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Law and Justice Interim Committee 63rd Montana Legislature

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SCOTT SALES

HOUSE MEMBERS

MARGARET (MARGIE) MACDONALD--
JENNY ECK
ELLIE BOLDMAN HILL
SARAH LASZLOFFY
STEVE LAVIN
DENNIS LENZ

COMMITTEE STAFF

RACHEL WEISS, Lead Staff
JULIANNE BURKHARDT, Staff Attorney
DAWN FIELD, Secretary

MINUTES LOG

December 5, 2013
Room 102, State Capitol
Helena, Montana

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. To the left of each section in these minutes is a time designation indicating the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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Hard copies of the exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.

COMMITTEE MEMBERS PRESENT

REP. MARGARET (MARGIE) MACDONALD, Chair (via polycom phone)
SEN. TERRY MURPHY, Vice Chair
SEN. SCOTT BOULANGER
SEN. LARRY JENT
SEN. SCOTT SALES
REP. SARAH LASZLOFFY
REP. STEVE LAVIN

COMMITTEE MEMBERS EXCUSED/ABSENT

SEN. SHANNON AUGARE
SEN. ROBYN DRISCOLL
REP. JENNY ECK
REP. ELLIE BOLDMAN HILL
REP. DENNIS LENZ

STAFF PRESENT

RACHEL WEISS, Lead Staff
JULIANNE BURKHARDT, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

Agenda, Attachment #1.
Visitors' list, Attachment #2.

COMMITTEE ACTION

The Law and Justice Interim Committee did not take any formal action at this meeting.

CALL TO ORDER AND ROLL CALL

00:00:01 SEN. MURPHY called the Law and Justice Interim Committee (LJIC) to order at 8:10 a.m. The Secretary took roll, REP. MACDONALD was present via polycom, Sen. Augare, Sen. Driscoll, Rep. Eck, Rep. Hill, and Rep. Lenz were excused (Attachment 3).

AGENCY OVERSIGHT - Administrative Rule Review and Required Reports

00:01:50 **Julianne Burkhardt, Staff Attorney, Legislative Services Division (LSD)**, discussed administrative rule activity for the Department of Justice (EXHIBIT 1).

00:02:16 **Rachel Weiss, Research Analyst, LSD**, reviewed a decision brief: *Agency Oversight: Review of Advisory Councils and Required Reports* (EXHIBIT 2), which included a table summarizing all statutorily required councils and reports.

00:05:01 Ms. Weiss noted that the Department of Corrections submitted a report on its private prisons (EXHIBIT 3) to the Legislative Audit Division, as required in 53-30-604(4), MCA.

Public Comment

00:05:20 There was no public comment.

Committee Questions

00:05:30 There were no committee questions.

SJ 3 STUDY: Staff Update on Information Requests from September Meeting

Administrative rule authority of Board of Pardons and Parole (BOPP)

00:05:59 Ms. Burkhardt reviewed an July 12, 2012, staff memo, Rules of Board of Pardons and Parole, as prepared by David Niss, former LSD staff attorney (EXHIBIT 4). She said it is up to the LJIC on how it wishes to proceed on this issue.

Court case review/legal background

00:08:10 Ms. Burkhardt referred to the LJIC's discussion at the last meeting regarding the parole review process prior to 1989, and explained how the wording of 46-23-201, MCA, created a liberty interest. She said that the wording has been changed and that the liberty interest no longer exists, however, within current statutes governing the parole process and in administrative rules, hearings are still held and written decisions are still issued.

00:10:30 Ms. Burkhardt reviewed details of two court cases as part of her discussion of BOPP authority: *West v. Mahoney* (May 2001) and *McDermott v. MacDonald* (May 2001). She said that the BOPP does have the authority to consider information beyond what was considered by the sentencing court in deciding parole requests, and that the LJIC should be aware of that in its discussions.

Montana quasi-judicial board structure

00:15:31 Ms. Weiss said, as requested at the previous meeting, she prepared a staff report on the composition and structure of Montana's quasi-judicial boards, and their requirements (EXHIBIT 5). She reviewed the report.

00:20:08 Ms. Weiss discussed another staff report prepared on parole board structures in other states (EXHIBIT 6) and specifically the tables on pages 6 and 7.

Public Comment

00:27:14 **Patti Jacques, Helena**, commented on her concerns that the BOPP is allowed to look at other factors, such as dropped charges before conviction. She discussed other concerns as well, including BOPP requirements for completion of programs as a condition of release and the treatment of mentally ill inmates. She submitted a list of changes needed in the criminal justice system for mentally ill inmates (EXHIBIT 7).

00:30:01 **Craig Thomas, former Director, BOPP**, discussed several historical observations on the issues: administrative rule concerns, court cases affecting BOPP rules and procedures, BOPP's quasi-judicial status, and others. He reminded the LJIC that Montana's Board is only one of four that is accredited by the American Corrections Association.

Committee Questions

00:36:04 REP. MACDONALD asked Mr. Thomas to provide copies of the study he referenced in his comments. Mr. Thomas said he would provide that to the staff.

00:37:06 SEN. JENT and Ms. Burkhardt discussed the implications of the 1989 statutory language change that removed the liberty interest from the statute.

00:43:11 SEN. MURPHY asked if it was legislative action or a court ruling that exempted the BOPP from the Montana Administrative Procedure Act (MAPA). Ms. Burkhardt said it was the legislature that enacted that. SEN. MURPHY asked if it was known why the legislature took that action. Ms. Burkhardt said she did not know the legislative history.

00:44:37 SEN. MURPHY pointed to a box of letters on the table and said that all of them were sent to him regarding the great level of concern that how the BOPP is operating. He said his personal opinion is that only a judge may pass a sentence, not an appointed board. He said this issue needs to be looked at.

SJ 3: Jail Diversion and Community Support for People in the Criminal Justice System -- Billings and Bozeman Areas

00:47:31 **Andrea Lower, Pretrial Services Coordinator, Gallatin County**, discussed Gallatin County's court services, the collaborative mental health and criminal justice

program, and the Gallatin County Court Services website (EXHIBIT 8). efforts in Gallatin County.

00:56:40 **Steve Ette, Director of Court Services, Gallatin County**, highlighted additional court programs and said that none of the programs would be possible without the tremendous support received by local law enforcement and other judicial branch entities. He provided copies of the Gallatin County Court Services pamphlet (EXHIBIT 9).

01:08:45 **Ryan Swartzmeyer, Detention Center Case Manager, Gallatin Mental Health Center**, discussed the Gallatin County jail diversion program, which included statistics from the last three years (EXHIBIT 10).

01:17:03 **MarCee Neary, Director, Billings Community Crisis Center**, address the LJIC via polycom telephone. A copy of her testimony was also provided (EXHIBIT 11) Ms. Neary discussed how the Billings Crisis Center evolved into being and a federally funded jail diversion program, known as Project CALM (EXHIBIT 12), that was in operation from 2010-2013. Ms. Neary also discussed a Community Crisis Center (CCC) fact sheet (EXHIBIT 13) and a color handout on the CCC (EXHIBIT 14). Ms. Neary said that what would help most is a stable commitment from the State to maintain mental health services in Montana.

01:23:57 **Terry Jessee, MS LCPC, Billings Clinic Behavioral Health/Yellowstone County Detention Center**, addressed the LJIC via polycom telephone. He described his work in Boise, Idaho, to build a crisis center there, which included a jail diversion program. He said that Yellowstone County law enforcement traveled to Boise to study that program and came back with many ideas. He said that he became aware of the Gallatin County program while he was in Boise.

01:25:37 Mr. Jessee discussed the need for jail diversion programs, statistics relating to the need, and the cost savings that would be realized through diversion programs rather than jail sentences. He agreed that Project CALM was a very valuable resource in Yellowstone County.

Public Comment

01:29:50 **Amy Grmoljez, Billings Clinic**, discussed the cost savings associated with diversion programs. She referred to the Project CALM report (EXHIBIT 14) in her comments and said that diversion programs help not only Yellowstone County but the entire state. She asked that the LJIC consider how a stable funding source for these types of programs could be established.

01:32:06 **Kathy McGowan, Montana Sheriffs and Peace Officers Association (MSPOA), and Community Mental Health Centers (CMHC)**, said that the efforts in Yellowstone County and other places are good examples of where progress has been made in dealing with mental illness. She praised the LJIC for its efforts to get programs off the ground but discussed the need for stable funding for these types of crisis programs. Ms. McGowan said that communities are stepping up, as are other agencies; and that if everyone invests, it can all happen. Ms. McGowan also discussed a United States Department of Justice grant to the MSPOA involving electronic monitoring and jail diversion.

- 01:36:06 **Pete Lawrenson, citizen, retired Missoula Police Chief, Chief of Security Montana Rail Link, BOPP member**, commented on BOPP deliberations at parole hearings and said it is BOPP's goal to make sure the offender has done everything he or she can to prevent reoffending. He said he also believes in diversion but that public safety is always the number one consideration of the BOPP. Mr. Lawrenson invited LJIC members to attend BOPP hearings so they could observe first hand how carefully the BOPP considers its decisions.
- 01:39:59 Patti Jacques commented that it is good to hear about what is going on around the state. She discussed NAMI efforts to fund crisis center operation in Helena but said it is unclear how long the program will be able to stay open. She discussed Medicaid concerns also.
- 01:41:39 **Pat Keim, Alternatives, Inc., Billings**, concurred that prerelease services and jail alternatives are very cost effective. He said Mr. Jessee's numbers are very dramatic and explained his program's work with local mental healthy providers. He said the programs are often quite effective and said he would be remiss if he didn't point out that funding for mental health services was cut in the 2013 Legislature. He said he planned to work to restore funding in the next legislative session.
- 01:43:21 **Brian Gootkin, Gallatin County Sheriff, President, MSPOA**, discussed crisis intervention training (CIT) and the next steps to be taken in Gallatin County, which includes crisis outreach and peer-to-peer training. He said that funding is needed to help with the peer-to-peer training.

Committee Questions

- 01:44:56 REP. MACDONALD commented that she found it interesting the Mr. Jessee was not aware of Gallatin County's programs until he visited the Idaho program. She said that it ought to be easier to connect instate programs so that people know what is going on here.
- 01:46:10 REP. MACDONALD said she applauded Yellowstone County efforts to address public safety and mental health issues. She asked Mr. Jessee to elaborate on why Yellowstone County Commissioners were not able to continue to fund the programs. Mr. Jessee said that there wasn't enough funding to do them all and had to make decisions on what they could fund. REP. MACDONALD asked if the Commissioners planned to explore other options on how Project CALM could be funded. Mr. Jessee said he did not know.
- 01:48:39 REP. MACDONALD asked how Medicaid expansion could affect local jurisdictions' funding models for crisis centers. Ms. McGowan that under expanded Medicaid, people with a serious mental illness and addiction would become Medicaid recipients, which would provide relief to general fund dollars. She explained how the Medicaid waiver works in Montana and efforts to expand that to include major depression, which would also relieve general fund dollars.
- 01:51:40 REP. MACDONALD asked how much of the population served at the Billings Crisis Center has health insurance coverage. Ms. Neary said it is a very small percentage and estimated that it is less than 1 percent. She explained further.

01:53:34 REP. MACDONALD asked for clarification on the number of beds in the Gallatin County program. Mr. Ette said the program has six beds.

01:54:58 SEN. MURPHY recessed the LJIC meeting for a short break at 10:05 a.m.

BREAK

02:11:28 SEN. MURPHY called the meeting back to order at 10:21 a.m.

SJ 3: Identifying Potential Areas for Change or Reform

Panel 1: Legal Perspectives

02:12:09 **Robert L. Stephens, Jr., Billings attorney**, addressed the LJIC via polycom telephone. Mr. Stephens referred to an August 2013 letter (EXHIBIT 15) he sent to the LJIC as he discussed his practice of criminal law in Montana. He discussed his opinion that the DOC impairs the ability of an inmate to be granted parole and that the BOPP has "unfettered exercise of discretion" in making parole board decisions, which makes parole a very unpredictable event. Mr. Stephens said that Montana views its probation and parole system as means to control conduct and that it has de-emphasized one critical element, which is reintegration efforts. He said that Montana falls very short in this area.

02:24:57 **Ronald H. Waterman, Helena attorney**, discussed his work with the Montana prison system and his current efforts, as a member of the American Law Institute, to set forth principals of best practice of what law should be in a variety of circumstances. Mr. Waterman strongly recommended rethinking the current structure of the BOPP but only as a part of a larger reform of the criminal justice system. He explained his recommendations in further detail. Mr. Waterman submitted a copy of his testimony for the record (EXHIBIT 16).

02:36:22 **Ed Corrigan, Flathead County Attorney**, discussed his experience with the BOPP from his point of view as a prosecuting attorney. He said the issue is whether the BOPP is adequately performing its duties and said it is his opinion that the BOPP has served the State very well. Mr. Corrigan referred to a July 2013 email he sent to Christine Slaughter (EXHIBIT 17) as part of his discussion. Mr. Corrigan said that the BOPP acts professionally and that there is no need for major reforms, only perhaps some small "tweaks".

Committee Questions

02:42:16 REP. MACDONALD pointed out that Mr. Waterman's and Mr. Corrigan's testimony contradicted one another. Mr. Waterman said that while he respected Mr. Corrigan's opinion, his experience with the BOPP has been quite different and that he has found the BOPP to have unfettered discretion with no predictable outcome. He said that the correctional system should give inmates a clear path in what must be done to be granted parole and that Montana's current system does not do that.

Panel 2: Community Service Providers and Organizations

02:46:52 **Moe Wosepka, Director, Montana Catholic Conference**, shared his perspective of the issue as gained from his prison ministry work over the last 18 years. Mr. Wosepka said that parole and reentry are not simple issues and that the best assurance that an inmate will be successful in that transition is to ensure that he is prepared to do so before leaving the secure facility. Several issues Mr. Wosepka has found to be problematic in his work include the lack of transitional funding,

government policies, uncertain release dates, barriers created by the corrections system, and lack of preparation for release. Mr. Wosepka said that it would be very helpful to reinstate "good time", require that all inmates have marketable skills and education before release, and to redo the current sexual offender tier system. Mr. Wosepka submitted a copy of his testimony for the record (EXHIBIT 18).

03:02:48 **Larry Gaalswyk, Executive Director, T.E.A.M. Mentoring**, addressed the LJIC via polycom telephone. He discussed his experience of working with men and women leaving prison and fear and apprehension they experience in trying to transition back into society. He discussed the great difficulty of these people in accessing housing, jobs, and establishing a support system. Mr. Gaalswyk said his experience with the BOPP has mainly been positive but that he does have several recommendations: training for the families of the prisoner and the victim prior to participating at a parole hearing, the need for a firm date for parole in order to allow the inmate to make plans, the issue of mandatory parole, and BOPP members refrain from chastising of prisoners or their families during parole hearings. Mr. Gaalswyk's written comments were submitted into the record (EXHIBIT 19).

Committee Questions

03:11:57 SEN. BOULANGER asked if an inmate can be denied parole if he has no job or housing. Mr. Wosepka said they are not denied parole but may not be able to be released, even if parole has been granted, if approved housing or employment is not obtained.

Panel 3: Additional Perspectives

03:18:14 **Chris Christiaens, Great Falls**, discussed his background as a Montana legislator and member of the Law and Justice Interim Committee. He said that the 1985 LJIC commissioned and adopted a study, through the Department of Justice, on the BOPP. He said that the BOPP was asked to adopt the recommendations from that study and that to his knowledge, the BOPP has never done so. He suggested that the LJIC find the study and review those recommendations because had they gone into effect, a number of inmates who were not granted parole would have been paroled

03:20:21 Mr. Christiaens discussed particulars of the 1985 study and its findings. He said that much of it is relevant to the current issues. He also discussed corrections legislation he sponsored that dealt with issues such as boot camp, the NEXUS program, and the prison population cap. Other topics discussed by Mr. Christiaens included:

- the need for mandatory, not optional training for BOPP members;
- the importance of pre-sentence investigation (PSI) reports in the parole hearing process because of the great amount of information they contain;
- he suggested the LJIC track how many people granted parole and how many are still sitting in prison;
- BOPP treatment of families and agreed that the Board should refrain from criticizing or chastising inmates at hearings;
- concerns that inmate files are not being read thoroughly or that they become mixed up with other inmates' files;
- problems with placements at pre-release centers, which can result in the inmate not being paroled;

- the need for identification cards and his great disgust that this was still an issue needing to be dealt with;
- the great need for mental health and chemical dependency treatment programs, particularly in rural areas of the state.

03:33:54 Mr. Christiaens encouraged the LJIC to find the 1985 report and review it. He predicted that the recommendations would take care of most of the problems being experienced today.

03:36:33 **Greg Hinkle, former State Senator, Thompson Falls**, addressed the LJIC via polycom telephone. He thanked the LJIC for studying this issue. He discussed his involvement in prison ministry programs and said that he has worked with many inmates who have struggled with parole eligibility problems. He discussed a computer-based parole eligibility program in Texas as a possible solution to some of the problems being discussed. A copy of Mr. Hinkle's testimony was submitted into the record (EXHIBIT 20).

03:44:39 **Steve Cape, Montana Coalition for Safety and Justice**, reviewed his background as a service provider to offenders and their families at re-entry.

03:46:38 Mr. Cape discussed his opinion of the BOPP issue and said that it is an example of a failed policy. He referred to several specific anecdotal instances in which parolees were sent back to prison for infractions such as being hospitalized or being unable to pay a bill. Mr. Cape elaborated on his concerns further.

03:51:28 Mr. Cape made a number of specific suggestions on how to improve the parole process and the operation of the BOPP as outlined in a document submitted to the LJIC (EXHIBIT 21). Mr. Cape also submitted a Pew report on the issue of how to deal with offenders who violate the terms of parole (EXHIBIT 22), and a Wall Street Journal article on use of software by state parole boards (EXHIBIT 23).

04:00:02 Mr. Cape encouraged the LJIC to look closely at Montana's current regulations, policies, and performance record of the BOPP. He predicted that they would find that very few actually get paroled and that the majority of those who do have a very difficult time back in their community.

Committee Questions

04:00:33 SEN. BOULANGER asked if any of the presenters could suggest a specific state that the LJIC could study as a model for new standards.

04:01:18 Sen. Hinkle said Texas, New York, Louisiana, Hawaii, Kentucky, Ohio, California, and West Virginia all use computer-based parole programs.

04:02:52 Mr. Christiaens suggested looking at Ohio and Florida and said that a judge from Ohio traveled to Montana in 1985 to discuss its sentencing guidelines.

04:03:45 Mr. Cape suggested Michigan and Nevada and said that both states have extensive data that would be useful.

- 04:04:13 SEN. JENT asked Mr Cape if any systems are a mix of subjective and objective standards. He said he is very reluctant to use a set point system. Mr. Cape agreed that a set point system can be too rigid. He discussed programs operating in Texas and Michigan that use a combination of subjective and objective factors.
- 04:06:28 SEN. JENT asked Mr. Christiaens to comment on federal system sentencing guidelines. Mr. Christiaens said that the federal system really has incarcerated far too many people and that judges have little leeway in sentencing. He said that legislation has been introduced to deal with this and that disparate sentencing is occurring as a result. He said this should be looked at as well.
- 04:07:58 SEN. JENT said that the LJIC has heard repeatedly that employment and conditions for parole not specified in the sentencing order are two of the biggest problems in the parole process. He asked if these could be dealt with through more control of the BOPP's administrative rule process or if legislation would be required. Mr. Cape said he believes both would be necessary. He explained further.
- 04:11:19 Mr. Christiaens said it is important to look at the classification process that occurs in the prison before the parole process and how realistic the conditions are that are imposed at that point. He cited an example that at one time a condition for parole was that every inmate must complete a GED.
- 04:12:30 REP. MACDONALD asked Mr. Christiaens to further explain a confusing situation he referenced in which an inmate was granted parole and that a condition of his parole was spending a certain amount of time at a prerelease center but because the prisoner was not acceptable to any of the prerelease centers in the state, he has never been released. Mr. Christiaens said that scenario happens quite frequently, particularly with sex offenders, who are very difficult to place.
- 04:15:27 REP. MACDONALD thanked Mr. Christiaens for discussing the 1985 advisory council study and said that the LJIC would request staff to provide it to the committee.
- 04:15:32 SEN. BOULANGER discussed a situation in which an offender was mistakenly classified as a sex offender versus a violent offender. He asked if there is a process through which this can be fixed. Mr. Christiaens suggested that the family contact the Attorney General's Office but said it could be a difficult process.
- 04:17:42 SEN. BOULANGER asked if is possible for the inmate to have the opportunity to work with the AG to fix this issue while he is incarcerated. Mr. Christiaens said the inmate likely would not know for certain what his classification is until he is released.

Public Comment on the previous panel discussion

- 04:19:11 Patti Jacques, Helena, commented on her son's parole hearing, held last month. She also discussed his continuing struggle with mental health issues and how state law will probably prevent him from ever getting out.
- 04:23:32 Rudy Stock, Helena, discussed a the situation of a mentally disabled man named "Kenny" and submitted his testimony into the record (EXHIBIT 24). Mr. Stock said it appears to boil down to Kenny not being able to afford his freedom and that he

didn't think that was right. Mr. Stock submitted other documents into the record as well: an article from the *Missoulian* (EXHIBIT 25), an article regarding certain nonprofit organizations paying executives outrageous salaries, bonuses, and incentives (EXHIBIT 26), and a letter from Melise Jordan regarding the status of her incarcerated husband (EXHIBIT 27).

- 04:26:21 **Beth Brenneman, staff attorney, Disability Rights Montana (DRM)**, commented on the commonality of issues before the Children, Families, Health, and Human Services Interim Committee (CFHHS) and the LJIC. She discussed her position that people with mental illness or developmental disabilities do not belong in prisons and that there are successful ways to get people out into society and contributing to their communities. Ms. Brenneman said that House Bills 131, 131, and 132, (2009) were a good start but that the lack of funding has hampered efforts. She discussed the need for a real commitment to crisis diversion. She discussed housing as a real obstacle to parole for many, as is employment; but said that both are a solvable problems. She also discussed the great need for medication and access to psychiatric treatment for mentally ill prisoners, as well as the need for a pharmaceutical healthcare benefit. She said the lack of a comprehensive commitment is preventing many from being paroled and in successfully transitioning back into their communities.
- 04:32:11 **Timothy Allred, Parole Analyst, BOPP, Great Falls**, thanked all who work to help offenders reintegrate back into their families and society. He discussed his work with victims as part of that process also, and said that parole hearings are very difficult for both sides. He said that computer models would not be effective and would not allow victims' voices to be heard.
- 04:35:13 Craig Thomas, former Executive Director of the BOPP, said that there was a great deal of negative information discussed at the meeting and that while he could dispute much of it, he would simply say that he would agree that the system may not be perfect and that perhaps objective standards would be a good thing, but that he strongly opposes the notion of abolishing the board. Mr. Thomas stated that the discussion about the Parole Board enhancing sentences was absolutely incorrect. He also disputed the low numbers of inmates released for parole.
- 04:38:28 Mr. Thomas also disputed comments made by Mr. Christiaens regarding the 1985 advisory council study and statement that the BOPP did not adopt the recommendations. He said that the BOPP has complied with every recommendation that it had control over and explained that the governor rejected several of them, which prevented the BOPP from adopting them. He said there is more to that story. Regarding comments about reinstating good time, he said that the Board has no control over that. Mr. Thomas said that problems can't be solved unless all stakeholders get involved and communicate. He recommended forming another advisory council, saying that the problem is bigger than the BOPP and that the entire system could work better.
- 04:40:56 Pete Lawrenson, BOPP member, discussed his tenure as a BOPP member, including the training and orientation he participated in as a new member last spring. He testified to the professional staff of the BOPP and said that the Board does everything possible to make sure the offender is released and out of the

system. Mr. Lawrenson also described how he personally prepares for parole hearings and the amount of time that he spends reading and reviewing upcoming cases and invited the LJIC to attend parole hearings. Mr. Lawrenson said that the BOPP is open to suggestions on how to improve and operate more effectively as a board.

04:46:01 **Charles Clugston, Washington**, said that he and his wife have written statements regarding their concerns about the BOPP. He read his statement into the record (EXHIBIT 28). His statement included three recommendations for changes. Mr. Clugston submitted his wife's letter into the record as well (EXHIBIT 29).

SEN. MURPHY recessed the meeting for lunch at 1:00 p.m., to reconvene at 1:30 p.m.

LUNCH

05:31:40 SEN. MURPHY called the meeting back to order at 1:40 p.m.

SJ 22 STUDY: Litigants' Perspectives on Family Law in Montana

05:31:59 Ms. Weiss briefly reviewed the SJ 22 study on family law procedures and alternatives (EXHIBIT 30).

05:32:43 **Erin Farris, Montana Supreme Court Court HELP program administrator**, reviewed a Court Help Program Quick Facts sheet (EXHIBIT 31). listing information and statistics relating to the Court HELP program. She introduced Kathy Estelle, who was a self-represented litigant in a family law case in 2010. Ms. Farris said Ms. Estelle's experience was fairly typical as a self-represented litigant. said Kathy's experience typical, except for master's degree in family therapy. Will discuss process going through court, pro bono services through Montana legal assistance, ongoing challenges as result of how the parenting plan was issued.

05:37:08 **Kathy Estelle, Helena**, related details regarding her experience as a *pro se* litigant, which included the difficulty of obtaining legal assistance and her ongoing challenges as a result of how her parenting plan was issued. She said the process was overwhelming and recommended that the system be set up in a manner to better provide families with the resources they need to get a proper parenting plan set up, such as through a consultant who could help guide the process.

Committee Questions

05:42:56 SEN. MURPHY asked Ms. Estelle to make specific suggestions on what would make family law simpler and easier. Ms. Estelle said that the parenting plan process was very complicated and difficult. She said that because a parenting plan is such an important and necessary legal document, resource center would be very helpful, with support available to give directions and suggestions.

SJ 22 STUDY: Overview of the Standing Committee on Self-Represented Litigants (formed by the Access to Justice Commission established by the Montana Supreme Court).

05:45:37 **Honorable Michele Snowberger, Belgrade City Court Judge and Committee Presiding Officer**, listed the members of the Standing Committee on Self-Represented Litigants (EXHIBIT 32) and reviewed the vision, charge, areas of emphasis, and potential strategies of the Committee (EXHIBIT 33). She discussed

an ongoing data collection project and said that a final report would be provided to the LJIC.

05:51:42 Judge Snowberger discussed the difficulties of creating a usable and standardized form. She said the goal is to create a form that is easily used and understood forms and reviewed the components of a readable form (EXHIBIT 34).

05:58:57 Judge Snowberger discussed how the Belgrade City Court uses video technology to document and assist in the process (EXHIBIT 35).

Public Comment

06:02:11 There was no public comment.

Committee Questions

06:02:18 There were no committee questions.

SJ 22 STUDY: Litigants' Perspectives on Family Law in Montana - continued

06:03:32 **Simon Fickinger, Missoula**, discussed his experience as a self-represented litigant in the dissolution of his marriage and resulting parenting action. He agreed that it is a very difficult experience and related details on how it affected his life and his children's lives. He said the current system is woefully inadequate and that he feels that he ended up with a very poor parenting plan because of it. Mr. Fickinger related additional details regarding his particular situation.

06:08:06 Mr. Fickinger made two suggestions to improve the current process: adopt a uniform statewide parenting plan, across all judicial districts and base decisions on what is best for the child and not what is most convenient for the

06:10:59 **Audra Couch** discussed her experience of going through a divorce and said she used the Fourth Judicial District parenting plan guidelines and parental agreement as the basis for her plans. She discussed the level of difficulty and anxiety experienced by parents and children who are going through this process and said that she was eventually denied access to her daughter. Ms. Couch related additional details of her experience and offered several suggestions on considerations that should be made in order to ensure that the child's best interests are the primary consideration.

Public Comment

06:18:16 **Linda Gryczan, Helena, President, Montana Mediation Association**, discussed several anecdotal stories similar to those discussed by the panelists. She agreed that children's needs should be the primary consideration, rather than those of the parents, and that as a mediator, she is able to offer very innovative solutions to help. Ms. Gryczan said that if there are to be state standards, child development must be a consideration.

06:22:02 **Chris Thompson, Bozeman**, agreed that children should not be used as "pull toys" in the process as parents divorce. He suggested that creating an ombudsman panel to help parents work together on an parenting plan and also agreed that a uniform parenting plan would be a good idea.

Committee Questions

06:24:07 There were no committee questions.

SJ 22 STUDY: Parenting Guidelines in Montana

06:25:01 **P. Mars Scott, Missoula attorney and Chairperson of the Family Law Section of the State Bar of Montana**, complimented Ms. Weiss on her thorough report on Montana's parenting plan guidelines (EXHIBIT 30). He said that 32% of 22 judicial districts have adopted parenting guidelines, saying that resolving parenting issues are part and parcel of a divorce dispute and that there is currently little training on how best to do that.

06:27:27 Mr. Scott discussed the parenting guidelines used by the Fourth Judicial District in Missoula, saying that while they are not binding, they appear to work fairly well. He said that if a parent can focus on what is best for the child, the process ends with much better results.

06:30:16 Mr. Scott discussed his support for a statewide parenting plan, saying that a uniform plan would provide useful tools to parents to help them figure out how a parenting plan works and what is best for their family. He submitted into the record a copy of his presentation (EXHIBIT 36), which included three points for consideration.

06:32:09 Judge Snowberger discussed the parenting guidelines being used informally in the Eighteenth Judicial District in Gallatin County.

06:34:57 Judge Snowberger discussed a handout on child development that is available in the community (EXHIBIT 37).

06:41:40 **Cindy Thiel, attorney, Missoula**, said that she would support uniform guidelines but thought that it should be the courts that develop them and not the Legislature. She discussed the benefits of having a uniform parenting plan and said that the Legislature could ensure that it is done properly by adequately funding the undertaking.

Public Comment

06:46:32 There was no public comment.

Committee Questions

06:46:37 REP. MACDONALD asked Judge Snowberger to respond to Ms. Thiel's concerns and if it would be appropriate for the Legislature to direct the Standing Committee to engage in the process of developing statewide guidelines. Judge Snowberger said that she could not comment on the ability of the Legislature to direct the Judiciary in that direct of a manner but said she did agree that it would be a better for the parenting plan guidelines to be developed by the judiciary than the legislature.

Public Comment on any topic within the committee's jurisdiction but not on this agenda

06:50:00 **Micki Clugston, mother of inmate**, thanked the LJIC for its decision to study the Board of Pardons and Parole. She read from her letter about her son's situation and affidavits files by his former wives, and their influence in parole decisions, and his experience in appearing before the BOPP (EXHIBIT 29).

- 06:59:58 Cindy Thiel, family law attorney, Missoula, offered three suggestions for statutory changes that would streamline family law processes. The first recommendation was to change 40-4-104, MCA, - entry of a final decree of dissolution of a marriage. She explained how her change would simplify the process for everyone involved.
- 07:02:45 Ms. Thiel proposed to amend 40-4-217, MCA, - notice of intent to move. She explained the current provisions and her suggestions for change, which, she said, would decrease litigation.
- 07:03:51 Ms. Thiel also proposed to amend 40-4-108, MCA, - petition for a name change. She said that it is expensive to file a petition for a name change but that it isn't necessary if it is done as part of the marriage dissolution process. She explained that a wife can request restoration of a former name in 40-4-108, MCA, but that option is not available for husbands. She suggested that the statute be changed to allow either spouse to make such a request.
- 07:05:24 SEN. JENT said have list on both resolutions relevant to committee work sessions. said he would give them to Will give them to staff

COMMITTEE WORK SESSION

SJ 3 study: Review of work plan for next meeting; request additional information or suggest topics for next meeting?

- 07:05:53 SEN. JENT listed issues he would like to continue working on at the next LJIC meeting: require video and audio recordings of all BOPP hearings, subjecting BOPP to administrative rule (MAPA), develop an objective risk assessment computer model to score each potential parolee, develop an objective/subjective system based on the Michigan model for parole for risk assessment purposes, revisit the repeal of the good time credit statute, revise the 2013 bill creating a certificate of rehabilitation, deal with ID card issue for released prisoners, eliminate parole conditions that are impossible to attain, and eliminate mandatory conditions for release not ordered by a judge. SEN. JENT emphasized that his suggestions are not intended to attack or criticize the BOPP, but are intended to improve the operations of the Board and create consistent standards.
- 07:09:11 Regarding SJ 22, SEN. JENT said he would like to revise the following statutes: 40-4-104, 40-4-108, and 40-4-217, MCA. He discussed his proposed changes to each.
- 07:10:01 Regarding other matters for the next meeting, SEN. JENT said he would also like to address the back log of litigants in the courts. He said he planned to discuss solutions with the Chief Justice and said that any solution would require additional funding for the judiciary. He said that more judges are needed to deal with the overtaxed judicial districts.
- 07:11:54 REP. MACDONALD asked staff to find the 1989 advisory council study report and to highlight the recommendations that were adopted. She thanked SEN. JENT for his list and said it was very similar to hers. She asked SEN. JENT if he is interested in pursuing establishing a family court division in the District Court system. SEN. JENT said that could be part of a discussion about using special masters instead of

judges. He agreed that family court issues would be a good topic for a future meeting.

07:15:07 REP. MACDONALD asked SEN. JENT to clarify if this would be done through legislative policy established for the judiciary or if it would be left to the judiciary. SEN. JENT said he thought it would be a little bit of both and explained further.

07:17:06 Ms. Weiss listed other agenda items scheduled for the February meeting: an update from the Office of the Public Defender, an update on re-entry, followup with the CFHHS on its study of state institutions, and the big issue of gun ownership, mental illness, and NICS.

07:18:17 Ms. Weiss suggested that some of the topics discussed with would be dealt with best in the form of bill drafts. She listed those issues that she thought should be presented as bill drafts. She said she would make arrangements to have DOC staff present information on its risk assessment tool, based on the Ohio model, that it is in the process of implementing. She said she would also have more information on the issue of debt limits and uncontested divorces, as discussed at a previous meeting.

07:21:11 Ms. Weiss said she would have additional information to present on the good time statute, the ID card issue, and elimination of mandatory parole conditions.

07:23:00 SEN. JENT said that he has a scheduling conflict for the February meeting but will try to change trial dates in order to attend the meeting.

ADJOURN

07:24:00 With no further business before the Law and Justice Interim Committee, SEN. MURPHY adjourned the meeting at 3:34 p.m. The LJIC will meet next on February 13-14, 2014, in Helena.

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