



Task Force on State Public Defender Operations

64th Montana Legislature

PO BOX 201706
HELENA, MONTANA 59620-1706
(406) 444-3064

HOUSE MEMBERS

RANDY BRODEHL
KIMBERLY DUDIK
KENNETH HOLMLUND

SENATE MEMBERS

DAVID HOWARD
JIM KEANE
CYNTHIA WOLKEN

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

Agenda

8:30 a.m., February 1, 2016 Room 137, State Capitol

- 8:30 I. Call meeting to order - roll call: Rep. Dudik, Chairwoman
8:35 II. Status check regarding study plan: Dave Bohyer, LSD Research Director
8:40 III. Provide overview of what needs to be accomplished in remaining meetings: Chairwoman Dudik
8:45 IV. Committee Discussion: Member thoughts on information received to date and plans to finish work: Task Force members
9:00 V. Issue Review and Task Force Member Questions
This portion of the meeting will be devoted to brief reviews of information previously provided to the Task Force and to brief presentations of new information, followed by questions from Task Force members.

Responses to Task Force requests for information from December 10 meeting

Dave Bohyer, LSD

1. Numbers of federal prosecutors (22) and federal public defenders (12, plus 70 contractors); overview of the federal public defender system in Montana
 - a. Overviews by Task Force members: Ms. Holton and Mr. Holden
2. Other states' salaries for PD attorneys and contract attorney rates
3. Other states' public defender operations -- various elements
 - a. Letter from David Carroll, Sixth Amendment Center
 - i. Other states that are in litigation regarding failure to provide constitutional public defender system.
 - ii. Other states that use a 100% contract model for public defenders.
 - iii. At least one state that separates the civil and criminal defense services provided by the OPD and provide organizational details.
 - iv. At least one state that separates the trial and appellate functions provided by the OPD and provide organizational details. (Montana)
 - v. At least one state that limits OPD support for appeals based on ineffective counsel and provide organizational details. (Montana)
 - vi. At least one state that separates OPD services for children from all OPD services for adults and provide organizational details.
4. Overview of City of Billings' efforts to supplant MCA provisions with city ordinances, including which statutes are superseded and the results of the efforts.
5. Review/discuss the survey (OPD attorneys, contract OPD attorneys, judges, County Attorneys, City Attorneys, Deputy Co. and City Attorneys, sheriffs and deputies, police chiefs and officers)
6. Montana "advisory commissions" (by any name) that advise governmental bodies
7. Other states' statewide public defender commissions: size; duties; purpose.
Julie Johnson, LSD Staff Attorney
8. What is the management structure and role of the Montana Public Defender Commission? (Previous memo)
9. Legal requirements and limitations for providing public defender services

10:00 **BREAK**

- 10:15 OPD Staff
These OPD presentations are devoted to a brief review of information previously provided by OPD to the Task Force regarding performance of OPD employed and contracted attorneys and to OPD's new ideas and recommendations for enhancing evidence-based performance of OPD employee and contract attorneys
10. Evidence-Based Performance and the OPD
 - a. Performance measures used by OPD
 - b. Consequences for non-performance -- details of quality assurance measures, progressive corrective actions, and actual outcomes
 - c. In what ways are OPD's "caseload weighting" used to determine:
 - i. staffing and caseloads for attorneys;
 - ii. the appropriate balance of attorneys to support staff; and
 - iii. the appropriate quality of and hours invested in certain types of cases?
 11. OPD's conflict management system
 - a. The pool of contract attorneys: size, distribution, use of, and written expansion plan for each PDO Region
 - b. Specialized attorney training required for dependent/neglect cases, death penalty cases, civil commitment cases and:
 - i. what required training does OPD provide to employee and contract attorneys;
 - ii. how does and how will OPD ensure compliance with the training requirements?
 12. OPD's review of contractors' billing: Extent, authority, and limitations, plus OPD's written improvement plan
 13. OPD analysis on support staff turnover
 14. OPD data on the cost of services provided by OPD-employed and by contract attorneys for different criminal charges or criminal charges by category, e.g., traffic, other misdemeanor, felony, DN, etc. OPD's written improvement plan to gather, use, and report the data more effectively.
 15. OPD's processes for collecting the \$200 or \$800 fees for misdemeanor/felony public defense required in section 46-8-113, MCA
 - a. What can OPD do to improve the efficiency and effectiveness of the current processes and what must be done to effectuate the improvement?
- 11:00 VI. New Issues Presentations and Task Force Member Questions
Dependent Neglect Pilot Project Status Report
16. Beth McLaughlin, Administrator, Montana Supreme Court:
 - a. Data collected and analyzed through the pilot project for D/N cases.
 - b. Planning for continuing, expanding, or terminating the pilot project for D/N cases.
- 11:20 Legal Analyses of Various Issues: Julie Johnson, LSD
This Legal memo provides analysis of court case(s) that illuminate when guidance or oversight of contract attorneys crosses the line to become an employer/employee relationship; lists and discusses statutes that require a GAL or CASA volunteer and an attorney who is not the GAL or CASA, discusses options for reducing the number of crimes and misdemeanors for which the penalty potentially includes jail time, and lists stackable and nonstackable statutory offenses that can ultimately lead to incarceration.
- 11:40 OPD-Child and Family Services Division: Cases Involving Dependent Neglect
17. Sarah Corbally, Administrator, Child and Family Services Division, DPHHS: A high-altitude DPHHS overview of Dependent Neglect cases, structure, processes, costs in Montana; recommendations for improving processes
- 12:00 Diversion Programs
18. Dave Bohyer, LSD: Information about Billings Center for Children and Families,
 19. Juli Pierce, Task Force member: Overview of and experience with the Billings Center for Children and Families,
 20. OPD staff: OPD "wrap-around" services and project suggested for certain regions, including services, funding, stage of planning, etc.
- 12:30 **WORKING LUNCH:** Committee Conversation about OPD Dependent Neglect Cases

- 1:00 Eligibility Issues Regarding Public Defender Services
21. Dave Bohyer: Overview of eligibility guidelines for DPHHS programs
 22. OPD staff:
 - a. OPD's written policy, guidelines and processes for determining client Eligibility for OPD services
 - b. 'Presumptive eligibility' for OPD services
 - c. OPD coordination with DPHHS or other state agencies in determining eligibility for OPD services
 - d. OPD's written guidelines and processes for determining "hardship exemption"
 - i. OPD's written definition of 'hardship' exemption
 - ii. How it "hardship" screened for and applied?
 - iii. What form is used?
 - iv. Who makes the eligibility determination?
 - v. What criteria are utilized?
 - vi. What quality assurance is utilized to ensure a hardship truly exists?
 - vii. How often is the hardship exemption granted statewide and by region?
- 1:30 A plan to improve indigent defense in Montana General Improvements for Indigent Defense in Montana: Mark Murphy, Montana County Attorneys' Assoc.
- 1:50 Proportionality Research: OPD response
Judge Haynes had asked the OPD to provide "proportionality research" in regard to contractor proficiency versus PDO/ADO staff attorney proficiency. OPD staff will respond.
- 2:05 Public Defender Commission efforts to contract with national entity, e.g. the National Conference of State Courts, for an efficiency study of PDO/ADO
- 2:10 OPD improvement plans; duties and responsibilities that could be done more effectively or efficiently and any statutory changes needed to allow the improvements to be made:
23. Agency-wide improvement proposals: OPD staff
 - a. Statutory changes needed to improve indigent defense generally, including OPD, APD, Conflict Manager, and the Commission
 - b. Statutory changes needed to improve collection of fees, e.g., \$200/\$800, imposed on defendants for public defender services provided through OPD
 - c. Options to close "inactive" cases, in particular
 24. Appellate Defender improvement proposals: ADO staff
 25. Conflict Coordinator improvement proposals: OPD Conflict Coordinator
 26. PD Commission improvement proposals: Commissioner(s).
- 2:50 OPD Planning
27. OPD's plans, including a time line, for gathering and inputting data to populate OPD database(s)
 28. Status of OPD's written plan, including a time line, for using the data/database, including how the data may improve the performance of PDO/ADO and contract attorneys
 29. Status of OPD's written plan, including a time line, for how OPD intends to work with judges, law enforcement, county attorneys, and others to get more and better information about the proficiency of PDO/ADO and contract attorneys
 30. OPD's plan to use the proficiency information it collects. What will be the frequency of OPD's collection of the proficiency information. How will the information be collected and analyzed? Who will have access to it?
 31. OPD's plans for expanding or adding non-attorney staff positions that would improve OPD's ability to effectively provide indigent defense
- 3:15 VII. Public Comment: The Task Force will entertain public comment on any topic within the Task Force's purview and within guidelines established by the Presiding Officer.

BREAK

- 3:45 VIII. Task Force Work Session
This portion of the meeting will be devoted to Task Force members discussing options for improving OPD operations.
- 32. Discussion of Possible Legislative Changes (see following page)
 - 33. Identification and discussion of legal changes to pursue
- 5:30 IX. Adjourn

Possible Legislative Changes:

1. Dependent Neglect Cases:
 - a. Change procedure for when an attorney is assigned for a parent in a child abuse and neglect case (especially in the case of putative parents or absentee parents).
 - b. Change the procedure for Dependent Neglect cases so that OPD is not involved in early stages or involved in different process to speed resolution of cases.
 - c. What changes can be made structurally to make the representation of children in Dependent and Neglect cases independent from representation of parents?
2. Misdemeanor Cases:
 - a. Change the procedure for misdemeanor cases so that OPD is not involved in early stages or involved in a different process to speed resolution of cases.
 - b. What misdemeanor offenses should have penalties changed?
3. Eligibility
 - a. Change the procedure for eligibility determination to ensure only the appropriate individuals eligible for services receive them.
4. Organizational Changes:
 - a. Change the structure of OPD to improve management of resources and accountability for performance.
 - b. What has to be done structurally, administratively, and legislatively to create an Executive Director for the OPD and make head of Trial Division, Appellate Division and Conflict Division Managers?
 - c. What changes can be made structurally and legislatively to make Appellate Division separate, financially and duties, from the other divisions (this is especially important in states where a direct appeal is permitted for ineffective assistance of counsel like Montana)?
 - d. How to improve functioning of the Conflict (and contract) system (management, attorney competence, bill review, etc.) and the role of the Legislature in making this happen (or utilizing Administrative Rules).
 - e. Change the size and duties of the Public Defender Commission.
5. Employee Performance:
 - a. Provide the design of and implementation plan for an "Evidence-Based Performance System" for the OPD.
 - b. What changes should be made to require specific training to practice in certain areas?
6. Workload v. Workforce Issues:
 - a. How to determine caseload weighting to determine staffing, caseload, and the right balance of attorney v. support staff (we need to have confidence that the system is a predictable and reliable measure of ideal staffing levels).

Develop process for caseload weighting to determine staffing, caseload, and the right balance of attorney v. support staff (We need to have confidence that the system is a predictable and reliable measure of ideal staffing levels).