

# Agency Oversight: Review of Advisory Councils and Required Reports

## *Decision Brief*

Prepared by Rachel Weiss  
for the Law and Justice Interim Committee  
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### Background

As part of its agency oversight work, the Law and Justice Interim Committee (LJIC) must review advisory councils and required reports that are created by law and assigned to agencies under the LJIC's jurisdiction. The LJIC is required to make recommendations to the next Legislature on whether the advisory councils (or commissions) and required reports should be retained or eliminated.<sup>1</sup>

In its work plan, the LJIC adopted a "moderate" level of involvement for this task. As a result, members will receive:

- a copy of each required report as it becomes available;
- a presentation from the affected agency, if possible; and
- additional information about the report, if requested.

In addition, members requested a brief written summary of the councils under its oversight. This paper is intended to fulfill that request and to provide the LJIC with background on the councils and reports so that it can make recommendations.

The following tables list each report and advisory council. Included in the tables are columns for members to note if they want to request more information on the report or if they wish to recommend that the report or council be eliminated from statute.

### Recommendation Process

If the committee recommends that a report or council be eliminated, members should request a committee bill draft for consideration by the next Legislature to remove the requirement from statute.

If the committee recommends that the report or council be retained, it should include the recommendation in its final report to the Legislative Council. To accomplish this end, the committee could consider a broad motion that encompasses all reports and councils that it recommends be retained in statute instead of making a separate motion for each council and report. No bill drafts are necessary (or even practical) because the committee is not requesting any changes to existing statutes.

The LJIC may defer decisions on these reports until a later meeting.

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<sup>1</sup>Section 5-5-215(1)(d), MCA.

Required Reports (last updated 11/14/13)

| Agency and Report                                   | Statute   | Summary   | LJIC Recommendation or Request Information |
|---|-----------|---|--|
| <b>Department of Justice</b>                        |           |   |  |
| Domestic Violence Fatality Review Commission report | 2-15-2017 | The commission shall report its findings and recommendations in writing to the LJIC, the attorney general, the governor, and the chief justice of the Montana supreme court prior to each regular legislative session.  |  |
| <b>Board of Crime Control</b>                       |           |   |  |
| Status of Restorative Justice Grant Program         | 2-15-2013 | The board shall report annually to the LJIC regarding the status and performance of the restorative justice grant programs.<br>(Also: The board shall produce a biennial report summarizing the grants provided, how the grant money was spent, and the program data and information reported by grant recipients.) |  |

| Agency and Report   | Statute   | Summary  | LJIC Recommendation or Request Information |
|---|-----------|--|--|
| <b>Department of Corrections</b>                          |           |  |  |
| Multiagency Reentry Task Force                            | 46-23-902 | Before July 1 of each even-numbered year, the task force shall report to the LJIC regarding the development, implementation, and effectiveness of reentry programs.  |  |
| Compliance inspections of private correctional facilities | 53-30-604 | The department shall present a biennial report of compliance inspections (of private correctional facilities) to the legislature.<br>[see 8/21/13 letter to LAD that is included in this packet]   |  |
| <b>Board of Pardons and Parole</b>                        |           |  |  |
| Governor's report on executive clemency <sup>2</sup>      | 46-23-316 | The governor shall report to the legislature each case of remission of fine or forfeiture, respite, commutation, or pardon granted since the previous report, stating the name of the convict, the crime of which the convict was convicted, the sentence and its date, the date of remission, commutation, pardon, or respite, with the reason for granting the same, and the objection, if any, of any of the members of the board made to the action. |  |

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<sup>2</sup> Although this report is made by the governor not the board, it is included in this section because of the subject matter relevance. Typically, the report has been made just prior to or at the start of a legislative session. The most recent report was included in a briefing paper on the board that the LJIC received for the September 2013 meeting.

| Agency and Report                             | Statute  | Summary  | LJIC Recommendation or Request Information |
|---|----------|--|--|
| <b>Office of the State Public Defender</b>    |          |  |  |
| Biennial report                               | 47-1-105 | The commission shall submit a biennial report to the governor, the supreme court, and the legislature. The report must cover certain topics outlined in the statute.   |  |
| <b>Judicial Branch</b>                        |          |  |  |
| Judicial Information Technology Status Report | 3-1-702  | The court administrator shall report annually to the LJIC on the status of development and procurement of information technology within the judicial branch, including any changes in the judicial branch information technology strategic plan and any problems encountered in deploying appropriate information technology within the judicial branch. |  |

Advisory Councils or Commissions

| <b>Council or Commission</b>   | <b>Statute</b> | <b>Membership</b>                                      | <b>Legislative Member(s)?</b> | <b>Number of Required Meetings</b> | <b>LJIC Recommendation or Request Information</b> |
|--|----------------|--|-------------------------------|------------------------------------|---|
| <b>Department of Justice</b>   |                |  |                               |                                    |   |
| Domestic Violence Fatality Review Commission                             | 2-15-2017      | 18 maximum   | Yes                           | as necessary                       |   |
| Gaming Advisory Council  | 2-15-2021      | 9  | Yes                           | as necessary                       |   |
| Criminal Intelligence Information Advisory Council                       | 44-5-501       | 6  | Yes                           | at least annually                  |   |
| <b>Board of Crime Control</b>  |                |  |                               |                                    |   |
| Advisory Council on Concealed Weapons Permit Issues (to advise governor) | 45-8-329       | interested persons appointed by governor (currently 6) | not specified                 | not specified                      |   |
| <b>Judicial Branch</b>   |                |  |                               |                                    |   |
| District Court Council   | 3-1-1602       | 9  | No                            | at least quarterly                 |   |

**2-15-2017. Domestic violence fatality review commission -- confidentiality of meetings and records -- criminal liability for unauthorized disclosure -- report to legislature.** (1) There is a domestic violence fatality review commission in the department of justice.

(2) The commission shall:

(a) examine the trends and patterns of domestic violence-related fatalities in Montana;

(b) educate the public, service providers, and policymakers about domestic violence fatalities and strategies for intervention and prevention; and

(c) recommend policies, practices, and services that may encourage collaboration and reduce fatalities due to domestic violence.

(3) The members of the commission, not to exceed 18, are appointed by the attorney general from among the following disciplines:

(a) representatives from state departments that are involved in issues of domestic abuse;

(b) representatives of private organizations that are involved in issues of domestic abuse;

(c) medical and mental health care providers who are involved in issues of domestic abuse;

(d) representatives from law enforcement, the judiciary, and the state bar of Montana;

(e) representatives of Montana Indian tribes;

(f) other concerned citizens; and

(g) a member of the legislature who serves on either the house judiciary committee or the senate judiciary committee.

(4) The members shall serve without compensation by the commission but are entitled to be reimbursed for travel expenses as provided for in 2-18-501 through 2-18-503, and members who are full-time salaried officers or employees of this state or of any political subdivision of this state are entitled to their regular compensation. The provisions of 2-15-122 do not apply to the commission.

(5) The commission shall review closed domestic homicide cases selected by the attorney general to provide the commission with the best opportunity to fulfill its duties under this section.

(6) Upon written request from the commission, a person who possesses information or records that are necessary and relevant to a domestic violence fatality review shall, as soon as practicable, provide the commission with the information and records. A person who provides information or records upon request of the commission is not criminally or civilly liable for providing information or records in compliance with this section.

(7) The meetings and proceedings of the commission are confidential and are exempt from the provisions of Title 2, chapter 3.

(8) The records of the commission are confidential and are exempt from the provisions of Title 2, chapter 6. The records are not subject to subpoena, discovery, or introduction into evidence in a civil or criminal action unless the records are reviewed by

a district court judge and ordered to be provided to the person seeking access. The commission shall disclose conclusions and recommendations upon request but may not disclose information, records, or data that are otherwise confidential. The commission may not use the information, records, or data for purposes other than those designated by subsections (2)(a) and (2)(c).

(9) The commission may require any person appearing before it to sign a confidentiality agreement created by the commission in order to maintain the confidentiality of the proceedings. In addition, the commission may enter into agreements with nonprofit organizations and private agencies to obtain otherwise confidential information.

(10) A member of the commission who knowingly uses information obtained pursuant to subsection (6) for a purpose not authorized in subsection (2) or who discloses information in violation of subsection (8) is subject to a civil penalty of not more than \$500.

(11) The commission shall report its findings and recommendations in writing to the law and justice interim committee, the attorney general, the governor, and the chief justice of the Montana supreme court prior to each regular legislative session. The report must be made available to the public through the office of the attorney general. The commission may issue data or other information periodically, in addition to the biennial report.

**2-15-2021. Gaming advisory council -- allocation -- composition -- compensation -- biennial report.** (1) There is a gaming advisory council.

(2) The gaming advisory council is allocated to the department for administrative purposes only as prescribed in 2-15-121.

(3) The gaming advisory council consists of nine members. One member must be from the senate, and one member must be from the house of representatives. The senate committee on committees and the speaker of the house of representatives shall appoint the legislative members of the council. The seven remaining members must be appointed by the department, with one representing the public at large, two representing local governments, one being a Native American, and three representing the gaming industry.

(4) Each gaming advisory council member is appointed to a 3-year term of office. A member of the council may be removed for good cause by the appointing body provided for in subsection (3).

(5) The gaming advisory council shall appoint a presiding officer from its members.

(6) Members of the gaming advisory council are entitled to travel, meals, and lodging expenses as provided for in 2-18-501 through 2-18-503. A member who is not a full-time salaried officer or employee of the state or of a political subdivision of the state is also entitled to be paid \$25 for each day during which the member is actually and necessarily engaged in the performance of council duties. Expenses of the council must be paid from licensing fees received by the department.

(7) The gaming advisory council shall, within its authorized budget, hold meetings and incur expenses as it considers necessary to study all aspects of gambling

in the state.

(8) (a) The gaming advisory council shall submit a biennial report to the department, at a time designated by the department, with recommendations for amendments to the gambling statutes, the need for additional or modified department rules, the clarification of existing rules, and other recommendations on the operation of the department or any other gambling-related matter.

(b) The biennial report required under subsection (8)(a) must be affixed to the report on gambling in the state that the department submits that year.

(c) The council may submit interim reports to the department as the council considers necessary.

(d) The council shall meet with the department upon request of the department.

(e) The department shall meet with the council upon request of the council.

(9) The department shall give each council member notice and a copy of each proposed change in administrative rules relating to gambling. The notice and copy must be given at the time a notice of proposed rules changes is filed with the secretary of state. The council shall review the proposal, may comment on it, and may attend any hearing on the proposal. The department shall consider any comment by any council member or by the council as a whole prior to adopting the proposed change.

**44-5-501. Creation of criminal intelligence information section -- advisory council.** (1) The department of justice may create a criminal intelligence information section.

(2) (a) If a section is created under subsection (1), the attorney general shall establish a criminal intelligence information advisory council in accordance with 2-15-122, consisting of one representative from the Montana chiefs of police association, one representative from the Montana sheriffs and peace officers association, one representative from the Montana county attorneys association, one member of the department of justice, a member of the judiciary committee of either the house of representatives or the senate, and a citizen at large.

(b) The representatives from the Montana chiefs of police association and the Montana sheriffs and peace officers association must be sworn officers of a participating agency.

(c) The department of justice member may not be an employee of the department involved in criminal intelligence or criminal investigation work.

(d) Members of the advisory council serve at the pleasure of the attorney general.

(e) The department shall provide staff and support services for the advisory council.

**45-8-329. Concealed weapon permits from other states recognized -- advisory council.** (1) A concealed weapon permit from another state is valid in this state if:

(a) the person issued the permit has the permit in the person's immediate possession;



(b) the person bearing the permit is also in possession of an official photo identification of the person, whether on the permit or on other identification; and

(c) the state that issued the permit requires a criminal records background check of permit applicants prior to issuance of a permit.

(2) The attorney general shall develop and maintain a list of states from which permits are recognized under this section for the use by law enforcement agencies in this state.

(3) A determination or declaration of a Montana government entity, official, or employee is not necessary to the existence and exercise of the privilege granted by this section.

(4) The governor shall establish a council, composed of interested persons, including law enforcement personnel and gun owners, to advise the governor on and pursue concealed weapon permit issues.

**3-1-1602. District court council -- appointment -- composition -- duties -- staggered terms -- staff.** (1) There is a district court council. The council must be composed of nine members as follows:

(a) the chief justice of the supreme court or a designee of the chief justice;

(b) four district court judges elected by district court judges, one of whom must be from a judicial district that does not contain a first-class city as provided in 7-1-4111; and

(c) the following ex officio, nonvoting members appointed by the supreme court:

(i) one chief juvenile probation officer nominated by the Montana juvenile probation officers association;

(ii) one clerk of the district court nominated by the Montana association of clerks of district courts;

(iii) one county commissioner nominated by the Montana association of counties; and

(iv) one court reporter nominated by the Montana court reporters association.

(2) The chief justice or the chief justice's designee shall serve as the presiding officer of the council and shall appoint a vice presiding officer to act in the absence of the presiding officer.

(3) The district court council shall develop and adopt policies and procedures, subject to review by the supreme court, to administer the state funding of district courts. The policies and procedures must address but not be limited to the following issues related to district courts:

(a) workload;

(b) resource allocation among the district courts;

(c) hiring policies;

(d) court procedures;

(e) information technology;

(f) for court reporters, work schedules, transcript fees, and equipment; and

(g) other issues regarding the state funding of district courts.

(4) Each district court judge shall retain the inherent power to select and appoint the judge's own necessary assistants and employees and to direct the performance of

their duties.

(5) The chief justice of the supreme court shall serve on the council during the term of election or appointment. Other members shall serve staggered 3-year terms.

(6) The court administrator shall provide sufficient support to the council to allow it to carry out its statutory duties.

(7) The council shall provide reports to the legislature and supreme court upon request.

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