



## LEGISLATIVE FINANCE COMMITTEE

### 61<sup>st</sup> Montana Legislature

Room 110 Capitol Building \* P.O. Box 201711 \* Helena, MT 59620-1711 \* (406) 444-2986 \* FAX (406) 444-3036

#### SENATE MEMBERS

KEITH BALES  
STEVE GALLUS  
DAVE LEWIS  
RICK RIPLEY  
DAVID WANZENRIED  
CAROL WILLIAMS

#### HOUSE MEMBERS

WILLIAM GLASER  
CYNTHIA HINER  
GALEN HOLLENBAUGH  
LLEW JONES  
JON SESSO  
JANNA TAYLOR

DIANE MCDUFFIE, Secretary  
AMY CARLSON, Director

# MINUTES

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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To view the minutes, locate the meeting date and click on minutes. To hear the audio recording, click on the Real Player icon. Note: You must have Real Player to listen to the audio recording.

### **LFC-SUBCOMMITTEE REFERENCE BOOK SECTION JUDICIAL BRANCH, LAW ENFORCEMENT, AND JUSTICE MEMBERS PRESENT**

SEN. KEITH BALES  
SEN. STEVE GALLUS  
REP. CYNTHIA HINER  
REP. JANNA TAYLOR

### **INVITED MEMBERS OF THE LAW AND JUSTICE INTERIM COMMITTEE PRESENT**

SEN ESP  
SEN MOSS  
REPRESENTATIVE PETERSON

### **STAFF PRESENT**

PAT GERVAIS, Fiscal Analyst  
SUSIE LINDSAY, Secretary

JARET COLES, Staff Attorney  
SHERI HEFFELFINGER, Research Analyst  
VALENCIA LANE, Staff Attorney

## Visitors

Visitors' list, Attachment #1.

- 00:01:37 REP HINER called the meeting to order. Secretary noted roll. Attachment #2
- 00:01:17 AMY CARLSON, Legislative Fiscal Analyst, explained a chart produced by the Legislative Fiscal Division that depicts the total demands for the general fund. (EXHIBIT 1) The blue line indicates adjusted base, which means that the money spent in 2010, with a couple minor adjustments is then used as a starting point for session. That figure is \$3.6 billion dollars. She further explained the individual colored boxes of the chart. The red box which represents present law base adjustments that are ongoing services in the next biennium authorized by the prior legislative session. The green box is titled current level services. These are services provided at this point in time. These services were not authorized by the legislature to continue into the next biennium. An example of current level services is the 2% for K-12, the at risk for K-12, organ transplants, and the tuition mitigation. \$148.4 million in that category. The other box is purple. This shows retirement costs. Those costs are associated with actuarially funded retirement systems. State Administration Veterans' Affairs interim committee is looking for ways to shrink this box. The purple line shows where the Legislative Finance Committee (LFC) has voted to make the starting point for budget deliberations and is less five percent in the adjusted base.
- 00:04:31 SEN ESP asked Ms Carlson to explain the around \$50 million that was freed up money that Director Ewer asked be held back.
- 00:06:44 MS CARLSON explained that the ending fund balance was \$282 million. An additional \$18-\$20 million from the one-time-only (OTO) in Medicaid that was put into the state special fund and is due to the Enhanced Federal Match Rate (FMAP). She also stated that around \$50 million in the Governor's version of HB645 is going into the Teachers' Retirement System (TRS).
- She further explained that the focus of this meeting is to review the options in the reference book. She did not anticipate any voting. This meeting is simply a time for the committee to ask more questions of the staff, give further direction to the staff or put forth any ideas for other potential cost reductions.
- 00:08:42 REP HINER asked for questions or comments. There were none.
- 00:09:01 PAT GERVAIS, Senior Fiscal Analyst, explained the expense forms for this subcommittee.
- 00:10:01 MS GERVAIS talked about the options related to the Judicial branch found in the reference book. The first option is to close the courts one day a week. (EXHIBIT 2)
- 00:12:44 REP PETERSON asked if there was any input from the Judicial Branch. He objected to furloughing everyone but judges.

00:13:27 SEN BALES stated that the Legislature authorized more district judges last session. He asked Pat for clarification on the impact of that decision.

00:15:04 MS GERVAIS explained that three additional judges would be elected in November and take office in January and that a statutory change would be needed to impact this.

00:16:00 SEN ESP asked if judges will be in current level of service or present law adjustments.

00:16:44 MS GERVAIS responded that because the judges were legislatively approved, she anticipates seeing a present law adjustment.

00:16:56 BETH MCLAUGHLIN, Court Services Director with the Office of Court Administer (OCA), stated that the Judicial Branch is concerned with the option of closing the courts one day a week. However, at this time the branch cannot offer an alternative solution. She provided a hand out. (EXHIBIT 3)

She indicated that closing the courts one day a week would have a dramatic affect on the civil justice system. This would reduce judicial services by 20%. That equates to closing courts 52 days per year, per judge, which would be 2400 court days a year. The priority would then be the statutory matters like abuse and neglect, criminal matters, etc. However civil matters would not be addressed. The statute does not allow the furloughing of judges or a reduction in their salaries. Therefore, the closing of courts one day a week would mean 120 other employees, law clerks, judicial assistants and court recorders would be furloughed.

00:24:11 SEN BALES asked what suggestions for cost savings the Judicial Branch could offer.

00:24:41 MS MCLAUGHLIN stated that the Judicial Branch voluntarily cut 5%. A meeting will take place in October to decide on other ideas.

00:25:34 SEN ESP asked for an approximate number for benefits and salaries.

00:26:41 MS MCLAUGHLIN stated that administrative support positions would be \$45,000 a year with benefits, law clerks salaries start at \$45,000, plus the benefit package and court recorders start at \$40,000, plus the benefit package.

00:26:57 SEN ESP asked a follow-up for the specific amount. In addition, he asked Ms Gervais if judges salaries are set and specified in statute. Ms Gervais indicated that he was correct.

00:27:35 REP PETERSON stated that the Constitution states, "all judges shall be paid as provided by law, but salaries shall not be diminished during terms of office." He stated that law clerks could be let go.

00:29:42 MS GERVAIS explained the next option concerned funding of juvenile placement. The Judicial Branch uses their portion of the funding for juvenile probation placement. At the end of the fiscal year, juvenile placement funds that are not expended are transferred to a state special revenue account for juvenile delinquency intervention programs. The Judicial Branch can then spend the money for up to two years. Around \$1 million is

being transferred each year. One idea for cost containment would be to reduce the funds appropriated for juvenile placement and the impacts on the juvenile delinquency intervention account.

- 00:32:01 REP TAYLOR stated that sometimes the money that is not spent will get sent to corrections to spend on adults.
- 00:32:44 MS GERVAIS responded that funds are not restricted, therefore the department has the ability to do a transfer among programs.
- 00:33:24 REP TAYLOR wants to know if this has been done in the past and how much money was transferred to other programs.
- 00:33:56 SEN MOSS asked if any reports had been published on this.
- 00:34:20 MS GERVAIS stated that normally reports are published, however, this year as a cost savings measure, the survey was not conducted.
- 00:34:39 MS MCLAUGHLIN stated that individual cost containment measures are reported annually to the cost containment panel.
- 00:36:42 SEN MOSS asked for copies of those reports.
- 00:36:56 MS MCLAUGHLIN stated that she would get the reports to the committee. She then provided additional comments.
- 00:41:07 REP TAYLOR directed her cost question to Ms McLaughlin.
- 00:41:29 MS MCLAUGHLIN stated she didn't know off hand how much goes to adults.
- 00:42:03 REP HINER asked how many out of state juvenile placements occurred in the last four years and how much that cost.
- 00:42:21 MS MCLAUGHLIN stated that she could get the information.

#### PUBLIC COMMENT

None

- 00:43:10 MS GERVAIS explained the Department of Justice option in the reference book for consumer settlement proceeds. A state special revenue account receives proceeds from consumer settlement litigation to support the function of litigation. Statute states that excess fees are to be transferred to the general fund, but statute is not specific when that occurs or which fees it includes.
- 00:45:19 REP PETERSON asked for clarification of the excess.
- 00:46:01 MS GERVAIS responded that the statute is not clear on excess. It simply states excess fines, costs and fees from consumer settlement proceeds be transferred to the general

fund. However, it does not define what excess is.

- 00:46:42 REP PETERSON stated that in reading the statute it states, "excess from proceeds paid to the state to settle litigation and consumer protection cases." If a consumer protection case was settled, do all the proceeds go to the account?
- 00:47:11 MS GERVAIS responded that not all the settlement proceeds came to the state. She offered an example of the recent mental health trust that was established based upon some consumer protection settlement actions that did not come through the state special revenue account.
- 00:48:22 REP TAYLOR asked how much money is in the account now.
- 00:48:37 MS GERVAIS stated that \$1 or \$2 million dollars is in the account.
- 00:49:14 SEN MOSS asked about the status of the council that was established last session.
- 00:49:42 ALI BOVINGDON, Deputy Attorney General, stated that the consumer protection act litigation is funded by the state special revenue account. The state pursues consumer protection cases against companies that have violated the consumer protection act. Successful litigation action against companies money goes into the fund. Currently, \$2.4 million is the annual budget. \$2.7 million is in the account currently. As the account does not receive general fund monies, the department policy is to work towards a four year operating reserve.
- 00:57:18 REP PETERSON asked if private attorneys are hired for consumer protection.
- 00:57:35 MS BOVINGDON responded that the Attorney General's office sometimes hires outside counsel and then negotiates 10% retainers.
- 00:58:18 REP PETERSON asked why private attorneys couldn't handle consumer protection cases instead of the state.
- 00:59:09 MS BOVINGDON responded that the Attorney General's office maintains that the state is better positioned to handle those cases because it has the ability to offer injunctive relief to shut down businesses that private attorneys can not do. In addition, on the parens patriae theory, the state stands as a parent in consumer protection cases.
- 01:00:19 SEN MOSS asked for comments on the council as a citizen input to recommend distribution for these funds.
- 01:00:43 MS BOVINGDON responded that a council was set up. However, the Legislative Audit Division raised concerns with the council. Therefore, Attorney General Bullock is looking into that.
- 01:01:41 REP HINER wanted to know what the amount of the four year operating reserve totaled.
- 01:02:00 MS BOVINGDON stated that the 4 years reserve is \$4.8 million.

01:02:10 SEN ESP stated that schools are only allowed a six month reserve, he thought four years was a little long.

#### PUBLIC COMMENT

None.

01:02:58 MS GERVAIS continued with the options that affect the Office of Public Defender. The first option is on page four of the reference book. This option would eliminate jail time for selected misdemeanor offenses. The Judicial Branch provided raw data, from the central court repository, on misdemeanor offenses that carried jail time and how often jail time was ordered in those cases. Ms Gervais used that data to compile a list of 16 offenses that were most often charged, but least often had jail time ordered. She provided a copy of the list. (EXHIBIT #4) She stated that the Legislative Finance Committee had indicated that they would like to propose a bill draft on this topic but have not been specific on the details. The list compiles charges that were charged 500 or more times a year, and given jail time less the half of the time. OPD also provided a list of six offenses. Appendix C provides a list of local or city ordinances that carry the possibility of jail time.

01:10:04 SEN GALLUS asked Ms Gervais if the list of items take into account the conviction rate. In addition, how often was a public defender requested for these charges. Also, what is the rate public defender are used in the Justice of Peace courts.

01:10:50 MS GERVAIS stated that the conviction rate was not taken into account. Around 75%-80% of folks use the Public Defender. She stated that this information is related to the district courts.

01:12:49 MS RANDY HOOD, Chief Public Defender, stated that the proposal to remove jail time from certain misdemeanors is of interest to the Public Defender Office in an ongoing attempt to contain costs. Also, other states have tried this and met with success. The list that Ms Hood provided has only six items as certain crimes have a lot of public policy supporting jail time. For example, partner family member assault case, which carries a minimum 24 hours in jail. This is used by law enforcement as a way to diffuse and control situations. That is an example of why Ms Hood only provided a list of six offenses compared to the Legislative Fiscal Division's sixteen.

The Public Defender Office represents 75%-80% of cases with misdemeanor offences. Clients that have broken city ordinances must be represented if there is jail time involved. This number has increased over the past years, as newly created city ordinances has grown.

01:17:17 REP PETERSON stated that the option only suggests two ways to reduce costs to the Office of Public Defender and asked Ms Hood if there are any other costs that could be reduced. He also asked if the public could contribute to the costs of the Office of Public Defender and stated that rather than Ms Hood taking high profile cases she should just administer the office.

01:20:06 MS HOOD stated that she only has two or three cases a year, which do not overtax her.

01:20:21 REP PETERSON asked Ms Hood if there were any other options that could lower costs to the Public Defender office. He suggested that judges sometimes put additional pressure on the office to take on cases that normally the Office of Public Defender would not take. He asked Ms Hood if that were true.

01:20:58 MS HOOD stated that when a person does not qualify for public defender services, that client is able to go before a judge to challenge that determination. Often, judges overrule the Public Defender Office's decision on that client's indigence.

01:21:44 REP PETERSON asked Ms Hood if the poverty level percentage was adjusted, would the caseload of the Public Defender be reduced. He asked if their clients would still fall within that category.

01:22:31 MS HOOD stated that many of the clients do not work, have no money and therefore would still need those services.

01:23:17 MS GERVAIS explained that the next reference book option deals with eligibility for public defender services. A person can be eligible by having household income at or below 133% of the federal poverty level. If the level were changed to 185% or 200%, then it would disqualify more people. The second criteria is hardship. This means a determination is made that they do not have significant resources to hire counsel to defend themselves.

01:25:36 MS HOOD commented on the poverty level use. Under the hardship portion of statute, only about 8% of clients qualify. In addition, the office checks property web sites and checks pay stubs to make sure people qualify for hardship. The other 92% of people qualify by income (poverty level).

01:27:49 SEN BALES asked if someone comes in with a tax return that they are below 130% if that is the only piece of information used.

01:28:21 MS HOOD stated that everyone must fill out a detailed form, which asks for family members living within the household.

01:29:18 SEN BALES thought there was a case in Ravalli county where a person had assets and still used a public defender. He wondered if that was a case that simply missed "fell through the cracks".

01:29:54 MS HOOD stated that the defendant was in their 60s and had large piece of land worth quite a bit of money, but the only liquid asset was their social security check. The Public Defender asked the client to obtain a loan on their land to pay for court costs. The client was unable to obtain a loan.

01:31:13 REP PETERSON asked Ms Hood for examples of hardship.

01:31:31 Hardship is more often a function of the crime. When the charge is very serious, then the cost of private counsel is high. Thus, clients with those charges typically meet the hardship requirement.

01:32:27 REP PETERSON asked if the court played any roll in determining the use of public defender.

01:32:38 MS HOOD stated that the court does sometimes overrule the Public Defender's determination basis and requires the client to be given a public defender anyway.

01:33:02 MS GERVAIS explained the next option in the reference book. One way to cut costs in the Public Defender Office is to eliminate some services that are offered by the Public Defender.

01:35:15 MS HOOD testified that the guardianship cases are people that are incapacitated. Significant amount of these clients have assets and the Public Defender tries to get them to pay. This is not a large amount of cases. Children are required to be represented by courts, particularly Indian children. Specialty courts, like the drug courts, have grown in terms of clients coming to use public defender services. However, the drug courts are Department of Transportation (DOT) funded. The Public Defender Commission has looked at this issue for some time. Last week a decision was made that services would not be provided in the new Driving Under the Influence (DUI) courts and the remaining specialty court clients would have to complete the indigence form. Judges often require a public defender as they think it is all part of a treatment team.

01:40:10 SEN GALLUS discussed overhauling the entire Public Defender system of specialty courts involvement from a financial standpoint.

01:41:34 SEN ESP asked for other options from Ms Hood.

01:41:53 MS HOOD stated that costs associated with Public Defender office are constantly reviewed. The office is looking at other states' models that use consortiums to do the same work, like parent visitations, etc. instead of using a public defender.

01:43:23 SEN ESP asked if more contract work is possible.

01:43:34 MS HOOD agreed.

01:44:15 SEN ESP asked if the Public Defender Office could go back to the counties and if it would be more reasonable for the counties to do it.

01:45:00 MS HOOD stated that the Public Defender Office has increased the level of representation. People don't have to wait as long to see an attorney. Attorneys brought into a case sooner help bring the cost down, as the cases move quicker. The office has helped control mental health costs and actually reduced costs since taking those cases. She thinks private/contractor attorneys are necessary in conflict cases and in locations where there is no public defender office, but they do take longer to do the case and it takes a little bit more money for them to do the case.

01:46:30 SEN ESP asked if the public defender office will renegotiate with the private attorneys. There are plenty of attorneys looking for work.

01:47:20 MS HOOD stated that the office pays \$60/hour for private attorneys. Private attorneys will not take less money. Renegotiating the rate is not an option as by statute the office can not bid it out.

01:47:48 REP PETERSON asked about wards and conservatorship.

01:48:23 MS HOOD responded that the public defender office must take all those cases and under the current statute there is no requirement for indigence in those cases.

01:48:32 REP PETERSON followed up with a discussion of pro bono work for wards and conservatorship.

01:49:04 MS HOOD doesn't think the Public Defender Office should do this work, but currently has to follow statute.

01:49:35 REP PETERSON followed up with stating that he understood that takes a special skilled attorney. However, there are lots of private attorneys out there that would do the work. He thinks the number of cases will get too high for the Public Defender Office to maintain.

01:51:09 REP TAYLOR asked about the 24/7 monitoring program. Does the Public Defender Office costs go down in the three counties with the monitoring program.

01:52:17 MS HOOD stated that it is a program prior to conviction and it is a way for people to get out of jail and is used as a tool to manage people out on the streets. Therefore, it has not impacted the Public Defender Office.

01:52:27 REP TAYLOR asked if it is a condition of bonding or a condition of probation. Since it is a choice Rep Taylor asked if it wouldn't affect public defender costs.

01:52:47 MS HOOD stated that it still doesn't impact on the case itself. The clients still get representation on a DUI.

01:53:00 SEN BALES asked about private attorneys and could they do pro bono work on these cases and wondered if that stopped when the public defender system was set up.

01:53:36 MS HOOD stated that prior to the Public Defender Office being set up, courts paid for those cases and very little pro bono work was done in criminal cases. However, guardianship was pro bono prior to the Public Defender Office.

01:54:32 SEN BALES asked that although the use of pro bono was not widespread did the Public Defender Office still use those services.

01:54:48 MS HOOD agreed. She stated that the Public Defender Office has law students that do pro bono work.

01:55:30 SEN BALES asked for ways that the Public Defender Office could get back into more pro bono work.

01:55:54 SEN ESP asked if Ms Hood has approached legislators with proposed legislation to reduce workload on guardianship cases.

01:56:14 MS HOOD did provide proposed legislation to the Office of Budget and Program Planning.

01:56:42 SEN ESP suggested Ms Hood to follow up with executive.

01:57:16 REP PETERSON followed up with the suggestion that it takes staff time and attorney time to collect debt.

01:57:35 MS HOOD agreed.

01:58:00 SHERI HEFFELFINGER, Legislative Research Analyst, stated that the Law and Justice Interim Committee has two bill drafts for clients that may want to participate in a DUI court. The bills deal with drivers license sanctions and jail time. The bill drafts could be an opportunity to change the statute to not require public defenders as part of the DUI courts' treatment programs.

#### PUBLIC COMMENT

02:00:44 ALEC HANSEN, Association of Cities and Towns, stated that public defender was created by charging \$1.76 to each city and county. Currently, over \$2 million goes towards the Public Defender costs. The Association of Cities and Towns does not want the cost to increase.

02:03:59 FRITZ GILLESPIE, member of the Public Defender Commission, suggested judges announcing at the beginning that no jail time will be ordered alleviating the need for a public defender.

02:10:36 SEN GALLUS as a point of clarification, stated that he did not ask Ms Hood to remove attorneys from the process, but rather if Ms Hood thought it was a viable savings from a cost point of view.

02:11:05 KELSON YOUNG, Montana Coalition Against Domestic and Sexual Violence, expressed concern about removing jail time for the offenses discussed.

02:11:55 LUNCH

03:23:59 MS GERVAIS began the discussion of the Department of Corrections portion of the reference book. (EXHIBIT #5) She stated that one cost containment strategy could be early release of inmates. A number of states have done it and Montana did it in 2003.

03:24:29 MIKE FERRITER, Director of the Montana Department of Corrections, stated he is providing a newsletter with information on Department of Corrections (EXHIBIT #6) and charts and graphs were handed out on the percentage of violent and nonviolent male inmates.(EXHIBIT #7) He indicated that he wished to highlight the successes of the Department of Corrections. He further stated that everything listed in the reference book

has already been tried. He explained that in 2003 he was instructed by the Director of Corrections at that time to release 359 inmates as a cost savings measure. Warden Mahoney and Mr. Ferriter stated that they could do that, but they needed to ensure those individuals that were released would not return to the prison system. He presented charts that explained programs in place to prevent offenders from returning to prison. Since 2004 73% of Department of Correction offenders have been diverted from the prison system. This translates into over 5,000 offenders. He stated that they do not have 359 offenders that could be released today, as the inmates today need to remain in prison for public safety reasons.

- 03:34:14 MS GERVAIS explained that the next option suggests increasing diversions from the correctional system to avoid the high cost of incarceration.
- 03:35:20 DIR FERRITER stated that corrections started revocation centers for females and males in 2006. This allows offenders one more step before prison. He stated that revocation centers are fairly successful programs. Also, 7,000 inmates are on probation that have a prison sentence but if they meet their probationary obligation then they are diverted from incarceration.
- 03:40:36 REP PETERSON asked when the diversion programs take place.
- 03:41:04 DIR FERRITER stated that the programs start at all levels.
- 03:43:21 REP PETERSON asked who makes the decisions for the diversions.
- 03:43:44 DIR FERRITER stated that the regional administrator makes that decision.
- 03:45:04 REP HINER asked what average length of stay in a diversion program.
- 03:45:27 DIR FERRITER stated only 4 months are allowed in revocation centers.
- 03:47:16 REP HINER asked if a person can repeat to a different revocation center.
- 03:47:46 DIR FERRITER stated that they can go to a different revocation multiple times.
- 03:48:51 MS GERVAIS stated that the next option suggests changing sentencing provisions. She stated that this topic may need more research and perhaps even an interim study.
- 03:49:47 SEN BALES asked what percentage of offenders are sent directly to prison or first to Department of Corrections.
- 03:51:07 MS GERVAIS stated that she could get that information for the committee.
- 03:51:15 DIR FERRITER stated that sentencing is complex. He agreed that research would need to be conducted.
- 03:53:26 REP PETERSON stated that often times the general public testifies during the legislative process for additional prison terms. He asked if any difference is noted between a 15 year

sentence served vs a 25 year sentence.

- 03:54:31 MIKE MAHONEY, Warden at Montana State Prison responded. He thought it was an interesting question. He stated that the Montana code tries to tailor sentencing for a specific crime. Sometimes the additional time is beneficial, but it depends on the crime. He stated that Meth addicts would benefit from longer sentencing. Meth addicts need time to dry out to regain their cognitive abilities back again.
- 03:56:08 REP PETERSON stated that currently under the law after the offender has served 25% of their sentence, they are allowed before the parole board. Perhaps reducing to 20% of their sentence served could cut costs.
- 03:57:27 WARDEN MAHONEY stated that victims are often shocked that the offender gets parole eligibility after only 25% of sentence served. Victims may take issue if that is reduced to 20%.
- 03:58:26 MS GERVAIS stated that the next option deals with a 10% budget reduction for the Department of Corrections. Ms Gervais explained what that would entail. She stated that this would amount to \$17 million a year. For example, to meet this reduction the department could eliminate community treatment programs, the Missoula assessment center and elimination of administration functions. Or another example to meet this amount, 544 incarcerated inmates would need to be released from the prison in Deerlodge. This reference book option tries to explain what it would mean if a 10% reduction for this agency is necessary.
- 04:01:03 SEN GALLUS asked for realistic options.
- 04:01:22 MS GERVAIS stated that this options shows how difficult the next budget cycle will be.
- 04:01:41 DIR FERRITER agreed that the option demonstrates what Department of Corrections is up against. He has no other suggestions.
- 04:04:40 SEN MOSS asked Dir Ferriter asked if he asked his staff for suggestions to reduce the corrections budget.
- 04:06:38 SEN BALES asked Dir Ferriter for new and inventive ways for the Department of Corrections to cut their budget. If his department actually cut the budget rather than the legislature, then perhaps the cuts would be more to Dir Ferriter's liking.
- 04:08:32 DIR FERRITER stated all the innovations within the Department of Corrections will probably not be enough, but they will continue to think about it.
- 04:09:35 REP PETERSON referred to elimination to all community based programs and if the Missoula Assessment and Sanction Center (MASC) program is eliminated then prison costs would go up.
- 04:10:53 DIR FERRITER agreed.

04:10:55 MS GERVAIS presented another cost saving option that would reduce recidivism and the revocations.

04:12:06 DIR FERRITER stated that recidivism and revocations are the focus of Department of Corrections and agreed that some condensation of the revocations.

04:14:42 REP TAYLOR asked about the 15 month METH program and wanted to know about the recidivism statistics for individuals in the METH program.

04:15:57 DIR FERRITER stated that 299 individuals has completed the METH program since 1997 for an 82% completion rate. None of the 82% have repeated. He thought this program is costly, but works, so he doesn't want to change it.

04:17:26 SEN BALES asked about problems with psychiatric clients not getting their medication and the legislation passed last session to help with this problem. He wanted to know if this had been resolved.

04:18:54 DIR FERRITER stated that the problem is getting better thanks to the legislature. He stated that 40% of inmates have mental health issues. A new revocation center will be opening in July 2010 with a 10 bed facility for drug addicts and mental health clients.

04:20:07 SEN GALLUS wondered how much the new revocation center cost. At a time of budget cuts it seems strange to open a brand new facility.

04:21:10 DIR FERRITER stated it cost \$12.3 million for the new facility. Dir Ferriter stated that the facility was necessary to replace a decrepit old facility.

04:22:37 MS GERVAIS discussed an additional option for budget reduction. This option would reduce provider rates. Currently a \$124 million budget for the biennium is allowed to pay providers. A 1% reduction in this budget would save \$1.2 million for the biennium.

04:24:07 DIR FERRITER stated that due to budget constraints the Department of Corrections no longer offers a GED program, nor a sexual offender program at the Shelby facility. He thinks it would be difficult to lower costs and provider rates.

04:27:02 REP HINER wanted to clarify the brochure numbers, specifically the differences in cost per day.

04:27:42 DIR FERRITER stated that the difference in number of inmates accounts for the difference in costs.

04:29:14 REP HINER asked if females cost more per day.

04:29:41 DIR FERRITER stated that no, just smaller amount of females, but cost to secure is the same.

04:29:58 REP HINER asked why the youth Riverside Facility costs \$342 a day.

- 04:30:46 DIR FERRITER stated that in the past girls were sent out of state to Texas. The decision was made to find a place for the girls to remain in Montana. The capacity at Riverside is 20 girls, currently there are 12. This is a full education program and much care offered in a secure facility for no more than 20 girls, therefore the cost is high.
- 04:31:57 REP HINER asked if 12 girls are there now.
- 04:32:22 DIR FERRITER stated that the success of the programs means that fewer girls are there because of diversion opportunities. Hence, we are incarcerating fewer offenders today because of these facilities.
- 04:32:52 SEN BALES asked how Montana costs compare with other states.
- 04:33:16 DIR FERRITER stated that he thinks prison costs are similar. The youthful offender cost is more but that is because those facilities don't run at full capacity.
- 04:34:36 MS GERVAIS stated that the last item included in the reference book for this section suggests reducing length of stay in various programs to cut costs.
- 04:35:17 SEN GALLUS asked Dir Ferriter about reducing the length of stay vs reducing the amounts of beds.
- 04:36:15 DIR FERRITER stated that yes there are waiting lists, but they are not as long as it used to be. However, to capture cost reduction Montana would have to reduce the number of beds.
- 04:37:14 REP PETERSON asked how shortened stays affect rehabilitation.
- 04:37:41 DIR FERRITER stated that the charts he provided relates to the effect of rehabilitation and the success of the programs.
- 04:41:41 REP PETERSON followed up with a question on sex offenders. The public has a real problem with sex offenders. He would need the figures on how those offenders do after they have gone through the program.
- 04:42:50 DIR FERRITER recognized the challenges. About one third of Deer Lodge inmates are sex offenders. He thanked the committee. He stated that he did not bring any cost saving solutions as he did not think that they were necessary yet.

#### PUBLIC COMMENT

- 04:44:11 CRAIG THOMAS, Executive Director of Board of Pardons and Parole, stated that they are concerned about the early release option. Over the last ten years the parole board has released 5600 inmates, which is typically 500 a year. The return rates are around 30%. Generally, 56% of inmates are granted parole after they serve 25% of their sentence. Mr Thomas stated the board could discuss reducing parole programming to cut the budget. There are not currently 500 inmates that could be paroled.

- 04:49:29 MIKE THATCHER, Administrator for the Community Counseling and Correctional Services, currently administer 13 programs in Montana, Washington and Wyoming. He stated that the WATCH program in Glendive is 75%-79% successful. WATCH, START, NEXUS, ELKHORN all work. He hopes that these programs don't get cut.
- 05:10:43 PAT KEIM, Alternatives Incorporated a non-profit pre-release center is concerned with reducing provider's rates.
- 05:15:46 WARDEN MAHONEY stated that the community corrections still does their job. The department is proactive at moving people through the system. Of sex offenders that complete their program only 2% return and usually not for sexual offense.
- 05:21:33 REP PETERSON asked Warden Mahoney what the potential was for building less secure buildings for sex offenders.
- 05:22:02 WARDEN MAHONEY stated that the department tried a request for proposals last biennium. Tier I offenders need a facility, but don't need maximum security.
- 05:23:11 MS GERVAIS asked committee members if they had priorities for which options should be researched further.
- 05:23:50 REP TAYLOR stress to the agencies that we are partnering with them and we want their input and suggestions.
- 05:25:12 REP PETERSON stated that the Attorney General's office has costs related to the Consumer Protection Act. He stated that it is a nice service but wonders how necessary. He thinks having a public defender on the treatment team is inconsistent with what an attorney does. He believes attorneys advocate for clients not work with clients after conviction going to treatment programs. He thinks this should be removed from the drug court, as well as, long term less secure facilities for Tier I offenders.
- 05:28:11 SEN ESP would like dollar amounts added to these proposals. He wants to know how much 120 FTE in the court system costs. He further stated that it is difficult to assess options without knowing how much money is involved.
- 05:29:52 SEN BALES commented that a four day work week for courts is preferable to suspending the three judge positions allowed on in 2009 session. He liked the idea of requiring a judge to state beforehand if the offense would require jail time and thinks change statute to reflect this would be good.
- 05:32:02 SEN GALLUS wanted to know if the LFC is to find places to reduce the budget or if the agencies will provide a plan.
- 05:33:11 MS GERVAIS will perform the additional duties as directed. She suggested a second meeting after the agencies submit their budgets September 1.
- 05:34:26 SEN ESP stated that the legislature will have to choose where to cut in the end.

- 05:35:17 REP PETERSON thinks attorneys should be asked to do more work. He also thinks law clerks are expendable. In addition, he suggests a method of receiving pay from clients in treatment programs.
- 05:39:41 SEN MOSS thanked the committee for the opportunity. She stated that perhaps fixed costs like utilities, food services, etc. could those be negotiated.
- 05:42:11 SEN BALES thought that Law and Justice people can offer input on policy and that LFC members can bring money questions. He stated that workable ideas early are better than waiting to the end and to try to logically find ways to cut.
- 05:45:49 SEN ESP stated that he would like to see entitlement shares to see how 2005 compares to today.
- 05:47:20 REP HINER asked Ms Gervais to set up dates for an upcoming meeting. Meeting adjourned.