



Law and Justice Interim Committee

63rd Montana Legislature

SENATE MEMBERS

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SCOTT BOULANGER
ROBYN DRISCOLL
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COMMITTEE STAFF

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

MINUTES LOG

Law and Justice Interim Committee Meeting

Room 102, Capital Building
February 13, 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
SEN. LARRY JENT
SEN. SCOTT SALES

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

COMMITTEE MEMBERS EXCUSED

SEN. SHANNON AUGARE
REP. STEVE LAVIN

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

None taken.

CALL TO ORDER AND ROLL CALL

00:00:04 Representative Margie MacDonald, Presiding Officer called the meeting to order. The secretary took the roll. Rep. Lavin, Rep. Augare, and Sen. Murphy were excused. ([Attachment #3](#))

OVERVIEW OF MEETING AGENDA

00:00:39 Rachel Weiss, Research Analyst, gave an overview of the meeting agenda and referenced the NICS and Mental Health written comments found in committee member packets. ([Exhibit 1](#))

00:02:40 Rep. MacDonald reviewed procedures for the meeting.

COMMITTEE ISSUE: NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM (NICS) AND MENTAL HEALTH

Panel 1: NICS and Federal Law - all panelists participating remotely

00:02:58 Sherre Y. Baker, NICS Liaison Specialist, FBI and Jeanne E. Miller, Sr. Attorney, Office of Chief Counsel, ATF, gave a slide presentation overview of the NICS process. ([Exhibit 2](#))

00:24:25 Rep. MacDonald recognized that Rep. Hill was here.

00:25:22 Tina Collins, NICS Liaison Specialist, FBI, gave an overview of what the Veterans Administration shares with NICS.

Committee Questions

00:27:48 Sen. Jent
00:28:30 Mr. Will Finch, FBI Legal Counsel
00:29:43 Sen. Jent
00:31:03 Mr. Finch
00:31:40 Rep. MacDonald
00:31:44 Rep. Hill
00:32:33 Ms. Baker
00:35:02 Rep. MacDonald
00:35:11 Ms. Baker
00:35:49 Rep. MacDonald
00:35:55 Ms. Baker
00:36:06 Rep. MacDonald
00:36:46 Ms. Baker

- 00:38:37 Rep. MacDonald
- 00:39:06 Jeanne E. Miller, Sr., Attorney, Office of Chief Counsel, ATF, continued the NICS slide presentation on Relief from Disabilities Program Criteria under the NICS Improvement Amendments Act of 2007.
- 00:53:01 Rep. MacDonald asked for questions from committee. Seeing none, she thanked the panel.

Panel 2: Montana Background

- 00:54:42 Jennifer Viets, Program Manager, Criminal Justice Information Network (CJIN), Montana Department of Justice, gave an overview of how Montana connects with and accesses information through NICS concerning background checks and mental health issues. [\(Exhibit 3\)](#)

Committee Questions

- 01:04:40 Sen. Driscoll
- 01:05:20 Ms. Viets
- 01:05:37 Sen. Jent
- 01:06:39 Ms. Viets
- 01:07:19 Sen. Jent
- 01:07:38 Ms. Viets
- 01:08:12 Sen. Driscoll
- 01:08:24 Ms. Viets
- 01:08:55 Sen. Driscoll
- 01:09:04 Ms. Viets
- 01:09:21 Rep. Lenz
- 01:09:54 Ms. Viets
- 01:11:01 Brooke Marshall, Executive Director, Montana Board of Crime Control, submitted a handout. [\(Exhibit 4\)](#) She gave an overview of the Justice Assistance Grant (JAG) Byrne Program as it relates to NICS.

Committee Questions

- 01:21:38 Sen. Boulanger
- 01:22:28 Ms. Viets
- 01:23:00 Sen. Boulanger
- 01:23:14 Sen. Boulanger
- 01:23:29 Ms. Viets
- 01:23:49 Rep. MacDonald asked for further questions. Seeing none, she thanked the panel and introduced the next panel.

Panel 3: Other Perspectives and State Actions

- 01:24:40 Peter Read, Mayors Against Illegal Guns, talked about his grief over losing his daughter in the Virginia Tech shooting and submitted his testimony to the committee. [\(Exhibit 5\)](#) He urged the legislature to pass a records submissions

law to prevent further shooting tragedies.

01:32:17 Rep. MacDonald asked for questions from the committee. There were no questions. Sen. Murphy arrived.

BREAK

01:53:32 Rep. MacDonald reconvened the meeting at 10:25 a.m.

Panel 4: Mental Health, Disabilities, Privacy, and Veterans Perspectives

01:54:00 Matt Kuntz, Executive Director, NAMI Montana, talked about how NAMI's main focus is working on symptom reduction and access to treatment for the mentally ill. He addressed the issue of access to guns for disabled veterans who submit to a treatment program.

Committee Questions

02:01:41 Sen. Murphy

02:02:23 Mr. Kuntz

02:02:59 Rep. MacDonald

02:03:17 Niki Zupanic, Public Policy Director, ACLU of Montana, said the ACLU is not opposed to background checks per se. However, they are opposed to states submitting information to NICS without having a careful discussion and without putting into place safeguards that protect privacy.

Committee Questions

02:11:06 Sen. Driscoll

02:11:33 Ms. Zupanic

02:11:41 Sen Boulanger

02:12:30 Ms. Zupanic

02:13:02 Sen Boulanger

02:13:30 Ms. Zupanic

02:15:19 Rep. MacDonald

02:15:26 Beth Brenneman, Staff Attorney, Disability Rights Montana, gave an overview of the law concerning in-patient involuntary psychiatric treatment. **(Exhibit 6)**

Committee Questions

02:26:07 Sen. Driscoll

02:26:18 Ms. Brenneman

02:27:14 Rep. Lenz

02:27:58 Ms. Brenneman

02:28:39 Rep. Hill referenced a letter from the National Shooting Sports Foundation, Inc. **(Exhibit 7)**

02:30:55 Ms. Brenneman

02:31:37 Sen. Jent

02:32:13 Ms. Zupanic

02:33:19 Sen. Boulanger

02:33:59 Ms. Benneman

02:35:41 Sen. Boulanger
02:36:15 Rep. Eck
02:36:53 Ms. Brenneman

02:37:47 Mervin Gunderson, National Executive Committeeman, American Legion, talked about a Veteran's right to bear arms ([Exhibit 8](#)) and referenced the "American Legion Legislative Point Paper". ([Exhibit 9](#))

Committee Questions

02:43:09 Sen. Jent
02:45:41 Mr. Gunderson
02:48:23 Rep. Lenz
02:49:57 Mr. Kuntz
02:52:11 Rep Lenz
02:52:41 Mr. Kuntz
02:53:05 Ms. Brenneman
02:54:06 Sen. Boulanger
02:55:05 Mr. Gunderson
02:59:04 Rep. MacDonald
02:59:23 Mr. Gunderson
02:59:40 Rep. Eck
03:00:00 Mr. Kuntz
03:03:40 Sen. Boulanger
03:04:11 Mr. Kuntz
03:04:53 Mr. Gunderson
03:06:05 Rep. MacDonald
03:06:35 Rep. Eck
03:07:24 Mr. Read
03:09:51 Rep. Hill referenced Gary Marbut's written testimony found in ([Exhibit 1](#)) and Rep. MacDonald reiterated that he was not on the panel.

03:10:10 Rep. Lenz
03:10:41 Mr. Kuntz
03:11:30 Ms. Brenneman
03:11:58 Rep. Lenz
03:12:06 Mr. Kuntz
03:12:49 Rep. Hill
03:14:38 Mr. Read
03:18:00 Sen. Boulanger
03:18:35 Rep. MacDonald thanked the panel and reviewed the rules for public comment.

PUBLIC COMMENT ON NICS AND MENTAL HEALTH RECORDS

Rep. MacDonald acknowledged Rev. Thomas A. Dooling J.D., and his written testimony provided to the committee. ([Exhibit 10](#))

03:20:37 Patti Jocques commented on Mr. Kuntz's statements and about the problems with her son and losing his gun rights.

03:26:00 Nancy De Pastino, "Moms Demand Action for Gun Safety in America", talked

about school gun safety and how a school lockdown affected her children. She provided written comment. [\(Exhibit 11\)](#)

03:29:46 Julie Quenemoen said she supported submitting mental health records to NICS. She provided written comment. [\(Exhibit 12\)](#)

03:32:47 Gene Quenemoen supported said he supported submitting mental health records to NICS. He provided written comment. [\(Exhibit 13\)](#)

03:35:18 Doug Nulle said the topic of gun ownership and mental illness raised two issues for him: compliance with the NIAA and privacy.

03:40:10 Julia Starrett, "Moms Demand Action for Gun Safety in America", believes stronger gun laws will save lives without infringing on 2nd Amendment rights. She provided written comments. [\(Exhibit 14\)](#)

03:42:11 William Clawson wants Montana to participate in the system and comply with federal law concerning gun safety and background checks.

03:43:31 Sonja Woods provided the committee with her testimony. [\(Exhibit 15\)](#) Mr. Read helped Ms. Woods read her statement. She also referred to her previously submitted testimony. [\(Exhibit 1\)](#)

03:46:32 Rep. MacDonald thanked the participants and recessed the meeting for lunch at 12:15 p.m.

LUNCH

04:46:43 Rep. MacDonald reconvened the meeting at 1:18 p.m.

SJ 22: COURT FUNDING AND WORKLOAD - - ND MEDIATION PILOT PROGRAM

04:47:16 Beth McLaughlin, Supreme Court Administrator, provided the committee with her handout, "Montana Judicial Branch Basics 2014" [\(Exhibit 16\)](#) and asked to have Judge Mike Salvagni to sit with her on the panel. Ms. McLaughlin provided an overview of the Judicial Branch.

05:05:31 Judge Salvagni

05:06:10 Ms. McLaughlin

05:19:39 Judge Salvagni

05:26:41 Ms. McLaughlin

05:27:19 Judge Salvagni

05:28:02 Ms. McLaughlin discussed a North Dakota Supreme Court pilot project to provide mediation in family law cases. [\(Exhibit 17\)](#)

Committee Questions

05:34:07 Sen. Jent

05:34:50 Judge Salvagni

05:35:28 Sen. Jent

05:35:53 Ms. McLaughlin

05:36:53 Rep. Hill

05:37:12 Judge Salvagni
05:37:58 Rep. Eck
05:38:17 Ms. McLaughlin
05:38:46 Rep. Eck
05:38:53 Ms. McLaughlin
05:39:44 Rep. Hill
05:40:19 Ms. McLaughlin
05:41:12 Rep. MacDonald
05:41:42 Ms. McLaughlin
05:43:12 Rep. MacDonald
05:43:39 Ms. McLaughlin
05:44:08 Rep. MacDonald asked for public comment.

SJ 3: DISTRICT COURT JUDGE SENTENCING PERSPECTIVES

05:44:51 Judge Mike Salvagni, 18th Judicial District (Gallatin County), is in his 38th year in the Judicial System. He gave an outline of his work and the Montana judicial system sentencing guidelines.

Committee Questions

06:04:43 Sen. Driscoll
06:05:11 Judge Salvagni
06:08:23 Sen. Murphy
06:10:19 Judge Salvagni
06:11:35 Sen. Murphy
06:12:17 Judge Salvagni
06:12:57 Sen. Murphy
06:14:12 Judge Salvagni
06:17:20 Sen. Murphy
6:18:13 Judge Salvagni
06:18:27 Sen. Murphy
06:18:45 Judge Salvagni
06:19:18 Sen. Murphy
06:19:25 Judge Salvagni
06:19:32 Rep. Eck
06:19:44 Judge Salvagni
06:20:18 Rep. Hill
06:21:21 Judge Salvagni
06:22:56 Rep. Eck
06:23:50 Judge Salvagni
06:25:26 Rep. Eck
06:25:55 Judge Salvagni

Public Comment

06:28:02 Patti Jacques told the committee about her son and his mental health struggles at the Montana State Hospital and the Montana State Prison.

06:30:16 Rep. MacDonald asked for further public comment and questions from the

committee for the public.

BREAK

06:48:41 Rep. MacDonald reconvened the meeting at 3:20 p.m.

SJ 22: MEDIATION REPORT FROM THE STATE BAR OF MONTANA JUSTICE INITIATIVES COMMITTEE

06:49:12 Brian Muldoon, Mediation Subcommittee Chairman for the State Bar of Montana Justice Initiatives Committee, commented on *pro se* (self-represented) litigation. He explained how mediation works within the judicial process. [\(Exhibit 18\)](#)

07:12:22 Mr. Muldoon commented on a proposed statute from Washington requiring mandatory mediation in cases involving children. [\(Exhibit 19\)](#)

Committee Questions

07:14:21 Rep. Hill

07:15:41 Mr. Muldoon

07:16:24 Rep. Hill

07:16:42 Mr. Muldoon directed committee to yellow handout. [\(Exhibit 18\)](#)

07:18:01 Rep. Hill

07:18:27 Mr. Muldoon

07:20:47 Rep. MacDonald asked for further questions.

07:21:01 Rep. Hill

07:22:07 Mr. Muldoon

07:23:22 Sen. Jent

07:24:19 Mr. Muldoon

07:26:40 Rep. MacDonald asked for public comment.

Public comment

07:26:49 Audrey Walleser, a mediator from Eastern Montana who travels extensively in her job and has worked on reservations, explained the benefits of mediation.

COMMITTEE ISSUE: RESTORATIVE JUSTICE UPDATE

07:30:37 Brooke Marshall, Executive Director, Board of Crime Control, gave an overview of the restorative justice grant programs. [\(Exhibit 20\)](#)

Committee Questions

07:37:53 Rep. MacDonald

07:38:13 Ms. Marshall

07:39:07 Rep. MacDonald

07:39:23 Ms. Marshall

07:39:58 Rep. MacDonald asked for public comment. There was none.

COMMITTEE ISSUE: OFFICE OF THE PUBLIC DEFENDER (OPD) WORKLOAD

- 07:40:20 Bill Hooks, Chief Public Defender for the State of Montana, updated the committee on the litigation he initiated for the Helena region asking the courts to halt assignment of new cases to OPD attorneys.
- 07:44:38 Rep. MacDonald asked for questions from the committee. There were none.
- 07:44:51 Rep. MacDonald asked for public comment. There was none.

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

- 07:45:42 Ms. Weiss gave an overview on what the Children, Families, Health and Human Services Interim Committee (CFHHS) heard in a previous meeting concerning providing mental health services in the communities.
- 07:47:33 Sen. Murphy, serves on the CFHHS Committee and commented on treatment of the mentally ill. The prison system is not appropriate setting for them in many cases. He encouraged committee members to carefully consider some innovative bills to address the situation.
- 07:50:25 Rep. MacDonald asked Rep. Eck for her comments since she sponsored HJ 16 and has followed the interim committee process.
- 07:50:42 Rep. Eck commented on the state of the prison system and forensic unit and the overburden it is experiencing. She talked about community-based services and crisis care.
- 07:53:23 Sen. Murphy talked about some issues that will be coming before the CFHHS Committee.
- 07:57:11 Rep. MacDonald asked for questions from the committee. There were none.

Public comment

- 07:57:24 Rep. MacDonald asked for public comment.
- 07:57:33 John Wilkinson commented on how much money it takes to run the program mentioned by Sen Murphy.
- 07:58:47 Patti Jacques, commented on mental health issues and lack of services in the communities. She asked that the mentally ill not be sent to prison.

AGENCY OVERSIGHT -- ADMINISTRATIVE RULE REVIEW AND REQUIRED REPORTS

- 08:00:18 Julianne Burkhardt, Staff Attorney, gave an overview of the rule review ([Exhibit 21](#)).
- 08:00:56 Rachel Weiss mentioned a report from the Department of Justice ([Exhibit 22](#)) about the False Claims Act. She mentioned Chief Public Defender's annual report. ([Exhibit 23](#)) She also referenced a copy of the letter in their packets that went to the Legislature, the Governor and the Supreme Court. ([Exhibit 24](#))

PUBLIC COMMENT

- 08:02:03 John Hartsoe started to explain how the law doesn't work. He provided the committee with written testimony. **(Exhibit 25)**
- 08:06:03 Rep. MacDonald asked him to speak generally and asked him what law he was referring to and told him the committee was not a court of law and could not adjudicate any claims.
- 08:09:39 Rep. MacDonald thanked him and said the committee would take his testimony under consideration. She asked for any other public comment. There was none.

COMMITTEE WORK SESSION

SJ 22 study:

- reviewed the possible committee bills discussed in December;
- request possible committee bills;
- review work plan for next meeting;
- request additional information or suggest topics for next meeting?
- NICS/Mental health work: What additional information, if any, would the LIJC like to request; what actions, if any, would the LJIC like to take?

- 08:10:50 Ms. Weiss opened discussion and reviewed the possible committee bills discussed in December. She referred to "SJ 22 Possible Bill Draft Language". **(Exhibit 26)**
- 08:13:32 Ms. Burkhardt
- 08:14:34 Sen. Sales
- 08:15:08 Rep. MacDonald
- 08:15:40 Ms. Weiss
- 08:16:41 Ms. Burkhardt
- 08:17:55 Rep. MacDonald
- 08:18:42 Rep. Hill
- 08:20:02 Rep. MacDonald
- 08:20:11 Ms. Weiss
- 08:21:32 Rep. Hill
- 08:24:02 Sen. Jent
- 08:25:31 Rep. Hill
- 08:26:45 Rep. MacDonald
- 08:26:52 Sen. Jent
- 08:27:25 Rep. MacDonald
- 08:27:37 Ms. Weiss
- 08:28:28 Rep. Hill
- 08:29:15 Rep. MacDonald
- 08:30:34 Rep. Eck
- 08:30:56 Rep. MacDonald
- 08:31:20 Rep. Hill
- 08:32:06 Rep. MacDonald
- 08:32:44 Rep. MacDonald recessed the meeting at 5:04 p.m. to reconvene at 8 a.m. on Friday, February 14, 2014.

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