

May 2018

Law and Justice Interim Committee
Rachel Weiss

POSSIBLE STATUTORY CHANGES TO CLARIFY LEGISLATIVE OVERSIGHT OF THE OFFICE OF STATE PUBLIC DEFENDER

Purpose

The Law and Justice Interim Committee (LJIC) may wish to consider a committee bill to revise two laws related to its oversight duties for the Office of State Public Defender (OPD). The two possible changes are highlighted below.

Clarify the committee assigned to oversee the OPD during interims

The 2017 Legislature made several revisions to the organizational structure and duties of the OPD. One of the revisions inadvertently removed language that clarifies the interim committee that is responsible for overseeing the OPD operations during the interim.

The OPD is administratively attached to the Department of Administration (DOA). The State Administration and Veterans' Affairs (SAVA) Interim Committee is required by [section 5-5-228, MCA](#), to conduct interim agency oversight for the DOA. However, given the LJIC's subject matter knowledge and interest in OPD affairs, [section 5-5-226, MCA](#), specifically assigns oversight of the OPD to this committee. To avoid any conflict between those two statutes, section 5-5-228, MCA, [previously contained language exempting the OPD](#) from SAVA oversight. That exemption language was stricken from section 5-5-228, MCA, in the 2017 session by [House Bill 77](#), which revised the organizational structure of the OPD.

The LJIC members might consider putting the exemption back into section 5-5-228, MCA, to ensure there is not uncertainty about the interim committee that has oversight duties for OPD. The current and previous versions of the affected sections of law are attached to this paper with the relevant subsections highlighted.

Add required report to codified statute

In 2005, the Legislature created the statewide public defender system by enacting [Senate Bill 146](#). In addition to consolidating the public defender functions previously performed and funded on the county-level, the bill required various reports and data to be collected.

One of these reports requires the Legislative Fiscal Analyst (LFA) to compare general fund revenue, statutory entitlement share payments to local governments, and actual costs to operate the statewide public defender system. The report must be provided to the governor, the Legislative Finance Committee, the Law and Justice Interim Committee, and the Montana Supreme Court.

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Although the bill was enacted in 2005, the analysis was to start in 2011 and continue at 5-year increments after that year. Unlike most ongoing reports that the Legislature requires, this particular subsection of SB 146 was not codified, meaning it wasn't assigned a specific statute number for future reference. (Codified sections are those printed with statute numbers in the Montana Code Annotated books.) However, because the report is in session law (section 72, Ch. 449 , Laws of 2005), it is still a required duty of the LFA.

As of this interim, the analysis has not been performed or the report provided to the various stakeholders nor were current legislative or agency staff aware of the requirements until the agency staff rediscovered the subsection earlier this year.

The LJIC members might consider a bill draft to revise statute either to ensure the analysis and report are completed as the 2005 Legislature required or to eliminate the report from session law. The LJIC would have at least three options in this regard, the first two of which would require legislation:

1. Move the report requirement from session law into a codified section of the Montana Code Annotated to make it easier to track;
2. Eliminate the report requirement from session law; or
3. Take no action.

Even if the LJIC or a future legislature took no action on this matter, the LFA is still required to report the information.

The section of SB 146 that creates the report is attached to this paper and available on the LJIC's webpage for the May 2018 meeting.

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