



Task Force on State Public Defender Operations

64th Montana Legislature

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HOUSE MEMBERS

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DAVID HOWARD
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PUBLIC MEMBERS

HON. JAMES HAYNES
MIKE EAKIN
JASON TRINITY HOLDEN
WENDY HOLTON
JULI PIERCE

COMMITTEE STAFF

DAVE BOHYER, RESEARCH DIRECTOR
JULIE JOHNSON, ATTORNEY
FONG HOM, SECRETARY

MINUTES LOG

February 1, 2016
Room 137, Capitol Building
Helena, Montana

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

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Please contact the Legislative Services Division at 406-444-3064 for more information.

COMMITTEE MEMBERS PRESENT

SEN. DAVID HOWARD
SEN. JIM KEANE
SEN. CYNTHIA WOLKEN

REP. RANDY BRODEHL
REP. KIMBERLY DUDIK
REP. KENNETH HOLMLUND

MIKE EAKIN
JASON TRINITY HOLDEN
WENDY HOLTON
JULI PIERCE

COMMITTEE MEMBERS EXCUSED

HON. JAMES HAYNES

STAFF PRESENT

DAVE BOHYER, Research Director
JULIE JOHNSON, Attorney
FONG HOM, Committee Secretary

VISITORS' LIST (Attachment 1)

AGENDA (Attachment 2)

COMMITTEE ACTION

CALL TO ORDER and ROLL CALL

00:00:05 Rep. Dudik called the meeting to order at 8:32 a.m. The secretary took roll. Judge Haynes was excused. **(Attachment 3)**

00:02:23 Rep. Dudik gave an overview of the meeting agenda.

STATUS CHECK REGARDING THE STUDY PLAN - Dave Bohyer, LSD Research Director

00:02:35 Mr. Bohyer gave a status check of the study plan.

OVERVIEW OF FUTURE MEETINGS - Rep. Dudik, Chair

00:06:10 Rep. Dudik gave an overview of what needs to be done.

COMMITTEE DISCUSSION

00:07:00 The committee members discussed ways to decrease the need for public defenders, and the fact that dependent/neglect cases are what is driving the explosion in the public defender system, the absence of parents in the courtroom.

00:13:47 Rep. Brodehl distributed a document showing an example of what a strategic plan would look like. **(Exhibit 1)**

ISSUE REVIEW AND TASK FORCE MEMBER QUESTIONS

Responses to Requests for Information from December 10 Meeting - Dave Bohyer

Numbers of Federal Prosecutors and Federal Public Defenders

00:18:51 Mr. Bohyer discussed the numbers of federal prosecutors and federal public defenders. **(Exhibit 2)**

Committee Questions

00:21:14 Mr. Eakin asked about the workload of the 70 federal public defenders.

00:23:30 Mr. Holden discussed the reasons why he wanted to look at the federal public defender's system.

Other States' Salaries

00:31:38 Mr. Bohyer **(Exhibit 3)**

Committee Questions

00:37:24 The committee members discussed how helpful it is to look at what other attorneys are getting paid in the state, the average entry level salary and contract rate in Wyoming, Idaho, and North and South Dakota, and attorney's

fees in death penalty cases.

Elements from Other States' Public Defender Operations

00:43:56 Mr. Bohyer **(Exhibit 4)**

Overview of City of Billings' Ordinances

00:48:04 Mr. Bohyer **(Exhibit 5)**

Committee Questions

- 00:50:43 Rep. Dudik asked about the statute that precludes cities from adopting ordinances.
- 00:51:18 Rep. Dudik asked Ms. Johnson about a law that correlates to what Billings is doing.
- 00:51:30 Rep. Dudik asked Ms. Johnson about Armitage vs. City of Missoula.
- 00:51:56 Sen. Wolken asked Ms. Johnson how going to jail on an ordinance violation triggers a public defender.
- 00:56:10 Rep. Dudik asked about the MAP Program.
- 00:58:00 Rep. Holmlund asked how long Billings has been using ordinances.

Review/Discuss Survey - Dave Bohyer

00:59:05 Mr. Bohyer **(Exhibit 6) (Exhibit 7)**.

Committee Questions

- 01:03:02 Rep. Dudik asked what list was used to distribute the survey, and requested that the survey be distributed to law enforcement with February 29th as a cutoff date.

The Montana "Advisory Commissions - Dave Bohyer

01:05:58 Mr. Bohyer **(Exhibit 8) (Exhibit 9)**

Committee Questions

- 01:11:04 Rep. Dudik asked about the number of members on the Commission.
- 01:11:29 Sen. Keane said that the task force should be cautious in reducing the number of members on the Commission.
- 01:12:21 Rep. Dudik asked if a prosecutor can serve on the Commission. Rep. Dudik encouraged the committee to look at other quasi-judicial boards for ideas on improvements to the Public Defender's Office.

Other States' Statewide Public Defender Commissions - Dave Bohyer

01:14:14 Mr. Bohyer **(Exhibit 9)**

Overview of Role of the Montana Public Defender Commission - Julie Johnson

01:15:39 Ms. Johnson **(Exhibit 10)**

Legal Requirement - Julie Johnson

01:15:30 Ms. Johnson

Committee Questions

01:19:21 Rep. Dudik asked that the committee look at the duties of the Public Defender Commission.

BREAK (reconvened at 10:13 a.m.)

Office of Public Defender Presentations

Evidence-Based Performance and the OPD - Bill Hooks, Chief Public Defender, Office of the Public Defender

01:42:32 Mr. Hooks discussed the Performance and the Evidence-Based Performance and Case Weighting System of the Public Defender Office.

Committee Questions

01:48:13 Rep. Dudik asked about evaluation forms or tools that the Public Defender Office utilizes to track compliance of its attorneys. She requested a copy of the evaluation form.

01:50:26 Rep. Dudik asked that Mr. Hooks to discuss Exception 10, what the performance measures are, the consequences for nonperformance, OPD's caseload weighting, the appropriate balance of attorneys to support staff, and the appropriate quality of hours invested in certain types of cases. Rep. Dudik requested a copy of the written protocol for the progressive corrective actions.

OPD's Contract Attorneys - Christina Neal, Conflict Coordinator, Office of the State Public Defender

01:58:45 Ms. Neal

Committee Questions

02:06:14 Rep. Dudik requested that a written plan as suggested by Ms. Neal be completed within the next month.

Specialized Attorney Training Required for Public Defender Cases - Peter Ohman, Training Coordinator, Office of State Public Defender

02:07:18 Mr. Ohman

Committee Questions

02:13:08 Rep. Dudik asked about a training requirement.

02:14:01 Rep. Brodehl asked about enforcing the requirement for training.

OPD's Review of Contractors' Billing - Wendy Johnson, Contract Manager, Office of the State Public Defender

02:15:32 Ms. Johnson

Committee Questions

02:20:36 Rep. Dudik asked about a written protocol for review of contractor bills.

OPD Analysis on Support Staff Turnover - Harry Freebourn

02:21:06 Mr. Freebourn (**Exhibit 11**)

Committee Questions

02:25:48 Mr. Eakin asked what an “acceptable” turnover rate was.
02:26:32 Rep. Brodehl asked about exit interviews.

OPD Financial Information - Harry Freebourn

02:27:50 Mr. Freebourn (**Exhibit 12**)

Committee Questions

02:33:53 Mr. Holden asked if Mr. Freebourn’s graph included the contractor cases or just in-house cases.

OPD’s Processes for Collecting - Fritz Gillespie, Chair, Public Defender Commission

02:34:20 Mr. Gillespie (**Exhibit 13**)

Committee Questions

02:37:25 Rep. Brodehl asked about the length of time a case is kept open when making an attempt to collect and if Mr. Gillespie will be asking for legislative changes for fee collection.

NEW ISSUES PRESENTATIONS AND TASK FORCE MEMBER QUESTIONS

Dependent Neglect Pilot Project Status Report - Beth McLaughlin, Administrator, Montana Supreme Court

02:42:41 Ms. McLaughlin (**Exhibit 14**)

HB 612 - Beth McLaughlin

02:45:20 Ms. McLaughlin (**Exhibit 15**) (**Exhibit 16**)

Committee Questions

02:52:44 Mr. Eakin asked about pre-hearing conferences and treatment plans for abused and neglected children.
02:54:35 Ms. McLaughlin spoke on the issue of representation on abuse cases.
02:59:03 Ms. McLaughlin distributed data information on Direct Appeal Lifecycle for informational purposes. (**Exhibit 17**)

Legal Analyses of Various Issues - Julie Johnson, Staff Attorney

03:01:21 Ms. Johnson (**Exhibit 18**)

Committee Questions

03:12:11 Rep. Dudik asked about the court’s jurisdiction over the time allowed for final payment of a fine.
03:13:29 Rep. Brodehl asked about a disconnect between the first charge and the second charge, and whether or not a public defender be appointed for the second charge.

OPD-Child and Family Services Division: Cases Involving Dependent Neglect - Sarah Corbally, Administrator, Child and Family Services Division, Department of Public Health and Human Service

03:18:20 Ms. Corbally gave a presentation on the following: Organizational Chart (**Exhibit 19**); Timeline for judicial hearings (**Exhibit 20**); Outcomes (**Exhibit 21**); Funding Sources (**Exhibit 22**).

DIVERSION PROGRAMS

Billings Center for Children and Families - Dave Bohyer

03:34:31 Mr. Bohyer (**Exhibit 23**)

Overview of and Experience with Billings Center for Children and Families - Juli Pierce

03:35:54 Ms. Pierce

OPD Wrap-Around Services - Bill Hooks

03:45:05 Mr. Hooks

LUNCH (reconvened at 1:03 p.m.)

ELIGIBILITY ISSUES REGARDING PUBLIC DEFENDER SERVICES

Overview of Eligibility Guidelines - Dave Bohyer

04:32:57 Mr. Bohyer (**Exhibit 24**)

Committee Questions

04:37:03 Sen. Howard asked about the amount of assets a person can have.
04:38:22 Rep. Brodehl asked about assessments done by the courts.
04:39:28 Ms. Pierce responded to Rep. Brodehl's question.
04:42:36 Sen. Howard asked about the process after the paperwork is filled out.
04:43:06 Mr. Hooks responded to Sen. Howard's question.
04:46:34 Rep. Dudik asked Mr. Hooks to speak about a situation where an application for legal representation was not turned over to the public defender's office.
04:52:36 Mr. Holden asked if it is in the Office of the Public Defender's best interest to be looking for more clients or less clients.
04:56:35 Ms. Holton asked whether there is a large number of people getting through who don't qualify for the services.
04:58:57 Rep. Dudik asked if there are eligibility specialists in the OPD to take this on and is that an area that could be approved upon.

OPD's Guidelines and Processes to Determine a Hardship Exemption - Bill Hooks

05:01:50 Mr. Hooks

Committee Questions of Mr. Hooks

05:06:45 Mr. Eakin asked if the Public Defender's Office has the ability when someone is appointed counsel under hardship to collect the full cost of defense at a later date.

A Plan to Improve Indigent Defense in Montana - Mark Murphy, Montana County Attorneys' Association

05:08:04 Mr. Murphy (**Exhibit 25**)

Committee Questions

05:28:40 Sen. Wolken wanted a discussion on funding jails, and holding people accountable which could result in good public safety outcomes.
05:32:28 Sen. Wolken asked if Mr. Murphy would discuss with his members on which criminal penalties it would support or eliminate that are listed in SB90.

Proportionality Research: OPD Response - Fritz Gillespie, Public Defender Commission

05:34:40 Mr. Gillespie (**Exhibit 26**)

Public Defender Commission Efforts to Contract with National Entity - Fritz Gillespie

05:39:00 Mr. Gillespie

Committee Questions of Mr. Gillespie

05:40:28 Rep. Brodehl asked how the Office of the Public Defender is going to use the \$500,000.
05:42:39 Rep. Brodehl asked if Mr. Gillespie has contacted other organizations to see what funds are available to help put a plan together.

OPD improvement plans: duties and responsibilities

05:49:06 Mr. Gillespie (**Exhibit 27**)

Committee Questions

06:06:47 Mr. Eakin asked about collection agencies that the Office of the Public Defender had contacted.
06:08:04 Mr. Holden asked about a voucher system as proposed by Mr. Murphy.
06:09:31 Ms. Holton said there is a mechanism for collecting court costs. She asked if collection of OPD costs should be subject to a process that would take OPD out of the process.
06:13:40 Ms. Pierce asked about fees being paid in full before a deferred sentence is granted.
06:24:29 Rep. Holmlund asked how OPD accounts for the money that comes in and whether OPD tracks who still owes money.

Office of Public Defender Planning

06:31:39 Wendy Johnson discussed plans for gathering and inputting data to populate OPD database(s). (**Exhibit 28**)
06:34:38 Wendy Johnson discussed the status of OPD's written plan.
06:36:40 Wendy Johnson discussed OPD's plan to use the proficiency information it collects.
06:37:53 Mr. Hooks discussed OPD's plans for expanding non-attorney staff positions.

Public Comment

06:40:17 David Nielsen
06:43:03 Thomas Jodoin, City Attorney

BREAK (reconvened at 3:38 p.m.)

OPD Strategic Plan Discussion

- 07:08:40 Rep. Dudik asked Mr. Gillespie to speak on a strategic plan.
- 07:09:08 Mr. Gillespie discussed the OPD's work on a strategic plan, putting together goals and objectives.
- 07:10:31 Bonnie Olson, Public Defender Commission member, discussed the activities of the Commission's work on a strategic plan.
- 07:11:45 Rep. Dudik requested that Ms. Olson be on the May meeting agenda.
- 07:12:17 Sen. Keane commented on who should look at OPD's strategic plan.
- 07:14:06 Rep. Dudik said that the plan should be forwarded to Mr. Murphy, Mr. Taylor, and Ms. McLaughlin.

TASK FORCE WORK SESSION

- 07:14:36 The committee members discussed options for reorganizing the Public Defender Commission, collegiality amongst the prosecuting attorneys and the public defender attorneys, collection of fees process, the high incident of staff turnover, looking at a soft cap system imposed outside of OPD, hiring experienced attorneys with specialized knowledge, looking at OPD's strategic plan, open adoptions, what the Supreme Court thinks about the family drug treatment court model, appointment of counsel in dependent/neglect cases and not having attorneys appointed for absentee parents, parents who had not been served with paperwork, punitive parents, and how those attorneys are appointed, appointment of children's attorneys, formal mentorship programs, an evidence-based performance system, expanding drug treatment courts, and contract attorney payment rates, caseloads, and pay for public defenders.
- 07:49:50 Rep. Dudik asked Ms. Johnson to provide a legal memo on open adoptions, how it ties into what's in the child's best interests, provide an analysis on the case laws and any other guidelines, federal or state, and the "no treatment plan before an adjudication", and what treatment courts are doing for the family/drug treatments. Rep. Dudik requested that Ms. Johnson to look into the Appellate system and its budget, and to also look at other specialized courts in the state and what their guidelines are.
- 08:14:52 Rep. Dudik asked that Mr. Bohyer email Ms. McLaughlin and ask about a proposal to expand family and drug treatment courts and if that is something the Supreme Court wants to pursue.
- 08:17:52 Rep. Dudik asked Mr. Bohyer to talk with Ms. McLaughlin about the Supreme Court's position on eligibility determination.
- 08:20:39 Rep. Dudik would like a proposal from the OPD as to what it would like to see for contract attorney payment rates, caseloads, and pay for public defenders.

ADJOURNMENT

- 08:27:38 With no further business before the committee, Rep. Dudik adjourned the meeting at 4:59 p.m.

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