



Law and Justice Interim Committee

62nd Montana Legislature

SENATE MEMBERS

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SHANNON AUGARE
STEVE GALLUS
GREG HINKLE
LYNDA MOSS
TERRY MURPHY

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DAVID NISS, Staff Attorney
DAWN FIELD, Secretary
DAVE BOHYER, Research Director

MINUTES

September 7, 2012

Room 102, Capitol Building
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

SEN. JIM SHOCKLEY, Chair
REP. MIKE MENAHAN, Vice Chair

SEN. SHANNON AUGARE
SEN. STEVE GALLUS
SEN. LYNDA MOSS
SEN. TERRY MURPHY

REP. ELLIE BOLDMAN HILL
REP. STEVE LAVIN
REP. MARGARET MACDONALD
REP. MICHAEL MORE
REP. KEN PETERSON

COMMITTEE MEMBERS EXCUSED

SEN. GREG HINKLE

STAFF PRESENT

DAVE BOHYER, Research Director
JULIANNE BURKHARDT, Staff Attorney
FONG HOM, Secretary

AGENDA AND VISITORS' LIST

Agenda (**Attachment 1**)
Visitors' list (**Attachment 2**)

COMMITTEE ACTION

CALL TO ORDER AND ROLL CALL

- 00:00:01 SEN. SHOCKLEY called the meeting to order at 8:02 a.m. The committee secretary called roll. Representatives Hill, Lavin, and More, and Senators Gallus, Hinkle and Moss were excused. (**Attachment 3**)
- 00:00:17 Dave Bohyer, Research Director, gave an overview of the agenda and meeting materials.

AGENDA

LCIj21 - CLARIFY INVESTIGATORY AUTHORITY OF POST

- 00:05:13 Mr. Bohyer gave an overview of LCIj21 (**Exhibit 1**).
- Committee questions and discussion
- 00:08:55 SEN. MURPHY
00:09:11 SEN. SHOCKLEY
- 00:11:54 **Chris Tweeten, Attorney for POST Council**, told the committee what his responsibilities are as attorney for the POST Council and discussed the situation of Robert Smith's letter that was written during Mr. Smith's position as Assistant Attorney General and that that letter was not an official opinion of the Attorney General but simply a letter of advice giving Mr. Smith's interpretation of statutes dealing with the question of whether POST is a criminal justice agency for purposes of the criminal justice information act.
- 00:19:06 Mr. Tweeten discussed proposed legislation that the Council wanted to bring forth in the upcoming session.
- 00:24:39 SEN. MURPHY
00:25:11 Mr. Tweeten
00:26:17 SEN. SHOCKLEY
00:26:38 REP. PETERSON
00:27:10 Mr. Tweeten
00:27:24 REP. PETERSON
00:27:42 SEN. SHOCKLEY
00:28:27 Mr. Tweeten
00:31:47 SEN. SHOCKLEY

BOARD OF PARDONS AND PAROLE

- **Legislative Review of Rules of Board of Pardons and Parole - Julianne Burkhardt, Staff Attorney**

00:33:35 Ms. Burkhardt discussed the rule review process and David Niss' memo of July 13, 2012, regarding legislative review of rules (**Exhibit 2**).

Public Comment

00:37:49 **Fern Osler, Board of Pardons and Parole**, commented on the exemption and the fact that the Board does make administrative rules.

Committee questions

00:39:16 SEN. SHOCKLEY
00:39:37 REP. PETERSON
00:39:56 Ms. Burkhardt
00:41:17 REP. PETERSON
00:42:44 REP. SHOCKLEY

- **Board of Pardons and Parole's Decision in the Clugston Case**

00:43:27 Ms. Osler discussed the decision of the Board regarding the Clugston case. She provided documentation (**Exhibit 3**) regarding the case.

Committee questions

00:45:16 SEN. SHOCKLEY
00:45:50 Ms. Osler
00:55:41 SEN. MURPHY
00:57:00 Ms. Osler
00:57:39 SEN. MURPHY
00:58:06 Ms. Osler
00:59:09 REP. PETERSON
01:00:30 Ms. Osler
01:01:03 REP. MORE
01:01:23 Ms. Osler
01:02:15 REP. PETERSON
01:02:31 Ms. Osler
01:02:35 REP. PETERSON
01:02:44 Ms. Osler
01:02:57 SEN. SHOCKLEY
01:03:08 SEN. MOSS
01:03:56 SEN. SHOCKLEY
01:06:31 Ms. Osler
01:07:30 SEN. SHOCKLEY
01:08:23 Ms. Osler

DNA EVIDENCE RETENTION

- **Montana Innocence Project - Jessie McQuillan, MIP**

01:09:42 Ms. McQuillan addressed and discussed preservation of DNA evidence.

- 01:21:03 • **Montana County Attorney's Association - Mark Murphy**
Mr. Murphy said that crime labs should be funded so that adequate testing can be done in a timely manner so that innocent people are not lingering in jail.
 - 01:26:46 • **Office of State Public Defender - Bill Hooks, Chief Public Defender**
Mr. Hooks said that the Office of the State Public Defender supports any projects that will help its clients avail themselves of the opportunity to prove that they are innocent of a crime.
 - 01:28:27 • **Office of State Public Defender - Wade Zolynski, Chief Public Appellant Defender**
Mr. Zolynski said that preserved evidence works both ways.
- Committee questions
- 01:29:28 SEN. MOSS
 - 01:30:26 Ms. McQuillan
 - 01:31:47 SEN. MOSS
 - 01:32:14 Ms. McQuillan
 - 01:34:27 SEN. MOSS
 - 01:36:08 Mr. Murphy
 - 01:39:43 Ms. McQuillan
 - 01:42:34 SEN. SHOCKLEY

PUBLIC COMMENT

- 01:44:46 **Perry Johnson, Undersheriff, Ravalli County**, commented on the discussion held regarding preservation of DNA evidence.
- 01:49:03 **Cheryl Wood, Montana Association of Counties**, opposes any legislation that shifts additional burden or costs to local governments without an accompanying funding mechanism.
- 01:49:46 **Melise Jordan, Advocates Against Injustice**, commented on the Judge Tucker's sentencing papers with regard to her husband's case.
- 01:55:27 **James Cox, citizen**, commented on what Ms. Osler said about the administrative procedures. She said that they are already complying with the law but he knows that is not so.
- 01:57:33 **Judge Loren Tucker** said that he cannot comment of Ms. Jordan's comments.

BREAK - reconvene at 10:15 a.m.

SUPREME COURT'S RULES OF PROCEDURE -- SUBSTITUTION OF DISTRICT JUDGES

- 02:14:59 • **Request from the Montana Judges' Association to disapprove 3-1-804, MCA Judge Loren Tucker, 5th Judicial District Judge, and President of the**

Montana Judges Association, said that the Association is requesting that the LJIC take action on 3-1-804, MCA, that states that a party does not need to supply a reason for throwing a district judge off a case by filing a motion that says they want a different judge and paying a filing fee.

02:28:25 SEN. SHOCKLEY said that a copy of Katherine M. Bidegaray's testimony is submitted to the committee for the record **(Exhibit 4)**.

Opponents

02:28:58 **Brad Newman, 2nd Judicial District Judge**, discussed why 3-1-804 is a bad public policy.

02:44:47 **Julie Macek, 8th Judicial District Judge**, provided a copy of the standard motion **(Exhibit 5)** that allows the practice to occur throughout the state against district court judges.

02:56:03 **Dirk Sandefur, 8th Judicial District Judge**, asked the committee to pay particular attention to the cases referenced by Judge Newman.

Proponents

03:03:32 **Mark Murphy, Montana County Attorney's Association**, said that he talked with members of the Association and the members said that they do not use the rule very often.

03:06:01 **Bill Hooks, Chief Public Defender**, said that the substitution rule is a good one and should be preserved.

03:09:51 **Wade Zolynski, Chief Public Appellant Defender**, said that this issue is of concern because legal issues will come from a change that district court judges are currently requesting.

03:16:32 **Al Smith, Montana Trial Lawyers' Association**, said that the Trial Lawyers' Association opposed this rule.

03:19:24 **John Alke, Montana Defense Trial Lawyers' Association**, said the Association opposed proposed rule.

PUBLIC COMMENT

03:25:39 **Greg Smith, Attorney, Cascade County**, said that the Cascade County Bar Association supports retaining the substitution rule.

03:29:32 **Bob Emmons, Attorney**, commented on keeping the rule, don't amend the law, leave it the way it is.

03:38:04 **John Hartsoe, Lake County**, said that the substitute rule should be retained. Mr. Hartsoe also testified to the illegal activities going on in Lake County.

Committee questions
03:43:49 REP. PETERSON
03:44:38 Judge Newman
03:45:19 REP. PETERSON
03:45:38 Judge Newman
03:46:28 REP. PETERSON
03:47:56 Judge Newman
03:48:31 REP. PETERSON
03:48:45 Judge Newman
03:50:16 REP. PETERSON
03:50:25 Judge Newman
03:51:06 REP. PETERSON
03:53:06 Judge Newman
03:54:52 REP. PETERSON
03:55:31 Judge Newman
03:56:51 SEN. SHOCKLEY
03:57:44 Judge Newman
03:58:23 SEN. SHOCKLEY
03:58:44 Judge Newman
03:59:45 SEN. SHOCKLEY
04:00:44 Judge Tucker

BILL DRAFT PROPOSAL LCij 06 - Designating certain information as confidential criminal justice information on an application for a permit to carry a concealed weapon

04:03:02 SEN. SHOCKLEY discussed the proposed bill draft LCij 06 (**Exhibit 6**).

Committee discussion
04:05:06 Mr. Bohyer
04:05:47 SEN. SHOCKLEY
04:06:58 REP. MENAHAN

PUBLIC COMMENT

04:08:27 **Perry Johnson, Undersheriff, Ravalli County Sheriff's Office**, is a proponent for leaving the social security number on the application.

Committee questions and comments
04:09:56 REP. MCDONALD
04:11:23 SEN. AUGARE
04:13:18 SEN. SHOCKLEY
04:14:29 REP. MORE
04:15:05 REP. MENAHAN

Lunch Break - reconvened at 1:16 p.m.

Motion to disprove 2009 amendments to 3-1-804, MCA

05:14:08 SEN. MURPHY moved that the committee recommend to the Legislature to disapprove the 2009 amendments to 3-1-804, MCA, related to the removal of a judge by any party.

Committee discussion

05:14:40 REP. PETERSON objected to the use of the word "arbitrary" and said that there is nothing in the rule that says it is arbitrary and a person has the right to remove a judge. He said he will not support the motion.

05:16:31 SEN. MOSS said that she cannot support the motion.

05:17:20 REP. MENAHAN said that he will vote against the motion.

05:20:22 SEN. SHOCKLEY said that he discussed the rule with legal staff and the Code Commissioner and came to the conclusion that the substance of the rule that was modified was not part of the rule that related to the arbitrary removal of judges.

05:22:38 SEN. MURPHY said his motion only refers to disallowing the modifications that the court made in 2009, not to the whole rule.

05:23:03 Ms. Burkhardt said that she discussed this with Mr. Everts, Legal Director, and came to the conclusion as expressed by Sen. Shockley that this committee with due deference to all district court judges, but respectfully disagreed with them. The only role this committee has is to make a recommendation to the Legislature to disapprove the 2009 amendment.

Motion Restated

05:24:41 Ms. Burkhardt said that the motion before the committee is to recommend to the Legislature to disapprove the 2009 amendment to 3-1-804, MCA.

Roll Call Vote

05:29:41 The motion failed on a roll call vote 8-2, with no votes from Representative MacDonald, Representative Menahan, Representative More, Representative Peterson and Senator Augare, Senator Gallus (by proxy), Senator Moss, and Senator Shockley. Sen. Murphy and Sen. Hinkle (by proxy) voted yes. Representatives Hill and Lavin were excused. **(Attachment 4)**

LC 325 - Study the operations of the Montana Board of Pardons and Parole

05:30:31 SEN. MURPHY gave an overview of LC 325, an interim study to look at the operations of the Montana Board of Pardons and Parole.

Committee discussion

05:32:28 SEN. SHOCKLEY

05:33:16 SEN. MURPHY

05:33:32 Mr. Bohyer reviewed LC 325 **(Exhibit 7)**.

05:35:02 REP. MENAHAN

05:38:59 REP. PETERSON

05:41:33 REP. MCDONALD
05:42:34 SEN. SHOCKLEY

Motion

05:42:57 SEN. MURPHY moved to approve LC 325 for preintroduction purposes to the 2013 legislative session.

Roll Call Vote

05:43:53 The motion passed on a roll call vote 8-2, with Rep. MacDonald, Rep. More, Sen. Augare, Sen. Gallus (proxy), Sen. Hinkle (proxy), Sen. Moss, Sen. Shockley, and Sen. Murphy voting yes; Rep. Menahan and Rep. Peterson voting no; Re. Hill and Rep. Lavin absent. (Attachment 5)

LCIj 08: Revise criminal intelligence information advisory council

05:46:55 Mr. Bohyer reviewed LCIj 08 (**Exhibit 8**), updating and clarifying statutes related to the criminal intelligence information section and advisory council.

Public Comment - none

Committee discussion

05:50:13 REP. MORE
05:52:17 REP. PETERSON
05:52:38 Mr. Bohyer
05:52:46 REP. PETERSON
05:52:59 Mr. Bohyer
05:53:05 REP. PETERSON
05:53:18 SEN. SHOCKLEY

05:54:24 Mr. Bohyer distributed information on Criminal Justice Information contained in Title 44, Chapter 5, part 103 (**Exhibit 9**).

Motion

05:55:34 REP. PETERSON moved to approve LCIj 08 for preintroduction purposes to the 2013 legislative session.

05:55:58 The motion passed 5-4 on a roll call vote, with yes votes from Rep. MacDonald, Rep. Peterson, Sen. Gallus (proxy), Sen. Moss and Sen. Shockley; and no votes from Rep. Menahan, Rep. More, Sen. Hinkle (proxy), and Sen. Murphy. Rep. Hill, Rep. Lavin, and Sen. Augare were excused. (**Attachment 6**)

LCIj 60 - establishing the Corrections Advisory Council and establishing its purpose and duties

05:58:55 Mr. Bohyer gave a presentation on LCIj 60 (**Exhibit 10**).

Committee discussion

06:00:26 SEN. SHOCKLEY
06:01:14 REP. PETERSON

Motion

06:01:27 REP. MENAHAN moved to approve LCIj 60 for preintroduction purposes to the

2013 legislative session.

06:02:59 The motion passed 7-2 on a roll call vote with Representatives MacDonald and Menahan, and Senators Gallus (proxy), Hinkle (proxy), Moss, Murphy and Shockley voting yes; Rep. More and Rep. Peterson voting no; and Rep. Hill, Rep. Lavin, and Sen. Augare were excused. **(Attachment 7)**

LCIj 61 - Eliminating the report on expenditures authorized by the annual license tax on attorneys (Exhibit 11)

Motion

06:03:23 REP. PETERSON moved to approve LCIj 61 for preintroduction purposes to the 2013 legislative session.

06:03:47 The motion passed by voice vote with Rep. Lavin, Rep. Hill and Sen. Augare excused.

LCIj 62 - Eliminating the report on health care costs for medical parolees (Exhibit 12)

Motion

06:04:23 REP. PETERSON moved to approve LCIj 62 for preintroduction purposes to the 2013 legislative session.

06:04:26 The motion passed by voice vote with Rep. Lavin, Rep. Hill and Sen. Augare excused.

LCIj 5D3 - Establishing a statewide multi-agency reentry task force for paroled offenders at high risk of recidivism (Exhibit 13)

Motion

06:06:31 REP. MacDONALD moved to approve LCIj 5D3 for preintroduction purposes to the 2013 legislative session.

06:08:36 The motion passed with Rep. Peterson voting no and Rep. Lavin, Rep. Hill and Sen. Augare excused.

PUBLIC COMMENT

06:09:45 **Fern Osler, Executive Director, Board of Pardons and Parole**, commented on the audit that was conducted on the Parole Board in 2002, on health care costs for parolees, and on the statewide reentry.

06:12:22 **John Ward, Parole Board**, said that the Board's function is to provide treatment to make incarcerated people successful on the outside.

06:16:59 **Melise Jordan** commented on her being a part of a journalistic website working with other newspapers in Montana regarding incarcerated people.

- 06:23:11 **Craig Thomas, Special Projects Coordinator, Community Counseling and Correctional Services**, supports the Parole Board.
- 06:29:44 **Christine Slaughter, Analyst, Board of Pardons and Parole**, said that listening to the committee today, she feels that the voices of the victims are not being heard.
- 06:31:50 **Jill Swenson, RN, St. Patrick Hospital**, commented on her concerns that prisoners do not get the respect that they should.
- 06:34:29 **Chanelle Thibault** asked if LC1j 06 had been voted on.
- 06:35:04 **James Cox**, discussed his role in re-introducing ex-prisoners into society.
- 06:39:04 **Melise Jordan** said that she is certified through the state of Florida in DOC.
- 06:40:11 **Fern Osler** provided information on the sex offender treatment program (**Exhibit 14**) but did not discuss the program.
- 06:40:37 **Hope Michael** commented on her incarcerated husband.

BREAK - reconvened at 3:04 p.m.

ASSIGNMENT OF SPONSORS

- 07:04:35 Rep. MacDonald will sponsor LC1j 2A.
- 07:05:10 Rep. Lavin will sponsor LC1j 03.
- 07:06:41 Rep. MacDonald will sponsor LC1j 5A.
- 07:07:14 REP. MCDONALD will sponsor LC1j 5B.
- 07:08:08 Rep. MacDonald will sponsor LC1j 5C.
- 07:09:47 Rep. Hill will sponsor LC1j 07.
- 07:12:26 Sen. Murphy will sponsor LC1j 09.
- 07:13:29 Sen. Murphy will sponsor LC1j 11.
- 07:14:34 Rep. Hill will sponsor LC1j 04.
- 07:15:59 Rep. Lavin will sponsor LC1j 08.
- 07:17:16 Sen. Murphy will sponsor LC1j 60.
- 07:17:46 Sen. Augare will sponsor LC1j61.
- 07:18:04 After some discussion, Rep. MacDonald said she would sponsor LC1j 10.
- 07:20:12 Sen. Augare will sponsor LC1j 62.
- 07:20:39 Sen. Murphy will sponsor LC 325.
- 07:21:43 There was discussion on LC1j 21. Sen. Shockley said that if no one wanted to sponsor this bill, this bill would simply go away.
- 07:22:29 Rep. MacDonald will sponsor LC1j 5D3.

LC1j 06 - designating certain information of an applicant for a concealed carry

permit as confidential criminal justice information

Motion

07:23:35 SEN. MURPHY moved to approve LClj 06 for preintroduction purposes to the 2013 legislative session.

Committee discussion

07:23:47 SEN. SHOCKLEY
07:24:52 REP. MORE said he will oppose the bill.
07:25:32 SEN. SHOCKLEY
07:25:56 SEN. MURPHY
07:26:19 SEN. SHOCKLEY
07:26:50 SEN. MOSS said she will oppose the bill.
07:27:23 SEN. SHOCKLEY

Roll Call Vote

07:28:35 The motion passed 7-3, with Rep. MacDonald, Rep. Menahan, Rep. More, Rep. Peterson (proxy), Sen. Gallus (proxy), Sen. Murphy, and Sen. Shockley voting yes; Sen. Augare (proxy), Sen. Hinkle (proxy), and Sen. Moss voting no. Rep. Hill and Rep. Lavin were excused. **(Attachment 8)**

07:30:10 Sen. Murphy will sponsor LClj 06.

07:30:29 SEN. SHOCKLEY read a message from Sen. Hinkle explaining why he was unable to be at the meeting.

ADJOURNMENT

07:31:32 With no further business before the committee, SEN. SHOCKLEY adjourned the meeting at 3:34 p.m.

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