



Montana Legislative Services Division
Office of Research and Policy Analysis
David D. Bohyer, Director

PO BOX 201706
Helena, MT 59620-1706
(406) 444-3064
FAX (406) 444-3036

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TO: Members of the Law and Justice Interim Committee
FROM: Dave Bohyer *[Signature]*
RE: Status update on the Task Force on State Public Defender Operations

The Task Force conducted its third meeting of the interim on February 1. The meeting covered topics ranging from federal public defenders to information about other states' public defender offices to legal distinctions between attorney-employees and independent attorney-contractors to options for reducing the number of crimes for which jail time is an option, each of which bears on the operations of the Office of the State Public Defender, prosecutors, and the Judiciary.

As might be expected, the many questions that have been answered seems only to have generated more questions. The Task Force members have tried to focus on policy matters rather than on management issues, personnel, or personalities. Even so, questions and concerns remain about topics ranging from the size and composition of the Public Defender Commission to the organizational structure of the Office of Public Defender to the competitiveness of PD attorneys' compensation to employee turnover to caseload management to employee-attorney and contract-attorney performance and efficiency. I have included a list of Task Force members' questions asked and information requests made at the February meeting, which will be addressed at the scheduled May 16 meeting.

Additionally, the concept of "holistic defense" was raised at the February meeting and will be discussed further at the May 16 meeting. In short, the holistic defense concept is aimed at keeping individuals out of the courts and jails/prisons, potentially through providing counseling or treatment for alcohol/chemical dependency, parenting education, job training, employment counseling, housing alternatives, and other social services, broadly speaking.

The Task Force also wants to visit the issue of the disproportional number of American Indians caught up in the criminal justice system and, thus, affecting the operations of the Office of Public Defender and, on parallel tracks, the judiciary, probation and parole, and jails and prisons.

Suffice it to say that the Task Force has not yet discovered a magic solution for reducing public defender caseloads or reducing the cost of providing constitutionally required indigent defense services. With only two meetings remaining, May 16 and September 12, the Task Force members will be compelled to focus their collective attention and energy on the elements of the operations of the Office of State Public Defender that may potentially have the most beneficial effects.

Questions Asked and Information Requests Made by the Task Force on State Public Defender Operations

February 1, 2016

Compiled by Dave Bohyer, LSD Research Director

Requester	Summary of Request
Dudik	Results of survey; analysis
Pierce	Options for reorganizing PD Commission?
Pierce	Options for professional administration and supervision of OPD, ADO, Conflicts, Contracts?
Brodehl	Comparative salary <u>and</u> benefits?
Dudik	Seek reaction from Judiciary regarding expansion of family and drug treatment courts to relieve caseloads in District and SupCo.
Dudik	What are the ABA or National Assoc. for Children guidelines for appt. of attorney for absentee parent in DN cases?
Dudik	Option to add ExDir for OPD; use 47-1-105 duties.
Dudik	Option to revise PDC duties to only advise ExDir, nothing more.
Holden	Option to add an admin officer for PDO, ADO, CCO.
Brodehl	Ask OPD and Judiciary for collaborative solution to collection of fees due for OPD/ADO represent.
Howard	Judiciary willingness to make eligibility determination.
Dudik	Option for adding prosecutor to PDC
Dudik	Statutorily separate OPD, ADO, CCO, and PDC; authority/duties; budgets.
Pierce	Options to improve training?
Keane	Options to improve retention?
Keane	Options to reduce caseloads?
Holden	Options for enhancing "accountability" through better information?
Keane	Reaction from ACLU, courts, prosecutors, et al., to PDC strategic plan at May meeting.
Howard	How many OPD applicants receive "hardship" designation? OPD investigation of income? Applicant prosecution?
Brodehl	If an OPD attorney is not required in a first case (for which there is no possibility of jail), is one required in a follow-on case to the original, e.g., where contempt of court (and jail) is possible?
Dudik	In regard to Rep. Brodehl's question in #11: If attorney is required in 2nd case, is the requirement constitutional, statutory, or case law?
Pierce	Re DN cases: What are minimal legal requirements for appointment of counsel for: parents; putative father; child(ren)?
Holden	Option for collecting administrative fee prior to OPD services?
Eakin	What effect would open adoption (for DN cases?) have on OPD caseload?
Dudik	Legal memo on open adoptions and "child's best interest"; option for no treatment plan prior to adjudication; drug treatment courts as option to JP/District Court.
Dudik	Legal guidelines for family and drug treatment courts?
Dudik	Options for "soft caps" on contract services
Dudik	Examine (optional) duties of PDC
Eakin	Options for diversion from system before charges are filed?
Brodehl	Joint proposal from County Attorneys' Assoc. and OPD re "voucher" option.

Requester	Summary of Request
Dudik	Re DN cases: Copy of written processes and forms used by CFS and by Courts
Brodehl	SupCo pilot project report in July.
Dudik	Options to scandalize family and drug treatment courts?
Dudik	Copy of OPD evaluation form(s) for attorneys & contractors
Dudik	Provide "everything" OPD uses to evaluate OPD attorneys and contractors.
Brodehl	Design for an evidence-based performance system.
Brodehl	Proposal for addition of social workers, other nonattorneys to shoulder nonattorney work now done by attorneys?
Howard	OPD recommendation for/on a soft-cap system and eligibility determination.
Brodehl	OPD's recommendation for the best use of 11 FTE for eligibility determination.
Holton	Options to address known issues associated with caseloads, attorney pay, contractor pay.
Dudik	Recommendations to link FTE and CWS to numbers of attorneys, paraprofessionals, other staff.
Dudik	Specific recommendations to address retention issues; mitigate turnover.
Dudik	Description (visual/flow chart?) of OPD processes re eligibility determination and fees.
Dudik	Historical actions for OPD supplementals, requests for funding and OPD; include appropriation in SB 410.
Dudik	Status of "holistic" defense/Bronx project pilot in Missoula?
Brodehl	Options for collection of 46-8-113 fees; 46-18-251?
Dudik	OPD proposal to establish a formal mentorship program for attorneys.
Holmlund	Calendar for OPD training events
Holden	What is # and % of OPD cases where services are initially provided then rescinded due to ineligibility determination?
Dudik	PDC strategic plan for all OPD services for May agenda.
Wolken	Will brief Task Force at May 16 mtg. on Commission on Sentencing action in re sentencing revisions, e.g., SB 50.
Dudik	Examples of written protocols when reviewing contractor invoices
Dudik	Written plan for collecting, inputting, and using "performance feedback" for OPD attorneys and contractors.
Dudik	Written plan to expand contract attorney pools in each Region