



## Law and Justice Interim Committee

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### 63rd Montana Legislature

#### SENATE MEMBERS

TERRY MURPHY--Vice Chair  
SHANNON AUGARE  
SCOTT BOULANGER  
ROBYN DRISCOLL  
LARRY JENT  
SCOTT SALES

#### HOUSE MEMBERS

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

#### COMMITTEE STAFF

RACHEL WEISS, Lead Staff  
JULIANNE BURKHARDT, Staff Attorney  
JOY LEWIS, Secretary

# MINUTES LOG

LAW AND JUSTICE INTERIM COMMITTEE MEETING  
ROOM 172 CAPITOL BUILDING  
APRIL 28, 2014

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.

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 summary, along with the audio and video recordings, are listed by meeting date on the interim committee's web page.

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

### **COMMITTEE MEMBERS PRESENT**

REP. MARGARET ( MARGIE ) MACDONALD, Chair  
SEN. TERRY MURPHY, Vice Chair  
SEN. SCOTT BOULANGER  
SEN. ROBYN DRISCOLL

REP. JENNY ECK  
REP. ELLIE BOLDMAN HILL  
REP. SARAH LASZLOFFY  
REP. DENNIS LENZ

### **COMMITTEE MEMBERS ABSENT**

SEN. SHANNON AUGARE  
REP. STEVE LAVIN  
SEN. LARRY JENT  
SEN. SCOTT SALES

### **STAFF PRESENT**

RACHEL WEISS, Lead Staff  
JULIANNE BURKHARDT, Staff Attorney  
JOY LEWIS, Secretary

### **AGENDA & VISITORS' LIST**

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

## **COMMITTEE ACTION**

Sen. Murphy made a motion to direct staff to draft a letter to the FBI requesting an investigation of the CCA-run facility in Shelby based upon the same conditions the FBI is looking into at the private prison in Idaho. He asked that this draft be ready for the next committee meeting in June. The motion passed with a voice vote. Sen. Boulanger voted "no."

## **CALL TO ORDER AND ROLL CALL:**

00:00:04 Representative Margie MacDonald, Presiding Officer, called the meeting to order at 8:54 a.m. The Secretary took the roll. ([Attachment 3](#))

## **COMMITTEE ISSUE: OVERVIEW OF RECENT SENTENCING AND CORRECTIONS CHANGES IN SOUTH DAKOTA**

00:01:47 Jim Seward, General Counsel for South Dakota Governor Dennis Daugaard, gave an overview of South Dakota's recent sentencing and corrections changes. ([Exhibit 1](#))  
Rep. Hill arrived at 9:13 p.m.

00:26:36 Jake Horowitz, State Policy Director, Public Safety Performance Project for The Pew Charitable Trusts, gave an overview of the Public Safety and Performance Project. ([Exhibit 2](#))

00:54:05 Director Mike Batista, Montana Department of Corrections (DOC), gave a presentation on the strengths of the corrections system, where some improvements can be made, and the prison's current status. He compared Montana's prison statistics with South Dakota's. ([Exhibit 3](#))

00:58:27 Sen. Boulanger

00:58:59 Director Batista described Montana as the only state having a Department of Corrections commit system. He gave an overview of the pros and cons of this system. He also talked about Montana's population drivers and prison population management.

### **Questions from the committee**

01:18:30 Rep. MacDonald

01:18:51 Rep. Hill

01:19:19 Sen. Driscoll - Mr. Horowitz

01:22:00 Rep. Driscoll - Mr. Seward

01:25:20 Rep. Eck - Mr. Horowitz

01:29:19 Rep. Eck - Dir. Batista

01:30:23 Rep. MacDonald

01:30:34 Ms. Rachel Weiss

01:30:39 Rep. MacDonald - Mr. Horowitz

01:32:22 Rep. MacDonald

## **SJ 3: OVERVIEW OF SOUTH DAKOTA PAROLE PROCESS**

01:32:56 Ed Ligtenberg, Director, South Dakota Board of Pardons and Paroles, gave an

overview of the parole system of South Dakota. [\(Exhibit 4\)](#)

**Questions from the committee**

01:48:50 Rep. MacDonald  
01:48:57 Sen. Driscoll - Mr. Ligtenberg  
01:51:29 Rep. MacDonald - Mr. Ligtenberg  
01:53:59 Rep. MacDonald

**BREAK** at 10:35 a.m.

02:09:41 Rep. MacDonald reconvened the meeting at 10:55 a.m.

**Committee Issue: Re-Entry Task Force Update**

02:09:55 Adrienne Slaughter, Governmental Relations Director, DOC, thanked the committee for its work and for sponsoring HB 68 last interim. She discussed how the creation of the Re-entry Task Force has helped raise awareness for key partners in Montana about the need for improved re-entry services and programs.

**Questions from the committee**

02:15:32 Rep. MacDonald

**SJ 3: PAROLE SUPERVISION FEES AND PROGRAM COSTS**

02:16:46 Rachel Weiss, Research Analyst, gave an overview of the SJ3 Study background paper on fees charged to parolees. [\(Exhibit 5\)](#)

02:20:33 Brendan McQuillan, speaking on his own behalf, talked about his experience as an attorney with people unable to pay their fees. He explained that overall Montana's felon system works well but there are instances where the misdemeanor system needs some more attention and work.

02:28:35 Niki Zupanic, Public Policy Director, ACLU of Montana, summarized information from different states concerning assessed and collected fees associated with criminal sentences. She gave an overview of the constitutional requirements for the process that is due to a person who has been assessed a financial obligation but is unable to meet it for failure to pay a financial obligation. She submitted written testimony to the committee. [\(Exhibit 6\)](#) [\(Exhibit 7\)](#) [\(Exhibit 8\)](#)

02:44:29 Adrienne Slaughter, (DOC), spoke about Ms. Weiss' background paper that gives a comprehensive view of the DOC's protocol in regards to statutory requirements for supervision fees and programming costs. The DOC agrees with Ms. Zupanic's points and the concerns of the committee.

**Questions from the committee**

02:45:39 Rep. MacDonald  
There were no comments.

**PUBLIC COMMENT ON SJ 3 AND MORNING CORRECTIONS/SENTENCING POLICY TOPICS**

- 02:48:33 **Dr. Gary Mihelish** talked about the treatment of persons with mental illness in prisons and jails. He emphasized recommendation #6 "mandate release planning." He submitted written testimony to the committee. [\(Exhibit 9\)](#)
- 02:53:15 **Steve Cape**, representing Montana Coalition for Safety and Justice (MTCSJ), strongly suggested the Legislature craft legislation that would allow people unable to pay their fees to perform some type of community service.
- 02:55:59 **Mark Murphy**, Montana County Attorneys' Association talked about South Dakota's policies in comparison to Montana's and gave a brief history of Montana's criminal fees. A major impact on Montana's criminal justice system in the past 30 years has been the increase in DUIs. He encouraged hiring enough probation officers to lower the caseloads.
- 03:04:18 **Pam Cyr** spoke on behalf of victims, and especially those affected in the case of Becky Richards. She submitted written testimony to the committee. [\(Exhibit 10\)](#)
- 03:07:39 **Joy Wellington** talked about her husband, Clive Kinlock, who is currently incarcerated and has not been granted parole. She submitted written testimony to the committee. [\(Exhibit 11\)](#)
- 03:11:43 **Pat Keim**, Alternatives, Inc., a company that operates the mens' and womans' pre-release programs in Billings, said he was encouraged by the direction Director Batista is taking in the Department of Corrections to move inmates out of the prison, deferring them to alternative programs and keeping them in the community. He spoke about the sanction program instituted about three years ago. He urged the reinstatement of this program. He also spoke about the enhanced in-community supervision program which was cut from HB2 and he urged the committee to take a look at that again.
- 03:15:27 **Shannon Rausch** came in support of her incarcerated brother and talked about their experience with the parole board's rejection of his parole. She said that the Parole Board members didn't have all her brother's information and that she felt that they should have reviewed and known this information before her brother came before the Board. Three months later when her brother again went before the Board, the Board again denied the parole. When she asked for notes or minutes of the meeting, she was told that they don't take minutes. She believes some record of the meetings needs to be kept so they can remember what they said and keep better track of inmate information.
- 03:20:59 **Ron Richards** said the parole board is not broken. He is a victim and thinks that the perpetrator should stay in jail. He submitted written testimony to the committee. [\(Exhibit 12\)](#)
- 03:23:28 **Fern Johnson**, Executive Director of the Montana parole board, wanted to remind the committee that in South Dakota, parole violators are 25% of the prison admissions and in Montana they are 6.6% of the prison admissions. She encouraged the committee to read the "Executive Summary and Key Findings of the Parole Board." She submitted written testimony to the committee [\(Exhibit 13\)](#)
- 03:26:38 **Lunch**  
Meeting recessed for lunch at 12:10 pm

04:30:26 Rep. MacDonald reconvened the meeting at 1:10 p.m.

### **COMMITTEE ISSUE: COUNTY ATTORNEYS' UPDATE**

04:31:04 Richard Batterman, Fallon/Carter County Attorney and President of the Montana County Attorneys' Association, asked the committee to address the issue of pay inequality for deputy county attorneys and help fund continuing legal education training requirements for county attorneys and their deputies. He submitted written testimony to the committee. [\(Exhibit 14\)](#)

04:44:12 Jeremy Gersovitz, Deputy County Attorney, Lewis and Clark County, gave an overview of Lewis and Clark County criminal cases and described the process they follow.

#### **Questions from the committee**

04:48:02 Rep. Hill - Mr. Batterman

04:56:01 Sen. Driscoll - Mr. Batterman

#### **Public comment**

04:57:38 **Jennifer Clark**, Chief Criminal Deputy from Missoula County, talked about the educational costs incurred by deputy county attorneys to qualify them for their jobs and their comparatively low salaries. She submitted written testimony to the committee. [\(Exhibit 15\)](#)

### **SJ 3: REVIEW OF PRELIMINARY DRAFT LEGISLATION**

05:01:11 Sen. Jent joined the meeting via phone.

05:03:12 [LCIj99](#) Revise MAPA provisions related to the parole board, Ms. Burkhardt gave an overview of the bill. [\(Exhibit 16\)](#)

[LCIj98](#) Revise MAPA provisions related to the parole board (v2). Ms. Burkhardt gave an overview of the bill.

05:07:26 [LCIj97](#) Require parole hearings to be recorded. Ms. Weiss gave an overview of the following bill draft.

05:08:59 Sen. Murphy

05:09:27 Ms. Weiss

05:10:28 Sen. Murphy - Ms. Weiss

05:11:14 Sen. Driscoll - Ms. Weiss

05:12:03 Rep. Eck - Ms. Weiss

05:14:18 Sen. Jent

05:15:46 [LCIj96](#) Prohibit parole board from assigning conditions of parole. Ms. Burkhardt gave an overview of the bill draft.

05:17:10 Rep. Eck - Ms. Burkhardt

05:18:05 Rep. Lenz - Ms. Burkhardt

05:19:26 Rep. Eck - Ms. Burkhardt

05:20:17 [LCIj95](#) Revise parole criteria. Ms. Weiss gave an overview of the bill draft.

05:23:25 Rep. MacDonald

### Public comment

- 05:25:08 **Jane Weber**, Friends and Families Matter and Montana Cares Network, spoke about the group's qualified support for LCj95, LCj96, LCj97, and LCj98. She submitted written testimony to the committee. [\(Exhibit 17\)](#)
- 05:37:00 **Steve Cape**, Montana Coalition for Safety and Justice, provided comments and recommended some changes on the following bill drafts; LCj95, LCj96, LCj97, LCj98, and LCj99. He submitted written proposals and testimony to the committee. [\(Exhibit 18\)](#)
- 05:44:08 **Beth McLaughlin**, Montana Supreme Court Administrator, representing the Montana Supreme Court and the 46 Judges that make up the District Courts across Montana, spoke about LCj96. She recommended that the committee not bring this bill forth and explained the reasoning behind this request.
- 05:48:42 **Mark Murphy**, Montana County Attorneys' Association, limited his comments to LCj96 and LCj97. He asked that, at the victims request, the victim's testimony not be recorded for privacy purposes. He concurred with Ms. McLaughlin's testimony in asking the committee to not move LCj+96 forward. He wanted the committee to think hard about the huge costs that will be incurred by this bill.
- 05:55:18 **Matt Kuntz**, Executive Director for NAMI Montana, spoke about LCj95 and one of the recommendations by "Friends and Families Matter" [\(Exhibit 17\)](#). He wants the supervisory programs to be ironclad.

### Questions from Committee to public

- 05:57:53 Rep. Eck - Mr. Murphy

### Committee discussion, direction to staff, and *optional action*

- 06:01:01 Rep. MacDonald
- 06:01:54 Sen. Jent
- 06:04:49 Sen. Murphy
- 06:06:03 Rep. MacDonald - Sen Murphy
- 06:06:57 Sen. Driscoll on LCj97
- 06:07:30 Rep. MacDonald - Sen Driscoll
- 06:08:13 Rep. MacDonald
- 06:08:22 Rep. Eck on LCj97
- 06:09:49 Rep. Lenz
- 06:10:55 Rep. MacDonald on LCj98 - Sen. Jent
- 06:13:24 Ms. Burkhardt
- 06:14:22 Sen. Jent
- 06:15:00 Rep. MacDonald
- 06:15:19 Sen. Jent
- 06:16:40 Rep. MacDonald suggested redrafting LCj97, and continuing discussion and work on LCj98 and LCj95.
- 06:19:00 Sen. Jent agreed with the way LCj96 is written and recommended advancing it.
- 06:20:44 Rep. MacDonald
- 06:20:50 Ms. Weiss
- 06:21:42 Sen. Murphy
- 06:21:59 Rep. MacDonald

**BREAK** at 3:02 p.m.

06:37:48 Rep. MacDonald reconvened the meeting at 3:20 p.m.

## **SJ 22: REVIEW OF PRELIMINARY BILL DRAFTS**

06:37:59 LCIj01 Adjust debt limit allowed for uncontested divorce.  
Ms. Weiss gave an overview of the bill draft. (**Exhibit 19**)

06:39:34 Rep. MacDonald

06:40:26 Ms. Weiss

06:41:11 Rep. MacDonald

06:42:05 LCIj02 Eliminate requirement for a hearing before a judge enters final dissolution decree in certain cases. Ms. Burkhardt gave an overview of the bill draft.

06:42:39 Rep. MacDonald

06:42:52 LCIj03 Clarify who must move to amend parenting plan when one parent relocates. Ms. Burkhardt gave an overview of the bill draft.

06:43:39 Rep. MacDonald

06:43:51 LCIj04 Allow husband to restore original name as part of dissolution filing.  
Ms. Weiss gave an overview of the bill draft.

06:44:30 LCIj05 Require district courts to adopt local rules requiring mediation. Ms. Weiss gave an overview of the bill draft.

06:46:37 Rep. Lenz - Ms. Weiss

06:49:22 LCIj06 Montana pilot project to offer paid mediation to certain family law litigants. Ms. Weiss gave an overview of the bill draft.

06:50:59 Rep. MacDonald

### **Public comment**

06:51:20 **Beth McLaughlin**, Montana Supreme Court Administrator, commented on all the draft bills. She feels LCJl01, LCJl02, LCJl03, and LCJl04 will offer good assistance to the courts and to pro se litigants. She recommended that the committee not push LCJl05 forward. She is in favor of LCJl06.

06:56:56 **Brian Muldoon** disagreed with Beth McLaughlin's assessment on the bill drafts. Mediation can work without significant extra cost. He recommended LCJl05 and LCJl06 be joined together.

07:01:29 **Jon Bennion**, on behalf of the Access to Justice Commission, talked about the self-help program, a program that provides important relief and guidance for people trying to navigate the system.

### **Questions from the committee**

07:02:39 Rep. Lenz - Mr. Muldoon

### **Committee discussion, direction to staff, and optional action**

07:05:43 Rep. MacDonald

07:07:04 Rep. Lenz



**COMMITTEE ISSUE: RELIEF FROM DISABILITIES PROVISIONS IN OTHER STATES (NICS AND MENTAL HEALTH)**

07:08:20 Ms. Weiss gave an overview of a research paper and discussed legislation from South Dakota, North Dakota, Idaho, and Oregon. [\(Exhibit 20\)](#) [\(Exhibit 21\)](#)

**Public comment**

07:12:36 **Nancy De Pastino**, Regional Manager for Moms Demand Action for Gun Safety in America, encouraged the committee to introduce a bill that will keep guns out of the hands of the dangerously mentally ill. [\(Exhibit 22\)](#)

07:15:48 **Julia Starrett** spoke about how important it is for Montana be part of the NICS program. She shared some statistics with the committee.

07:18:35 **Heidi Kendall** agreed with the two previous speakers, and went on record as supporting legislation that will keep guns out of the hands of the dangerously mentally ill.

**Questions from the committee**

07:19:18 Sen Driscoll - Mr. Bennion, Department of Justice

**Committee discussion, direction to staff, and optional action**

07:20:49 Rep. MacDonald

07:21:17 Sen. Murphy

07:21:44 Sen. Driscoll - Ms. Weiss

07:22:21 Rep. MacDonald

**COMMITTEE ISSUE: UPDATE ON HJ 16 STUDY (STUDY OF STATE INSTITUTIONS)**

07:23:19 Ms. Weiss gave an overview of the study.

07:24:38 Rep. Eck

**Public comment**

There was none.

**Questions from the committee**

There were none.

**Agency Oversight: Administrative Rule Review**

07:25:29 Ms. Burkhardt gave an overview of the rule review. [\(Exhibit 23\)](#)

**Public comment**

There was none.

**Questions from the committee**

There were none.

**PUBLIC COMMENT ON ANY ITEM WITHIN THE COMMITTEE'S JURISDICTION BUT NOT**



## ON THIS AGENDA

07:26:23 **John Richardson**, former convicted felon, was discharged in December of 2007. He was informed that he needed to continue to register as a sex offender for 10 years and contended that this was not in his original sentence or judgement. He has been forced to continue registering as a sex offender. The Supreme Court said that no conditions could be added to his original judgement. He's been doing battle with the District Court and feels like he's not being heard and can't afford lawyers to help him out. He asked the committee for any advice they may have for him.

## COMMITTEE WORK SESSION

### **Member issues to include in future agendas?**

### **Other committee discussion and/or direction to staff?**

07:32:18 Rep. MacDonald referenced a paper by Craig Thomas titled "Background Paper: Liberty Interest in Parole Release." ([Exhibit 24](#))

07:32:48 Sen. Murphy

07:34:39 Rep. MacDonald - Ms. Weiss

07:35:51 **Sen. Murphy made a motion to direct staff to draft a letter to the FBI requesting an investigation of the CCA-run facility in Shelby based upon the same conditions the FBI is looking into at the private prison in Idaho. He asked that this draft be ready for the next committee meeting in June.**

07:37:05 **The motion passed with a voice vote. Sen. Boulanger voted "no."**

### **Next meeting: June 26-27 (Thursday/Friday)**

07:39:28 Rep. MacDonald asked the committee to consider new meeting dates for August because of a meeting conflict with the National Council of State Legislatures.

07:40:23 Ms. Weiss

07:41:09 Rep. Lenz

07:41:25 Ms. Burkhardt

07:41:51 Rep. Eck

07:43:36 Rep. MacDonald

07:44:20 Ms. Weiss

07:44:56 Rep. MacDonald

**Adjourn** Rep. MacDonald adjourned the meeting at 4:25 p.m.