



Law and Justice Interim Committee

64th Montana Legislature

SENATE MEMBERS

SCOTT SALES--Chair
DIANE SANDS--Vice Chair
DOUG KARY
SUE MALEK
MARY SHEEHY MOE
NELS SWANDAL

HOUSE MEMBERS

JENNY ECK
ELLIE BOLDMAN HILL
SARAH LASZLOFFY
STEVE LAVIN
DALE MORTENSEN
CAROLYN PEASE-LOPEZ

COMMITTEE STAFF

RACHEL WEISS, Lead Staff
JULIANNE BURKHARDT, Staff Attorney
LAURA SHERLEY, Secretary

MINUTES LOG

March 9, 2016
Room #137, Capitol Building
Helena, Montana

Please note: This document is a Minutes Log and provides a notation 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 record 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 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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Please contact the Legislative Services Division at 406-444-3064 for more information.

COMMITTEE MEMBERS PRESENT

SEN. SCOTT SALES, Chair
SEN. DIANE SANDS, Vice Chair

SEN. DOUG KARY
SEN. SUE MALEK
SEN. MARY SHEEHY MOE
SEN. NELLS SWANDAL

REP. JENNY ECK
REP. ELLIE BOLDMAN HILL
REP. SARAH LASZLOFFY
REP. STEVE LAVIN
REP. DALE MORTENSEN
REP. CAROLYN PEASE-LOPEZ

COMMITTEE MEMBERS EXCUSED

STAFF PRESENT

RACHEL WEISS, Lead Staff
JULIANNE BURKHARDT, Staff Attorney
LAURA SHERLEY, Secretary

VISITORS' LIST (Attachment 4)

AGENDA (Attachment 5)

COMMITTEE ACTIONS

The committee:

- Voted to submit a letter of support for a grant application by the Sexual Assault Evidence Task Force to test unsubmitted evidence kits.
- Directed staff to poll members on what committee issues it would like to work on at the next two meetings.
- Set April 21 and June 28-29 as the next meeting dates.

RECONVENE -- ROLL CALL

00:00:02 Sen. Sales reconvened the meeting at 8:01 a.m. The committee secretary called roll ([Attachment 6](#)).

SJ 24: STUDY OF SEXUAL ASSAULT IN MONTANA

Review of Montana's Statues and Possible Changes

Julianne Burkhardt, LSD

Jennifer Streano, Office of the Public Defender

Robin Turner, Public Policy and Legal Director, Coalition Against Domestic and Sexual Violence

Suzu Boylan, Assistant Chief Deputy, Missoula County Attorney's Office

00:00:52 Ms. Burkhardt ([Exhibit 17](#))([Exhibit 18](#))

00:06:16 Ms. Streano ([see Exhibit 17](#))

00:20:56 Ms. Turner ([Exhibit 19](#))

00:38:01 Ms. Boylan

Questions from the committee

00:58:38 Rep. Hill asked the panel to discuss the sufficiency of the current privacy and communications statute in regards to their proposed bill draft on revenge porn.

01:03:35 Rep. Hill asked Ms. Boylan about subsection B of Exhibit 18 regarding the definition of intimate parts exposed.

01:06:30 Sen. Sands asked the panel to elaborate on the topics that were not discussed in the bill drafts.

01:08:32 Sen. Sands asked the panel to discuss aggravated sexual intercourse without consent and the penalties.

01:10:42 Sen. Sands asked how the working group discussed mandatory sentencing versus judicial discretion.

01:12:27 Sen. Sands asked the working group to consider looking into other sections of consent for the bill draft.

01:13:23 Rep. Hill asked the panel to further discuss the tiered view of sexual intercourse without consent and how their draft bill affects the current sex offender registry.

01:18:19 Sen. Moe asked the panel about what is consent in the draft bills and how an offender would know when consent has been withdrawn.

01:23:54 Sen. Moe asked why the revenge porn bill is focused on cell phone and media privacy and not in written word form.

01:26:29 Sen. Moe asked about consent in the revenge porn bill, especially when an adult is complicit in making the picture.

01:29:47 Sen. Malek asked Ms. Turner if is it required in the law that a victim has to take civil action for distribution of intimate pictures without consent.

01:31:10 Sen. Malek commented that distribution of a picture is different from distribution

of comments. Sen. Malek also asked Ms. Boylan to clarify section A on page eighteen of Exhibit 17.

- 01:33:36 Sen. Swandal asked the panel to explain to the committee why the draft bill in Exhibit 17 says 'overt actions' rather than just 'actions'.
- 01:37:37 Rep. Eck asked the panel about page one, subsection two of Exhibit 18 phrasing and if they believe that this piece is critical.
- 01:41:32 Rep. Eck asked if the situation of a person having their picture taken unknowingly is covered under law at this time.
- 01:49:04 Rep. Hill asked if they could inject a third subsection under section A to fit the committee's concerns and creating a civil context for criminal issue that includes the greater of \$10,000.
- 01:51:58 Sen. Sands asked the panel if there is adequate provision in the Montana statutes for sexual assault cases and if additional language is needed.
- 01:54:05 Sen. Sands asked a followup question if a statute should be considered around the ability to sue in a sexual assault.

PUBLIC COMMENT ON STATUTORY REVIEW PANELS AND SJ 24 STUDY

- 01:55:47 Mark Murphy, Montana County Attorney Association, discussed the work group and his responses to the drafts.

Break (Reconvened at 10:21 a.m.)

PUBLIC COMMENT ON ANY ITEM WITHIN LJIC JURISDICTION BUT NOT ON THIS AGENDA

- 02:20:01 Patty Grubb, commented on adolescent brains and porn addictions ([Exhibit 20](#))([Exhibit 21](#))([Exhibit 22](#)).
- 02:35:32 Al Smith, Great Falls, commented on faulty eyewitness identification testimony leading to false convictions ([Exhibit 23](#)).

COMMITTEE WORK SESSION

- 02:41:00 Ms. Weiss reviewed the committee work plan.
- 02:44:46 Sen. Sands recommended that the work group continue and use the committee suggestions to work on the bill drafts and also recommended a draft with a separate section for statutory sexual assault for minors.
- 02:46:09 Rep. Eck requested a review of the revenge porn bill draft.
- 02:47:20 Ms. Burkhardt asked clarification of Rep. Eck's comments and requests.
- 02:48:57 Rep. Hill asked for clarification if the committee is working with the work group or with the committee staff for the bill draft.
- 02:51:00 Ms. Burkhardt responded to Rep. Hill's comments.
- 02:52:28 Sen. Moe asked that the bill address the consequences of minors that knowingly take an intimate photograph and distribute it.
- 02:54:10 Sen. Sands asked Sen. Swandal to discuss the issue of minors being sentenced as sex offenders.
- 02:57:45 Sen. Sands asked Sen. Swandal if he would be willing to be the point person for the working group regarding the issues of youth sentencing.
- 02:58:50 Rep. Hill added to the discussion between Sen. Sands and Sen. Swandal and requested that they should also consider adult tiered sentencing and how it is tied to the sex offender registry.

03:00:42 Sen. Moe asked that a panel be added to the next meeting agenda regarding the sex offender registry.

03:01:59 Sen. Malek agreed with Sen. Moe and also commented on pornography and how it relates to the bill.

03:05:51 Rep. Eck commented on the persecution and tiering sex offenders.

03:09:17 Rep. Lopez commented asked if the eyewitness problem could be addressed by the committee as well and possibly look at examples from other states.

03:11:19 Sen. Swandal commented on the eyewitness problem that the panel may have already agreed not to have legislation further involved.

03:12:14 Sen. Sands asked if there is a need for ongoing funding for training for county attorneys and law officers in practices related a community wide response to sexual assault ([Exhibit 24](#)).

03:14:03 Sen. Kary requested a discussion of a committee bill proposition for public incapacitation authority for cities.

03:17:50 Ms. Weiss discussed the current future tentative meeting plans and dates.

03:20:06 Sen. Sales and the committee discussed the April and June Law & Justice Interim Committee meeting dates and possible agenda items.

Motion

03:26:10 Sen. Sands moved to submit a letter of support for a grant application by the Sexual Assault Evidence Task Force to test unsubmitted evidence kits.

Vote

03:26:53 The motion passed on a voice vote, 10-2 with Sen. Sales and Rep. Mortensen voting 'no'.

03:27:39 Sen. Sands recommended prioritizing agenda items for the future meetings to save time for the committee staff and for the committee discussion.

03:28:25 Ms. Weiss reviewed the possible work plan for the April and June meetings and helped draft an agenda.

03:32:28 Sen. Sands asked the committee who would be willing to look at legislation to support a fund victim services relative to sexual assault. The committee discussed the topics for the future agenda.

03:35:47 Ms. Weiss responded to the comments with a proposal date for the finalized future agenda topics and suggested working with victim services organizations and Department of Justice for ideas about funding needs.

03:37:25 Sen. Sands commented about the use of staff for bill drafting.

03:38:21 Ms. Weiss clarified the comments that Sen. Sands mentioned on the use of staff for bill drafting.

03:40:00 Sen. Sands commented on the Board of Crime Control conference in October 2016 in Exhibit 5.

ADJOURN

03:40:53 With no more work before the committee, Sen. Sales adjourned the meeting at 11:41 a.m.