

MEMORANDUM

To: Representative Mary S. Hooper, Chair
House Committee on Appropriations

From: Representative Maxine Grad, Chair and Representative Barbara Rachelson, on
behalf of the House Judiciary Committee

Date: February 19, 2021

Subject: House Judiciary's Review of Assigned Provisions in the Governor's
Recommended FY 2022 State Budget, and a few Additional Comments, and
Recommendations Related to our Policy Area.

Thank you for inviting our committee to be involved in the process and share our recommendations with the Appropriations Committee.

Our committee has reviewed the Governor's Budget, and in particular the items assigned to us in your Memorandum to Committee Chairs. Using the following lens, of our identified committee's core goals and values in reviewing the budget and making our recommendations to your committee:

Core goals and values of the House Judiciary committee include:

Addressing inequities in the justice system

We recognize that different backgrounds and situations can lead to very different interactions with law enforcement and courts. With this in mind, we work to level the playing field, to ensure equal treatment for all people who come into the criminal justice system.

Prioritizing access to justice

As part of this work, we seek to ensure geographic justice throughout the state of Vermont and to address the differences between counties.

Supporting healing and rehabilitation

We are committed to asking what alternatives exist to address and resolve harm outside of the Judicial system. We embrace restorative approaches that prevent and heal harm for all parties.

Responses to Assigned Sections of The Governor's Recommended Budget Narrative

1. From the General Fund to Fund 21145, The Victims Compensation Fund: \$952,000 EXPLANATION: Transfer of general funds to the Victims Compensation Fund to permit the Center for Crime Victim Services to provide continued funding for the Victims Advocate staff positions. The fund has been negatively affected by a reduction of citations and convictions related to COVID-19, along with increased staffing costs resulting from a collective bargaining agreement.

Recommendation: Our committee was glad to see one-time funds being suggested to help fill one of the holes in the Victims' Compensation Fund because of COVID. We support this. It is a one-time partial fix to a larger issue and problem.

Further Request/Recommendation: We hope that Government Operations and Appropriations will look at the inconsistencies in the funding model and structural model of the Center for Crime Victim Services. The Collective Bargaining Unit agreement is important to honor. We should look at why we call the Center for Crime Victim Services a state agency, while for the most part it isn't. The staff in that office are not state employees, yet their contracted employees in the State Attorney's Offices are state employees, as are their contracted employee in the Training Academy. This is just one of many observations we had. We are happy to elaborate more to the appropriate committee when this issue is addressed and when it is useful to have this information. Our Committee stands ready to be a part of the conversation from the viewpoint of services delivered.

2. The following estimated amounts, which may be all or a portion of unencumbered fund balances, shall be transferred from the following funds to the General Fund. The Commissioner of Finance and Management shall report to the Joint Fiscal Committee at its July meeting the final amounts transferred from each fund and certify that such transfers will not impair the agency, office, or department reliant upon each fund from meeting its statutory requirements. 21638 21928 62100 AG-Fees & reimbursement - \$ 2,000,000.00

Recommendation: While our committee is not the policy committee for the Attorney General's Office, we understand that the AG's office was comfortable with the \$2 million figure but want to ensure that the Community Justice and Diversion Programs will be adequately funded, as they are both more successful and less expensive than incarceration and using the court system.

3. Sec. E.200 ATTORNEY GENERAL

Notwithstanding any other provisions of law, the Office of the Attorney General, Medicaid Fraud and Residential Abuse Unit, is authorized to retain, subject to appropriation, one-half of the State share of any recoveries from Medicaid fraud settlements, excluding interest, that exceed the State share of restitution to the Medicaid Program. All such designated additional recoveries retained shall be used to finance Medicaid Fraud and Residential Abuse Unit activities.

(b) Of the revenue available to the Attorney General under 9 V.S.A. § 2458(b)(4), \$1,390,500 is appropriated in Sec. B.200 of this act. EXPLANATION: Same provisions as in fiscal year 2021.

Recommendation: The Judiciary Committee passed the False Claims Act several years ago and support the formula used to reinvest the funding to help create further mechanisms to address Medicaid Fraud. We also understand that some of the funding is transferred to the DIVA Office for the same rationale. We are not able to comment on the amounts appropriated or on how DIVA uses the funding and understanding that the House Health Committee is addressing the DIVA portions.

Additional Recommendations/Comments:

- a. **Our primary concern is to assure that the \$243,000 needed for Community Justice Programs in this year's budget is in place, as it was unclear as to whether it would be or not, due to an extremely high vacancy rate set for the AG's office, that they did not feel was achievable.**
- b. We concur that the AG's office's Rapid Response Team was and is an important element of Vermont's COVID prevention activities and know that their staff spent over 2000 hours from March to December on them. We encourage the appropriate committees to look at any additional COVID relief funding that could be awarded in this fiscal year.
- c. We understand that the False Claims Act Medicaid Fraud investigations are the only program in the AG's office where they keep a portion of the funds, they initiate the state receiving (in this case, it's paid back false Medicaid billing) and that this program mandates the formula, as mentioned above. The AG's office does not collect an admin fee or other funding from any other litigation that bring in settlements. This area may be something that Government Operations could explore further.

4. Sec. E.105 TECHNOLOGY FUND ESTABLISHED

There is established the Technology Modernization Special Fund to be managed by the Secretary of the Agency of Digital Services. Monies in the fund shall be used to purchase and upgrade technology platforms, systems, and cybersecurity services used by agencies and departments to carry out their statutory functions as prioritized by the Secretary. The Fund shall be composed of monies from time to time appropriated by the General Assembly. Notwithstanding any contrary provisions of the law, unexpended balances and any earnings shall remain in the Fund from year to year. Money in the fund is to be allocated in FY22 as follows: (1) \$15,000,000 for the first phase of a DMV IT system - replacement of the 40 year old mainframe applications; (2) \$1,075,000 for the second phase of the DEC permit navigator - citizen facing permit portal; (3) \$500,000 to NRB for phase 2 of the Act 250 online application and database project - moving Act 250 services online; (4) \$12,750,000 for a Human Capital Management ERP upgrade - replacement of our HR system that tracks employee information, timesheets, and contracts; (5) \$4,500,000 for BFIS system - Bright Futures Information System replacement; (6) \$2,000,000 for VDOL financial account and reporting system - consolidation of VDOL finance system into the state's enterprise finance system; (7) \$3,500,000 to VDOL for UI modernization – begins replacement of mainframe applications for unemployment insurance; (8) \$1,000,000 to VDOL Joblink replacement - coordinates activities between ACCD and VDOL to better serve Vermonters; (9) \$1,500,000 to ADS cybersecurity - core infrastructure replacement and router replacements for public safety connections to the municipalities; (10) \$1,000,000 to ACCD for Salesforce grant management system - transitions ACCD from an unwieldy grants program to a centralized grants system; (11) \$9,500,000 to AHS IE project - Integrated Eligibility replaces Access; and (12) \$430,000 to States' Attorneys for case management system - needed upgrade to SAS case management software. EXPLANATION: New fund created for the purposes described above

Recommendation:

We understand the rationale that the State' Attorneys have for requesting a new case management system and support their having the technology they need to effectively and efficiently do their jobs.

We don't understand why the Defender General's office, which also has the same problem of their case management system no longer being supported (and needing a new one), isn't on the list of approved and funded projects. We heard in the Appropriations hearings that both offices presented their needs to the Governor's office and question why one was funded this way and one wasn't. We hope that another committee will address this issue.

We look to the following House Committees: Energy and Technology and Corrections and Institutions to ensure that when State departments are buying software, they buy software that is compatible with our other relevant state departments. We also assume that committees look at intervals of time for new purchases, reasonableness of the selections, and the adequate funds to train, ramp up and support the systems, as that is not our jurisdiction.

5. Sec. E.220 CENTER FOR CRIME VICTIMS SERVICES

Notwithstanding 20 V.S.A. § 2365(c), the Vermont Center for Crime Victims Services shall transfer \$52,624 from the Domestic and Sexual Violence Special Fund established in 13 V.S.A. § 5360 to the Criminal Justice Training Council for the purpose of funding one-half the costs of the Domestic Violence Trainer position. The other half of the position will be funded with an appropriation to the Criminal Justice Training Council. **EXPLANATION:** Same provisions as in fiscal year 2021, amount updated to reflect the cost of the position.

Recommendation: We support law enforcement being trained in addressing domestic violence responses and work. We cannot comment on the way the money is transferred to the Criminal Justice Training Council or it funding half a position, that is made full-time by General Funds, and look to the committee of jurisdiction, Government Operations to address those issues. It raises the same issues we raised above in #1, related to how the Center for Crime Victims is funded, reimbursed, and the duties that come with accountability to the funding sources without having any direct oversight of employees hired in other departments from the contracts with them. **EXPLANATION:** Same provisions as in fiscal year 2021.

6. Sec. E.209 PUBLIC SAFETY – STATE POLICE

Of this appropriation, \$405,000 is allocated for grants in support of the Drug Task Force. Of this amount, \$190,000 shall be used by the Vermont Drug Task Force to fund three town task force officers. These town task force officers shall be dedicated to enforcement efforts with respect to both regulated drugs as defined in 18 V.S.A. § 4201(29) and the diversion of legal prescription drugs. Any unobligated funds may be allocated by the Commissioner to fund the work of the Drug Task Force or carried forward. **EXPLANATION:** Same provisions as in fiscal year 2021.

Recommendation: Unfortunately, we know truly little about this grant program and the rationale behind having three towns receive funding. We cannot make a recommendation at this time and hope another committee of jurisdiction has more information than we do.

Woodside: Sec. E.327 33 V.S.A. § 5801 is amended to read:
Title 33 Chapter 58 Woodside Juvenile Rehabilitation Center is repealed in its entirety. § 5801.
Woodside Juvenile Rehabilitation Center

(a) The Woodside Juvenile Rehabilitation Center in the town of Essex shall be operated by the Department for Children and Families as a residential treatment facility that provides in-patient psychiatric, mental health, and substance abuse services in a secure setting for adolescents who have been adjudicated or charged with a delinquency or criminal act.

(b) The total capacity of the facility shall not exceed 30 beds.

(c) The purpose or capacity of the Woodside Juvenile Rehabilitation Center shall not be altered except by act of the General Assembly following a study recommending any change of use by the Agency of Human Services.

~~(d) No person who has reached his or her 18th birthday may be placed at Woodside.~~

~~Notwithstanding any other provision of law, a person under 18 years of age may be placed at Woodside, provided that he or she meets the admissions criteria for treatment as established by~~

~~the Department for Children and Families. Any person already placed at Woodside may voluntarily continue receiving treatment at Woodside beyond his or her 18th birthday, provided that he or she continues to meet the criteria established by the Department for continued treatment. The Commissioner shall ensure that a child placed at Woodside has the same or due process rights as a child placed at Woodside in its previous role as a detention facility.~~

~~§ 5802. Separation of victim of sexual assault and perpetrator~~

~~The Commissioner for Children and Families shall develop policies applicable when the Department knows or learns that a sexual assault perpetrator and his or her victim have been simultaneously placed at the facility. The policies shall include processes and procedures for investigation and, if appropriate, continued separation of or minimizing incidental contact between the perpetrator and the victim, while ensuring that they both receive educational and other appropriate services. EXPLANATION: Repeals Woodside language as the alternative plan for justice-involved youth moves forward.~~

Recommendation: While the House Judiciary Committee has addressed related issues such as raising the age for youth to be in the jurisdiction of the family court, we have not had any direct policy work related to closing Woodside. We also strongly support diversion and community alternatives whenever possible, as well as access to treatment programs regardless of geography. We look to the House Human Services and the House Corrections and Institutions Committees for more specific work on what replaces Woodside.

Not in our lane, but impacts our lane:

1. (3) \$38,680,000 to the Agency of Administration for the following: (A) \$11,580,000 for distribution to departments to fund the FY22 53rd week of Medicaid. (B) \$12,450,000 for distribution to departments to fund the FY22 27th payroll pay period. (C) \$250,000 to support two additional positions to work with the Executive Director of Racial Equity. (D) \$14,400,000 for distribution to departments to fund the annual increase in the Vermont State Employee Retirement System (VSERS) Actuarially Determined Employer Contribution (ADEC).

Recommendations: While our Committee does not oversee the Office of Racial Equity, much of our work is done in conjunction with this office, especially as we look to the overrepresentation of BIPOC in the criminal justice system. We frequently ask this office for assistance and are strongly supportive of having adequate resources funding their efforts.

Other Recommendations:

- ✓ The Vermont Network shared with us their testimony before the Appropriations Committee, and while we did not hear this testimony, we are supportive of their efforts, and rely on their work to center the experiences of victims and survivors in the judicial system.

Other Observations and Comments:

1. We are concerned that so many of the offices we work with—the AG’s office, the State Attorney’s, the Defender General’s office, the Court’s—were all given target vacancy savings that were not at all realistic and create either a budget shortage or loss of staff. Some of these targets were hundreds of thousands of dollars off. We hope that this type of plugging numbers can be eliminated and ask that advocacy with the governor’s office occur to address this issue.
2. We are concerned that the Judiciary is asking for 13 FTEs to implement our current expungement laws. We do understand that the process for expungement of paper records is time consuming, but feel that this request requires more scrutiny. The Court has suggested a procedure whereby criminal records are sealed rather than expunged, which could require less personnel time to process. This change to the law related to expungements and the resulting modification in court procedure should be fully evaluated before making a long-term commitment to an increase of 13 FTEs
3. During the pandemic and state of emergency, state courts have significantly increased the use of remote video hearings. Such hearings are likely to continue, though to a lesser extent, after the end of the state of emergency. The unavailability of reliable internet connectivity or broadband limits the ability of many in Vermont to reliably access these remote hearings and thus has a significant negative impact on access to justice. Accordingly, the Judiciary Committee supports additional funding of State-wide efforts to expand broadband as recommended by the Energy and Technology Committee.
4. We were alarmed to hear the Defender General’s office speak of a 39% increase in CHINS cases, and question if it is COVID related, and could be eligible for COVID relief funding in that office.