



Law and Justice Interim Committee

65th Montana Legislature

SENATE MEMBERS

DIANE SANDS--Chair
JEN GROSS
MARGARET (MARGIE) MACDONALD
KEITH REGIER
SCOTT SALES
NELS SWANDAL

HOUSE MEMBERS

JIMMY PATELIS--Vice Chair
JESSICA KARJALA
GEORGE KIPP III
RYAN LYNCH
LOLA SHELDON-GALLOWAY
BARRY USHER

COMMITTEE STAFF

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

MINUTES LOG

January 30, 2018
Room 102, 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.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select Committees, then Interim. Once on the page for Interim Committees, scroll down to the appropriate committee. The written Minutes Log, along with the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the Exhibits is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed.

Please contact the Legislative Services Division at 406-444-3064 for more information.

COMMITTEE MEMBERS PRESENT

SEN. DIANE SANDS, Chair
REP. JIMMY PATELIS, Vice Chair

SEN. JEN GROSS
SEN. MARGARET (MARGIE) MACDONALD
SEN. KEITH REGIER
SEN. SCOTT SALES
SEN. NELSON SWANDAL

REP. GEORGE KIPP III
REP. RYAN LYNCH
REP. LOLA SHELDON-GALLOWAY
REP. BARRY USHER

COMMITTEE MEMBERS EXCUSED

REP. JESSICA KARJALA

STAFF PRESENT

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

VISITORS' LIST (Attachment 1)

AGENDA (Attachment 2)

COMMITTEE ACTIONS

RECONVENE AND ROLL CALL

00:00:01 Sen. Sands reconvened the meeting at 8:00 a.m. The committee secretary took roll call ([Attachment 3](#)).

AGENCY OVERSIGHT: DEPARTMENT OF JUSTICE -- Jon Bennion, Chief Deputy Attorney General, DOJ

00:01:26 Mr. Bennion reviewed the updates that the department will give the committee and introduced the next speaker.

00:02:10 Sara Garcia, Montana Motor Vehicle Administrator ([Exhibit 1](#))

Questions from the committee for Ms. Garcia

00:04:09 Sen. Sands asked what the funding is for the Real ID program.

00:05:09 Rep. Sheldon-Galloway asked if the Real ID program will be using fingerprints and facial recognition software.

00:06:00 Sen. Regier asked if there have been any updates to the information that will be required on the Real ID cards.

00:06:33 Sen. Regier asked what information Homeland Security requires on the Real ID cards.

00:06:43 Rep. Patelis arrived to the meeting at 8:07 a.m.

00:07:13 Mr. Bennion gave a brief update on the department's work related to Marsy's Law and with the Attorney General's Sex Assault Kit Initiative.

Committee discussion

00:12:41 Sen. Sands asked if the committee wanted additional updates on Real ID and also commented on the sexual assault kit updates.

00:14:29 Sen. Regier asked if the committee meeting in Billings will be a one- or two-day meeting.

00:15:37 Sen. Regier asked if a tour of the Montana Women's Prison will be part of the committee meeting in Billings.

00:15:54 Mr. Bennion continued his presentation.

Questions from the committee

00:20:30 Sen. Sands commented on the work by the department and that the Marsy's Law issues should be reviewed for future sessions.

00:21:10 Sen. Gross asked how many sexual assault nurse examiners are across the state and what the sexual assault kit process entails.

00:23:33 Rep. Usher asked if a sexual assault nurse examiner is required to attend court.

HJ 6: UPDATE ON AID MONTANA AND MONTANA SUMMIT ON SUBSTANCE USE DISORDERS -- Jon Bennion, DOJ

- 00:24:45 Mr. Bennion updated the committee on the department's work on substance abuse disorders.
- 00:35:07 Sen. Sands commented on the shared work of substance abuse disorders with the Children, Families, Health and Human Services (CFHHS) Interim Committee.

Questions and comments from the committee

- 00:35:32 Rep. Sheldon-Galloway asked if the new health care programs will eventually stop receiving federal funding and if the state will need to supply the funding to keep the services.
- 00:38:10 Sen. Sands commented on the state's health care programs and the information provided at the summit on substance abuse disorders.
- 00:40:07 Rep. Usher asked if the DOJ will review the issue of illegally prescribed drugs.
- 00:42:35 Sen. Sands commented on the prescription drug abuse issue and the work being done on the topic in CFHHS.
- 00:43:35 Sen. Sands asked that the department update the committee on their conversation with the federal Department of Justice regarding prescription drug abuse issues.
- 00:43:50 Sen. Gross asked for an inventory of substance abuse treatment services throughout the state and where they are located.

Public comment

- 00:44:32 May Simmons, New Hope Center
- 00:50:26 Tonya Winger, self

SJ 25 STUDY: OVERVIEW OF DEVELOPMENT AND USE OF EXISTING JAIL STANDARDS AND CURRENT HOUSING PRACTICES IN ADULT COUNTY DETENTION CENTERS

Eric Bryson, Montana Association of Counties
Sheriff Mike Linder, Yellowstone County
Lt. Steve Metzger, Yellowstone County Detention Center
Undersheriff Pat Roos, Custer County

- 00:54:43 Undersheriff Roos
- 00:58:12 Lt. Metzger
- 01:02:28 Sheriff Linder
- 01:08:06 Mr. Bryson

Questions from the committee

- 01:11:54 Sen. Swandal asked Lt. Metzger if he has authority to correct issues within the detention center when they are identified in a peer review, and asked when each jail report is made public.
- 01:13:00 Sen. Swandal asked Lt. Metzger if the peer review committee has authority to make corrections in the detention centers.
- 01:13:29 Sen. Swandal asked the panel who makes the decision about when inmates will not be placed in jail due to overpopulation.
- 01:14:34 Rep. Usher asked the panel if they want a commission that has authority to make corrections or if they are comfortable with the peer review committee.
- 01:16:20 Rep. Usher asked Sheriff Linder and Mr. Bryson if there has been discussion from the counties to the state regarding overpopulation.

01:20:06 Rep. Lynch asked Mr. Bryson how many of the jails are involved in the peer review process. The question was also answered by Undersheriff Roos.
01:21:14 Rep. Lynch asked for clarification of the peer review process.
01:26:17 Rep. Lynch asked if counties' insurance is priced differently based on peer review outcomes and standards.
01:28:15 Rep. Lynch asked what are the solitary confinement best practices and how does the peer review commission handle the current issues on solitary confinement.
01:30:06 Rep. Lynch asked if a mental health assessment is done in solitary confinement.
01:32:41 Sen. MacDonald asked what types of checks and balances are used to place an inmate in solitary confinement and how often the facilities have supervisory input.
01:38:51 Sen. Regier asked Sheriff Linder to discuss the inmate work programs.
01:40:20 Rep. Patelis asked if insurance rates fluctuate when number of inmates increase.
01:41:20 Sen. Sands asked for clarification of inmate medical costs in county jails.
01:43:10 Sen. Sands asked for a report of claims filed against the counties, which MACo will deliver to the committee.
01:44:09 Rep. Lynch asked for information on solitary confinement use in state jails.

Public comment

01:45:05 Abigail St. Lawrence, Montana Association of Christians
01:46:23 Beth Brenneman, Disability Rights of Montana
01:49:18 May Simmons, New Hope Center
01:50:51 Tonya Winger, self
01:53:59 SK Rossi, ACLU
01:55:14 William Barron, Lake County Commissioner
01:58:37 Nanette Gilbertson, Montana Sheriffs & Peace Officers Association (MSPOA)
02:00:14 Steve Eschenbacher, Attorney for Lake County

02:01:36 Sen. Sands reminded the committee about the upcoming discussion that will be later in the agenda.

BREAK (Reconvened at 10:17 a.m.)

AGENCY OVERSIGHT: OFFICE OF STATE PUBLIC DEFENDER

Harry Freebourn, Interim Director

Peter Ohman, Public Defender Division Administrator

02:18:11 Director Freebourn ([Exhibit 2](#)) and ([Exhibit 3](#))
02:29:58 Mr. Ohman

Questions from the committee

02:36:35 Sen. Sales asked Director Freebourn what the OPD budget is and what amount the counties were paying prior to state assumption.
02:37:23 Sen. Sales asked what amount counties were paying for public defenders in 2005 prior to state assumption.
02:37:57 Sen. Sales asked Director Freebourn what the conviction rate was for individuals represented by OPD currently and prior to state assumption.
02:38:35 Sen. Swandal asked Mr. Ohman if there has been a reduction in the workload with the passage of HB 133 (2017).
02:39:20 Rep. Usher asked Director Freebourn to clarify how the office does income testing.

Public comment

None

COMMITTEE ISSUE: LEGAL BACKGROUND ON CRIMINAL JURISDICTION IN INDIAN COUNTY

Professor Maylinn Smith, Adjunct Professor of Law and Co-Director, Margery Hunter Brown Indian Law Clinic, Alexander Blewett III School of Law, University of Montana

Professor Monte Mills, Assistant Professor of Law and Co-Director, Margery Hunter Brown Indian Law Clinic, Alexander Blewett III School of Law, University of Montana

02:47:25 Mr. Mills and Ms. Smith ([Exhibit 4](#)) and ([Exhibit 5](#))

Questions from the committee

- 03:18:50 Sen. Sands asked the presenters to speak on the structure of tribal courts in Indian countries.
- 03:25:28 Rep. Kipp asked if the Major Crimes Act of 1885 obligates the United States government to assist in policing all criminal actions in Indian Country.
- 03:31:13 Rep. Kipp asked the presenters to speak on the issue of prosecution of Native American decedents and non-Indians in Indian Country.
- 03:34:50 Rep. Kipp asked if the presenters would give an overview of the Supreme Court's decision regarding judicial authority within Indian country and if an Indian tribe can exercise criminal jurisdiction over a non-Indian.
- 03:37:38 Sen. MacDonald asked the presenters to comment on the disproportionate Indian population in the criminal system.
- 03:41:35 Rep. Kipp asked if jurisdiction could be considered part of the subject of cooperative agreement.
- 03:42:40 Rep. Usher asked for clarification of state officers' abilities to enforce state law in Indian Country jurisdiction.
- 03:43:50 Rep. Sheldon-Galloway asked if a Native American goes to federal court and possibly federal prison if the federal government is involved in the sentencing.
- 03:45:58 Rep. Sheldon-Galloway asked for clarification on the sentencing of Native Americans that are currently in the state prison system.
- 03:46:26 Sen. Sands asked if there are emerging Indian Country judicial frameworks that the committee should be aware of.
- 03:48:40 Sen. Sands commented on the domestic violence review that the committee received yesterday and asked the speakers to comment on the issue.

Public comment

03:50:06 Steve Eschenbacher, Attorney for Lake County

LUNCH (Reconvened at 1:00 p.m.)

COMMITTEE ISSUE: COUNTY SHERIFFS' PERSPECTIVES' ON CURRENT TRENDS, CHALLENGES, AND JAIL POPULATIONS

Sheriff Brian Gootkin, Gallatin County

Sheriff TJ McDermott, Missoula County

Undersheriff Pat Roos, Custer County

05:02:09 Sheriff Linder

05:05:40 Brian Gootkin, Gallatin County Sheriff

05:13:20 Undersheriff Roos

Questions from the committee

- 05:16:06 Sen. Swandal asked Sheriff Gootkin what type of drugs are most often found in his facility and if a drug dog can be utilized.
- 05:16:37 Sen. Swandal asked Undersheriff Roos if female offenders are incarcerated mainly due to drug use.
- 05:17:02 Rep. Sheldon-Galloway asked the panel if overload in emergency rooms due to over population in jails is also an issue in their communities.
- 05:21:11 Rep. Sheldon-Galloway asked whose jurisdiction is an inmate under when they are in the emergency room.
- 05:22:43 Sen. Gross asked Sheriff Linder to speak on the crisis intervention training for officers and the process of civil commitment.
- 05:24:50 Sen. Gross asked Sheriff Gootkin to speak on civil commitment and crisis intervention and how this relates to low jail population.
- 05:26:31 Sen. Regier asked the panel to speak on inmate health care budgets.
- 05:29:57 Sen. Sands asked the panel if the legislature should adopt a national standard for best practices and if this would help or hinder the jails.
- 05:33:00 Rep. Usher asked Sheriff Gootkin what is the total budget for his facility.
- 05:33:19 Rep. Usher asked the panel if the fire department completes reviews of the jails.

Public comment

- 05:35:10 Gary Mihelish, self
- 05:38:11 May Simmons, Lake County
- 05:40:24 Tonya Winger, self
- 05:41:58 Beth Brenneman, Disability Rights of Montana

COMMITTEE ISSUE: PRERELEASE AND COMMUNITY CORRECTIONS PROVIDERS' PERSPECTIVES -- PAST SUCCESSES, PRESENT TRENDS AND CHALLENGES, AND IDEAS FOR THE FUTURE

Amy Tenney, CEO, Boyd Andrew Community Services

Jan Begger, COO, Alternatives, Inc.

Alex Vukovich, WATCH Program Administrator, CCCS, Inc.

- 05:46:52 Ms. Tenney
- 05:52:21 Ms. Begger
- 05:59:23 Mr. Vukovich

Questions from the committee

- 06:07:17 Rep. Patelis asked Mr. Vukovich to speak on the WATCH Program.
- 06:09:45 Rep. Patelis asked Ms. Tenney to speak on the Elkhorn Program.
- 06:11:54 Rep. Patelis asked Ms. Begger if the Federal Bureau of Prisons has stopped contracting with certain prerelease centers throughout the United States.
- 06:14:11 Rep. Sheldon-Galloway asked the panel to speak on the current use and success rate of prerelease centers compared to previous years.
- 06:17:22 Rep. Patelis asked that the committee receive a tour of the Elkhorn Detention Center. The question was redirected to Ms. Cotton.
- 06:18:36 Sen. Sands asked the panel to speak on the diversity of populations in their individual programs.
- 06:20:50 Sen. Sands asked Ms. Tenney if her staff are trained in cultural issues and cultural sensitivity for Native American inmates.
- 06:21:14 Sen. Sands asked the panel to speak on PREA compliance in their facilities.

Public comment

06:23:26 May Simmons, New Hope Center

PUBLIC COMMENT ON ANY TOPIC WITH THE COMMITTEE'S JURISDICTION BUT NOT ON THIS AGENDA

06:28:12 Andy Hudak, Montana Sex Offender treatment Association (MSOTA)

06:39:13 Michael DesRosier, Glacier County Commissioner

06:42:57 May Simmons, New Hope Center

Break (Reconvened at 3:02 p.m.)

COMMITTEE WORK SESSION

07:02:04 Sen Sands commented on the committee's next steps.

07:02:38 Ms. Weiss reviewed the committee's work plan and agency oversight topics ([Exhibit 6](#)) ([Exhibit 7](#)).

Staff review of next meeting agenda items, Agency updates, SJ 25 Study, and HJ 6 Study

07:03:47 Ms. Weiss reviewed the committee's tentative meeting dates (see Exhibit 6).

07:05:34 Sen. Sands asked the committee to review and discuss the upcoming meeting dates and agenda items.

07:05:44 The committee discussed the March, May, and July meeting agenda items and dates.

07:10:19 Ms. Weiss reviewed the agenda items and the planned Women's Prison tour for the committee's March meeting.

07:11:08 The committee discussed the tour in Billings in March.

07:15:30 Ms. Weiss reviewed the committee's next steps regarding the SJ 25 study.

07:17:14 The committee discussed next steps on the SJ 25 study.

07:33:24 Ms. Weiss reviewed the committee's next steps regarding the HJ 6 study.

07:34:29 The committee discussed next steps on the HJ 6 study.

07:38:27 Ms. Weiss reminded the committee that LJIC receives updates from the State-Tribal Relations Interim Committee regarding SJ 3: *Study of Tribal Resources for Members in Criminal Justice System*.

07:39:57 Sen. Sands commented on the committee monitoring of DOC.

ADJOURNMENT

07:41:08 With no more work before the committee, Sen. Sands adjourned the meeting at 3:41 p.m.

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