



LEGISLATIVE FINANCE COMMITTEE

62nd Montana Legislature

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DIANE MCDUFFIE, Secretary
AMY CARLSON, Director

MINUTES

Judicial Branch, Justice and Corrections Reference Book Subcommittee September 8, 2010

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.

SUBCOMMITTEE MEMBERS PRESENT

REP. CYNTHIA HINER, Chair
REP. JANNA TAYLOR
SEN WILLIAMS, Vice Chair LFC

LEGISLATIVE MEMBERS FROM THE LAW AND JUSTICE INTERIM COMMITTEE PRESENT

SEN MOSS
SEN ESP
REP PETERSON

STAFF PRESENT

PAT GERVAIS, Fiscal Analyst
SUSIE LINDSAY, Secretary

SHERI HEFFELFINGER, Research Analyst

Visitors

Visitors' list, Attachment #1.

- 00:00:03 REP HINER called the meeting to order. The secretary noted the roll, Attachment #2. The minutes were accepted as written.
- 00:00:51 PAT GERVAIS, Senior Fiscal Analyst, explained the process of the meeting. (EXHIBIT #1)
- 00:01:36 SEN ESP noted that the 5% reduction plans are included. (EXHIBIT #2) He asked if a 10% reduction plan is being worked on by the Legislative Fiscal Division.
- 00:02:15 MS GERVAIS responded that 5% is a statutory requirement, but as yet 10% is not on the list.
- 00:02:44 MS GERVAIS reviewed agenda items 4-14. (EXHIBITS #3-#13)
- 00:04:11 REP PETERSON wants to discuss item 5, elimination of law clerks. He stated that at the last meeting he suggested eliminating law clerks. He reported that he has received public comments about eliminating law clerks. He stated that judges could agree to share law clerks. He explained that oftentimes judges are given documents from attorneys that are not well researched and law clerks provide better researched materials. He stated that law clerks do a lot of work that the attorneys assigned to the case should be doing. He suggests sharing law clerks. Some districts may not have a big caseload, so a law clerk would not be necessary. If law clerks are eliminated it would save the state \$2.6 million.
- 00:10:28 MS GERVAIS stated that a 20% savings for FTE costs related to closing court one day per week for the office of court administration is \$1.35 million.
- 00:11:45 MS GERVAIS indicated that item 6 depicts 2011 biennium salary budgets. This item summarizes all of the law clerks positions or 35.5 FTEs at a cost of \$2.3 million.
- 00:12:27 MS GERVAIS explained item 7. It is a portion from the Fiscal Report on juvenile placement funds going to adults. It shows that during the 2005 session for the 2007 biennium \$1.5 million per year or a total of \$3 million for the biennium was transferred from the adult corrections budget into the juvenile placement budget.
- 00:13:08 MS GERVAIS explained that item 8 is a portion of the appropriations act for that biennium and shows that the department could transfer the money back to the adult population if needed. For the 2007 biennium the money was transferred back to adults. She stated that in her research, this was the only instance she found transferring funds between adult corrections and juvenile placement. Since the money was transferred in and then back out, the net impact for the juvenile budget was zero.
- 00:14:04 REP TAYLOR clarified that this type of transfer has not happened since this example.

00:14:22 MS GERVAIS indicated in her research she had not found any other instances of transfers between adults and juveniles. She explained that items 9 and 10 answer questions from the previous committee meeting about the Department of Corrections (DOC) commitments by year and initial placements within the system.

00:16:03 REP PETERSON clarified that item 10 shows the DOC commitments chart. He wanted further clarification on item 9.

00:16:20 MS GERVAIS concurred that item 10 shows the DOC commitments. She further clarified item 9.

00:17:14 REP PETERSON asked how the process for those cases were determined.

00:17:26 MS GERVAIS stated that she thinks it is ultimately up to the judge and suggested that Director Ferritier may have more information.

00:17:53 MIKE FERRITIER Director of the Department of Corrections, explained that the placement decision for the DOC commitments is made by probation or other DOC facilities.

00:19:47 REP PETERSON asked what determines that they are DOC commitments.

00:20:07 DIR FERRITIER stated that district court judges determine offenders to be DOC commitments.

00:20:48 REP PETERSON stated that it seems easy for the judge and he thinks the judges would sentence all offenders as commitments.

00:21:08 DIR FERRITIER stated that a DOC commitment is limited to 5 years.

00:21:28 MS GERVAIS stated that item 11 summaries the statutory change in the entitlement share for counties related to the Public Defender system when it was enacted in 2005.

00:22:23 MS GERVAIS explained item 12 summarizes the statutory change in the entitlement share for cities and towns related to the Public Defender system when it was enacted in 2005.

00:22:44 REP PETERSON asked if Public Defenders are provided in Browning.

00:23:12 MS GERVAIS indicated she was uncertain but that Randy Hood, Chief Public Defender, might be able to provide that information.

00:23:37 RANDY HOOD, Chief Public Defender, stated that the state currently has jurisdiction only on the Flathead Indian Reservation, not on other reservations.

00:23:58 REP PETERSON asked why Browning is on the list.

00:24:16 CHIEF HOOD stated that there is a City of Browning Court.

00:24:33 HAROLD BLATTIE stated that for the municipalities the total cost of \$861,000 was simply apportioned on a per capita basis. It was decided that this formula was the best way to apportion those costs. The larger counties had a provision in the 2005 bill that an interim study be conducted to determine the costs. The Legislative Audit Division audited those large counties and a negotiated amount was determined.

00:25:53 REP PETERSON stated that several towns listed are on reservations. He wants to know why those towns are included in the proration.

00:26:22 MR BLATTIE explained that the league of cities and towns agreed to use that methodology to allocate the adjustment.

00:26:32 MS GERVAIS stated that items 13 and 14 explain the juvenile placement funding budget history for 2005-2011.

00:27:38 MS GERVAIS explained the next report entitled Proposed 2011 Session Legislation. (EXHIBIT #14) She explained that the Office of Public Defender will present their bill requests to the Law and Justice Interim Committee over the next two days. They have draft requested agency legislation to look at removing jail time for certain misdemeanors.

00:29:13 REP PETERSON asked if these requests will be discussed at the Law and Justice Interim Committee.

00:30:24 MS GERVAIS said they would. The next report is a printout of tables from the budgeting system that gives a first glimpse of what the agencies submitted on September 1 to the Governor's office. (EXHIBIT #15) This is not the executive budget request, but this is a starting point. The first report is for the Judicial Branch. She further explained the details of the report.

The next report shows the 5% base budget reduction plan submitted by the agency. She explained that the LFC has adopted a motion that recommends that the beginning point for budget deliberations in the next session include a 5% reduction plan. Agencies that have more than 20 FTE are required to submit a 5% reduction plan as part of their agency submitted budgets. She guided the committee through the first report on the Judicial Branch. (SEE EXHIBIT #2)

00:34:26 REP TAYLOR asked if this is what the agency submitted on September 1 to the Office of Budget and Planning.

00:34:55 MS GERVAIS indicated it was.

00:35:35 REP TAYLOR stated that there is no reduction to the Judicial Branch.

00:36:13 MS GERVAIS explained that the Judicial Branch does not include a 4% personal services reduction since they are a separate branch of government.

00:38:20 REP TAYLOR asked if the 5% reductions were provided by statute.

00:38:25 MS GERVAIS indicated they were.

00:38:37 SEN ESP asked if the base budget was represented on the first graph.

00:38:40 MS GERVAIS stated that the first graph has new proposals included in it, so the first graph does not represent their base. This chart represents their initial request to the Governor's office.

00:38:44 REP PETERSON asked about present law adjustments. He asked if the present law adjustment was made before the 5% reduction.

00:38:58 MS GERVAIS stated that statute requires a 5% reduction of base. So there was an estimate of the base budget. Present law allows the agency to request the funding that the agency would need to continue services at the current level. The base is based upon expenditures in FY2010. To get to present law the agency adds funding the agency feels it needs to provide services into the future that they are currently providing.

00:39:28 REP PETERSON asked if the present law adjustment was made because of the needs then the 5% was taken.

00:39:52 MS GERVAIS stated that the present law adjustment would not have been included in the 5% calculation.

00:40:24 SEN ESP asked if the agency could respond to the 5% reductions and the 2% vacancy savings.

00:40:56 LOIS MENZIES, Court Administrator, provided general information. She stated that the 2% vacancy savings was imposed by the legislature. The Judicial Branch was prepared to live with the 2% vacancy savings. However, the 5% plan was extremely difficult for the district court council to decide upon. The council actually looked at about 12 different options before finally settling on the current plan. The reduction plan amounts to about \$1.7 million. These reductions will impact positions that provide direct support to judges for work on cases. The reductions will force the courts to concentrate on statutory required cases. For example, criminal cases and child abuse and neglect cases. Civil cases will be put off.

00:48:07 SEN ESP asked if the Judicial Branch looked at specific FTE positions or were the reductions general.

00:48:18 MS MENZIES responded that the positions were associated with judges. Traditionally a judge will have a law clerk, judicial assistant, and a court reporter. In some cases a judge will have more staff assigned to him and those are the positions being looked at for reductions.

00:48:27 REP PETERSON asked about the \$1.7 million every year to meet the 5% reduction and the present law adjustment additional need is \$3.3 million. He wanted to know if something in the present law adjustment can be reduced. He asked if the department is still going to continue to grow even though there is a 5% reduction.

00:50:12 MS MENZIES stated that the budget is confusing and the branch does have some new proposals coming forward for new FTE positions. The branch has 5 FTE build into the base, but they need to request an additional 5 FTE.

00:51:07 MS GERVAIS further explained how the base budget and present law adjustments work. If the legislature wants to get to the base less 5%, then the legislature has to adopt the 5% plans, plus not provide for the present law adjustments.

00:52:33 REP PETERSON asked if present law adjustment could have a reduction of pay.

00:52:58 MS GERVAIS stated that the LFD staff will look at the present law adjustments in the Budget Analysis.

00:53:49 REP PETERSON thanked the staff and MS MENZIES.

00:54:05 MS MENZIES stated that a lot of the cost is an increase in employee's health insurance benefits.

00:54:31 SEN ESP asked if the Judicial Branch has looked at increased pensions costs as new proposals or present law adjustments.

00:54:50 MS MENZIES stated that they have not. By statute the Judicial Branch is required to pay a certain amount and the branch would not seek to reduce that.

00:55:14 SEN MOSS asked about reductions within the drug courts. She stated that in the Law and Justice Interim Committee they have looked at models for successful programs and one of the successful programs are the drug courts. She wanted Ms Menzies to explain any reductions in the drug court program.

00:55:48 MS MENZIES stated that currently they are planning a 35% reduction across the board for twelve drug courts around the state. The reduction would amount to around \$250,000.

00:57:07 SEN MOSS asked if a reduction is taken, would another entity have to fill in for the reduction, like local governments.

00:57:10 MS MENZIES stated that could occur.

00:58:01 REP HINER asked if Ms Menzies is aware of federal or local government funding available to mitigate the 35% reductions.

00:58:18 MS MENZIES stated that the Judicial Branch requested from their federal delegation an earmark for the drug courts. At last word, that earmark is making its way through the process.

00:59:50 REP PETERSON asked for examples of boards and commissions within the Judicial Branch.

01:00:14 MS MENZIES explained.

- 01:01:46 MS GERVAIS explained the next packet of information is for the Department of Justice (DOJ) and that it includes the 5% reduction plan. (EXHIBITS #16 & #17) The 5% reduction plan amounts to \$1.2 million. Executive branch agency plans include a 4% reduction in personal services. The Department of Justice included that 4% reduction as part of their 5% plan.
- 01:03:09 JIM BURTON, Deputy Director for DOJ, explained that the agency's 5% reductions represents a 4% reduction in personal services, which are FTE reductions. In terms of the state special revenues the agency would reduce benefit claim payments in consumer protection, gambling investigations and delay implementation of vehicle insurance verification system and law enforcement academy reductions.
- 01:06:09 REP PETERSON asked about the major litigation for a cost of \$300,000. He wanted to know what that cost entailed.
- 01:06:50 MR BURTON responded.
- 01:07:18 SEN ESP asked if DOJ has listed \$16 million additional funding for present law adjustments and asked what that amount included.
- 01:08:15 MR BURTON responded that the money is for 9 new highway patrol officers, motor vehicle debt payments, improvements to the IT smart cop program, upgrades to the criminal justice information network and several other items.
- 01:11:35 SEN ESP asked if the report indicated that \$85 million a year is required to fund DOJ and of that \$60 million is new spending above the last biennium.
- 01:12:16 MR BURTON replied that the annual budget was \$75 million a year. The items he just reviewed would be a \$10 million increase per year.
- 01:12:46 MS GERVAIS stated that present law adjustments build upon the base. The base is fiscal 2010 expenditures with some adjustments. DOJ stated that in 2012 they need what they spent in 2010, plus \$16 million. The \$16 million per year is split between funding sources. This is about \$3.5 million general fund, \$9.7 million in state special revenue, \$61,000 in federal special revenue, plus proprietary funds to make up the \$16 million in addition to what they spent in FY 2010 to support their efforts in FY 2012.
- 01:14:00 SEN ESP asked for clarification of the \$10 million figure that Mr Burton referred to.
- 01:14:22 MS GERVAIS responded that the FY 2011 appropriation level was greater than FY 2010 expenditures. She directed the committee to look at the cover page table that gives the biennial comparison. This is the comparison as outlined in statute. Ms Gervais further explained the table and reminded the subcommittee that this is not necessarily what will be in the Governor's budget.
- 01:15:53 REP PETERSON asked about the present law adjustments that includes 33.5 FTEs over the 2013 biennium. He asked if the department could privatize some of those functions.

01:16:34 MR BURTON responded that the FTEs are actually 16.75 for the first year 16.75 for the next year, not 33.5 in total. Currently, there are outside contracts for Information Technology (IT) projects and outside attorneys on major cases. The five IT positions may be able to be outside positions, but it would have to be looked at. However, the 9 FTE highway patrol officers could not be outside contracts.

01:18:24 MS GERVAIS explained Office of Public Defender's (OPD) 5% reduction plan and the initial budget submission. (EXHIBITS #18 & #19) The OPD will likely request a supplemental appropriation during the upcoming session. The 5% reductions amounts to \$990,000.

01:19:52 HARRY FREEBORN, Administrative Director for the Office of Public Defender, provided a handout. (EXHIBIT #20) He explained his handout and the OPD's FTEs. He explained the \$990,623 reduction is for contract expenditures. His office did not put the 4% personal services reductions within that amount. To reach the \$990,623 reductions, in house attorneys would have to take on as many cases as possible, then an internal backlog would be created.

01:26:22 SEN ESP asked for a dollar amount of the cost for contracted services.

01:26:40 MR FREEBORN responded that it is \$4.9 million.

01:26:47 MS GERVAIS explained the Department of Corrections (DOC) 5% reduction plan. (EXHIBITS #21 & #22)

01:28:20 DIR FERRITIER explained the DOC 5% reduction plan is a statutory requirement and it does not reflect the Governor's final budget. The reduction of \$8.2 million represents serious cuts. Of the twenty-five items, the DOC considers items 11, 12 and 13 as the most important.

01:33:28 SEN ESP asked about annualized items in present law adjustments.

01:33:56 DIR FERRITIER stated that every year the contracts have to be established.

01:34:19 SEN ESP asked if those numbers are not reflected in base from last year. For example the annualized treatment beds, etc.

01:34:34 DIR FERRITIER was unclear about the information that Sen Esp referred to.

01:35:00 MS GERVAIS explained the annualized treatment beds, prerelease beds and northwest prerelease. Caseload growth is part of present law.

01:36:56 REP PETERSON asked about the private prison in Shelby. He asked if reducing the contract payment to them would mean the DOC would have to take over for a lessor amount than the contracted payments.

01:37:38 DIR FERRITIER stated the services would be about the same. However, DOC expects the contractors to also offer substance abuse education. This 5% reduction proposes to

reduce the population at the Shelby facility by 50 beds.

- 01:39:38 REP PETERSON asked if more privatization would provide a savings for the state.
- 01:40:00 DIR FERRITIER stated that it is a balancing act and thinks that DOC has a comfortable balance.
- 01:41:19 SEN ESP wanted to recall Mr. Burton. He asked Mr Burton if DOJ's present law adjustments have statutory requirements and asked if legislation is being drafted by DOJ to reverse the requirements.
- 01:41:40 MR BURTON responded.
- 01:44:07 SEN ESP suggested that if there are previously enacted statutes that could be delayed, the department submit a proposal for legislation to do that.
- 01:44:38 MR BURTON agreed.

PUBLIC COMMENT

None

- 01:45:20 MS GERVAIS reiterated what the committee reviewed. She commented on the budgeting process. She indicated that a report of the committee's meetings will be given to the full Finance Committee.
- 01:46:29 REP PETERSON stated that the base includes present law adjustments from the previous biennium. He commented that the agencies continue to grow. He would like to follow up with SEN ESP's suggestion to propose legislation to reverse some mandates imposed upon the state.
- 01:47:49 REP TAYLOR stated that she is in favor of making statutory changes to city ordinances that don't need a public defender.
- 01:48:42 REP PETERSON stated that if jail may be eliminated in cases of alcohol abuse and the use of SCRAM bracelets could be used to monitor offenders instead. In addition, other new technology that monitors offenders, but keep them out of jail could be looked into.
- 01:49:28 SEN ESP stated that he hopes the LFC will be firm with the agencies to begin the planning process to adjust the spending.
- 01:51:50 SEN MOSS encouraged the agencies to keep communication open and share successes and how they already are adjusting. She commented that she is always amazed by the creativity and resourcefulness among agencies.
- 01:52:57 REP PETERSON mentioned the possibility of privatization and the financial benefits to the state through privatization.
- 01:53:58 REP HINER thanked all the participants. She asked if there will be report given to the

Law and Justice Interim Committee.

01:54:46 MS GERVAIS stated that she will provide an update to the Law and Justice Interim Committee.

01:55:03 REP HINER adjourned the meeting at 3:10.