

MONTANA PUBLIC DEFENDER COMMISSION  
**BUDGET COMMITTEE MEETING**  
139 North Last Chance Gulch, Helena, MT 59601  
**March 12, 2012**

**MINUTES**  
*(Approved at the March 27, 2014 Meeting)*

**Call to Order**

Committee Chair Fritz Gillespie called the meeting of the Budget Committee to order at 1:10 p.m.

**Committee Members Present**

Fritz Gillespie, Helena; Ken Olson, Great Falls; Margaret Novak, Chester; Chris Daem, Billings

**Committee Members Absent**

None

**Agency Team Members Present**

Joslyn Hunt, Chief Appellate Defender; Harry Freebourn, Administrative Director

**Interested Parties**

Carleen Green, Accounting Supervisor; Larry Murphy, Contract Manager; Brent Doig, Office of Budget and Program Planning (OBPP)

**Approval of Minutes from December 20, 2010 Meeting**

The minutes were approved as drafted.

**Executive Planning Process for 2015 Biennium (EPP)**

Administrative Director Harry Freebourn presented the 2015 Budget Items worksheet, which will be periodically updated to show how the budget is progressing through various stages, up to final legislative action.

Mr. Freebourn explained the process that the Commission and the Executive branch will undertake leading to final approval of the agency budget for the 2015 Biennium, and gave a brief overview of the agency's funding history. He noted that the one-time funds for the current biennium (\$300,000 per year for IT purchases and increased contractor costs, and \$500,000 in FY 12 and \$400,000 in FY 13 for capital defense cases) will most likely be removed from the agency's base budget and requested again in the next biennium. The current appropriation for the death penalty costs is biennial, so any unused amount rolls over to the next year. On September 1, the unused portion can be converted to a general appropriation that could be spent on any portion of the agency's mission. Chairman Gillespie thinks it unwise to convert any remaining funds prematurely, since another capital case could come up between September 1 and fiscal year end. However, Mr. Doig said that it would be better to convert and spend the remaining funds than to request a supplemental appropriation, if it comes to that.

The agency's estimated increase in new cases for the current year is expected to be about 5%.

Mr. Freebourn will provide updated figures as they are available. The agency is currently anticipating the need to transfer up to \$500,000 from FY 13 to cover the case load increase it is experiencing in FY 12. It is unclear whether this would stay in the FY 12 base budget, which is the starting point for the next biennium. Brent Doig, OBPP budget analyst, will investigate. Decision packages (DPs) are adjustments to the base budget for costs that are not in the base. They are presented to the executive branch for approval, rejection, or amendment. Mr. Doig said that the executive branch looks at revenue estimates compared to the needs of each agency when reviewing DPs, but he expects that they will plan to maintain the status quo as much as possible. The governor-elect will also have a chance to review the executive budget before it goes to the legislature.

The proposed DPs were reviewed and discussed (beginning on page 31 of the EPP document). All DPs were reviewed, but only those generating substantive discussion are identified below. All amounts are high level estimates and are subject to change.

#### *DP 1-1c*

The first group of DPs makes modified FTE positions permanent and request new positions to handle the increased caseloads in both Program 1 and Program 2. The dollar estimate for the first year of the biennium is always higher because one-time office set up costs are included.

#### *DP 2-2a*

The next group addresses pay increases, both for market adjustments as well as movement within the pay ladder. These figures will be adjusted when the new attorney salary survey is complete on July 27. The administrative workforce pay ladder will be set by state salary survey. The career ladder for the Appellate office will get them parity with the Attorney General's office; they are currently on the same pay ladder as the Program 1 attorneys.

#### *DP 7*

Investigator Supervisor Mori Woods joined the meeting to discuss increased investigator support. The current DP for 2 FTE will allow the agency to meet comply with agency Policy 121, which prioritizes felony cases. It's possible that one of these positions could be offset by a reduction in contract investigator services.

Currently the agency is able to provide investigative services for less than 25% of the 17,000 misdemeanor cases per year. These are primarily PFMA or DUI cases where the next charge would be a felony. Additional FTE (possibly eight or nine more) would be required if the Commission wishes to make investigative services available for more misdemeanor and civil cases.

Chairman Gillespie noted that the both the American University (AU) and American Civil Liberties Union (ACLU) reports complained about the lack of investigative services. Ms. Woods said they do as many as they can, but the felonies have to take precedence. Chairman Gillespie asked for an alternative proposal for DP 7 that would include investigations for misdemeanors.

#### *DP 8*

The agency currently has one person tracking accounts receivables, which are skyrocketing.

The increase in special revenue would pay for the position. The agency requested \$100,000 in appropriation authority for FY 12, and current projections are for \$160,000 in receipts this year, although the excess over the approved appropriation can't be expended. Commissioner Novak said that the majority of the \$1.2 million in receivables is uncollectable and she thinks it is ridiculous to add FTE to account for it. Unfortunately, accounting for the assessments and collections is outside of the agency's control; legislation would be required to change the clients' obligation to pay.

*DP 9*

Regional Deputy Public Defender Dave Stenerson joined the meeting to discuss the social worker program in the Missoula office that is currently funded through a federal grant. The program has been very successful in Missoula and Mr. Stenerson supports expanding the program throughout the system. The role of the social worker is to reduce attorney work load by doing jail visits and work in DN cases. There is also a suicide prevention component as well as arranging placement and treatment services to facilitate release in bail or sentencing hearings.

There was a lengthy discussion of what the role and qualifications of such a position would be, whether these services are already available elsewhere in the community, how the position impacts attorney workload, the ability to advocate for clients from the defender perspective, and service coordination. Chairman Gillespie said that this might be a low priority DP, but how the position reduces attorney workload is the key.

The next group of DPs is related to recommendations made in the American University report.

*DP 11-11a*

The Commission has advanced a decision package for an increase in contract attorney rates at every session. Two years ago, the Commission requested an increase up to \$75 per hour. This DP currently shows the cost to increase up to the Federal Defender rate of \$125 per hour as recommended by the AU. Chief Hunt said that if the contractor rate is increased, the FTE rate must be comparably raised, or she will lose even more staff going into private practice to provide contract services.

Chairman Gillespie noted that increasing pay for both FTE and contractors was the Commission's number one priority during the last EPP process, but OPBB did not support the increases due to the impact they would have on other agencies. Mr. Doig said that any time a proposal for an increase is advanced, other entities feel they are entitled to an increase also. Commissioner Novak pointed out that this is a different scenario because within state government all attorneys are paid more than public defenders, which is hugely unjust. Mr. Doig said that the agency and the Commission have done a great job of showing the discrepancies, but the reality is that it comes down to some certain amount of available money, and pay increases represent very significant amounts of money.

*DP 12-12a*

As of June 30, 2011, most managers were within caseload limits set by Policy 114. However, there is a feeling that the limits might be too high, especially for the larger offices. Chairman Gillespie said that Policy 114 was developed on the basis of 2080 work hours per year (52 weeks at 40 hours per week), but in reality, an attorney can put in no more than 1700 hours

of productive work annually after accounting for vacation, continuing education, office meetings, etc. He would like the policy to be reworked based on a maximum of 1700 available hours, eliminating caseloads entirely for Regions 1, 2 and 9 (Kalispell, Missoula and Billings). The rest of the committee agreed that the DP should reflect the new caseload limits, rather than eliminating all caseloads for managers.

Chairman Gillespie asked Chief Hunt about the need for additional FTE to reduce her caseload in Program 2. Chief Hunt takes difficult or travel-intensive cases, as well as pitching in when they are short staffed. She is having trouble staying within the 1000 hour maximum that is currently in the policy. Considering the case growth Program 2 is experiencing, a full FTE is probably needed to provide the needed flexibility to absorb the unexpected as well as allow Chief Hunt adequate time to manage, including day to day supervision and mentoring.

#### *DP 13*

Chairman Gillespie recommends deferring this for another biennium. He thinks the AU was looking at this from the perspective of a metropolitan area, and it is difficult to see how it would work in rural Montana.

#### *DP 15*

Chief Hunt supports eliminating this DP. OPD has an adequate brief bank, and her office sends out a weekly update on both Montana and Federal Supreme Court cases. Although it would be great to expand this into a trial note book and provide local training, she does not have adequate staff to expand in that way. Chairman Gillespie would like to merge the trial notebook idea into this DP, but it is still likely to be near the bottom of the priority list.

#### *DP 17*

Chairman Gillespie is not interested in hiring a secretary to the Commission, but instead wants two positions to do field audits (an attorney and a fiscal person) that might report directly to the Commission.

The remaining DPs are not related to the AU recommendations, but address other anticipated issues. Mr. Freebourn reminded the committee that the EPP process looks at needs that are a year or more in the future; any immediate needs are not part of this process.

Mr. Freebourn will make the changes the committee requested for their next meeting, with a goal of developing recommendations for the full Commission to consider at that meeting.

#### **Public Comment**

No members of the public were in attendance.

#### **Old Business/New Business (\*Action Items)**

The next meeting will be held on March 22 in the same location. Time to be determined.

#### **Adjourn**

The meeting adjourned at 4:00 p.m.