

## MINUTES

### MONTANA HOUSE OF REPRESENTATIVES 54th LEGISLATURE - REGULAR SESSION

#### JOINT SUBCOMMITTEE ON INSTITUTIONS & CULTURAL EDUCATION

Call to Order: By CHAIRMAN MARJORIE I. FISHER, on January 12, 1995, at 8:05 a.m.

#### ROLL CALL

**Members Present:**

Rep. Marjorie I. Fisher, Chairman (R)  
Sen. Larry J. Tveit, Vice Chairman (R)  
Rep. William T. "Red" Menahan (D)  
Rep. Steve Vick (R)  
Sen. Mignon Waterman (D)

**Members Excused:** Sen. Gary Aklestad

**Members Absent:** None

**Staff Present:** Lorene Thorson, Legislative Fiscal Analyst  
John Patrick, Office of Budget & Program Planning  
Shirley Benson, Office of Budget & Program Planning  
Brandee Decrevel, Committee Secretary

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

**Committee Business Summary:**

Hearing: Department of Justice  
- Montana Highway Patrol  
- Legal Services Division  
Executive Action: Department of Justice  
- Board of Crime Control  
- Highway Traffic Safety  
- Montana Highway Patrol

{Tape: 1; Side: A; Approx. Counter: 63; Comments: None.}

#### EXECUTIVE ACTION ON DEPARTMENT OF JUSTICE MONTANA BOARD OF CRIME CONTROL

**Motion/Vote:** SEN. LARRY TVEIT moved to accept the 1994 base budget. REP. STEVE VICK seconded the motion. The motion carried unanimously.

**Motion/Vote:** REP. RED MENAHAN moved to accept the present law adjustments, items 1-3. SEN. TVEIT seconded the motion. The motion carried unanimously.

**Motion/Vote:** REP. MENAHAN moved to accept the present law adjustments, items 4 - 8. SEN. MIGNON WATERMAN seconded the motion. The motion carried unanimously.

**Motion/Vote:** SEN. WATERMAN moved to accept the language to provide continuing authority for the pass-through grants for the 1995 biennium to continue into the 1997 biennium. REP. MENAHAN seconded the motion. The motion carried unanimously. EXHIBIT 1

Lorene Thorson, LFA, told the subcommittee that there are five new proposals. The agency also handed out two other proposals: 1) federal pass-through grants for \$500,000 each year for Violence Against Women and 2) \$500,000 each year for criminal history record system improvement under the Brady Law. The first new proposal for victims' compensation includes a request for one new FTE. EXHIBIT 2

**Questions From Subcommittee Members and Responses:**

SEN. WATERMAN asked about the personnel changes in the victims' compensation unit and what the studies show.

Mr. Gene Kiser told the subcommittee that a year ago the Board of Crime Control established a task force on victims' compensation. The task force's primary goal was to look at the rules surrounding the victims' compensation program and the possibility of rewriting the rules. The division is now more sensitive and responsive to victims and has the attitude that they are going to do everything humanly possibly to assist and help victims.

CHAIRMAN MARGE FISHER asked if victims need an attorney to file and claim.

Mr. Kiser replied that the forms do not require an attorney to fill out a claim. The statute does not allow reimbursement to an attorney who prepares and submits a claim.

CHAIRMAN FISHER asked what kind of information the board of Crime Control has showing the accomplishments of the pass-through grant monies at this time.

Cathy Kendall stated the agency can tell the committee: 1) how many pounds of marijuana have been accessed by law enforcement, 2) how many victims have received services through the victim system program and, 3) what kind of services have been received. Many of the programs have raised the number of parents and kids involved in the after-school programs.

REP. STEVE VICK asked if to be eligible for victims' compensation the crime must be committed in Montana.

Mr. Kiser told the subcommittee that if the crime occurs in Montana and the victim moves out of state, the compensation is still paid. Even if the victim is just visiting Montana, the

state will be primarily responsible and will try to work something out with the state the victim is from.

**REP. VICK** asked where the funding for this program comes from.

**Don Merritt** replied that the state special revenue funds are derived from a percentage of justice court fines and fees. These funds pay for the administration of this program and the benefits of this program. In addition to the state special revenue, the agency applies for and receives a federal grant.

**Mr. Kiser** told the committee that the source of the fund are all fines and forfeitures from the Justice of the Peace courts. The state receives 50% of these fines and the agency receives 15.9% of this amount to establish this fund. In developing the proposal the agency has looked at some alternatives to just adding an FTE. The budget office suggested that they look into the possibility of contracting with a claims processing service. The agency did that, but the private entities contacted indicated it would be less cost-effective when compared with the cost of an additional FTE.

**CHAIRMAN FISHER** asked if the division staff is adequately trained to process claims from doctors.

**Mr. Kiser** told the subcommittee that staff receive on-the-job training and as they get more experienced they learn the necessary statutes and rules. They receive some guidance and training in the beginning.

**Attorney General Joe Mazurek** told the subcommittee this program was originally attached to the workers' compensation division, so staff were working side-by-side with similar types of clients.

**SEN. LARRY TVEIT** asked if the bills that come in are medical bills, and if so, how does the agency determine if costs are fair for treatments.

**Mr. Kiser** said that part of the research done in the claims review process is a comparison with charges by other hospitals, and other medical providers. If a claim comes in that is complicated or problematic, the agency may be required to assess its validity.

**Motion/Vote:** **SEN. WATERMAN** moved to accept the executive budget new proposal item #1, victims' compensation. **REP. MENAHAN** seconded the motion. **The motion carried unanimously.**

**Motion/Vote:** **SEN. WATERMAN** moved to accept item #2, legislative contract authority. **REP. MENAHAN** seconded the motion. **The motion carried unanimously.**

**Lorene Thorson, LFA,** told the subcommittee that the restitution program is a new proposal for \$50,000 in state special revenue.

It would automate a system to follow up on offenders that are ordered by the court to make restitution payments. It started out in FY95 as a pilot project but continuation of federal funding is not likely.

**Motion/Vote:** REP. VICK moved to accept item #3, the restitution program. REP. MENAHAN seconded the motion. **The motion carried unanimously.**

Lorene Thorson, LFA, explained the Statistical Analysis Center proposal to use federal funds that have been received annually for the last three years. In the past, the agency asked for authority to use the funds through the budget amendment process. This proposal moves the appropriation into their budget and would add \$50,000 in federal funds spending authority per year.

**Motion/Vote:** SEN. LARRY TVEIT moved to accept item #4, statistical analysis center. REP. MENAHAN seconded the motion. **The motion carried unanimously.**

Lorene Thorson, LFA, stated the delinquency prevention proposal requests \$150,000 in federal funds to be awarded by the Office of Juvenile Justice and Delinquency Prevention. The division plans to coordinate with the Department of Family Services to enhance their program.

**Motion/Vote:** REP. MENAHAN moved to accept item #5, delinquency prevention. REP. VICK seconded the motion. **The motion carried unanimously.**

**Questions From Subcommittee Members and Responses:**

REP. VICK asked the agency for more details about this program.

Cathy Kendall said that the program is an additional program that comes from the federal office of juvenile justice and delinquency prevention. The additional money that the federal government is allocating for this purpose is to assist community-based partnerships in the state to establish delinquency programs.

REP. VICK asked for an example of a program that was set up in Libby, Montana.

Ms. Kendall said that currently they are establishing programs using the existing services within the Libby community hoping to enhance those services such as after-school programs or at-risk youth. The programs provide tutoring skills, life skills, and require parental involvement with the kids in the program.

*{Tape: 1; Side: B; Approx. Counter: 0; Comments: None.}*

The subcommittee discussed the Violence Against Women Act.

REP. STEVE VICK asked if some of the money from this proposal can be used by the county attorney for additional FTE to help with prosecution.

Ms. Kendall said according to the federal regulations this type of funding can be used by units of local government for a school district.

Motion/Vote: SEN. WATERMAN moved to accept the Violence Against Women Act new proposal. SEN. TVEIT seconded the motion. The motion carried unanimously.

Motion/Vote: SEN. WATERMAN moved to approve the criminal history record system improvement. SEN. TVEIT seconded the motion. The motion carried 4-1 with REP. STEVE VICK voting no.

#### EXECUTIVE ACTION ON HIGHWAY TRAFFIC SAFETY

Lorene Thorson, LFA, told the committee that the base budget is about \$1.1 million.

Motion/Vote: SEN. LARRY TVEIT moved to accept the base budget. REP. STEVE VICK seconded the motion. The motion carried unanimously.

Motion/Vote: REP. VICK moved to accept present law adjustments, items 1-3. SEN. TVEIT seconded the motion. The motion carried unanimously.

Lorene Thorson, LFA, told the subcommittee that contracted services are \$135,000 each year for public education and information contracts.

Motion/Vote: SEN. MIGNON WATERMAN moved to accept contracted services item #4. SEN. TVEIT seconded the motion. The motion carried 4-1 with CHAIRMAN FISHER voting no.

Motion/Vote: SEN. WATERMAN moved for approval on other expenses and equipment. SEN. TVEIT seconded the motion. The motion carried unanimously.

Motion/Vote: SEN. WATERMAN moved for approval on local assistance. SEN. TVEIT seconded the motion. The motion carried unanimously.

Lorene Thorson, LFA, told the subcommittee that item #8 grants include \$3.2 million for noncompliance with a federal mandate. The LFA raised an issue because of the ongoing costs associated with the new highway patrolmen that would be initially funded with these funds.

**Questions From Subcommittee Members and Responses:**

**CHAIRMAN FISHER** asked what funds would be used when these grant funds are no longer available.

**Dennis Taylor** stated the grants will allow the use of federal funds rather than state resources the first two years. After that, the state will need to pick up ongoing costs.

**Motion/Vote:** **SEN. WATERMAN** moved approval on the grants, item #8. **SEN. TVEIT** seconded the motion. **The motion carried unanimously.**

*{Tape: 2; Side: A; Approx. Counter: 0; Comments: The committee resumed the meeting after a short break.}*

**HEARING ON DEPARTMENT OF JUSTICE**  
**MONTANA HIGHWAY PATROL**

**Col. Craig Reap, Montana Highway Patrol,** told the committee that there is a requirement that the agencies that incarcerate an individual, if they are not the agency that operates the detention center, are required to pay the operators of the detention center whatever the reasonable costs are. For many years the statute was \$20 per day and a few years ago it was changed to allow the detention facility to change it to the reasonable cost. Since that time, the agency has seen a dramatic increase in the cost of the prisoner boarding costs. The 1993 legislature granted \$568,518 per year for this cost. In FY94, the agency had to move \$174,000 to FY95 in order to cover 94 expenses and that left the agency \$394,518 in FY95.

In FY95 after three and one half months, the agency had already spent \$221,733. The supplemental request is for \$436,000 which would restore the \$174,000 borrowed from FY95 to cover FY94 and an additional \$262,000 to balance the projected costs of FY95. That total is projected at \$830,000.

**Questions from Subcommittee Members and Responses:**

**CHAIRMAN FISHER** asked if someone is picked up in Kalispell and the judge sentences them to six months, will the violator be kept in Kalispell rather than sent to the prison in Deer Lodge.

**Col. Reap** replied that was correct. None of the violators go to Deer Lodge except those who committed a felony or negligent homicide. In 99 percent of the cases which go into Justice Court, the violator is sentenced to the county jail.

**SEN. MIGNON WATERMAN** asked if the agency anticipates that the truth in sentencing proposal will pass and would this cut the budget.

**Col. Reap** said if the violator gets a court sentence, they will serve that entire time unless for some reason there is a problem with jail overcrowding.

**SEN. WATERMAN** asked how the authorizing of a vehicle sale works and does that come off the cost.

**Col. Reap** said that they have seen some vehicles that were processed and now there are 6 vehicles in the highway patrol. Sometimes the vehicles are used by other agencies.

**HEARING ON DEPARTMENT OF JUSTICE**  
**LEGAL SERVICES DIVISION**

**Lorene Thorson, LFA**, told the committee that there is a mistake on page D-38 of the budget analysis book in the present law table. The -.90 FTE shown in the table should be -9.0.

**Chris Tweeten, Chief Deputy Attorney General**, told the committee that he serves as the division administrator of the Legal Services Division. **Mr. Tweeten** submitted written testimony.

**EXHIBIT 3**

*{Tape: 1; Side: B; Approx. Counter: 0; Comments: None.}*

**Neil Jenson, Assistant United States District Court trustee**, told the committee that the state needs to get involved in bankruptcy cases to protect state interests. He gave an overview on efforts made to this end. He said, since the U.S. Attorney's office has been involved in bankruptcy cases, they were able to collect the following amounts for: Farm Home Administration, \$511, 803; Internal Revenue Service, \$509,000; Small Business Administration, \$500,000. He said there are millions of dollars at risk in bankruptcy cases now pending.

**Mr. Jenson** described how bankruptcy works and the mixture of federal and state law that "compounds the complexity of the issue of bankruptcy." He said debtors currently owe \$361,000 to state agencies. He said this doesn't include the "big ticket" cases. He described these big ticket cases amounting to hundreds of thousands of dollars. He stressed the difficulties and frustrations they experience when working with their state counterparts because "there is mass confusion" on the part of state agencies when it comes to knowing the law. He said it would help a great deal to have one or two knowledgeable state employees to work with on a regular basis. He gave an example of a Yellowstone County case in which "one simple mistake" resulted in a decrease of \$500,000 in the county budget.

*{Tape: 2; Side: B; Approx. Counter: 285; Comments: None.}*

**Mr. Jenson** said if they had attorneys on staff who worked with bankruptcy issues on a regular basis, they would be better

prepared to handle these cases efficiently and with a better settlement outcome. He also emphasized the need to develop ways to prevent bankruptcy claims by being better informed and organized. He provided the committee with other "intangible" kinds of situations that are possible. He mentioned that there are increasing cases involving "freemen" in bankruptcy cases. He stressed the state's need to be more aggressive when handling foreclosures. He read a statement by the Texas Attorney General about bankruptcy cases in that state and how they have achieved success through "pro-active participation."

**Questions From Committee Members and Responses:**

**REP. STEVE VICK** asked **Mr. Tweeten** if agencies that devote some time to bankruptcy proceedings could reduce FTE if the Department of Justice bankruptcy proposal passes.

**Mr. Tweeten** stated agencies do not currently devote much staff or resources to bankruptcy litigation. He said that the Department of Revenue attorney can only devote two-tenths of his time to bankruptcy cases and that agency is the one with the most bankruptcy claims. He said it's difficult to manage an effective program with bits and pieces of time from agency attorneys.

**REP. VICK** asked how the bankruptcy collection unit would be funded.

**Mr. Tweeten** said that in the first biennium it would be funded by general fund. The unit would sunset at the end of the biennium if collections do not equal or exceed expenditures. If the collections are equal or exceed expenditures, a proprietary account would fund the unit in the 1999 biennium.

**REP. VICK** asked about the money that is collected this way.

**Mr. Tweeten** told the committee that current statute guides the way funds are currently collected and are accounted for under the statute.

**REP. VICK** asked if they plan on hiring outside counsel to assist with these cases. **Mr. Tweeten** deferred the question to **Mr. Jenson**.

**Mr. Jenson** replied with examples of bankruptcy situations that are risky, and cannot be handled piecemeal. He described the work involved in following cases.

**REP. VICK** asked if there's a lack of incentive under the current system, with the funds going to the general fund, for agencies to pursue these cases.

**Mr. Tweeten** responded that it is a problem and thought it might be better addressed to the agencies themselves. He suspected that bankruptcy is not a priority for most agencies. The health



department has 13 lawyers in various regulatory programs that primarily work on environmental issues and whose training is in that area. He didn't think the agencies make a conscious decision not to pursue bankruptcy cases just because the money goes into general fund.

{Tape: 2; Side: B; Approx. Counter: 721; Comments: Inaudible section.}

**Mr. Tweeten** described a survey that was sent to the states to gather information for a study that is soon to be published. He said that the study found that having attorneys located in the agencies created a lot of efficiency, incentive for the agencies to seek legal advice from services that are more accessible and paid for, and would get their legal advice up front before they get into legal trouble rather than "waiting until they get into trouble and trying to get the attorney general's office to bail them out." He said the idea of consolidation was set aside until they could examine the study results.

**SEN. WATERMAN** asked if they are planning to expand in-house resources or would be contracting for outside help.

**Mr. Tweeten** said he didn't know the answer and deferred to the Governor's Office.

**Motion/Vote:** REP. RED MENAHAN MOVED TO ACCEPT THE BUDGET OFFICE RECOMMENDATION. SEN. WATERMAN seconded the motion. The motion carried unanimously. (During proofreading, clarification of this motion was requested. Upon listening to the tape, there was no further description or discussion about this motion to clarify what the recommendation was.)

**Motion/Vote:** REP. VICK MOVED TO ACCEPT THE LITIGATION SUPPLEMENTAL. REP. MENAHAN seconded the motion. The motion carried unanimously.

{Tape: 3; Side: A; Approx. Counter: 0; Comments: None.}

#### HEARING ON THE DEPARTMENT OF JUSTICE MONTANA HIGHWAY PATROL

**Col. Craig Reap**, Montana Highway Patrol, told the committee that in his time as chief of the highway patrol his goal is to get more officers out on the road providing services for the state of Montana. The mission of the patrol when the division started was to protect the motorist and to prevent deaths and injuries on the highways of the state. In the last 60 years, this mission has not changed. They continue to perform the mission by using aggressive actions, techniques and equipment.

For purposes of the organization the state is divided into five districts. There are district offices in Butte, Missoula, Great Falls, Billings, and Glendive. Officers are assigned to every county of the state except five. In 1940, the average daily

traffic volume in Montana was about 300 vehicles. In 1973, the number was 1,250. The average daily traffic count in 1993 stood at 2,000. The number of miles traveled in Montana has increased dramatically. In 1985, it stood at 7.3 billion miles and in 1993 it was at 9.3 billion.

Two items that have changed since the original budget proposals include the cost of cars and the price of gas. The highway patrol has 202 cars that are used for daily use. They have to replace 64 cars per year. In FY95, because of the increase in prices, the department was only able to purchase five cars. The cost of gas is increasing beyond what was budgeted for the increase.

Contracted services present law adjustments are primarily made up of the prisoner per diem costs. Supplies present law adjustments include mostly fuel costs. Communications present law adjustments are for a new phone service for an office in Livingston. The motor carrier safety program (MCSAP) present law adjustments includes increases for strike forces. Many of the increased activities are required by the federal government to continue the MCSAP program in Montana. The travel present law adjustments is for officer subsistence in highway patrol operations as negotiated in the labor contract. The equipment present law adjustment is for replacement patrol vehicles and other equipment.

There are six executive new proposals. The executive has requested \$622,000 for FY96 and over \$872,000 for FY97. The majority of the money is federal money from highway traffic safety grants, to fund in-car automation and suppression panels for some of the radio repeater sites.

The new proposal for additional funds for rent and training requests highway special revenue funds of \$32,585 in FY96 and \$25,085 in FY97. The third executive new proposal is from federal to state special funds for the Accident Prevention Unit. The new proposal for legislative contract authority requests authority of \$100,000 each year. The personal services reduction is vacancy savings of approximately 4.9 percent. The department stated that vacancy savings does not work for the highway patrol department.

Under the MCSAP program, there is a present law adjustment for a rent increase. The division found out there is a 10-year contract and the rent will not increase during that time.

#### Questions From Committee Members and Responses:

**REP. MENAHAN** asked about vacancy savings and what they are requesting in terms of the proposal to cut personnel, and asked what they could live with.

**Col. Reap** said they like to fill vacancies as soon as possible. When they run out of recruits when there are vacancies, then the

vacancies exist. He said they would rather not be bound by a vacancy savings in their budget.

**JanDee May, Central Services Division**, said in the past, vacancy savings were intended to save the program money during the transition from one employee to the next, usually also at a lower salary level. She continued describing the percentages of savings that could be gained from vacancy savings. She explained that vacancy savings don't always save money, especially when retirement of the employee is involved.

**SEN. WATERMAN** described a scenario whereby vacancy savings doesn't seem to be working, and asked if there might not be a better way.

**Ms. May** responded that for the Legal Services Division, vacancy savings would not apply, because they have very little turnover to begin with, and the percentage of savings is negligible. She also cited how vacancy savings affects other agencies.

**Mr. Tweeten** commented on funding constraints at the Legal Services Division.

#### HEARING ON THE DEPARTMENT OF JUSTICE CENTRAL SERVICES DIVISION

**JanDee May, Administrator, Central Services Division**, stated the Central Services Division manages all the fiscal activity for the department. The division disperses and collects over \$52 million in revenue such as driver's license fees, gambling machine permits, etc. The division coordinates all personnel activities. Over the years the amount of work that the staff has taken on has increased. The agency is asking for the committee to reconsider the vacancy savings that is requested in an executive new proposal for the division. **EXHIBIT 4**

#### The County Attorney Payroll Program

State law requires that the state pay half the salary of county attorneys. Counties that have a population of over 30,000 must hire a full-time attorney. The remaining counties can choose a full-time or half-time attorney. Currently, 24 counties have full-time attorneys, 31 counties have part-time attorneys and two counties share one attorney. Historically, this program has required a supplemental.

#### Extradition and Transportation of Prisoners

State law requires that the Attorney General reimburse all mileage and expenses to sheriffs for the delivery of prisoners and people who are mentally ill. It further requires that the state pay any extradition expenses for bringing prisoners back to Montana. The governor houses the extradition secretary who

decides if the state reimburses for the extraditions. The cost of extraditions are rising each year.

*{Tape: 3; Side: B; Approx. Counter: 0; Comments: This action took place on January 13, 1995, as the first order of business for this meeting. The remainder of the executive action for this division continues in the minutes for January 13, 1995.}*

**EXECUTIVE ACTION ON DEPARTMENT OF JUSTICE**  
**LEGAL SERVICES DIVISION**

**Motion/Vote:** REP. MENAHAN MOVED TO ACCEPT THE 1994 BASE BUDGET. REP. VICK seconded the motion. The motion carried unanimously.

**Questions From Committee Members and Responses:**

Lorene Thorson, LFA, told the committee that the personal services FTE reduction is due to the Natural Resource Damage Program being funded in a separate bill. All of the expenditures for this program were taken out of the base. This would remove the 9.0 FTE that were transferred to Justice from the Department of Health by Executive Order.

**Motion/Vote:** SEN. WATERMAN MOVED TO ACCEPT THE PERSONAL SERVICES PRESENT LAW ADJUSTMENT AND THE INFLATION/DEFLATION ADJUSTMENT. REP. VICK seconded the motion. The motion carried unanimously.

**Motion/Vote:** SEN. WATERMAN MOVED TO ACCEPT ALL EXECUTIVE PRESENT LAW ADJUSTMENTS. REP. MENAHAN seconded the motion. The motion carried unanimously.

**Questions From Committee Members and Responses:**

Lorene Thorson, LFA, asked the subcommittee to consider the language on page D-39 of the budget analysis book to deal with costs associated with litigation.

**Motion/Vote:** SEN. WATERMAN MOVED TO ACCEPT THE LANGUAGE. REP. MENAHAN seconded the motion. The motion carried unanimously.

**Questions From Committee Members and Responses:**

Ms. Thorson told the committee that item #1, Executive Budget New Proposal, is for a bankruptcy unit. This proposal will add two attorneys, one paralegal and one secretary. This will be funded through the general fund. If the unit does not bring in collections that are equal to or exceed expenditures, the unit will sunset at the end of the 1997 biennium.

**Motion/Vote:** SEN. WATERMAN MOVED TO ACCEPT THE BANKRUPTCY/ COLLECTION UNIT. REP. MENAHAN seconded the motion. The motion carried unanimously.

**Questions From Committee Members and Responses:**

**Ms. Thorson** told the committee that item #2 is the Anti-Trust Revolving Account. This proposal would establish a revolving account in which recoveries in anti-trust cases would be deposited and from which the Attorney General would be authorized to use monies to defray the cost of participating in these anti-trust cases.

**CHAIRMAN FISHER** asked why they are moving the legal services into general fund. **Mr. Patrick** explained that the partial FTE works primarily with the Motor Vehicle Division.

**SEN. WATERMAN** asked for further clarification and **Mr. Patrick** replied that, again, it is only partial funding.

**REP. VICK** asked if the Department of Transportation funds are impacted because there isn't a helmet law. **Ms. Thorson** replied that she didn't think that was connected to the \$3 million in federal funds that were not received, but said there are many proposals in transportation and there are many reasons the funds are in general fund. She said if all new proposals and present law were passed that are currently funded with highway special revenue, by FY97 there would be sufficient funds.

**SEN. WATERMAN** asked a question about the gas tax. **Mr. Patrick** said they are looking at long-term funding that is not dependent upon the gas tax. **SEN. WATERMAN** asked if there is a shortfall in the next biennium. **Mr. Patrick** said he wasn't sure if there was in the next biennium, but said the possibility exists.

**Motion/Vote:** **SEN. WATERMAN MOVED TO ACCEPT THE ANTI-TRUST REVOLVING ACCOUNT.** **REP. MENAHAN** seconded the motion. The motion carried unanimously.

**Discussion:** **John Patrick, OBPP,** asked if they could delay action on the Legal Service Attorney Fund Switch until the next day.

**Ms. Thorson** discussed the highways state special revenue fund balance.

The subcommittee discussed the various budgets in future biennia for a few minutes. Discussion returned to the Legal Services Division.

**Motion/Vote:** **REP. MENAHAN MOVED TO ACCEPT ITEM #3, LEGAL SERVICES ATTORNEY FUND SWITCH.** **SEN. WATERMAN** seconded the motion. The motion failed by majority voice vote.

**Discussion:**

**Lorene Thorson, LFA,** told the committee that the personal services reduction would result in \$44,678 reduction in FY96 and \$44,851 in FY97.

**SEN. WATERMAN** spoke against the proposal because the department testified that the vacancy savings department-wide will result in a million dollar reduction with the loss of 55 FTE.

**Motion/Vote:** **REP. VICK** MOVED TO ACCEPT THE PERSONAL SERVICES REDUCTION. **SEN. TVEIT** seconded the motion. The motion carried 3-2 with **SEN. WATERMAN** and **REP. MENAHAN** voting no.

### Discussion

**Ms. Thorson** stated that there is one elected official new proposal. The attorney general is requesting \$79,500 in general fund in FY96 and \$72,500 in FY97 also adding 2.0 FTE to enable the appellate legal services to meet the increasing workload in a timely manner.

**CHAIRMAN FISHER** asked how many more cases would be handled by the increased FTE funding.

**Mr. Tweeten** explained that they don't know how many cases, but described what the workload entails and how they have been handling them. Changes in federal law have created public defender programs for prisoners to use in federal cases, and changes in the law for the "right to counsel," have increased the number of cases that go to trial.

**SEN. VICK** asked if this staff works on the death penalty and upon hearing an affirmative answer, asked why the appeals take so long. **Mr. Tweeten** responded that he could have a good conversation with **SEN. AKLESTAD** about this issue because he has been researching it. He said they are trying to work through state law to get to those cases more promptly. He provided some history on the death penalty and court of appeals in Montana.

**SEN. WATERMAN** asked a question about the death penalty and rights of appeal that would be grandfathered should a bill pass to change this law. **Mr. Tweeten** said that **SEN. AKLESTAD'S** bill would not immediately impact all people now on death row. It would take a number of years before all prisoners' cases could be addressed.

**CHAIRMAN FISHER** asked if there are any death row cases being dealt with and **Mr. Tweeten** said that a prisoner named McKenzie will be executed despite a number of petitions being filed to stay his execution and hear his case again.

The committee asked several questions of **Mr. Tweeten** regarding **SEN. AKLESTAD'S** bill pertaining to the appeal process for death row prisoners.

**Motion:** **SEN. WATERMAN** MOVED TO ACCEPT THE APPELLATE LEGAL STAFF. **REP. MENAHAN** seconded the motion.

Motion/Vote: SEN. LARRY TVEIT MOVED A SUBSTITUTE MOTION TO POSTPONE ACTION ON THE APPELLATE LEGAL STAFF. REP. VICK seconded the motion. The motion carried 3-2 with SEN. WATERMAN and REP. MENAHAN voting no.

(See minutes for meeting of 1/13/95 for continuation of executive action on the Department of Justice, Legal Services Division)

ADJOURNMENT

Adjournment: 11:55 am

*Mar. I. Fisher*

MARJORIE I. FISHER, Chairman

*P. Borneman*

for BRANDEE J. DECREVEL, Secretary

MIF/BJD

Note: These minutes were edited by Lorene Thorson and Patti Borneman.

\* These minutes were revised 4 months after the meeting. I do not sign as to their accuracy.



# INSTITUTIONS

## Joint Appropriations Subcommittee

ROLL CALL

DATE 1-12-96

NAME	PRESENT	ABSENT	EXCUSED
Rep. Marj Fisher, Chairman	✓		
Rep. Red Menahan	✓		
Rep. Steve Vick	✓		
Sen. Larry Tveit, Vice Chairman	✓		
Sen. Gary Aklestad			✓
Sen. Mignon Waterman	✓		

EXHIBIT One  
DATE 1-12-95  
SB None

**Montana Board of Crime Control  
Language**

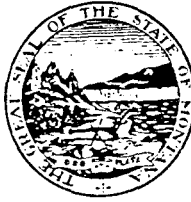
The Crime Control Division administers several pass-through grant programs, which have a three- year federal appropriation authority, on a federal fiscal year basis. To provide continuing authority for the pass-through grants for the three-year period of federal authority, these grants have historically been separate, biennial appropriations, accompanied by the following language in the general appropriations act:

"All remaining federal pass-through grant appropriation authority for the 1995 biennium is authorized to continue into fiscal 1996 and fiscal 1997."

STATE OF MONTANA  
**DEPARTMENT OF JUSTICE**  
**BOARD OF CRIME CONTROL**

303 North Roberts - PO Box 201408 - Helena, MT 59620-1408

Joseph P. Mazurek  
Attorney General




Phone (406) 444-3604  
FAX (406) 444-4722

EXHIBIT 2  
DATE 1-12-95  
SB None

**MEMORANDUM**

TO: Representative Marjorie Fisher  
Members of the Sub-Committee

FROM: Gene Kiser 

DATE: January 11, 1995

SUBJECT: Crime Control Budget

Below is a short list of considerations for the Sub-Committee's Executive Session.

1. MBCC requests that the appropriated amount for certain federal pass through funds be increased as follows:

	FY96	FY97
Violence Against Women Act	\$500,000	\$500,000
Criminal History Record System Improvement\Brady Act Implementation	\$500,000	\$500,000

2. MBCC requests that language be inserted to allow remaining pass-through grant authority for the 95 biennium be authorized to continue into fiscal 1996 - 1997.

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

ATTORNEY GENERAL  
STATE OF MONTANA

EXHIBIT 3  
DATE 1-12-95  
1

Joseph P. Mazurek  
Attorney General



Department of Justice  
215 North Sanders  
PO Box 201401  
Helena, MT 59620-1401

BUDGET NARRATIVE  
LEGAL SERVICES DIVISION

1. Program Overview- The Legal Services Division is the in-house law firm for the State of Montana. It provides a variety of legal services to state and local government through three major programs-Appellate Legal Services, County Prosecutors Services, and Agency Legal Services. A fourth program, the Natural Resources Damage ("NRD") program, was transferred to the Department of Justice from the Department of Health and Environmental Sciences by executive order in June, 1994. The NRD program budget is approved in a separate bill not part of HB 2.

The Legal Services Division programs are:

- APPELLATE LEGAL SERVICES consists of several work units which represent the State in criminal cases before state and federal appeal courts and in cases seeking post-conviction review of Montana criminal convictions, represent the Department's agencies with respect to legal matters, handle all of the State's Indian law-related cases, and handle other miscellaneous legal matters.

- AGENCY LEGAL SERVICES provides legal services to other agencies of state government outside counsel.

The original of this document is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

1-12-95

EXHIBIT

MAY 4

DATE

1/12/95

HB

January 12, 1995

Madam Chair, members of the committee, my name is JanDee May, Administrator of the Central Services Division.

### CENTRAL SERVICES DIVISION

The Central Services Division has a small staff who provide fiscal, budget, and personnel management support to all programs housed within the Department of Justice. We tend to be the invisible division because we don't bust the drug dealers, or investigate and solve the crimes, train the police officers. We may not have the most exciting mission, but we are critical to the operation of the department...because we do the two most important things in an organization....we manage the money and we manage the people.

All fiscal activities of the department are dealt with here in Helena. Division staff review and pay all the bills associated with the Department's \$32 million annual budget. They process payroll for more than 650+ individuals every two weeks, track contracts, perform reconciliations to the Statewide accounting system and collect and disburse over \$52 million in revenue annually. Remember, revenue does not come in in million dollar chunks. It comes in as the \$16 driver license fee, or the \$200 video gambling permit fee. Five FTE do all of this...an amazing feat.

The division coordinates all personnel activities which range from recruitment, selection, classification reviews, disciplinary actions, training, contract negotiations and if necessary, reduction in force. Three FTE support these functions for one of the largest departments in state government...with over 650 FTE. Again, pretty amazing.

The budgeting function encompasses coordination and preparation of the budget request, tracking legislative action, response to budget inquiries, and most importantly monitoring and projecting expenditures during the year and working with divisions to make sure we stay within the appropriation and operate within legislative intent. You're looking at the person that does that!!

Over the years, the volume of work for division staff has increased substantially. **(CHART)**...describe. For example, in 1989 the gambling division was transferred from the Department of Commerce, with it came 36 FTE, a \$1.4 million budget and \$13 million in receipts. Yet our staff remained constant. Revenues in the Gambling Division have since climbed to \$30 million in FY94 and are projected to approach \$32 million in FY95.

The Department has experience substantial growth during the current biennium. The 1993 Legislature

-transferred the liquor and welfare fraud investigation

responsibilities to DOJ from DOR (12 FTE & \$500,000 budget), (HB609),

- passed SB164 which created a Workers Compensation Fraud Unit with 6.00 FTE and \$340,000 budget), and

- through executive order last year, the Governor transferred the Natural Resource Damage Control Program from DHES (9 FTE. \$2.6 million)

To the credit of automation and staff dedication, we have tried manage this growing workload. We've prioritized duties and some simply get delayed or do not get done.

Though I am not asking for additional staff, I would ask you not to impose a vacancy savings reduction on this small budget. My division has little turnover and is usually (as it is now) fully staffed. With every position filled, it is a challenge to meet our responsibilities.

CSD also administers two small programs.

- County Attorney Payroll, and
- Extradition and Transportation of Prisoners

With both these programs, CSD is simply the bill payer and has no control over expenses.

#### COUNTY ATTORNEY PAYROLL

Montana law (MCA 7-4-2502) requires that one-half of county attorney salaries be paid from the general fund. The Central Services Division administers this statute which simply means we pay the bills. We have no control over the level of spending.

Counties with a population in excess of 30,000 must employ a full time county attorney. Seven counties fall into this category. The remaining counties can choose whether to hire a full time or part time county attorney. Currently 24 counties employ a full time attorney and 31 counties have part time county attorneys (two counties share).

Historically, this program has required a supplemental. Reasons for overspending the budget have included: ~~excess~~

- movement from part-time to full-time county attorneys after the budget was set by the legislature,
- reducing the budget for vacancy savings when none occurs, &

-a budget not adequate to fund cost of living adjustments approved at the county level..

To address these problems, the 1993 legislature did several things.

1. Passed HB474 which required counties to notify us during budget preparation if the status of the county attorney would change in the coming biennium.
2. Vacancy savings was not applied, and
3. A cost of living adjustment for 2/3 of the county attorneys was included.

Even with these changes, last year's expenditures (FY94), exceeded the budget by \$22,000. The reason is 49 counties approved a cost of living adjustment while the budget included funding for only 37 counties to provide an increase. This deficit was covered by a surplus in the Transportation and Extradition of Prisoners program. Projections for the current year (FY95) show the program barely living within the budget.

The 1995 biennium budget offered by the Governor attempts to fully fund this program. Counties were notified of HB474 requirements and three counties identified an anticipated change in status for the 1997 biennium...two full time to part time and one part time to full time. These changes were built into the budget request. No vacancy savings was taken by the Budget Office and a sufficient cost of living adjustment has been included.

With luck, expenditures will stay within budget.

History:

<u>Fiscal Year</u>	<u>Budget</u>	<u>Expenditures</u>	<u>Supplemental</u>
FY88	924,317	940,861	16,544
FY89	937,463	960,009	(22,546)
FY90	977,179	1,012,137	(34,958)
FY91	1,003,551	1,045,551	(42,000)
FY92	1,143,773	1,238,176	(94,403)
FY93	1,342,224	1,280,000	62,224
FY94	1,307,904	1,329,903	(21,999)
FY95	1,343,740		

*stillwater  
Pondera ↓  
Custer ↑*

#### EXTRADITION AND TRANSPORTATION OF PRISONERS

State law (MCA 7-32-2144, MCA 46-30-411) requires the Attorney General to reimburse mileage and expenses to sheriffs for the delivery of prisoners and mentally ill persons to Montana detention centers and state mental health facilities. State law further requires the Attorney General to pay extradition expenses

associated with bringing fugitives back to the state.

The Governor's Office houses the Extradition Secretary who decides when and when not to approve extraditions. Carol Smith works directly with sheriff depts and coordinates the extradition and transportation of prisoners. The Department of Justice is simply the bill payer with no ability to control expenses.

As you can see from the chart, this program has historically been a budget buster. However, that trend ended in FY94 when expenditures were actually below budget...the first time since 1988. Governor Racicot, having been on the bill-paying end for four years as Attorney General, was committed to lowering expenditures and living within budget through better management.

He has done this by:

1. Use of an interstate shuttle system. For example, Missoula County will travel to Wallace, Idaho to pick up Montana prisoners coming from California, Oregon & Washington. If these prisoner are destined for anther county, that county will arrange with the Missoula staff for a "hand off".
2. Use of a private extradition service to transport fugitives that can't be moved on the interstate shuttle system.
3. All counties must call the Governor's office for approval to extradite BEFORE the extradition occurs. They must also provide an estimate transportation cost and identify the criminal charge. If not cost effective, the request is denied.

Historically, 80% of expenditures were for extraditions. In FY94, this Percentage dropped to 50%. ~~WELART~~ Additionally, the cost per extradition has dropped from \$1,000 (average) between FY90 - FY93 to \$571 (average) in FY94.

The requested budget for the 1997 biennium includes a 10% annual increase in expenditures. It is not possible to control inflationary factors or the numbers of necessary extradition. What can be done is to continue to manage those costs as is being done now.

There are many reasons for this 10% increase.

1. Airfare costs are very expensive as we rarely get the "deals" due to the immediacy of the travel needs.
2. Airlines do not like convicts on their planes. Though they cannot deny passage, they can and often do require two guards.
3. Out of state lodging costs are extremely high as are



meals.

4. In-state lodging, per diem and gas is also costing more and more each year.
5. And finally, the volume of crime continues to rise.

The requested budget for the 1997 biennium is nearly \$90,000 less than was expended in FY93 and is similar to the FY95 appropriated level. This is a success story.

<u>Fiscal Year</u>	<u>Budget</u>	<u>Expenditures</u>	<u>Supplemental</u>	<u>% Inc.</u>
FY88	147,321	146,855		
FY89	147,337	187,198	(38,861)	28.00%
FY90	146,869	191,751	(44,882)	.43%2
FY91	146,875	195,151	(48,276)	2.77%
FY92	143,648*	217,648	(74,000)	11.53%
FY93	143,640*	228,500	(84,860)	5.22%
FY94	144,220	117,218	(27,002)	
FY95	150,961			
FY96	141,834			
FY97	156,017			

\*Reduced by \$50,000 during Special Session.

Handout 1 1-16-95  
Central Services Division

# DEPARTMENT OF JUSTICE

% Increase of Expenditures, Revenues & FTE

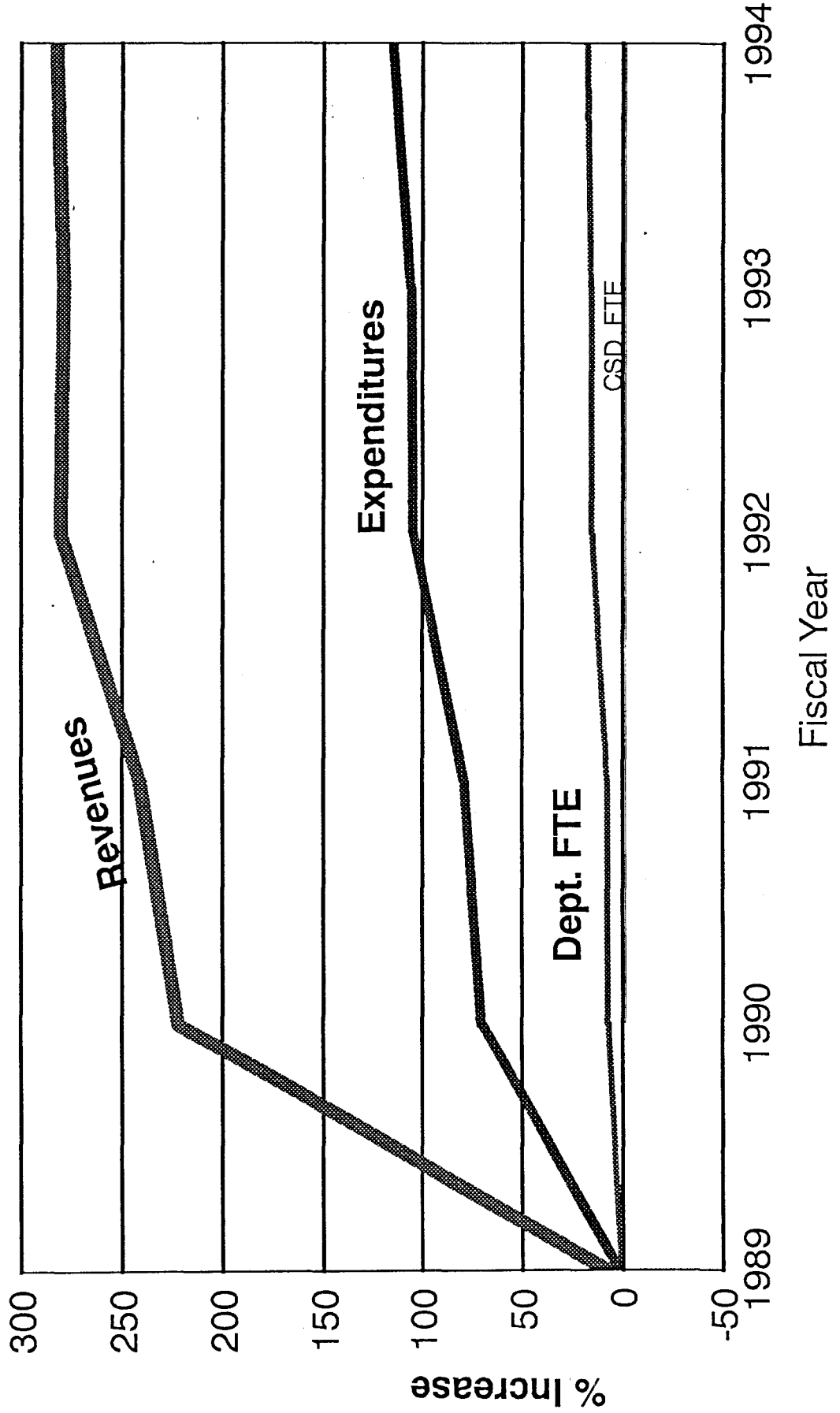
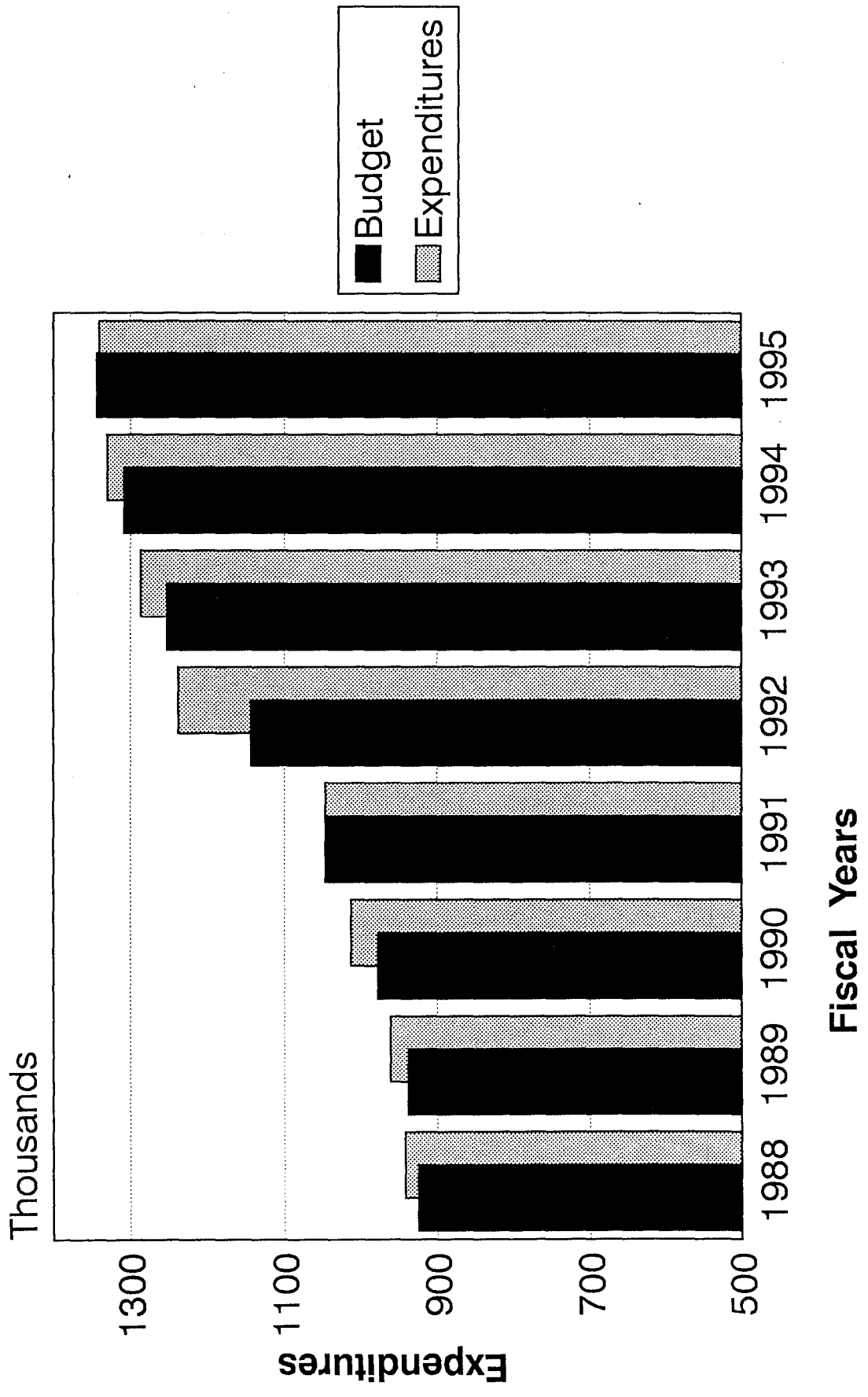


EXHIBIT 4  
DATE 1/12/95  
HB \_\_\_\_\_

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Central Services Division

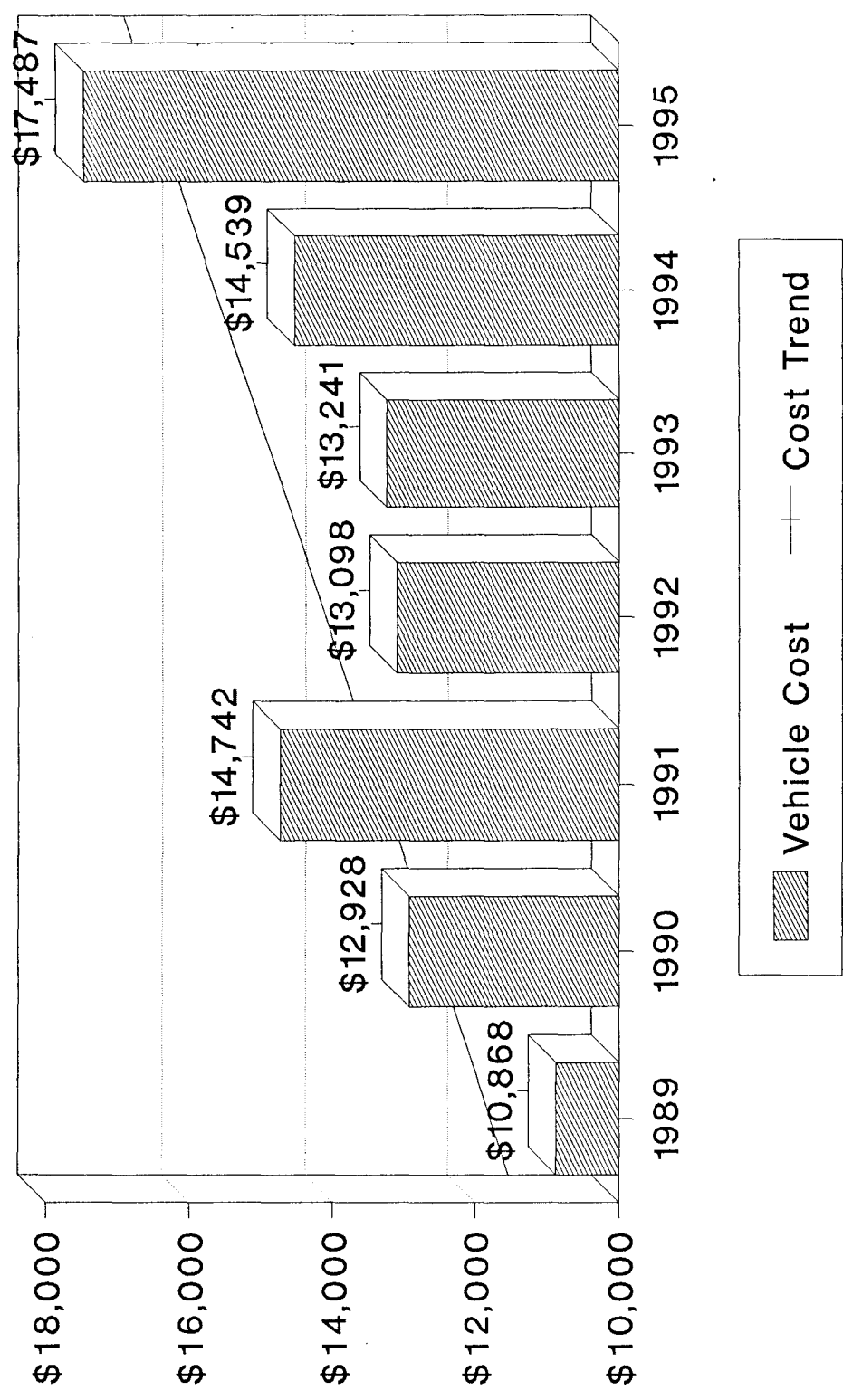
# DEPARTMENT OF JUSTICE

## County Attorney Payroll



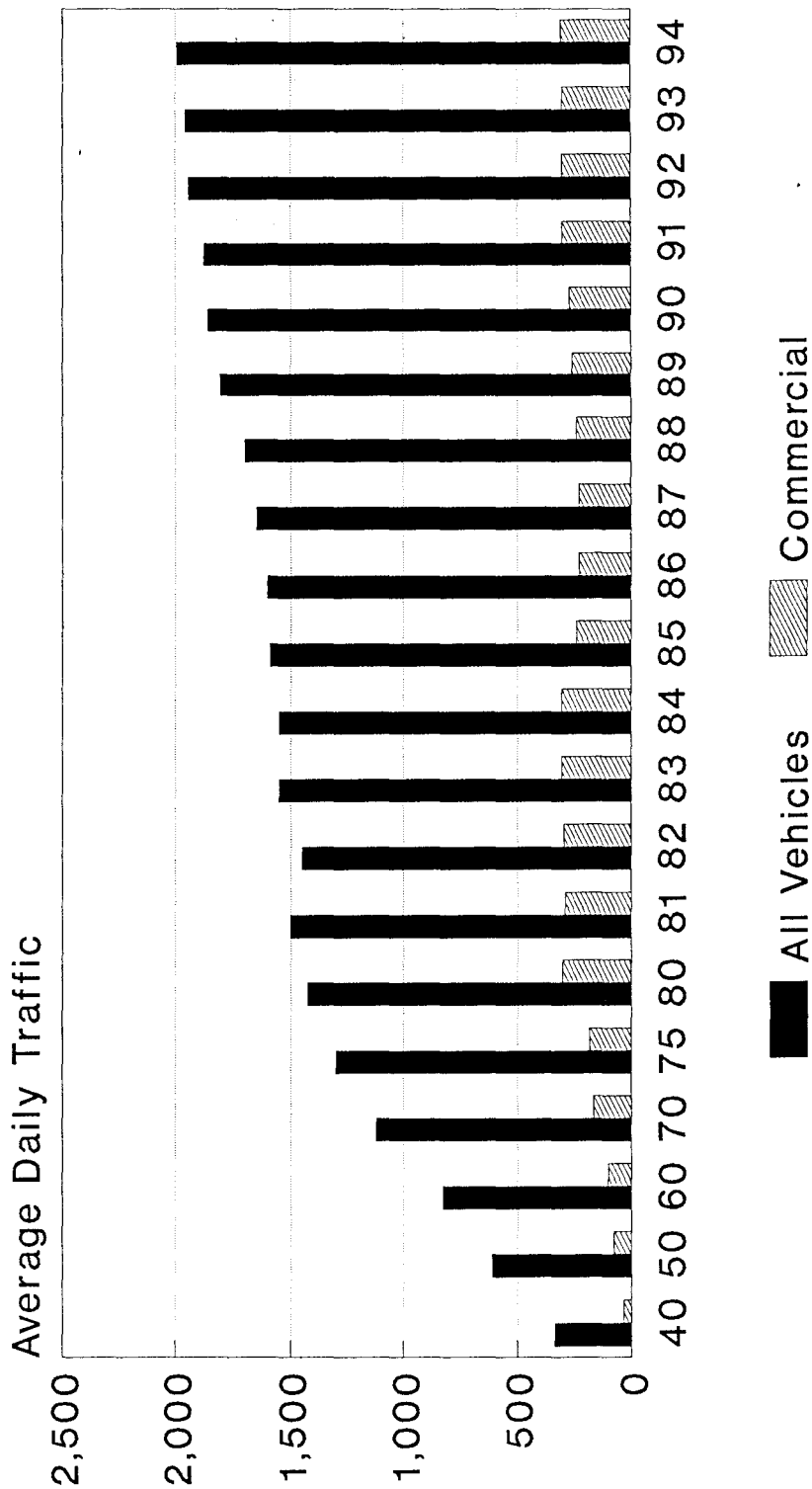
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# Department of Justice Vehicle Cost Trend



# Department of Justice

## Comparison of Ave. Daily Traffic Volume



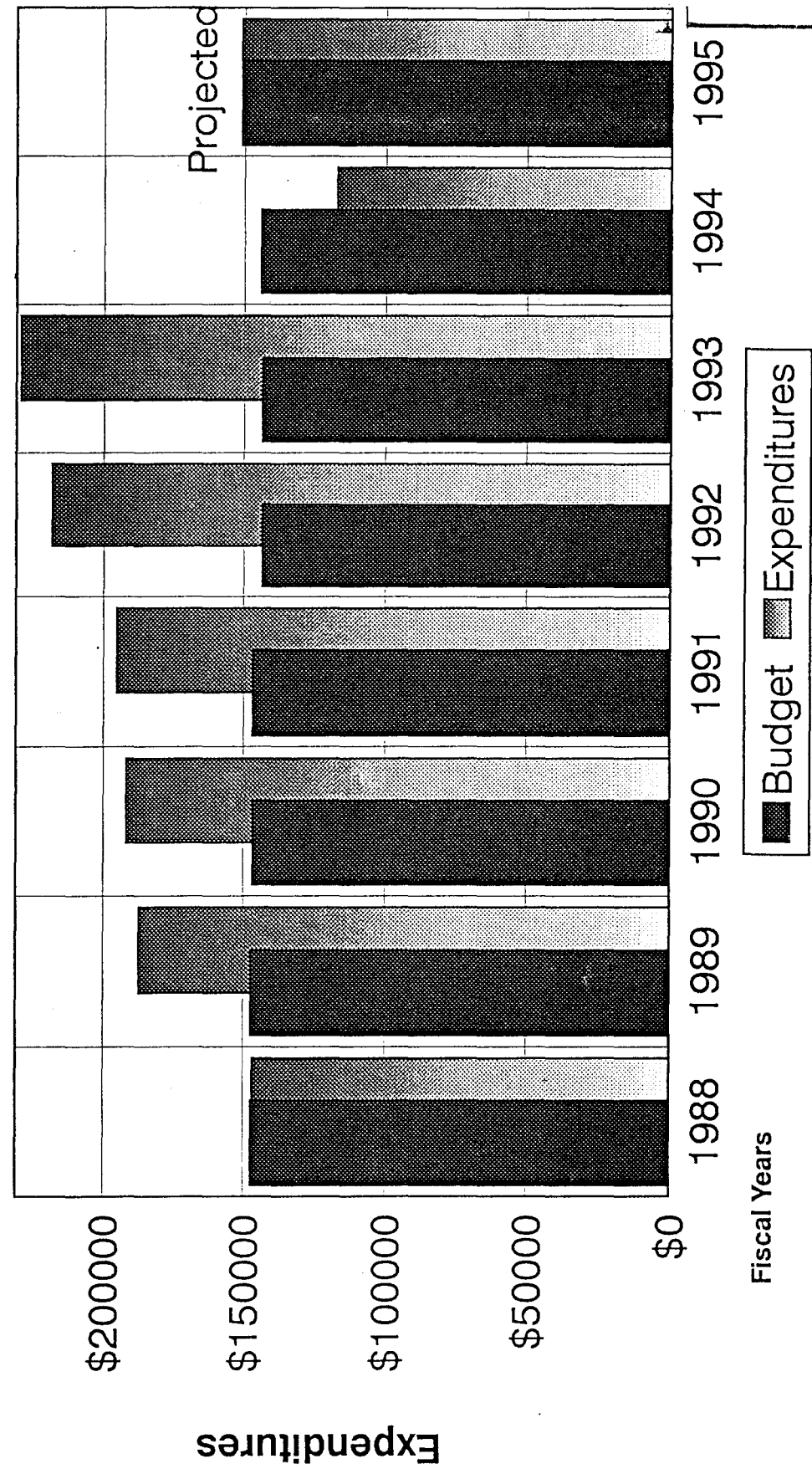
Rural Primary and Interstate Highways  
 1940 to 1994  
 1994 = 1993 + 2%

1/10/01  
 1-12-95  
 H.P.D.

# DEPARTMENT OF JUSTICE

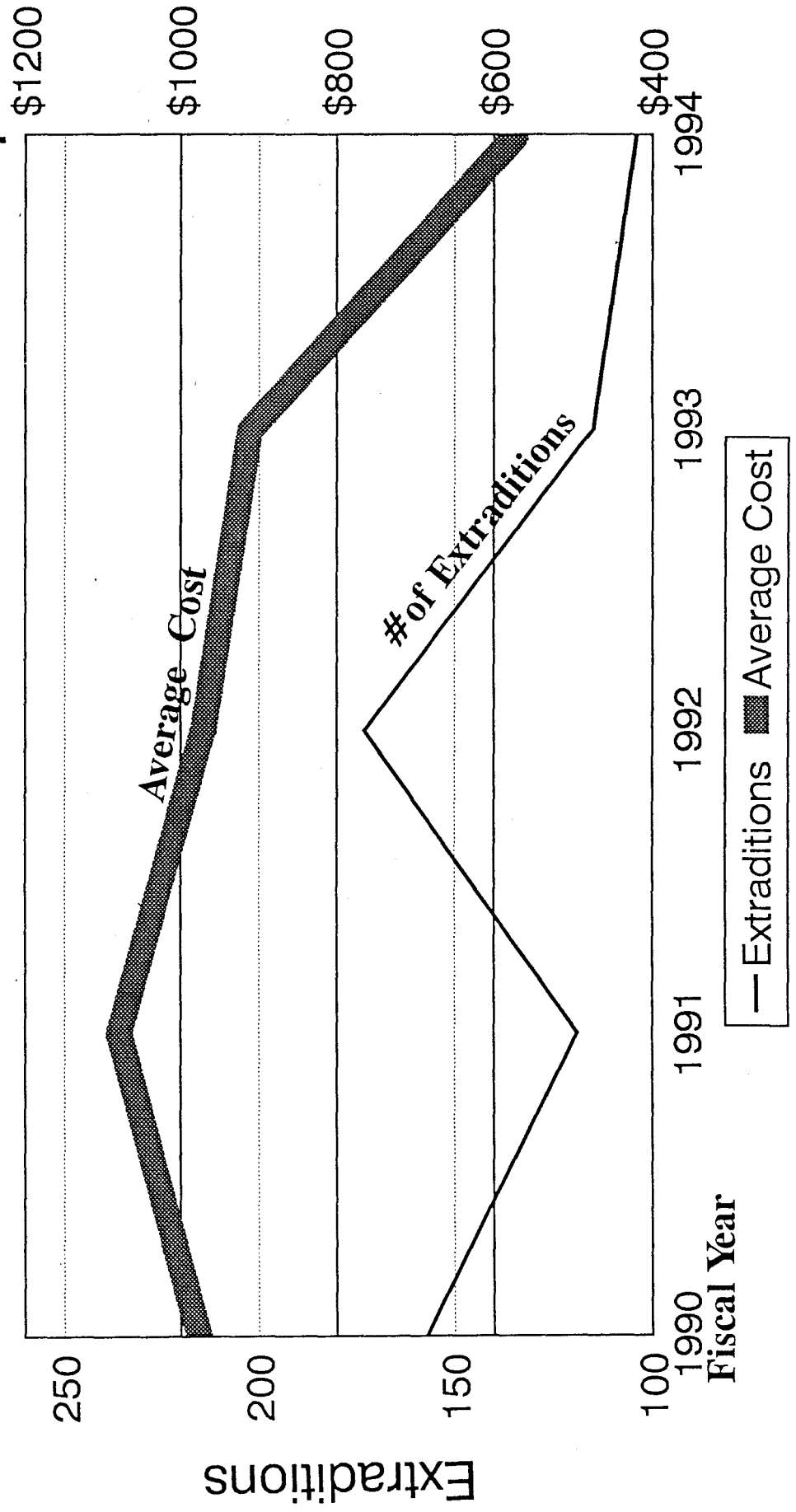
## Extradition and Transportation of Prisoners

DATE 1-12-95



# DEPARTMENT OF JUSTICE

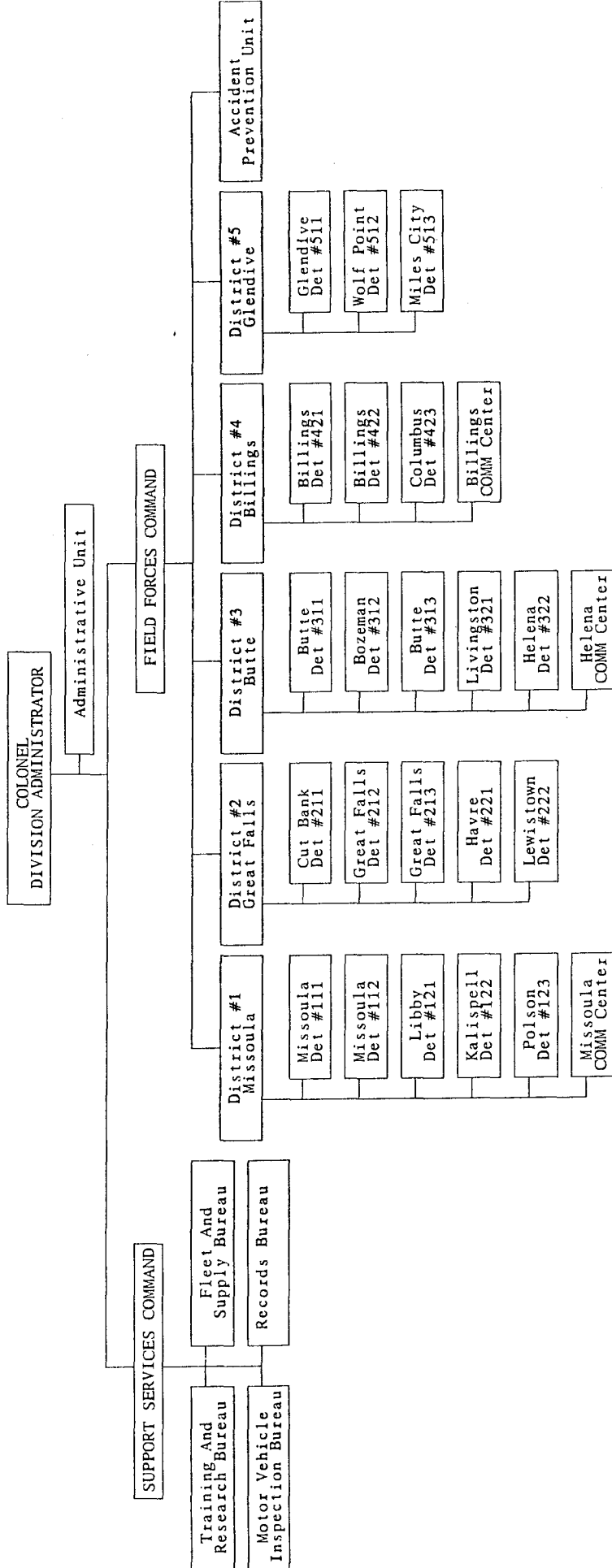
## Extradition of Prisoners



1-16-95  
H.W. P.D.

EXHIBIT 4  
DATE 1-12-95  
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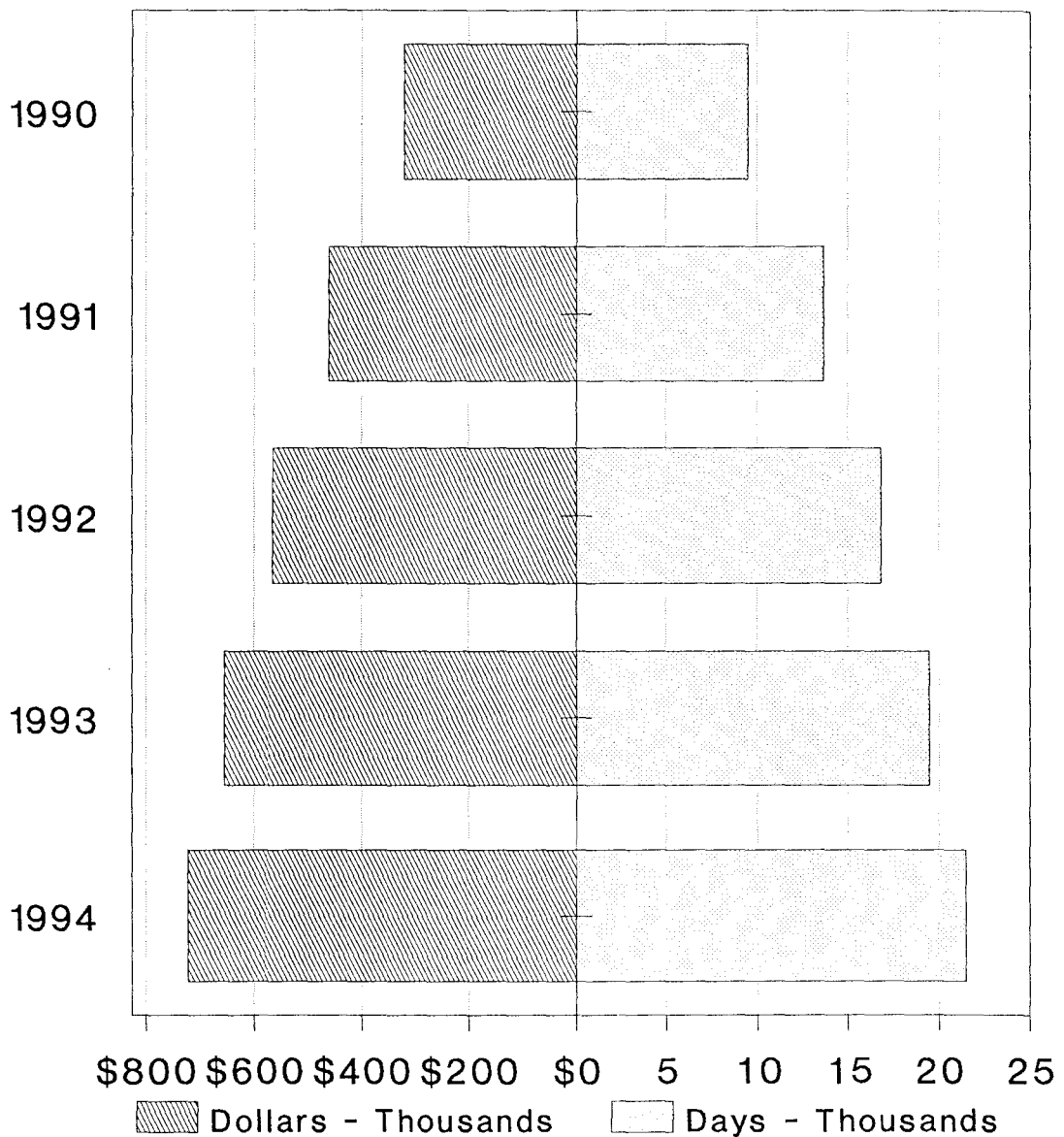
MONTANA DEPARTMENT OF JUSTICE  
HIGHWAY PATROL DIVISION





# Department of Justice Prisoner Cost/Days

Fiscal Year



EXHIBIT

4

Handout 1

1-12-95

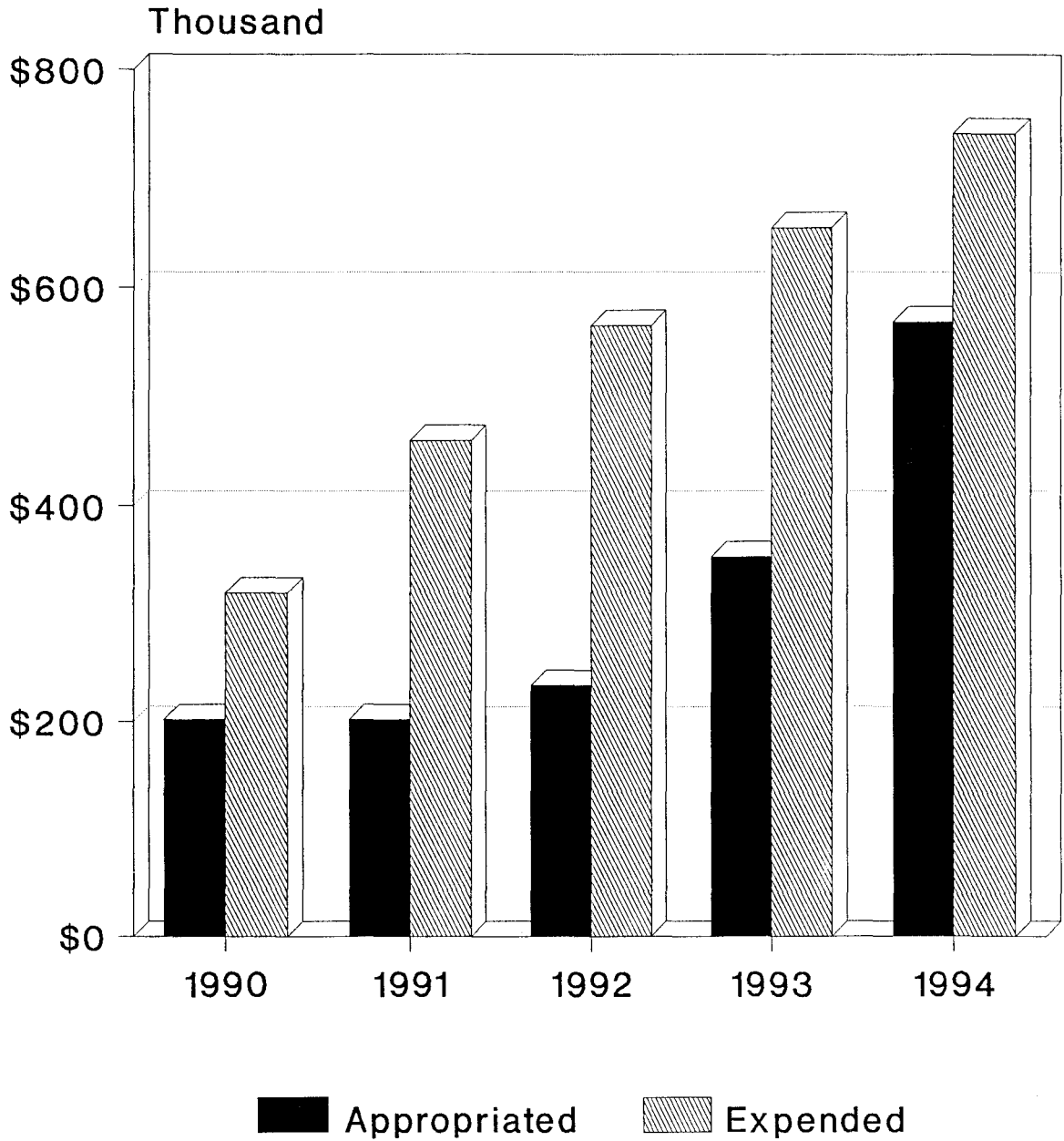
DATE

1-12-95

L.S.D.

XL

# Department of Justice Prisoner Costs



HOUSE OF REPRESENTATIVES  
VISITORS REGISTER

Institutions of Cultural Education SUB-COMMITTEE  
BILL NO. \_\_\_\_\_ SPONSOR(S) \_\_\_\_\_

DATE 1-12-90

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
DENNIS M. TAYLOR	JUSTICE		
Judith May	Justice		
Jim Oppedahl	Justice		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

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