



Law and Justice Interim Committee

62nd Montana Legislature

SENATE MEMBERS

SHANNON AUGARE
STEVE GALLUS
GREG HINKLE
LYNDA MOSS
TERRY MURPHY
JIM SHOCKLEY

HOUSE MEMBERS

ELLIE BOLDMAN HILL
STEVE LAVIN
MARGARET MACDONALD
MIKE MENAHAN
MICHAEL MORE
KEN PETERSON

COMMITTEE STAFF

SHERI SCURR, Lead Staff
VALENCIA LANE, Staff Attorney
DAWN FIELD, Secretary

MINUTES

June 21, 2011

Room 152, State Capitol
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.

An electronic copy of these minutes and the audio recording may be accessed from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side column of the home page, select *Committees*, then *Interim*, and then the appropriate committee.

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. GREG HINKLE
SEN. LYNDA MOSS
SEN. TERRY MURPHY
SEN. JIM SHOCKLEY

REP. ELLIE BOLDMAN HILL
REP. STEVE LAVIN
REP. MARGARET MACDONALD
REP. MIKE MENAHAN
REP. MICHAEL MORE
REP. KEN PETERSON

COMMITTEE MEMBERS EXCUSED/ABSENT

SEN. SHANNON AUGARE
SEN. STEVE GALLUS
REP. MARGARET MACDONALD

STAFF PRESENT

SHERI SCURR, Lead Staff
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 SEN. SHOCKLEY as presiding officer
- elected REP. MENAHAN as vice presiding officer; and
- agreed by consensus on 12 study topics for the 2011-2012 interim in addition to assigned tasks.

CALL TO ORDER AND ROLL CALL

00:00:01 SEN. SHOCKLEY called the meeting to order at 9:30 a.m. The secretary called roll, SEN. AUGARE, SEN. GALLUS, and REP. MCDONALD were excused ([Attachment #3](#)). Members and staff introduced themselves. REP. HILL, REP. MENAHAN, and REP. MORE arrived later in the meeting.

ORIENTATION TO THE LAW AND JUSTICE INTERIM COMMITTEE

- 00:11:46 **Sheri Scurr, Research Analyst, Legislative Services Division (LSD)**, reviewed portions of the Rules, Procedures, and Guidelines for Interim Committees ([EXHIBIT 1](#)), including the Law and Justice Interim Committee (LJIC) duties, past LJIC activities and accomplishments, agency oversight duties, and staff resources. Ms. Scurr also provided an orientation to the LJIC (Welcome to the Law and Justice Interim Committee - [EXHIBIT 2](#)) and noted that only one study resolution (SJR 29 - Restorative Justice - [EXHIBIT 3](#)) was assigned to the LJIC by the Legislative Council.
- 00:21:22 **Valencia Lane, Staff Attorney, LSD**, explained the purpose of rule review and listed the agencies she monitors, and said that traditionally she has prepared a brief written summary for LJIC members to review.
- 00:23:43 REP. PETERSON said he would like to see the affected statute attached to proposed rules as part of the process. He asked Ms. Lane if that is part of her review and said he has concerns about agencies adopting rules beyond their authority. Ms. Lane said it is a part of her review and that she brings concerns to the attention of the agency and the LJIC.
- 00:25:19 SEN. SHOCKLEY discussed his vision of the LJIC's interest in studying medical marijuana, saying that while the Children, Families, Health, and Human Services Interim Committee (CFHHS) was assigned oversight of the implementation of SB 423, he would like the LJIC to study medical marijuana from a law enforcement perspective. He said he has invited former CFHHS chair, Rep. Diane Sands, to attend a LJIC meeting because of her expertise and knowledge regarding the

medical marijuana issue in Montana. (Sen. Shockley later noted that Rep. Sands sent her regrets that she was not able to attend.)

00:27:20 Ms. Scurr continued her orientation discussion (EXHIBIT 2, page 11)). She presented three work level options.

00:32:37 SEN. SHOCKLEY recessed the meeting for a short break.

BREAK

00:58:07 SEN. SHOCKLEY called the meeting back to order at 10:30 a.m.

ELECTION OF OFFICERS

00:58:39 SEN. SHOCKLEY reviewed the LJIC officer rotation history. He recommended that the LJIC consider making a change to its officer rotation protocol for future committees.

01:00:04 REP. PETERSON nominated SEN. SHOCKLEY for chair. No additional nominations were made. SEN. SHOCKLEY was elected to serve as the LJIC Presiding Officer by acclamation. REP. HILL nominated REP. MENAHAN for Vice Presiding Officer. No additional nominations were made. REP. MENAHAN was elected to serve as LJIC Vice Presiding Officer by acclamation.

AGENCY OVERVIEWS

01:03:38 Ms. Scurr referred the members to a legislative background brief on restorative justice (EXHIBIT 4). She said the information would be helpful while listening to the agency overviews and in setting work priorities later in the meeting. Ms. Scurr discussed the brief.

01:10:23 REP. MORE asked about victim impact panels. Ms. Scurr said that she is working with the Department of Corrections (DOC) to bring more specific information on victim impact panels to the next LJIC meeting.

01:11:18 Ms. Scurr said she prepared an agency overview for each agency under the purview of the LJIC which include the Department of Corrections (EXHIBIT 5), the Department of Justice (EXHIBIT 6), the Judicial Branch (EXHIBIT 7), the Office of State Public Defender (EXHIBIT 8), and the entities that are administratively attached to these agencies. Ms. Scurr suggested that the members refer to the brief for each agency presentation. She said each agency overview lists the department head, description and responsibilities of the agency, programs, number of full-time employees (FTEs), funding for fiscal years 2012-2013, and other information.

01:12:25 Ms. Scurr introduced **Greg DeWitt, Fiscal Analyst, Legislative Fiscal Division (LFD)**, as the fiscal analyst who will provide staff assistance and fiscal information for corrections and justice issues.

Ms. Scurr reviewed the Department of Corrections (DOC) overview (EXHIBIT 5). She said that the DOC provided an informational "DOC-At-A-Glance" brochure (EXHIBIT 9) and that two additional documents relating to the DOC were in the meeting materials: a list of all Montana DOC and contracted facilities, programs,

and offices ([EXHIBIT 10](#)) and information on the Interstate Commission for Adult Offender Supervision ([EXHIBIT 11](#)).

AGENCY PRESENTATIONS

■ Department of Corrections

01:21:11 **Mike Ferriter, Director, Department of Corrections (DOC)**, referred to Ms. Scurr's agency overview ([EXHIBIT 5](#)) and the DOC At-A-Glance ([EXHIBIT 9](#)) in his presentation regarding:

- DOC accomplishments,
- fiscal year objectives for 2012-13,
- concerns for 2012-13 biennium, and
- legislative issues on the horizon for the DOC.

Concerns included labor contracts, space for approved additional correctional beds, the budget cuts, managing sex offenders and mentally ill offenders, youthful offenders transferred to adult facilities, gang activity in secure facilities, and pending retirements that will affect staffing.

Legislative issues on the horizon include:

- consideration of a sex offender review board;
- a pre-release center for northwestern Montana;
- aging and inadequate correctional facilities;
- inadequate juvenile transition facilities, such as a pre-release for youth released from Pine Hills.

Committee Questions

01:41:01 REP. PETERSON asked about containing costs, specifically if privatized correctional facilities would decrease costs and he asked Director Ferriter to address union concerns. Director Ferriter said that Montana State Prison (MSP) in Deer Lodge is now considered a special needs prison so the costs are naturally higher than the private prison in Shelby. He said the younger and healthier inmates go to the Crossroads Correctional facility in Shelby and predicted that costs would not remain low there either if the Shelby facility had to deal with the same issues facing MSP.

01:43:10 REP. PETERSON agreed that sex offenders are a problem but wondered if creating a sex offender review board would serve as an "end run" around the Board of Pardons and Parole. Director Ferriter said it would not, but because sex offenders are a specialized population, more resources are needed to deal with them. He said a review board would use creative ideas to reduce the number of sex offenders that actually go to MSP through education and treatment. He said the proposed board is still in the planning stages and that the DOC is looking at how other states have created similar boards. REP. PETERSON and Director Ferriter discussed the difficulty of siting a sex offender facility.

01:48:31 REP. PETERSON asked about youthful offenders being placed in the adult population and the problems that have occurred. Director Ferriter agreed that the DOC needs to look at how to deal with these youth. He said it is a problem, not

just in Montana, but nationally; and that the best solution would be a separate facility where specialized treatment could result in a better outcome.

- 01:52:53 REP. PETERSON asked what restorative justice programs are in place in the DOC. Director Ferriter discussed, as one example of how the DOC has incorporated restorative justice into its programs, the boot camp at the Treasure State Correctional Training Center. He said he planned to present more detailed information on the DOC's approach to restorative justice at the next meeting.
- 01:56:51 REP. MORE asked about the number of prison management staff who are nearing retirement age and if the DOC has a plan or policy in place for hiring new management staff. Director Ferriter said staff hires will be made both internally and externally and will depend on the requirements of each position.
- 01:59:49 SEN. HINKLE asked about classification and housing of violent and nonviolent offenders. Director Ferriter explained how offenders are processed into a correctional facility and the diagnostic tools and evaluations that are in place to ensure they are placed appropriately.
- 02:02:47 SEN. HINKLE said one of his primary motivations for sponsoring SJR 29 was for victim restitution. He asked that Director Ferriter focus his presentations on that issue at future LJIC meetings. Director Ferriter said he would do so.
- 02:04:40 SEN. MOSS asked, regarding the creation of a sex offender review board, if the DOC is communicating with other states about their programs. Director Ferriter said that Pam Bunke, Adult Corrections Administrator, DOC, is exploring the concept. He said it is likely that the concept will be presented to the 2013 Legislature and that he would have more detailed information at the next LJIC meeting.
- 02:06:33 SEN. MOSS said that jail suicides continue to occur. She asked Director Ferriter to comment on jail suicide prevention. Director Ferriter said the DOC has been fairly successful in preventing suicides and that the problem has affected county jails more than the DOC. He agreed that suicide prevention is an important issue and said that the DOC has implemented staff training and screening procedures in order to increase awareness.
- 02:08:51 SEN. SHOCKLEY discussed several areas in which the DOC has worked diligently to improve and commended the DOC for its efforts. His discussion points included several specific programs and budget items, as listed in the DOC At-A-Glance brochure (EXHIBIT 9). Director Ferriter said that great effort has been made to improve outcomes and reduce costs.
- 02:13:07 SEN. SHOCKLEY asked Director Ferriter to explain the WATCH (Warm Springs Alcohol Treatment and Change) program. Director Ferriter said it is a specialized facility for DUI offenders. He reviewed how the program is administered. SEN. SHOCKLEY said that the methamphetamine treatment program has also been very successful. He said he would like the LJIC to tour the MSP and the WATCH program. He asked Director Ferriter to discuss what is happening with the

proposed prerelease center in Kalispell. Director Ferriter said that while the funding was available in the 2011 biennium, it was not able to be sited. He said the funding was not included in the 2013 biennium budget but that the DOC is not going to give up on the idea. He discussed the importance of working with a community when siting a pre-release or treatment program and said that the DOC has learned that involving a community in the decision process is a critical component.

■ **Board of Pardons and Parole**

There was no representative present due to a scheduling conflict. SEN. SHOCKLEY later noted the Board would have an opportunity to present at a subsequent meeting.

02:28:07 **LUNCH BREAK** - SEN. SHOCKLEY recessed the meeting until 1 p.m.

03:30:05 SEN. SHOCKLEY called the meeting back to order at 1:01 p.m. Agency presentations continued.

AGENCY PRESENTATIONS, continued

■ **Department of Justice**

03:30:17 **Tim Burton, Deputy Director, Department of Justice (DOJ)**, said that rather than giving an overview of the Department of Justice, he would answer LJIC member questions.

Committee questions

03:31:35 SEN. SHOCKLEY asked if the problems experienced in getting the MERLIN program fully operational have been worked out. Mr. Burton said the program is running smoothly now. He said that monthly conference calls with county treasurers are held and that DOJ staff also attends their meetings. He stated that the DOJ has accomplished what was asked of it by the last LJIC.

03:34:11 SEN. MURPHY said that there is interest in increasing services from the forensic division, particularly in the State Crime Lab keeping evidence on a long term basis. He asked if it is feasible to do this. Mr. Burton said that there are space and cost concerns and that the cost/benefit discussion needs to be held. He said he would work with the LJIC, if desired, to explore the issue more.

■ **Board of Crime Control**

03:36:58 **Don Merritt, Acting Executive Director of the Montana Board of Crime Control (MBCC)**, introduced Stacy Dorrington and said she would address the issues of the Juvenile Detention Alternative Initiative and the issue disproportionate minority contact. (*Agency Overview distributed but not discussed at meeting EXHIBIT 12*).

03:37:25 **Stacy Dorrington, MBCC**, updated the LJIC on the MBCC's work on the Juvenile Detention Alternative Initiative (JDAI) and the Disproportionate Minority Contact Initiative. Ms. Dorrington reported that staff has attended trainings and has developed plans to reduce disproportionate minority contact within the juvenile justice system and to decrease detention. She distributed copies of a

presentation/training led by Dr. Ed Latessa ([EXHIBIT 13](#)) attended by MBCC staff. She said that significant decreases in juvenile detentions have been achieved and that Montana's program has been designated as a model site for the three-year plan and that the program is being adopted by other states.

Committee questions

03:39:47 REP. PETERSON asked Ms. Dorrington to explain what "disproportionate minority contact within a juvenile justice system" is. Ms. Dorrington explained that ten different areas for decision points are tracked on youth entering the juvenile justice system and that a comparison is made between the American Indian population and the Caucasian population in order to look for points of disproportionalities, such as arrest rates, diversion opportunities, and detention rates. She said the data is analyzed for the purpose of making sure all youth are treated fairly. Ms Dorrington handed out copies of MBCC's study and evaluation of Montana's five juvenile detention regions (Montana Board of Crime Control Juvenile Detention Technical Assistance, Dennis Wagner PhD, October 2009, [EXHIBIT 14](#)).

03:44:09 SEN. SHOCKLEY asked Mr. Merritt to clarify the purpose of the MBCC. Mr. Merritt said the MBCC serves all facets of the justice system and that the MBCC's primary responsibility is to seek out and secure funding and resources in order to improve the justice system.

■ **Judicial Branch**

03:45:48 **Lois Menzies, Court Administrator, Supreme Court**, distributed and discussed an organizational chart showing the structure of Montana's Judicial Branch and data on case filings, the Judicial Branch 2013 budget, performance measures and other information ([EXHIBIT 15](#)).

03:50:58 Ms. Menzies discussed 2011 biennium Judicial Branch accomplishments: Court Help Program, Drug Treatment Courts, and Court performance measures ([EXHIBIT 16](#)).

03:56:35 Ms. Menzies discussed the caseload management quarterly report for January through March, 2011 ([EXHIBIT 17](#)).

03:57:42 Ms. Menzies discussed key points of a Judicial Branch Technology report to the Law and Justice Interim Committee, which included technology projects, strategic goals, and completed projects ([EXHIBIT 18](#)).

Committee questions

04:02:42 REP. PETERSON asked if the electronic filing of court reports will be similar to that of the federal system. Ms. Menzies said yes, to the degree possible.

04:04:08 REP. PETERSON said the opinions are easy to find on the Internet but the official citations are not included and the pagination is different from the books. He asked if it would be possible to correct that. Ms. Menzies said that she was not aware of that problem and said she would look into how it could be fixed.

04:08:16 SEN. SHOCKLEY announced that Ms. Menzies would soon be retiring and thanked her for her years of service.

04:08:51 Ms. Menzies provided copies of the statutorily-required juvenile probation report: Juvenile Offenders in Montana for Fiscal Year 2009 ([EXHIBIT 19](#)). She said the report would not be done again until 2013.

■ **Office of State Public Defender**

04:09:58 **Randi Hood, Chief Public Defender**, reminded the LJIC that the public defender system represents not only the indigent population, but others too. Ms. Hood reviewed the major accomplishments of the last biennium, most of which focused on 32 recommendations resulting from the American University audit and noted the following other accomplishments:

- established managers' tools for case load reduction and training;
- separated the appellate office and placed it directly under the Commission;
- completed full performance evaluations for all OPD staff and are in compliance with professional standards;
- received a clean financial audit;
- working with union attorneys on case-weighting issues;
- working actively to monitor and control costs; and
- providing representation for a death penalty case.

04:21:06 Ms. Hood discussed a number of other issues related to the OPD:

- an upcoming Legislative Audit Division Performance Audit ;
- internal audits to review policies, procedures to include internal monitoring, and regional monitoring;
- review of the OPD workforce design and wise use of funding and existing resources in order to hold down costs and increase efficiency;
- major redesign of the indigency questionnaire and verification of indigency measures;
- a strategic planning meeting scheduled for August 29; and
- the hiring of a conflict coordinator to manage conflict of interest cases.

04:29:11 Ms. Hood said that two significant issues are facing the OPD:

- public defenders remain the lowest paid attorneys in state government, which presents recruitment and retention issues; and
- pay for contract attorneys, which, at \$60 an hour, is about 1/3 of the rate charged by private attorneys.

Committee questions

04:33:28 REP. PETERSON asked if the legislation passed in the 2011 session has been beneficial to the OPD. Ms. Hood said it was and she discussed how the legislation has positively impacted case load problems and other problems.

04:35:03 REP. PETERSON and Director Hood discussed charging for services. Both agreed that nominal fees should be charged and that if the offender has the ability to pay, they ought to be required to pay for services rendered.

- 04:38:04 REP. MORE asked about the large amount (\$800,000) allocated for the death penalty case. Ms. Hood said that the OPD is currently paying on two death penalty cases.
- 04:39:08 SEN. MOSS said that she is pleased with the progress made on implementing the American University report recommendations. She asked if there has been any additional communication with individuals from the American University about the progress made. Ms. Hood said the Commission plans to deal with the final disposition of the recommendations at the August meeting, which will be shared with the American University.
- 04:40:35 SEN. SHOCKLEY thanked Ms. Hood for the update and agreed that the OPD attorneys and staff are not paid enough. SEN. SHOCKLEY asked what union represents OPD staff and what percentage of employees belong to the union. Ms. Hood said the union is the American Federation of State, County, and Municipal Employees (AFSCME) and that all employees except management belong. SEN. SHOCKLEY said he would like the LJIC to be updated in 2012 on how SB 187 has worked out for the OPD.
- 04:42:25 **Fritz Gillespie, Chair, Public Defender Commission**, arrived at the meeting. He said he would be happy to answer questions from the committee and was looking forward to working with the LJIC.
- 04:43:00 REP. PETERSON asked if SB 187 will be beneficial to the OPD. Mr. Gillespie said that overall, he thought the provisions of the bill were helpful to the OPD. He said that he did not have a specific list of changes that might be needed in the 2013 session but that the eligibility determination statute may need to be changed. SEN. SHOCKLEY suggested that a committee bill could be drafted to take care of the problem.
- 04:47:16 SEN. SHOCKLEY recessed the meeting for a break until 2:35 p.m.
BREAK
- 05:06:00 SEN. SHOCKLEY called the meeting back to order.

SB 423 - MEDICAL MARIJUANA - INFORMATIONAL BRIEFINGS

■ Status of constitutional challenge

- 05:06:14 **Ali Bovington, Deputy Attorney General, Department of Justice**, updated the LJIC on the medical marijuana litigation. She discussed the basis of the complaint and said that the plaintiffs are seeking a declaration that the law is unconstitutional, based on five basic counts:
- denial of individual's right of privacy, dignity, pursuit of life's basic necessities, and freedom of speech;
 - violation of equal protection for people using medical marijuana as treatment versus people using prescription medication;
 - violation of right to due process because the law restricts a care giver's ability to lawfully supply the product and a patient's ability to lawfully obtain the product;
 - violation of Fourth Amendment protections against unreasonable search and seizure; and

- violation of individual's right to engage in political and free speech by prohibiting advertising marijuana or related products.

Ms. Bovingdon said the preliminary injunction hearing should conclude in the next day or two and that a ruling is expected by the end of June. She said that the Court has three options before it: issue an injunction that would strike down the law, agree with the State and allow the law to go into effect, or enjoin parts of the law from being enacted, pending a trial on the merits of the case. Ms. Bovingdon said parallel to the court case, an initiative to repeal SB 423 has been requested for the 2012 election. She said she would provide copies of the litigation documents, should the committee wish to receive them.

Committee questions

- 05:16:33 REP. MENAHAN asked if the plaintiff's ability to raise and spend money to publicize or promote the initiative to repeal the law was an issue that would be argued as part of the court case. Ms. Bovingdon said the free speech issue was raised in two places in the complaint but that she would have to go back and review the State's brief to be certain whether or not that issue was raised. SEN. SHOCKLEY commented that commercial advertising of a product is different than political speech.
- 05:19:26 REP. PETERSON asked what the status of SB 423 will be if the court grants the injunction. Ms. Bovingdon said that the Montana Medical Marijuana Act would be reinstated until a full trial on the merits is completed. REP. PETERSON discussed the severability clause in SB 423 and what may happen in the judge enjoins part or all of the law from being enacted. Ms. Lane addressed the issue of the severability clause and different scenarios that could occur should additional portions of the law be enjoined. She said she is very certain that the judge is aware of the potential complications and that a ruling will be issued before July 1. Ms. Bovingdon and Ms. Lane discussed the portions of the law already enjoined.
- 05:27:13 REP. MORE commented that, as a participant of the process during the session, he wished the arguments being made in the state's brief had been produced before the session, rather than after. SEN. SHOCKLEY and Ms. Bovingdon discussed the implications of a court decision that could result in either going back to the Medical Marijuana Act or even previous to that, making marijuana a completely illegal substance again. They also discussed the privacy and security arguments being made by the plaintiffs and the argument that restrictions on access to medical marijuana may interfere with fundamental rights and with the doctor/patient relationship.
- 05:33:11 REP. PETERSON said that it might be a good strategy to agree that certain parts are unconstitutional in order to leave other parts in place. He asked if the Attorney General will retry the case should injunctions be granted. Ms. Bovingdon said that the Attorney General would have to evaluate the court decision before deciding what would be appropriate in moving forward.

05:34:43 SEN. HINKLE asked Ms. Bovingdon to comment on the confusion that could result if SB 423 is completely overturned or if the injunction is partially granted. Ms. Bovingdon said she is confident that decision will be issued before July 1 and that guidance will be given. She said that the State's brief has a very strong argument on why SB 423 is constitutional and that it is premature to speculate on what could happen.

• **Status of implementation**

05:36:58 **Anna Whiting Sorrell, Director, Department of Public Health and Human Services (DPHHS)**, said DPHHS staff was currently providing testimony at the court hearing. She reviewed how SB 423 has been implemented to date and the steps taken in doing so.

Committee questions

05:39:54 SEN. HINKLE asked how the DPHHS is dealing with the issue that it is administering a state law that is in conflict with federal law. Director Whiting Sorrell said the Department is complying with state law and is not recognizing that it is out of compliance with federal law.

05:41:41 REP. PETERSON asked about a letter written by a number of legislators asking for clarification regarding allowing a person's spouse to be the person's medical marijuana provider. Director Whiting Sorrell said the letter was received and that DPHHS legal staff is researching the legal issues brought forward in the letter. She said a response would be forthcoming.

05:43:11 REP. MORE asked about the number of medical marijuana patient registry cards issued between June 1 and June 17. Director Whiting Sorrell said the Department processed about 1,800 registry cards under the new rules during that time period.

■ **Law enforcement concerns**

05:44:28 **Jim Smith, Montana Sheriff's and Peace Officers Association (MSPOA), and Montana County Attorney Association (MCAA)**, distributed a memo from the MSPOA and MCAA outlining their concerns and questions regarding law enforcement's concerns about medical marijuana ([EXHIBIT 20](#)). Responding to other issues raised earlier in the meeting, Mr. Smith said that he would be happy to go to the Flathed area to advocate for siting a pre-release center and that he would work with the LJIC on that. He also said the issue of suicide prevention in jails remains an issue of concern to law enforcement agencies.

Committee questions

05:51:15 REP. PETERSON said he has a copy of a letter from the House Judiciary Committee of the United States Congress to Eric Holder, United States Attorney General, requesting an official position on medical marijuana. REP. PETERSON read portions of the letter and said he is looking forward to Mr. Holder's response.

05:52:32 REP. MORE asked Mr. Smith to discuss what role he envisions the LJIC taking in addressing the concerns of the law enforcement agencies about medical

marijuana. Mr. Smith said that the MSPOA is very appreciative that the Committee is interested in having a dialog with the law enforcement agencies on how best to deal with medical marijuana.

05:54:18 SEN. MURPHY said that a number of years ago, the Sheriff of Ravalli County won a federal case based on 10th Amendment laws ruling that local law enforcement is not required to enforce federal law. Mr. Smith said that former Sheriff Jay Prinz did prevail in that case. SEN. MURPHY said that, in that case, Montana law enforcement should be concerned only about enforcing SB 423. Mr. Smith said yes, that is what state law enforcement has been trying to do. He said the federal government can not delegate work to local agencies, for enforcement purposes.

PUBLIC COMMENT

05:57:09 **Jessie McQuillan, Director, Montana Innocence Project**, commented on DNA preservation of biological evidence in felony criminal cases, saying that the last LJIC studied the issue and that while SB 58 (2011) was tabled in the House, there is still a great deal of interest in this issue. She said it is a very important issue and encouraged the LJIC to include it in its work plan.

05:59:40 **Niki Zupanic, Public Policy Director, ACLU Montana**, commented that the ACLU is very pleased that the LJIC will be dealing with restorative justice and that the focus on repairing harm is beneficial not only to the perpetrator and victim, but to society as a whole. She also urged the LJIC to prioritize the issue of jail suicide prevention. She said that this issue has been a long-standing problem in Montana, with Montana's jail suicide rate about five times the national average. She said she is encouraged that the MSPOA plans to continue its work to decrease and prevent jail suicides but that the ACLU is unaware if progress has been made in implementing voluntary jail suicide prevention standards. She distributed copies of an article written about jail suicides that occurred in the last twelve months ([EXHIBIT 21](#)).

06:08:34 **Christina Davis, State Director, Children's Defense Fund (CDF)**, said that one goal of the CDF is to dismantle the "cradle to prison pipeline" through education, health care, and juvenile justice actions. She said that the fact that juvenile offenders are being housed in adult populations is a very dangerous path and urged the LJIC to consider that in its work. She discussed several studies on this issue.

06:11:42 **Kris Minard, citizen**, thanked the LJIC for its work in the last interim on the issue of DUI. She urged the committee to continue working on a social host ordinance and said she would gladly assist the committee in doing so.

06:13:24 **Sally Hilander, Victim Programs Manager, DOC**, said that she is an ardent supporter of restorative justice and has received training from national experts. She said that she has personally witnessed the difference that restorative justice can make in the lives of offenders and victims. She offered to share her knowledge and resources with the LJIC.

- 06:15:28 Ms. Scurr read three public comments regarding restorative justice into the committee record received from:
- Judge Michele Snowberger, Belgrade City Court ([EXHIBIT 22](#));
 - Connie Campbell, Community Mediation Center ([EXHIBIT 23](#)); and
 - Kenneth Nordtvedt, Bozeman ([EXHIBIT 24](#)).

COMMITTEE WORK SESSION

- 06:25:17 The LJIC discussed potential study topics. Each member had the opportunity to present his or her suggestions. Stakeholders were also allowed to comment at the request of committee members. After consideration of each topic, it was agreed that the following topics would be included in the LJIC's work plan:
- SB 187 - revising Office of Public Defender statutes;
 - SB 423 - medical marijuana - study impact on law enforcement;
 - jail suicide prevention;
 - long term preservation of biological evidence;
 - housing of youthful offenders in adult populations/detention alternatives/disproportionate minority contact;
 - social host ordinance issue;
 - drug-impaired driving;
 - HB 198 - eminent domain - study procedure and compensation and coordinate with Environmental Quality Council study;
 - expansion of 24/7 Sobriety program to include other offenses;
 - issue of correctional facilities and the state hospital releasing offenders and patients into homelessness;
 - revise standards for involuntary commitment; and
 - revise Montana statute on permit to carry concealed weapon to include reciprocity with other states.
- 07:06:10 SEN. SHOCKLEY referred the members to the committee decision matrix ([EXHIBIT 2](#), page 12, Welcome to the Law and Justice Interim Committee) and said that the committee would consider those topics in addition to the member-suggested topics in completing the decision matrix at the September meeting. Ms. Scurr asked that the members also review the tentative meeting schedule on page 13.

RULE REVIEW

- 07:08:32 Ms. Lane said that a proposed rule from the DOC regarding youth paroled from a youth correctional facility ([EXHIBIT 25](#)) was provided in the meeting materials. She reviewed the rule review process adopted by past LJIC committees, which has been to receive a written summary of all proposed rules and said that the LJIC could continue with that practice or could direct her to notify it only regarding proposed rules that would be of concern to the LJIC. It was agreed that Ms. Lane would continue to do written summaries of all proposed rules and highlight. SEN. SHOCKLEY asked Ms. Lane to review for the committee at the next meeting what the committee's powers are with respect to objecting to or vetoing rules..
- 07:11:57 The Law and Justice Interim Committee discussed visits to facilities and programs. It was agreed that SEN. SHOCKLEY would consult with Director

Ferriter and Ms. Scurr and that the issue would be further discussed at the September meeting.

ADJOURNMENT

07:20:23 With no further business before the Committee, SEN. SHOCKLEY adjourned the meeting. The next meeting of the Law and Justice Interim Committee is scheduled for September 9, 2011, in Helena.

CI0429 1207dfxa.