



## Law and Justice Interim Committee

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### 65th Montana Legislature

#### SENATE MEMBERS

DIANE SANDS--Chair  
JEN GROSS  
MARGARET (MARGIE) MACDONALD  
KEITH REGIER  
SCOTT SALES  
NELS SWANDAL

#### HOUSE MEMBERS

JIMMY PATELIS--Vice Chair  
JESSICA KARJALA  
GEORGE KIPP III  
RYAN LYNCH  
LOLA SHELDON-GALLOWAY  
BARRY USHER

#### COMMITTEE STAFF

RACHEL WEISS, Lead Staff  
JULIANNE BURKHARDT, Staff Attorney  
LAURA SHERLEY, Secretary

# MINUTES LOG

July 16, 2018  
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.

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

#### **COMMITTEE MEMBERS PRESENT**

SEN. DIANE SANDS, Chair  
REP. JIMMY PATELIS, Vice Chair

SEN. JEN GROSS  
SEN. MARGARET (MARGIE) MACDONALD  
SEN. KEITH REGIER  
SEN. NELSON SWANDAL

REP. JESSICA KARJALA  
REP. GEORGE KIPP III  
REP. RYAN LYNCH  
REP. LOLA SHELDON-GALLOWAY  
REP. BARRY USHER

#### **COMMITTEE MEMBERS EXCUSED**

SEN. SCOTT SALES

## **STAFF PRESENT**

RACHEL WEISS, Lead Staff  
JULIANNE BURKHARDT, Staff Attorney  
LAURA SHERLEY, Secretary

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

## **AGENDA** ([Attachment 2](#))

### **COMMITTEE ACTIONS**

The Law & Justice Interim Committee moved to:

- amend LC1j03 to incorporate developmentally disabled language, add a member with Native American background to the long-term restricted housing working group, and add suggested definitions and time limits on days in solitary confinement;
- forward LC1j01 to the 2019 Legislature as a committee bill;
- amend the language in LC1j02 regarding the Board of Pardons and Parole member selection process to include a nominating committee similar to that used for the Commissioner of Political Practices;
- authorize staff to draft the POST Council, Judicial Branch, Department of Corrections, Office of State Public Defender, Board of Pardons and Parole, and Department of Justice legislative proposals;
- direct staff to draft a clean-up bill on language related to Marsy's Law to review at the committee's September 2018 meeting.

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

00:00:02 Sen. Sands called the meeting to order at 7:59 a.m. The committee secretary took roll ([Attachment 3](#)).

### **GENERAL OVERSIGHT: ADMINISTRATIVE RULE REVIEW AND REVIEW OF JUSTICE REINVESTMENT TABLE**

**Julianne Burkhardt, Staff Attorney, Legislative Services Division (LSD)**

**Rachel Weiss, Research Analyst, LSD**

00:00:59 Ms. Burkhardt ([Exhibit 1](#))

00:01:42 Ms. Weiss ([Exhibit 2](#))

### **Questions/comments from the committee**

00:05:18 Sen. Sands commented on the work behind the Review of Justice Reinvestment Table (see Exhibit 2).

00:05:44 Sen. Regier asked Ms. Burkhardt where the money came from that is now in the Blood Draw Search Warrant Processing Account and if that funding will be used for blood draws.

00:06:46 Rep. Patelis commented on the Criminal Justice Oversight Council's work on SB 59 (see Exhibit 2).

00:08:45 Sen. MacDonald asked Ms. Weiss how the information regarding the disposition of Department of Correction holds was previously delivered to the committee and asked for the information to be distributed to the committee again (see Exhibit 11).

### **Public comment**

None

**AGENCY OVERSIGHT: POST COUNCIL UPDATE AND LEGISLATIVE PROPOSALS -- Perry Johnson, Executive Director**

00:10:18 Mr. Johnson ([Exhibit 3](#))

**Questions from the committee**

00:13:16 Sen. Sands asked Mr. Johnson to review the council's legislative proposals.  
00:18:53 Rep. Usher asked Mr. Johnson to review the council's budget.  
00:23:40 Rep. Lynch asked for clarification on the legislative proposal language regarding the revocation or suspension of a public safety officer's basic certificate (see Exhibit 3).  
00:25:46 Rep. Lynch asked if the council receives complaints on officers that are not certified.  
00:27:13 Rep. Lynch asked how the council handles complaints on employees who are not public safety officers and if the employee is notified of the complaint.  
00:29:11 Rep. Sheldon-Galloway asked how a sheriff can operate without being certified.  
00:30:40 Rep. Sheldon-Galloway asked for clarification on reserve officers and the cost to the counties.

**Public comment**

00:32:32 Nanette Gilbertson, Montana Sheriffs and Peace Officers Association  
00:33:58 Jon Metropoulos, Missoula Correctional Services  
00:38:10 SK Rossi, American Civil Liberties Union  
00:39:29 Sen. Sands commented on the council's legislative proposals and the action the committee can take on the proposals.

**JUDICIAL BRANCH UPDATE AND LEGISLATIVE PROPOSALS -- Beth McLaughlin, Court Administrator**

00:40:26 Ms. McLaughlin ([Exhibit 4](#)), ([Exhibit 5](#)), and ([Exhibit 6](#)).  
00:48:51 Rep. Kipp joined the meeting at 8:47 a.m.

**Questions from the committee**

00:53:13 Sen. MacDonald asked if there will be six months of data on pretrial services that will be available for the 2019 legislative session.  
00:53:36 Rep. Lynch asked on behalf of Rep. Karjala what the measurements for success are for the family court diversion program and the family treatment program.

**Public comment**

None

**SJ 25 STUDY OF SOLITARY CONFINEMENT: REVIEW DRAFT FINAL REPORT AND DRAFT BILL (LCIj03) -- Rachel Weiss, LSD**

00:54:56 Ms. Weiss ([Exhibit 7](#)) and ([Exhibit 8](#))

**Questions from the committee**

01:05:26 Sen. MacDonald asked if there were any other states with absolute limits on days for solitary confinement.  
01:06:25 Sen. Sands asked for clarification on the LCIj03 draft language regarding pregnant inmates (see Exhibit 8).

- 01:07:21 Rep. Patelis asked for clarification on the LCIj03 draft language regarding vulnerable people (see Exhibit 8).
- 01:11:28 Rep. Kipp asked to add a requirement to have a member with Native American background serve on the working group outlined in Section 5 of LCIj03.

**Public comment**

- 01:13:36 Patty Jacques, self ([Exhibit 9](#))
- 01:19:58 Abigail St. Lawrence, Montana Association of Christians
- 01:23:38 Steve Cape, Montana Coalition for Safety and Justice
- 01:29:47 Gary Mihelish, National Alliance on Mental Illness
- 01:32:34 Beth Brennehan, Disability Rights of Montana

**BREAK** (Reconvened at 9:57 a.m.)

**DEPARTMENT OF CORRECTIONS UPDATE, LEGISLATIVE PROPOSALS, AND LOCKED HOUSING PROGRAM OVERVIEW -- Director Reginald Michael**

- 01:59:02 Director Michael ([Exhibit 10](#)), ([Exhibit 11](#)), and ([Exhibit 12](#)).

Committee questions for Director Michael

- 02:38:05 Sen. Sands asked the committee to review the department's report on restrictive housing during lunch and asked the department to have a representative available after lunch for committee questions (see Exhibit 10).
- 02:38:51 Rep. Usher asked what the cost projections are for the medication-assisted treatment (MAT) program.
- 02:41:30 Sen. Regier asked what is the intent of the MAT program.
- 02:42:22 Sen. Regier asked if it is too early to project the success rate of the MAT program.
- 02:43:25 Rep. Sheldon-Galloway asked what percentage of inmates have mental illness and if a mental health facility would solve the issues seen in correctional facilities.
- 02:46:14 Rep. Sheldon-Galloway asked if the mental health problem has been switched from one department to another rather than fixing the issue.
- 02:47:14 Sen. Sands asked the department to include Native American mental health research as well as research evidence-based programs that are appropriate for Native American inmates.
- 02:48:48 Cynthia Wolken, deputy director, DOC ([Exhibit 13](#))
- 02:51:32 Ms. Wolken spoke on an additional bill draft request by the department regarding Audio/Video recording requirements of the Board of Pardons and Parole.

Committee questions for Ms. Wolken

- 02:53:40 Rep. Patelis asked how many juvenile parole officers are in the state.
- 02:54:54 Rep. Patelis asked if Nexus Correctional Treatment Center and Elkhorn Treatment Center are used in addition to Riverside Treatment Center for prerelease housing.
- 02:57:36 Megan Coy, Programs and Facilities Bureau Chief, Probation and Parole Division, DOC ([Exhibit 14](#)) and ([Exhibit 15](#))
- 03:07:02 Kim Lahiff, Western Regions Bureau Chief, Probation and Parole Division, DOC (see Exhibit 14)
- 03:14:08 Ms. Coy
- 03:14:42 Ms. Lahiff

Committee questions for Ms. Coy and Ms. Lahiff

- 03:15:52 Rep. Lynch commented on the importance of data tracking.  
03:16:57 Sen. Gross asked how the MIIG process is described to inmates being released.  
03:18:09 Sen. Sands asked what the difference is between the women's needs assessments compared to the general/men's needs assessments.

**Public comment**

- 03:19:24 Matt Kuntz, National Alliance on Mental Illness  
03:22:53 David Golie, self ([Exhibit 16](#))  
03:30:14 Rudy Stock, self ([Exhibit 17](#))  
03:33:44 SK Rossi, American Civil Liberties Union  
03:35:13 Steve Cape, Montana Coalition for Safety and Justice  
03:43:11 Patti Jacques, self

**LUNCH** (Reconvened at 12:45 p.m.)

**DUI TASK FORCE PRESENTATION**

**Ron Yates, Chairman, DUI Law Committee of the Cascade County DUI Task Force  
Becky Sturdevant, Mothers Against Drunk Driving (MADD)**

- 04:47:23 Mr. Yates ([Exhibit 18](#)) and ([Exhibit 19](#))  
05:14:24 Ms. Sturdevant ([Exhibit 20](#))

**Questions from the committee**

- 05:21:22 Sen. Regier asked Mr. Yates what the positions of the elected officials were that participated in the survey.  
05:22:01 Rep. Lynch asked the panel to discuss medication-assisted treatment.  
05:23:40 Rep. Sheldon-Galloway asked Mr. Yates what legislators can do to simplify the booking process.

**Public comment**

- 05:27:26 Harold Blattie, Montana Association of Counties  
05:31:21 Virginia Braun, self

**AGENCY OVERSIGHT: OFFICE OF STATE PUBLIC DEFENDER UPDATE, LEGISLATIVE PROPOSALS, AND LJIC STAFF REVIEW OF LJIC DRAFT BILL (LCIj01)**

- 05:33:00 Sen. Sands reviewed the office's financial situation ([Exhibit 21](#))

**Peter Ohman, Public Defender Division Administrator, and Carleen Green, Central Services Administrator**

- 05:34:20 Mr. Ohman

**Questions from the committee**

- 05:44:07 Sen. Sands commented on the division's work and asked for the panel to comment on the 2018 fiscal year (FY) office budget.  
05:46:23 Rep. Usher asked the panel which party the office represents in dependency and neglect cases.

**Rachel Weiss, LSD**

05:48:39 Ms. Weiss ([Exhibit 22](#))

**Public comment**

None

**AGENCY OVERSIGHT: BOARD OF PARDONS AND PAROLE UPDATE, LEGISLATIVE PROPOSALS, AND LJIC STAFF REVIEW OF LJIC DRAFT BILL (LCIj02)**

**Annette Carter, Board Presiding Officer**

05:51:46 Ms. Carter ([Exhibit 23](#)) and ([Exhibit 24](#)).

**Questions from the committee**

- 06:02:49 Rep. Patelis asked for clarification on the use of transition centers.
- 06:04:43 Rep. Kipp asked the board to comment on parole officers on state reservations.
- 06:06:07 Rep. Kipp asked for an overview of the parole plan.
- 06:08:21 Rep. Sheldon-Galloway asked for an overview of the steps an offender takes entering the parole system.
- 06:09:33 Rep. Sheldon-Galloway asked how often a victim is notified and given a review of where the offender is in the release process.
- 06:11:23 Rep. Sheldon-Galloway asked for clarification on the parole process.
- 06:12:33 Rep. Sheldon-Galloway asked why there are more professional parole board video hearings rather than in-person interviews.
- 06:15:25 Rep. Sheldon-Galloway asked if the type of parole hearings changed since going to the professional parole board.
- 06:17:01 Rep. Patelis asked if a Native American offender is paroled to their reservation.
- 06:19:46 Kristina Lucero, Board Member, continued the presentation.
- 06:22:28 Sen. Sands commented on evidence-based programing and asked in they are looking for models for Native American offenders.
- 06:24:34 Rep. Kipp commented on Ms. Lucero's work with the state reservations and the importance of having housing and services infrastructures on reservations.

**Rachel Weiss, LSD**

06:26:40 Ms. Weiss ([Exhibit 25](#)) and ([Exhibit 26](#))

**Questions from the committee**

- 06:32:51 Rep. Sheldon-Galloway asked for clarification on the parole board member re-application process.
- 06:34:04 Rep. Usher asked if there were term limits on the parole board.
- 06:34:20 Rep. Kipp asked for clarification on appointee requirements. The question was redirected to Ms. Burkhardt.
- 06:37:44 Rep. Kipp asked why the appointment process is proposed to be changed.
- 06:38:22 Rep. Patelis responded to Rep. Kipp's question and asked Ms. Burkhardt if members of the legislature make recommendations for Commissioner of Political Practice appointees.
- 06:40:18 Rep. Patelis asked Ms. Burkhardt if the President of the Senate or the Speaker of the Houses can make appointment recommendations to the Governor.
- 06:41:52 Rep. Patelis asked how many days the Governor has to choose an appointee.

06:44:22 Sen. MacDonald asked if removal of a parole board member has to be for cause.  
06:45:31 Rep. Sheldon-Galloway commented on the Governor's ability to appoint.  
06:46:20 Sen. Sands asked why the legislature needs to directly make appointments.  
06:47:02 Sen. MacDonald commented on the Governor's appointments to quasi-judicial boards.

**Public comment**

06:48:29 Rudy Stock, self ([Exhibit 27](#))  
06:52:15 Teresa Dennis, self ([Exhibit 28](#))

**BREAK** (Reconvened at 3:10 p.m.)

**PUBLIC COMMENT ON ANY ITEM WITHIN LJIC'S JURISDICTION BUT NOT ON THIS AGENDA**

07:12:18 Bonnie Dennis, self ([Exhibit 29](#))  
07:13:42 Cheryl Lowell, self ([Exhibit 30](#))

**AGENCY UPDATE: DEPARTMENT OF JUSTICE UPDATE, LEGISLATIVE PROPOSALS, AND AID MONTANA INITIATIVE -- Jon Bennion, Deputy Attorney General, DOJ**

07:20:23 Mr. Bennion ([Exhibit 31](#))

**Questions from the committee**

07:35:19 Rep. Patelis asked if other states are drafting legislation related to sports betting.  
07:37:40 Sen. Regier asked where had the Blood Draw Search Warrant Processing Account funding been going before the new legislation.  
07:38:28 Rep. Usher asked if the department will be reviewing the statute of limitations with the new DNA technology.  
07:41:01 Sen. Swandal asked if law has to specifically state if a case is retroactive.  
07:42:13 Sen. Sands commented on data privacy laws and asked for the department to look at data privacy laws and criminal activity of sharing information.

**Public comment**

07:43:58 Gary Mihelish, National Alliance on Mental Illness  
07:45:42 Jean Branscom, Montana Medical Association

**Questions from the committee**

07:52:22 Sen. Swandal asked Ms. Branscom how drug weaning is being done.

**COMMITTEE ISSUE: UPDATE ON SJ 3 STUDY OF TRIBAL RESOURCES FOR TRIBAL OFFENDERS -- Sen. Jen Gross, State-Tribal Relations Committee (STRC) and LJIC member**

07:53:29 Sen. Gross

**Questions from the committee**

08:00:32 Rep. Kipp asked if the STRC decided not to pursue the Native American reentry program due to cost and commented on judicial issues in tribal country.  
08:03:53 Sen. Patelis commented on reentry issues on reservations.

**Public comment**

None

## **PUBLIC COMMENT ON ANY ITEM WITHIN LJIC'S JURISDICTION BUT NOT ON THIS**

### **AGENDA**

08:05:39 David Avery, Missoula  
08:09:44 Lauren Pope, Open Aid Alliance  
08:12:27 David Avery, Missoula  
08:16:40 Jana Staton, self

**BREAK** (reconvened at 4:30 p.m.)

### **WORK SESSION**

08:30:56 Sen. Sands asked the committee for discussion on LC1j03 (see Exhibit 8).  
08:31:35 Sen. MacDonald ([Exhibit 32](#))  
08:34:28 Sen. Sands asked DOC to comment on LC1j03. The question was redirected to Adrienne Cotton, Government Relations Director, DOC, and Colleen Ambrose, Chief Legal Advisor, DOC.  
08:37:23 Sen. Sands asked the committee to discuss LC1j03, section 2.  
08:39:57 Rep. Sheldon-Galloway asked for clarification of the definitions for solitary confinement in LC1j03. The question was redirected to Ms. Weiss.  
08:41:25 Committee discussion on other states' use of solitary confinement.  
08:46:47 Rep. Sheldon-Galloway asked the department for clarification on the definitions of solitary confinement.  
08:48:28 Rep. Sheldon-Galloway asked if restricted housing and confinement are two different sentences.  
08:49:35 Sen. MacDonald  
08:51:20 Rep. Patelis asked Director Michael if LC1j03 will assist the department or hinder their work in solitary confinement.  
08:57:22 Sen. Sands asked Ms. Ambrose if LC1j03 defines numbers of hours and days in solitary confinement.  
09:01:05 Sen. Sands asked Ms. Ambrose if solitary confinement of vulnerable people is discussed in the department's memo (see Exhibit 11).  
09:03:48 Rep. Usher  
09:04:45 Sen. Sands commented on LC1j03, section 4, and asked Ms. Ambrose to comment on LC1j03, section 4. Ms. Cotton also responded to the question.  
09:06:27 Sen. Sands asked the department if they could make changes in administrative rules to adopt policy.  
09:07:03 Committee discussion on LC1j03 ([Exhibit 33](#)).  
09:18:06 Rep. Patelis asked the department to comment on the solitary confinement policy (see Exhibit 33).  
09:20:33 Rep. Patelis asked if the current revisions to the solitary confinement policy were a result of the Langford case.  
09:21:54 Rep. Patelis asked if the revised restricted housing policy was officially in use (see Exhibit 25).  
09:22:18 Sen. Sands asked the committee for discussion and action on LC1j03.

### **MOTION**

09:22:47 Sen. MacDonald moved to forward LC1j03 to incorporate developmentally disabled language, add a member with Native American background to the working group, and add suggested definitions and time limits on days in solitary confinement.

#### DISCUSSION ON THE MOTION

09:24:19 Sen. Sands appointed Sen. MacDonald and Rep. Patelis to work with the committee staff on the amendments to LC1j03.  
09:24:35 Ms. Weiss asked for clarification on Sen. Sands' appointment.  
09:24:59 Sen. Regier asked Ms. Weiss to restate the motion.  
09:26:09 Sen. Regier asked for clarification of the motion.  
09:26:35 Sen. Regier  
09:27:25 Rep. Lynch  
09:28:27 Sen. Sands  
09:28:37 Sen. Gross  
09:29:18 Rep. Usher asked for clarification on recommendations regarding juvenile in isolation.  
09:29:48 Rep. Usher  
09:31:05 Rep. Kipp

#### VOTE

09:33:07 The motion passed on an 8-4 roll call vote, with Rep. Sheldon-Galloway, Rep. Usher, and Sen. Regier voting 'no'. Sen. Sales voted 'no' by proxy.  
[\(Attachment 4\)](#)  
09:33:55 Sen. Sands asked the committee for discussion on LC1j01 and asked Ms. Weiss for clarification of the draft bill process.

#### MOTION

09:34:37 Sen. Swandal moved to forward LC1j01 through as a committee bill.

#### DISCUSSION ON THE MOTION

09:35:00 Rep. Usher asked for clarification on the motion.

#### VOTE

09:35:16 The motion passed unanimously on a voice vote.  
09:35:34 Sen. Sands asked the committee for discussion on LC1j02.

#### MOTION

09:35:52 Rep. Patelis moved to amend the language in LC1j02 regarding the Board of Pardons and Parole member selection process.

#### DISCUSSION ON THE MOTION

09:36:24 Sen. Sands asked for clarification of the amendments.  
09:38:14 Sen. MacDonald  
09:39:31 Sen. Gross  
09:40:29 Sen. Gross asked for clarification of the appointment requirements.  
09:41:03 Rep. Patelis  
09:41:18 Rep. Sheldon-Galloway  
09:42:41 Rep. Lynch asked Ms. Burkhardt if the committee's recommendations are constitutional.  
09:44:49 Rep. Usher  
09:45:01 Rep. Kipp asked for clarification on the motion.

## VOTE

09:45:55 The motion passed on a 9-3 roll call vote, with Sen. Gross, Sen. MacDonald, and Sen. Sands voting 'no' ([Attachment 5](#)).

09:46:53 Sen. Sands asked the committee to discuss the agencies' legislative proposals.

## MOTION

09:47:20 Rep. Lynch moved to draft the agencies' proposals.

## DISCUSSION ON THE MOTION

09:47:21 Sen. Sands reviewed the drafts and asked Ms. Weiss for clarification of the agency legislative proposal process.

## VOTE

09:48:20 The motion passed unanimously on a voice vote.

09:48:47 Sen. Sands commented on Marsy's Law.

09:49:06 Ms. Weiss reviewed references in statute to Marsy's Law ([Exhibit 34](#)).

## MOTION

09:50:05 Sen. Swandal moved to draft a clean-up bill on language related to Marsy's Law to review at the committee's September 2018 meeting.

## VOTE

09:50:08 The motion passed unanimously on a voice vote.

09:50:21 Ms. Weiss reviewed the HJ 6 study summary ([Exhibit 35](#)).

09:51:31 Sen. Sands asked for clarification of the agenda items for the committee's September 2018 meeting.

09:53:03 Rep. Patelis asked if the September 2018 meeting is scheduled for one day.

09:53:22 Sen. Regier asked for an update at the September 2018 meeting on how the federal government regulates and dictates the operation of sexual offender registries ([Exhibit 36](#)).

09:55:25 Rep. Lynch asked for an update on the Parole Board guidelines and asked Ms. Weiss if the reinvestment table will be updated for the September 2018 meeting (see Exhibit 2).

09:56:18 Rep. Lynch asked for clarification on the bill draft request process.

09:57:26 Rep. Karjala commented on committee member comments and discussion.

## ADJOURNMENT

09:58:28 Sen. Sands adjourned the meeting at 5:57 p.m.

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