



# Task Force on State Public Defender Operations

## 64th Montana Legislature

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### HOUSE MEMBERS

RANDY BRODEHL  
KIMBERLY DUDIK  
KENNETH HOLMLUND

### SENATE MEMBERS

DAVID HOWARD  
JIM KEANE  
CYNTHIA WOLKEN

### 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

September 17, 2015  
Room 102, 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.

Access to an electronic copy of these minutes and the audio or video recording is provided from the Legislative Branch home page at <http://leg.mt.gov>. On the left-side menu of the home page, select Committees, then Interim. Once on the page for Interim Committees, scroll down to the appropriate committee. The written Minutes Log, along with the audio and video recordings, is listed by meeting date on the interim committee's web page. Each of the "Exhibits" is linked and can be viewed by clicking on the Exhibit of interest. All Exhibits are public information and may be printed.

Please contact the Legislative Services Division at 406-444-3064 for more information.

### COMMITTEE MEMBERS PRESENT

SEN. DAVID HOWARD  
SEN. JIM KEANE  
SEN. CYNTHIA WOLKEN

REP. RANDY BRODEHL  
REP. KIMBERLY DUDIK  
REP. KENNETH HOLMLUND

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

### STAFF PRESENT

DAVE BOHYER, Research Director  
JULIE JOHNSON, Attorney  
FONG HOM, Committee Secretary

## VISITORS' LIST ([Attachment 1](#))

## AGENDA ([Attachment 2](#))

### COMMITTEE ACTION

The Task Force reviewed and revised the Proposed Study Plan for conducting the House Bill No. 627 study of the State Public Defender Office's operations. The revisions included prescribing guidelines to staff for identifying other states' indigent defense systems to compare to Montana's, and revising the future meeting dates of the Task Force.

Staff was directed to identify Public Defender Operations in other states that::

- carry an annual caseload of about 34,000 cases;
- are not in litigation (for alleged violation of constitutional requirements for providing indigent defense);
- have a commission structure similar to the Montana Public Defender Commission;
- use the "business manager" model;
- has a separate child (Dependent Neglect) division; and
- use the civil/criminal structure; and use guardians ad litem and court-appointed special advocates.

The Task Force also took the following actions:

- allow proxies from excused members in written form and delegated to another Task Force member;
- tentatively adopted the *Rules, Guidelines, and Procedures for Interim Committees* as the Task Force's operating rules;
- elected Rep. Kim Dudik as Presiding Officer and Rep. Randy Brodehl as Vice Presiding Officer; and
- approved the meeting schedule as set out in the Proposed Study Plan with the following changes: the December 4 meeting date change to December 10, 2015, and the February 5 meeting date change to February 1, 2016.

### CALL TO ORDER and ROLL CALL

00:00:25 Sen. Howard called the meeting to order at 8:20 a.m. The committee secretary noted roll visually. ([Attachment 3](#))

### MEMBER INTRODUCTIONS

00:00:53 The members of the Commission and the staff introduced themselves.

### OVERVIEW OF HB 627 - Dave Bohyer, Research Director, Legislative Services Division

00:08:23 Mr. Bohyer ([Exhibit 1](#))

### LEGAL OVERVIEWS

Julie Johnson, Staff Attorney, Legislative Services Division  
Fritz Gillespie, Chairman, Public Defender Commission  
Bill Hooks, Chief Public Defender, Office of Public Defender  
Wade Zolynski, Chief Appellate Defender, Office of Appellate Public Defender  
Kristina Neal, Conflict Coordinator, Office of Conflict Coordination

### **Constitutional duties of OPD - Julie Johnson, Staff Attorney**

00:14:44 Ms. Johnson ([Exhibit 2](#))

### **Statutory duties of OPD - Julie Johnson**

00:29:45 Ms. Johnson ([Exhibit 3](#))

00:39:21 Mr. Gillespie

00:51:30 Mr. Hooks

01:07:50 Mr. Zolynski ([Exhibit 4](#))

01:18:33 Ms. Neal

01:26:58 *Sen. Keane arrived and briefly introduced himself.*

### Committee Questions

01:29:20 Rep. Dudik asked Harry Freebourn, Administrator, Office of the Public Defender, to provide information on the sources of funding for the Office of Public Defender.

01:34:58 Rep. Brodehl asked Mr. Gillespie about one-time only funding to hire someone to look at increasing collections.

01:43:34 Judge Haynes asked Mr. Gillespie about the criteria for eligibility for public defender service.

01:50:22 Sen. Wolken asked Mr. Gillespie if there are any analyses done on tracking the public defender caseloads with the rise in people who qualify for services.

01:58:55 Rep. Holmlund asked Mr. Hooks about the number of dependent neglect cases and the percentage of time a public defender attorney would spend on those cases.

02:03:59 Rep. Dudik asked Mr. Zolynski and Mr. Hooks about using contract attorneys vs. using staff attorneys.

02:09:07 Rep. Brodehl asked Mr. Hooks about the assignment of attorneys to Dependent Neglect cases.

002:12:22 Ms. Pierce asked about the number of new cases that involve felonies, misdemeanors, DN cases, involuntary commitments, or all of the statutory cases that the public defender's office is required to take.

**BREAK** - reconvene at 10:52 a.m.

### Public Comment

None

### **PROFESSIONAL AND ETHICAL RESPONSIBILITIES OF OPD ATTORNEYS - Julie Johnson, Staff Attorney**

02:32:56 Ms. Johnson

### Committee Questions

02:38:23 Rep. Holmlund asked if the Supreme Court has ever defined what they meant by "prompt investigation".

**HISTORICAL BACKGROUND ON CREATION OF MONTANA OFFICE OF PUBLIC DEFENDER - Niki Zupanic, American Civil Liberties Union of Montana**

02:38:47 Ms. Zupanic briefed the Task Force on the ACLU's involvement in the establishment of the State Office of Public Defender.

Committee Questions

03:07:43 Sen. Keane asked Ms. Zupanic if she would provide information on how other states fund their public defender offices.

**LUNCH BREAK** - reconvene at 1:03 p.m.

**HISTORICAL BACKGROUND ON THE EVOLUTION OF INDIGENT DEFENSE - James Park Taylor, University of Montana Law School and Montana ACLU**

04:44:29 Mr. Taylor ([Exhibit 5](#))

Committee Questions

05:20:04 Rep. Dudik discussed ideas of changing various criminal statutes so that imprisonment would not be a risk for certain misdemeanor offenses, changing the ways an attorney is appointed to represent children in Child Abuse and Neglect Cases, and changing the law of not having an attorney appointed to the case until a father is identified, served, and appeared.

05:23:42 Rep. Brodehl asked about money spent per defendant.

05:24:15 Rep. Brodehl requested that Mr. Taylor provide information of where Montana is in money spent per defendant as compared to the nation.

05:26:28 Mr. Eakin asked about the reimbursement rate for federal public defender contract attorneys.

**VIEWS FROM THE TRENCHES**

Terry Jesse, Member, Public Defender Commission  
Chris Abbott, Public Defender, Office of Public Defender  
Fred Snodgrass, Contract Public Defender  
Mark Murphy, Montana County Attorneys Association  
Hon. Perry Miller, Justice of the Peace, Blaine County  
Hon. John Larson, 4th Judicial District  
Eileen Larkin, Staff Attorney, Office of the Appellate Public Defender  
Hon. Mike McGrath, Chief Justice, Montana Supreme Court

05:28:18 Mr. Jesse

05:37:44 Mr. Abbott

05:55:25 Mr. Snodgrass

06:02:26 Mr. Murphy

Committee Questions

06:16:25 Sen. Keane asked Mr. Abbott how to resolve the issue of clients sitting in jail and the costs of keeping them there.

06:20:23 Sen. Wolken asked about the cost shifting that is happening as a result of delays

accruing to public defender offices and county detention of pretrial detainees and if processing those cases faster could save taxpayer's money.

06:23:16 Rep. Brodehl asked the panelists about using vacancy savings to fund the program, the need for more staff attorneys, and inequality in pay for staff attorneys versus private attorneys.

06:28:07 Judge Haynes asked about travel time and the use of teleconferences.

06:34:44 Hon. Perry Miller

06:45:03 Hon. John Larson

06:59:48 Ms. Larkin

07:11:19 Hon. Mike McGrath

**BREAK** - reconvened at 3:57 p.m.

### **PUBLIC COMMENT**

None

### **PROPOSED STUDY PLAN - Dave Bohyer**

07:38:33 Mr. Bohyer ([Exhibit 6](#))

#### Committee Discussion

07:52:40 The committee discussed having a presentation on how other states finance their public defender program, potential conflicts in the meeting schedule, comparing the structure of public defender programs in other states, identifying whether other states' public defender programs use the commission model, a business manager or agency director model, and whether other states use guardians ad litem or other representations rather than using attorneys.

### **ADMINISTRATIVE MATTERS**

#### **Proxy voting**

08:03:10 Sen. Keane discussed the issue of proxy voting.

#### **Motion/Vote**

08:03:59 Sen. Keane moved that proxies be allowed for voting, that proxies be in written form that indicate who the designated proxy is, and that the proxy be sent to staff. The motion passed unanimously by voice vote.

#### **Adopt "Rules, Procedures, and Guidelines"**

08:04:30 Mr. Bohyer gave a presentation on the document "Rules, Procedures, and Guidelines". ([Exhibit 7](#))

#### **Motion/Vote**

08:06:30 Sen. Keane moved to adopt the Rules, Procedures, and Guidelines for Interim Committees as the Task Force's rules. The motion passed unanimously by voice

vote.

### **Election of Presiding Officer and Vice Presiding Officer**

#### **Presiding Officer**

08:07:15 Sen. Wolken nominated Rep. Dudik as Presiding Officer.

08:07:38 Rep. Holmlund nominated Rep. Brodehl.

#### **Committee Discussion**

08:09:11 Rep. Brodehl asked to be allowed to give a short presentation and to make the election a secret ballot. He requested a ruling by the staff attorney on secret ballot voting.

08:10:08 Ms. Johnson said that for the public record, it would have to be a public vote.

08:10:17 Rep. Dudik commented on her qualifications for and reasons to be elected.

08:11:37 Rep. Brodehl commented on his qualifications for and reasons to be elected.

#### **Roll Call Vote**

08:12:59 Rep. Dudik was elected Presiding Officer. She received 7 votes and Rep. Brodehl received 4 votes. (Attachment 4)

#### **Vice Presiding Officer**

08:14:57 Sen. Keane nominated Rep. Brodehl as Vice Presiding Officer.

08:15:31 The committee, by acclamation, elected Rep. Brodehl as Vice Presiding Officer.

#### **Committee Discussion**

08:16:01 Rep. Dudik discussed rescheduling the Task Force's visit to the Appellate Defender Office.

08:16:34 Mr. Bohyer discussed hearing from the Task Force members on identifying which states to study.

08:17:21 Rep. Dudik discussed the role of Ms. Holton as Facilitator.

### **ADJOURNMENT**

08:19:17 With no further business before the committee, Rep. Dudik adjourned the meeting at 4:39 p.m.

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