



Law and Justice Interim Committee

65th Montana Legislature

SENATE MEMBERS

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

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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

May 21, 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.

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

SEN. MARGARET (MARGIE) MACDONALD
SEN. KEITH REGIER
SEN. SCOTT SALES
SEN. NELSON SWANDAL

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

COMMITTEE MEMBERS EXCUSED

REP. GEORGE KIPP III
SEN. JEN GROSS (joined by phone at 2:32 p.m.)

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 requested staff to provide:

- a bill draft on the subject of solitary confinement in state prisons;
- a bill draft on the interim oversight of the Office of State Public Defender;
- and a bill draft on the appointment of the Board of Pardons and Parole for discussion purposes at the next meeting.

CALL TO ORDER AND ROLL CALL

00:00:02 Sen. Sands called the meeting to order at 8:02 a.m. The committee secretary took roll ([Attachment 3](#)). Sen. Gross was excused and left her proxy with Sen. MacDonald ([Attachment 4](#)).

SJ 25 STUDY: STATE EFFORTS TO REDUCE USE OF RESTRICTED HOUSING IN PRISONS (All appearing via videoconference)

Josh Tewalt, Director of Operations, Association of State Correctional Administrators (ASCA)

Colby Braun, Warden, North Dakota State Penitentiary

Lisa Ann Peterson, Clinic Director North Dakota State Penitentiary

00:01:32 Mr. Tewalt
00:34:10 Sen. Sands commented on Mr. Tewalt's presentation.
00:34:51 Ms. Peterson and Mr. Braun ([Exhibit 1](#))
01:09:01 Sen. Sands commented on Ms. Peterson's and Mr. Braun's presentation.

Questions from the committee

01:09:23 Sen. Sands asked the panel what role the legislature has in the reforms.
01:14:04 Sen. MacDonald asked the panel if the new programming incorporating behavioral changes caused a reduction in segregation unit population.
01:16:00 Rep. Karjala asked Ms. Peterson and Mr. Tewalt if trauma informed care is part of their respective health care programs.
01:17:55 Rep. Karjala asked Ms. Peterson if treatment includes the adverse childhood experiences inventory.
01:19:46 Rep. Lynch asked Ms. Peterson and Mr. Braun if data analysis had been done prior to the program's implementation.
01:21:18 Rep. Lynch asked Mr. Braun to speak on North Dakota's inmate prioritization list.
01:23:25 Rep. Sheldon-Galloway asked the panel to speak on the mental health centers where the programs are being implemented.

SJ 25 STUDY: SHERIFFS' SUGGESTIONS TO REDUCE USE OF ADMINISTRATIVE SEGREGATION IN DETENTION CENTERS

Undersheriff Sam Bofto, Yellowstone County

Sheriff Brian Gootkin, Gallatin County

Dr. Gary Mihelish

01:31:39 Sheriff Gootkin
01:33:49 Undersheriff Bofto
01:37:43 Dr. Mihelish

Questions from the committee

01:49:27 Sen. MacDonald asked Undersheriff Bofto when the pretrial assessment program will be implemented.
01:50:13 Sen. MacDonald asked if low risk inmates are currently being released back into the community.
01:50:57 Rep. Usher asked which five counties received the grant.
01:51:32 Rep. Sheldon-Galloway asked Dr. Mihelish if his proposal regarding involuntary commitment would assist landlords and law enforcement and if the law was put in place how would it impact jails.
01:54:30 Sen. MacDonald asked Dr. Mihelish to speak further on involuntary commitment.

PUBLIC COMMENT ON SJ 25 STUDY TOPICS

01:58:06 Patti Jacques, self
02:02:34 Mark Murphy, Montana Association of Chiefs of Police
02:05:37 David Andersen, Montana Association of Christians
02:08:34 Beth Breneman, Disability Rights of Montana

BREAK (Reconvened at 10:32 a.m.)

AGENCY OVERSIGHT: DEPARTMENT OF CORRECTIONS UPDATE -- Director Reginald Michael, Director, DOC

02:29:57 Director Michael gave the committee an update on the department's work ([Exhibit 2](#)).

Questions from the committee

02:49:27 Rep. Sheldon-Galloway asked Director Michael to speak on jail counts for the state versus county facilities.
02:52:21 Rep. Patelis commented on the counties' work to lower jail population.
02:53:50 Rep. Patelis asked how PREA investigations are followed up by the department.
02:57:03 Rep. Usher asked how the department is handling their oversight of parole and probation.
02:59:40 Sen. Sands asked that the department come with a report on the DOC programing oversight committee at the next committee meeting.

Public comment

03:00:55 Richard Shreves, self
03:06:11 Sheriff Gootkin, Gallatin County

AGENCY OVERSIGHT: STATEWIDE REENTRY TASK FORCE REPORT -- Marcia Levitan, Reentry Program Manager, DOC

03:08:04 Ms. Levitan reported on the work of the statewide reentry task force from DOC and gave recommendations to the committee ([Exhibit 3](#)).

Questions from the committee

03:34:38 Sen. Sands commented on Ms. Levitan's presentation and her membership on the statewide reentry task force.

03:35:15 Rep. Karjala thanked Ms. Levitan for her presentation and recommendations.

03:35:29 Rep. Sheldon-Galloway asked for clarification on the role of the task force.

Public comment

03:36:53 Randy Knowles, Great Falls

03:41:09 Annette Smith, self

03:46:04 Jason Kirchner, self

03:47:12 Laurie Pope, Partners for Reintegration and Open Aid Alliance

03:52:14 Miclan Quorpencetta, Missoula Interfaith Collaborative ([Exhibit 4](#))

03:55:22 Asa Lehrke, PEER support specialist

03:57:02 Patti Jacques, self

ADMINISTRATIVE RULE REVIEW -- Julianne Burkhardt, Staff Attorney, Legislative Services Division (LSD)

04:00:50 Ms. Burkhardt gave an update on administrative rule changes ([Exhibit 5](#)).

Questions from the committee

None

Public comment

None

LUNCH (Reconvened at 1:01 p.m.)

COMMITTEE TOPIC: VICTIMS' RIGHTS -- CURRENT STATUTORY RIGHTS AND FUNDING FOR SERVICES, GAPS IN STATUTES, PRACTICES, OR FUNDING, IDEAS FOR CHANGES

Robin Turner, Public Policy and Legal Director, Montana Coalition Against Sexual and Domestic Violence

Meg Garvin, MA, JD, Executive Director and Clinical Professor of Law, National Crime Victim Law Institute (via telephone)

Marty Lambert, Gallatin County Attorney

04:59:34 Ms. Turner ([Exhibit 6](#))

05:14:45 Ms. Garvin

05:32:22 Mr. Lambert ([Exhibit 7](#)) and ([Exhibit 8](#))

Questions from the committee

05:42:54 Rep. Sheldon-Galloway asked Mr. Lambert for clarification of the section 46-18-236, MCA (2017) effective date.

05:44:07 Sen. Swandal asked the panel what the procedure is for their pre-sentence investigation.

05:46:44 Sen. Sands asked the panel what language in statute allows local prosecutors the ability to deny access to public records.

Public comment

05:50:15 Patricia Klanke, Montana Coalition Against Sexual and Domestic Violence

AGENCY OVERSIGHT: DEPARTMENT OF JUSTICE UPDATE -- Liz Bangerter, Government Affairs Director, DOJ

06:01:12 Ms. Bangerter gave the committee a brief update on the Sexual Assault Kit Initiative (SAKI), the AID Montana initiative, and Real ID program implementation.

Questions from the committee

None

Public comment

06:04:23

06:07:02 Marty Lambert, Gallatin County Attorney
Robin Turner, Montana Coalition Against Sexual and Domestic Violence

Questions from the committee

06:08:38 Sen. Sands asked Ms. Turner if she was involved in the nurses' training in Great Falls.

06:10:00 Sen. Sands asked Ms. Turner if the delay to obtain sexual assault kit testing in rural areas of the state impacts the cases.

BREAK (Reconvened at 2:31 p.m.)

06:29:04 Sen. Gross joined the meeting at 2:32 p.m.

AGENCY OVERSIGHT: BOARD OF PARDONS AND PAROLE UPDATE -- Annette Carter, Board Member

06:29:19 Ms. Carter updated the committee on the work of the Board of Pardons and Parole ([Exhibit 9](#)).

Questions from the committee

06:36:00 Sen. Sands asked Ms. Carter to speak on how the board makes decisions on Native American offenders who do not have access to reentry programs in their reservation.

06:38:18 Sen. Sands asked if Native American offenders are being paroled in urban areas versus reservations.

06:39:27 Sen. Sands commented on the Native American offender population percentage in state correctional facilities.

06:40:21 Sen. MacDonald asked if the board is familiar with the pilot project in South Dakota that is carrying out supervision on reservations.

06:42:00 Sen. Sales asked for more information on Troy Johnson who was taken into custody on May 16, 2018.

06:42:55 Rep. Usher asked for an update on the board's replacement of the chair ([Exhibit 10](#)).

06:43:15 Rep. Patelis asked how many individuals are paroled to a prerelease center and if the board has considered transition centers for Native American offenders.

06:45:17 Rep. Patelis commented on the use of transition centers for Native American offenders.

06:47:28 Sen. Sands asked Sen. Gross to comment on the discussion regarding Native American offenders due to her membership on the State-Tribal Relations Interim Committee.

06:49:31 Sen. Sands asked Ms. Carter to speak on how the board reviews female offenders.

06:51:43 Sen. Sands asked if there are parole programs specifically designed for female offenders.

06:52:15 Sen. Sands asked if the board has sensitivity training for female offenders and cultural sensitivity training for Native American offenders.

06:52:47 Sen. Regier asked how the board handles victim rights.

06:54:51 Sen. Regier asked if the board works through a county attorney if victims are not contacted.

06:55:42 Rep. Sheldon-Galloway asked for clarification of the parole data (see Exhibit 9).

06:59:23 Rep. Sheldon-Galloway commented on parole plans holding more importance than the crime and the victims.

07:01:23 Rep. Sheldon-Galloway asked what is the process if an offender is released back into a difference community than the one where the crime was committed.

07:02:57 Rep. Sheldon-Galloway commented on county safety being a responsibility of the board and asked how the legislature can assist the board.

07:06:07 Rep. Usher asked if there is data on what communities the board is parole releasing to.

07:07:33 Sen. MacDonald asked how success and community safety is measured.

07:09:34 Rep. Patelis commented on the potential usefulness of a fulltime parole board and asked if parole guidelines are still being drafted.

07:12:21 Rep. Patelis asked if the board is utilizing risk and needs assessments.

07:13:03 Rep. Patelis asked for clarification of the parole releasing process and if there is a validated risk and needs assessment tool being used.

07:15:45 Sen. Sands commented on the committee questions and discussion.

07:16:15 Rep. Usher asked how much facility overcrowding is weighing on the decision to parole versus the risk to the community.

Public comment

07:18:19 Glenna Scott, self

AGENCY OVERSIGHT: OFFICE OF PUBLIC DEFENDER UPDATE

Introduction and update -- Rhonda Schaffer, Director

07:22:53 Director Schaffer gave the committee an update on the office's work.

Review of items for possible clean up committee bill -- Rachel Weiss, LSD

07:29:15 Ms. Weiss reviewed items for a possible clean up committee bill ([Exhibit 11](#)).

07:31:02 Sen. Regier left the meeting at 3:34 p.m.

Questions from the committee

07:35:47 Sen. Sands asked Ms. Weiss if the committee has the authority to repeal reports.

07:36:11 Rep. Lynch asked Ms. Weiss if the required report was ever performed.

07:36:43 Sen. MacDonald commented on entitlement share training for legislators.

07:38:53 Sen. Sales commented on the history of SB 146 (2005) and the required report.

07:40:19 Sen. Sands asked Sen. Sales to speak to the required report.

- 07:40:49 Rep. Karjala asked Director Schaffer to respond to the committee's comments. Peter Ohman, Appellate Defender Division Administrator, OPD, also responded to the comments.
- 07:44:58 Sen. MacDonald commented on the need of the required report.

Public comment

None

COMMITTEE ISSUE: UPDATE ON SJ 3 STUDY OF TRIBAL RESOURCES FOR TRIBAL MEMBERS IN STATE CRIMINAL JUSTICE SYSTEM

Sen. Jen Gross, State-Tribal Relations Committee and LJIC member

- 07:46:08 Sen. Gross gave a review of the work being done by the State-Tribal Relations Interim Committee as it relates to LJIC. Sen. Gross also spoke on the topic at time marker 06:47:28.

Rachel Weiss, LSD

- 07:46:32 Ms. Weiss presented on facts and figures for American Indian offenders in the state's correctional system ([Exhibit 12](#)).

Questions from the committee

- 07:48:40 Sen. Sands asked the committee to review the report for the next meeting.

Public comment

None

SJ 25 STUDY: REVIEW OF POSSIBLE FINAL REPORT TOPICS -- Rachel Weiss, LSD

- 07:49:10 Ms. Weiss reviewed possible final committee report topics ([Exhibit 13](#)).

Questions from the committee

None

Public comment

None

PUBLIC COMMENT ON ANY TOPIC WITHIN THE LJIC'S JURISDICTION BUT NOT ON THIS AGENDA

None

COMMITTEE WORK SESSION

Staff review of next meeting items

- 07:52:35 Sen. Sands asked the committee for discussion on the topics for its next meeting
- 07:52:55 Ms. Weiss reviewed the committee's work plan ([Exhibit 14](#)).
- 07:55:37 Sen. MacDonald commented on the MIIG report discussed by Director Michael that was given to the district judges.
- 07:56:50 Rep. Patelis asked that the parole board's next report contain statistics data on how many Native American offenders are being paroled to the transition centers.
- 07:57:25 Sen. Sands asked Ms. Weiss for clarification of topics to be discussed at the committee's July meeting.

07:58:16 Sen. MacDonald asked the committee staff to draft legislation that would define solitary confinement, administrative segregation, and protective custody; set in place limits around solitary confinement; provide direction to the Department of Corrections to adopt standards to make similar policy changes in surrounding states.

07:59:26 Sen. Sales asked if the changes made in North Dakota or Idaho were forced upon it by legislature or if the departments adopted the changes.

08:00:35 Sen. Sales commented on the importance of having the data and knowledge on the issues before taking committee action.

08:01:58 Rep. Usher commented on the changes in policy in North Dakota and Idaho that were made by their departments.

08:04:37 Sen. Swandal asked for clarification of the proposed draft legislation.

08:05:03 Sen. Sands recommended asking DOC to draft legislation opposed to having committee draft legislation.

08:06:29 Rep. Patelis commented on the data from Idaho and North Dakota regarding policy changes and the difficulty making policy changes in correctional facilities.

08:07:59 Rep. Lynch asked for clarification of the facilities that would be affected in the proposed draft legislation.

08:09:30 Rep. Usher recommended asking DOC if they are working on legislation.

08:10:03 Sen. Sands asked Adrienne Cotton, Government Relations Director, DOC, if the department is working on draft legislation.

Motion

08:11:52 Sen. MacDonald moved to have committee staff draft legislation that would define solitary confinement, administrative segregation, and protective custody; set in place limits around solitary confinement; and provide direction to the Department of Corrections to adopt standards to make similar policy changes in surrounding states.

Vote

08:12:33 The motion passed on a 6-4 roll call vote, with Sen. Sales and Reps. Patelis, Sheldon-Galloway, and Usher voting 'no' ([Attachment 5](#)).

08:13:54 Rep. Usher objected to Sen. Gross voting via phone.

Motion

08:14:46 Rep. Lynch moved to work with the State Administration & Veteran Affairs Interim Committee to request a bill draft to move Office of the Public Defender (OPD) back under the jurisdiction of the LJIC.

Vote

08:15:09 The motion passed unanimously on a voice vote.

08:15:23 Rep. Usher objected to Sen. Gross voting via phone.

08:15:34 Rep. Sheldon-Galloway asked for clarification of proposed draft legislation.

08:17:15 Sen. Sands asked for clarification of Rep. Sheldon-Galloway's proposal.

08:18:08 Rep. Patelis asked if research has been done on how Board of Pardons & Parole appointments are handled and asked to return bill language that requires Senate confirmation.

Motion

08:19:44 Rep. Patelis moved to require Senate confirmation of Board of Pardons & Parole members and require two members be appointed by the President of the Senate and Speaker of the House.

Discussion on the motion

08:20:12 Ms. Weiss clarified that appointees already require Senate confirmation.
08:21:17 Rep. Patelis
08:22:07 Sen. MacDonald
08:23:02 Rep. Patelis

Vote

08:23:41 The motion passed on a 7-3 roll call vote, with Sens. Gross, MacDonald, and Sands voting 'no' ([Attachment 6](#)).
08:24:47 Rep. Usher objected to Sen. Gross voting via phone.
08:25:17 Sen. Sands asked Ms. Weiss if committee staff needed further direction.
08:25:42 Sen. Sands asked Sen. Sales if probate law issues would be presented in the Judiciary Standing Committee in a session.

ADJOURNMENT

08:26:39 Sen. Sands adjourned the meeting at 4:29 p.m.

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