



LAW AND JUSTICE INTERIM COMMITTEE

67th Montana Legislature

SENATE MEMBERS

John Esp
Jen Gross
Ryan Lynch
Tom McGillvray
Keith Regier
Susan Webber

HOUSE MEMBERS

Laurie Bishop
Frank Fleming
Donavon Hawk
Emma Kerr-Carpenter
Amy Regier
Barry Usher

COMMITTEE STAFF

Rachel Weiss - Research Analyst
Julianne Burkhardt - Attorney
Daniel Collins - Secretary

MINUTES LOG

September 14, 2021
Capitol Room 102 and Video Conference
Helena, Montana

Please note: This document is a Minutes Log and provides annotation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video recording of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of the meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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MEMBERS PRESENT:

Sen. John Esp, Acting Presiding Officer (R)
Sen. Ryan Lynch (D)
Sen. Tom McGillvray (R)
Sen. Keith Regier (R)
Sen. Susan Webber (D)
Rep. Laurie Bishop (D)
Rep. Frank Fleming (R)
Rep. Emma Kerr-Carpenter (D)
Rep. Amy Regier (R)
Rep. Barry Usher (R)

MEMBERS EXCUSED:

Sen. Jen Gross (D)
Rep. Donavon Hawk (D)

STAFF PRESENT:

Rachel Weiss, Research Analyst
Julianne Burkhardt, Attorney
Daniel Collins, Secretary

AGENDA [\(Attachment 1\)](#)

NO VISITORS' LIST

COMMITTEE ACTION

The committee:

- Revised and adopted a work plan for the 2021-2022 interim; and
- Amended the committee's rules and procedures to address ballot issue review timelines.

CALL TO ORDER/ROLL CALL

08:33:32 Sen. Esp called the meeting to order at 8:33 AM. The committee secretary took roll. Sen. Gross was excused and left her proxy with Rep. Kerr-Carpenter [\(Attachment 3\)](#). Rep. Hawk was excused and left his proxy with Rep. Kerr-Carpenter. [\(Attachment 4\)](#).

INTRODUCTION OF NEW MEMBER AND STAFF

08:34:44 Sen. Webber.

08:35:17 Ms. Weiss introduced Daniel Collins, the new Law and Justice Interim Committee Secretary, and Milly Allen, the new Legislative Office of Research and Policy Analysis Research Analyst.

HJ 40 STUDY OF JUDICIAL STANDARDS COMMISSION

08:36:50 Chief Justice Mike McGrath, Montana Supreme Court

08:47:46 District Court Judge Mike Menahan, 1st Judicial District [\(Exhibit 1\)](#)

Questions from the committee

09:02:12 Sen. Regier asked about the ratio of judges to lawyers on the Judicial Standards Commission.

09:02:49 Sen. Regier asked about a complaint against a judge regarding partisan politics. (see Exhibit 1)

09:04:38 Sen. Regier asked if a judge can contribute financial resources towards a candidate.

09:05:45 Sen. Regier asked about the public opinion regarding the amount of dismissals.

09:07:03 Sen. Regier asked Judge Menahan about recusing himself in the event of a complaint against the Judiciary Standards Commission.

09:07:43 Sen. Regier asked about the replacement if Judge Menahan did recuse himself.

09:08:53 Sen. Regier asked Justice McGrath his opinion on House Bill 380.

09:10:09 Sen. Regier asked Justice McGrath about a judicial poll conducted on HB 380.

09:10:24 Sen. Regier asked Justice McGrath if the Code of Judicial Conduct is in law.

09:11:13 Sen. Regier asked Justice McGrath who sets the code.

09:11:52 Sen. Regier asked Justice McGrath how conflicts of interest are handled, and if its ever happened.

09:13:20 Sen McGillvray asked Judge Menahan about a judge being reprimanded for emailing his political feelings.

09:17:46 Sen. McGillvray asked Judge Menahan about the appropriateness of certain comments in emails by judges.

09:21:11 Sen. McGillvray asked Justice McGrath why judges can comment differently in an email as opposed to in person.

09:24:56 Rep. Bishop asked Sen. Esp if the discussion and questions were still focused on HJ 40, and asked Justice McGrath to address the appropriateness of one branch codifying the code of conduct for a different branch as it relates to the separation of powers.

09:28:05 Sen. Esp asked about the last amendment made to the Code of Judicial Conduct.

09:29:05 Rep. Usher asked Justice McGrath about his statements in a public email referencing HB 685.

09:31:20 Rep. Usher asked Justice McGrath about his opinion regarding citizens' roles in electing judges as compared to citizens' having a say regarding judges' actions.

09:35:23 Rep. Usher asked Justice McGrath what happens with a dispute between branches of government.

09:38:03 Rep. Kerr-Carpenter asked Judge Menahan if there is a culture of repeated reprimands in judges.

09:40:20 Sen. Regier asked Judge Menahan about the confidentiality provisions. **(Exhibit 2)**

09:41:39 Sen. Esp asked if records of complaints are retained and the disposition of the complaints.

09:42:20 Sen. Esp asked Justice McGrath about court records being kept confidential from the public.

09:44:36 Sen. Esp responded to Justice McGrath, mentioning the Supreme Court suspending its rules regarding access to public records in a previous year.

09:46:28 Sen. Esp asked about the validity regarding public records of the Judicial Standards Commission not getting released until the case is over.

Public comment on the agenda item

09:48:34 May Simmons, Polson

09:52:01 Bart Crabtree, Montana State Council on Judicial Accountability **(Exhibit 3)**

09:55:12 Camille Fischer, self **(Exhibit 4)**

09:52:36 Clemente Arciga, Welcome Back Missoula

09:55:35 Bruce Spencer, State Bar of Montana

09:59:29 Pascal Redfern, self

10:02:14 Judge Menahan spoke about judges being charged criminally.

10:02:44 Judge McGrath stated that judges are not immune from criminal law.

AGENCY OVERSIGHT

10:04:18 Steven Hurd, Chairman of the Board of Pardons and Parole

10:11:35 Jimmy Patelis, Board of Pardons and Parole

10:22:36 Mr. Hurd remarked on the transition of the parole board. Mr. Hurd remarked on reviews that have come in from several agencies.

Questions from the committee

10:25:35 Sen. McGillvray asked Mr. Patelis if the parole board is responsible where parolees go.

10:28:11 Sen. McGillvray asked about the sober living institutions.
10:31:54 Sen. McGillvray asked about a hearing schedule.
10:32:12 Rep. Bishop asked about the data available to the board.
10:36:21 Rep. Bishop asked what kind of data is used for decision making.
10:39:51 Sen. Webber asked Mr. Hurd about the number of meetings the board holds.
10:43:18 Sen. Webber asked Mr. Hurd if the board visits the women's prison.
10:44:22 Sen. Webber asked Mr. Hurd how women's parole hearings are scheduled.
10:46:02 Rep. Kerr-Carpenter asked Mr. Hurd and Mr. Patelis about accreditations for sober living homes.
10:47:58 Sen. Webber asked about the number of Native Americans on the parole board.

Public comment on the agenda item

10:49:10 May Simmons, Polson
10:52:46 Kathleen Stewart, self

BREAK

COMMITTEE ISSUE: UPDATE ON SB 39 FROM 2021 SESSION

11:05:15 Ms. Weiss ([Exhibit 5](#))
11:08:19 Quinlan O'Connor, Chief Legal Counsel, Department of Labor and Industry, introduced himself and discussed SB 39 and its implementation.

Questions from the committee

11:10:30 Sen. Regier commented on the Department of Labor and Industry staff and reviewed why SB 39 was introduced last year. (See Exhibit 5)

Public comment on the agenda item

None

COMMITTEE ISSUE: UPDATE ON HB 91 FROM 2021 SESSION

11:13:50 Ms. Weiss provided an overview on HB 91. ([Exhibit 6](#))
11:15:03 Alan Doane, Montana Department of Justice, commented briefly on HB 91 and touched on DOJ's readiness for implementation. (See Exhibit 6)
11:15:53 Bryan Lockerby, Administrator for the Division of Criminal Investigation, introduced Suzanne Anders, Supervisor.
11:16:21 Ms. Anders updated the committee on the implementation of HB 91.

Questions from the committee

11:19:37 Rep. Kerr-Carpenter asked how many hours it will take to perform ongoing maintenance for the database.

Public comment on the agenda item

None

ADMINISTRATIVE RULE REVIEW

11:22:27 Ms. Burkhardt provided an overview on the rules adopted since the previous meeting in June. ([Exhibit 7](#))

Questions from the committee

None

Public comment on the agenda item

None

ELECTION OF OFFICERS

11:24:27 Sen. Regier moved to nominate Sen. Esp as presiding officer of the 2021-2022 Law and Justice Interim Committee.

11:24:48 Sen. Lynch moved to nominate Rep. Kerr-Carpenter as presiding officer of the 2021-2022 Law and Justice Interim Committee.

11:25:15 Vote on Sen. Regier's motion.

Vote:

11:25:15 Motion failed on a 6 - 6 roll call vote.

11:26:47 Vote on Sen. Lynch's motion.

Vote:

11:26:47 Motion failed on a 6 - 6 roll call vote.

11:29:06 Sen. McGillvray commented about the priority level of HJ40.

LUNCH

12:48:25 Sen. Esp called committee to order, briefed the committee on a hearing regarding the Office of the Public Defender being held in contempt of court, and distributed an article. ([Exhibit 8](#)) ([Exhibit 9](#))

COMMITTEE REVIEW OF PROPOSED BALLOT INITIATIVES

12:50:21 Ms. Burkhardt provided an overview on changes made to the ballot initiative process. ([Exhibit 10](#)) ([Exhibit 11](#))

13:00:13 Rep. Usher moved to amend the committee rules.

13:00:42 Sen. Regier asked about a deadline for ballot issues.

13:02:12 Rep. Bishop and Sen. Esp discussed clarification regarding the language.

Vote:

13:05:13 Motion carried on a 11 - 1 by voice vote, with Rep. Bishop voting no.

Public comment on the agenda item

None

HJ 31 STUDY OF CRIMINAL JUSTICE DATA

13:06:25 Quinn Holzer, Legislative Fiscal Division (LFD), the fiscal division's data work.

13:09:34 Nick VanBrown, LFD, discussed how the LFD is starting to process data.

Questions from the committee

13:16:33 Rep. Kerr-Carpenter discussed difficulties in understanding the funding and outcomes of certain programs.

13:18:00 Sen. Lynch discussed previous discussions on criminal justice data.

13:19:42 Mr. VanBrown responded to Sen. Lynch's and Sen. Kerr-Carpenter's statements.

13:21:13 Sen. Esp responded to Mr. VanBrown's statement.

13:22:24 Sen. McGillvray asked if the Financial Modernization and Risk Analysis (MARA) measures the likelihood of losing federal funds and how that affects the budget.

13:25:12 Sen. Esp asked Rep. Bishop and Sen. Regier of any requests of the fiscal division for any types of information.

13:25:37 Rep. Bishop discussed her thoughts on the topic.

13:28:35 Mr. Holzer concluding statements.

Public comment on the agenda item

13:29:42 Nanette Gilbertson, Montana Sheriffs and Peace Officers Association and Montana County Attorney's Association.

ADMINISTRATIVE MATTERS

13:32:18 Ms. Weiss provided a detailed overview of the work plan scheduling. [\(Exhibit 12\)](#) [\(Exhibit 13\)](#) [\(Exhibit 14\)](#) [\(Exhibit 15\)](#) [\(Exhibit 16\)](#)

13:39:53 Sen. Esp asked Ms. Weiss for clarification regarding the work plan.

Questions from the committee

13:42:40 Rep. Kerr-Carpenter discussed the work plan.

13:43:21 Rep. Bishop concurred with Rep. Kerr-Carpenter.

13:44:19 Rep. Usher commented on the HJ 31 data study.

13:45:18 Ms. Weiss commented on the work matrix.

13:46:20 Sen. Webber concurred with Rep. Kerr-Carpenter.

13:47:28 Sen. Regier commented on the work plan time frame and concurred with Rep. Usher.

13:48:00 Sen. Esp commented on needing data before making policy decisions.

Public comment on the agenda item

None

PUBLIC COMMENT ON ANY TOPIC WITHIN THE LJIC'S JURISDICTION BUT NOT ON THIS AGENDA

13:50:00 Marsha Enochs, self [\(Exhibit 17\)](#)

13:55:51 May Simmons, Polson

13:59:36 Andy Hudak, Montana Sex Offender Treatment Association

14:03:02 Erin McGowan, Community Corrections Association [\(Exhibit 18\)](#)

14:05:47 Kathy Stewart, self

BREAK

WORK SESSION

14:18:20 Rep. Kerr-Carpenter moved to invite several parties to the committee to save staff time.

Vote:

14:19:14 Motion carried unanimously by voice vote.

14:19:27 Ms. Weiss summarized the work plan and the topics on the October agenda.
(See Exhibit 12) (See Exhibit 13)
14:30:11 Sen. Lynch moved to send a revised letter to the Legislative Council about SJ
26. (See Exhibit 16)

Vote:

14:30:23 Motion carried unanimously by voice vote.
14:30:37 Sen. Esp asked about a document reflecting work plan.
14:31:23 Sen. Esp asked about setting a date for June 2022.
14:32:46 Committee discussed the June date.
14:33:55 Sen. McGillvray moved to adopt work plan as amended.

Vote:

14:34:12 Motion carried unanimously by voice vote.
14:35:28 Sen. Esp asked Ms. Burkhardt if she will get the executive director's report on
ballots.
14:36:43 Rep. Usher asked about meeting complications.
14:38:11 Sen. Esp asked about the Interim Review of Ballot Issues memo. (See Exhibit
10)

ADJOURNMENT

Adjournment: 14:39:33