

AGENDA
ASSEMBLY BUDGET SUBCOMMITTEE NO. 4
STATE ADMINISTRATION

ASSEMBLYMEMBER GEORGE NAKANO, CHAIR

WEDNESDAY, MAY 1, 2002
STATE CAPITOL, ROOM 437
1:30 PM

CONSENT CALENDAR

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0550	SECRETARY FOR YOUTH AND ADULT CORRECTIONAL AGENCY
5450	YOUTHFUL OFFENDER PAROLE BOARD

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ITEM 8100 OFFICE OF CRIMINAL JUSTICE PLANNING**ISSUE 1: VERTICAL PROSECUTION PROGRAMS****BACKGROUND:**

Vertical prosecution is an approach that allows the same deputy district attorney or deputy city attorney (prosecutor) to follow a criminal case through the entire prosecutorial process. This process is different from an often-used method of dividing the major portions of the prosecutorial process between groups of prosecutors. For example under the non-vertical prosecution model, for the same case, agencies may have one prosecutor present at the arraignment and another participate in the trial phase.

The Office of Criminal Justice Planning is the granting agency for five vertical prosecution programs funded by the General Fund. For the budget year funding for these program totals \$18.3 million.

Career Criminal Prosecution	\$4.0 million
Major Narcotics Vendor Prosecution	2.6 million
Vertical Prosecution of Statutory Rape	8.4 million
Elder Abuse Vertical Prosecution	2.0 million
Child Sexual Abuse Prosecution	1.3 million

The Department grants funds to local prosecutors to pay for the implementation of vertical prosecution programs for specific crimes such as statutory rape, elder abuse, sale of narcotics and domestic violence. Funding is not mandatory and the total amount of funding to counties for these five programs vary from zero (Sierra and San Benito) to \$1.2 million received by Los Angeles County.

COMMENTS:

There seems to be little disagreement about the effectiveness of vertical prosecution programs. In fact, Penal Code Section 273.8 discusses the effectiveness of vertical prosecution for spousal abuse cases. However, the prosecution of criminal cases is a local responsibility and local prosecutors must make decisions that balance the allocation of resources to address its caseload with or without vertical prosecution funding. As a result it is not clear if the State should assume the long-term financial responsibility for financing local prosecutions.

ITEM 8100 OFFICE OF CRIMINAL JUSTICE PLANNING**ISSUE 2: COLD HIT PROGRAM****BACKGROUND:**

The Budget Act of 2000 appropriated \$50 million from the General Fund to fund efforts to solve unsolved sexual assault cases using new technology, primarily DNA testing. In combination with legislation that increased the statute of limitation for sexual assault cases by a minimum of four years the universe of unsolved cases was greatly increased and estimated by the department at 30,000. This estimate was based upon reported number of cases of sexual assault by local law enforcement agencies to the department of justice. The program is funded for three years and would end June 30 ,2003. During that period of time, local entities were given time and funding to re evaluate evidence related to unsolved sexual assault cases (generally in the form of "Rape Kits" or a standardized collection package used in sexual assault cases). Upon determining that the evidence retained biological properties suitable for DNA testing, additional funds were made available for testing.

Earlier this year in a hearing held by the Womens' Caucus, the interim director of OCJP indicated that due to a shortage of cases, \$4 million would be available for transfer to Women's shelter programs. The Administration has subsequently submitted a Finance Letter proposing the transfer of those funds from the DNA Profiling Program to Domestic Violence Program over the next two years.

The department of Justice indicates that the program has currently identified 15,000 sexual assault cases available for review. Additional cases will be sought from local law enforcement agencies by one of three procedures:

- 1) Requesting agencies to look further for evidence related to unsolved sexual assault case ;
- 2) Accepting current cases; and
- 3) Asking agencies to look at evidence related to other types of cases (e.g. homicides) where there could be a sexual assault component with biological evidence suitable for dna testing.

Biological evidence in cases in the last category may be more difficult as they may not contain completed Rape Kits and would require more intensive testing to determine whether there is suitable biological evidence. In order to seek additional cases for the Cold Hit program, the department has extended the term of the program for an additional 18 months. This will be accomplished by using the liquidation period of the grant to allow the counties to perform reimbursable services rather than completing the work within the initial 36 months. The department indicated that it would be granting funds until June 30, 2003. Further, DOJ has indicated that it is contemplating increasing reimbursements to local agencies to encourage the submission of additional cases.

There is reason to believe that there are additional unsolved sexual assault cases that may remain in the custody of local law enforcement agencies. The County of Los Angeles has indicated that to date, approximately 2,000 unsolved cases have been identified. This amount is approximately 13 percent of the 15,000 cases identified Statewide. This is lower than the 3,750 cases (25 percent) predicted based upon reporting of the sexual assaults by all local law enforcement agencies. Should this be reflective of the overall outstanding number of cases

statewide, the estimated number of cases to work would increase to 28,125. At this level it would not be clear that it is either necessary to extend the casework to non-sexual assault designated cases (see category #3 above) or that there are sufficient funds to revert \$4 million from the grant. However, it is not known how much longer it will take to identify these additional cases.

COMMENTS:**The subcommittee may want to ask the department:**

- To identify budgeted expenditures for this program for:
 - 1) the identification of case evidence that may have a sexual assault component to it;
 - 2) identification of usable biological evidence; and
 - 3) DNA testing of biological evidence
- Estimated costs paid by the program to date.
- Amounts granted to counties to date.
- The basis for estimated savings of \$4 million for the program.
- Estimated unexpended or unobligated funds as of June 30, 2003 that the subcommittee may be able to identify as available for reversion to the general fund.

The subcommittee may want to consider:

- Whether it would like to extend the program to any unsolved criminal cases that may have a sexual assault component or limit the grant to cases that have been identified primarily as sexual assault cases.
- Whether it would like to allow an extension into the liquidation period for an additional 18 months or limit term of the grant to 36 months and revert unspent funds to the General Fund as of June 30, 2003 in order to count in the 2002-03 budget year.

ITEM 8100 OFFICE OF CRIMINAL JUSTICE PLANNING**ISSUE 3: GRANT REPORTING****BACKGROUND:**

The Office of Criminal Justice Planning is the State Administering Agency, or state liaison for a number of federal grants. Among these grants is the Edward Byrne Memorial State and Local Law Enforcement Assistance Grant. This Grant totals \$486 million in Federal Fiscal Year 2002. Of this amount California's Share is \$51 million. (Budget Act of 2001 identifies \$52 million in Byrne Funds). Funds are allocated on an annual basis. The Grant is a partnership between federal state and local governments to improve the functioning of the criminal justice system. Emphasis is on violent crime and anti- drug enforcement programs.

COMMENTS:

The grantor [the Bureau of Justice Assistance (BJA) within the United States Department of Justice (US-DOJ)] has identified 28 purpose areas for funding that include:

- Programs that reduce the demand for drugs
- Programs that address crimes against the elderly
- Disruption of illicit commerce in stolen goods and property
- Improving the investigation and prosecution of white collar crime
- Career criminal prosecution
- Improvement of criminal justice information systems
- Promoting enforcement of child abuse and neglect laws
- Improvement of forensic capabilities to use DNA testing for identification purposes
- Implementing Anti-terrorism programs and procurement of equipment by local law enforcement agencies
- Enforcement of laws related to the use of alcohol and the operation of motor vehicles

With regard to governments respond to the events of September 11, Justice BJA specifically identified the following potential uses of Byrne Funds:

- Developing and implementing anti-terrorism plans and training programs.
- Purchasing equipment for local law enforcement anti-terrorism projects.

- Improving community crime prevention and security.
- Creating multijurisdictional task forces in response to organized crime.
- Facilitating interagency and intelligence coordination.
- Integrating criminal justice information systems.
- Investigating and prosecuting money laundering and cybercrime.
- Improving DNA identification systems.

The Byrne Grant gives a grantee State like California a number of options when applying for funding. The State can implement one or a number of different programs that fit under the criteria of the grant. Even after the grant has been awarded, the State may redirect funds between subgrantees within a program or between programs with federal approval. Since all local assistance funds for the Byrne grant are included in one line item of the Budget Act (2001) the department may effect a transfer between programs within the grant without legislative notification. Moreover, if the Department's level of funding for a particular grant remains constant over time and within its baseline allotments, new programs may be funded and old programs may be dropped without the need for review by the budget committee.

The Subcommittee may want to consider supplemental reporting language directing the department to report on the grants administered by the department; criteria for redirection of funds, the number of redirections and amounts of funds redirected.

Possible Supplemental Report Language:

Item 8100 – OCJP

1. Redirection and Reversion of Funds. Notwithstanding any other provisions of law, the Office of Criminal Justice Planning shall report to the fiscal committees of both houses of the Legislature on a quarterly basis: all grants administered by the department; criteria for redirection between programs; number of redirections during that quarter and the reason for the redirection; and the cumulative total of redirections for the current state fiscal year. In addition, the department shall report on a quarterly basis any funds reverted or returned during the current fiscal year.

ITEM 0820 DEPARTMENT OF JUSTICE**ISSUE1: FORENSIC FEES**

CURRENT YEAR	PROPOSED CHANGE	PROPOSED BUDGET EXPENDITURES
\$51,476,000	\$-255,000	\$51,221,000

BACKGROUND:

Currently, the Department of Justice operates 11 crime laboratories that provide forensic services without charge to local law enforcement agencies that do not have their own forensic laboratories. The department provides a number of forensic services including crime scene investigations, ballistics, trace element analysis and DNA testing. An exception to the rule is the Department's charges for performing blood alcohol and drug testing services.

Local governments generally have the responsibility to investigate and prosecute crimes. This includes the development of physical evidence through the use of forensic services. The LAO concluded that since these services were an integral part of the overall law enforcement responsibilities of local government the costs should be paid by those entities, thus providing alignment between the funding and programmatic responsibilities

Due to limited resources DOJ may have to limit services to local agencies to the investigation of violent and serious crimes where suspects have been identified. As a result, DOJ may be forced to prioritize its resources based upon the workload in its entire service area rather than that of a particular county that may experience other types of crime.

COMMENTS:

The Legislative Analyst's Office proposes that the cost of forensic services be shifted to the local governments receiving the service. This would allow the counties to request services based upon its own priorities. The proposal charging local entities for services provided by the Department of Justice crime laboratories is consistent with the Administration's proposal in 1999-2000. This concept was also previously proposed by the Legislative Analyst's Office in the Analysis of the 1997-98 Budget Bill.

The LAO estimates that this proposal would reduce General Fund costs to the Department of Justice by \$16 million annually. It is believed that after taking into account current charges to local agencies for blood alcohol and drug testing services, this amount may be closer to \$7 million annually. If one were to phase in the implementation in the budget year, a delay of 6 months would reduce the budget year savings to \$3.5 million. To the extent that local agencies increase their demand for services above current levels, the department would be able to support additional staffing and resources.

ITEM 0820 DEPARTMENT OF JUSTICE**ISSUE 2: SPOUSAL ABUSE VERTICAL PROSECUTION**

CURRENT YEAR	PROPOSED CHANGE	PROPOSED BUDGET EXPENDITURES
\$3,845,000	0	\$3,845,000

BACKGROUND:

Chapter 599 , Statutes of 1994 (AB 801, Barbara Friedman, et al) transferred authority of the spousal abuse vertical prosecution program from the Office of Criminal Justice Planning to the Department of Justice. The program would be available to both district attorneys and city attorney offices for the prosecution of felony and misdemeanor cases of spousal abuse. Vertical prosecution programs use single prosecutors or single teams of prosecutors to participate in the prosecution of specific types of cases through its various phases such as arraignment and trial. The benefit of this model is that there is better communication between the prosecutor and the victim, witnesses and local investigative agencies

COMMENTS:

With one person or team following the case, the state has more flexibility in preparing the case such as following up with witnesses to make sure they appear.

Vertical prosecution in spousal abuse cases can be particularly effective when dealing with the abused victim. Since it would not be uncommon for a victim subsequent to the attack, to want to change his/her testimony in order to protect the spouse. As a result it is important for the prosecution to document incriminating testimony as early as possible and to note any change in testimony which could potentially jeopardize the case.

However, vertical prosecution programs for spousal abuse are no longer untested techniques. In fact, Section 273.8 of the Penal Code indicates that vertical prosecution is " a proven way of demonstrably increasing the likelihood of convicting spousal abusers ..."

However, local district attorneys and city attorneys have broad discretion in the allocation of resources for the purpose of prosecution as they balance the effectiveness of various strategies including vertical prosecution with the number of cases filed. Since the prosecution of criminal cases is primarily a local responsibility it is not clear that the State should assume the long term funding support of a particular prosecution technique.

ITEM 0820 DEPARTMENT OF JUSTICE**ISSUE 3: ASSET FORFEITURE EXPENDITURES**

CURRENT YEAR	PROPOSED CHANGE	PROPOSED BUDGET EXPENDITURES
1,888	0	4,568

BACKGROUND:

Federal law allows the state to seize in a civil action, the assets of a person or organization related to the commission of specified crimes. These assets are allocated to public safety agencies by the court. While the law does not require that the person be convicted or even charged with a crime prior to the distribution of the seized assets generally distributions in California are after conviction.

The Department of Justice requests the \$1.2 million in one time expenditures from Federal Asset Forfeiture funds for the purchase of computers and surveillance cameras in 2002-03 and an on-going increase in of \$792,000 for continuing computer expenditures.

COMMENTS:

The proposed expenditures are for laptop computers for special agents that would allow for the transmission of information to and from the field and thereby reduce the need to visit field offices for that purpose and thereby increase the efficiency of each special agent. The surveillance vehicles requested would allow the department to covertly record the activities of suspects in the course of criminal investigations.

The purchases proposed (computers) are those that might otherwise be included in the standard complement for each special agent position or within ongoing operating expenses and equipment resources. In addition, it would appear that the need for additional surveillance equipment may be related to the department's anti-terrorism investigations. Since the state is currently requesting federal funds for that purpose, it may be premature to fund this expenditure with state funds at this time.

The Governor's budget identified a funding "gap" between the State's revenues and its expenditures of approximately \$12.5 billion through the end of the budget year. A subsequent analysis by the Office of the Legislative Analyst projects that the gap will increase by \$5 billion to \$17.5 billion. While the proposal to purchase computers and surveillance equipment may increase public safety by increasing the capabilities of the Department, it is not clear that the denial of the request would cause public safety to deteriorate below current levels.

The Subcommittee may want to consider whether to:

Approve the proposed increase in appropriation in the federal asset forfeiture funds

Approve a commensurate reduction in General Fund appropriation. This would result in a saving to the General Fund of \$1.2 in the budget year and \$792,000 in future years.

ITEM 0820 DEPARTMENT OF JUSTICE**ISSUE 4: DO NOT CALL PROGRAM**

CURRENT YEAR	PROPOSED CHANGE	PROPOSED BUDGET EXPENDITURES
\$0 million	\$0 million	\$0 million

BACKGROUND:

SB 771 (Figueroa and Campbell Chapter 695, Statutes of 2001) established a "do not call" list for residential and wireless telephone subscribers who do not want to receive telephone solicitations.

Under the law, by January 1, 2003, the California Attorney General is required to establish, maintain and update quarterly a "do not call" list containing all of the telephone numbers and ZIP codes (but not the names and addresses) of residential and wireless telephone subscribers who do not want to receive unsolicited telephone calls. The Attorney General may contract with a private vendor to establish, maintain and administer the list. However, the contract must include appropriate provisions to protect the confidentiality of subscriber information and ensure that the best available, cost-effective technology is utilized so that subscribers and solicitors may easily subscribe or access information on the "do not call" list.

The program would require that solicitors pay a fee not to exceed the costs for preparation, production, maintenance, and distribution of the list in order to obtain copies of the "do not call list". The Attorney General would be responsible for establishing a sliding fee schedule, that would not charge a solicitor with fewer than five full-time employees while it would charge the maximum fee to a solicitor with more than 1,000 employees. In addition, any individual who wishes to subscribe to the list may be charged a fee of up to \$1 every three years.

The Governor's Budget requests \$1million for the Attorney General is from the Special Telephone Solicitor's Fund and 12.6 positions in the budget year to implement this program. Funding in this proposal includes fees from consumers but does not address revenues from the sale of lists to solicitors.

COMMENTS:

The Department of Justice states that the fees collected by this program will be insufficient to support its operation. The department projects annual costs of approximately \$8 million to contract for the program (\$8.2 million in 2002-03 and \$8.1 million in 2003-04), which includes a call center and database. They believe that the program will have an annual shortfall of approximately \$5 million after the collection of fees (3 million subscribers in 2002-03). Supplemental information from the department estimates additional revenues of approximately \$250,000 in 2002-03 and \$500,000 annually thereafter from the sale of lists to solicitors.

According to the Senate Third Reading Analysis, the fiscal impact of this program was \$2.2 million in start up costs. A General Fund loan was anticipated to fund these costs to be repaid over a five-year period. The Governor's Budget includes no provisions for such a loan. The Senate Analysis also stated that "ongoing costs should be significantly less than the start-up costs." The Department of Justice estimates costs of \$348,000 in the current year and \$8.2 million in the budget year. Estimated costs decrease to \$8.1 million in the 2003-04 fiscal year.

The Attorney General is currently sponsoring legislation, SB 1560 (Figueroa), which will attempt to address difficulties with the implementation, enforcement, and funding of this program. The department requests that the Subcommittee send this item to Conference Committee in order to allow additional time for clean-up legislation to be completed. At that time the department will be able to provide more accurate costs for the program. The Senate has not taken any action on this issue to date.

The Subcommittee may want to ask:

How the program costs increased from \$2.2 million at the time the bill was signed by the Governor to \$8.2 million in May 2002.

Whether the Department of Finance concurs with the Department of Justice's estimate of expenditures of \$8.2 million in 2002-03.

Why the Governor's Budget does not address the fees charged to solicitors for do not call phone lists.

What alternatives the department will pursue should the revenues from the subscriber fees as specified in SB 771 be insufficient to cover proposed expenditures.

If the Administration and the Department of Justice can state whether there will be a need for General Fund support for this program, either in the form of a loan as contemplated during the passage of SB 771 through the Legislature, or in the form of long term support for this program.

The subcommittee may want to consider the following options:

- A) Increase spending authority/ adopt trailer bill language
 - 1) Increase spending authority by \$7.2 million to \$8.2 million in the budget year in anticipation of an increase in fee revenues to the Special Telephone Solicitor's Fund; and
 - 2) Accept trailer bill language to increase fees for consumers wishing to be on the do not call list.

Based upon the receipt of 2.4 million customers the first year, a fee of approximately \$3.45 would be required to fund costs of the program through 2002-03. Due to the variations in the number of applicants from year to year, a fee of approximately \$3.70 may be required for the long-term stability of the fund. Details of the department's revenue collection and expenditure plans are not yet available.

- B) Do nothing
 - 1) Approve \$1 million in funds for the program to provide partial funding for this program.
 - 2) Department receives additional appropriation authority via SB 1560 (clean up legislation)

- C) May Revision
 - 1) Approve department budget as proposed in the Governor's Budget
 - 2) Consider department's proposal for augmentation during the May Revision process if submitted in Finance Letter from the Administration with details of the program needs, revenues, expenditures and workload at the higher level.

ITEM 5440 BOARD OF PRISON TERMS /
5240 DEPARTMENT OF CORRECTIONS**ISSUE 1: FOREIGN PRISONER TREATY TRANSFER PROGRAM****BACKGROUND:**

The Board of Prison Terms has authority to transfer foreign born inmates in California correctional institutions to their native country. Currently the Board estimates that there are 27,000 foreign born inmates in the State. At an estimated average incarceration cost of \$26,690 (2002-03) per inmate annually, the State would incur yearly costs of up to \$720 million for this population.

BPT stated that it had received 650 applications for transfer through August 1994 with 539 additional applications for transfer received through April 1996. By June 1996 the number of outstanding unprocessed applications were 107. As of April 19, 2002 BPT indicates it has a backlog of 219 open cases. This does not include an undetermined number of cases that have been referred to the United States Department of Justice for transfer. Cases in this category are classified as closed by the department.

SB 1544 currently before the Senate Appropriations Committee would direct the Board of Prison Terms to initiate the transfer of foreign born prisoners to the countries of Canada, Mexico or European countries that have a treaty with the United States government regarding the transfer of these prisoners. The transfer would be based upon acceptance by the foreign country and agreement that the prisoner's time incarcerated would be similar to that in California.

COMMENTS:

Should BPT process the transfer of 1,000 foreign born prisoners a year, the savings to the state could be \$15 - \$26 million. Since it may take 6 to 12 months to process the transfer, if the transfer program were to begin in the budget year, the savings would be significantly less than the amount in 2003-04. If the Department were able to process a combination of existing and new applications beginning in the budget year, savings should be realized in the Department of Corrections budget.

In the April 2, 2002 budget hearing, the subcommittee directed the department to provide it with information regarding the resources required to implement the screening of 5,000 foreign born prisoners annually for participation in this program.

In the April 9, 2002 budget hearing, the subcommittee asked the board to answer questions related to the operation of the foreign prisoner transfer program that included:

- The status of any pending applications for prisoner transfer;
- Notification of the prisoner of the status of his or her application;
- Notification of the family of a prisoner eligible for foreign transfer;
- Process to appeal a denial to transfer to the native country;
- Notification of foreign counsel of the existence of a foreign national in state prison;

- List of prisoners by country that have applied for transfer since 1995, and the status of the applications;
- Procedures in place to track applications to insure that they are processed in a timely manner; and
- Procedures implemented in the last two years to expedite the processing of transfer applications and the subsequent transfer to the inmate's country of birth.

The subcommittee has also requested the status of a report due January 31, 2002 related to this program.

The BPT estimates a cost of \$363,000 a year and 4 positions to screen the 5,000 inmates annually. Based upon prior experience BPT estimates 80 prisoners would be eligible for transfer a year. The actual number of transfers may be larger in the budget year due the number of outstanding applications already pending before the Board, those currently before the US-DOJ and the likelihood that there may be a review of previously denied applications. Currently, a prisoner entering a Department of Corrections (CDC) facility is asked if they would like to pursue completing their sentence in their native country. As CDC only provides the forms in English and Spanish and provides limited translator services, there is no guarantee that all previously screened persons have been adequately noticed. Nor is it clear that there are procedures to allow a foreign-born prisoner, after further contemplation, to later apply for transfer to his or her native country after initially refusing this option. The number of transfers could also be higher if the State provides notice to the diplomatic representative of the native country of the foreign born prisoner of his or her incarceration. While there appears not to be any limitations on the notification of foreign governments, BPT does not provide notification - except for those countries specified by the Penal Code (sections 834c et al). Another factor that may affect the number of transfers from California would be any limits imposed by other countries. Due to its proximity to Mexico, it is expected that a large number of inmates potentially eligible for transfer are citizens of that country. The federal government has been working under guidelines that limit the number of prisoners transferred to Mexico to 300. Representatives of the Mexican government have indicated that there are only currently 180 prisoners transferred under this program however, the government has indicated that it would be flexible to increasing the number of prisoners that it will accept.

Due to the timeframe required to transfer an inmate to foreign custody, the estimated savings from this program in the first (budget) year is anticipated to be smaller than in future years. It is believed that the BPT may be able to transfer up to 250 prisoners in the budget year. This would provide savings of \$3.7 to 6.7 million.