry, Lewistown Police Department; and
 - Leroy Beebee, private citizen, (mailed to the members prior to the meeting).
- 02:53:26 **Jim Smith, Montana Sheriffs and Peace Officers Association and the Montana County Attorneys Association**, offered his association's assistance to the LJIC. He said that, with her permission, he was also offering the assistance of **Pam Bucy, Montana Association of Chiefs of Police and the Montana Police Protective Association**.
- 02:55:47 **Leo McCarthy, Mariah's Challenge, Butte**, said that as the father of a child killed by a drunk driver, he was appearing before the LJIC to support change. He said that while he could not get his daughter back, he could work for changes that would prevent his family's tragedy from happening to someone else. Mr. McCarthy said that the apathetic drinking culture that exists in Montana is protected by weak DUI laws. He said that he would like a third DUI offense to become a felony offense and that people are able to use the current system to avoid responsibility for killing people because of their choice to drink and drive. Mr. McCarthy concluded his testimony by playing a voice message recorded on his cellular phone by Mariah shortly before her death.
- 03:03:22 **Tawny Haynes**, widow of Montana Highway Patrol Officer Michael Haynes, killed by a drunk driver, said that Michael was a beloved husband, son, father, and best friend. Mrs. Haynes described the pain of losing her husband and of her children losing their father. She said that the attitude of tolerance and culture of acceptance regarding drinking and driving that exists in Montana is what killed her husband and that he had dedicated himself to battling the epidemic of drunk drivers. Mrs. Haynes discussed several strict DUI laws enacted in New Mexico and the differences those laws have made in DUI statistics. She also discussed the "Responsible Alcohol Servers Training program (RAST) and said that it is voluntary at this time but should be mandatory. Mrs. Haynes stated that drunk driving is not an accident, but a choice; and that people must be held accountable for that choice. She asked that the LJIC use SJR 39 as an opportunity to save someone else's husband, father, or son.
- 03:10:20 **Brenda Simmons, Project Director, Institute for Public Strategies, Bozeman**, discussed the Montana Community Change Project, the purpose of which is to reduce drinking and driving in Montana. She provided a packet of information (EXHIBIT #14) and a list of four policy recommendations:
- criminalization of refusals;
 - ignition interlock devices for first-time DUI offenders;
 - mandatory training and certification for alcohol sellers/servers; and
 - third offense felony DUI with no time limitations.

- 03:14:00 **Julie Johnson, Montana Innocence Project**, said that she worked closely with SEN. MOSS and SEN. SHOCKLEY to draft SJR 29 and that she envisioned that the focus of the study would be on preservation of evidence, not who would be required to submit DNA samples. She asked that the LJIC focus on preservation of evidence, rather than collection.
- 03:16:28 **Shauna Helfert, Liquor Control Division, Department of Revenue (DOR)**, reviewed a fact sheet (EXHIBIT #15) that explained how the RAST program is operated.
- 03:18:34 **Dennis Paxinos, Billings, Yellowstone County Attorney**, provided DUI-related statistics in Yellowstone County. He said that this issue is frustrating for prosecutors and law enforcement because frequently it is disease-based, not criminal, but results in death regardless. Mr. Paxinos said that his office will support the efforts of the LJIC. He made several suggestions that would decrease the number of drunk drivers on the road and said that efforts to identify and get help for serious drinkers must be more innovative. He said that making a third DUI offense a felony would create 1,000 new felons and cautioned the LJIC that dealing with those felons would require a great deal more correctional resources than are available now. Regarding SJR 39, Mr. Paxinos said his office wants to help with study as well. He said that a statute of limitations decision regarding retention of evidence must be made because available storage and the cost of maintaining evidence will be factors.

AGENCY PRESENTATIONS

Judicial Branch

- 03:24:18 **Lois Menzies, Court Administrator, Montana Supreme Court**, provided informational materials (EXHIBIT #16) and discussed several pages from the packet, including a flow chart of the Judicial Branch structure, a quick facts sheet containing budget, funding, and caseload information, and other relevant information.

Department of Justice

- 03:34:54 **Larry Fasbender, temporary Deputy Director, Department of Justice, (DOJ)**, introduced Tim Burton as his replacement. Mr. Fasbender expressed Mr. McGrath's regrets in not being able to attend the meeting and then provided an overview of the DOJ. He discussed ongoing problems within the Motor Vehicle Division involving implementation of the MERLIN project and noted that while there are still issues to resolve, the program is operating more smoothly now. He also discussed the new General Motors license to operate in Montana, and a Montana Highway Patrol update which included information on the Smart Cop program. Mr. Fasbender said that DOJ resources are available to the LJIC for both the SJR 29 and the SJR 39 studies.
- 03:44:31 Regarding the MERLIN program, SEN. ESP asked about the speed at which vehicle registrations are being handled and the backlog of registrations. Mr. Fasbender said that there are still problems, but that overall, improvement is being seen. SEN. ESP asked Mr. Fasbender to provide weekly updates to Ms.

Heffelfinger over the next month, so that the LJIC could observe the speed of transactions and monitor the backlog. Mr. Fasbender said he would do so.

Montana Board of Crime Control

- 03:50:16 **Roland Mena, Montana Board of Crime Control (MBCC)**, read the MBCC's mission statement, reviewed its organizational structure, board members, advisory councils, budget, and other relevant information (EXHIBIT #17).
- 04:01:17 SEN. HINKLE asked for a list of who exactly had received the federal recovery money through MBCC programs and of how much each entity had received. Mr. Mena said he would obtain that information and provide it to SEN. HINKLE. (*Mr. Mena provided the information to Ms. Heffelfinger on August 4, who mailed it to Committee members - EXHIBIT #29*).
- 04:02:16 In response to questions from SEN. ESP, SEN. JUNEAU, and SEN. SHOCKLEY regarding grant and jail funding, and the multijurisdictional task force, Mr. Mena said he would provide copies of the *Crime in Montana 2007-2008 Report*. (*Mr. Mena provided copies of the report later in the meeting (EXHIBIT #28)*).

Department of Corrections

- 04:04:55 **Mike Ferriter Director, Montana Department of Corrections (DOC)**, said that new laws related to crime impact the DOC and asked that the LJIC keep that in mind when creating policy. He said that new policy must include adequate resources. Director Ferriter discussed "*Montana Department of Corrections At a Glance 2007-08*" (EXHIBIT #18). He said that the LJIC also had been given copies of "*Today's Corrections*", a DVD produced by the DOC (EXHIBIT #19) and a sex offender fact sheet (EXHIBIT #20). Director Ferriter discussed other DOC issues of concern, including the continuing problem of mental illness in inmates, substance abuse, sex offenders, youth offenders, facility space and bed availability issues, and aging offenders.
- 04:17:15 SEN. SHOCKLEY asked if inmates at the prison in Deer Lodge could be released if there was a place for them to be released to. Director Ferriter said yes, many could be released if the DOC had more prerelease centers and prerelease beds.
- 04:18:00 SEN. HINKLE asked for an update regarding the Three Rivers facility in Hardin. Director Ferriter briefly reviewed the history concerning the facility but said he could not provide more specific information because the State has no relationship with the Three Rivers facility.
- 04:18:54 REP. PETERSON asked if the medical release legislation, passed in 2009, had been applied yet. Director Ferriter said it is being applied but not to a great extent. He said that the DOC hopes to someday establish an assisted living facility for aging inmates. REP. PETERSON asked, with respect to sex offenders not being able to be paroled, who or what is preventing a facility for sex offenders from being built. Director Ferriter said that there has been quite a bit of opposition by several factions in communities where sex offender prerelease centers have been proposed.

04:22:34 SEN. JUNEAU asked about the differences between counties for sentences handed down for similar offenses. Director Ferriter said that the information referenced by SEN. JUNEAU pertains to persistent felony offenders and that he would try to provide additional information to her at a later time.

Office of State Public Defender

04:25:07 **Randi Hood, Chief Public Defender**, reviewed a detailed handout explaining the history and structure of the public defender system (EXHIBIT #21). Ms. Hood said that Harry Freebourn, Administrative Director, and Mike Sherwood, Chairman, Public Defender Commission, were in attendance, should the LJIC have questions for them.

04:38:26 REP. STOKER asked about the status of the American Civil Liberties Union (ACLU) lawsuit. Ms. Hood said that she thought the requirements of the lawsuit had been satisfactorily met.

04:39:25 REP. PETERSON said, referring to a recent article in the Billings Gazette, that the LJIC would like to read the report discussed in the article. REP. AUGARE distributed copies of the Billings Gazette article and a summary of the draft report (EXHIBIT #22). He asked Ms. Hood to comment on the draft report. Ms. Hood said that the OPD has a strong game plan with which to move forward and noted that many of the problem areas discussed in the report have been addressed since the information was first gathered 12 months ago. She said that it was not easy to combine six different offices and staff and that while rough spots are still being smoothed out, overall, morale has improved. She said the goal is to use the report as a roadmap for a successful future.

Peggy Zetler, Program Officer, Beaverhead County DUI Taskforce, distributed copies of "*Deterring Alcohol Misuse in Beaverhead County*" (EXHIBIT #23).

04:43:25 REP. AUGARE asked Ms. Menzies to answer Committee questions. SEN. ESP asked Ms. Menzies to explain how the Judicial Branch is dealing with the budget reductions approved in the 2009 Legislature. Ms. Menzies said that her office has a menu of proposed reductions, approved by the District Court Council, that total the \$2 million reduction.

04:45:00 **BREAK** until 3 p.m.

05:00:43 **RECONVENE**

05:01:11 SEN. ESP explained a memo provided to LJIC regarding problems encountered by counties in dealing with the DOJ MERLIN system (EXHIBIT #24).

COMMITTEE DISCUSSION AND WORK SESSION, OPTIONS, MEMBER ISSUES, AND WORK SCHEDULE

05:02:50 Ms. Heffelfinger led the LJIC in a discussion of work plan decisions, including emerging issues, member issues, setting priorities, a meeting schedule, staffing issues, budgetary considerations, and other issues affecting the work of the

committee. She referred to a list of TVMT broadcasting areas (EXHIBIT #25) as part of her discussion involving out of town meetings. Ms. Heffelfinger also discussed the Department of Corrections Advisory Council's request to the LJIC to consider an interim study regarding sex offenders (last two pages of EXHIBIT #1), a June 26, 2009, memo from Ms. Lane to REP. AUGARE regarding his concerns about the Crossroads Correctional Center in Shelby (EXHIBIT #26), and a Helena Independent Record article regarding Governor Schweitzer's hiring practices and concerns about cronyism (EXHIBIT #27).

05:51:44 After a lengthy discussion of how to allocate staff and committee time and resources on the various study topics and issues, Ms. Heffelfinger summarized what seemed to be the direction of the discussion and the consensus of the committee that committee and staff resources would be allocated as follows:

- 20% to administrative and statutory duties;
- 20% to SJR 29 - retention of biological evidence;
- 40% to SJR 39 - DUI laws; and
- 20% to emerging issues, which include (to date) pet hoarding and community placement of sex offenders.

REP. AUGARE asked that committee members provide Ms. Heffelfinger with their study priorities and preferences in the next week and that the final work plan would be approved at the next meeting. The LJIC set September 28 and 29, 2009, as its next meeting date. The meeting will be held in Helena. It was agreed that committee meetings will be held in Helena but that individual members who wish to tour facilities of interest and relevant to study topics would be reimbursed for expenses.

ADJOURNMENT

05:55:42 With no further business before the LJIC, the meeting was adjourned at 4 p.m. The next meeting is scheduled for September 28 and 29, 2009 in Helena.

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