

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

Draft Minutes

Call to Order

Committee Chair Fritz Gillespie called the meeting of the Legislative Committee to order at 8:40 a.m.

Committee Members Present

Fritz Gillespie, Helena; Ann Sherwood, Pablo

Committee Members Absent

Majel Russell, Billings; Al Avignone, Bozeman

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 (*Action Item)

July 24, 2009, September 23, 2010 and December 20, 2010 meetings

Commissioner Sherwood moved to approve the minutes as drafted. Chairman Gillespie seconded and the motion carried.

Draft Legislation for 2013 Session

The Committee reviewed the legislative proposals, some of which are placeholders for possible future action.

1. Allow for Flat Fee Contracts

Flat fee contracts are currently prohibited under 47-2-216. This is an audit issue because there are currently flat fee contracts in place related to specialty courts. The idea of forming consortiums to handle DN cases would also involve flat fee contracts. The consortium would handle all parties (parents and children) in x number of cases for x amount of dollars. The agency would continue to supervise Standards compliance, but the billing model would change. Since the contractors are not members of the same firm, they could handle conflicts within the consortium, possibly impacting the role of the OPD Conflict Coordinator. Although Mr. Murphy hasn't gotten any interest from the contractors he has approached with this model, the Strategic Planning Committee is interested in it as a way to control DN costs. Mr. Freebourn believes that the ACLU would not oppose providing services this way in the DN arena, although they would argue against it in criminal cases. Chairman Gillespie will present the pros and cons to the full Commission.

2. Remove Jail Time for Certain Misdemeanors

Senate Bill 50, to reduce jail time for certain misdemeanors, was introduced by Senator Gallus during the last session. Even though the selected crimes were not controversial, the bill died quickly. In response, 46-8-101 was amended to allow the court to order at the initial hearing that incarceration will not be a potential penalty if found guilty, in which case the defendant is not entitled to a public defender. The regions will be surveyed to find out if this change has been embraced by the various courts.

Chairman Gillespie would prefer not to offer this legislation again because it was so poorly received. Commissioner Sherwood would like to take another run at it. They will present the pros and cons of going forward to the full Commission.

3. Specialty Courts

There are many issues involved in providing services in specialty courts. Some within the agency see a significant value to the client in participating in treatment courts. However, many of the courts are postconviction courts; they also require the defense member of the treatment team to represent all clients in the treatment court, thus representing people who are not indigent and/or who may have already been convicted (both of which make them not eligible for services under current law). Commissioner Sherwood would like more information about the time and cost involved in serving these courts from the regions, as well as details on how many courts are diversionary.

A specialty court team has been formed, although they have not yet met. Mr. Freebourn noted that the proposed legislation wouldn't preclude OPD from participating in specialty courts, but would provide flexibility in the future.

4. Postconviction Relief

Currently all PCR cases are contracted out because of the possibility of an ineffective assistance of counsel claim. This proposal would expand the Conflict Coordinator function and save money by hiring an FTE to handle PCR cases. Chairman Gillespie said that adding an FTE to the conflict program would also provide a backup in the Conflict Coordinator's absence.

5. GAL Issue

Current statute requires OPD to pay for an attorney for the GAL or CASA should the court choose to appoint one. This proposal would require the court to pay. Mr. Freebourn suggested that Chairman Gillespie contact the Supreme Court administrator about this legislation as he has reason to believe that they will oppose it. Commissioner Sherwood supports this proposal.

6. Case Dumping

Chief Hunt would like to pursue legislation that says that private attorneys are committed to a case, although it will be controversial and she doubts it will go through. Commissioner Sherwood understands the problem, but she opposes the proposed legislation because if a defendant becomes indigent during the case they still deserve counsel, especially if they lost their job because they are charged with a crime. Chief Hunt is trying to ensure that the attorney is not dumping the client just because they have expended the retainer. Hopefully the Court will adopt a new rule. Chairman Gillespie suggested leaving the proposed legislation on the table for now.

7. Deputy Chief Public Defender

Mr. Freebourn said that there is also a decision package for this position. The agency already has the maximum number of exempt positions allowed, so a slot will have to be made available. Commissioner Sherwood suggested changing the language by eliminating “who is experienced in managing day to day operations of a public defender system.”

8. Redefine Household for the IQ Process

Chairman Gillespie is still looking for a federal statute defining indigency that will encompass the clients’ various situations and ensure that all people who are entitled to services are determined to be eligible. This is just a placeholder for now.

Legislative Timeline

The legislative proposals will be presented at the full Commission meeting on April 13. Draft proposals that the Commission wishes to advance will be discussed with the Governor’s office in April, and then with the Law and Justice Interim Committee.

Public Comment

No members of the public were present.

Old Business/New Business (*Action Items)

There was no old or new business.

Adjourn

The meeting adjourned at 10:08 a.m.