

# MONTANA PUBLIC DEFENDER COMMISSION

## CONFERENCE CALL

Public Location: Helena Regional Office  
139 North Last Chance Gulch, Helena, MT 59601

**April 3, 2014**

### MINUTES

*(Approved at the April 25, 2014 Meeting)*

#### **Commissioners Present**

Fritz Gillespie, (Chair), Helena; Chuck Petaja, Helena; Ken Olson, Great Falls; Roy Brown, Billings; Margaret Novak, Chester; Ann Sherwood, Pablo

#### **Commissioners Absent**

Chris Daem, Billings; Mike Metzger, Billings; Majel Russell, Billings; Brian Gallik, Bozeman

#### **Staff Members Present**

Bill Hooks, Chief Public Defender; Wade Zolynski, Chief Appellate Defender; Kristina Neal, Conflict Coordinator; Harry Freebourn, Administrative Director; Wendy Johnson, Contract Manager; Carleen Green, Accountant

#### **Interested Parties**

Timm Twardoski, Executive Director, American Federation of State, County and Municipal Employees (AFSCME); Scott Crichton, Executive Director, American Civil Liberties Union of Montana; Brent Doig, Office of Budget and Program Planning (OBPP)

#### **1. Call to Order**

Chairman Fritz Gillespie called the meeting of the Public Defender Commission to order at 10:10 a.m.

#### **2. Committee Reports**

- A. Strategic Planning
- B. Legislative
- C. Budget

Committee reports were given in conjunction with the action items.

#### **3. Proposal for Program 3, Conflict Program (\*Action Item)**

Mr. Freebourn's memo summarizes the advantages and disadvantages of creating a separate program for the conflict function. The Strategic Planning Committee recommends going forward with Program 3.

Commissioner Olson, Strategic Planning Committee chair, made the following motion:

Based on the unanimous recommendation of the members of the Strategic Planning Committee, I move that the Commission approve the establishment of a new program, Program 3, entitled "Conflict Coordinator Program;" that the effective date be July 1, 2013; and that all estimated costs and actual FTE of this program be transferred from Program 1, the Public Defender Program or Program 2, the Appellate Defender Program, for fiscal 2014. Commissioner Petaja seconded the motion. Mr. Freebourn explained that new programs must be created in even-numbered years so that there is a base year for the next biennium. Chairman Gillespie called the question and the motion carried unanimously.

Commissioner Petaja is also a member of the Strategic Planning Committee, and he gave a status update on the proposal for Program 4, a civil program. The Committee decided that Program 4 should be tabled for now due to implementation issues, but it may be considered again at a later date.

**4. Set Priorities for Proposed Legislation (\*Action Item)**

The Commission was asked to set their legislative priorities prior to the April 11 meeting with the Governor's office, although they can add other proposals after that date.

The Legislative Committee unanimously recommended that the Commission pursue all proposals except for the meeting stipend. Commissioner Novak moved to adopt the Committee recommendation. Commissioner Sherwood seconded and the motion carried. The Committee did not prioritize the proposals, leaving that to the Commission.

Commissioner Petaja proposed additional legislation limiting the ability to revoke people on probation or parole and taking away all of the good time already served for strictly administrative violations. He said that up to 75% of revocations are due to administrative violations (including failure to pay fees) rather than new crimes. There was general interest in the proposal, and Chairman Gillespie will initiate conversations with the Department of Corrections and the Governor's office to explore the idea.

Chairman Gillespie presented his own informal ranking of the remaining 10 proposals and invited discussion.

Commissioner Sherwood is still opposed to the concealed weapons bill and would prefer to not rank it at all. A lengthy conversation ensued including discussion of how state policy comes into play, and the investigators' justification for the proposal (security and protection). Chairman Gillespie recapped some of the investigators' testimony last session where they described scary situations in remote areas. Commissioner Novak noted that the Commission had previously voted to support this legislation and suggested that this was not the time to reconsider a decision that had already been made. Chairman Gillespie agreed and will schedule an in-depth discussion after a full study of all the issues. It will be tabled for now in terms of ranking.

Mr. Doig provided guidance on prioritizing the proposed legislation. He said that, unlike

agencies presenting huge numbers of bills, these few proposals can be ranked in groups.

Commissioner Brown moved that the four items related to the indigency determination process be ranked as 1-4 per Chairman Gillespie's suggestion, and the remaining proposals be ranked as additional suggested legislation. Commissioner Petaja seconded.

Chairman Gillespie invited public comment before voting. Mr. Twardoski noted that in the examples given regarding the dangers investigators face in the field, there was no cell coverage, creating even more risk to the employees. He also commented that he had consulted with the AFSCME attorney about whether the contract would supersede the state firearms policy and he was advised that it would only if it was an OPD internal policy.

The question was called and the motion carried.

#### **5. Set Priorities for Decision Packages (\*Action Item)**

Mr. Freebourn led the discussion regarding prioritizing the decision packages. A one-page worksheet summarizes the current EPP document. Mr. Freebourn said that once priorities are set by the Commission, the agency will work with OBPP to package the proposals appropriately, keeping in mind Senator Sesso's recommendation to present as few requests as possible. Mr. Doig acknowledged that it is difficult to set priorities at this point, without knowing what the resources will be. For now, the Commission at least needs to decide what decision packages they do or don't want to advance.

The discussion included the cost benefits of FTE over contractors; the contract attorney rate; whether or not the current consolidated request is reasonable or realistic; and the need to more specifically identify the request for additional FTE in Program 1 by region.

Chairman Gillespie said that the Budget Committee was remiss in not making priority recommendations to the Commission with a rationale behind each one. He moved to table the discussion for now, schedule another Budget Committee meeting to prioritize the decision packages, and then hold another conference call meeting of the full Commission to adopt the priorities by the end of the month. Commissioner Petaja seconded and the motion carried.

#### **6. Public Comment**

Mr. Twardoski spoke on behalf of the support staff, who haven't received market or pay ladder increases in six years. He hopes it will be a top priority for the next session. He also urged the Commission to appropriately staff the agency with FTE instead of relying on contractors for overflow, and not to rank more contractor dollars equally with the need for additional FTE.

#### **7. Adjourn**

The meeting adjourned at 11:40 a.m.