



November 2022

Law and Justice Interim Committee

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**STUDY SUMMARY FOR THE 68<sup>TH</sup> 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 1<sup>st</sup> 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. Committee members did direct staff to compile a table of complaints received by the JSC back to 2000 along with the disposition of the complaints. That table is available online and in Appendix B of this summary.

In addition, in late August 2022, the Legislative Audit Committee ranked a performance audit of the JSC fourth in its priority list for Fiscal Year 2023 audits. Information related to that process will be available in a future interim depending on how long the audit process takes.

## 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.

### Senate Members

**Senator John Esp**

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\*Appointed in August 2021 to replace Sen. Bryce Bennett

### House Members

**Representative Laurie Bishop**

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**APPENDIX B: NUMBER OF COMPLAINTS FILED WITH THE  
JUDICIAL STANDARDS COMMISSION SINCE 2000**

Appendix B: Number of Complaints Filed with the JSC Since 2000

Calendar Year	Total Complaints Filed	Dismissed	Closed-Variou s Reasons	Disciplinary Action Taken	Link to Report
2001	34	30	3 (including 1 after judge voluntarily resigned)	1 admonition	<a href="#">2003 Report to Legislature</a>
2002	43	40	2 (1 with advisory letter issued)	1 (another complaint resulted in formal charges but was closed when the officer resigned)	<a href="#">2003 Report to Legislature</a> <a href="#">2005 Report to Legislature</a>
2003	41	37	1 after judge resigned	3 letters of caution	<a href="#">2005 Report to Legislature</a>
2004	36	36	0	0	<a href="#">2005 Report to Legislature</a> <a href="#">2007 Report to Legislature</a>
2005	54	52	1 advisory letter issued	1 public reprimand	<a href="#">2007 Report to Legislature</a>
2006	31	28	0	2 letters of admonition; 1 private reprimand	<a href="#">2007 Report to Legislature</a> <a href="#">2009 Report to Legislature</a>
2007	47	43	1 with advisory letter	2 letters of admonition; 1 permanently removed from office	<a href="#">2009 Report to Legislature</a> <a href="#">2011 Report to Legislature</a>
2008	54	43	2	9	<a href="#">2009 Report to Legislature</a> <a href="#">2011 Report to Legislature</a>
2009	59	52	2 (including 1 after judge voluntarily resigned)	3 letters of admonition; 2 private reprimands	<a href="#">2011 Report to Legislature</a>
2010	66	55	2 after judges voluntarily resigned	1 letter of admonition; 8 private reprimands	<a href="#">2011 Report to Legislature</a> <a href="#">2013 Report to Legislature</a>
2011	78	66	3 (including 1 after judge voluntarily resigned)	4 letters of admonition; 5 private reprimands	<a href="#">2013 Report to Legislature</a>
2012	70	64	3 after judges voluntarily resigned	3 private reprimands	<a href="#">2013 Report to Legislature</a> <a href="#">2015 Report to Legislature</a>
2013	70	59	2 (including 1 after judge voluntarily resigned)	8 complaints resulted in public reprimand for 1 judge; 1 letter of admonition	<a href="#">2015 Report to Legislature</a>
2014	60	58	1 dismissed at end of judge's term; 1 voluntarily resigned	0	<a href="#">2015 Report to Legislature</a> <a href="#">2017 Report to Legislature</a>
2015	68	67	0	1 letter to judge to expedite ruling in case	<a href="#">2017 Report to Legislature</a>
2016*	61	57	2	1 letter of direction to judge; 1 private reprimand	<a href="#">2017 Report to Legislature</a> <a href="#">2019 Report to Legislature</a>
2017	46	44	0	2 letters of admonition	<a href="#">2019 Report to Legislature</a>
2018	60	58	0	2 dismissed with letters of caution	<a href="#">2019 Report to Legislature</a> <a href="#">2021 Report to Legislature</a>



2019**	51	44	1 judge retired	4 resulted in 30-day suspension for same judge; 1 stipulation for public reprimand; 1 letter of admonition	<a href="#">2021 Report to Legislature</a>
2020***	42	36	1 judge retired in 2020; 1 judge retired as result of 2019 report	0	<a href="#">2021 Report to Legislature</a>

\*One complaint number was used 3 times (16-022) because one complainant filed complaints against 3 different judges.

\*\* This row uses the total complaints and resolutions listed in the JSC report's table. One complaint number (19-041) was used twice because the complainant filed against 2 judges.

\*\*\* 4 pending complaints at end of 2020 calendar year

Research and data checking assistance provided by Bethany McDowell James, Legislative Services Division  
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