



August 2022

Law and Justice Interim Committee

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DRAFT STUDY SUMMARY FOR THE 68TH MONTANA
LEGISLATURE

HOUSE JOINT RESOLUTION 40 STUDY SUMMARY, 2021-2022



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This summary of the work of the Law and Justice Interim Committee on the 2021-2022 House Joint Resolution No. 40 (HJ 40), requested by the 2021 Legislature, is an effort to highlight key information and public testimony received by the committee and the processes it followed in reaching any conclusions. To review additional information, including audio minutes and meeting exhibits, visit the 2021-2022 Law and Justice Interim Committee website:
<https://leg.mt.gov/committees/interim/past-interim-committees/2021-2022/2021ljic/>

BACKGROUND

The Montana Constitution provides for the removal and discipline of judges and justices. It also required the Legislature to create a Judicial Standards Commission (JSC) to receive and investigate complaints about judges. The Montana Legislature enacted Title 3, chapter 1, part 11, MCA, which creates a commission and provides for its operation. Prior to the creation of the JSC, impeachment was the only method to remove a judge or justice from office.

The 2021 Legislature considered several bills related to the removal and discipline of judges and requested an interim study of the history, structure, and methods of the JSC. That resolution – House Joint Resolution No. 40 (HJ 40) sponsored by Rep. Bill Mercer – also requested that the Legislative Audit Committee (LAC) prioritize a performance audit of the Judicial Standards Commission.

The 2021-2022 Legislative Council assigned HJ 40 to the Law and Justice Interim Committee (LJIC) along with four other interim study resolutions and a study bill.

ABOUT THE JUDICIAL STANDARDS COMMISSION

The JSC is a five-member body that receives and investigates complaints about judges. Any Montana citizen may file a written complaint with the JSC. The JSC may investigate to determine if there are grounds to conduct additional proceedings and may make discipline recommendations to the Montana Supreme Court, if necessary. If the commissioners vote to send a disciplinary recommendation to the Montana Supreme Court, the Supreme Court has several options:

- Retire any justice or judge for disability that seriously interferes with the performance of the duties of the justice or judge; or
- Censure, suspend, or remove any justice or judge for willful misconduct in office, willful and persistent failure to perform the duties of the justice or judge, violation of the canons of judicial ethics, or habitual intemperance.

The Judicial Standards Commission is composed of two district court judges who are elected by other district court judges, one attorney appointed by the Supreme Court, and two public members appointed by the Governor.

The commission is composed of two district court judges who are elected by other district court judges, one attorney appointed by the Supreme Court, and two public members appointed by the Governor. All members must be confirmed by the Montana Senate.

While most JSC proceedings are confidential, certain public disclosure requirements do apply when the JSC or Supreme Court conducts a hearing on a recommendation of the commission or when the involved judge waives confidentiality. In addition, to help monitor the effectiveness and efficiency of the commission, statute authorizes the Legislative Auditor to audit the commission and grants the auditor access to confidential materials. The JSC also submits a report to the Legislature every other year with

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information related to complaints it has received and any disposition of the complaint. The most recent report is from January 2021 and is available on the HJ 40 study web page.

STUDY PROCESS

When selecting priorities for its interim work, the LJIC adopted a moderate level of involvement with HJ 40. That level of involvement included staff research and at least one panel or roundtable discussion to review the structure and history of the commission, including the panelists' views on current commission operations and ideas for changes. The committee also received a staff paper on the JSC.

The LJIC started the HJ 40 study in September 2021 at its second meeting. Chief Justice Mike McGrath of the Montana Supreme Court and the JSC's current presiding officer, Judge Mike Menahan of the 1st Judicial District Court in Lewis and Clark and Broadwater Counties, both spoke to the LJIC about the role of the JSC and the Supreme Court in disciplining judges and justices. They also took questions from committee members.

In May 2022, the LJIC convened a second panel to learn more about how other states handle judicial discipline and to learn about possible constitutional or statutory changes to the Montana system.

The LJIC also took public testimony on the JSC and the study topics.

STUDY OUTCOMES

The Law and Justice Interim Committee did not request further information or presentations after May 2022. It also did not request legislation related to the study. The LAC did not prioritize the performance audit of the JSC. [DRAFT LANGUAGE MAY CHANGE AFTER THE AUGUST 29 MEETING.]

STUDY MATERIALS

- HJ 40 study web page: <https://leg.mt.gov/committees/interim/ljic/studies-topics/hj40-judicial-standards-commission/>
- Staff Paper: Background on the Judicial Standards Commission: <https://leg.mt.gov/content/Committees/Interim/2021-2022/Law-and-Justice/Studies/HJ-40/hj40-jsc-background-ljic-may-2022.pdf>
- September 2021 panel discussion video: <https://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20210914/-1/43803?startposition=20210914083626&viewMode=3&globalStreamId=4>
- May 2022 panel discussion video: <http://sg001-harmony.sliq.net/00309/Harmony/en/PowerBrowser/PowerBrowserV2/20220516/-1/43810?startposition=20220509133613&viewMode=3&globalStreamId=4>
- HJ 40 text: <https://leg.mt.gov/bills/2021/billhtml/HJ0040.htm>

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APPENDIX A: LAW AND JUSTICE INTERIM COMMITTEE MEMBERS

Before the close of each legislative session, the House and Senate leadership appoint lawmakers to interim committees. The members of the Law and Justice Interim Committee, like most other interim committees, serve one 20-month term. Members who are reelected to the Legislature, subject to overall term limits and if appointed, may serve again on an interim committee. This information is included in order to comply with 2-15-155, MCA.

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