



## Law and Justice Interim Committee

### 66th Montana Legislature

#### SENATE MEMBERS

BRYCE BENNETT  
JOHN ESP  
STEVE FITZPATRICK  
JEN GROSS  
KEITH REGIER  
DIANE SANDS

#### HOUSE MEMBERS

ROBERT FARRIS-OLSEN  
FRANK FLEMING  
KATHY KELKER  
CASEY KNUDSEN  
JASMINE KROTKOV  
BARRY USHER

#### COMMITTEE STAFF

RACHEL WEISS, Research Analyst  
JULIANNE BURKHARDT, Staff Attorney  
LAURA SHERLEY, Secretary

# MINUTES LOG

September 9, 2019  
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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#### **COMMITTEE MEMBERS PRESENT**

SEN. BRYCE BENNETT  
SEN. JOHN ESP  
SEN. STEVE FITZPATRICK  
SEN. JEN GROSS  
SEN. KEITH REGIER  
SEN. DIANE SANDS

REP. ROBERT FARRIS-OLSEN  
REP. FRANK FLEMING  
REP. KATHY KELKER  
REP. CASEY KNUDSEN  
REP. JASMINE KROTKOV  
REP. BARRY USHER

#### **COMMITTEE MEMBERS EXCUSED**

## **STAFF PRESENT**

RACHEL WEISS, Research Analyst  
JULIANNE BURKHARDT, Staff Attorney  
LAURA SHERLEY, Secretary  
VERONICA SULLIVAN, Secretary

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

## **AGENDA (Attachment 2)**

## **COMMITTEE ACTIONS**

- The Law and Justice Interim Committee voted to send a letter to Governor Bullock encouraging him to appoint members of the Criminal Justice Oversight Council; and
- Approved the committee work plan for the interim.

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

08:31:08 Rep. Usher called the meeting to order at 8:31 a.m. The secretary took roll (**Attachment 3**).

## **JUDICIAL BRANCH AND OFFICE OF COURT ADMINISTRATOR INTRODUCTION AND UPDATE**

08:32:27 Beth McLaughlin, Court Administrator, Judicial Branch and Office of Court Administrator (**Exhibit 1**)

08:33:17 Sen. Esp joined the meeting at 8:33 a.m.

08:36:15 Sen. Fitzpatrick joined the meeting at 8:36 a.m.

## **Questions from the committee**

08:52:04 Rep. Kelker asked how a new court is created in a community.

08:53:45 Rep. Kelker asked how a prosecutor's decision to prosecute a case can affect a case.

08:55:05 Ms. McLaughlin continued her presentation (**Exhibit 2**).

## **Questions from the committee**

09:02:00 Rep. Fleming asked if the committee has access to the pretrial and treatment court public safety assessment tools.

## **Public comment on the agenda item**

09:03:08 Gary Mihelish, NAMI Helena

09:05:46 Laurie Little Dog, self

## **AGENCY OVERSIGHT: DEPARTMENT OF CORRECTIONS (DOC) INTRODUCTION AND OVERVIEW**

09:07:49 Reginald Michael, Director, Department of Corrections (**Exhibit 3**) (**Exhibit 4**) (**Exhibit 5**) (**Exhibit 6**)

### **Questions from the committee**

- 09:40:10 Sen. Sands asked if the department is considering a community-based model of incarceration for the women's prison in Billings
- 09:44:00 Sen. Sands commented on the county jail reimbursement rate.
- 09:45:06 Rep. Usher asked that all state counties be represented in the study of county jail reimbursement rates.
- 09:45:21 Rep. Kelker asked for clarification on the department's plan for inmates with mental health challenges in segregated housing.
- 09:48:39 Rep. Kelker commented on the department's plan to enhance public education and the importance of educating the public on the system's handling of inmates with mental health challenges.
- 09:50:14 Sen. Gross asked for further information on the victim services program and how implementation of the program has met expectations (see Exhibit 6).
- 09:55:56 Sen. Gross asked how the department communicates with district courts and county attorneys.
- 09:58:23 Sen. Gross asked if the family group team meetings (FTGM) have been used for victims of domestic abuse (see Exhibit 6). The question was redirected to Jamie Rodgers, Victim Services Program Manager, Department of Corrections.
- 10:03:09 Sen. Regier asked Director Michael how the department evaluates that inmates are receiving quality health care. The question was also answered by Cynthia Wolken, Deputy Director, Department of Corrections.
- 10:06:14 Sen. Esp asked Director Michael if he will be at the next Legislative Audit Committee meeting to discuss the audit of Pine Hills Correctional Facility.
- 10:06:52 Sen. Sands asked Director Michael for an update on the Prison Rape Elimination Act (PREA) implementation process.
- 10:10:08 Sen. Sands commented on the department's staff that are PREA trained.
- 10:11:03 Rep. Usher asked if the Board of Crime Control was successfully moved under the Department of Correction's oversight.
- 10:14:04 Rep. Usher commented on the department's Criminal Justice Oversight Council December meeting date.
- 10:15:48 Sen. Gross asked Ms. Rodgers what the process is for communication between the Victim Services Program and county attorney offices.
- 10:17:47 Sen. Gross asked Ms. Rodgers if there is a written policy in place in the Victim Services Program for communication with other victim services advocates.

### **Public comment on the agenda item**

- 10:18:49 Laurie Little Dog, self
- 10:24:05 Marty Lambert, Gallatin County Attorney (**Exhibit 7**)
- 10:28:43 Benjamin Halverson, Billings Deputy City Attorney
- 10:29:36 Brian Gootkin, Gallatin County Sheriff
- 10:30:40 Verna Turnsplenty, self (**Exhibit 8**)
- 10:33:57 Clemente Arciga, self
- 10:36:35 Kathleen Stewart, self
- 10:40:51 Jerry O'Neill, self
- 10:42:42 Steve Cape, Montana Coalition for Safety and Justice

### **Committee discussion**

- 10:47:55 Sen. Regier asked if the committee should send a letter to the Governor's office

to help expedite the Criminal Justice Oversight Council member appointments.

**MOTION**

10:48:31 Rep. Kelker moved that the committee send a letter to the Governor's office to help expedite the Criminal Justice Oversight Council member appointments.

**VOTE**

10:48:35 The motion passed on an unanimous voice vote.

**BREAK** (Reconvened at 11:01 a.m.)

**HJ 36 STUDY OF COMPENSATION FOR WRONGFULLY CONVICTED PERSONS:  
DISCUSSION OF MONTANA LAWS, OTHER STATE MODELS, EXPERIENCES OF  
EXONERATED INDIVIDUALS AND THEIR FAMILIES, SUGGESTIONS FOR LEGISLATION**

11:02:13 Panel introductions  
11:02:59 Frank Knaack, Executive Director, Montana Innocence Project  
11:05:10 Cody Marble, exoneree  
11:07:08 Jerry Marble, father of an exoneree  
11:10:19 Michelle Feldman, State Campaign Director, Innocence Project (**Exhibit 9**)  
11:21:48 Patrick Webb, Director of Grassroots Operations, Americans for Prosperity

**Public comment on the agenda item**

11:28:03 Jeff Baker, self (**Exhibit 10**)  
11:30:37 Rudy Stock, self  
11:36:14 Steve Cape, Montana Coalition for Safety and Justice  
11:39:18 Laurie Little Dog, self (**Exhibit 11**)

**Questions from the committee**

11:41:44 Rep. Knudsen asked the panel how the state compensates persons held without bail but never convicted.  
11:43:03 Rep. Kelker asked Ms. Feldman if the state adopted a compensation model, could a wrongfully convicted person still pursue a case against the state even after being compensated and if this has happened in other states.  
11:44:43 Sen. Regier asked Ms. Feldman how exoneree civil awards were funded. The question was redirected to Mr. Knaack.  
11:45:27 Sen. Regier asked Mr. Cody Marble if his wrongful conviction was a jury trial and what brought about the conviction.  
11:46:03 Sen. Regier asked Ms. Burkhardt if there is immunity in law for prosecutors.  
11:46:32 Rep. Krotkov asked Ms. Feldman if the compensation model includes allowing exonerees the choice of non-monetary benefits.  
11:48:32 Rep. Krotkov asked Ms. Feldman if there has been any efforts to repair public trust in the justice system.  
11:49:39 Rep. Farris-Olsen asked Ms. Feldman for further information on prosecutorial immunity.  
11:51:25 Rep. Kelker asked Ms. Feldman to speak on the timely manner of reviewing and settling compensation cases.  
11:53:07 Sen. Bennett asked Ms. Feldman to speak on the public stigma that can follow exonerees. Mr. Cody Marble also commented on the question.

- 11:56:16 Sen. Bennett asked Mr. Cody Marble to comment on the list of available services for released persons.
- 11:57:53 Sen. Sands commented on legislation addressing prerelease centers and housing support, and asked Mr. Webb to discuss the rate of county attorneys prosecuting.
- 12:00:07 Sen. Sands commented on the state criminal justice system.
- 12:00:58 Rep. Usher asked Ms. Feldman how the number of exoneree cases in the state compares to other states.
- 12:02:32 Rep. Usher asked Mr. Knaack if he was involved in the State v. Baker case.

**AGENCY OVERSIGHT: ADVISORY COUNCILS, REQUIRED REPORTS, AND ADMINISTRATIVE RULE REVIEW**

- 12:04:25 Ms. Burkhardt
- 12:04:57 Ms. Weiss (**Exhibit 12**)

**Questions from the committee**

- 12:06:38 Rep. Krotkov asked Ms. Weiss for further information on the Montana Incentives and Interventions Gird (MIIG) report (see Exhibit 12).
- 12:08:35 Rep. Krotkov asked Ms. Weiss when the various reports will be submitted to the committee for review.
- 12:11:07 Sen. Gross asked Ms. Weiss if an updated Domestic Violence Fatality Review Commission report is in progress (see Exhibit 12).
- 12:12:04 Sen. Gross asked Ms. Weiss if all positions on the Domestic Violence Fatality Review Commission and the Native American Domestic Violence Review Commission have been filled.
- 12:12:41 Rep. Usher commented on the advisory councils and required reports as part of the committee's oversight and encouraged the committee to ask the departments about their required reports when they are presenting in committee.
- 12:12:56 Sen. Sands commented on the history of the committee's oversight.

**Public comment on the agenda item**

None

**LUNCH** (Reconvened at 1:15 p.m.)

**AGENCY OVERSIGHT: DEPARTMENT OF JUSTICE (DOJ) INTRODUCTION AND OVERVIEW**

- 13:16:37 Liz Bangerter, Government Affairs Director, DOJ (**Exhibit 13**) (**Exhibit 14**) (**Exhibit 15**) (**Exhibit 16**) (**Exhibit 17**)

**Public comment on the agenda item**

- 13:26:57 Nanette Gilbertson, Montana Sheriffs and Peace Officers Association

**Questions from the committee**

- 13:28:17 Sen. Sands asked Ms. Bangerter if AAA is administering Real IDs.
- 13:34:33 Rep. Kelker asked Ms. Bangerter what the department's plans are on DUI issues.

- 13:36:56 Sen. Esp asked Ms. Bangerter for further information on the case surrounding HB 286 (2019). The question was redirected to Melissa Schlichting, Deputy Attorney General and Legal Services Division Administrator, DOJ.
- 13:38:00 Sen. Gross commented on the DOJ staff working on the implementation of the 2019 missing persons-related legislation.
- 13:39:10 Sen Regier asked Ms. Bangerter what information is on the Real ID card.
- 13:41:57 Committee discussion on Real ID.
- 13:43:53 Rep. Usher asked Dana Toole, Special Services Bureau Chief, DOJ, for an update on the Child and Family Osbudsman office and their work.

## **HJ 31 STUDY OF THE BOARD OF CRIME CONTROL**

### **Overview of the Board's structure, duties, and grant distribution process**

- 13:46:55 Peter Ohman, Chair of the Montana Board of Crime Control
- 13:50:42 Natalia Bowser, Bureau Chief, Crime Control Bureau, DOC (**Exhibit 18**)

### **Analysis of Board's authority and legislative oversight after SB 95 transfer**

- 14:04:06 Ms. Burkhardt (**Exhibit 19**) (**Exhibit 20**)

### **Public comment on the HJ 31 study**

- 14:12:48 Nanette Gilbertson, Montana Sheriffs and Peace Officers Association
- 14:16:25 Leo Dutton, Lewis and Clark County Sheriff
- 14:23:29 Brian Gootkin, Gallatin County Sheriff

### **Questions from the committee**

- 14:25:38 Rep. Kelker asked Mr. Ohman to comment on the Board of Crime Control's ability to hire administrative staff.
- 14:28:57 Rep. Kelker asked Mr. Ohman about the board's Victims of Crime Act (VOCA) grant RFP process.
- 14:33:10 Rep. Usher commented on VOCA grant funds (**Exhibit 21**).
- 14:34:40 Rep. Kelker asked Mr. Ohman to comment on the use of the VOCA funds.
- 14:38:02 Sen. Esp asked Ms. Bowser for clarification on her handout (See Exhibit 18).
- 14:41:27 Mr. Ohman and Ms. Bowser clarified federal VOCA funding and how it was used.
- 14:43:10 Rep. Usher commented on the RFP process the board performed.
- 14:44:26 Sen. Esp commented on Gallatin County and Park County involvement in the VOCA project.
- 14:45:17 Sen. Gross asked Mr. Ohman to comment on federal procurement guidelines.

**BREAK** (Reconvened at 2:59 p.m.)

## **SJ 19 STUDY OF SEXUAL AND VIOLENT OFFENDER REGISTRIES**

### **Overview of legislative history**

- 15:00:58 Ms. Weiss (**Exhibit 22**) (**Exhibit 23**) (**Exhibit 24**) (**Exhibit 25**)

### **Introduction, explanation of role and sexual offender registry resources available to LJIC**

- 15:08:04 Madison Mattioli, Assistant Attorney General, DOJ (**Exhibit 26**)

### **Public comment on the SJ 19 study**

- 15:15:10 Jackie Jones, Montana County Attorneys' Association

15:16:08 Clemente Arciga, self (**Exhibit 27**)  
15:19:42 Andy Hudak, Montana Sex Offender Treatment Association  
15:25:00 Daphne Hale, self (**Exhibit 28**)  
15:27:15 Bart Holt, self (**Exhibit 29**)  
15:31:00 Jim Lochrie, self (**Exhibit 30**) (**Exhibit 31**)  
15:41:32 Chad Wright, Office of the State Appellate Defender

**Questions from the committee**

15:43:53 Sen. Regier asked Ms. Mattioli for clarification on sex offender tier placement.  
  
15:45:41 Rep. Krotkov asked Ms. Mattioli if there are studies done on the sex offender registry and public notification.  
  
15:46:51 Rep. Krotkov asked Ms. Mattioli if there is data on the relationship between sex offender housing and real estate value.  
  
15:48:17 Rep. Kelker asked Ms. Mattioli to comment on the risk assessments in the sex offender registry.  
  
15:51:19 Rep. Usher asked Ms. Mattioli who her division reports to.

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

15:52:46 Jason McNees, self (**Exhibit 32**)  
15:56:23 Marsha Stock, self  
16:00:28 Katie Sorenson, self (**Exhibit 33**)  
16:02:55 Liesel Curtiss, self  
16:04:56 Michael Accardi, self (**Exhibit 34**) (**Exhibit 35**)  
16:07:01 Caterina Maw, self (**Exhibit 36**)  
16:13:36 Benton Little Dog, self  
16:15:08 Laurie Little Dog, self  
16:22:12 Rep. Dunwell, HD 84  
16:25:10 Andy Hudak, Montana Sex Offender Treatment Association

**ADMINISTRATIVE MATTERS: REVIEW OF DRAFT WORK PLAN, MEETING CHART/COMMITTEE WORK SESSION**

16:26:42 Ms. Weiss (**Exhibit 37**) (**Exhibit 38**) (**Exhibit 39**)

**Discussion/questions from the committee**

16:29:36 Sen. Esp asked that the committee hear from the assistant warden regarding the recent DOC correctional facility visitation policy changes.  
  
16:30:02 Sen. Gross reminded the committee of the letter received from DOC regarding the visitation policy (**Exhibit 40**).  
  
16:30:39 Rep. Kelker asked if there is a form available to the public regarding the DOC correctional facility communication policy with Montana State Prison inmates.  
  
16:31:20 Rep. Usher recommended the committee hear also from the warden regarding DOC correctional facility visitation policy.  
  
16:33:16 Sen. Gross asked Ms. Weiss to speak on the resources for inmates needing treatment and how the committee can address the topic (**Exhibit 41**).  
  
16:38:10 Rep. Kelker commented on the list of potential panels the committee could hear from (see Exhibit 41).

16:39:47 Sen. Gross commented on the resources available to parolees.  
16:40:33 Rep. Usher asked Ms. Weiss to comment on the committee's draft work plan (see Exhibit 39).  
16:43:16 Committee discussion on the LJIC draft work plan (see Exhibit 39).

#### **MOTION**

16:46:45 Sen Regier moved to adopt the work plan with the remaining time allowance to Rep. Kelker to divide between the DUI study and homelessness study.

#### **DISCUSSION ON THE MOTION**

16:47:18 Rep. Kelker  
16:49:11 Rep. Usher  
16:52:22 Rep. Usher asked for clarification on the motion.

#### **VOTE**

16:53:13 The motion passed on an 11-1 voice vote, with Rep. Krotkov voting 'no'.

#### **MOTION**

16:53:55 Sen. Sands moved to request staff work with the departments to update the agency updates and required reports deadlines.

#### **VOTE**

16:54:38 The motion passed on an unanimous voice vote.

16:54:56 Rep. Kelker commented on the information given to the committee regarding the sex offender registry and wrongfully incarceration compensation and recommended forming workgroups to study these issues.

16:57:54 Ms. Weiss reminded the committee of the designated times to the committee studies (see Exhibit 38).

16:59:26 Sen. Sands commented on the sexual and violent offender study and the time designated to it.

17:00:13 Sen. Esp recommended Rep. Kelker include the Budget Director and the chair of the Finance and Appropriation subcommittees in her studies.

17:00:29 Sen. Regier asked Ms. Weiss for clarification on the legislative week schedule (**Exhibit 42**).

17:04:52 Sen. Sands commented on the HB 715 study.

17:05:50 Rep. Usher reminded the committee to review the draft work plan report and handed out a letter delivered by DOC (see Exhibit 39) (**Exhibit 43**).

#### **ADJOURNMENT**

17:06:46 Rep. Usher adjourned the meeting at 5:06 pm.