



**Criminal Justice Oversight Council Meeting**  
**Department of Corrections**  
**5 South Last Chance Gulch, Helena, MT 59601**  
**December 5, 2018**

**1 PM – 3 PM**

**Room: EOC Room**

**1:00 PM Welcome and Introductions**

Chairman Reg Michael, DOC Director

The meeting was called to order by Director Reg Michael at 1:03 p.m.

**Criminal Justice Oversight Council Attendees:**

Director Reg Michael	- Director of the Department of Corrections/Committee Chairman
Annette Carter	- Board of Pardons and Parole
Natalia Bowser	- Board of Crime Control
Beth McLaughlin	- Supreme Court
Representative Jimmy Patelis	- Representative, R - Billings
Representative Ryan Lynch	- Representative, D - Butte
Senator Nate McConnel	- Senator, D - Missoula
Amy Tenney	- Governor's Appointment, Treatment Facility Rep.
Sheriff Ross Canen	- Sheriff Dawson County
Melissa Kelly	- Governor's Appointment, Pre-release Center Rep.

Director Michael thanked the Council members for attending the meeting. He stated this would be the final meeting for the Criminal Justice Oversight Council before the Legislative Session begins. He asked the Council members to be respectful of Roberts Rules of Order. He stated members of the public were also present and reminded everyone this was a meeting of the CJOC, and we would try and walk through the process in an orderly fashion following the published agenda. After each section of the agenda there will be a chance for public comment before the Council takes executive action. Director Michael stated the agenda and all of the meeting documents had been placed on the CJOC website for everyone's review prior to the meeting.

**1:15 PM Council Proposals for Bill Updates**

- *46-18-111 PSI 30 Business Days*
- *46-18-203 Revocation of suspended or deferred sentence*
- *46-23-1024 7 Business days after arrest*

Council Discussion

Public Comment

Executive Action

The first item on the agenda are the three Council Proposals for Bill Updates.

- 46-18-111 which updates the language from 30 days to 30 business days, which will give enough time to get the PSI's completed. Thirty days did not account for weekends and holidays. The update to 30 business days will now take these non-working days into account.
- 46-18-203 addresses the revocation of suspended or deferred sentences adding language "beginning upon admission" clarifying when the 9 months begins.
- 46-23-1024 addresses the initial hearing after arrest. The hearing was to be held within 5 days after arrest, the update changes the hearing requirement to 7 business days.

**Annette Carter put forth a motion** to discuss the three bill proposals and move forward to an executive action. The motion was seconded by Representative Patelis.

Sheriff Canen asked if the working group proposals for 46-18-208 and 46-23-1011 would be reviewed at this time. Director Michael stated they would be reviewed under the *Review Working Group Proposal* section of the agenda.

Director Michael stated that he was concerned about the 30 days to complete a Pre-Sentence Investigation bill. He did not believe 30 days was enough to perform a PSI of true value to present to the court. He was concerned that 30 business days would still not be enough to create a PSI of any value for the courts.

Representative Lynch submitted a proposed change to 46-18-111 to be discussed in the next section. Representative Patelis asked that the proposed language changes regarding 30 business days be tabled until Representative Lynch's proposed change is reviewed. 30 business days may not be enough time to cover the chemical dependency screening evaluation for the PSI.

The Council agreed to hold off on the proposed language change for 46-18-111 and move forward with the updated language on the bill proposals 46-18-203, revocation of suspended or deferred sentence and 46-23-1024, 7 business days after arrest.

Director Michael opened the floor for public comment. There were no public comments on these two bill updates.

Director Michael moved forward with the vote for bill updates:

- 46-18-203 addresses the revocation of suspended or deferred sentences adding language "beginning upon admission" clarifying when the 9 months started.
- 46-23-1024 addresses the initial hearing after arrest. The hearing was to be held within 5 days after arrest, the update changes the hearing requirement to 7 business days.

Vote:

Annette Carter	Yes
Natalia Bowser	Yes
Reg Michael	Yes
Beth McLaughlin	Yes
Representative Jimmy Patelis	Yes
Representative Ryan Lynch	Yes
Amy Tenney	Yes
Sheriff Ross Canen	Yes
Melissa Kelly	Yes
Senator Nate McConnel	Yes

The motion carried to update language to reflect the proposed changes for the two bills.

## **2:00 PM Member Recommendations for New Proposals**

- *SB0059 Suggested changes to Oversight Council – Representative Ryan Lynch*
- *PSI 30 Bill Draft - Representative Ryan Lynch*

Council Discussion

Public Comment  
Executive Action

**Representative Lynch put forth a motion** to review the proposed changes to SB0059 for the Criminal Justice Oversight Council and move forward with the suggested changes. The motion seconded by Annette Carter.

Vote:

Annette Carter	Yes
Natalia Bowser	Yes
Reg Michael	Yes
Beth McLaughlin	Yes
Representative Jimmy Patelis	Yes
Representative Ryan Lynch	Yes
Amy Tenney	Yes
Sheriff Ross Canen	Yes
Melissa Kelly	Yes
Senator Nate McConnel	Yes

The highlights of the proposed changes to SB0059 were reviewed by the Council. The proposed changes include:

- Expand the CJOC from 15 to 18 members, adding the following members to the Council:
  - District Court Judge appointed by the Montana Supreme Court
  - Public Defender appointed by the public defender's office
  - County Attorney subject to the Governor's office
- Council shall select the chair at its first meeting.
- Remove the Council sunset date, continuing the Criminal Justice Oversight Council which was scheduled to terminate on June 30, 2019.

This proposal would move forward in the bill format. Director Michael asked if Representative Lynch would be carrying the bill. Representative Lynch said he would be willing to carry the bill forward.

Director Michael opened the floor for public comment. County Attorney Lambert agreed with Representative Lynch that the work the Criminal Justice Oversight Council does is incredibly important to the Department of Corrections. He felt there would be great benefits in adding a District Judge, a Public Defender and a County Attorney from the Criminal Justice System and those who work everyday in the Criminal Courts. He also stated the Council would need to be in existence in the next interim to continue their work.

A vote was taken to move forward with the proposed changes for SB0059.

Vote:

Annette Carter	Yes
Natalia Bowser	Yes
Reg Michael	Yes
Beth McLaughlin	Yes
Representative Jimmy Patelis	Yes
Representative Ryan Lynch	Yes
Amy Tenney	Yes
Sheriff Ross Canen	Yes

Melissa Kelly	Yes
Senator Nate McConnel	Yes

The motion to move forward with the proposed changes to SB0059 carried.

Representative Lynch will reach out to Rachel Weiss to finalize the draft language for this bill.

Director Michael asked Representative Lynch to outline his proposed changes to the PSI 30 Bill Draft. Representative Lynch explained this proposal came from the local and district courts in Butte. The Working Group Resolution was presented at a Judge's conference and there was support at this level to move the resolution forward. Representative Lynch is concerned about losing the DOC Commit and what that would look like for the state of Montana. Some of the conversations with Judge Krueger and his staff regarding the frustrations they were feeling was caused by the lack of pre-screening offenders beforehand. Historically they had received placement options and sentencing recommendations from the local PSI Officer. Through these conversations the language updates on this bill were drafted, which included the 30 business days along with additional requirements for the department. Representative Lynch is presenting this draft to the Council to see what the impact of the changes looks like. He said he is in favor of the updates, and believes there is a void of information that the courts have become frustrated with. He does not want to throw out the DOC Commit and feels this addresses the frustrations the courts have.

**Director Michael put forth a motion** to consider the proposed changes to PSI 30 Bill Draft submitted by Representative Lynch. The motion seconded by Annette Carter.

Vote:

Annette Carter	Yes
Natalia Bowser	Yes
Reg Michael	Yes
Beth McLaughlin	Yes
Representative Jimmy Patelis	Yes
Representative Ryan Lynch	Yes
Amy Tenney	Yes
Sheriff Ross Canen	Yes
Melissa Kelly	Yes
Senator Nate McConnel	Yes

The proposal contained the following additional requirements to the PSI:

- Department of Corrections will prescreen an offender for appropriate placement
- Determine a bed date
  
- PSI shall include a chemical dependency evaluation if requested or required
- Shall include the recommendation of a chemical dependency evaluator (outlining the cost of the evaluation and the screening be the responsibility of the DOC).
  - Director Michael mentioned a chemical dependency evaluation before the PSI is completed and submitted to the court would be very challenging or impossible to complete with 30 business days. He believes this will be an issue getting everything included in the PSI in the 30 business days.
  
- Department of Corrections will honor and follow placement recommendations made in court orders and sentences imposed for any offender convicted of a felony charge.

- Director Michael stated he would like conversations from others on this point. It sounds like it removes the DOC Commit in its current form as a function of the DOC, and places it back into the authority of the sentencing judge. He put forth the question of “*what would be the need for a DOC Commit if this proposed update went forward?*”
- Senator McConnel stated that at the last meeting Judge Krueger expressed his disappointment with some of the ways the DOC was handling sentences. He does think given the changes in the laws from the 2017 Legislative Session, it is important to continue to pay attention to the data driven treatment that can keep people in a community and in the least restrictive environment. He feels we should continue the policy.
- Beth McLaughlin commented she understood where the judges are coming from on the issue involving pre-screening offenders. At the discussion at the meeting in September, it was pretty clear people needed to have an appropriate chemical dependency evaluation to get into certain programs. There is a catch-22 of who does it and how does it happen. This appears to be tricky if that is part of the criteria for getting into a program. She feels the CD evaluation is a pretty serious issue for the judges. She continued to state she is not sure how often in a court order the judge actually makes a placement recommendation beyond DOC Commit. She is not sure if this information is collected.
- Director Michael stated he was not sure if we track the number of DOC recommendations received from the courts, he asked Lorraine Schneider, Legal Counsel, if she had this information. Lorraine stated she does not have any reliable data on the placement recommendations. She stated in her observation judgements that make a placement recommendation are followed. She went on to state that in her observation, not based on hard data, the department typically ends up placing the individual where the court recommended the individual be placed. She mentioned the offenders who come back and are controversial are the ones that have not been placed in accordance with the court’s judgement for various reasons.
- Director Michael asked the Council membership to understand the flexibility and authority the DOC has under the DOC commit sentencing process to make placements where they think are most appropriate. He stated it was his understanding that some Montana Supreme Court opinions have ruled that those placements are at the discretion of the DOC. Lorraine confirmed this statement, there was a recent court that re-affirmed that a DOC Commit with a recommendation by the court is a recommendation, but the final decision belongs to the Department of Corrections. Director Michael went on to state that in its current form, the law affords the DOC to make an independent placement considering the judge’s recommendation, but the DOC is not required to make placement decisions that are mandated through consistency with those judges recommendations.
- Director Michael asked as the Council if they would like to make a recommendation to adopt legislation that moves this out of the hands of the DOC and solely into the hands of the sentencing judge.
- Representative Patelis stated he was not sure this was a great idea. He believed it will cause a lot of control problems in the population of the prisons. He understands the judges point of view where they would like to have a pre-screened defendant to say if he is appropriate for pre-release or a particular treatment facility. If they make a broad recommendation with this type of information in front of them, he does not believe this would require the DOC Commit go away. He brought up the point if the judge recommends treatment at the Nexis treatment center, the DOC does not have to follow this recommendation. His understanding is the judges would like to know what is appropriate for a treatment facility or a pre-release center so they could make a recommendation to some type of facility, not a necessarily particular facility. He does not feel the 30 business days is realistic if pre-screening is required. He does agree with the pre-screening aspect, as a judge you would like to sentence them to a treatment facility, whether it is secure or

non-secure. He felt the judges would like to know if the offender is going to be accepted into the facility or not. This is his understanding of the issue, the judge makes a sentence recommendation and later finds out they are not acceptable to the recommended program. He believes the screening process will help rectify this issue. He does not believe the DOC Commit should be replaced with the actual sentencing of a judge, that will cause major problems in how to control the population of the prison system.

- Representative Lynch stated the proposed language in this bill came from the courts. He believes there are things that should be structured differently, and some language should be updated and changed. He felt to the Director's point, he thought the language may need to be changed from "shall honor the place of recommendation" to "shall honor the *initial* place of recommendation". Not every offender who goes to the initial place of recommendation is successful, and fully understands the department would need to utilize the MIIG in order for the offender to be successful or to be engaged in further treatment and programming. He stated he understood the need for a longer period to create the PSI but did not want to make it too far away. Representative Lynch stated we need to look at what the court is telling us, there seems to be information they feel they are not receiving. Representative Lynch asked if Director Michael would be willing to sit down with the judges to come up with a solution to fill the information void the judges are currently experiencing. He would also welcome Beth's input and Deputy Director Wolken's input to help resolve this issue. The changes made for Justice Re-investment caused some pieces to be broken and caused the information gaps that are present. He felt it would be more diplomatic to take a step back and have the Director come and sit down with a couple of the district court judges in Butte to see if they can come to some sort of agreement that everyone is comfortable with.
- Director Michael said he would be willing to sit down and have a discussion with Judge Krueger and any of the other judges that Beth and any of the others recommend. He felt as we look at this proposed bill update in its current form, he does have concerns about how it conflicts with the legislation passed, and all of the other requirements that are placed on evaluations and assessments, the use of a MIIG and making determinations at various stages of the adjudication process. Director Michael stated he would not be in favor of this proposal in its current form, he believes it creates additional liabilities for the DOC that butt up against legislation that has already passed. He is willing to have ongoing conversations about how to rectify or resolve these issues.
- Representative Lynch asked for the discussion of the proposed draft changes to the PSI 30 Bill Draft be tabled at this point. He would like to put in a placeholder and work with Beth McLaughlin and the judicial officers before moving forward with the proposed updates.
- Annette Carter stated she had concerns with iii and iv. She said with number iv the Parole Board has gone to do a hearing on someone who might have been on parole at the time but were sentenced on a new offense and ended up with a DOC sentence on the new offense. They came back to the board on a parole revocation, in this case it would not have been appropriate to follow the judge's recommendation. There are some cases where the judge recommended Nexis, but the parole revocation must still be dealt with. She has reviewed court orders on people who have had been sentenced in multiple courts throughout the state and the judges have given different recommendations, how should this be addressed? Things need to be flushed out before a decision can be made.
- Director Michael summarized that it would be a challenge to say that a recommendation should be made to put the Department of Corrections in a place where they are mandated to follow any recommendation with regards to placement as it relates to the recommendations actually issued by the judges. The DOC will always consider the judge's recommendation but will also be required by other areas of the law to make placements

based on risk and needs assessments and evaluations done within the requirements of the existing legislation.

- Beth McLaughlin agrees with Representative Lynch's suggestion to step back and have discussions directly with the judges. This is a big deal within the court, not just an abuse issue. There is some significant confusion about the evaluation process as well as a lack of understanding about what is happening in the new world of Justice Reform. Beth believes this discussion should happen as quickly as possible and should not be put off for a couple of months.
- Melissa Kelly offered her assistance with the substance abuse evaluations. She would like to come up with a standardized tool that would be specific to each court and what they would like to see. She stated that many of the chemical dependency evaluators do not have any experience with evaluating anyone in the criminal justice system. Director Michael said he would like to see Melissa included in any conversations with the judicial officers.
- Department of Corrections shall collect and analyze data as to the court ordered placement recommendations and implementation for offenders given a DOC commitment. The Department of Corrections shall collect and analyze data related to the new criminal offenses committed by offenders under their supervision.
  - Director Michael stated the data collection piece was important. He believes the Council should be stating they need more data and they should collect as much data as possible to measure the outcome.

Director Michael opened the floor for public discussion regarding Representative Lynch's draft proposal for 46-18-111. County Attorney Lambert stated this issue really needs to be addressed. He has heard the concerns from a lot of the district court judges. He agreed with Director Michael and Representative Patelis that 30 business days is not realistic. He stated the 30 business day time requirement would not be realistic with the required chemical dependency evaluations. It might be more realistic to set the business days requirement aside entirely and not have a specific number of days. He believes the DOC Commitment and placement recommendations where chemical dependencies are involved needs to be addressed as soon as possible by the DOC and the judges.

Laurie Pope, Superior Court Specialist in Missoula stated it is nearly impossible to get a chemical dependency evaluation in three months let alone 30 days.

Kim Lahiff, P&P Division Bureau Chief stated after the last meeting she discussed ways to bridge the communications gap with the P&P Division Administrator and the Bureau Chiefs. She has a draft letter that was designed to speak to the courts to let them know what the placement was. One of the gaps they have heard from several of the judges was the concern that placements were not happening at all, or the placements they recommended were not happening. They are planning on communicating with the courts to see if there were any judges that would be interested in reviewing the letter and give feedback. This letter would not address the Pre-Sentence Investigation concerns but would address the other concerns received from the judges.

Kevin Olson, P&P Division Administrator stated they came together after the last meeting to address the communication gap. When judges make placement recommendations in their DOC Commit process, P&P would like to have something in place to get back to the judge to say whether or not they have fulfilled their recommendation, or why the recommendation was not fulfilled and what the alternative placement was. This is a new process they have just started working on to keep the court fully informed on each individual sent to P&P.

**Representative Patelis put forth a motion** to accept the language changes for the proposal for the CJOC proposed bill update 46-18-111- PSI 30 Business Days. The motion seconded by Annette Carter.

Amy Tenney stated she was concerned about moving forward with the 30 working days. She felt the discussion showed they were all on board with the pre-screening but felt that the pre-screening could not be completed in the 30 business days. If the Council moves forward with the 30 business days, it will limit what could be done with the pre-screening.

Representative Lynch asked how many times we have met the 30-day deadline to get the PSI completed. He went on to ask what percentage of PSI's are completed in the 30 days and what was the average length of time to get the PSI completed? Director Michael stated he does not have that data but does believe we are meeting the vast majority of the PSI's in 30 days. He went on to state the question is "what is the quality of the document being produced?" Thirty days will not afford the department enough time to produce a document of value much less what the current proposal is recommending.

Director Michael stated his vote on this would be a "no", he does not believe the recommendations can get done in 30 days. If others believe it can be done in 30 days, they will move forward with the vote. Representative Patelis clarified if the Council does not vote on this now, it will continue as 30 days instead of 30 business days. If something different comes up with the judges and the pre-screening, this is a different issue. Director Michael explained that 30 days was not enough time to complete the PSI. He suggested the Council votes on the 30 business days to see if it passes. If it does not, a new motion can be made with an extended period of time.

After further discussion, **Director Michael withdrew the motion** to accept the language changes for the CJOC proposed bill update 46-18-111, PSI 30 Business days.

**Director Michael put forth a motion** to extend the language changes for the CJOC proposed bill update 46-18-111- PSI 30 Business Days from 30 days to 60 business days instead of 30 business days. He stated this would give the time and the opportunity to put together a Pre-Sentence Investigation that meets the recommendations Representative Lynch is proposing. The motion was seconded by Representative Patelis. Director Michael, explained the motion was now for 60 business days to extend the time granted to complete a Pre-Sentence Investigation Report. Representative Patelis stated with the extended time period he would expect to receive a better product. The extension is given to make sure the PSI writer has enough time to put together a quality report. Director Michael agreed that the extension should help the officers who investigate the matter and submit the reports. This extra time will provide a more comprehensive document that will be more useful and valuable to the judges.

Director Michael opened the floor for public discussion. He summarized County Attorney Lambert's recommendation to not put a designated time to complete the PSI, but he is concerned the DOC would bog the court system down if there is no timeframe on sentencing. This could cause the sentencings to slow down and the court will not be happy.

Vote:

Annette Carter	Yes
Natalia Bowser	Yes
Reg Michael	Yes
Beth McLaughlin	Yes
Representative Jimmy Patelis	Yes
Representative Ryan Lynch	Yes
Amy Tenney	Yes

Sheriff Ross Canen	Yes
Melissa Kelly	Yes
Senator Nate McConnel	Yes

The motion carried. The proposed bill language for 46-18-111 will be updated to 60 business days of the court order.

Director Michael asked if there was a motion on how the Council should address and deal with the other proposals in Representative Ryan Lynch's proposed document. Representative Lynch suggested the proposal be tabled until a later date. Director Michael stated the DOC would be willing to work with Beth and anyone else who can put them in a position to have dialogue with a judicial officer on this topic.

## **2:30 PM Working Group Proposals**

- *Conditional Discharge from Supervision*
- *Early Termination from Supervision*

Council Discussion

Public Comment

Executive Action

### ***Working Group Committee Members:***

Judge Kurt Kruger, Chair

Marty Lambert, Gallatin County Attorney

Peter Ohman, Public Defender Division Administrator

Kim Lahiff, Probation and Parole Bureau Chief, Missoula

Brian Gootkin, Gallatin County Sheriff

Rich St. John, Chief of Police, Billings

The working group was created to address to areas:

- *Conditional Discharge from Supervision*
- *Early Termination from Supervision*

Director Michael stated the working group was charged by the CJOC to evaluate, assess and make recommendations relative to conditional discharge from supervision and early termination from supervision. This was the scope the CJOC requested the working group to provide to the Council.

Several documents presented go beyond the scope of intent for the working group. Director Michael asked if there was a motion to expand the consideration beyond what the working group was charged with. If not, the Council will only review the working group proposals related to conditional discharge from supervision and early termination from supervision.

Sheriff Canen stated he believes the working group recommendations on the 12/4 document are within original scope.

County Attorney Lambert, a member of the working group, said the changes applied to 46-18-208, early termination of deferred or suspended sentences and 46-23-1011 early termination of supervision. Both are in accordance with the charge of the working group. He continued that only two items were beyond the scope of the charge. The Resolution talking about the DOC commitment which involved persons going to a chemical dependency treatment program and the sunseting of the CJOC. Both of these issues have already been addressed and are no longer on the table.

County Attorney Lambert re-stated the only changes on the table from the working group were changes to 46-18-208, early termination of deferred or suspended sentences and 46-23-1011 early termination of supervision. In addition to the changes reviewed by the working group on 10/1, additional language was added to protect crime victims and give them input as part of this process. A new subsection 4 was added to 46-18-208 and a new subsection 9 was added to 46-23-1011. These are enhancements to the language of the document reviewed on 10/1, with regards to the responsibilities of the Department of Corrections and the County Attorney to bring crime victims into the process for early termination of deferred or suspended sentences and 46-23-1011 early termination of supervision.

These updates should address the procedural difficulties that came out of the 2017 Legislative session, they are being treated differently by District Judges across the state of Montana which is not fair.

Sheriff Gootkin encouraged the CJOC to approve the suggested updates submitted by the working group.

Peter Ohman stated the main problem was the process, there is a lot of difficulty getting these petitions to and through the court. He feels these amendments clean up the process but believes the CJOC needs to consider the policy behind the original bills. The original policy was the CSG's recommendation. The Sentencing Commission and the Legislatures have acknowledged that if the Justice Re-investment is going to be successful there needs to be a healthy amount of conditional discharges from supervision when based on an appropriate risk and needs assessment. He feels the proposal is appropriate on the process level with the amendments, but is lacking under 46-23-1011, subsection 6 which states the Probation and Parole Officer shall recommend conditional discharge when various measures are met. The proposed language does not have a mandatory trigger for filing the paperwork. It is all left to the prosecutor, the defendant or the defense attorney to file the paperwork at their discretion or when they get to it. He feels the current language has watered down the policy idea behind the Legislation that was passed in 2017.

**Sheriff Canen made the motion** to expand the discussion to include all items presented by the working group and move forward with their proposals. This motion was seconded by Representative Lynch.

Vote:

Annette Carter	Yes
Natalia Bowser	Yes
Reg Michael	Yes
Beth McLaughlin	Abstain
Representative Jimmy Patelis	Yes
Representative Ryan Lynch	Yes
Amy Tenney	Yes
Sheriff Ross Canen	Yes
Melissa Kelly	Yes
Senator Nate McConnel	Yes

**Sheriff Canen put forth the motion** to accept the full package as presented from the working group. This motion was seconded by Natalia Bowser.

Peter Ohman stated the proposed amendments clean up the process but no longer have a mandatory process for moving these conditional discharges from supervision petitions or motions forward through the court process. While sitting on the Sentencing Commission they found that recommendations, even discretionary recommendations, were coming from probation but were not moving forward. The Sentencing Commission came up with the idea of allowing the Probation Officers to file the petitions and make it a mandatory filing for certain pre-conditions so they would get to the court. There is now a

process for these petitions to get to the prosecutor, defendant or defense council to get them. Under the new language there is no trigger forcing the Probation Officer to move it that far and there is no secondary trigger to get it to the judge.

Director Michael summarized that in its current form the recommendation related to the conditional discharge from supervision still does not offer a broad opportunity for the P&P Officer to get those recommendations in front of the court.

Peter replied the Probation Officer can move these recommendations forward, but the current language in 46-23-1011 of the statute states the "Probation Officer *shall* recommend conditional discharge", under the working group amendments, it now states "Based on the risk and needs of each individual as determined by the individual's most recent risk and needs assessment, and the probationer's or parolee's general compliance with the terms governing his or her release, the probationer or the prosecutor *may* file a motion recommending conditional discharge." The *shall* has been replaced with *may*. It does not appear there is any mandatory duty on the part of the Probation Officer to initiate the process.

Director Michael stated from his perspective, it would be desirable to create a process where the Probation and Parole Officers have an opportunity to file the motions, but in its current form we don't have the authorization to do that. Is the County Attorney in each individual jurisdiction going to be willing to file those petitions for early conditional discharge? If the County Attorney does not agree with the discharge, would we not have a vehicle moving forward to terminate the supervision.

Peter replied it allows the defendant to file the petition, or the defense attorney to file. Most of the people in this situation are poor and cannot afford a lawyer. OPD has been trying to help with the filing process for the last few months. This has not been the best process since there have been several issues encountered. We also don't want people who victimized a person getting in touch with the victims. The vehicle does exist, the question is if it is a viable vehicle moving forward.

Director Michael asked if there was any way to fix the working group proposal. Peter responded if the language using *shall recommend conditional discharge when the probationer is in compliance* remained in sub-section 6, he believes it is important that the recommendation is made. Historically the recommendations have been made but still have not made it to the court. He thinks this would help, but is not sure how to make sure they move forward to the court, especially if the prosecutor decides not to file on their own. We could keep the language in sub-section 6, sub a and see what happens. Unless there is some way to guarantee the petitions will get to the judge, he doesn't believe it will fulfill the expectations about getting the numbers up to be consistent with the presentation in Missoula by the CSG. The process will work from a legal perspective but may not bump the numbers up since it will be used as one of the main metrics to measure the success of the Justice Re-investment and the associated cost savings. Representative Jimmy Patelis also commented on the lack of a driver to move the petitions forward.

County Attorney Lambert stated we should take care of the legal problems with the process first. He is willing to work with Peter in the session with regard to language to guarantee the presentation of the motions on the behalf of the defendants. He felt we really need to make sure we have a process that is consistent statewide first. He was certain the Director can put into policy that wherever a probationer or parolee might meet the requirements of 46-23-1011 with regard to early termination of supervision, the DOC assists the probationer with the filing of the motion, which needs to be filed by a party to the action. Otherwise we will not be able to get around the unauthorized practice issue. Right now the working group has agreed these cleanup provisions should be brought forward. He does not believe it is unfair to require the probationer to file the motion and believes the DOC can assist the probationer with regards to

preparation of the documents. The OPD can also help the defendant with regard to preparation of the documents. He asked for a “Yes” vote on Sheriff Canen’s motion.

Kim Lahiff agrees with County Attorney Lambert and Peter Ohman’s comments. She feels the changes are necessary and will help provide some direction for the legal aspect and for everyone involved from county attorney’s offices to judges. She agrees with County Attorney Lambert that the procedure for the Department of Corrections already exists and stated the DOC has already set this as a priority. The one area that is not addressed are the offenders who do not come through the Probation Officer, they do not have the documents with the Probation Officers recommendation. They are trying to navigate the process on their own which is causing confusion for the court. She feels this is a great step forward.

Director Michael agreed with Kim that we cannot stop defendants from filing a motion on their own asking for early termination of supervision.

Motion was restated and followed by a vote.

Vote:

Annette Carter	Yes
Natalia Bowser	Yes
Reg Michael	Yes
Beth McLaughlin	Abstain
Representative Jimmy Patelis	Yes
Representative Ryan Lynch	Yes
Amy Tenney	Yes
Sheriff Ross Canen	Yes
Melissa Kelly	Yes
Senator Nate McConnell	Yes

The motion to move forward with the working group proposed changes was approved.

Director Michael thanked everyone for their participation. He also thanked all of the members of the Working Group for helping the Council get further along the road. He stated the most important piece of this particular issue is *“Are there individuals out there who no longer need to be receiving supervision services by the state of Montana?”* This is a piece we need to work together and move forward in trying to make some of it happen. The reality is there are some people who don’t need to be on supervision for the next twenty-five years of their life, it makes no sense. There are not too many states that are continuing this practice. There are some folks that need to be under some form of supervision or oversight for an extended period of time, but not everyone. If we can move ourselves closer to identifying those who don’t need to be under periods of extended supervision, we will realize the benefits. The focus should be on working together to get the right people identified, the Council is hopeful that is the end result of this piece of legislation.

Director Michael asked if there were any other items the Council would like to discuss. He asked if there were any members of the Council who would be interested in sponsoring the legislation generated by this Council. Representative Lynch stated that he or Senator McConnell should be approached for any legislation representation needed by the Council. Senator McConnell agreed.

**3:00 PM      Adjourn**  
**Meeting adjourned at 3:06 p.m.**