



Criminal Justice Oversight Council

66th Montana Legislature

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Hon. Kurt Krueger	Co. Atty. Marty Lambert	Andy Huff
Sen. Nate McConnell	DOC Dir. Reginald D. Michael	Kelsen Young, MCADSV
Sen. Keith Regier	DOC Dep. Dir. Cynthia Wolken	SK Rossi, ACLU
Rep. Ryan Lynch	Annette Carter, BOPP Chair	Melissa Kelly, Gallatin County Re-Entry
Rep. Barry Usher	Sheriff Ross Canen	Amy Tenney, Boyd Andrew
		Rhonda Lindquist, OPD

November 17, 2020

Minutes

Access to the audio recording of this meeting can be found at: <https://youtu.be/j0TjpZRCE5U>

9:06 - Meeting called to order by Chair Krueger

The Zoom recording uses a timestamp for the time elapsed in the recording. The minutes for this meeting will use this timestamp to help identify the location of the comments in the recording.

002:39 - Roll call taken by Kathy Ralston

004:10 - Chair Krueger introduces Rhonda Lindquist to the council, she replaces Peter Ohman.

004:13 - Chair Krueger asks for a motion to approve the September meeting minutes.

004:36 - County Attorney Lambert moves to approve the meeting minutes as written.

004:38 - Rep. Lynch seconds the motion.

004:48 - Chair Krueger asked if there was discussion on the minutes.

005:05 - With no discussion, Chair Krueger asked if there was any objection to the minutes as written. There were none. The September meeting minutes were approved by acclamation.

005:26 - Director Michael stated that COVID-19 has found its way into our corrections facilities. Both our custodial facilities as well as our community corrections facilities. We were very fortunate that we spent our first six months successfully keeping it out of our facilities. They are now trying to contain the spread of the virus in the facilities. The staff are continually screened upon entry for duty using temperature checks and questionnaires about general health conditions. They have increased cleaning and disinfecting in the facilities and those efforts continue. They have ongoing testing of both staff and offenders, both symptomatic and asymptomatic individuals. They have continued to restrict visitation generally, inmates are allowed to have attorney visits that come onsite, but for most of the legal visits the attorneys have found a different way to get information. Legal visits will continue to be allowed and they will make accommodations to try and do those as safely as possible.

The Clinical Services Division staff are conducting daily rounds and routine checks on both inmates and the staff in our facilities. Director Michael stated they have done nothing less than remarkable and amazing work. They are frontline in our facilities, and they are the front line at the central office to make decisions and try to get equipment and resources to those who are working in the facilities directly with our offender

population. Some of the medical staff in our facilities and the central office have contracted the virus themselves. This is because they're moving to those facilities to try and get resources to individuals in the facilities. They continue to try and educate both the staff and inmate populations on what is going on and how to best contain the virus.

The virus is impacting their staffing levels and they had to send a request for assistance to the Governor's office for the Montana Army National Guard and general Quinn, who is the leader of our state's National Guard system. They have offered some staffing assistance and those soldiers who have come to our Montana State Prison have just been extraordinary. They have military training and understand the mission and get it done but it won't last forever. They will likely finish with their assistance at some point in the very near future.

Overall, it has been a challenge once the virus found its way into the facilities. The information on the numbers is on their website and you can look at that website. The most recent numbers state approximately 748 inmates have been confirmed to have the virus and 148 staff members have been confirmed to have the virus. There were two offender deaths in the facility, some have been a combination of the virus and some severe pre-existing conditions, such as stage four cancer. They are reporting this information to the state public health officials and they are reporting it on the national listing.

The Clinical Services staff are connecting with both the state health authorities and with local health authorities at the county levels. Transportation is still a challenge, they are limiting transportation in and out of the facility, but are trying to do some movement with recommendations and input from the Clinical Services Division team as well as Montana Department of Public Health and Human Services teams in conjunction with local health departments to determine if it would be advisable to move people from severely affected areas over to other areas. All of those conversations include a full host of individuals who are health professionals, providing input to how we should conduct movement.

It has been a challenge being on the front line trying to help keep everyone safe, they are trying to mitigate the spread and trying to help people get healthy again. Their goal is to do as much as they can to limit the amount the virus is spreading throughout the facilities, including the treatment partners and facilities. It has also been in the pre-release facilities on some lower level as well as the probation and parole environments.

The department shares in many challenges related to COVID-19 that are being experienced across the state, and throughout the nation – medical services are under great strain. Medical providers and hospitals have expressed concern about the burden that is occurring within their environments and facilities. Limitations do exist on getting people into hospitals. One thing they have done at Montana State Prison is created a temporary infirmary that will house up to 20 individuals who may be sick and are in need of more specific care. They do have a plan to expand that to another 20 infirmary beds if necessary. Usage has been limited, and they haven't had to fill up the first 20 beds yet. Director Michael has communicated with Dr. Paul Reese who said they are experiencing some success in treating individuals and our levels of virus spread and contamination has been under control. It seems the treatment protocol that the doctors and nurses are using at the facilities are, on some level, minimizing the spread of the virus and assisting people in getting well again. He has spoken with secretaries and Directors of Department of Correction facilities all around this country and everyone is experiencing similar things, some are much worse than we are.

18:49 - Director Michael stated the only thing the Department of Corrections is going to focus on for the legislative action is the situation at the Pine Hills Correctional facility where on statute, it is designated as a youth facility. They don't have a lot of youths in there, less than 20 youths in Pine Hills. Before he arrived as the DOC Director a decision had been made to use the Pine Hills facility for adults as well as youth.

The Legislative Audit Division has done a legislative audit and determined that under the current statute, the facility should only be used to house youths. Their position has been it doesn't make sense to have a facility of that size to house these individuals and they only have a limited number of people there. When he first arrived, they had upwards of 50 youths in the facility. They have found other ways to manage the children of the community without sending them to prisons, he believes it is the right thing to do. This is not just the DOC, it includes the Judges, County Attorneys and legal officials throughout the state of Montana.

One of the things they need to do with Pine Hills is to use it as efficiently and effectively as they can. Steve Ray is the superintendent at the facility, and he's done an amazing job making adjustments and assisting with management of the population. He is doing the appropriate sight and sound separation with the children that are in the facilities, as well as the adults that are being housed over in Pine Hills, but we still have the issue of the legislative restrictions and the legal restrictions saying that we should not have adults there. There is a piece in the statute which allows us to use facilities as efficiently and appropriately as they deem proper and they have done that. They need to clean it up and will try to bring legislation to do this. They did try to address this in the 2017 legislature before he arrived and somehow that proposed piece of legislation was killed and never made it back to the table. They are going to bring it back to the table so they can correct what they are actually doing, they believe it is the right thing to do.

It would only make sense to use Pine Hills as a children's facility if they place more children in it, they currently have 17 boys in there. He strongly recommends against putting another round of children in the facility.

23:27 - Senator Regier asked Director Michael how the military been used, specifically what roles were they given to fill in during this virus.

23:46 - Director Michael responded they have tried to limit the role of the military staff, they were given an orientation and training where they went over who their audience was and let them know the basic parameters of the prison. It was to give them some basic information on the Prison Rape Elimination Act (PREA) and to give them some general information on how to manage a prison population, the dos and don'ts. They talked about how to interact with the inmate populations and how to be successful and safe in a prison environment. The National Guard assisted them with things like food service preparation and food service delivery. They are not giving meals in a cafeteria environment at this time, they are currently serving them in the units. They are also using the National Guard to do laundry assistance and cleaning in the facility as well as assist with the count of the locations that are in the facility. They are trying to separate the Military Staff from their inmate population when they can. They are not in the facility with military weapons or firearms. They are in support of the other activities that are going on and they have been wonderful. General Quinn and the Governor have really helped in addressing a significant staffing need. Those individuals who were allowed to come to the facility were prepared and they did a wonderful job for us, we have been very appreciative of what general Quinn did for us.

27:44 - Senator Regier asked how the inmates who have contracted the virus are being treated medically, are they given some kind of medication and what is being given to the population that doesn't have the virus. Are there some preventive things that can be given to them?

28:08 - Director Michael responded the clinical staff are conducting daily nursing assessments on all inmates that are diagnosed with COVID-19 at their assigned isolation or quarantine housing. In the event of an inmate's diagnosis with COVID-19 and they exhibit those symptoms of illness requiring a higher level of clinical observation or care, the inmate will be moved to a dedicated area at an onsite location or to a medical center that can provide the level of medical care required. Treatment is based on symptoms

and medical evaluations. Offenders with worsening symptoms are provided the necessary medical interventions in the infirmary and those interventions might include the use of oxygen, the use of steroid therapy and Remdesivir is being used on some levels as well. If conditions of an offender who is being treated onsite at MSP worsen and they require a higher level of care, they may be transported to an acute care hospital to get more specific care.

30:07 - Marty Lambert asked what is being done as of right now with the female and males who have been sentenced either to prison or the DOC and are in county jails.

30:19 - Director Michael said they are doing the best they can to move them when they can as they have been advised. The medical professionals are telling them the more you move people around in an infected environment the worse the virus spreads and the worse people's health is challenged. They are trying to do movements when it makes sense. That decision is assisted by recommendations from their clinical services team in conjunction with their dialogue with the state health officials and their local county healthcare officials. They recognize movement does have to occur and they are doing as much as they can. Warden Salmonsens and his team in the transport division at MSP are evaluating movement each and every day. They have transportation meetings on a regular basis, they are not ignoring the need to transport people, but they are trying to do it in an environment where it is thoughtful and healthcare responsible. They will try as best they can to continue to meet the needs of the counties or if they have situations where counties have indicated an extreme emergency, they will consider that emergency and talk to the medical professionals in both Clinical Services people in the DOC and DPHHS people. They will also talk to the county health officials where the individual is. Today, they are not moving people around as normal. This is not normal life and they are going to treat it that way until they have a better handle on what is happening here.

32:41 - Mr. Lambert asks if it is a group decision or an individual decision and can he be more specific with regard to how the decisions are being made by the DOC.

32:52 - Director Michael replied it is a group decision. They try to look at who needs to be moved and they have a transport team that will reach out to the Clinical Services staff when they get information from counties. They will talk about what is going on in that area and what the county health officials think about what is happening in that area. They will talk to the individuals at the State Department of Health Care (DPHHS) and they will make a recommendation to the transport staff and the warden who will make the determination of whether it is appropriate or not to move people in that particular area to any other facility, whether it is Montana State Prison, Montana Women's Prison or to one of the treatment facilities. It depends on what is going on where they are and where they might be charted to go.

34:21 - Chair Krueger states they received answers to requests that were made at previous meetings. Megan Coy is not on the agenda, but she is in the meeting. He asked Ms. Coy to comment on the documents provided yesterday.

34:53 - Ms. Coy states members of the CJOC received three documents yesterday. The first is titled DOC Commit Placement Clarification table. At the last meeting a pie chart was provided and there was some confusion about the colors associated with the pie chart. This document provides that information in a table format so that it is more easily readable. It shows where offenders went for the population presented previously, where offenders went from assessment sanction centers.

The second document received was related to conditional release pre-authorizations. There were some questions about the pre-authorization process and how many offenders were approved or denied for placement following that pre-authorization request from an assessment sanction center. They looked at all

the pre-authorizations processed between August of 2019 and August of 2020 and they had processed 147 conditional release pre-authorization requests for offenders who were convicted of sexual or violent offenses. That is a request from an assessment center based on: evaluations and assessments; the courts recommendations, orders; sentencing limitations; requirements of an offender's victim input; the offender's criminal history and their placement history. The assessment center makes that recommendation which then goes to the DOC Management and ultimately to the Director of the Department of Corrections for review to make sure the plan is solid and appropriate for that offender.

Of the 147 requests, 20 of them were denied due to one or more of the following reasons:

- There were a number of offenders who had simultaneous disciplinary issues. Their placement was terminated from that assessment center because of those disciplinary issues and a pre-authorization had been submitted, so it was denied at that point.
- An offender refused their placement. A request for additional information about the case was requested, so that initial request was denied with a request for more information from the assessment center, which was then provided in a subsequent pre-authorization request.
- Other denial reasons included:
 - Severity of the offense
 - Strong victim opposition
 - If the offender had a significant criminal or placement history
 - History of non-compliance and placements are on supervision
 - Behavior in the jail prior to their placement at the assessment center.

The third document provided was a Word document for a specific question related to the average length of stay for offenders in the assessment sanction centers. The information provided was compiled by their IT Division for the biennial report. It includes the length of stay as well as the average daily population, the offender cost per day for each of the facilities under DOC, and whether they are a DOC facility or a DOC contracted facility.

39:31 – Chair Krueger asks for clarification regarding all program's average daily populations for adult Probation and Parole. It says the average length of probation or parole is only 379 days, is that a correct figure?

40:05 – Ms. Coy responds she believes the number is correct. This document has been reviewed internally by both their IT staff as well as their Probation and Parole Division staff. She would have to defer any questions about P&P to the Probation and Parole staff or the Deputy Director.

40:32 – Chair Krueger states he sentences people weekly and very rarely gives a one-year sentence. The sentences range from three to twenty years and many times those are suspended. He asked how they can have an average probation time period of just about a year and asked Deputy Director Wolken to comment.

41:06 – Deputy Director Wolken responds she would have to look at it a little bit more or would have to defer to Ms. Coy.

41:16 – Ms. Coy asks if it would be possible to have Kevin Olson talk about the information.

41:33 – Mr. Olson states it has been a while since he looked at the document and asks for 10 minutes to review the document and so he can provide an answer.

41:44 - Chair Krueger agrees and states the average length of stay in the Montana prison is showing 345 days, which is less than a year and the average probation is 379 days.

43:17 - Director Michael states the average stay could simply be the time they are under supervision, it may not have a direct correlation to the sentence or the order. They do a lot of violations and they need to get better at that. It may be that individuals are found in violation and their term of supervision is cut short because they decided to do something else with that case.

43:48 - Chair Krueger states if an offender is given a ten-year sentence, five years DOC and a five-year suspended sentence, that is what it is supposed to be. That determination is based on the crime and what they think is the necessity of supervision, technically that person would be under supervision for ten years. It can be a lesser time depending on how well they do after they have served their incarceration, but a one-year supervision is really a remarkable figure in light of how the sentences are given. The longer sentences that judges put those people on is for a reason, in terms of why they should be on supervision, a one-year average is as a very low period of time for supervision.

45:01 - Director Michael states it may be the issue where they were unsuccessful at supervision and were returned to a custodial environment. They looked at some of these, a few of the things Ms. Coy talked about were conditional releases and pre-authorization, but a lot of them are returning citizens for their second and third time around, and these cases do get dragged out. It may be because they are unsuccessful during that first year or so and the P&P officers have to take other interventions. Those interventions would likely have included return to some custodial environment or return to some treatment environment. He was not saying they cut them off because they are successful in life, they are doing a lot of these cutoffs because they are unsuccessful, and they put them to a higher level of security.

46:17 - Chair Krueger states he truly appreciates what was just said, but that figure shows the average person's stay in prison is less than a year at 345 days. The average stay in the actual prison itself is less than a year and the average person on probation is approximately a year. He does not see how they can have both of those numbers.

47:45 - Amy Tenney states the numbers are low for Elkhorn and Nexus when compared to their data. She is wondering if the spreadsheet includes the 90-day beds they recently put in, or the PPD hold beds which could have been three to five days. Is that potentially skewing the length of stay data for Elkhorn?

48:12- Ms. Coy responds it absolutely could. This information comes right out of OMIS in terms of the length of stay, because OMIS does not currently have a mechanism to show those different populations, that is why the Elkhorn numbers are showing that way.

48:55 - Chair Krueger states they will move to the Council draft report.

49:10 - Representative Lynch states the draft reports are the same that were presented back in September. A summary of the Council's activities highlighting everything they had talked about. The report can be updated if there is action after this meeting on what they want to put forward to the upcoming legislative session. He didn't see any feedback from anyone, but did update some language within the risk and needs speaking to the correct validation of the data that is in there. There was the addition of the pre-trial program to ensure they capture that data as well. He would highlight those two areas, the other issue they had talked about was the movement of the Council from the DOC administrative support to Legislative Services. That is the question for discussion, do people want to do that? It can be done in as a recommendation of the Council. Other than that, it is really a summary of activities. They need to make

sure they get data, it is a timely conversation based upon the conversation they just finished about data and making sure they have accurate definitions and they are all on the same page.

51:19 - Chair Krueger states it is his understanding this is the report that Rep. Lynch will be presenting to the legislature together with the recommendation this committee be staffed by Legislative Services.

51:49 - Marty Lambert asked Rep. Lynch about the very last paragraph that talks about the pre-trial program. Is it possible to specifically put in the data that needs to be gathered with regard to domestic violence cases? It is a great concern to law enforcement and county attorneys that individual specific data regarding the offender and that offender's history with the victim in cases of partner and family member assault, stalking and violation of order of protection. That is very important information which goes to the most serious situation that a court could consider when considering release in these situations. He is fine with the general language and understands the legislature is going to consider that and the judiciary wants the legislature to consider that. If it's possible to put something in the report specifically about domestic violence cases, he and the county attorneys would appreciate that.

53:08 - Rep. Lynch states the report is from the committee, he is authoring it but does not have any ownership over it. He agrees it is important to highlight that, especially as we do have folks in that community who can speak more eloquently about that.

53:46 - Rhonda Lindquist asks Mr. Lambert when he brings up the information for domestic violence, who is going to collect that information? Where does that come in and does it become part of the system, who is responsible to keep that information accurate.

54:12 - Mr. Lambert states in Gallatin County, court services is going to compile that information. That is one of the issues with regard to how these public safety assessments are put together, these pre-trial assessments that are contemplated by this program. In Gallatin County they have court services to provide information to the judges at initial appearance with regards to the history of that offender. He did not know how it will take place elsewhere, but it needs to happen. In domestic violence cases that is very important information that the court needs when making the initial bail determinations.

55:03 - Ms. Lindquist states she agrees with Mr. Lambert, it is very important information. She wants to make sure the language put in ensures everyone has the same expectation and are gathering information the same way, so when they get a number there is not a caveat of this and that and 16 other things you have to take into consideration, this is her concern.

55:32 - Mr. Lambert agrees with Ms. Lindquist and states that is the system they have now regarding the initial bail determination predominantly, as the case goes along both the defense and the state have the opportunity to supplement that information by way of motion and ask the court to reconsider any bail determination in any condition that goes along with that.

56:11 - Ms. Lindquist states she understands where Mr. Lambert is coming from, they are talking about the justice system as a whole. OPD is interested in bringing the pieces together so they are all sharing this information. They find isolated pieces of information come in and then decisions are made on that when maybe it is not the same over the whole system. They are very concerned with COVID and PMFA, dependent neglect cases and those types of things.

57:09 - Chair Krueger asks if there was a motion to approve the Criminal Justice Oversight Council report and the transfer of the staffing to Legislative Council.

57:22 - Deputy Directory Wolken makes the motion.

57:29 - Senator Regier seconds the motion.

57:34 - Chair Krueger asked if there was any further discussion. There was none. He asks for all those in favor of approving the Criminal Justice Oversight Council report together with a recommendation that this Council be further staffed by Legislative Council, say aye. Chair Krueger asked if there was any opposition, there was none.

58:26 - Chair Krueger states the motion passed with all in favor and none opposed. The Criminal Justice Oversight Council report will be presented to the legislature in the next year, this committee will be staffed by Legislative Council.

58:44 - Chair Krueger announces the Council will take a 15 minute break at this time and reconvene at 10:15 to continue with the agenda.

59:18 - Chair Krueger reconvenes the meeting and asks Mr. Olson if he had an opportunity to look through the data on Ms. Coy's report.

59:36 - Mr. Olson states 393 is the number used to calculate the average cost of supervision per day per offender. It is not the length of the sentence and it is not the length of total time on supervision. There are 393 working days in an 18 month period. They went back 18 months and had 10,598 defenders on average on supervision and then they use the wage analysis of an average pay of a probation and parole officer, that is where they come up with the \$6.29 a day. It has nothing to do with the sentence or duration of supervision, that 10,598 encompasses all correctional statuses including probation, parole and DOC commits. It is simply a number to use to calculate cost.

01:00:38 - Chair Krueger asks as they move to the upper columns where it says Male State Prison, does the same thing apply to all of the other facilities underneath it? Is that just determining a specific year?

01:00:59 - Mr. Olsen believes it is encompassing a time frame to calculate cost.

01:01:42 - Chair Krueger states the next item on the agenda is the proposed legislation. He requested a DOC Commitment sentence outcome where the Department of Corrections shall inform the court after 30 or 40 days if they do not follow the recommendation of the court in terms of placement. This is in relation to the judges who make recommendations as to the placement of individuals. If it is silent, they are automatically placed at the prison but if they make a recommendation for a specific treatment facility, it is a recommendation. As they have seen throughout this year, it is up to the DOC whether they follow that recommendation. This is a proposed piece of legislation that says they are not changing anything other than if they don't follow the judge's recommendation, they have 40 days to inform the court why they didn't follow the recommendation. Also, in this piece of legislation, the DOC is to collect and analyze data in relation to offenders for the next biennium. They are supposed to provide the legislature and this committee with the data. They are also to provide data in relation to new crimes that are committed by offenders under their supervision, and whether there are re-offenses. He is requesting this committee ask one of the legislators to sponsor this type of legislation.

01:04:04 - Chair Krueger asks if there is a motion to approve the DOC Commit sentence outcome.

01:04:20 - Mr. Lambert makes the motion to approve the DOC Commit sentence outcome.

01:04:31 - Senator Regier seconds the motion.

01:04:41 - Chair Krueger asks the Criminal Justice Oversight Council to approve this resolution, he believes it is a necessary piece of legislation so the judges can find out whether their recommendations are followed. With COVID they have 588 community treatment beds open, out of those there are 187 treatment beds, 141 pre-release beds today and 260 assessment sanction beds. If a judge sentences a person to treatment, in a previous meeting they found in the second Judicial District, they are only following those recommendations 29% of the time. This is saying they have to notify the court of why they are not following that recommendation and provide statistics in relation to it. He would hope that the Council would pass this, it would give them some other means to be able to track that data and find out where they are going to have placement of individuals.

01:06:29 - Ms. Lindquist asked with COVID and not being able to move folks, is this playing into the empty beds? Are we talking about 2019 or 2018? Right now it would certainly seem that would have an effect.

01:07:04 - Chair Krueger explains this has been an ongoing issue even pre-COVID. As they went through the statistics during this past year, they have seen underutilization of treatment beds. They are not changing the DOC Commit, they are saying that the DOC will have to notify the judge that they didn't follow the recommendations and outline the reason why. They will also need to provide statistics.

01:08:14 - Deputy Director Wolken states she felt the recommendation is fine, it is a good idea. Ms. Coy, Mr. Olson and their staff would like to share the reasons why people weren't able to be placed at the recommended facility. She was wondering if they could parse out the whereas clauses. She believes some of the whereas clauses make conclusions that are not completely representative of why some of these beds have gone unused. Medicaid expansion, the expansion of community-based treatment services and the expansion of drug treatment courts for felony offenders have been contributing factors to population fluctuations in the treatment facilities. Could they pass the recommendation as is without those conclusions at the beginning?

01:09:28 - Chair Krueger states the whereas would not be part of the legislation. What they are voting on is the substance of what they are asking the legislature to do. He has no objection, that would be up to the legislature for this to occur, this is a draft. Underutilization of beds is the general principle, but he has no objection to the outcome of the legislation.

01:10:42 - Rep. Usher states he was not sure if he was going to vote on this or not. He has a bill draft in that may completely repeal the DOC Commit. Just informing the judge does nothing for accountability. He believes that his constituents have said that they elect judges to do the conviction and sentencing and not bureaucrats in the Department of Corrections. If the judge gives a sentence and the DOC comes back with a different recommendation to change that sentence, they have to request that change from the judge and have an order. That's the way 49 other states do it and he believes that is the way Montana should do it.

01:12:11 - Mr. Lambert suggests they eliminate the preposition to honor on line 33 of page two, that is subjective. You want them to do what you have ordered them to do, which is what happens with every other party that appears in front of you. Unless that order is modified or reversed on appeal, when you give an order it is to be followed. The other thing would be on page three about line 41 or 42 of section three, do you have a timeline? There is no timeline suggested there, how far back do you want them to start looking at new offenses committed by probationers? Mr. Lambert thinks that is an important element that they should know and the public should know.

01:13:39 - Chair Krueger asks if Mr. Lambert would like to make a substitute motion that would be somewhat similar to what representative Usher had just discussed. It would read support legislation that requires the Department of Corrections to follow placement recommendations made in district court orders and sentences for any offender convicted of a felony. And if they don't follow the recommendations, they are to explain why. He stated he did not have a specific time frame in relation to section three. He is open to having it start from the beginning of 2020 or even go back into 2019. He did not think they should go back much further than that time period because it could be an overwhelming aspect. He does think it should be at least the beginning of 2020, but he is open for modifications if Mr. Lambert would like to make a substitute motion.

01:15:08 Mr. Lambert makes a substitute motion to approve the recommended legislation from the Oversight Council as follows: Same as in the draft except 33 and 34 now read support legislation that requires the Department of Corrections to follow placement recommendations made in district court orders and sentences for any offenders convicted of a felony offense.

01:15:41 - Annette Carter asks if they recommend somebody to attend a pre-release center and they are denied by all centers, what happens in that that type of situation with the placement request? They have community based screening committees, how will this get handled?

01:16:07 - Chair Krueger asks if there is a second to Mr. Lambert's motion.

01:16:22 - Rep. Usher seconds the motion.

01:16:25 - Chair Krueger states the motion to amend has been moved and seconded.

01:16:35 - Chair Krueger states with the amended motion, if you support legislation that would follow the recommendations of the district court orders. If they ordered a person through a pre-release facility and they were not accepted in any pre-release facilities, that would be the second portion. They could say they were unable to follow that order because no pre-release facility was able to take that offender and that would be accomplished under this proposed legislation.

01:17:16 - Senator Regier asks a question on semantics. He heard an amendment discussed and heard a substitute motion. He believes Mr. Lambert moved a substitute motion so that did away with the original one, and his motion is to accept the document striking "honor" and "and" out. Is he correct on that?

01:17:43 - Senator Regier confirms it is not an amendment that they are talking about, it is a substitute motion.

01:18:13 - Chair Krueger calls for the question of all those in favor to adopt the substitute motion regarding the DOC Commit sentence outcome as presented to say yes.

01:18:42 - Chair Krueger asks for a roll call.

01:18:52 - Ms. Ralston performs a roll call.

Chair Krueger - Yes

Representative Usher - Yes

Representative Lynch - Yes

Senator Regier - Yes

Senator McConnell - Yes

County Attorney Marty Lambert - Yes
Sherriff Ross Canen - Yes
Director Reginald Michael - No
Deputy Director Cynthia Wolken - Yes
Annette Farley - Yes
Andrew Huff - No
Rhonda Lindquist - Yes
SK Rossi - No
Kelson Young - No
Amy Tenney - Yes
Melissa Kelly - Yes

01:21:45 - Ms. Ralston announces they have 12 with a yes vote and four with a no vote.

01:21:51- Chair Krueger announces the substitute motion for the DOC commitment sentence outcome has passed the Criminal Justice Oversight Committee.

01:22:07 - The next item on the agenda is the discussion of the next meeting date. As the Chair, he would like the Council to discuss when they would like to meet again. With no discussion raised, Chair Krueger asks if anyone objects to the idea of waiting until after the legislative session at which time he will send out a notice of a proposed meeting. He does not think they have a need to meet during the legislature, but also give the new administration time to implement how they intend to establish the Department of Corrections. They will probably meet next May or June.

01:23:49 - Chair Krueger states with no discussion, the next meeting will occur after the legislature.

01:24:18 - Rep. Usher states after the session, the new Speaker will probably reappoint the same representatives, the same with the Senate President, he is not sure whether it is going to be the same people or not. He was trying to figure out if the current law that created this Council was based on position or appointments of people by the Governor or Legislature? He noted in the beginning of the meeting Chair Krueger mentioned Rhonda Lindquist replaced Peter Ohman because she took his job.

01:25:19 - Chair Krueger explains the new member of the committee is Ms. Lindquist, she represents the Office of Public Defenders, Peter Omen had become a District Court Judge. It was the organization that had the position and the Governor appointed Ms. Lindquist to the committee. The statute provides how the speaker appoints Legislators, the Chief Justice appoints the District Court Judge and the others are also statutorily outlined on how they are appointed.

01:26:18 - Rep. Usher states his understanding is SK Rossi is going to be a regular lobbyist for some organizations instead of representing the ACLU. Would that be the same case for her since she was appointed as an advocate organization.

01:26:31 - SK Rossi explains that was a civil rights advocate position, it was not specific to the ACLU. They are planning to stay on the committee as a civil rights advocate.

01:26:46 - Rep. Usher states he was asking the judge to clarify that.

01:27:02 - Chair Krueger states the continuation of this Council will be brought up with the next legislative session. He was not familiar with the situation and would follow the statutes on this situation.

01:27:26 - Chair Krueger states if there is no further discussion of the next meeting, they would to move into public comment.

01:27:44 - Nanette Gilbertson representing the Montana County Attorney's Association and the Montana Sheriffs and Peace Officers Association. She thinks the continuation of the Criminal Justice Oversight Council is critically important. This interim they had a late start, but they dove into some important issues. They missed some of the things that are critical for this Council to evaluate, one of those is the investment part of justice reinvestment. She does not believe we have sufficiently tracked the funding in the state of what was initially invested in order to put into place the policies that were passed and what has been reinvested. Where are the savings that were anticipated? How much is the state saving and how have those savings been reinvested in the policies and programs in order to move justice reinvestment forward? This is something this Council should continue to ask and get information on that investment reinvestment monetary question.

01:29:28 - Ms. Gilbertson stated the Council members received documents last night, the public did not receive them and they were not posted on the website.

01:30:46 - Laurie Little Dog is concerned with the situation in the secure facilities and the presentation provided by the Director of the Department of Corrections. There is a rampant number of COVID positive people that are not being given treatment. They have noticed the DOC has stopped giving readily available tests to inmates and they are required to submit their signature on a waiver that would hold the DOC not responsible for medical malpractice. The CDC has given numbers for every person that is infected, it usually spreads to 8 or 9 additional people. We have 142 staff with COVID at Montana State Prison and only 346 inmates, the numbers don't add up and are being grossly underrepresented. They challenge the DOC is in contact with local county officials for reporting such numbers, they have gotten information from the local public health officers that are in conflict with that statement. They want to see the Department of Corrections system wide including the contract facilities have more transparency with their numbers of record reporting what is happening. People are not being seen daily by the medical staff, even if they have symptoms. She believes the medical staff is working all the time, but they are not taking temperature checks daily. The staff at the prisons are only having inmates fill out a questionnaire and take a temperature check. They have talked with medical professionals out of the Billings hospital and they were saying only 10% of the COVID people have a significant fever so that's not really a good indicator.

01:33:20 - Ms. Little Dog calls attention to the fact that they had given an email with information from CDC studies to Ms. Hiner and Ms. Winner. Mr. Michaels has spoken about the fact that you can't just wait for people to show symptoms in order to expect to control the spread of the virus in the system. We have a lot of death happening, she is going on record saying that at least four of five deaths were COVID related. She is not sure why there were only two deaths reported. They want to make sure there is a demand from the public on the record that they want bodies to be sent to Billings to the state medical examiner's office for autopsies.

People are being traumatized and tragically denied religious accommodations in the facilities, specifically the locked housing and the intake units. The Martz diagnostic intake unit is denied all religious practice, this is illegal. They have it on record they are actively denying persons of this stating there is a security risk. It is not acceptable for Native Americans to be denied these religious accommodations. Many tribes have a three day window when a person is crossing back to the ancestors to perform certain prayers and religious practices. That is being denied by the Department of Corrections, they need that looked at, there are people that are being told their parents or children have died, and they are being prohibited from making those prayers.

01:35:17 - Ms. Little Dog explains they reach the creator through the burning of sage. They have been told they can purchase those botanicals through the shop, but the activities coordinator has access to those items free of purchase and they should not be trying to make a buck off the religious botanicals that are needed for this purpose, especially when someone is grieving.

01:35:41 - Ms. Little Dog states there is a situation where we have a lot of people that were granted parole from the Board of Pardons and Parole, however they are still in prison, this is not acceptable. They need the IPPO, P&P, DOC and the BOPP to work together to make adequate adjustments so we can move bodies out of the facilities, there is a backlog and a gridlock. The executive order that Governor Bullock gave should be enough to supersede some of these legislative excuses that the DOC, BOPP, IPPOs and P&P are using to keep people in rather than let them go to safe places such as with direct family members. If not, rehab or stay with family until the rehabs are open.

01:36:41 - Ms. Little Dog states there was a voter suppression that took place on election day. The majority of reentry people across the state were denied access to voting. Megan Coy sent out a memo through Cynthia Wolken and the Governor's office that all reentry facilities were to allow people who wanted to vote be allowed to vote. That memo was dated October 27 and according to the elections officials absentee voting was closed on October 26. It has been reported to the Secretary of State's office as has the census fraud by the DOC not allowing persons to access the census directly. This has also been reported through federal complaints to the Inspector General's office naming MSP officials along with accomplices.

01:37:42 - Ms. Little Dog states they received word yesterday that video visits are now being denied. They want to send Christmas cards and packages, this is an ongoing saga. There is a history and a pattern that the Montana State Prison has internal prison security called IPS. Every New Year's Eve, year after year for a very long time there is a sick ritual that happens where IPS hand selects a list of inmates to physically assault on New Year's Eve. They are not tolerating this ever again, she highly suggests that the Department of Corrections and the prison authorities put down that practice forever, they are watching and the incoming administration is watching, they better not have cell extractions that result in beating up inmates.

01:39:13 - Carol Ahenakew is a behavioral health clinical therapist. She has a son that is incarcerated in the Billings pre-release. They had five deaths in the family in October, two grandmothers and grandfathers, then her sisters' brother and his cousin. It was back to back to back to back. Every time she had to call and give him the bad news she asked if he could get some sort of behavioral health service or a therapist to talk with him. She does not know if he received those services for behavioral health. She did ask if he was able to get services for behavioral health after his cousin's death. They had private funerals every week and her son thought he could catch his last grandmother's funeral, so he walked out of the pre-release, she called the police. Her husband has cancer as well, he was also in hospital. They didn't know what direction that was going to go as well but he is at home now recuperating from COVID, so this was so much for her son.

She is wondering about all the inmates that need the service, there is so much that goes on in the pre-releases and prisons. To have COVID hit these Indian communities is really affecting them mentally. She does not believe her son ever received the requested services, he said he didn't. She is concerned about others that are being affected by multiple deaths that are happening in these communities with their Indian families. Her son is in jail right now and she still wants him to receive that service.

01:44:40 - Josh Butterfly with Opening Doors in Great Falls. They assist individuals after a term of incarceration to get back on their feet by providing resources in the communities. They operate out of

their own pocket with the money they have leftover from their jobs. They help assist with transportation, food, etc. to help make the inmates transition easier.

He has experience from the past pandemic with H1N1 when he was in Shelby prison, it was the same nightmare. The numbers are not correct about the number of people that are infected. Back at that time the Department of Corrections along with other entities developed a plan to receive funding if another outbreak happens within a prison regarding a virus. Part of that plan was to reduce the prison population to those within a time frame of their discharge or parole and those who are actually paroled. There have been people that have been on parole or have received their parole, and it was denied because they claim there were behavior issues within the disciplinary proceedings. One of the cultures within the institutions is when you get a parole the guards put them on the shortlist and want to get them to where they can write them up to prevent the inmates from getting out. This has been happening, similar to the beatings, every New Year and is something that needs to be addressed. How the department is not handling business and they are hiding the truth from the public. They always send the documents to these meetings a day prior so nobody can have a chance to really examine them and to ask questions and they always defer questions to other departments within the in the Department of Corrections, that is not transparency.

Mr. Butterfly talks about addressing the corruption within the department. They try to help people when they get out, but they have found a barrier within the Department of Corrections when they have intake. They do go over the judgment of the judges that provided them with the recommendations and they stack on additional groups. They stop them at the Board of Pardons since they are incomplete on their programming, but that was not part of the judge's recommendation. That is one of the issues they have been trying to address, to get them to follow the judge's orders instead of superseding their orders and making their own decisions on how that inmate will receive treatment. There are limited treatment resources within the institution right now, a lot of individuals are pending release upon completion of group. There are places and people out there that want to help them get better who are focused on rehabilitation and helping them get back into the community in a smooth transition. They can be a part of that process but people are being sent back for minor ruin in fractions who can be diverted to a treatment center or a community placement that would help them because these people have fallen. Recently inmates can receive the stimulus payment to help combat the Coronavirus, but the deadline is on the 21st of November and they have to file online which will not be provided. Those resources to help them with hygiene, washing their hands and other essential things are being withheld by the prison staff. This information was provided to them through emails. They want to work on trying to help them have a successful life working a job and fulfilling their court recommendations, becoming productive members of society. When the pandemic first started, they could have released inmates from the prison to community settings who were already approved and they did not.

Mr. Butterfly states there is a need to look into a lot of the funding sources when they brought up the transparency on funding sources. One of the places to be looked at is the IWF account which is money generated from the families and the inmates work that they do at the DOC and throughout the departments within the prison. Some of these funds are utilized for some of the administrative meetings they have and some of the parties. This can be utilized for reentry and helping people get back out on the streets so they can fulfill those recommendations that the judges set forth in their judgment. There needs to be a lot more transparency and the Department of Corrections, the Director needs to clean this up before the next administration gets in.

01:53:27 - May Simmons wishes Director Michael and Ms. Wolken happy trails on their next endeavors as the new Governor comes in. She asks why they are letting the National Guard go when MWP is so short staffed that there are one or two floor officers and lockdowns are constant. There are no National Guard staff at the women's prison, just the men's prison. There is something wrong with the numbers reported and Shelby is saying there is no staff COVID positive cases. She knows that is not true, the guys

tell her that they are shifting in officers from other states. She states the news media was horrified when she read one of the death certificates on how a deceased person was treated. Ms. Simmons stated d this is a direct email quote from someone who was quarantined. Intake in the women's prison rarely saw medical they had to take their own Ibuprofen and their lungs were not regularly checked.

Ms. Simmons states Greg Gianforte has said he has documented cases of mismanagement. There is a case of housing in Butte where a PO told an offender she was denied housing and they said "I don't care if you live in your car". This girl is probably COVID positive and is living in her car. She was not given access to emergency housing, why?

Ms. Simmons states her advocacy mail is being denied at MSP, that is a violation of my HRB rights and her ability to function as an advocate, not only to this committee, but to the Law and Justice committee.

There are hundreds of victims out there that have never been made whole. Ms. Ambrose thinks once they are discharged from the facility, they are out of the DOC's responsibility. They have never been offered treatment. She was with a gal Saturday night who's a PREA victim when Ms. Simmons mentioned the officers name she broke down on the floor and started crying. They know about her and have offered her zero and that's not right, we need to fix that. She should have been in treatment when she testified in front of Rep. Lynch in 2017, she has never been offered the opportunity for treatment or any kind of counseling. She is still traumatized.

01:59:32 - Clemente Arciga expresses he shares Ms. Little Dog, Ms. Simmons and Mr. Butterfly's concerns. He did like what Rep. Usher stated about the judgment. He had a discussion P&P officer saying he wanted to be treated according to his judgment and they don't follow that. What are they doing to help him down the right path? If he is struggling where can he go? When he can't find housing, what are you doing to help him. He wants to succeed, many of them strive for it daily, but they need help. He understands he messed up, but he has served his time.

He asked if anyone follows up on these comments. Does anyone even listen? He has not received one call from anyone. He did receive a couple emails after the last Law and Justice committee meeting. His biggest question is what are they doing to help him and others like him.

02:03:43 - Lita Pappion is a Senior Organizer with Indian People's Action. She has personal experience with having a family member in prison and it was a nightmare. It was a sentence that impacted both her grandchildren and herself. They didn't break the law, he did. She did not know why they had to pay the support for him as he laid in jail and they were out working to take care of him. He should be working to fix something instead of just sitting there. She agrees with everything that Ms. Simmons, Ms. Little Dog, Mr. Butterfly and Clemente expressed. They have all had personal experience.

She had a couple of suggestions, before releasing the National Guard they could have them build temporary hospitals at the prisons since COVID has blown up out of control. The second would be to have guards, police officers and maybe even judges sit in jail for a week or two as part of their training to determine what they are punishing people to. They are sentencing murderers and shoplifters with the same punishment, that seems outrageous. It is just insane to give the same punishment to people for such a wide variety of crimes.

She stated Slaughters transport is playing a huge role in spreading COVID, that's got to stop. They keep shifting people here and there and claiming it's a security reason when 90% of these people aren't dangerous, they are not in there for dangerous crimes. She understands the need for security but in some cases it is getting a little ridiculous. She worked with the pre-release in Billings for a long time and heard

horror stories about what goes on. There is a charge of \$400 a month for a bed with three other women that they don't know, and everything is limited on what they can do. They can't have any control of their money or have any control over their lives and are steadily told what they need to do. There needs to be more training for the staff, there is a lot of pettiness going on.

There needs to be an independent agency that reviews grievances from people in the prisons, not the prison reviewing them.

She is very concerned about COVID. She knows of people who have been paroled and not let loose.

02:06:58 - Chair Krueger thanks everyone for their comments and states they have reached the time for adjournment. He thanks every member of the Council for their participation over the past year and the DOC. He asked if anyone else on the Council had anything before they had a motion to adjourn. With no further discussion Chair Krueger asks if there was a motion to adjourn.

02:07:43 - Mr. Lambert makes the motion to adjourn.

02:07:48 - Deputy Director Wolken seconds the motion.

02:07:53 - Chair Krueger asks if anyone was opposed to adjournment. With no opposition the meeting was adjourned.