

1 HOUSE JOINT RESOLUTION NO. 20

2 INTRODUCED BY K. DUDIK

3

4 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF
5 MONTANA TO STUDY THE OPERATIONS OF THE OFFICE OF THE PUBLIC DEFENDER TO DETERMINE
6 THE APPROPRIATE LEVEL OF RESOURCES TO ALLOW THE OFFICE TO PROVIDE EFFECTIVE
7 ASSISTANCE OF COUNSEL TO THOSE THAT QUALIFY.

8

9 WHEREAS, the Office of the State Public Defender (OPD) was established by the Montana Public
10 Defender Act (Act) by the 2005 Montana Legislature and the Act is codified in Title 47, MCA; and

11 WHEREAS, the Act was established to provide effective assistance of counsel in Montana to those
12 individuals that qualified under the Act and to settle a lawsuit against the State of Montana and a certain number
13 of counties brought by the Montana Chapter of the American Civil Liberties Union; and

14 WHEREAS, OPD is supervised by the Montana Public Defender Commission, whose members are
15 appointed by the Governor; and

16 WHEREAS, OPD contains two programs: the Public Defender Program (PDP) and the Appellate
17 Defender Program (ADP); and

18 WHEREAS, the PDP had a 12% increase in its new case inflow during fiscal year 2012 and expects
19 another 4% increase during fiscal year 2013; and

20 WHEREAS, the PDP now provides legal services to over 32,000 new cases per fiscal year, an increase
21 of 5,000 cases over its 5-year average of 27,000 cases and, therefore, needs additional resources in the form
22 of attorneys, investigators, and legal support staff to handle this new level; and

23 WHEREAS, the PDP, because of its pay structure and the added pressures related to increased
24 caseloads, had 27% turnover in its attorney workforce and 36% turnover in its legal support staff during fiscal year
25 2012 and expects similar turnover numbers in fiscal year 2013; and

26 WHEREAS, the ADP experienced a 17% increase in direct appeals during fiscal year 2012 and an 18%
27 increase in appeals during the first half of fiscal year 2013; and

28 WHEREAS, due to the ADP's pay structure and the added pressures related to its increased caseload,
29 the ADP had a 44% turnover rate in its attorney workforce in fiscal year 2012 and a 100% turnover in its legal
30 support staff workforce in the first half of fiscal year 2013; and

1 WHEREAS, the Chairman of the Joint Appropriations Subcommittee on the Judicial Branch, Law
2 Enforcement, and Justice, during a presentation of the OPD budget to the House Appropriations Committee,
3 stated that a study bill was in order.

4
5 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE
6 STATE OF MONTANA:

7 That the Legislative Council be requested to designate an appropriate interim committee, pursuant to
8 section 5-5-217, MCA, or direct sufficient staff resources to study the operations of the Office of the Public
9 Defender to determine the appropriate level of resources to allow OPD to provide effective assistance of counsel
10 to those that qualify for assistance.

11 BE IT FURTHER RESOLVED, that the study must examine:

12 (1) the constitutional and statutory duties of OPD and the ethical considerations of attorneys employed
13 by OPD;

14 (2) the effects of attorney compensation and caseloads on the recruitment and retention of attorneys;

15 (3) workload impacts experienced by administrative and support staff;

16 (4) types of cases attorneys are assigned;

17 (5) measures and resources that could be implemented or assigned to improve recruitment and retention
18 issues;

19 (6) how other states provide assistance of counsel to those who qualify for assistance, including how
20 those states structure and fund their offices or programs and any litigation on the structure and funding of those
21 offices and programs; and

22 (7) any other issues related to the duties, funding, and ethical obligations of OPD that the committee feels
23 are relevant to determine the appropriate level of resources to allow OPD to accomplish its constitutional and
24 statutory duties.

25 BE IT FURTHER RESOLVED, that the study examine the possibility and costs of a restructure of OPD
26 that would include creating a criminal division, a civil division, and a division for representation of children.

27 BE IT FURTHER RESOLVED, that the study should involve input from the various stakeholders of OPD
28 and the legal system.

29 BE IT FURTHER RESOLVED, that to the extent possible, the committee or staff should consult with
30 outside experts about Montana's system and the systems in other states.

