



Law and Justice Interim Committee

62nd Montana Legislature

SENATE MEMBERS

SHANNON AUGARE
STEVE GALLUS
GREG HINKLE
LYNDA MOSS
TERRY MURPHY
JIM SHOCKLEY

HOUSE MEMBERS

ELLIE BOLDMAN HILL
STEVE LAVIN
MARGARET MACDONALD
MIKE MENAHAN
MICHAEL MORE
KEN PETERSON

COMMITTEE STAFF

SHERI SCURR, Lead Staff
DAVID NISS, Staff Attorney
DAWN FIELD, Secretary

MINUTES

September 9, 2011

Room 137, 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

SEN. SHANNON AUGARE
SEN. GREG HINKLE
SEN. LYNDA MOSS
SEN. TERRY MURPHY
SEN. JIM SHOCKLEY

REP. STEVE LAVIN
REP. MARGARET MACDONALD
REP. MIKE MENAHAN
REP. MICHAEL MORE
REP. KEN PETERSON

COMMITTEE MEMBERS EXCUSED/ABSENT

SEN. STEVE GALLUS
REP. ELLIE BOLDMAN HILL

STAFF PRESENT

SHERI SCURR, Lead Staff
TODD EVERTS, Staff Attorney
DAWN FIELD, Secretary

AGENDA & VISITORS' LIST

Agenda, [Attachment #1](#).
Visitors' list, [Attachment #2](#).

COMMITTEE ACTION

The Law and Justice Interim Committee:

- approved the June 21, 2011, meeting minutes as corrected; and
- approved the proposed work plan, as amended.

CALL TO ORDER AND ROLL CALL

00:00:01 SEN. SHOCKLEY called the Law and Justice Interim Committee (LJIC) to order at 8:30 a.m. The Secretary called roll, SEN. GALLUS and REP. HILL were excused ([Attachment #3](#)).

RULE REVIEW

00:01:16 **Todd Everts, Legal Counsel, Legislative Services Division (LSD)**, announced that Valencia Lane retired from Legislative Services Division in August and that David Niss would staff the LJIC for the duration of the current interim. Mr. Everts discussed a August 31, 2011, memo written by Mr. Niss regarding Department of Corrections and Department of Justice proposed rules ([EXHIBIT 1](#)).

ADOPT MINUTES

00:04:27 REP. PETERSON asked to make a correction on page 11 of the June 21, 2011, minutes (to change Eric Cantor to Eric Holder in two different places). **REP. PETERSON moved to approve the minutes as corrected. The motion passed on a unanimous voice vote.**

DVD: RESTORATIVE JUSTICE FOR VICTIMS, COMMUNITIES, AND OFFENDERS

00:06:14 **Sheri Scurr, Research Analyst, LSD**, said that the LJIC would be viewing a DVD (*Restorative Justice: For Victims, Communities, and Offenders*) that would provide a comprehensive introduction into restorative justice with a panel presentation and discussion to follow. The Committee viewed the DVD.

00:32:10 SEN. SHOCKLEY, referring to the rule review memo discussed by Mr. Everts, said that after his discussion of the issue with the Attorney General, LSD staff's concerns about proposed DOJ rules regarding the 24/7 program have been satisfied.

Panel - Gallatin County's community restorative justice program

Restorative Justice Inventory, Department of Corrections, was included in the meeting packet and listed on the agenda but was not reviewed or discussed at the meeting ([EXHIBIT 2](#)).

- 00:35:43 **Barbara Rainey, Program Coordinator, Gallatin County Justice Council Program, Bozeman**, discussed a PowerPoint slide presentation regarding key points of Gallatin County's restorative justice program and related documents ([EXHIBIT 3](#)). She noted that at this point, the Justice Council deals with misdemeanor offenses only. Ms. Rainey also provided an informational brochure published by from the Justice Council ([EXHIBIT 4](#)).
- 01:04:42 Ms. Scurr noted that a summary of the Justice Council program ([EXHIBIT 5](#)) was provided in the meeting folder and that the summary will be updated as new data is received.
- 01:05:19 **Judge Michele Snowberger, Belgrade City Court Judge, Belgrade**, discussed how she works with offenders who recognize that their lives aren't what they want them to be and desire to change, but don't have the skills to do so. She said that the Justice Council provides a court structure in which that change can occur. Judge Snowberger suggested that the LJIC look at the following areas:
- change the general sentencing statute to clarify that a judge can sentence an offender to a restorative justice program;
 - clarify that both diversionary and nondiversionary programs are available to the court, including deferred prosecution if the program is successfully completed; and
 - ensure that community corrections legislation properly reflects all courts and local communities, not just counties.
- 01:12:28 **Glenda Howze, Executive Committee Member, Justice Council**, discussed her involvement with the Justice Council, her view of success, and changes she would like to see, including the legislative suggestions mentioned by Judge Snowberger:
- a method to track recidivism, and
 - a mentoring program to allow Council members to have contact with participants.
- 01:20:54 **Mike O'Donnell, victim and program participant**, related his personal experience as a participant with his offender (statement included in [EXHIBIT 3](#)). He said that professional, respectful, and dedicated individuals worked with him, his family, and the offender; and inspired him to volunteer for the program. He said the program does make a difference and that it needs support in order to be successful.

Committee questions and discussion

- 01:25:24 SEN. MURPHY asked if Gallatin County has seen success, including cost savings, taking the restitution over incarceration approach. Ms. Rainey explained that the Justice Council program is used as sentencing enhancement to a sentence for which restitution has already been ordered. She said it is not in lieu of a sentence but as an alternative to incarceration, so in that sense the program frees up jail beds and gives the offender a chance to look at his or herself and make choices. Ms. Rainey said that the Justice Council makes clear what the consequences will be if the offender chooses not to participate.

- 01:27:55 REP. PETERSON said he has concerns about the anonymity aspect of the program and that it is difficult to measure success if the process is anonymous. Judge Snowberger said that the anonymity is more for the protection of the victim than the offender, and that the confidentiality allows participants to be more honest in their responses. She also discussed the legal implications of tracking offenders and the lack of authority to do so under current statutes.
- 01:32:28 REP. PETERSON said that he is not willing to fund a program unless results can be tracked in order to determine its effectiveness. Judge Snowberger said that her personal experience is that the process is a transformational one for the participants and that it reminds her to be optimistic about the human spirit and its ability to change. She said that people come back to tell her how their lives have changed because of their participation in Justice Council. She said it is very important to have some kind of overlaying resource for the state to help local communities develop and offer programs like the Justice Council. Judge Snowberger said that the Attorney General's Office helped her start the Gallatin County program, which has changed her own behavior in the courtroom.
- 01:38:31 SEN. HINKLE asked Judge Snowberger to clarify if she has the ability to sentence an offender to a restorative justice council, and if so, do victims get to participate in the sentencing; and do counties save money due to fewer inmates being incarcerated. Judge Snowberger explained the sentencing mechanism used, that an "action plan" is designed for each offender, and that certain steps are taken if the offender fails to comply. She discussed victim rights, which include the right to be heard at sentencing and said that she has not had a victim request that an offender be sentenced to Justice Council. Regarding decreased costs, Judge Snowberger said she believes that counties would see a reduction in costs and provided examples of similar programs operating in New Zealand and Australia and the benefits being experienced there after a number of years of restorative justice programs for juvenile offenders.
- 01:45:58 SEN. MOSS thanked the panelists for coming and for their involvement in the Justice Council. She asked Judge Snowberger if a template or model for tracking results is available. Judge Snowberger said there are programs that track results but would have to research it further. SEN. MOSS said that LSD staff could assist, if necessary. SEN. MOSS asked if services and other programs, such as drug courts, could be linked with the Justice Council. Judge Snowberger said that there is not a specific team approach to do that but that the Council makes many referrals to connect offenders with needed services, which may become a part of the offender's action plan. SEN. MOSS and Judge Snowberger discussed community safety issues and if offenders ever confront the issues they were convicted of.
- 01:54:53 REP. MCDONALD asked if participants in the Justice Council are those who would not be incarcerated for their offense or if participation keeps them from being incarcerated. Judge Snowberger said it is a case-by-case decision and explained further. REP. MCDONALD asked the other panelists to comment on if they feel that the Justice Council program makes neighborhoods safer. Ms. Howze said that she does think the program makes for safer neighborhoods. She

said that even though there is no defined tracking method, anecdotal evidence does indicate that the program is successful.

01:59:01 REP. MCDONALD asked if there are activities to help offenders see that their actions can help heal neighborhoods. Ms. Howze related anecdotal information about a young man who agreed to perform random acts of kindness in his neighborhood. She said he adopted an elderly woman in his neighborhood and shoveled her walk for an entire winter. She discussed another case in which a victim-offender dialog occurred between a pawn shop owner and the offender who pawned a stolen bike. She said the store owner felt like he recovered some level of trust after being able to talk with the offender.

02:00:56 SEN. SHOCKLEY said that he shares the concern about tracking results but that the program does appear to be fairly cost effective, with a cost of approximately \$227 per offender. He asked how many offenders and victims actually engage in a dialog. Ms. Rainey said it has been difficult to get the dialogs going because judges rarely allow contact between the offender and the victim.

02:11:57 SEN. SHOCKLEY recessed the LJIC for a brief break.

BREAK

02:31:05 REP. MENAHAN reconvened the meeting at 11:02 a.m.

Panel - State restorative justice programs

02:32:13 **Matthew Dale, Director, Office of Consumer Protection and Victim Services, Department of Justice (DOJ)**, noted that the Office of Restorative Justice was combined with the Office of Consumer Protection and Victim Services and that the department's restorative justice program is inactive at this time. He referred to Ms. Scurr's summary of the DOJ ([EXHIBIT 6](#)) to further explain how the office functioned while restorative justice was funded. Mr. Dale noted that while the Department is not actively engaged in restorative justice at this time, it does partner with the Department of Corrections and maintains the library established when the program was funded. Mr. Dale said DOJ staff is available to participate in restorative justice programs, should the Legislature decide to add them back to DOJ duties.

02:36:01 **Sally Hilander, Victim Programs Manager, DOC**, explained how DOC programs serve victims, including providing opportunities for victims to have facilitated contact with the offender. She discussed the mission, goals, and objectives of the programs; how the programs are staffed and funded; program components, and historical data ([EXHIBIT 7](#)).

02:44:00 **Greg Budd, Superintendent, Treasure State Correctional Training Center, Department of Corrections (DOC)**, highlighted the Center's mission statement; the goals, objectives, and components of the training program; staffing and funding; and program components and content. ([EXHIBIT 8](#)).

02:50:09 **Dan Burden, former Superintendent and founder of Boot Camp victim impact program, and victim-dialogue facilitator**, discussed how he became involved in restorative justice and his continued involvement as a volunteer since

his retirement from the DOC. He also discussed policy changes and other recommendations for the legislature to consider regarding restorative justice (EXHIBIT 9).

02:57:17 **Mardi Elford, victim and volunteer coordinator for victim impact panels,** explained her involvement in restorative justice. Ms. Elford also offered suggestions on how to enhance and expand victim impact panels (EXHIBIT 10).

Committee questions and discussion

03:04:01 REP. PETERSON asked, regarding the boot camp program, if victims participate in the impact panels and if so, to what extent. Mr. Budd said the at least two victims participate on each impact panel but not with their offender. REP. PETERSON asked if an offender ever faces his victims. Mr. Budd said not unless it is through a dialogue arranged by the DOC.

03:05:27 REP. PETERSON asked why the DOJ's Office of Restorative Justice is inactive. Mr. Dale said that the office was funded through grants and when the grants ended, the restorative justice programs did too.

03:07:30 SEN. HINKLE asked if there are numbers available that indicate the number of violent offenders versus nonviolent offenders incarcerated. Mr. Budd said he would find out. SEN. HINKLE said that if the restorative justice programs for nonviolent offenders was expanded, fewer offenders would be incarcerated which would decrease costs and free up funding. He asked Mr. Budd if he agreed that the restorative justice and restitution programs for nonviolent offenders should be expanded. Mr. Budd agreed.

03:09:45 REP. MCDONALD said she is interested in broadening the utilization of the victim impact panels and how that might affect programming throughout the DOC. Ms. Hilander said she thought that creating victim impact panels in each facility could be done without a large outlay of money. Mr. Burden said that a limiting factor would be finding victim speakers who are at a stage in the healing process where they are able to share their experience. Mr. Budd added that there are eight active speakers who participate in nine panels a year and agreed that it may be difficult to get speakers to help with the project. He said that it would require a time investment and training requirements as well, which would involve DOC staff.

03:16:41 **Mike Ferriter, Director, DOC,** agreed that there is a lot of value in the victim impact panels but said there would be a cost associated with expanding the program throughout the DOC system, which would have to be budgeted and planned for. REP. MCDONALD said she was thinking more in terms of the residential and prerelease centers only, not system-wide. Director Ferriter agreed that expansion into the prerelease programs is a good idea but emphasized that additional staff and funding would still be needed. He agreed the panels would aid with return rates and recidivism and noted that the recidivism rate for the boot camp participants is dramatically less.

- 03:20:50 SEN. SHOCKLEY said he was impressed with what he had heard at the meeting and that he would like to discuss costs at some point. Director Ferriter agreed that the victim panels have been very effective. He also discussed how the young age of the boot camp offenders is another important factor.
- 03:23:22 REP. PETERSON asked if all offenders in boot camp participate in victim panels and how boot camp offenders are tracked. Mr. Budd said that all but a few offenders participate in the panels and that only offenders who successfully complete the requirements and graduate the boot camp are tracked.
- 03:25:29 REP. MORE asked if there are recurring social or psychological themes in the lives of the offenders that differentiate them from their peers in society. He referred to the DOC's desire to elicit empathy from the offender for the victim and asked what is missing from an offender's behavioral patterns that make them different. Mr. Burden said the lack of empathy is a general theme, as are addictions to drugs and alcohol, and criminal thinking. Mr. Budd said that offenders are also frequently diagnosed with an anti-social personality disorder.
- 03:27:43 REP. MCDONALD asked Mr. Budd about recidivism rates over time and the rate for new crimes. Mr. Budd said that the current recidivism rate for boot camp graduates is 6.3%, versus a 15% rate for the DOC overall.
- 03:28:53 REP. MENAHAN asked how the principles of restorative justice could be incorporated statewide for those who won't be committed to the DOC's custody. He said that probation and parole might seem to be a logical place to begin incorporating restorative justice principals into District Court cases. But he noted that probation and parole staff are already overworked and that he didn't think counties could afford to pay for it. He asked if the panelists had any suggestions or recommendations to the LJIC on how make restorative justice work on a statewide basis. Mr. Budd said that there may be restorative justice models that could be researched that may help answer REP. MENAHAN's question. Director Ferriter said that there are just under 9,000 offenders on probation and parole and of those, over 7,500 are on probation; so resources are an issue. He said he likes the idea and suggested that a good way to begin might be through a pilot project within probation and parole. He said it is just over \$4 a day to supervise probation and parole offenders, versus over \$90 a day at the Montana State Prison (MSP). He reiterated that additional resources would be needed.
- 03:36:24 SEN. SHOCKLEY asked if other counties have similar programs to Gallatin County's Justice Council. Ms. Hilander said that she knows of programs in the Flathead Valley, Bozeman, and Helena. Ms. Scurr said that she is in the process of completing an inventory of all restorative justice programs in the state and that the committee will receive a summary of each program.
- 03:38:51 SEN. SHOCKLEY said that the testimony indicates that an actual offender/victim face-to-face dialog is difficult to achieve and is not cost effective. He asked if it the money would be better spent on organizing the victim impact panels. Ms. Hilander agreed that a victim/offender dialog does not occur frequently and is a

difficult process but said that the opportunity needs to be available to victims who want to pursue it. She said that main expense is travel.

03:41:40 SEN. SHOCKLEY asked what the cost per day is for an inmate at the boot camp. Mr. Budd referred to EXHIBIT 8 and said the cost is \$91.42 plus administrative costs and that he would find out what the administrative cost is. SEN. SHOCKLEY asked what the daily rate is for MSP and Crossroads Correctional Center. Director Ferriter said the daily rate for MSP is \$99.62, including administrative costs; and the daily rate for Crossroads is \$72.83. He said that the more healthy inmates with fewer needs are housed at Shelby, which is why costs are lower at that facility.

03:45:57 REP. PETERSON asked how the victims who participate on the impact panels are found. Mr. Burden said that they are found mostly by word-of-mouth. Mr. Budd said that sometimes the offender's crimes will match the victim. He said it has been his observation that when that happens, the experience has a harder and more distinct impact on the offender. He related several statistics regarding boot camp graduates and recidivism rates.

03:48:58 SEN. SHOCKLEY recessed the LJIC for a short lunch break.

LUNCH BREAK

04:37:35 SEN. SHOCKLEY reconvened the meeting at 1:10 p.m.

JAIL SUICIDE PREVENTION, BACKGROUND, BRIEFING

Jail Suicide Prevention: Review of Previous Committee Work, was included in the pre-meeting packet and listed on the agenda but not discussed at the meeting ([EXHIBIT 11](#)).

Panel - Update on Jail Suicide prevention efforts

04:39:25 **Karl Rossten, Suicide Prevention Coordinator, Department of Public Health and Human Services (DPHHS)**, discussed a summary of national research and interventions specific to Montana's correctional facilities ([EXHIBIT 12](#)).

04:47:22 **Deb Matteucci, Behavioral Health Facilitator, DPHHS**, updated the LJIC on training initiatives going on across state that impact topic of jail suicide which include new programs, information sharing between DOC and DPHHS, training for mental health providers treating patients with criminal justice issues, expansion of training for law enforcement officers, and pursuit of a funding options needed to implement a new collaborative-approach program.

04:59:00 **Dennis McCave, Montana Sheriff's and Peace Officers Association (MSPOA) and Captain, Yellowstone County Sheriff**, read a statement regarding Montana Jail Standards and a review process update ([EXHIBIT 13](#)). Mr. McCave distributed and discussed additional documents:

- Detention Standards, Chapter 7 - security and control ([EXHIBIT 14](#)); and
- suicide prevention screening guidelines ([EXHIBIT 15](#)).

Mr. McCave said that having a centralized reporting repository, a uniform standardized assessment tool, and statewide consistent training, would be a tremendous step in reducing the number of jail suicides.

- 05:04:43 **Harold Blattie, Executive Director, Montana Association of Counties (MACo)**, explained the structure of MACo and its relevance to the jail suicide issue. He said that MACo considers the issue mostly from a liability standpoint for counties. He said that training for law enforcement is a huge challenge but is likely the most critical component in decreasing jail suicides. Mr. Blattie discussed the difficulty Broadwater County is experiencing in filling its new jail and the budgetary dilemma incurred by the lack of inmates. He said he highlighted that situation as an example of the kind of budget issue facing county jails, which is why jail suicide prevention measures are frequently not funded. He said that MACo will remain committed to help decrease jail suicides in spite of the funding challenges and referred to the collaborative incentive program discussed by Ms. Matteucci.
- 05:12:27 SEN. AUGARE thanked the panelists for their work and noted that the previous Law and Justice Interim Committee studied this issue, which included working with the MSPOA on what could be done, from a policy perspective, to curb jail suicides. He said that the MSPOA identified core standards but few have been implemented. He said that legislators need more information, that LSD staff has been directed to work with the MSPOA, and that the legislators expect answers so it can arrive at solutions.
- 05:16:19 SEN. AUGARE asked, of the 113 voluntary core standards, what is being done to ensure the standards are actually being implemented; and if the standards should be mandatory, rather than voluntary. Mr. McCave clarified that he has not been contacted by LSD staff. He discussed ten county jail reviews that have been completed ([EXHIBIT 13](#)). He said that this issue is a challenge nation-wide and cited Ohio as an example of a state that shut down its jail standards program due to lack of funding. He stated that the MSPOA is better equipped to deal with jail standards than is state government and that many other states are using similar professional organizations, rather than state agencies, to design and implement jail standards. He said he is working to get other entities, such as the DPHHS and MACo, to join in the process as partners to help with this issue. Mr. McCave said that he will report back to the LJIC as the MSPOA continues its work on the standards update.
- 05:20:57 REP. MORE asked, instead of trying to change human behavior, why not modify the physical means through which the suicides are physically accomplished. He said more focus should be put on what can be done in a cell itself to reduce or remove the possibility of suicide. He suggested that counties partner with the building industry to get ideas for modifications to cells that would reduce suicide. Mr. Rossten said that national research indicates that is an area that should be focused on but that the research also indicates that training is also critical.
- 05:23:45 REP. MORE asked Mr. Blattie to respond. Mr. Blattie said that having a jail inspection program would help identify risk areas but that once assessed, the issue of who would pay for the modifications still exists. He said that counties have to bear the costs of improvements to capital facilities but that when a state agency has a state inmate detained in a local jail, the state pays only certain costs.

- 05:26:02 SEN. MOSS said that 64% inmates have mental health issues. She asked if there are examples in Montana where telemedicine or video conferencing is used to help with mental health assessments or treatment. Ms. Matteucci said there are some facilities that use telemedicine to bring mental health services in through contracted services and that this occurs on an individual basis. She discussed the importance of training, the need for institutionalized screening and assessment tools, how services could be accessed through different avenues, and the shortage of mental health providers and services. SEN. MOSS and Ms. Matteucci discussed the Indiana Rural Health Association model project. SEN. MOSS asked if there has been a cost analysis to determine if it that could be an effective tool and if a similar partnership could be done in Montana.
- 05:32:04 SEN. HINKLE asked who is notified about inmates identified as being at risk for suicide. Mr. Rossten said it is usually a crisis response team or a community mental health center that is contacted to provide services. SEN. HINKLE asked what the difference is between an inmate committed to the DPHHS versus the DOC. Ms. Matteucci said there are several variables to consider and explained the sentencing criteria, including placement in a facility.
- 05:36:15 SEN. SHOCKLEY asked how a person sentenced as not guilty but mentally ill is sentenced and placed. Ms. Matteucci said the person would be placed at the state hospital and explained the different treatment units there.
- 05:37:28 SEN. SHOCKLEY said that Mr. Rossten's panel discussion indicated that larger facilities have fewer suicides. Mr. Rossten said that is the case because larger facilities typically have more resources and services.
- 05:38:31 SEN. SHOCKLEY and Mr. McCave discussed the number of jails and average daily population of jails in eastern Montana. Mr. McCave said most jails average well under 50 inmates per day, and some as few as two or three. SEN. SHOCKLEY said that people in smaller jails are at the greatest risk. Mr. McCave agreed. SEN. SHOCKLEY asked if a regional jail used by several counties would be safer and more economical. Mr. McCave said that idea that has been discussed and is being done in other parts of the country. He said that one issue in Montana is travel distances and that officers could spend hours just driving offenders back and forth. SEN. SHOCKLEY asked about jails using safer clothing and bedding. Mr. McCave said that a number of jails have suicide smocks and suicide mattresses but that these items are very expensive. He said that most Montana jails are very old and that the peer review and inspection process would help identify the risk areas, as would standardized forms and training.
- 05:48:08 SEN. SHOCKLEY said he has been told that if a person wants to commit suicide, most will find a way to do it and that there is little that can be done to deter them. He discussed the risk of lawsuits, particularly if jail standards have been adopted. He asked Mr. Blattie to comment. Mr. Blattie agreed that having standards would create a totally different liability standard for counties.

05:50:06 SEN. SHOCKLEY asked if the MSPOA has a plan to help smaller and rural jails. Mr. McCave said he is trying to organize a meeting to talk about the future of the process and where to go from here. He said that the discussion must address how followup should be done, how often a peer review should be completed, and what the consequences should be if a review is not completed successfully. SEN. SHOCKLEY said he would like to have every jail be observed, not in a pass/fail situation, but to give the facility suggestions and recommendations on what could be done to make improvements. He said that because county commissioners have many difficult funding choices to make, there will still be things that won't get funded.

05:53:49 SEN. SHOCKLEY recessed the committee for a short break.

BREAK

06:14:45 SEN. SHOCKLEY called the meeting back to order at 2:45 p.m.

INVOLUNTARY COMMITMENT STANDARDS, BACKGROUND BRIEFING

A memo prepared by David Niss, Staff Attorney, regarding standards for emergency detention and involuntary commitment, was included in the pre-meeting packet but was not discussed at the meeting ([EXHIBIT 16](#)).

Panel - Involuntary commitment standards (HB 365, 2011 Session)

06:18:17 **Matt Kuntz, Executive Director, NAMI-Montana**, said that most people don't understand the basics of serious mental illness. He discussed the definition of serious mental illness as used by NAMI and the effects of serious mental illness. He explained how the civil commitment process is used and discussed historical approaches used to treat mental illness. He also touched on the various approaches used by counties in dealing with the mentally ill and the difficulty in obtaining treatment for the them. Mr. Kuntz said it is difficult to know where the line is when deciding someone is sick enough to take their civil rights away in order to provide treatment. He said that House Bill 265 (REP. MENAHAN, 2011 session) broadened the emergency detention standards, which has been very helpful.

06:23:44 **Anita Roessmann, Attorney, Disability Rights Montana (DRM)**, agreed that HB 365 was helpful because it clarified the standard for detaining a person for treatment. She discussed police power involved in the process as a guardian of people's safety. Ms. Roessmann discussed the committee bills passed in the 2009 session (HB 130, 131, and 132) and how they are being implemented in different parts of the state. Ms. Roessmann related an example of a young man from Billings for whom she advocated in an involuntary commit case and said that while HB 365 will help, it won't solve the problem for law enforcement officers dealing with the mentally ill.

06:32:57 **Joan Daly, Montana State Hospital, DPHHS**, distributed and discussed several documents:

- a summary sheet of Montana State Hospital admissions for 2010-2011 ([EXHIBIT 17](#));
- Montana State Hospital emergency and court ordered admissions and commitments for fiscal years 2010 and 2011 ([EXHIBIT 18](#)); and

- Montana State Hospital emergency and court ordered admissions to MSH by county for fiscal years 2010 and 2011 ([EXHIBIT 19](#)).

Ms. Daly noted that most patients have co-occurring disorders and that MSH does address chemical dependency issues. She discussed the counties with the numbers of admissions and other relevant statistics.

06:47:05 **Paul Meyer, Western Montana Community Mental Health Center (WMCMHC)**, discussed services and treatment provided at three crisis centers in Montana that provide detention services (Silver Bow County, Gallatin County, and Ravalli County). He said that positive changes have been seen in all three counties as a result of having the crisis facilities in place.

06:52:49 **Greg Chilcott, Ravalli County Commissioner, Montana Association of Counties**, said even though he has no expertise in mental health, as a county commissioner, he does understand the costs and risk exposure to county governments. He referred to the fiscal note attached to HB 365 ([EXHIBIT 20](#)) and discussed MACo's concern that any amendments or changes to the bill, as currently written, would likely increase the risks and costs to county governments. He said he is interested in gathering information in order to work from a better informed position so that better services can be provided to citizens.

Committee questions

06:55:20 REP. PETERSON asked what the basis is for taking tribal commitments. Ms. Daly said the process is the same as for any other citizen of the state. REP. PETERSON asked if the federal government pays for a tribal commit Ms. Daly said that she didn't know but would find out. REP. PETERSON asked if Yellowstone County's low rate of commitment to MSH is attributable to the Billings Crisis Center. Ms. Daly said that the Billings medical community made a commitment to treat patients locally, if possible and discussed the services available at the Billings Clinic and the Crisis Center. REP. PETERSON said it was his understanding that the Billings Crisis Center was used as a model for HB 130, 131, and 132. Ms. Daly said yes, but noted that the Billings Crisis Center does not have locked capacity, as do the other crisis centers.

07:01:50 REP. MENAHAN asked for additional information about the WMCMHC's three facilities. Mr. Meyer said that the Silver Bow facility has eight voluntary beds, two secure beds, and one seclusion room; Gallatin County has 8 voluntary beds and 2 secure beds. He said the patients on the detention side are restricted to 72 hours and the patients on the voluntary side average 3-6 days' stay. He said that the Ravalli County facility has four voluntary beds and one secure bed. Mr. Meyer said that all three facilities are licensed by the state, can hold people up to 72 hours, unless the person stipulates to voluntary treatment.

07:05:08 REP. MENAHAN said that the MSH is licensed for 189 patients and that there is a lot of pressure on the hospital from different sources. He asked if the diversion grants from the 2009 Legislature (HBs 130, 131, and 132) are achieving the

purpose of the legislation. Ms. Daly said if that statistics indicate a decrease in detentions at the MSH so one could say that there has been a benefit.

- 07:07:32 REP. MENAHAN said that certain concerns were expressed during the 2011 session that HB 365 might have opened the door to abuse by law enforcement by being able to detain the mentally ill and homeless and take them to detention centers. He said he personally did not think those concerns to be valid but asked Ms. Roessmann to comment on the pressure between infringing on the person's rights to get them help, versus the person's right to make decisions for themselves. Ms. Roessmann said that when more mental health services are created, more admits will be made to the state hospital but if the right kind of services are set up, a meaningful balance can occur, and meaningless referrals to the state hospital can be avoided. Ms. Roessmann discussed how the Billings Crisis Center operates and that no one leaves without having some type of help in place. She also discussed a Minnesota model in which the facility was intended to become obsolete as community services were put in place. She said that putting services together that would keep a person in their own community would be great for Montana.
- 07:13:16 REP. PETERSON referred to the distribution of funding for HBs 130, 131, and 132, and asked if the bills have been of benefit to the state. Ms. Roessmann said she agreed with how the funding was distributed and that the bills have benefitted the state. to the displeasure of the Billings Crisis Center and community regarding how the funding for House Bills 130, 131, and 132 was handled and asked Ms. Roessmann if she felt the bills have been beneficial to the state. Ms. Roessmann said that she understands why Billings was disappointed but that the legislation was the right thing to do and the bills have benefitted the state.
- 07:15:37 SEN. SHOCKLEY said that he probably would have voted for HB 365 but did have concerns. He said one concern was that it could result in a person could be brought in by law enforcement simply because they are poor or homeless. Ms. Roessmann agreed that is a concern that needs to be taken seriously but that a crisis center provides a meal and a warm mattress, but that statutory language spells out that a person must be taken to a care and treatment facility for an evaluation, not a jail. She said the easier it is to get a person in, evaluated, and either treated or released, the better.
- 07:18:32 SEN. SHOCKLEY asked if the Ravalli County facility has saved money, specifically transportation costs.. Commissioner Chilcott said it is still early in the process but believes a cost savings will be seen.
- 07:19:04 SEN. SHOCKLEY said that public defender involvement in Ravalli County has resulted in a lot of "wear and tear" on clients by being taken back and forth to the MSH many times. He asked Mr. Meyer to comment. Mr. Meyer said that the public defenders are required to protect people's rights but that the biggest need of a seriously mentally ill person is access to treatment, even though the person may not understand that. He said that defending them and putting them back on

the streets without treatment is a disservice to that person, which is why he supported HB 365.

- 07:21:03 SEN. SHOCKLEY asked Ms. Roessmann to explain the video conferencing bill passed in 2009. Ms. Roessmann said the bill provided that any aspect of a civil commitment procedure could be conducted entirely through video conference and explained how the process has been used.
- 07:23:34 SEN. SHOCKLEY asked how video conference is being used in Ravalli County. Mr. Meyer said that it is used at the crisis facility for the initial appearance and reading of rights, and again at the courthouse for the actual commitment hearing.

PUBLIC COMMENT

- 07:25:26 **Dr. Donald Harr, retired neuropsychiatrist and representative of the Montana Chapter of the American Foundation for Suicide Prevention and the Suicide Prevention Coalition, Yellowstone County**, expressed his concern about the number of jail suicides that have occurred in the last year and offered his associations' services and expertise to help the LJIC identify ways to reduce jail suicides. He said he could provide written information. Dr. Harr discussed the conflict between a person's civil rights and the right to treatment and pointed out that if a person is seriously mentally ill to the point where he can't recognize that he needs help and may be a danger, then the person has lost the right to refuse treatment.
- 07:29:35 REP. MENAHAN suggested that Dr. Harr offer his assistance to the panelists. Dr. Harr said he has already been in contact with them.
- 07:30:43 REP. PETERSON asked if Dr. Harr has he has discussed his concerns with Ms. Roessmann. Dr. Harr said he has.
- 07:31:29 **Rudy Stock, private citizen, Helena**, discussed numerous concerns about the Crossroads Correctional Center in Shelby, Montana. He said he has made over 80 trips to the Center since February 2011, and that he is very concerned about poor prisoner conditions there. Mr. Stock distributed and discussed the following:
- a copy of the contract between the Montana Department of Corrections and Corrections Corporation of America ((CCA), [EXHIBIT 21](#));
 - a packet of information regarding parole decisions made about Clive W. Kinlock, an inmate at Montana State Prison ([EXHIBIT 22](#)); and
 - information relating to a number of inmates of concern to Mr. Stock ([EXHIBIT 23](#)).
- 07:40:59 SEN. HINKLE asked Mr. Stock if he is aware of inmates who are eligible for parole but have been denied or inmates who have been paroled but are still being held. Mr. Stocks said he is, and discussed an example of an inmate who was paroled but given a long list of restrictions to be followed upon his parole, such as not being allowed to drive a car or possess a telephone. Mr. Stocks said that the restrictions almost guaranteed that the inmate could not function successfully outside of prison. SEN. HINKLE asked Mr. Stocks to discuss elaborate on the example of the paroled inmate who was sent back to prison for

getting married without notifying his parole officer before the marriage ([EXHIBIT 23](#)). Mr. Stock explained the conditions of the inmate's parole and how he ended up back in prison. SEN. HINKLE said, in light of the serious issues brought forth by Mr. Stock, he would like to move to request that the LJIC request a legislative audit for compliance of the contract with the DOC and the CCA. SEN. MURPHY seconded the motion. REP. PETERSON said that any legislator can request an audit so a motion may not be necessary. REP. MENAHAN opposed the motion, saying that as a county prosecutor he was familiar with two of the cases and that he was taking some of Mr. Stock's comments with a grain of salt. He said the request should be made as an individual legislator. SEN. HINKLE stated that some of the concerns discussed by Mr. Stock constitute human rights violations and that if the Law and Justice Committee would not vote to request an audit, he would do it as an individual legislator.

- 07:46:20 REP. PETERSON made a substitute motion to place the issue on the December meeting agenda and to ask the DOC to respond to Mr. Stock's concerns. Mr. Everts recommended that a vote not be taken on the motion because it had not been noticed on the agenda. REP. MENAHAN asked if REP. PETERSON and SEN. HINKLE would agree to withdraw their motions. REP. PETERSON agreed. SEN. HINKLE agreed. REP. MORE asked that the issue be placed on the December meeting agenda.
- 07:48:21 SEN. MURPHY said that he also has visited the Crossroads Correctional Center and shares SEN. HINKLE's concerns. He said he does not want an audit request to wait until December and joined SEN. HINKLE's request for an audit to be done immediately. REP. MCDONALD said she would join with them also and asked for staff to research how recently the Shelby facility have been looked at.
- 07:49:59 REP. PETERSON thought that the committee members could request a performance audit directly from the LAD.
- 07:50:21 Mr. Stock said that he supports having a performance audit done.
- 07:51:30 **Reuben McKinney, citizen**, discussed his concerns about the Board of Pardons and Parole and said that even though inmates comply with the Board's requirements, parole is being denied to inmates for arbitrary reasons and with no recourse for the inmate. Mr. McKinney discussed several specific examples. He stated that there is an issue of nepotism and allegations of two sets of books being kept, one that inmates are allowed to see and another that is not available to the inmate. Mr. McKinney discussed several other related concerns and said that there should be avenue for inmates to file a complaint.
- 08:00:29 **Sharon DeMers, relative of MSP inmate**, asked why MSP staff is not required to take urine analysis tests and to whom the Parole Board is held accountable. REP. MENAHAN said he could not answer the questions because he is not familiar with DOC policies and that the purpose of the public comment period is for the committee to listen to people's concerns, not to answer questions. He suggested that Ms. DeMers rephrase her questions as concerns.

- 08:02:36 **Lonette Peltier**, said that is of great concern to her that parole hearings are not recorded. She also expressed concern about the quantity and quality of food being served to inmates and that inmates can't get certain medical tests, including the fact that families are not allowed to pay for the tests.
- 08:04:44 REP. MENAHAN said that the LJIC can't answer the questions but that the questions can be looked into by individual legislators.
- 08:05:39 **Casey and Eddie Rudd, Bozeman**, said they share many of the concerns expressed in the previous comments. Ms. Rudd disclosed that both she and her husband are former inmates in the corrections system but are no longer on probation or parole. Mr. and Mrs. Rudd distributed a letter explaining a nonprofit prisoner advocate program started by Mrs. Rudd called "Connections" and the program's connection to the Montana Criminal Justice Reform Network ([EXHIBIT 24](#)). Copies of a "Connections" pamphlet were also provided ([EXHIBIT 25](#)). Ms. Rudd asked the LJIC to include in its study plan, research of mandatory parole or reinstating "good time" because the parole system is very clogged up by nonviolent offenders who are back in prison for minor infractions of probation and parole. Ms. Rudd also discussed a survey conducted by her program in 2006 regarding paroled inmates waiting to be released ([EXHIBIT 24](#), pages 2-4).
- 08:10:55 **Eddie Rudd, Bozeman**, added that if an inmate is denied by one prerelease, the inmate has to have to wait 30 to 60 days to submit the request again. Mrs. Rudd continued her comment on the survey results. She said she also surveyed the inmates to find out what their four top mandatory parole, good time reinstated, housing for transitional services, and one more that she couldn't recall. She discussed the many barriers faced by paroled prisoners trying to adjust to life outside of prison.
- 08:17:04 Ms. Rudd stated that she and Mr. Rudd have brought 137 paroled inmates into their own home in order to help them get on their feet and to help them understand what it will take for them to stay out of prison. Mrs. Rudd said she would gladly conduct a second survey, should the LJIC wish her to. REP. MENAHAN said she was welcome to do so and said that the information could be shared with the LJIC.
- 08:19:27 Matt Kuntz, NAMI-Montana, asked the members to consider visiting MSH in Warm Springs as part of the committee's site visits, and to meet with the Patient Council there (guilty but mentally ill patients). Mr. Kuntz said that treatment adherence is problematic for the guilty but mentally ill patients and asked that that issue be looked at also. He suggested that perhaps medication adherence could be included as part of the 24/7 sobriety program because currently there are not tools available to monitor medications.
- 08:21:00 **Jerry Williams, Executive Director, Montana Police Protective Association**. said that the definition in HB 365 would be supported by the police and that he didn't think it would be abused by law enforcement officers. He said the most important point is that it will help people and that having guidelines and protocols would be very helpful.

A letter from Becky Sturdevant, MADD volunteer, relating to committee DUI bills for the 2009 session was handed out but not discussed (EXHIBIT 26).

08:22:20 Ms. Roessmann discussed an article that appeared in the New York Times regarding the science of suicidology, which included research indicating that interfering with the physical mechanisms used to commit suicide is an effective way to prevent suicide. She said that she would provide copies to the committee members and urged the LJIC to implement recommendations to prevent jail suicide.

WORK SESSION ON PROPOSED WORK PLAN

08:26:08 Ms. Scurr reviewed the proposed work plan (EXHIBIT 27), including how to analyze and prioritize study tasks and choices. She asked the members to make suggestions and recommendations while considering staff time and resources available to the LJIC. The committee members discussed the proposed work plan and site visit tour options.

08:50:34 REP. MENAHAN asked that the DOC and Crossroads Correctional Center be asked to respond to Mr. Stock's concerns at the December meeting. REP. PETERSON asked for an update from the Department of Justice regarding the MERLIN vehicle licensing and registrations system and for an update from the Office of the Court Administrator regarding his question about citations on Montana Supreme Court opinions, and for an update on the recent death of the inmate at MSP. REP. MORE asked that the social host ordinance issue be taken off the committee's work plan. REP. MCDONALD asked to discuss REP. MORE's request further at the December meeting. **REP. MORE moved to adopt the work plan. The motion passed unanimously on a voice vote.**

ADJOURNMENT

08:57:30 REP. MENAHAN adjourned the meeting at 5:30 p.m. The Law and Justice Interim Committee will meet next on December 15 and 16, 2011, in Helena.

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