



Law and Justice Interim Committee
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

September 11, 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. JEN GROSS
SEN. MARGARET (MARGIE) MACDONALD
SEN. KEITH REGIER
SEN. SCOTT SALES
SEN. NELSON SWANDAL

REP. GEORGE KIPP III
REP. RYAN LYNCH
REP. LOLA SHELDON-GALLOWAY

COMMITTEE MEMBERS EXCUSED

REP. JESSICA KARJALA
REP. BARRY USHER

STAFF PRESENT

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

VISITORS' LIST (Attachment 1)

AGENDA (Attachment 2)

COMMITTEE ACTIONS

The Law and Justice Interim Committee moved to:

- forward to the 2019 Legislature bill draft LC1j02, which revises Board of Pardons and Parole appointments;
- forward to the 2019 Legislature bill draft LC1j04, which eliminates or revises references to Article II, section 36, of the Montana Constitution; and
- adopt the SJ: 25 Final Report: Studying Solitary Confinement in Montana.

CALL TO ORDER AND ROLL CALL

00:00:01 Sen. Sands called the meeting to order at 8:31 a.m. The committee secretary took roll (**Attachment 3**). Rep. Karjala was excused and left her proxy with Rep. Lynch (**Attachment 4**). Rep. Usher was excused and left his proxy with Rep. Patelis (**Attachment 5**).

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

00:00:58 Ms. Carter

Questions from the committee

00:05:19 Sen. Sands asked that the Board of Pardons and Parole (BOPP) notify surrounding legislators of when the meetings are being held to they may attend.
00:05:38 Sen. MacDonald asked for a notification when there are hearings in Billings.
00:06:29 Rep. Sheldon-Galloway commented on how many BOPP members are present at parole hearings and asked Ms. Carter to comment on video parole hearings.
00:08:21 Rep. Kipp arrived to the meeting at 8:40 a.m.
00:09:28 Rep. Sheldon-Galloway asked for clarification on the oversight of BOPP.

Public comment

00:11:18 SK Rossi, ACLU (**Exhibit 1**)
00:18:40 Dolly Friscia, self
00:21:49 Randy Knowles, Great Falls
00:24:18 Raph Graybill, Governor's Office
00:28:04 Carol Marie Anderson, self
00:31:40 Wendy Farris, Great Falls

AGENCY OVERSIGHT: DEPARTMENT OF JUSTICE

Jon Bennion, Deputy Attorney General
Colonel Tom Butler, Montana Highway Patrol

00:35:25 Mr. Bennion
00:36:02 Rep. Patelis arrived at the meeting at 9:07 a.m.

Questions from the committee for Mr. Bennion

- 00:48:18 Sen. MacDonald commented on the state opioid epidemic study that was shared by the Department of Justice (DOJ).
- 00:49:20 Sen. Regier asked if sex offender registry tiers are in law and if both violent offenders and low-level sex offenders have ten-year registry requirements.
- 00:51:24 Rep. Sheldon-Galloway asked why certain offender photos are not required in the total registry.
- 00:52:39 Sen. Sands commented on the importance of public safety and asked Mr. Bennion to comment on the use of and if offender registry databases are helpful to the public.
- 00:55:37 Rep. Kipp asked how many state offenders are registered tier three offenders.
- 00:56:37 Rep. Kipp commented on tier three offenders and their reporting requirements.
- 00:58:08 Sen. Sands asked Mr. Bennion if there will be potential legislation requests from the department.
- 01:05:34 Sen. Sands commented on DOJ's work and on the department's meeting regarding the opioid crisis on October 22, 2018, in Billings.
- 01:06:16 Rep. Kipp commented on law enforcement jurisdiction in Indian Country.
- 01:11:08 Colonel Butler continued the presentation ([Exhibit 2](#)) ([Exhibit 3](#))

Questions from the committee for Colonel Butler

- 01:18:06 Sen. MacDonald asked which counties are participating in the Public Safety Radio system.

Public comment

- 01:19:56 Wendy Farris, Great Falls
- 01:22:52 Randy Knowles, self
- 01:26:21 Andy Hudak, Montana Sex Offender Treatment Association
- 01:31:13 Mayre Flowers, Flathead County

PANEL: FOLLOW-UP ON 2017 REVISIONS TO SEXUAL ASSAULT STATUTES AND STRANGULATION BILL

Morgan Dake and Molly Rose Fehringer, Deputy County Attorneys, Yellowstone County

Peter Ohman, Public Defender Division Administrator, Office of Public Defender Anna Saverud and Mary Cochenour, Assistant Attorneys General, Department of Justice

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

- 01:34:30 Ms. Dake and Ms. Fehringer
- 01:46:03 Mr. Ohman
- 01:52:34 Ms. Saverud
- 01:54:30 Ms. Cochenour
- 01:56:23 Ms. Turner

Questions from the committee

- 02:12:56 Sen. Sands asked the panel to comment on the statute of limitations.
- 02:15:44 Sen. Gross asked for clarification on the issue a lower age limit in Youth Court offenses.

- 02:18:47 Rep. Patelis asked Ms. Turner for clarification on her comments regarding mandatory minimum sentences.
- 02:24:07 Rep. Patelis commented on mandatory minimum sentences and judges' ability to have discretion in sentencing.
- 02:25:28 Rep. Lynch asked Ms. Fehringer and Mr. Ohman if there is a limit when a judge cannot order a domestic violence assessment.
- 02:28:20 Sen. Swandal asked Ms. Fehringer for clarification of her comments related to prosecutors' negotiating power and commented on judges' discretion for mandatory minimum sentences.
- 02:31:00 Sen. Swandal commented on mandatory minimum sentences and judges' ability to have discretion over sentencing.
- 02:31:21 Sen. Sands commented on the information provided by the panel.

Public comment

- 02:31:56 Hal Lewis, Montana Sex Offender Treatment Association

ADMINISTRATIVE RULE REVIEW -- Ms. Burkhardt

- 02:36:38 Ms. Burkhardt ([Exhibit 4](#))

Questions from the committee

- 02:41:07 Sen. Swandal asked if both registry tier two and three are considered high risk.
- 02:41:20 Ms. Burkhardt continued her presentation.

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

- 02:43:10 Sen. Gross ([Exhibit 5](#))

Questions from the committee

- 02:53:05 Sen. Sands asked for clarification on the appropriations in the various bill drafts presented in the State-Tribal Relations Committee (STRC) regarding peer support and asked if STRC had reviewed Missoula's peer support program.
- 02:54:25 Sen. Regier asked if the STRC committee bills received unanimous votes.
- 02:55:04 Rep. Kipp commented on STRC's work and asked if alternative methods of treatment were considered in the peer support programs.
- 02:56:39 Rep. Kipp commented on alternative methods of treatment for Native American offenders and other select groups.
- 02:58:32 Sen. Sands commented on peer support models used on state reservations and the development of the peer support specialist position for Native American offenders.
- 02:59:59 Sen. Sands commented on the importance of peer support.

AGENCY OVERSIGHT: OFFICE OF STATE PUBLIC DEFENDER

Rhonda Schaffer, Director

Peter Ohman, Public Defender Division Administrator

- 03:00:49 Director Schaffer

Questions from the committee

- 03:08:29 Sen. Swandal asked what the average case load is for public defender attorneys.

- 03:09:42 Sen. Swandal asked what is the optimum number of misdemeanor cases for public defender attorneys.
- 03:11:48 Sen. Swandal asked Mr. Ohman if there are flat fee contracts and what are examples of flat fee contracts.
- 03:13:14 Sen. Gross asked Director Schaffer why there is an increase in dependent, neglect, and drug cases around a meat processing plant.
- 03:14:00 Sen. Gross asked Director Schaffer if the meat processing plant workers are from out of state.
- 03:14:38 Sen. MacDonald asked Mr. Ohman if the Office of State Public Defender is measuring factors that affect caseloads.
- 03:17:24 Sen. Sales asked Mr. Ohman to comment on attorneys being assigned to open container law cases and if there is jail time associated with the offense, and asked what the conviction rate is on open container cases.
- 03:19:03 Sen. Sands asked Mr. Ohman for a report on how many local ordinances affect the Office of State Public Defender workload.
- 03:19:34 Sen. Swandal asked if the office has worked with prosecutors to consider a diversion program.

Public comment

03:20:33 Carol Marie Anderson, self

LUNCH (Reconvened at 1:03 p.m.)

OVERVIEW OF POTENTIAL PROBATE LAW REVISION BILL

Mr. Ed Eck

Mr. Dirk Williams

04:32:20 Mr. Eck
04:39:16 Mr. Williams

Questions from the committee

- 04:55:21 Rep. Sheldon-Galloway asked Mr. Williams for clarification on common-law spouse laws.
- 04:57:37 Rep. Sheldon-Galloway asked if state law addresses life insurance policies on divorcing spouses.
- 04:58:49 Mr. Eck continued the presentation ([Exhibit 6](#))

Public comment

None

AGENCY OVERSIGHT: DEPARTMENT OF CORRECTIONS UPDATE -- Director Reginald D. Michael

05:00:03 Director Michael ([Exhibit 7](#))

Questions from the committee

- 05:32:16 Sen. Sales asked what areas in the Department of Corrections (DOC) are over-budget and if funds in these areas will be restored.
- 05:33:37 Rep. Patelis asked how many administrative positions does the DOC have on soft freeze.

05:35:01 Rep. Patelis commented on the DOC's work and freezing positions rather than terminating positions that are pertinent to public safety and asked what the status of the extension contract is with the Shelby correctional facility.

05:37:41 Rep. Lynch asked for clarification on DOC's budget.

05:39:45 Rep. Lynch asked for further information on DOC's business management and commented on the department's work on the Montana Women's Prison.

05:40:38 Rep. Sheldon-Galloway asked what will fund the department's victim program once the grant money is spent.

05:42:01 Sen. Sands asked which DOC facilities have decreased staff and if the department has legislation they will bring forward that will effect their budget.

05:45:08 Rep. Kipp commented on Director Michael's work on state reservations.

05:47:55 Sen. Sands commented on Native American offenders and the importance of having services for Native American offenders.

05:50:04 Sen. Sands commented on the work of the department.

Public comment

05:50:46 Wendy Farris, Great Falls

05:54:39 Patty Jacques, self

05:58:16 Mayre Flowers, self

05:58:59 Caterina Maw, self ([Exhibit 8](#))

06:07:33 Randy Knowles, self

06:16:01 Rudy Stock, self ([Exhibit 9](#))

06:18:16 Dolly Friscia, self

06:21:41 Jerry Marble, self ([Exhibit 10](#))

SJ 25 STUDY OF SOLITARY CONFINEMENT -- Ms. Weiss

06:27:12 Sen. Sands reminded the committee of the draft legislation they will consider regarding solitary confinement ([Exhibit 11](#)).

06:28:11 Ms. Weiss ([Exhibit 12](#))

Questions/comments from the committee

06:33:31 Committee discussion on LCJj03 (see Exhibit 12)

Public comment

06:50:12 Patty Jacques, self

06:52:54 Beth Brenneman, Disability Rights of Montana

06:56:05 Wendy Farris, Great Falls

06:57:08 Robin Turner, Montana Coalition Against Sexual and Domestic Violence

REVIEW OF OTHER DRAFT LJIC BILLS

LCJj02 - revise appointment of board of pardons and parole -- Ms. Weiss

06:58:07 Ms. Weiss ([Exhibit 13](#))

Questions from the committee

06:59:18 Committee discussion on LCJj02 (see Exhibit 13)

07:04:30 Rep. Kipp asked if the appointment process for BOPP members is a constitutional act. The question was redirected to Ms. Burkhardt.

07:07:47 Committee discussion on LCJj02 (see Exhibit 13)

Public comment

07:15:11 Raph Graybill, Governor's Office

LCIj04 - revise/eliminate statutory references to Marsy's Law -- Ms. Weiss

07:18:51 Sen. Sands reviewed bill drafts LCIj01 and LCIj04 ([Exhibit 14](#)) ([Exhibit 15](#))

07:19:26 Ms. Weiss (see Exhibit 15) ([Exhibit 16](#))

Questions from the committee

07:21:18 Sen. Regier asked if there is defining language for the term "victim" in LCIj04.

07:22:40 Sen. Swandal commented on repetitive language in LCIj04.

07:23:22 Rep. Sheldon-Galloway asked how much of the bill draft was new language.

07:25:17 Committee discussion on LCIj04

Public comment

None

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

07:26:53 Jerry Marble, self

WORK SESSION

07:30:17 Sen. Sands reviewed the committee's options on the bill drafts related to solitary confinement.

Motion

07:30:33 Sen. MacDonald moved to approve LCIj03 (see Exhibit 12)

Discussion on the Motion

07:30:35 Sen. MacDonald

Vote

07:31:15 The motion failed on a 6-6 roll call vote, with Rep. Lynch, Rep. Patelis, Rep. Sheldon-Galloway, Sen. Regier, and Sen. Sales voting 'no'. Rep. Usher voted 'no' by proxy. ([Attachment 6](#))

Motion

07:32:20 Sen. Swandal moved to approve LCIj04 with amendments (see Exhibit 15)

Discussion on the Motion

07:32:49 Sen. Regier

Vote

07:33:50 The motion to approve the LCIj04 amendments passed on an unanimous voice vote.

07:34:08 The motion to approve LCIj04 passed on an unanimous voice vote.

Motion

07:34:41 Rep. Patelis moved to approve LCIj02 (see Exhibit 13)

Vote

07:35:02 The motion passed on a 7-5 roll call vote, with Rep. Kipp, Sen. Gross, Sen. MacDonald, and Sen. Sands voting 'no'. Rep. Karjala voted 'no' by proxy. ([Attachment 7](#))

07:36:13 Committee discussion on bill sponsors.

Final Report

07:36:52 Ms. Weiss (see Exhibit 5)

Motion

07:37:36 Sen. Swandal moved to adopt the SR 25 Final Report: Studying Solitary Confinement in Montana (see Exhibit 5).

Vote

07:37:39 The motion passed on an unanimous voice vote.

CLOSING REMARKS

07:37:52 Committee discussion on interim, committee, and committee staff work.

ADJOURNMENT

07:41:55 Sen. Sands adjourned the meeting at 4:13 p.m.

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