



Public Safety Interim Budget Committee

68th Montana Legislature

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

SENATE MEMBERS

SHELLEY VANCE
TOM MCGILVRAY, VICE-CHAIR
RYAN LYNCH

HOUSE MEMBERS

EMMA KERR-CARPENTER
BILL MERCER, CHAIR
FIONA NAVE
MICHELLE BINKLEY

JULIE JOHNSON, Staff Attorney
WALKER HOPKINS, Fiscal Analyst
BRENT DOIG, OBPP Analyst
QUINN HOLZER, Assistant Director

MINUTES LOG

September 13, 2023
Room 152
Helena, Montana

Please note: This document is a Minutes Log and provides annotation of the time elapsed between the beginning of the meeting and the time at which the item was presented or discussed, a motion was made, or a vote was taken. The narrative presented here is provided only as a guide to the audio or video recording of the meeting. The official discussion, motion, or vote is available on the audio or video archive of this meeting. The Legislature does not prepare a transcript of the meeting activities. The time designation may be used to locate the referenced discussion on the audio or video recording of this meeting.

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MEMBERS PRESENT:

Rep. Bill Mercer (R)
Sen. Ryan Lynch (D)
Sen. Shelly Vance (R)
Sen. Tom McGillvray (R)
Rep. Emma Kerr-Carpenter (D)
Rep. Michele Binkley (R)
Sen. Christopher Pope (D)
Sen. Shane Morigeau (D)
Sen. John Esp (R)

MEMBERS EXCUSED:

Rep. Fiona Nave (D)

MEMBERS ABSENT:

STAFF PRESENT:

Walker Hopkins, Fiscal Analyst
Grace Gibney, Secretary

AGENDA ([Attachment 1](#))

VISITORS' LIST ([Attachment 2](#))

COMMITTEE ACTION

CALL TO ORDER/ROLL CALL

- 08:00:14 Representative Bill Mercer called the meeting to order.
- 08:00:22 Secretary took the roll.
- 08:00:55 Committee and staff introductions.

PROXY VOTING AND SUBCOMMITTEE RULES:

- 08:02:40 Rep Bill Mercer gave a brief overview of the committee rules concerning proxy voting. Asked for a motion to be made.
- 08:03:50 Sen. Tom McGillvray made a motion to permit proxy voting and to accept committee rules.

Vote:

- 08:04:15 Motion carried unanimously by voice vote.
- 08:04:39 Walker Hopkins, Fiscal Analyst, (LFD) gave a presentation of committee meeting schedule and overview of tentative future meeting dates.

2023 FISCAL YEAR END REPORT:

- 08:06:55 Walker Hopkins, Fiscal Analyst, (LFD) gave a walkthrough of the legislative website as pertains to Section D. Overview of 2023 Fiscal Year End Report summary and vacancy reporting. Review of state special revenue accounts, federal special revenue, and HB 2 funding.

COMMITTEE DISCUSSION:

- 08:13:45 Rep. Bill Mercer asked since OBPP didn't certify the jail hold account was low enough to unlock contingent authority. What happens with the \$1.6 million in this account?
- 08:14:13 Walker Hopkins explained the \$1.6 million number is general fund. As it was unexpended it should return to the general fund at FY 2023.
- 08:22:00 Rep. Emma Kerr-Carpenter asked about vacancies. Are turnover and retirements rates like other state agencies?
- 08:22:15 Walker Hopkins, Fiscal Analyst, (LFD) explained that several sections have experienced turnover, but he can research specifics to present at a future meeting.
- 08:23:58 Rep. Fiona Nave asked if the rates of turnover are similar from biennium to biennium or if it is uncommon to see higher rates.
- 08:24:14 Walker Hopkins, Fiscal Analyst, (LFD) confirmed he would acquire this information for the committee.

OFFICE OF STATE PUBLIC DEFENDER:

- 08:29:02 Koan Mercer, Central Services Division Administrator, Office of State Public

Defender (MSPD) introduced Brian Smith, Public Defender Division Administrator (MSPD), Chad Wright, Appellate Defender Division Administrator, (MSPD) and Eldena Bear Don't Walk, Conflict Defender Division Administrator, (MSPD). Gave an overview of OPD. The office continues to face a challenging labor market particularly at the attorney level. Explained a recruitment effort project to recruit and hire law students in their final year of law school. Announced the release of the National Public Defender Workload Study by the American Bar Association and the National Center for State Courts. Gave an overview of updates to the Ethical Case Management system.

- 08:32:47 Rep. Bill Mercer asked about the 23,878 matters that were closed in various courts however fees were only ordered in 855 cases. Asked how OPD determines how fees are waived.
- 08:34:26 Konan Mercer, Central Services Division Administrator, (MSPD) explained that there is no way to track when fees are waived or imposed by the court. The legislature has set requirements for the court to impose fees and the court must make an inquiry if the client is able to pay. If the court does not inquire, the client is not obligated to pay the fees.
- 08:35:21 Rep. Bill Mercer asked if the costs OPD has incurred to represent the defendant is brought before the court before they make a fee determination.
- 08:35:32 Konan Mercer, Central Services Division Administrator, (MSPD) explained that statute has laid out an \$800 flat fee if a felony case pleads and an hourly rate if it goes to trial. The court ultimately makes these decisions. Gave an overview of employees and contractors on capital cases during FY for the Batts case. No active capitol cases are currently open in Montana.
- 08:39:25 Rep. Bill Mercer brought up the possibility of Montana hiring a capital case team vs hiring contractors and explained that the differences in cost would be substantial. Asked how much training would be required by current staff to invest in creating an internal team.
- 08:41:33 Brian Smith, Public Defender Division Administrator, (MSPD) responded that their executive team has made inquiries to other states to observe how they construct their capital case legal teams. Introduced Chad Wright, Appellate Defender Division Administrator, (MSPD) as the individual to spearhead this project.
- 08:42:09 Chad Wright, Appellate Defender Division Administrator, (MSPD) explained the concern that the supplementals that the committee has looked at have only studied trial level litigation. Because of the success of the contractors to avoid death penalty sentences the state has been saved on costs that could be required long after the case is concluded. The standards require two trained appellate lawyers and two post-conviction attorneys. The state currently does not have this compacity. Administrator, Chad Wright explained he reached out to Georgia and Idaho about the complex units they have constructed.
- 08:46:12 Sen. Ryan Lynch asked if anyone on their staff has been certified to be on a capital case.

08:46:25 Chad Wright, Appellate Defender Division Administrator, (MSPD) explained that it was his understanding that they did at one point. Spoke about a case on the Highline several years ago. It is required that the individuals have tried a homicide case previously and have completed yearly training. An out-of-state mitigation specialist was also required.

08:48:15 Sen. Ryan Lynch asked how many current FTEs fit the requirements that could go to a training and represent in a capital case.

08:48:37 Chad Wright, Appellate Defender Division Administrator, (MSPD) responded that this information can be acquired for the committee.

08:49:00 Rep. Michelle Binkley made a comment that she is concerned that Montana isn't seeking death penalty because of the lack of an internal capital team. Expressed the importance of this issue for the committee.

08:49:45 Rep. Bill Mercer requested a memo in December on what compacity would be needed to develop a team that meets the ABA standards for capital punishment cases. Made comments on the Batts case.

08:52:33 Chad Wright, Appellate Defender Division Administrator, (MSPD) spoke about the Batts case, the contracted legal team and costs incurred and ongoing compacity issues.

08:56:11 Sen. Tom McGillvray asked out of the fees ordered by the court during fiscal year 2023 what the collection rate was. Asked that this information be collected.

08:56:33 Konan Mercer, Central Services Division Administrator, (MSPD) responded that he did not know an exact number. Explained tax returns are garnished, and the fees are collected to some degree but not to 100%. Explained the Department of Revenues involvement.

08:57:40 Rep. Bill Mercer suggested that this may be a better question for the Court Administrator. Clarified that the committee wishes to know more information on what is collected by the court.

08:58:50 Konan Mercer, Central Services Division Administrator, (MSPD) responded that this information is tracked in their system and would be willing to return with an answer.

08:59:07 Rep. Bill Mercer made additional comments on court costs and fees regarding the states interest.

09:00:43 Konan Mercer, Central Services Division Administrator, (MSPD) clarified that the prosecutor represents the states interest in the courtroom. Reiterated the offices compacity issues regarding contractors. Went on to give an overview of OPDs policy updates concerning protocols for ethical case assignment.

09:03:37 Rep. Bill Mercer asked about updates to the 471107 policies.

09:03:51 General statute. Director shall create policy and protocol for the assignment of cases to ensure that they are effectively done across the state.

09:04:53 Rep. Bill Mercer referred to subsection 3 and the distribution of cases in a timely manner. Asked if there is a current protocol concerning assignment of cases.

- 09:04:55 Konan Mercer, Central Services Division Administrator, (MSPD) replied that the policies have been provided to the committee. OPD is aware of the issue of timeliness. Explained the office is currently tasked with tracking of how long it takes from assignment to initial appointment of counsel.
- 09:07:48 Rep. Bill Mercer expressed that the policy does not ensure that cases are handled in a timely manner. Requested a new or clearer policy.
- 09:08:20 Konan Mercer, Central Services Division Administrator, (MSPD) Explained HB190 requirements of an annual plan that outlines goals regarding timeliness. It is a goal of MSPD to turn this plan into an acting policy.
- 09:09:28 Rep. Bill Mercer requested a protocol be adopted by December and an overview of the annual plan.
- 09:10:28 Konan Mercer, Central Services Division Administrator, (MSPD) reviewed FY 2023 cases in which the office of state public defender was appointed to represent defendants in each county, including a separate disclosure of the number of appointments to employees of the office of public defender compared to contract attorneys.
- 09:11:26 Rep. Bill Mercer asked MSPD to speak about challenges in staffing rural offices and challenges in Great Falls due to increased caseloads.
- 09:12:42 Brian Smith, Public Defender Division Administrator, (MSPD) explained that it is a challenge on the state bar level. It is difficult to incentivize attorneys to move to rural areas. Spoke about Great Falls team and caseloads in Cascade County.
- 09:14:49 Rep. Bill Mercer asked if the abuse and neglect rates in Cascade County contributes to the high load number of child removal cases.
- 09:15:15 Brian Smith, Public Defender Division Administrator, (MSPD) confirmed that these numbers are extremely high, and it is a contributing factor. Explained the creation of the Family Defense Work. Two full time attorneys also working in Glacier and Toole County.
- 09:15:45 Rep. Bill Mercer asked in what areas MSPD is struggling to hire and if all current vacancies are posted.
- 09:16:07 Konan Mercer, Central Services Division Administrator, (MSPD) explained all new vacancies are posted online. Announced 8 new attorneys were hired in the Billings area recently.
- 09:17:16 Eldena Bear Don't Walk, Conflict Defender Division Administrator, (MSPD) described challenges facing MSPD concerning rural areas, housing and the very specific fields Montana requires. Cascade, Lewis, and Clark and Gallatin Cuntly are areas in need of the most help.
- 09:20:11 Rep. Bill Mercer mentioned that in the report 24 vacancies are shown.19 are lawyer positions. Asked if the office has perpetual postings.
- 09:21:14 Konan Mercer, Central Services Division Administrator, (MSPD) explained that there are always positions posted. Described MSPDs hiring process for new attorneys.

- 09:22:12 Rep. Bill Mercer asked Brent Doig if MSPD can ask OBPP for modified FTE in the need for supplemental assistance.
- 09:22:50 Brent Doig, Lead Budget Analyst, Office of the Governor Budget, and Program Planning, (OBPP) confirmed that this happens often and is something that can be requested and granted by OBPP.

COMMITTEE DISCUSSION:

- 09:23:25 Rep. Bill Mercer asked if the committee has remaining questions. Made additional comments on case weights vs workload.
- 09:28:13 Konan Mercer, Central Services Division Administrator, (MSPD) spoke about active employees. Described chart outlining all employees and data relating to position type.
- 09:30:10 Rep. Bill Mercer asked for confirmation on number of current employees.
- 09:30:40 Konan Mercer, Central Services Division Administrator, (MSPD) confirmed the reported numbers are correct.
- 09:30:50 Rep. Bill Mercer called for committee questions. None were heard. Asked for general observations by MSPD.
- 09:32:15 Konan Mercer, Central Services Division Administrator, (MSPD) responded that he felt all concerns were discussed in MSPD's biennial report.
- 09:32:30 Rep. Mercer requested more information on active and open carry loads in the next December meeting. Made additional comments on caseloads by county.
- 09:36:04 Konan Mercer, Central Services Division Administrator, (MSPD) responded to comments made on county caseloads.
- 09:36:40 Rep. Bill Mercer concluded discussion. Asked for additional questions. None were heard.
- 09:37:03 Konan Mercer, Central Services Division Administrator, (MSPD) expressed thanks to the committee for the opportunity to present. Ensured that information asked of MSPD would be returned to the committee.

RECESS:

- 09:37:13 Reconvened at 10:02:19.

DEPARTMENT OF CORRECTIONS:

- 10:02:40 Walker Hopkins, Fiscal Analyst, (LFD) gave an overview of the Department of Corrections FYE spending report concerning HB2 and HB13, budgeted authority, unexpended authority and carry forward authority.
- 10:04:24 Rep. Bill Mercer asked why the \$1.6 million number was not authorized due to the jail hold count. Asked why is not subject to carry forward authority.

- 10:04:45 Brent Doig, Lead Budget Analyst, Office of the Governor Budget, and Program Planning, (OBPP) responded that it is reverted, but it will be eligible for carry forward authority.
- 10:05:01 Walker Hopkins, Fiscal Analyst, (LFD) restricted appropriations are not eligible to carryforward authority. Asked if Natalie Smitham, Chief Financial Officer with the Department of Corrections had any comments on statute concerning carry forward authority.
- 10:06:41 Natalie Smitham, Chief Financial Officer, Department of Corrections, (DOC) explained that she is currently under the impression that the restricted appropriation lost its restriction, and the department would be eligible to request carry forward authority. However, it is not a transaction that has been completed yet.
- 10:07:03 Brent Doig, Lead Budget Analyst, (OBPP) confirmed that once the funds are turned into a reverted appropriation 30% can be carried forward. Explained that each agency can carry forward authority that they do not spend.
- 10:08:23 Walker Hopkins, Fiscal Analyst, (LFD) made comments on budget process.
- 10:21:04 Rep. Bill Mercer asked for the dates the BCDs were completed by and if it was after the Legislative Finance Committee met.
- 10:21:16 Walker Hopkins, Fiscal Analyst, (LFD) Explained he did not know the exact date, but it was close to fiscal yearend.
- 10:21:46 Brent Doig, Lead Budget Analyst, (OBPP) confirmed they were completed after the Legislative Finance Committee met in June 2023.
- 10:21:54 Rep. Bill Mercer asked if copies of the BCDs have been provided to the Legislative Finance Committee.
- 10:22:40 Brent Doig, Lead Budget Analyst, (OBPP) responded that they were provided to the committee but not presented.
- 10:23:00 Sen. Tom McGillvray asked why 60% of the Prison Ranch budget has been expended.
- 10:23:25 Natalie Smitham, Chief Financial Officer, (DOC) explained that this fund is based on a revenue source rather than another form of appropriation.
- 10:24:13 Tom McGillvray asked where the revenue comes from.
- 10:24:17 Natalie Smitham, Chief Financial Officer, (DOC) responded that timber, cattle, crop sales contribute to this fund.
- 10:24:53 Tom McGillvray asked how much balance is in the revenue account.
- 10:25:00 Natalie Smitham, Chief Financial Officer, (DOC) explained she did not have the exact number but confirmed that she would get an answer for the committee.

- 10:25:39 Walker Hopkins, Fiscal Analyst, (LFD) presented that statue relating to carry forward authority.
- 10:27:20 Rep. Bill Mercer asked for more detail on why appropriation was left ~~setting-in~~ RPD fund.
- 10:29:23 Natalie Smitham, Chief Financial Officer, (DOC) explained the departments struggle to re organize and ensure their appropriation is in the right places. Program transfer moves were due to this. Carry forward authority was sitting in fund as well as continuing authority from the previous year. Contracted expenses, medical expenses and prescription drug causes could have also affected this as the funds were being housed there temporarily.
- 10:31:02 Rep. Bill Mercer made additional comments on carry forward authority and the departments excess revenue.
- 10:32:54 Natalie Smitham, Chief Financial Officer, (DOC) confirmed she would be happy to work with Walker Hopkins, Fiscal Analyst, (LFD) on putting together a more detailed report on this topic.
- 10:34:27 Rep. Bill Mercer asked why funds were not expended in the departments training fund.
- 10:34:52 Natalie Smitham, Chief Financial Officer, (DOC) explained that the funds were fully expended in the first part of the biennium. The department has struggled to find staff to take on training positions as there are currently many vacancies.
- 10:35:48 Director Brian Gootkin, Department of Corrections, (DOC) made opening comments and thanked the committee. Explained their team would present an overview of the department.
- 10:38:11 Rep. Bill Mercer asked about additional beds as a part of the unit D work.
- 10:38:45 Director Brian Gootkin, Department of Corrections, (DOC) confirmed that this is undetermined however it is the plan to produce additional beds after they are given the ability to speak to the architects and engineers.
- 10:39:14 Rep. Fiona Nave inquired if the department plans to come up with a ballpark number prior to speaking with the designer.
- 10:41:17 Director Brian Gootkin, (DOC) responded that it is a very complex plan, and he does not wish to give an irresponsible answer without knowing for certain.
- 10:41:43 Sen. Tom McGillvray insisted that the department should have a number or a range of numbers. Asked when he plans to meet with the architect and builder.
- 10:42:34 Director Brian Gootkin, (DOC) Explained he is uncomfortable giving a ballpark guess on the number of beds. Ensured he would present an exact number after meeting with Russ Katherman from the Architecture and Engineering division. Announced the architect and builder just got on board with the project at Montana State Prison.

- 10:43:30 Rep. Emma Kerr-Carpenter inquired about staffing issues and if there will be enough staff needed to manage the number of new beds.
- 10:44:03 Director Brian Gootkin, (DOC) explained that they have seen an increase in workforce thanks to their recruitment and retention team. Made additional comments on recruitment team and new reactionary application process. Explained that pay increases for correctional officers has contributed this this also.
- 10:46:58 Rep. Bill Mercer made additional comments on the additional bed's discussion.
- 10:49:03 Director Brian Gootkin, (DOC), explained he understands the frustrations of the committee, but it is a very complex design plan to renovate and add beds. Is confident that there will be additional beds but cannot provide a number at this time.
- 10:50:15 Rep. Bill Mercer asked about possible number that was predicted during session regarding this issue.
- 10:50:43 Natalie Smitham, Chief Financial Officer, (DOC) explained the departments original plan and intention. Explained that Unit D was originally going to be demolished but is going to be renovated. Unit D needs to be ADA accessible which requires wider hallways, rooms, and bathroom spaces. Explained compacity issues. Went on to present slides describing progress, next steps for MSP Projects.
- 10:55:13 Sen. Ryan Lynch asked if a bed number will be concrete by December.
- 10:55:37 Natalie Smitham, Chief Financial Officer, (DOC) responded that this is ample time for them to determine at bed number and game plan with the design team.
- 10:57:28 Rep. Fiona Nave asked if there are any issues between DOA that is slowing this process down.
- 10:57:43 Director Brian Gootkin, (DOC) responded that there are not.
- 11:00:07 Natalie Smitham, Chief Financial Officer, (DOC) gave an overview of recent contract amendments, improved opportunities for inmates beginning in October, updated wireless access pints, allowed for continuation of one free phone call per week and reduced phone call rates.
- 11:03:03 Sen. Tom McGillvray asked about for an update on 12-hour shifts.
- 11:03:10 Director Brian Gootkin, (DOC) explained that as staffing improved the department would shift and allow officers to pick between 12- and 8-hour shifts. Explained that they have had officers quit because of the mandatory 12- hour shifts and come back to work for the 8-hour shifts.
- 11:04:26 Sen. Tom McGillvray asked if overtime has been reduced.
- 11:04:33 Director Brian Gootkin, (DOC) explained that overtime rates has been reduced due to mandatory overtime being eliminated.

- 11:05:30 Sen. Ryan Lynch made comments regarding appreciation for all the work the department has completed in these areas.
- 11:05:57 Director Brian Gootkin, (DOC) updated committee on changes made to the Offender Management System. 2023 Montana Legislature dedicated \$17.7 million in HB to procure and implement new OMS.
- 11:07:35 Sen. Tom McGillvray asked if the new OMS system tracks recidivism.
- 11:07:50 Director Brian Gootkin, (DOC) explained it is a part of the system but not a main responsibility.
- 11:09:15 Rep. Bill Mercer asked questions surrounding the specific data the OMS system will track. Inquired if the committee could be involved in the process of choosing a new system vendor to ensure requirements and expectations are met.
- 11:12:53 Director Brian Gootkin, (DOC) responded with comments about how the data works within the OMS system.
- 11:16:19 Rep. Fiona Nave asked how the requirements for the system will be developed.
- 11:17:32 Director Brian Gootkin, (DOC) explained that DOC hired a consultant, Barry Dunn who sat down with line officers and the executive team to compile a list of requested requirements. Explained their team would be happy to provide this information to the committee.
- 11:20:15 Sen. Ryan Lynch asked when OMS will be moved into Snowflake.
- 11:20:30 Director Brian Gootkin, (DOC) responded that the department is next in line and this shift will be made very soon.
- 11:22:23 Sen. Tom McGillvray asked about the location of the 68 sex offender treatment beds.
- 11:22:20 Natalie Smitham, Chief Financial Officer, (DOC) replied that there is currently an existing provider interested in expanding their facility in the Warm Springs area.
- 11:22:44 Sen. Tom McGilvray asked about differences in bed utilization numbers.
- 11: 23:15 Natalie Smitham, Chief Financial Officer, (DOC) described possible delays that could occur such as treatment center vacancies that are based on treatment cycles.
- 11:24:56 Sen. Tom McGillvray asked when the Great Falls guaranteed payment contract will expire.
- 11:25:53 Natalie Smitham, Chief Financial Officer, (DOC) responded that this contract will be eliminated at the end of the current biennium.
- 11:28:35 Rep. Bill Mercer asked why the utilization is over 100% in the Gallatin Pre-Release Center. The contract has a compacity level, but the department can exceed it if they say they have additional space.

- 11:29:20 Natalie Smitham, Chief Financial Officer, (DOC) responded that there is language in their contract allowing them to fluctuate if they stay within the contract maximum.
- 11:29:43 Rep. Bill Mercer asked if the rate changes if the department exceeds the 100% compacity.
- 11:29:48 Natalie Smitham, Chief Financial Officer, (DOC) responded that the rate does not change.
- 11:32:43 Director Brian Gootkin, (DOC) spoke about the approval by the legislature for a new prerelease center in Flathead/ Kalispell area. Working with DOA for a location.
- 11:33:35 Rep. Fiona Nave asked what difficulties come along with finding a location for a prerelease center.
- 11:33:51 Director Brian Gootkin, (DOC) responded that high cost is a contending factor in searching for a suitable location.
- 11:34:40 Rep. Fiona Nave asked if the local community has given any pushback to a center being placed in the area.
- 11:34:48 Director Brian Gootkin, (DOC) responded that the department has not received any negative feedback as to date. Continued to give an overview of the department's annual plan.
- 11:37:37 Natalie Smitham, Chief Financial Officer, (DOC) summarized the FY 2023 Expenditures and Rental Vouchers program report.
- 11:39:08 Rep. Emma Kerr-Carpenter asked if the department could provide data on how many landlords receive payment by each city and at what rate they accept vouchers.
- 11:40:13 Natalie Smitham, Chief Financial Officer, (DOC) confirmed that this data could be compiled and returned to the committee.
- 11:40:17 Rep. Bill Mercer continued discussion about voucher payments to landlords. Confirmed that the committee would like to receive landlord name and amount of payment.
- 11: 41:46 Natalie Smitham, Chief Financial Officer, (DOC) said she would confirm with their legal team that this information can be released, and she would return to the committee with an answer.
- 11:42:17 Rep. Bill Mercer asked about the utilization of the additional 51 beds proposed during the 2023 session.
- 11:42:27 Natalie Smitham, Chief Financial Officer, (DOC) confirmed that there were 53 beds added since session and in 2024 there will be a total of 58 beds added.
- 11:43:06 Rep. Bill Mercer asked how many beds treatment beds are out of the current

total number. Walker Hopkins, Fiscal Analyst, (LFD) confirmed that the committee would be able to determine this from the data at hand.

- 11:43:46 Rep. Bill Mercer asked if there were quarter 4 evaluations conducted pursuant to HB 211 to be on programs to reduce recidivism.
- 11:44:00 Natalie Smitham, Chief Financial Officer, (DOC) confirmed that this information is included in the department's reports provided to the committee.
- 11:45:19 Joseph McElroy, Chief of Staff, Montana Board of Pardons and Parole gave an update on the board and its plan to comply with 46-23-218(4). Spoke about updates to internal data dashboards, consistency of the data, has worked closely with Department of Justice and Department of Corrections.
- 11:55:00 Rep. Bill Mercer asked if the board has been collecting data that is accurate and complete since 2018 as outlined in statute.
- 11:55:30 Joseph McElroy, Chief of Staff, Montana Board of Pardons and Parole, explained that he is proud that the board has kept accurate data however he is stuck with a module that does not work well.
- 11:56:47 Rep. Bill Mercer discussed the Offender Management System (OMS). Shared concerns around the data being made available across multiple departments.
- 12:00:22 Sen. Ryan Lynch recognized the current work that the board has done to improve the system.
- 12:02:48 Director Brian Gootkin, (DOC) made additional comments on the Montana Board of Pardon and Parole and the caseload rates per region.
- 12:04:26 Natalie Smitham, Chief Financial Officer, (DOC) spoke about the Inmate Welfare Fund and updates made.
- 12:06:53 Rep. Bill Mercer asked about low utilization numbers in the Missoula prerelease center and the Passages program.
- 12:08:34 Director Brian Gootkin, (DOC) responded that the reason for this is based in staffing issues.
- 12:09:04 Rep. Bill Mercer made additional comments on HB693 reporting.
- 12:14:49 Walker Hopkins, Fiscal Analyst, (LFD) shared a new dashboard presented by the Department of Corrections relating to jail holding information.

LUNCH:

12:17:40 Reconvened at 01:04:51.

JUDICIAL BRANCH:

01:04:51 Walker Hopkins, Fiscal Analyst, (LFD) gave an overview of FYE spending report, budgeted authority, unexpended authority and carry forward authority for the Judicial Branch.

- 01:14:30 Rep. Bill Mercer asked about \$354,901 that was not expended but that was reappropriated. If it is in HB 2 or not
- 01:14:57 Walker Hopkins, Fiscal Analyst, (LFD) responded that per language in HB 2 this amount was transferred to the Department of Justice through opioid settlement funds. Continued to give an overview of the FYE spending reports.
- 01:19:00 Rep. Bill Mercer asked why there is \$4.4 million in access in the benefits and claims subaccount.
- 01:19:26 Beth McLaughlin, Court Administrator, (Judicial Branch), explained history surrounding Juvenile Delinquency Intervention Programs and the fund structure from a fiscal perspective. It is outlined in statute how the funds are used and carried forward.
- 01:21:40 Rep. Bill Mercer made comments about the committee's interest in the growth of juvenile crime. Would like to have more of an understanding on what's happening in the juvenile justice space in the future.
- 01:23:41 Beth McLaughlin, Court Administrator, (Judicial Branch) discussed current strategic planning initiative with chief probation officers to analyze the entire youth court system. One of the biggest topics currently is the overwhelming pressure on the mental health system and how this effects youth court.
- 01:28:00 Beth McLaughlin, Court Administrator, (Judicial Branch) spoke about HB709 and its requirements for the Judicial Branch. Gave a dashboard demonstration of district course caseloads for CY 2022.
- 01:35:55 Rep Bill Mercer noted that the expenditures of ARPA dollars needed to be completed by CY 2024. Asked if this is an ARPA requirement.
- 01:36:52 Brent Doig, Lead Budget Analyst, (OBPP) responded that he reached out to Amy Sassano and will confirm an answer once he hears from her.
- 01:37:14 Beth McLaughlin, Court Administrator, (Judicial Branch) ARPA funding that was appropriated is used for two primary projects. Spoke about the Family Remediation Project: family law cases involving a parenting plan and parties who are representing themselves are offered free remediation to come to a settlement of their parenting dispute. Spoke Informal Domestic Relations Dispute Resolution program which is designed to assist people representing themselves in domestic cases.
- 01:43:13 Rep. Bill Mercer asked about the relation between HB 2 and the Companion Bill. The Companion Bill authorized expenditure of Department of Justice funds from the Consumer Protection account to fund the drug treatment courts. The bill was vetoed, attempts to override the veto also failed. Asked how the drug courts are currently being funding.
- 01:44:16 Brent Doig, Lead Budget Analyst, (OBPP) explained that there is still language in HB2 that relates to drug treatment court settlements. They have been given access to fund the courts.
- 01:44:50 Beth McLaughlin, Court Administrator, (Judicial Branch) explained the parallel

within the branch concerning water court funding. There is authority in HB2 in the water court to spend the water adjudication funds however the fund sits with DNRC. There is language in HB2 which authorizes the branch to use the opioid settlement to be used for a certain level of drug courts.

- 01:45:50 Rep. Bill Mercer asked if the branch is going to be able to fully fund drug courts.
- 01:46:00 Beth McLaughlin, Court Administrator, (Judicial Branch) confirmed that they are fully funded.
- 01:46:04 Rep. Bill Mercer inquired about vacancies. Asked about 5 open positions for treatment court coordinators.
- 01:46:45 Beth McLaughlin, Court Administrator, (Judicial Branch) Explained the 5 positions are not vacant. The positions exist but are being paid out of modified FTEs with funds that fall under federal grant money. Confirmed that the treatment courts are being staffed.
- 01:48:04 Rep. Bill Mercer confirmed that once the federal funds are gone the positions will be moved to permanent FTEs and will no longer show as vacancies.
- 01:48:16 Beth McLaughlin, Court Administrator, (Judicial Branch) replied that Rep. Mercer is correct in his understanding. Explained that this will happen at different dates when different grants expire in the fiscal year.
- 01:50:02 Beth McLaughlin, Court Administrator, (Judicial Branch) continued with a discussion on number of people admitted each year to drug treatment court.
- 01:52:56 Rep. Bill Mercer asked for a more detailed report on each specific report annually.
- 01:53:31 Beth McLaughlin, Court Administrator, (Judicial Branch) responded that this report is something that can be compiled to be presented at the Section D December meeting. Continued to discuss data surrounding pretrial programs and related costs. Explained the pretrial assessment process and associated costs.
- 02:04:10 Rep. Bill Mercer asked for Beth McLaughlin, Court Administrator, (Judicial Branch) to review reports provided to OPD pursuant to 46-8-113(2)(a) with names included but all other personal identifying information redacted.
- 02:04:54 Walker Hopkins, Fiscal Analyst, (LFD) responded that he was sent this information and can provide it to the committee although it is not posted online.
- 02:05:04 Rep. Bill Mercer asked if the Judicial Branch reports to OPD on collections or if they report on when the fees are imposed.
- 02:07:30 Beth McLaughlin, Court Administrator, (Judicial Branch) explained that the clerk of district court collects fees not the Judicial Branch. On a biweekly basis, the branch pulls all judgements made against a defendant from the full court case management system and is reported to OPD. OPD then works with the Department of Revenue to track collections.

- 02:07:17 Rep. Bill Mercer asked if the clerks of district court collect restitution payments for felonies.
- 02:07:29 Beth McLaughlin, Court Administrator, (Judicial Branch) responded that she is unsure but believes it depends on how the order is issued. It could be that probation is collecting these fees also.
- 02:07:45 Rep. Bill Mercer clarified that the responsibility does not lie with the Judicial Branch to collect court fees.
- 02:07:56 Beth McLaughlin, Court Administrator, (Judicial Branch) responded that this is correct. In 2019 session the obligation was given to OPD to collect.
- 02:08:35 Rep. Emma Kerr-Carpenter asked who determines how much a defendant pays.
- 02:08:55 Beth McLaughlin, Court Administrator, (Judicial Branch) confirmed that the judge looks at the person's ability to pay and possible cost related to the offence. These could include a fine, restitution, OPD payments, etc.
- 02:09:23 Rep. Emma Kerr-Carpenter asked if OPD can ask the judge to waive the fee for the client.
- 02:09:45 Beth McLaughlin, Court Administrator, (Judicial Branch) responded that this is correct. A judge must make the decision based on the defendant's ability to pay.
- 02:10:36 Rep. Bill Mercer asked for an update on vacant deputy juvenile probation officer positions. 13 vacancies as of June 1.
- 02:11:10 Beth McLaughlin, Court Administrator, (Judicial Branch) responded that the number is down slightly but continues to be a challenge area due to workforce issues, housing, and recent retirees. Salary is also lower than both adult probation and child protection workers.

BREAK:

02:13:49 Reconvened at 02:30:55

DEPARTMENT OF JUSTICE:

- 02:31:38 Will Selph, Chief of Staff, Montana Department of Justice (DOJ) gave an overview of what their team would discuss. Introduced Lauri Bakri, Motor Vehicle Division Administrator, (DOJ) and Bryan Lockerby, Division of Criminal Investigation Administrator, (DOJ).
- 02:32:34 Lauri Bakri, Motor Vehicle Division Administrator, (DOJ) announced the CARS project is 60 days from rollout. All tasks and budget are on time. Test scenarios are completed, end to end testing, specifics tier, decision requests, staff and associated hardware required.
- 02:39:20 Rep. Bill Mercer asked about the child support piece shared between CARS and DPHHS.
- 02:39:34 Lauri Bakri, Motor Vehicle Division Administrator, (DOJ) explained that DPHHS looks at MVD records for current information on citizens such as names and addresses. They are currently working on staging their servers so there is a good

interaction between the two data systems.

- 02:41:45 Rep. Bill Mercer asked about hiring status for positions funded by the 2023 legislature.
- 02:42:03 Will Selph, Chief of Staff, (DOJ) replied that the department is currently assessing needs across the state. Primary focus for FTE has been on law enforcement and investigation and prosecution-based positions.
- 02:43:07 Rep. Bill Mercer asked about positions within the Division of Criminal Investigating.
- 02:43:13 Will Selph, Chief of Staff, (DOJ) described a position open in the Major Crimes Unit. This position was open to internal staff and filled by an ARPA agent in the Kalispell area. Retail and other major crime unit positions will soon be posted in Billings.
- 02:44:30 Bryan Lockerby, Division of Criminal Investigation Administrator, (DOJ) provided an overview on the number of human trafficking investigations in FY 2023 initiated by the Department of Justice and the number of prosecutions generated from the investigations.
- 02:51:20 Rep Bill Mercer asked if there are more cases that can be investigated since there are more boots on the ground.
- 02:52:15 Bryan Lockerby, Division of Criminal Investigation Administrator, (DOJ) Adding more resources does increase cases. Continued to speak about human trafficking investigations across the state.
- 02:54:13 Sen. Tom McGillvray asked what a labor trafficking case is.
- 02:54:24 Bryan Lockerby, Division of Criminal Investigation Administrator, (DOJ) explained that labor trafficking is not seen as much as human trafficking but is defined as forcing a person to work.
- 02:55:01 Rep. Fiona Nave noted that in 34 cases prosecution was requested but only 9 were charged. Asked why this is.
- 02:55:30 Bryan Lockerby, Division of Criminal Investigation Administrator, (DOJ) replied that this is determined by the prosecution's workload as well as other varying pending factors that can play into when a case is prosecuted.
- 02:55:50 Rep. Bill Mercer commented that just because a case has not been prosecuted yet does not necessarily mean it will not be in the future.
- 02:58:32 Bryan Lockerby, Division of Criminal Investigation Administrator, (DOJ) made additional comments on the need for more investigative agents.
- 03:01:28 Rep. Bill Mercer asked for an overview of the ICAC (Internet Crimes Against Children) taskforce.
- 03:01:58 Bryan Lockerby, Division of Criminal Investigation Administrator, (DOJ) explained how the ICAC taskforce operates. Discussed how funding is distributed federally,

on the state level, involvement of MCMEC (National Center for Missing and Exploited Children). ICAC locations in Helena and Billings.

- 03:05:18 Rep. Bill Mercer asked about trends in ICAC that would be relevant to the committee such as sextortion targeted at children.
- 03:07:28 Bryan Lockerby, Division of Criminal Investigation Administrator, (DOJ) responded to Rep. Mercers question about sextortion and the growth of the issue especially after the COVID-19 pandemic. Discussed new challenges for ICAC relating to AI and avatars. Expressed that he would like to bring in an ICAC agent to talk about current needs and resources.
- 03:10:45 Rep. Bill Mercer asked about prevention strategies taken by the department such as education in public schools.
- 03:11:43 Bryan Lockerby, Division of Criminal Investigation Administrator, (DOJ) responded that ICAC is required to provide training and will provide upon request by community groups and schools. Number of presentations is tracked and this information can be gathered for the committee.
- 03:13:17 Will Selph, Chief of Staff, (DOJ) discussed PSB (Prosecution Services Bureau) report.
- 03:17:52 Rep. Bill Mercer expressed the committee's healthy appreciation for DCI agents and lawyers in PSB.
- 03:20:43 Stephanie Robles, Assistant Attorney General, (DOJ) discussed updates on sexual assault reporting by counties. Differences in record keeping and reporting by county, possibility of an online forum for tracking cases.
- 03:24:53 Will Selph, Chief of Staff, (DOJ) discussed opioid abatement lawsuits and the creation of the Montana Opioid Abatement Trust.
- 03:28:53 Rep. Bill Mercer asked if DPHHS gets its own allocation or if the state allocation goes to the Department of Justice.
- 03:29:05 Will Selph, Chief of Staff, (DOJ) explained the allocation is split between DPHHS and DOJ.
- 03:29:10 Rep. Bill Mercer responded that the memo does not suggest that DPHHS is currently receiving this funding.
- 03:29:19 Will Selph, Chief of Staff, (DOJ) responded that there is currently an MOU that is being drafted to line out how funds will be split based on the terms of the settlement.
- 03:29:55 Rep. Bill Mercer asked when the MOU is complete if it could be presented to the committee. Asked if DOJ and DPHHS get to choose how to spend funds without the input of the legislature or if it needs to be appropriated.
- 03:30:14 Will Selph, Chief of Staff, (DOJ) responded that he would have to consult outside counsel before he could respond to this question.

03:31:23 Walker Hopkins, Fiscal Analyst, (LFD) gave an overview of the Department of Justice's expenditure reports.

03:40:23 Emma Kerr-Carpenter asked about money transferred.

03: 41:15 Nate Thomas, Chief Financial Officer, (DOJ) responded that transfer to personal services to operation expenses accounts were due to operation needs associated with the consumer protection office.

03:42:12 Rep. Kerr Carpenter asked about another transfer of funds in the BCD reporting and the amounts moved to personal services to operation expenses accounts.

03:42:25 Nate Thomas, Chief Financial Officer, (DOJ) at fiscal year-end changes in first level the department can expend their budget up to 24.9% of a change. If it goes over this, a BCD is developed, and have the change is processed.

03:44:24 Rep. Emma Kerr Carpenter asked about litigation funding in current fiscal year.

03:44:47 Will Selph, Chief of Staff, (DOJ) responded that their team does not have the information prepared today.

03:45:14 Rep. Emma Kerr-Carpenter asked for a report to be developed for the next committee meeting on dispersing litigation funding.

03:46:16 Rep. Bill Mercer asked about the amount of expended money at the end of biennium by the department. If funds are being transferred to the personal services account this would seem to suggest that the legislature did not measure correctly the funding needed.

03:46:45 Brent Doig, Lead Budget Analyst, (OBPP) responded that this is not uncommon or out of line with other adjustments to agency budgets.

03:47:36 Will Selph, Chief of Staff, (DOJ) gave an example of funds that were moved to the personal services account to provide more staffing at Motor Vehicle Services.

03:50:24 Rep. Bill Mercer noted multiple areas in which positions were reporting more hours than expected. What programs were in need of additional modified resources. Why did it equal \$3 million?

03:51:35 Nate Thomas, Chief Financial Officer, (DOJ) responded that all were HB 2 positions authorized by the legislature. Confirmed that no sum of the \$3 million is being used outside of what was appropriated. Explained that the department had to reprioritize needs internally to accommodate operations. Examples: hiring full time paralegal vs. Part-time. The \$3 million is 2% of the overall budget for the Department of Justice.

03:53:11 Rep. Bill Mercer asked if an explanation was compiled, submitted to OBPP for analysis and authorization.

03:53:25 Brent Doig, Lead Budget Analyst, (OBPP) responded that the BCDs all have an explanation. Explained that this is done to align budget with expenditures.

03:54:05 Walker Hopkins, Fiscal Analyst, (LFD) added that BCDs are divided into time

sensitive and non-time sensitive. Made additional comments about BCD reporting.

03:57:15 Will Selph, Chief of Staff, (DOJ) invited the committee to tour the Montana Law Enforcement Academy (MLEA) and the Boulder campus at a future date.

PUBLIC SERVICE COMMISSION:

04:03:45 James Brown, President, Public Service Commission, (PSC) introduced himself and his colleagues to the committee. Jennifer Fielder, Vice-President, (PSC), Staci Litschauer, Financial Accounting Analyst, (PSC), Lucas Hamilton, Chief Legal, (PSC), Daniel Sherwood, Railroad Safety Program Manager, (PSC) and Brad Tschida, Executive Director, (PSC).

04:05:30 Walker Hopkins, Fiscal Analyst, (LFD) gave an overview of the commission's expenditure reports.

04:10:37 James Brown, President, (PSC) spoke about the authorization of two new FTEs approved by the legislature. PSC hired one new attorney and an IT specialist. Spoke about staffing, expenditures, and recent building lease rental increase. Provided updates of major cases for adjudication in FE 2024.

04:18:20 Rep. Emma Kerr-Carpenter asked why the Public Service Commission is not exempt from vacancy savings.

04:18:39 James Brown, President, (PSC) replied that a waiver was submitted for vacancy savings however it was not granted.

04:19:13 Rep. Emma Kerr-Carpenter asked what the rules are surrounding vacancy savings.

04:19:24 Walker Hopkins, Fiscal Analyst, (LFD) explained that agencies under 20.00 FTEs are exempt from vacancy savings. For example, the Highway Patrol is exempt.

04:21:33 Rep. Bill Mercer asked if the history of vacancy savings has been applicable to the Public Service Commission in the past.

04:21:48 Brent Doig, Lead Budget Analyst, (OBPP) confirmed that agencies under 20.00 FTEs are exempt per OBPP policy. Others are exempted in statute.

04:22:40 James Brown, President, (PSC) added that vacancy savings requires them to keep a position open throughout an entire fiscal year. The commission believes this is a burden on their agency given how small their staff is.

04:23:10 Rep. Emma Kerr-Carpenter made additional comments on vacancy savings.

04:23:51 Rep. Bill Mercer asked if the Ready project is fully employed.

04:24:32 Jennifer Fielder, Vice-President, (PSC) responded that all aspects of the Ready project have been released and are live. Explained each stage of operation and testing that went into this process. The project will be complete by Dec 31, 2023. Spoke about annual licensing fees needed for the program.

04:28:13 Rep. Bill Mercer asked if the licensing fees are the only ongoing expenditure or if there will be future resources needed to deploy the program.

- 04:28:40 Jennifer Fielder, Vice-President, (PSC) explained that with the addition of the added IT FTE, the PSC currently has a position in place that will alleviate the need to provide support for the Ready system. Expressed the commissions' goal to report back under budget.
- 04:29:26 Rep. Bill Mercer asked if there is a backup position to the IT position in case a vacancy arises.
- 04:29:43 Jennifer Fielder, Vice-President, (PSC) replied that they have been doing cross training within the agency.
- 04:30:12 Rep. Bill Mercer thanked the Public Service Commission and provided additional comments to the committee.

PUBLIC COMMENT:

- 04:32:19 Rep. Bill Mercer called for public comment. None was heard.

ADJOURNMENT:

- 04:34:10 Adjournment.