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Law and Justice Interim Committee

64th Montana Legislature

SENATE MEMBERS

DOUG KARY
SUE MALEK
MARY SHEEHY MOE
SCOTT SALES
DIANE SANDS
NELS SWANDAL

HOUSE MEMBERS

JENNY ECK
ELLIE BOLDMAN HILL
SARAH LASZLOFFY
STEVE LAVIN
DALE MORTENSEN
CAROLYN PEASE-LOPEZ

COMMITTEE STAFF

RACHEL WEISS, Lead Staff
JULIANNE BURKHARDT, Staff Attorney
JOY LEWIS, Secretary

MINUTES LOG

June 25, 2015
Room 102, Capitol Building
Helena, Montana

Please note: This document is a Minutes Log and provides a notation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video record of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select Committees, then Interim. Once on the page for Interim Committees, scroll down to the appropriate committee. The written Minutes Log, along with the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the Exhibits is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed.

Please contact the Legislative Services Division at 406-444-3064 for more information.

COMMITTEE MEMBERS PRESENT

SEN. DOUG KARY
SEN. SUE MALEK
SEN. MARY SHEEHY MOE
SEN. SCOTT SALES
SEN. DIANE SANDS
SEN. NELSON SWANDAL

REP. ELLIE BOLDMAN HILL
REP. STEVE LAVIN
REP. DALE MORTENSEN
REP. CAROLYN PEASE-LOPEZ

COMMITTEE MEMBERS EXCUSED

REP. JENNY ECK
REP. SARAH LASZLOFFY

STAFF PRESENT

RACHEL WEISS, Lead Staff
JULIANNE BURKHARDT, Staff Attorney
KRISTINA LIMING, Secretary

VISITORS' LIST ([Attachment 1](#))

AGENDA ([Attachment 2](#))

COMMITTEE ACTIONS

- Elected Senator Sales as the PO and Senator Sands as the VPO
- Adopted the SJ 24 study plan as drafted
- Requested legal staff work with the attorney general's office and other stakeholders to review Montana's sexual assault statutes
- Asked staff to adjust the draft work plan to incorporate a visit for committee members to the Crossroads Correctional Center in Shelby on September 28
- Revised the proposed meeting dates for the interim
- Requested a panel presentation in September on public intoxication issues facing communities
- Requested a panel presentation on eyewitness identification policies and best practices at a future meeting
- Requested updates on the work of the SB 224 Commission on Sentencing, the HB 627 Task Force on the State Public Defender Operations, and the HB 430 Judicial Redistricting Commission
- Tentatively adopted the draft work plan with the adjustments to meeting dates and committee issues

CALL TO ORDER AND ROLL CALL

00:00:11 Sen. Sales called the meeting to order at 9:00 a.m.
00:00:22 Secretary took the roll ([Attachment 3](#))
00:01:40 The committee members briefly introduced themselves.

ADMINISTRATIVE MATTERS

00:05:25 Ms. Weiss provided brief review of the Public Comment Guidelines ([EXHIBIT 1](#)) and gave a quick overview of committee duties and staff responsibilities for the 2015-2016 Interim. She made note of the Rules, Procedures and Guidelines document ([EXHIBIT 2](#)) and presented information about the committee budget.

00:11:44 Sen. Sands asked Ms. Weiss about the committee budget and the opportunity for a trip to Shelby, Montana.

00:14:05 Ms. Weiss reviewed 2013-2014 Law and Justice Interim Committee bills ([EXHIBIT 3](#)) and three criminal justice study entities created by the 2015 Legislature ([EXHIBIT 4](#)).

00:15:56 Rep. Hill arrived.

AGENCY OVERSIGHT

Judicial Branch

- 00:16:34 Beth McLaughlin, Court Administrator, provided the committee with a handout, Montana Judicial Branch Basics (**EXHIBIT 5**), and presented information about the Judicial Branch duties.
- 00:29:02 Sen. Moe asked Ms. McLaughlin about the communities that will be included in the HB612 Child Protection Pilot Project.
- 00:29:44 Sen. Malek asked Ms. McLaughlin about the district court map provided in the handout and the possibility of obtaining a document containing how many judges are in each county. She also asked about the current number of drug treatment courts in Montana.

Office of the State Public Defender

- 00:33:05 Richard "Fritz" Gillespie, Chairman, provided the committee with a brief description of the duties of the Office.

Committee Questions

- 00:39:10 Sen. Sands asked about the appointments to the HB627 Task Force on Public Defender operations.
- 00:40:00 Sen. Moe asked if there was a Board to oversee the Office.
- 00:41:28 Sen. Kary asked Mr. Gillespie about what areas are having increases in cases.
- 00:42:36 Sen. Malek asked Mr. Gillespie for a breakdown on the types of crimes that the Office of the State Public Defender encounters. She also inquired about the child abuse and neglect cases and the possibility of conflict resolution to assist with the problems.
- 00:47:016 William Hooks, Chief Public Defender, provided the committee with information regarding office workload, program accomplishments, and qualification guidelines.

Committee Questions

- 00:54:32 Sen. Kary asked Mr. Hooks about cost for private firms vs. public legal representation.
- 00:56:54 Rep. Hill asked Mr. Hooks about a prior case in Lewis and Clark County regarding the Office's constitutional obligation to provide counsel and its current status.
- 00:59:11 Sen. Malek asked Mr. Hooks about drug courts and the role of the public defender in the drug court system.
- 01:02:46 Sen. Swandal asked Mr. Hooks about malpractice coverage.
- 01:03:19 Wade Zolynski, Chief Appellate Defender, provided the committee with an overview of his division's successes, and current objectives.

Committee Questions

- 01:07:22 Sen. Swandal asked about the percentage of cases that are deemed to have no merit and are turned down.

- 01:08:03 Sen. Sands stated her appreciation for the information presented and noted the existence of the Task Force.
- 01:09:01 Kristina Neal, Conflict Coordinator, provided the committee with information about the duties her office is responsible for and caseload percentages related to youth in need of care.

Committee Questions

- 01:12:22 Sen. Swandal asked Ms. Neal about solutions for representation of clients that cannot be contacted.
- 01:13:52 Sen. Malek asked Ms. Neal about the outcomes of youth-related cases.

Board of Crime Control

- 01:15:28 Deb Matteucci, Executive Director, provided the committee with an overview of the Board of Crime Control's duties, responsibilities, and objectives for the future. She also provided the Board's biennium report for committee review (**EXHIBIT 6**).
- 01:25:08 **Break.** Reconvened at 10:46 a.m.

Department of Corrections

- 01:45:01 Mike Batista, Director, provided the committee with an overview of population management, efficiency practices, effects of Medicaid expansion, and the Prison Rape Elimination Act (PREA) requirements.

Committee Questions

- 02:06:16 Sen. Sands asked Ms. Matteucci about the financial impact that not being PREA compliant imposes on a state.
- 02:08:05 Sen. Malek asked Mr. Batista about the numbers he presented regarding offenders in Montana prisons and the current prisons operating in the state. She also asked about the county jail daily rate Mr. Batista mentioned during his presentation.
- 02:10:05 Sen. Swandal asked Mr. Batista to define significant reduction in youth populations. He also asked about early release from probation.
- 02:12:09 Sen. Sands asked Mr. Batista about sending offenders out of state for treatment.

Board of Pardons and Parole

- 02:13:11 Timothy Allred, Executive Director, provided the committee with information about the Board of Pardons and Parole and its duties.

Public Safety Officer Standards of Training (POST) Council

- 02:19:09 Perry Johnson, Executive Director, provided the committee with POST Council accomplishments, duties, and the updated administrative rules.

Committee Questions

- 02:24:53 Sen. Swandal asked Mr. Johnson about the importance of the eyewitness testimony study.
- 02:26:29 Sen. Sands asked Mr. Johnson about the sexual assault study and the training

that POST provided.
02:28:42 Sen. Malek asked Mr. Johnson about their role in defining what training the Law Enforcement Academy offers and how they monitor the training completion time of newly hired officers.

ELECTION OF OFFICERS

02:33:06 Sen. Sales opened nominations for Vice Presiding Officer.

Motion/Vote

02:33:15 Rep. Hill nominated Sen. Sands to serve as the Vice Presiding Officer. Motion passed unanimously by voice vote.

02:34:00 Sen. Sands opened nominations for Presiding Officer.

Motion/Vote

02:34:43 Sen. Swandal nominated Sen. Sales as the Presiding Officer of the committee. The motion passed unanimously by voice vote.

02:36:09 **Lunch.** Reconvened at 1:01 p.m.

AGENCY OVERSIGHT: Re-Entry Task Force Update and Report

04:00:32 Adrienne Slaughter, Government Relations Director, Department of Corrections, provided the committee with a report containing information regarding the Re-Entry Task Force efforts and recommendations (**EXHIBIT 7**).

04:11:34 Moe Wosepka, Catholic Diocese of Helena, shared information about a program he is helping to implement in order to provide sufficient support to assist with re-entry efforts within communities.

04:18:59 Tiffany Pimley, Gallatin County Re-entry Task Force, spoke to the committee about the Gallatin County Re-entry Task Force and the work that they are currently pursuing to assist with re-entry of local offenders.

Public Comment

The following individuals provided public comment on re-entry efforts:

04:24:01 Dr. Gary Mihelish, Helena

04:27:57 Candida Quinn, Montana Association of Quakers

04:31:03 Jim Smith, Montana Sheriff and Peace Officers Association

04:35:47 Andy Hudak, Kalispell

AGENCY OVERSIGHT AND SJ 24 STUDY

04:38:38 Tim Fox, Attorney General, stated his support for the SJ 24 study relating to sexual assault statutes.

Committee Questions

04:43:08 Sen. Sands and Mr. Fox discussed services and need to review interactions of state laws and federal laws.

04:50:02 Rep. Hill asked Mr. Fox about whether the Attorney General's Office is considering implementing laws relating to prohibiting the sale of firearms to individuals that have been adjudicated mentally ill.

- 04:53:37 Rep. Pease-Lopez asked Mr. Fox about jurisdictional issues relating to crimes committed on reservation lands.
- 04:58:20 Ole Olson, Assistant Attorney General, provided the committee with a brief summary on the United States Department of Justice's gender discrimination case currently occurring in Missoula County.
- 05:03:19 Jon Bennion, Deputy Attorney General, provided the committee with a document containing Sexual Assault Statutes in Montana (**EXHIBIT 8**). He provided the committee with possible parties that could assist with the SJ 24 study and spoke about current objectives and programs of the Attorney General's Office.

Committee Questions

- 05:08:03 Sen. Swandal asked Mr. Olsen about the status of the sex assault unit approved during 2015 session and asked advice about a current local case he has been approached with.
- 05:10:27 Sen. Sands asked Mr. Olsen for information pertaining to the jurisdiction issues between the state, the federal government, and the Department of Education. Mr. Fox stated his office's willingness to work with committee staff to provide the committee with all the information requested.
- 05:15:24 Sen. Moe asked Mr. Olsen about statutory definitions of consent.
- 05:16:11 Sen. Moe asked Mr. Bennion about sex offender tier levels and removal from the sexual offenders registry.
- 05:20:35 Sen. Malek asked Mr. Bennion about better definition and consistency for minimal and maximum sentencing for certain crimes committed. She also asked about development of a sexual assault prosecution unit and any efforts to possibly be made to educate the public about sexual assaults. Mr. Fox responded with additional information about public education.
- 05:26:54 Sen. Sands commented about and thanked Mr. Fox for his efforts to educate the public about sexual assaults.

OVERVIEW OF DRAFT WORK PLAN AND SJ 24 DRAFT PLAN STUDY

- 05:28:32 Ms. Weiss provided the committee with an overview of the draft work plan for the 2015-2016 interim (**EXHIBIT 9**).

Committee Questions and Discussion

- 05:42:21 Sen. Moe asked about the judicial redistricting commission and expressed her interest in receiving an update in committee on the redistricting process.
- 05:43:32 Sen. Malek expressed her interest in mental health issues and jail diversion efforts.
- 05:46:00 The committee discussed the option to travel to the correctional facilities.
- 05:52:09 Ms. Weiss provided the committee with an overview of the draft work plan for SJ 24: Study of Sexual Assault in Montana (**EXHIBIT 10**).

Public Comment

- 05:57:59 Ed Bartlett, Attorney/Lobbyist, requested that the committee consider examining public intoxication in relation to homelessness, incarceration, and re-entry.

- 06:01:20 Rep. Hill asked Mr. Bartlett if he was aware of a bill requested during session regarding public intoxication.
- 06:03:34 Sen. Malek asked Mr. Bartlett about the assistance that Medicaid expansion could have on alcohol dependency treatment.
- 06:04:49 Kelsen Young, Helena, commented about SJ 24 and provided suggestions for the committee in moving forward with the study.
- 06:08:27 Abigail St. Lawrence, Innocence Project, requested the committee consider adding the HJR 14 - Study of Eyewitness Identification Policies and Procedures. She provided the committee with the Preliminary Study Outline (**EXHIBIT 11**).
- 06:13:03 **Break.** Reconvened at 3:34 p.m.

ADMINISTRATIVE RULE EXPLANATION AND REVIEW

- 06:33:26 Julianne Burkhardt, staff attorney, provided the committee with an Overview of Rulemaking and Administrative Rule Activity (**EXHIBIT 12**).

PUBLIC COMMENT

None.

COMMITTEE WORK SESSION

- 06:37:00 The committee discussed proposed meeting dates for the 2015-2016 interim.
- 06:51:19 The committee discussed topics to potentially include in the work plan. They agreed by consensus to add public intoxication and eyewitness identification as panel discussions at future meetings, along with inclusion of the assigned study within the draft work plan document.

Motion/Vote

- 07:10:46 Sen. Swandal moved to adopt the SJ 24 proposed work plan. Motion passed unanimously by voice vote.
- 07:11:14 Sen. Sands requested that the staff attorney review the sexual assault statutes and identify any inconsistencies or uniformity issues for committee review.
- 07:12:45 The committee further discussed topics for inclusion in the work plan.
- 07:13:39 Ms. Weiss reviewed the committee discussion points that the committee indicated they would like to see included in the work plan, as well as the meeting dates.

Motion/Vote

- 07:16:39 Sen. Kary moved to adopt the tentative work plan proposed. Motion passed unanimously by voice vote.
- 07:17:22 The committee discussed details of the next meeting.

ADJOURN

- 07:18:41 Sen. Sales adjourned the meeting.

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