



Task Force on State Public Defender Operations

64th Montana Legislature

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September 30, 2016

TO: Legislative Finance Committee

FROM: Sheri Scurr, Legislative Research Analyst

RE: Requested Update on Activities of the Task Force on State Public Defender Operations

Background

The Task Force on State Public Defender Operations was established by House Bill 627 to study the operations of the Office of State Public Defender and "develop a long-term organizational plan that will allow the OPD to provide effective assistance of counsel to those who qualify".

Summary of Activities

The task force met five times. Its final meeting was held on Tues., Sept. 12, 2016. The main agenda items at each of its meetings were as follows:

- | | |
|----------------|--|
| Sept. 17, 2015 | Constitutional and statutory duties
Professional and ethical considerations
Historical background on creation of OPD and the ACLU lawsuit
Various perspectives from the "trenches" |
| Dec. 10, 2015 | Guidelines and policies governing staff and contract attorneys for OPD
Financial and personnel information
Workload data |
| Feb. 1, 2016 | Federal public defender system
Other state public defender systems
In-depth review of Montana's public defender system
Performance measures, including for contract attorneys
Eligibility determinations and fee collections
Dependent neglect (DN) caseloads
Diversion programs
OPD strategic planning efforts |

- May 16, 2016 Further research on various information requests
- DN cases and national guidelines
 - Salaries, benefits, and training for attorneys
 - Eligibility screening and hardship determinations
 - Treatment courts
 - Pre-trial diversion and holistic defense
 - Soft-caps on caseloads
 - (various other issues)
- Survey results - comments from stakeholders in Montana
Executive work session to request preliminary bill drafts
- Sept. 12, 2016 Hearings on preliminary bill draft requests
Final actions

Bills Considered and Final Actions

The task force considered 13 bill draft proposals and voted to recommend eight bills to the full legislature, as shown in the following table.

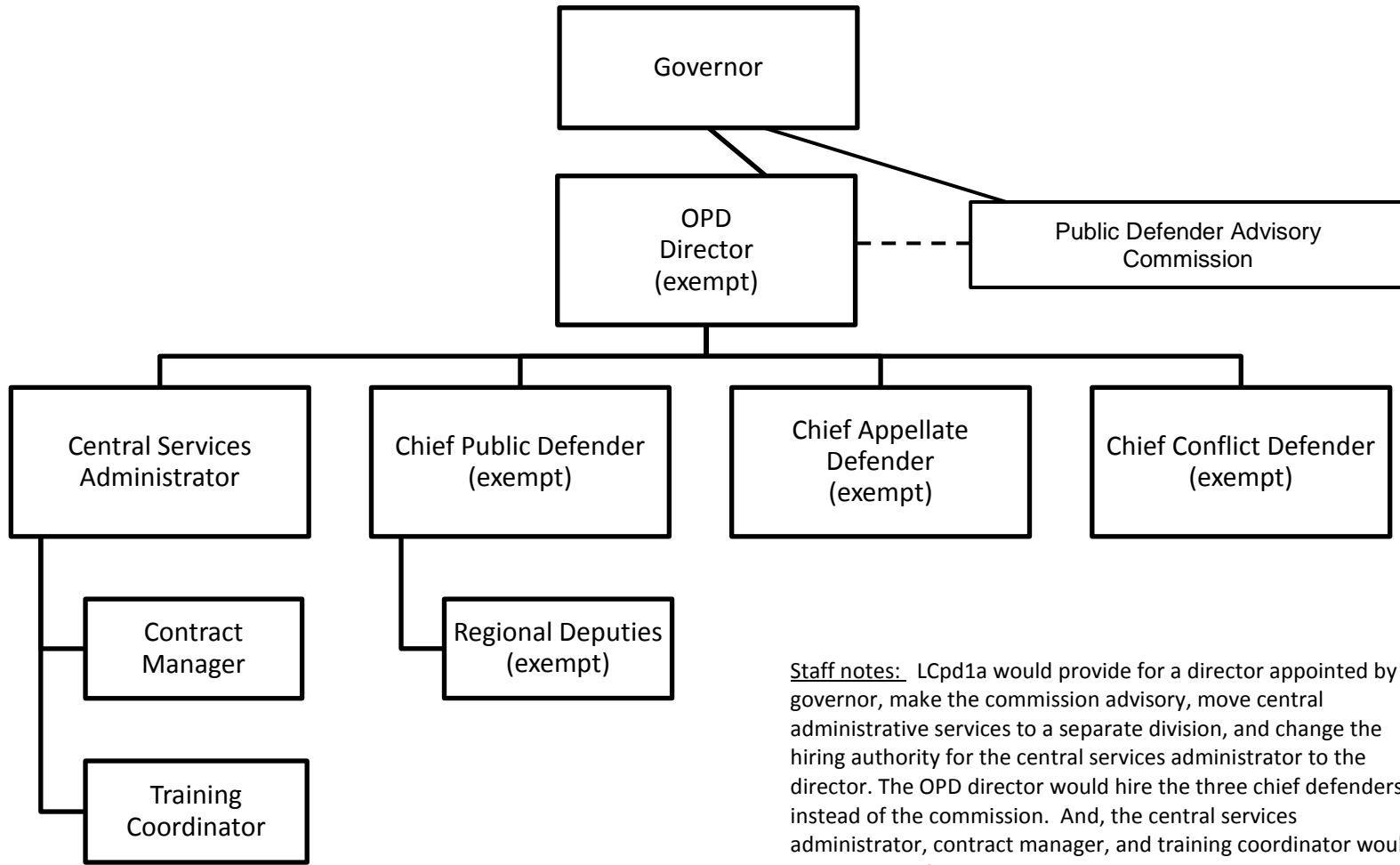
Bill No.	Description	Action
Structural changes - see also attached spreadsheet by LFD comparing costs		
LCpd1a	Governor to appoint an overall agency director. Commission to become advisory. (Amended - commission to nominate 3 candidates for director, governor to select from the list, director to be hired not appointed so may not be fired without cause) <i>- see attached organizational chart</i>	Passed 8 - 3
LCpd1b	Same as LCpd1a, except the Department of Administration director would appoint the OPD director.	Not moved
LCpd02	Establish a chief administrator hired by the commission and make other changes to enact OPD's strategic plan.	Failed 3 - 8
LCpd09	Eliminate requirement for chief appellate defender to confer with chief public defender on budget.	Passed 11 - 0

Bill No.	Description	Action
Eligibility determination and payment for services		
LCpd03	Transfer determination of eligibility to presiding court.	Motion withdrawn
LCpd04	Transfer determination of eligibility to DPHHS.	Passed 6 - 5
LCpd05	Make the Montana Department of Revenue responsible for collecting the any fees for public defender services imposed by a judge pursuant to section 46-8-113, MCA.	Passed 10 - 1
Workload management - contractor rates		
LCpd06	Establish a holistic defense pilot program in up to four locations.	Passed 10 - 1
LCpd07	Require the Public Defender Commission to contract for a workload assessment study.	Passed 10 - 1
LCpd08	Clearly grant to the Public Defender Commission and the OPD the authority to set different contractor rates in different areas of the state. (Discussion determined commission may do this under current law.)	Not moved
LCpd10	Revise appointment of public defender to a putative father in a dependent neglect case.	Passed 10 - 1
LCpd11	Statutorily require the Public Defender Commission to set "soft caps" for OPD and appellate defender contractor caseloads.	Not moved
New	Revise appointment of public defender to an absent parent in dependent neglect case.	Passed 7 - 5

For more information

For more information about the task force's activities, visit the task force website at www.leg.mt.gov/tfspdo or contact Sheri Scurr, task force staff, at sscurr@mt.gov or 406-444-3596.

Chart 1a – LCpd1a (Haynes motion)
 Appointment/Hiring Structure
 Public Defender System



Staff notes: LCpd1a would provide for a director appointed by the governor, make the commission advisory, move central administrative services to a separate division, and change the hiring authority for the central services administrator to the director. The OPD director would hire the three chief defenders instead of the commission. And, the central services administrator, contract manager, and training coordinator would become classified positions. The contract coordinator title would be changed to Chief Conflict Defender and the position would become exempt.

9/12/16 amendments:
 Commission to nominate 3 candidates for director
 Governor must select director from list
 Director to be hired, not a political appointee, so may not be fired without cause

**OPD Taskforce
Options for Management of OPD**

Position	Current Statutes		Option 1a		Option 1b		Option 02	
OPD Director			\$137,986	Exempt	\$137,986	Exempt		
Chief Public Defender	\$134,671	Exempt	134,671	Exempt	134,671	Exempt	\$134,671	Exempt
Appellate Defender/Chief Appellate Defender	121,336	Exempt	121,336	Exempt	121,336	Exempt	121,336	Exempt
Conflict Manager/Chief Conflict Defender	113,941	Non-exempt	108,001	Exempt	108,001	Exempt	108,001	Exempt
Regional Deputies (11)	1,304,396	Exempt	1,304,396	Exempt	1,304,396	Exempt	1,304,396	Exempt
Administrative Director/Central Service Administrator/Chief Administrator	124,003	Exempt	128,343	Non-exempt	128,343	Non-exempt	124,003	Exempt
Training Coordinator	118,161	Exempt	122,296	Non-exempt	122,296	Non-exempt	118,161	Exempt
Chief Contract Manager/Contract Manager	108,001	Exempt	111,781	Non-exempt	111,781	Non-exempt	108,001	Exempt
Total	\$2,024,508		\$2,168,809		\$2,168,809		\$2,018,567	
Cost difference from Current Statutes	-		\$144,301		\$144,301		(\$5,940)	

Assumptions

1. 2080 hours per year
2. 27% adder for benefits
3. Longevity at 3.5% based on 10 years of service (approximate age of agency) except where the current incumbent has more service credit
4. Moving from exempt to non-exempt would have a marginal cost related to the addition of longevity
5. OPD Director position base salary is based on the current salary for other agency heads (exempt from 2-18-103, MCA parts 1 through 3 and 10)