

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
59th LEGISLATURE - REGULAR SESSION**

**JOINT APPROPRIATIONS SUBCOMMITTEE ON CORRECTIONS AND PUBLIC
SAFETY**

Call to Order: By **CHAIRMAN TIM CALLAHAN**, on January 11, 2005 at
8:00 A.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Rep. Tim Callahan, Chairman (D)
Sen. Trudi Schmidt, Vice Chairman (D)
Sen. Keith Bales (R)
Sen. Steven Gallus (D)
Rep. Ray Hawk (R)
Rep. Cynthia Hiner (D)
Rep. John E. Witt (R)

Members Excused: None.

Members Absent: None.

Staff Present: Brent Doig, OBPP
Harry Freebourn, Legislative Branch
Shannon Scow, Committee Secretary
Shane Sierer, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: None
Executive Action: HB 2; Montana Board of Crime
Control (MBCC)

CHAIRMAN CALLAHAN opened the floor to questions for Montana Board of Crime Control (MBCC) before executive action. He began by asking Roland Mena, Executive Director of the Montana Board of Crime Control, to break down the various grants that the board administers. **Mr. Mena** indicated Exhibit 1, Page 1 to give examples of what the MBCC does with juvenile accountability grants.

EXHIBIT (jch07a01)

CHAIRMAN CALLAHAN asked for further details regarding how the information system is being built. **Commissioner Chris Christensen, Montana Board of Crime Control**, replied that the first step is to build the integrated system, which would link together independent data bases between the courts, protective services, Department of Corrections, and MBCC. The grant would enable the board to research what information the various information systems hold, and what the MBCC needs to build a comprehensive system.

CHAIRMAN CALLAHAN reiterated that more information is needed to tell the committee exactly what the juvenile accountability grant is meant to do. **Commissioner Christensen** noted again Exhibit 1, Page 1, responding that the programs are meant to set up systems for kids to keep them out of the adult jail system. Grants such as Drug Free Schools are funded 20% by the MBCC and 80% by the Office of Public Instruction.

The MBCC does the after-school programs while the Office of Public Instruction does the in-school programs. The Crime Victims Compensation programs have been moved to the Attorney General's office. The Local Law Enforcement Block Grant is given nationally, based on population. This is the program that is going to be combined with the Justice Assistance grant. It pays for equipment, training and overtime. The Crime Victim's Assistance Grant hires people that work with victims. The Juvenile Justice and Delinquency Prevention grant primarily finds gaps in the system to keep kids out of the system. The Drug Control and System Improvement funds the drug task forces, that will be combined with the Justice Assistance Grant. The Juvenile Detention Grant works with five regions on juvenile detention. The National Sex Offender registry helps inform communities if a sex offender has moved into their region. The Delinquency Prevention Grant currently has no funding. The MBCC is in a low period for funding delinquency programs. At first the Residential Substance Abuse Treatment Grant was for secure care facilities. The patients came for at least a six-month-stay, and were segregated from the population where their needs were

addressed. This went to WATCH and Pine Hills, but now the criteria is changed. It now must be coordinated with the Department of Public Health and Human Services.

CHAIRMAN CALLAHAN inquired if the MBCC has numbers on how many beds are filled at Pine Hills. **Commissioner Christensen** answered that approximately 18 beds are filled on average and about 300 total youth have gone through the program.

CHAIRMAN CALLAHAN inquired how long the facility has been running. **Commissioner Christensen** informed him that it has been since 1999.

REP. HAWK pointed to the \$16,727 being spent to enforce underage drinking laws. He inquired about accountability of this grant being enforced. **Commissioner Christensen** explained that a grant is awarded only when an agency reports objectives and purposes of the project to the MBCC. They then must report back with statistics and specifics on how their objectives are being reached. This specific grant works, not only with kids but also with the vendors. **REP. HAWK** asked if agencies must report back to continue receiving grant money. **Commissioner Christensen** assured the committee that the MBCC does "on-site checking" of the programs two to three times a year, contacting multiple parties involved.

Commissioner Christensen continued with explanations of the grants listed on Exhibit 1, Page 1, beginning with the Criminal Statistics Grant. This grant is a repository of crime data, which is published annually. The Law Enforcement Terrorism Prevention Grant is from the Homeland Security money. The MBCC sent out notices to over 30 law enforcement agencies, asking for what is important to them in terms of supplementing programs, followed by the meetings of these agencies. The MBCC found that the ability to communicate was a concern across the board. The first pilot project, called P25, pertains to interoperable communication systems involving Helena, Glendive and the northern tier, including 11 counties and five Indian Reservations. The Underage Drinking Laws is nationally recognized. The Crime Victims Assistance is mostly used for direct services, but also for training programs. The Violence Against Women Grant is designated for training -- mostly for victims of crime. Finally, the crime lab in Missoula is now waiting for national certification.

CHAIRMAN CALLAHAN commented that the Crime Victim's Assistance has had problems in the past with the timeliness of returns to victims as well as inadequate funding. **Commissioner Christensen**

replied that these specifics were sent to the Department of Justice, so he is not prepared to answer this question.

CHAIRMAN CALLAHAN asked the MBCC to respond to yesterday's questions about options or alternatives if the drug task force money were not available. **Mr. Mena** supplied Exhibit 2 to show the FY04 report on Montana Drug Task Force drug seizures and activities and Exhibit 3 FY05 grant awards for the Local Law Enforcement Block Grant.

[EXHIBIT \(jch07a02\)](#)

[EXHIBIT \(jch07a03\)](#)

With the potential \$1.3 million shortage, decisions would have to be made either to spend the money on Drug Task Forces or split the money between rural enforcement forces. It is most likely that larger cities will end up with the money and multi-jurisdiction would not occur. The result of this is the end of smaller drug task forces. This is a viable option, but would only focus on a single jurisdiction area. A process of hearings would occur to look at the needs in order for the board to make decisions. **Mr. Mena** then indicated Exhibit 2, Page 1 to reiterate the large amount of drug seizures that have been made by the Montana Drug Task Forces.

CHAIRMAN CALLAHAN inquired if the MBCC has any idea how much is not being seized. **Mr. Mena** remarked that the board is unable to measure this statistic.

SEN. BALES proposed part of the \$4.5 million anticipated funds for Homeland Security be diverted to areas affected by Byrne Grant cuts. **Commissioner Christensen** replied that he believes there is not much flexibility with the grant supplied by Homeland Security. **SEN. BALES** inquired if the MBCC has an idea of what can be done with these new funds.

SEN. SCHMIDT also asked about guidelines on this new Homeland Security Grant, proposing that the MBCC does not know if there will be any spill over into the Byrne's Grant area. **Mr. Mena** answered that based on the funds acquired during the last biennium, there will be no flexibility outside areas designated by Homeland Security. **Commissioner Christensen** added that the Homeland Security Committee identified needs for terrorism prevention in Montana and developed a plan for the state, not including anything relating to the Montana Drug Task Force. **SEN. SCHMIDT** followed-up on this comment, asking if the committee has specified exactly where the funds will be directed, noting that terrorism does occur across the border with the drug trade.

Commissioner Christensen responded that the funds have been designated for training, resources and equipment such as personal protective gear for hazardous materials along with the communications system. Nowhere in the plan is the Drug Task Force addressed. **SEN. BALES** followed-up by commenting that with as much money as there is, perhaps there is a way to shift existing grants to the Drug Task Force and use the Homeland Security money for the communications, etc. covered by other grants. **SEN. BALES** sees a request for an additional \$5 million dollars and because of Byrnes, an additional \$1 million dollars, that will potentially have to come from the general fund.

Commissioner Christensen explained that all the grants come with specific purpose areas. If the MBCC cuts from one and moves it to another, then there will be the same issue in a different area. The Homeland Security money is well defined to the threat of a foreign or domestic terrorist threat.

REP. HAWK remarked that the federal government is taking away \$1.1 million. He asked, "Could the local police departments apply to get the same funds?" **Mr. Mena** specified that the total amount lost to the state is only \$230,000. The \$1.1 million loss is to the MBCC efforts to fund the various programs listed in Exhibit 3.

REP. HAWK inquired about the destination of the funds now and if they go to the state; also whether or not other agencies can apply for these funds. **Mr. Mena** clarified that only four or five of the larger cities would be eligible to apply but the smaller cities will be ineligible.

REP. HAWK asked if the MBCC has explored having the cities that are eligible to apply for grants give money back to the Montana Drug Task Force program. **Mr. Mena** said that it is a possibility but the larger cities may be unable to make up the funds for the entire state.

Mr. Freebourn remarked that there may be a potential overlap of MBCC funds to other agencies; and that the MBCC needs to make sure there is no overlap of funds. **Mr. Doig** added that when funds are allocated to non-state entities, the Governor's Budget Office is not involved. When the Department of Justice or Military Affairs allocates money to the MBCC, these agencies approach the State and tell the State to allocate the funds. The Federal authority potentially doubles up, and perhaps the appropriation is doubled up, but it is not spent. **Mr. Freebourn** reiterated that there is a possibility for double appropriation. **Mr. Doig** responded that this money would not be in the base, that the committee would see the appropriation in a

decision package. If it were in the general fund it would go through the governor's office.

SEN. SCHMIDT pointed to Decision Package 3, Homeland Security, which will be over \$9 million. Eighty percent of this will go to local governments, and a question was asked about who decides who gets this 80%. She asked, "Are they prepared at a local level to begin implementing this money?" **Commissioner Christensen** explained that the process begins with an 18-member committee that decides what direction needs to be taken with this money. The committee then asks for proposals. These come back to the committee and the board makes the decision.

SEN. SCHMIDT inquired if the board was expecting to add to the forces of the small communities on the highline. **Commissioner Christensen** answered that a project director has already been hired to oversee this project. The executive board will also meet monthly to make these sorts of decisions.

SEN. BALES asked if it was possible that local systems give money to keep the Byrnes Grant alive, since these local agencies would have more money due to the Homeland Security money. **Mr. Mena** stated that the money is given to Homeland Security and not given to law enforcement agencies; therefore money cannot be shifted between the two agencies. If the MBCC is not allocated the Byrne Grant money, the board would have \$1.3 million to make decisions on what goes to rural communities. Historically, large cities have worked within their own jurisdictions.

SEN. BALES inquired if there is any mechanism to free up local money for a multi-jurisdictional effort. **Mr. Mena** responded that decision is up to the county commissioners and cannot be predicted.

CHAIRMAN CALLAHAN commented that it is yet to be determined if the Homeland Security money needs any additional work or funds from local agencies or if is truly replacing an already existing task. Also, he clarified that the board is looking for a bill sponsor in regard to this issue. In terms of the additional FTE in response to the new grant, funds will be reduced from another grant. He wanted to know, "Will this cause a reduction of FTE in another area and how do you know what you will need in FTE?" **Mr. Mena** stated the MBCC may have to reduce FTE's by one, maybe one and a half. This will be determined when there is more definite information on the reduction of the grant.

CHAIRMAN CALLAHAN asked for an explanation of how that decision is made. **Dawn Merrit, Fiscal Bureau Chief of the MBCC**, replied

that general fund dollars are used to match federal dollars. General fund money has been reduced so much that the MBCC is unable to get certain federal grants because there are no matching funds. General fund dollars are very critical, which is why the MBCC asked to eliminate one FTE request. This saves in vacancy savings. As for FTE, the MBCC already handles a large number of projects. Many are already on a rotation basis. Mr. Merrit does not see the \$1.13 million reduction leading to an FTE reduction because the MBCC will still be funding projects under the Justice Assistance grants. The MBCC staff covers several grants. There is not a specific FTE dedicated to administering these grants. **CHAIRMAN CALLAHAN** clarified that the FTE requested is specifically for the new grant related to Homeland Security. **Mr. Merrit** confirmed this specified FTE which will work on building the new communications system. **CHAIRMAN CALLAHAN** stated that this FTE is different because it is not created by several grants, making it proactive rather than reactive.

SEN. BALES returned to the federal funds that were lost because of the lack of matching funds. He asked what areas lost money because of the unavailability of funds. **Mr. Merrit** replied that the MBCC tries getting the most out of federal dollars, going after federal dollars that require the least amount of match. **Mr. Mena** added that every year different grants are available. If more general fund dollars were available, it would open up opportunities for different grants.

SEN. SCHMIDT asked if the dollar amounts in the Legislative Fiscal Division (LFD) book match up anywhere in the program funding amounts given, for instance, the Violence Against Women Program. **Mr. Merrit** explained how the book is showing FY05 activities, while the budget shows FY04 in the base budget. The year of the grant is noted by the side of the grant. Any remaining funds from this biennium grant carries over to the next biennium to fund additional projects. The carry over of grants may add up to more than the appropriation.

{Tape: 2; Side: A; Approx. Time Counter: 8 - 17; Comments: Mike Batista}

Mike Batista, Administrator of the Division of Criminal Investigation, stated that there is a misunderstanding of the number of drug enforcement resources in the state. There are only thirteen statewide and they are more scarce on the local level. The reduction of the Byrne Grant money puts the state and local agencies in competition for a small amount of available dollars. Our state is already sparse compared to surrounding states. The state needs to provide stability. The enormity of

the problem was not known until the Drug Task Force funds were made available five years ago. It does affect safety within the state.

Mr. Batista understands the comment about local agencies picking up for smaller cities, but this does not happen in reality.

Mr. Batista is also on the Homeland Security Task Force. This money is designated for first responders to equip local firefighters, and for prevention to create a Homeland Security Intelligence Center. The only money available for personal services is to fund an intelligence analyst that will work with the FBI. Also, three FTE's are currently funded with that money. There is certainly a relationship between drug enforcement and homeland security, but it is not recognized nor authorized. To allow appropriation to compensate for lost Byrne Grant money would protect the state interests because the state will have a more severe problem where people will capitalize on our weakness.

CHAIRMAN CALLAHAN asked for more questions, hearing none, he moved to Executive Action.

{Tape: 2; Side: A; Approx. Time Counter: 18 - 29.5; Comments: Executive Action}{Tape: 2; Side: B; Approx. Time Counter: 0 - 14.5}

EXECUTIVE ACTION ON HB 2; MONTANA BOARD OF CRIME CONTROL

Motion/Vote: REP. HINER moved APPROVE THE MBCC BASE BUDGET. Motion carried 6-1 by voice vote with REP. WITT voting no.

Motion/Vote: REP. HINER moved APPROVE THE MBCC STATE PRESENT LAW ADJUSTMENT. Motion carried 6-1 by voice vote with REP. WITT voting no.

Motion/Vote: SEN. SCHMIDT moved that DECISION PACKAGE 1 BE ADOPTED. Motion carried unanimously.

CHAIRMAN CALLAHAN asked to skip Decision Package 2, which has been withdrawn. **NO ACTION ON DECISION PACKAGE TWO.**

Motion: SEN. SCHMIDT moved that DECISION PACKAGE 3 BE ADOPTED.

Discussion:

SEN. SCHMIDT clarified the Decision Package (DP) 3 is to expend the \$4.6 million, and within that grant to pay for one FTE. The additional FTE will still keep MBCC at 20 FTE or under before vacancy savings is applied.

REP. WITT declared it bothersome to jump into a new federal program when there is so much talk about the \$1.1 million that is lacking from another federally funded program. He is concerned that a pattern may be established.

SEN. BALES voiced concern on how long these funds will go. He is concerned that if only half of the projected funds are obtained, the FTE is still authorized. Also, if the project is only funded one biennium, the FTE will carry over. **Mr. Mena** explained that the FTE is contingent on funds. **Mr. Freebourn** remarked that ultimately, the legislature does not approve FTE. The subcommittee can ask to delete the FTE from the request now; however, the agency can put the FTE in later without legislative approval. **SEN. BALES** asked if by authorizing this FTE, it will be put in the base the next biennium. **Mr. Doig** responded that it will not, unless the MBCC goes through the governor's office for a modified FTE.

Mr. Freebourn interjected with options for the committee. Option 1 relates to shifting an FTE from the Byrne grant that is being reduced to the Homeland Security program and asking the MBCC to live with the current number of FTE. Next, the committee can approve the FTE contingent to the availability of funds. Finally, the committee can leave the FTE out of the decision package and let the MBCC get approval for the FTE from the governor's office. **Mr. Merrit, Director of Administration for MBCC**, informed the committee that the reduction in the Byrne Grant money will not reduce the workload for the agency. In addition, the proposed FTE for the Homeland Security project would be for a highly specialized position that is currently not on staff. **Commissioner Christensen** reiterated that current staff is not on hand for the new FTE and the Byrne Grant reduction does not mean a significant decrease in work load for grants, only smaller grants in that area.

REP. WITT inquired if the communications money has any overlap with 9/11 and if the board is working with counties and systems that are currently in place. **Commissioner Christensen** responded that the communities are working together, specifically through the State Interoperable Executive Committee. This brings together communication between Helena, the northern tier, and

Butte when approaching the scene of an accident instead of using runners.

REP. WITT wondered if it would be a burden if the FTE was one-time only. **Commissioner Christensen** stated that making the FTE one-time-only could create a mobile employee with low job security. **REP. WITT** followed-up that every year the committee becomes more concerned with FTE and vacancy savings. While this should be up to the committee, he does not want to inhibit the performance of the MBCC.

SEN. GALLUS inquired whether the interoperable communications will be used as a law enforcement or first responder tool. **Commissioner Christensen** replied that the communications system would function across the board to all in public service. **SEN. GALLUS** asked if anything would be used for criminal investigation database. **Commissioner Christensen** answered that it deals primarily with mobile data, with capabilities of being encrypted to subjects sensitive in nature.

SEN. SCHMIDT voiced concern about the flexibility with excluding an FTE because she does not want to inhibit the function of a highly specialized position. **Mr. Doig** remarked that a one-time-only classification might make recruitment harder. If the FTE is not approved they can always approach the governor's office for a modified FTE. **CHAIRMAN CALLAHAN** added that the MBCC is not in the position to want to build a large FTE base if it is not needed. If they were to get a grant elsewhere they would be put in the position of vacancy savings.

Vote: Motion carried 5-2 by voice vote with **REP. HAWK** and **REP. WITT** voting no.

Motion/Vote: **SEN. SCHMIDT** moved that **HB 2 NEW LANGUAGE BE ADOPTED**. Motion carried unanimously by voice vote.

Motion/Vote: **SEN. SCHMIDT** moved that **HB 2 MONTANA BOARD OF CRIME CONTROL SECTION BE CLOSED**. Motion carried unanimously by voice vote.

{Tape: 2; Side: B; Approx. Time Counter: 14.6 - 29.5; Comments: Department of Corrections Orientation}

Orientation for Department of Corrections

Mr. Freebourn noted that there are five programs within the Department of Corrections: Administration and Support Services,

Community Corrections, Secure Custody, Montana Correctional Enterprises, and Juvenile Corrections Division. Certain divisions within these programs are listed on Page D-64 of the legislative budget analysis. The major budget highlights are on Page D-65, showing specifics within a \$26.7 million general fund increase. Most of the request is for additional contract beds and \$4.4 million for license plate replacement. D-66 highlights major change factors. The supplemental appropriation is discussed on D-67. On D-68, the adult daily population growth is shown between 1997 and 2004, as well as predictions to 2006-2007.

An expansion of secure facilities is requested by the Department of Corrections for the next biennium because the regional facilities are currently full and there will probably be limited room within the county jails. In 2003, there was a decrease in prisoners, due to a one-time massive release of prisoners that the department felt could be released. D-69 Figure 3 shows the general fund increases, with the incremental increases for FY06, FY07 and for the biennium. Mr. Freebourn pointed out that contract beds are a significant amount of the increase, as well as the license plate reissue. D-71 shows cost per day. This should help in the costing process. However, if the committee decides to push more prisoners into the Deer Lodge facility, there will be more cost than the incremental costs seen in the table because the facility is near its maximum capacity. These costs will be explained later in testimony. D-98 Figure 10 shows secure facilities which are broken down to cost-per-day.

Mr. Freebourn returned back to D-73, which shows projected capacity versus capacity design of each secure facility. The prisons are regularly audited for capacity: rated capacity, operational capacity and emergency capacity. This figure shows that most prisons are at an operational capacity, with potential to move into a dangerous area. These numbers could move into emergency capacity unless an expansion occurs in a timely manner. D-72 gives a definition of these capacity ratings. The final table for today, D-76, shows the projected budget overtime shortfall. The Department of Corrections has underbudgeted approximately \$900,000 according to LFD predictions. The overtime is necessary to staff facilities around the clock that don't have enough staff. Mr. Freebourn predicted that unless the Department of Corrections changes the overtime, the budget is already in the hole, and they will need another supplement next biennium.

Mr. Freebourn then went over the schedule for Department of Corrections, highlighting that tomorrow the subcommittee will hear testimony on the Administration and Support Services area.

[EXHIBIT \(jch07a04\)](#)

[EXHIBIT \(jch07a05\)](#)

[EXHIBIT \(jch07a06\)](#)

Exhibits 4 - 6 were given in response to information requested
January 7th, 2005.

January 11, 2005

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ADJOURNMENT

Adjournment: 10:30 A.M.

REP. TIM CALLAHAN, Chairman

SHANNON SCOW, Secretary

TC/SS