



Task Force on State Public Defender Operations

64th Montana Legislature

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HOUSE MEMBERS

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SENATE MEMBERS

DAVID HOWARD
JIM KEANE
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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

December 10, 2015
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

REP. KIMBERLY DUDIK, Chair
REP. RANDY BRODEHL, Vice Chair
SEN. JIM KEANE

REP. KENNETH HOLMLUND

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

COMMITTEE MEMBERS EXCUSED

SEN. DAVID HOWARD
SEN. CYNTHIA WOLKEN

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

00:00:01 Rep. Dudik called the meeting to order at 9:07 a.m. The secretary called roll. Sen. Howard and Sen. Wolken were excused. **(Attachment 3)**

STATUS CHECK REGARDING STUDY PLAN

00:03:11 Dave Bohyer, Research Director **(Exhibit 1)**

Committee Questions

00:08:01 Rep. Dudik asked that the Public Defender Office provide a strategic plan that outlines improvements to the public defender system.

LEGAL AND POLICY GUIDELINES AFFECTING OPD AND CONTRACT ATTORNEYS

Training and continuing education of contract and OPD staff attorneys - Julie Johnson, Staff Attorney

00:09:24 Ms. Johnson presented her response of the questions asked by the Task Force **(Exhibit 2)**, Misdemeanor Criminal Case Checklist **(Exhibit 3)**, and Initial Client Interview Form **(Exhibit 4)**.

Criteria for selecting and excluding contract attorneys - Julie Johnson

00:15:31 Ms. Johnson discussed two documents: the Attorney's Education and Experience Questionnaire **(Exhibit 5)** and How to Become an OPD Contract Attorney **(Exhibit 6)**.

Sanctions for official misconduct or ineffective assistance of counsel - Julie Johnson

00:21:55 Ms. Johnson

Agency or statutory requirements for serving as a child's attorney - Julie Johnson

00:24:20 Ms. Johnson discussed the documents "Representation of Children in Dependent/Neglect Cases". **(Exhibit 7)**

Committee Questions of Ms. Johnson

00:26:06 Rep. Dudik asked about the appointment of a guardian ad litem.

Legal guidelines for the appointment of an attorney for a child - Julie Johnson

00:32:26 Ms. Johnson

Committee Questions of Ms. Johnson

00:35:22 Mr. Eakin asked about the motion to rescind.

00:36:43 Judge Haynes commented on the Supreme Court funding attorney appointments.

00:37:13 Rep. Dudik asked Judge Haynes about referral cases.

Guidelines regarding client and OPD latitude for plea agreement, jury trial, client testimony, appeals - Julie Johnson

00:39:03 Ms. Johnson

Committee Questions of Ms. Johnson

00:43:44 The committee members asked about attorneys involved in child abuse and neglect cases, out-of-state attorneys having to meet OPD's requirements as a contract attorney, the oversight or proficiency determinations that are conducted by contract attorneys, a format for OPD employees or contract attorneys that allows them to tell a client that his case is frivolous, guidelines or standards for attorneys meeting with their clients before initial appearance or court hearings, standards or guidelines for contract attorneys representing both the children and parents of the children, whether a periodic review is conducted for contract attorneys, and updating laws regarding standards for representation of children.

OPD CONFLICT COORDINATION - Kristina Neal, Conflict Coordinator, OPD

01:04:07 Ms. Neal (**Exhibit 8**)

Committee Questions of Ms. Neal

01:24:15 The committee members asked about the Conflict Unit , payment discretions for contract attorneys, rights to an attorney for parents who might or might not be the biological parent of the child, staff attorneys and contract attorneys in the Conflict Unit, the hourly rate paid to contract attorneys, the amount of office expense of a contract attorney, caps in dollar amounts that are placed on particular cases, and travel reimbursements.

01:53:26 Rep. Dudik asked Ms. Neal to report back with a model on capping the dollar amount paid on particular cases.

01:56:18 Rep. Dudik requested a strategic plan for targeting areas that are low in having available attorneys and how to grow that attorney base.

02:00:33 Rep. Dudik referred the committee to a document "In re the rules of professional conduct". She asked Ms. Johnson to give an outline on what control of the Office of Public Defender has over cases.

BREAK (reconvened at 11:34 a.m.)

OVERVIEW OF OPD INFORMATION AND DATA

Wide-ranging financial, personnel, management, and performance information, and performance information - Harry Freebourn, Administrative Director, OPD

02:27:00 Organizational Structure. (**Exhibit 9**, tab 3)

02:34:26 Personnel numbers: FY 15 Agency Statistics. (**Exhibit 9**, tab 4)

02:45:18 Job classifications and compensation. (**Exhibit 9**, tab 5)

Committee Questions of Mr. Freebourn

02:37:42 Rep. Dudik asked about attorneys for cases in district court and in courts of limited jurisdiction and eligibility for assignment of a public defender.

03:05:40 Judge Haynes asked about unionizing staff in the Conflict Coordinator's Office.

03:07:01 Mr. Hooks gave a presentation on workload data (**Exhibit 9**, tab 7) and the rules for the Case Weight System (**Exhibit 10**).

Committee Questions of Mr. Hooks

03:15:04 The committee members asked about the Case Weighted System, comp time and vacation for the Public Defender attorneys, tracking costs incurred by attorneys, information per type of case and the charge or combination of charges, case duration by year, turnover for staff, and data regarding average costs per case per year.

LUNCH (reconvened at 1:43 p.m.)

OVERVIEW OF OPD INFORMATION AND DATA (continued)

04:26:45 Harry Freebourn gave a presentation on office space rental/leases. (**Exhibit 9**, tab 8)

04:28:03 Fritz Gillespie, Acting Director, Appellate Defender Office, discussed the workload of the Appellate Defender Office.

Committee Questions

04:29:40 Rep. Dudik asked Mr. Gillespie about breaking down the productivity of staff attorneys as compared to contract attorneys, if the attorney pool is going to be expanded, is it better to contract out, and what kinds of cases will be given to contract attorneys or to staff attorneys.

04:32:11 Koan Mercer, Assistant Appellate Defender, responded to Rep. Dudik's question.

04:33:26 Judge Haynes asked Mr. Mercer about evaluating the proficiency of appellate attorneys.

04:35:07 Rep. Dudik asked for that information and a copy of a report written by Mr. Zalenski.

04:35:24 Ms. Holton asked Mr. Gillespie about the length of time getting a case briefed and recruiting people to take some of the caseload.

04:36:47 Rep. Brodehl asked Mr. Gillespie about the number of prosecutors being less than the number of public defenders.

04:41:25 Rep. Dudik would like a report from the Appellate's Defenders Office showing the average cost for the past two years for staff attorneys as compared to how much they are paying contract attorneys.

04:42:17 Wendy Johnson, Contract Manager, Office of the State Public Defender, gave a presentation on the Memorandum of Understanding (MOU) and contracts with attorneys.

Committee Questions

04:49:45 Rep. Holmlund asked Ms. Johnson about observing a contract attorney's work in the court.

04:50:30 Judge Haynes asked Ms. Johnson about overseeing attorney contracts and proportionality of attorney expenses.

04:55:02 Mr. Holden asked the panel about attorneys expressing concerns about the imposition of mandatory minimums and stacking offenses that might result in a

- greater workload.
- 04:57:58 Rep. Dudik requested a written plan from all the divisions about attorneys will be used what you plan to do with that information, what's being tracked and how it's going to be used to improve performance, to have a solid plan for how that can be used going forward. Also, heard concerns about not getting feedback from judges. If we can have a written plan on how information.
- 05:01:06 Rep. Brodehl suggested having input from the law enforcement and prosecutors.

DISTRICT COURT WORKLOAD AND PUBLIC DEFENDER IMPACTS - Beth McLaughlin, Administrator, Montana Supreme Court

- 05:03:16 Ms. McLaughlin gave a presentation on "Criminal Violations Filed" (**Exhibit 11**); "Case Type Category" (**Exhibit 12**); and "2015 District Court Case Filing Review" (**Exhibit 13**).

Committee Questions of Ms. McLaughlin

- 05:21:21 Rep. Dudik asked for suggestions to improve the Public Defender System.
- 05:25:14 Rep. Brodehl asked how long before the Supreme Court anticipates having data that shows changes in the Dependent Neglect cases.
- 05:28:55 Sen. Keane asked if there was any discussion on isolating the part of the system that controls costs.

BREAK (reconvene at 2:52 p.m.)

PRINCIPLES AND PRACTICES OF PUBLIC DEFENSE SYSTEM

Ten Principles of a Public Defense Delivery System, ABA, 2002 - Dave Bohyer

- 05:46:21 Mr. Bohyer (**Exhibit 14**) and (**Exhibit 15**)

Committee Questions

- 06:01:15 The committee members asked for more information on equivalent hours of contract attorneys, if there has been a recent study of prosecutors having comparable salaries with the salaries of public defender attorneys, and looking at the salaries of public defenders in neighboring states.

The Ten Principles and How Montana and Other Jurisdictions Practice Them - Dave Bohyer

- 06:06:18 Mr. Bohyer (**Exhibit 15**) (**Exhibit 16**) (**Exhibit 17**)

Committee Questions

- 06:13:32 The committee asked about contract rates for contract attorneys in the states that were discussed, and how a public defender commission is established in other states.

TASK FORCE DISCUSSION

- 06:28:29 The committee requested more information on the federal system of public defenders, Child and Family abuse issues, public defender budgets in other states, actual costs per case for state/agency, conducting a survey of former contract attorneys, legislation that would reduce the number of crimes that have jail term at risk which would reduce the number of public defender requirements,

and eligibility requirements for the public defender system.
06:45:41 Rep. Dudik also requested more information whether other states have a separate civil and criminal division, a separate appellate office, and a separate child division in their public defender systems.

PUBLIC COMMENT

06:47:17 Jim Taylor, Legal Director, ACLU of Montana
06:57:47 Jim Smith, Montana County Attorneys Association
07:03:45 Mark Murphy, County Attorneys Association
07:13:52 Dave Nielsen, Montana League of Cities and Towns
07:17:27 Roger Nasset, Chief of Police, Kalispell
07:23:42 Margaret Novak, Public Defender Commission
07:33:11 Bonnie Olson, Public Defender Commission

07:36:54 Mr. Bohyer briefly discussed the requested information in the meeting packet.

ADJOURNMENT

07:38:51 With no further business before the committee, Rep. Dudik adjourned the meeting at 4:46 p.m.

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