Office of the State Public Defender

FY 11 TRAINING PROGRAMS

As of June 30, 2011

Date Of Training	Description of Training	Internal Personnel Attorney	Internal Personnel Non-Attorney	External Personnel Attorney	External Personnel Non-Attorney	Totals
July 6-8, 2010	OPD Oral Advocacy Workshop	11				11
August 9-11, 2010	Boot Camp Trial Skills Workshop †	17				17
September 7-9, 2010	Montana DN Uniform Practice Workshop	3		4	9	16
October 20-22, 2010	OPD Annual Training Conference and Staff Meeting	101	27	11		139
October 29, 2010	OPD Juvenile Defender Update 1 †	16				16
November 3-5, 2010	NACDL Defending Sexual Assault Cases (Savannah, GA)†	1				1
November 19, 2010	OPD DI Defender Update 1	14		1		15
December 17, 2010	OPD DN Defender Update 1	21		2		23
Jauary 10-11, 2011	National Training on Immigration Consequences of Criminal Convictions (Albuquerque, NM) †	2				2
January 28, 2011	OPD Juvenile Defender Update 2†	19		5		24
February 12, 2011	Everything You Always Wanted to Know about Bail	43		7		50
February 22-23, 2011	Criminal Mental Health Law Training (Helena) †	22	3	19	3	47
March 25, 2011	OPD DN Defender Update 2	17		3		20
April 11-15, 2011	Department of Public Advocacy Death Penalty Institute (Kentucky) †	4				4
April 22, 2011	Immigration Consequences of Criminal Convictions †	115		33		148
April 29, 2011	OPD Juvenile Defender Update 3 †	18		2		20
May 20, 2011	Changes to DUI Laws †	31		4		35
June 24, 2011	2011 Legislative Update †	76	3	11		90
June 28-29, 2011	Support Staff Training Conference	3	62			65
	Totals	**534**	**95**	**102**	**12**	**743**

† Training topics presented to train attorneys for criminal defense or procedure.

OPD ORAL ADVOCACY WORKSHOP
Lubrecht Conference Center
July 6-8, 2010

Tuesday, July 6

Noon – 1 PM: Welcome / Lunch

General Session 1 (1 PM – 1:45 PM): (BILL HOOKS / JOSLYN HUNT) **(.75 hours CLE)**
The Structure and Procedure of Appellate Practice in Montana

General Session 2 (1:45 PM – 2:30 PM): (BILL HOOKS / JOSLYN HUNT) **(.75 hours CLE)**
The psychology and tactics of Mt. Supreme Court Advocacy

General Session 3 (2:45 PM – 3:45 PM): (MOLLY HUSKEY / SARA THOMAS) **(1.0 hours CLE)**
What makes a story?
Comfortable and familiar techniques may not be effective techniques
Goal: Understanding the psychology of communication and specific skill sets necessary to enhance your credibility and persuasiveness as a speaker

First areas working on:
- Long term/ short term memory
- Chaining of ideas
- Eliciting positive responses

Small group session 1 (4:00 – 5:30 PM): **(1.0 hours CLE)**
Group 1: Kristina Neal
Group 2: Sara Thomas
Group 3: Molly Huskey
Group 4: Bill Hooks / Eric Olson

-Activities for relaxation
-Long term v. short term memory
-Chaining ideas
-Eliciting positive responses

Wednesday, July 7

General Session 4 (8:00 – 9:00 AM): (JUSTICE NELSON) **(1.0 hours CLE)**
The "Do's and Don'ts" of Oral Advocacy

General Session 5 (9:00 – 10:00 AM): (MOLLY HUSKEY / SARA THOMAS) **(1.0 hours CLE)**
Psychology of communication / Body Language and Change

Small group session 2 (10:15 – Noon) **(1.75 hours CLE)**

Practice

-Eye contact
-Nonverbal communication
-Dominant v. submissive speaker / listener
-Working with colleagues / audience
-Controlling interactions
-Change on stage – emotion and authenticity

Noon – 1:00 PM: LUNCH

General Session 6 (1:00 – 2:00 PM) (HUSKEY / THOMAS) **(1.0 hours CLE)**

Organizing oral arguments

-Platforms
-Themes
-Beginning /middle / end

Small group session 3 (2:15 – 5:00): **(2.75 hours CLE)**

-Continue work from morning
-Develop ideas from the general sessions

Thursday, July 8

Small group session 4 (8:00 AM – Noon) **(4.00 hours CLE)**

Continue work from Wednesday's sessions

Each person will do 3-5 min practice w/ 5-10 min of small group critique. Ideally, each person could do it once, get some immediate feedback and then have an opportunity to run it a second time.

Noon: Lunch and final commentary (INSTRUCTORS)

1:00 PM: Adjourn

TOTAL CLE: 12.00 HOURS

BOOT CAMP IV: August 10-12, 2010

<u>MONDAY</u> (August 9)
Travel and Room Registration

Initial Session (4:00 PM – 6:00 PM) Orientation and Introduction

Hand out and review materials (CD's and DVD's)

6:15: DINNER

7:15: Video: Frontline – Taking the Plea

<u>TUESDAY</u> (August 10)
Session 1 (8:00 AM – 8:30 AM) Introduction to the case (Street Stop DVD) (Eric Olson)

Session 2 (8:30 AM – 10:30 AM) Thoughts on meeting with, interviewing, and Communicating with your Client with your client and developing the Case Theme (James Park Taylor)

Session 3 (10:30 AM – 11:15 AM) Getting your Exhibit into Evidence (Randi Hood)

Session 4 (11:15 AM – 12:15 PM) "To the Point" Direct Exams (Steve Scott)

Working lunch (In Groups) (12:15 PM – 1:15 PM) "Developing Your Theme"

Session 6 (1:30 PM – 6:00 PM) Voir Dire (Noel Larrivee)

DINNER (6:15)

Evening Session (7:45 – 9:15) Movie: Murder on a Sunday Morning

<u>WEDNESDAY</u> (August 11)
Session 6 (8:00 – 9:00) Identifying and Exploring Mental Health Issues for Trial (Dr. Laura Wendlandt)

Session 7: (9:15 – 9:45) Introduction to the Reid Interrogation Technique (Adamo DVD)

Session 8: (10:00 – 12:30) Cross Examination Technique (Pozner & Dodd video) (Olson / Hood)

(1) Introduction to Cross Examination (15) and to the Pozner & Dodd Method, Rules 1 & 2 (DVD) (45)

(2) The Chapter Method (20) and Pozner and Dodd, Rule 3 (DVD) (40)

LUNCH (12:15 to 1:00 PM)

Session 9 (1:30 – 2:00) Cross Examination Technique

(3) Techniques for dealing with Runaway Witnesses (DVD) (23)

Session 10 (2:15 – 5:15): Cross Examination Exercises (Groups)

Team 1:	Olson / Sheehy
Team 2:	Steve Scott / Murphy
Team 3:	Hood / Larrivee
Team 4:	Taylor /

DINNER (6:15)

<u>THURSDAY</u> (August 12)

Judge:	(To Be Determined)
Prosecutor:	Sheehy
Jurors:	(Murphy / Hood / Larrivee / Laura / Yowell / Schoenleben / Eli / Kyle / 4 participants)
Witnesses:	Brian Yowell (Agnew) Thomas Schoenleben (Washington) Laura (Victoria) Eli (Nixon)

<u>Two trial teams (18 participants)</u>
Four will voir dire the jury (90 minutes)
One will direct examine Detective Agnew (15)
Two will cross examine Detective Agnew (30)
One will direct examine Officer Washington (15)
Two will cross examine Officer Washington (30)
One will direct examine Victoria Warmsprings (15)
One will cross examine Victoria Warmsprings (15)
One will direct examine Nixon (15)
One will cross examine Nixon (15)
Two will give opening statements (10) / closing arguments (20)
(270 minutes total = 4.5 hours)

<u>Witnesses</u>:
(1) The Suspect (Richard Eli Nixon)
(2) The arresting officer (Officer Washington)
(3) The interrogating detective (Detective Agnew)
(4) The purse-snatching victim (Victoria Warmsprings)

Prosecution will call Washington, Agnew & Victoria ("robbery victim")
Defense will call Δ.Nixon.

Pretrial proceedings:
The trial court denied Δ's motion to suppress the street video and the interrogation video.

The case file consists of:
Information and Affidavit ✓
Video of street stop✓
Washington's report ✓
Transcript of Interrogation ✓
Video of Interrogation
Agnew's report ✓
Victoria's statement ✓
NCIC – Nixon (traffic offenses only + 1 contempt) ✓
Miranda "waiver" given to Nixon by Agnew ✓
Evidence inventory:
- Pocket knife ✓
- Three baggies ✓
- Booking photo of Nixon ✓

TEAMS -- MENTORS

Team 1: (Ed Sheehy / Deirdre Caughlan)
Ashley Young (Region1)
Miller, Dan (Region 5)
Arthur, David (Region 9)
Usleber, Michael (Region 9)
Farmer, Marta (Contract counsel)

Team 2: (Steve Scott / Larry Murphy)
Custer, Brad (Region 5)
Pavelich, Matthew (Region 10)
Peterson, Anne (Region 4)
Schultz, Audrey (Region 9)

Team 3: (Randi Hood)
Blomgren, Cassidy **(Region 3)**
Myers, Jesse **(Region 9)**
Bryan, Jason **(Region 1)**
Adkins, Thad **(Region 4)**

Team 4: (Noel Larrivee)
Mike Park (Region 9)
Ted Fellman (Region 1)
Frickel, Jared (Region 9)
Bosse, Karla (Region 6)
Greenwell, Robert (Contract counsel)

Put the following sessions on DVD:
Building and using a Case Notebook (Rench DVD)
Effective Openings (Gallagher DVD)
Closing Statements: (Rench DVD)

5TH ANNUAL OPD STATEWIDE MEETING
and
TRAINING CONFERENCE

The Holiday Inn Conference Center
West Yellowstone, Montana

October 20-22, 2010

AGENDA

WEDNESDAY, OCTOBER 20
Sign-In: 1:00 – 3:00

1st Session (3:00 – 5:00)
Regional Caucus Meetings for staff and contract attorneys
(Please attend the appropriate caucus)
(Room #1: Regions 2 & 9)
(Room #2: Regions 1, 3, 4, & 8)
(Room #3: Regions 5, 6, 7, 10, & 11)
(Room #4: Justware Basics for Investigators and other new OPD staff)

2nd Session (5:00 – 6:00)
Concurrent Breakout Sessions

Appellate Defender Office: 2010 Montana Supreme Court Update
*Walter Hennessey: Standards for Handling Guardianship Matters **
*Kirsten Mull-Core: Professionally Responsible Practice in Treatment Court ***
*Mori Woods / Dan Kohm: Investigator Meeting ****

** Mandatory for attorneys handling Guardianship cases*
*** Mandatory for attorneys assigned to Treatment Court*
**** Mandatory for investigators*

7:00: Banquet and Awards Dinner
Guest of Honor: Justice Patricia O. Cotter

THURSDAY, OCTOBER 21

3rd Session (8:00 – 9:30)
Concurrent Breakout Sessions
90 mins CLE

> *Laura Schile: Securing the Chain of Custody: Proper Techniques for the Collection and Preservation of Evidence*

Michael Donahoe: Habeas Corpus & Post Conviction Practice in Montana

4th Session: Breakouts (9:45 – 10:45)
Concurrent Breakout Sessions
60 mins CLE

*George Yeannakis: Don't Waive that Transfer Hearing (DJ) **
*James Siegman / Steve Eschenbacher: Cross Examining the Arresting Officer in DUI ***
*Joslyn Hunt: Understanding Conflicts of Interest ****

> ** Mandatory for attorneys handling youth court cases*
> *** Mandatory for attorneys practicing in Courts of Limited Jurisdiction*
> **** Mandatory for investigators*

5th Session (11:00 – 1:00 PM)
120 mins CLE

Trial Evidence:
Getting it in / Keeping it out / Building a record
(A demonstrative discussion)
Moderator: Hon. Patricia Cotter
Panelists: Randi Hood / Steven Scott / Joslyn Hunt / Brent Larson

Concurrent Session

> *Laura Schile: Tips & Techniques for Investigating Miscellaneous Forensic Matters **
>
> ** Mandatory for investigators*

1:00 PM: ADJOURN FOR THE DAY (Balance of day free for personal activities)

7:00 PM: Dinner

FRIDAY, OCTOBER 22

6th Session (8:00 – Noon)
240 mins CLE
Advocacy, Communication and Elimination of Bias (III)
Educating Culturally Naïve Juries
(A Group Workshop)
Amie Thurber / Andrew King-Ries

*** * Noon: Adjourn * ***

SPEAKERS / PRESENTERS / PANELISTS

Justice Patricia O. Cotter was elected to the Montana Supreme Court in 2000.

George Yeannakis is Special Counsel for Team Child, Advocacy for Youth, in Seattle, WA.

Michael Donahoe is a Federal Defender in Missoula.

Laura Schile, formerly with the Oklahoma Indigent Defense System, is a forensic consultant with Pocket Expert Consulting Company in Tulsa, Oklahoma.

Andrew King-Ries is an associate professor of law at the University of Montana Law School.

Amie Thurber is Executive Director of National Coalition Building Institute, Missoula.

Kirsten Mull Core is an attorney in Bozeman.

Steve Scott is an attorney with the OPD Major Crimes Unit.

Steve Eschenbacher is the Managing Attorney of the OPD office in Polson.

James Siegman is a staff attorney in the Billings OPD office.

Randi Hood is the Chief Public Defender for Montana.

Joslyn Hunt is the Chief Appellate Defender for Montana.

Brent Larson has been a clerk for Justice James Nelson since 2005.

MENTAL DISEASE OR DEFECT UNDER MONTANA'S CRIMINAL CODE

A Cooperative Training Program at the Montana Law Enforcement Academy, Helena
2260 Sierra Road East – Karl Ohs Training Center
February 15 – 16, 2011

FINAL AGENDA

DAY ONE – 4.5 HOURS CEU

12:30 – 1:30 Session 1: Forensic Mental Examinations – statute & forensic matrix

- Paulette Kohman, DPHHS Legal

1:30 - 3:00 Session 2: Forensic mental examinations – content and use in proceedings

- Dr. Laura Wendlandt, Ph.D., Moderator
- Dr. Bo Smelko, Psy.D.
- Dr. Drew Schoening, Ph.D. – Montana State Hospital
- Brant Light, Assistant Attorney General & Criminal Training Coordinator, DOJ
- Peter Ohman, Attorney, OPD

3:00 – 3:15 BREAK

3:15 – 5:15 Session3: Consumer Panel & NAMI Voices Program

- Facilitated by Jerry Williams, Montana Law Enforcement Academy

DAY TWO - 5 HOURS CEU

8:00 – 8:30 Session 4: Cross agency Collaboration DPHHS & Corrections

- Deb Matteucci, DOC / DPHHS Behavioral Health Program Facilitator
- Coordination efforts for Guilty but Mentally Ill offenders (GBMI)
- New programs, training, policy and communication

8:30 – 9:30 Session 5: Probation & Parole

- Coordinating a presentence investigation with the forensic evaluation
- Mental health and chemical dependency programs for offenders in community settings
- Revocation and sanction – when and why

9:30 – 10:30 Session 6: Montana Case Law Review (Mental Disease & Defect)

- Paulette Kohman, Attorney, DPHHS
- Eric Olson, Attorney, OPD

10:45 – 12:15 Session 7: Resources in Montana correctional programs to serve the defendant's custody, care, and treatment needs

- Warden Mike Mahoney
- Dr. Liz Rantz (medical director)
- Jill Buck (mental health director)
- Blair Hopkins (Director, Chemical Dependency and Sex Offender)
- Dr. David Schaefer, Psychiatrist
- Laura Janes (chief, health services bureau – outside medical)

12:15 – 1:15 Session 8: Juvenile Justice

- Robert Peake, Bureau Chief, District and Youth Court Services
- Youth court vs. adult court: options, funding and placements

1:30 – 3:00 Lunch & Tour of Montana Law Enforcement Academy (optional – please RSVP)

2011 Laws Pertaining to Driving Under the Influence

HB 106: Creates a 24/7 Sobriety Project

- Effective October 1, 2011
- Amends 45-7-309, 46-18-201, and 61-5-208,
- Creates a 24/7 Sobriety Program for offenders convicted of a second or subsequent offense of 61-8-401 or 61-8-406.
- The program is not required, but counties can enforce it at their own discretion.
- Program participation may be a condition of bond or pretrial release, as well as a part of a sentence.
- Non-compliance with the program can be charged as contempt of court.

HB 12: Increase Penalties for 61-8-406 and 61-8-401

- Applies to all offenses committed on or after April 20, 2011.
- Amends 61-8-714 and 61-8-722
- Increases the potential jail time for a first offense BAC infraction (61-8-406) to 6 months (previously 10 days). For a second offense, the potential jail time is increased to 1 year (previously 30 days) and for a third offense, the time is also increased to 1 year (previously 6 months).
- Increases the potential jail time for a second offense DUI (61-8-406) to 1 year (previously 6 months)

HB 69: Revise Jail Penalties and Mandatory Minimums for DUI Court Participation

- Applies to all offenses committed on or after April 20, 2011.
- Amends 61-8-714 and 61-8-722
- Encourages DUI Court participation by allowing for the suspension of all jail time, except for the mandatory minimum, to be suspended with participation
- The mandatory minimum jail sentence for all crimes charged under 61-8-401 may not be suspended unless serving the minimum risks the physical or mental well-being of the offender. The mandatory minimum may also not be served on house arrest.
- For a second offense under 61-8-401, the potential jail time is increased to 1 year (this was also done under HB 12).

HB 102: Revise Probationary Driver's License for DUI Court Participation

- Applies to all offenses committed on or after April 8, 2011.
- Amends 61-2-302, 61-5-205, 61-5-208, and 61-8-734
- Participants in DUI Court may receive a probationary license at the court's discretion.

- A person with a second conviction of 61-8-401 or 61-8-406 may not receive a probationary license for the first 45 days of their suspension.
- A person with a third conviction of 61-8-401 or 61-8-406 may not receive a probationary license for the first 90 days of their suspension.
- Chemical dependency programs must be completed before the license is reinstated.

SB 15: Create Misdemeanor Crime of Aggravated DUI

- Applies to all offenses committed on or after April 28, 2011.
- Amends Title 61, Chapter 8,
- Applies if one of the following is true:
  (1) The driver has a BAC of 0.16 or more,
  (2) Is suspended or revoked for prior DUI/BAC,
  (3) Is required to have an ignition device,
  (4) Refuses testing and has previously refused testing in the past.
  (5) Has a previous DUI-related conviction in the previous 3 years, or 2 in the previous 7 years.
- Penalty includes a maximum jail sentence of 1 year and a maximum fine of $1,000.

SB 42: Authorize Warrants to Obtain Blood/Breath in DUI cases

- Applies to all offenses committed on or after April 28, 2011.
- Amends 46-5-224 and Title 61, Chapter 8
- If the arrested person has refused to provide a breath, blood, or urine sample under 61-8-409 or this section in a prior investigation in this state or under a substantially similar statute in another jurisdiction, the officer may apply for a search warrant to be issued to collect a person's blood for testing.
- If the arrested person has a previous conviction for a DUI-related offense, or a similar statute in another jurisdiction, the officer may apply for a search warrant to be issued to collect a person's blood for testing.
- Search warrant to be issued pursuant to 46-5-224.
- Proof of refusal is still admissible in court, even if a sample is obtained.

OPD Legislative Update
June 24, 2011

Senate Bill 210 – Provide Penalties for Certain Communications for Dangerous Drug Prescriptions

Effective: October 1, 2011

What the Bill States: Senate Bill 210 creates a criminal offense for attempting to obtain a dangerous drug by making certain communications with a person authorized to write prescriptions as follows:

- A person commits the offense of 45-9-104: Fraudulently Obtaining Dangerous Drugs by knowingly or purposefully failing to disclose to a practitioner that the person has received the same or a similar prescription for a dangerous drug from another source in the prior 30 days.
- A person commits the offense of 45-9-104: Fraudulently Obtaining Dangerous Drugs by knowingly or purposefully communicating false or incomplete information to a practitioner with the intent to procure dangerous drugs.
- A communication described in the above instance is not privileged communication.

House Bill 250 – Repeal 46-13-109 to Conform with *State v. District Court of the 18th District*

Effective: April 7, 2011

What the Bill States: House Bill 250 repeals 46-13-109.

- As was ruled by the Montana Supreme Court in *State v. District Court of the 18th District*, the prosecutor is no longer required to provide notice of intent to use evidence of other crimes, wrongs, or acts pursuant to 404(b) of the Montana Rules of Evidence.

What the Bill Means: The prosecution is no longer required to provide notice of intent to introduce other crimes to the defense during the omnibus hearing.

House Bill 548 – Revising 46-18-203 Regarding Revocation of a Suspended or Deferred Sentence

Effective: April 20, 2011, and retroactively to all past revocations, in accordance with 1-2-109.

What the Bill States: House Bill 548 changes the law regarding whether a petition for a revocation of suspended or deferred sentence can be filed with the sentencing court before the period of suspension or deferral.

- Previously, according to 46-18-203, a petition for revocation could only be filed with the sentencing court during the period of suspension or deferral of the sentence. The law did not explicitly forbid the filing of petitions for revocation before the beginning of a period of suspension or deferral.
- In *State v. Stiffarm,* the Supreme Court ruled that a petition for revocation must be filed during the period of suspension or deferral, and cannot be filed before that period has begun. Within the decision, the Supreme Court invited the legislature to re-examine the issue.
- Consequently, the legislature has now changed the law to reverse *State v. Stiffarm* and allow for petitions of revocation to be filed before the period of suspension or deferral has begun.

What the Bill Means: The bill reverses the Supreme Court decision of *State v. Stiffarm* and now allows petitions for revocation to be filed before the period of suspension or deferral has begun.

Senate Bill 76 – Provide Parole For Those Sentenced to Custody of DPHHS and In State Facility

Effective: October 1, 2011

What the Bill States: Prisoners sentenced to the custody of DPHHS and confined in a State of Montana facility are now eligible for parole according to the rules of parole eligibility in 46-23-201. The parole board may not release that person if they feel the person can be detrimental to himself or herself or society.

House Bill 126 – Amend Youth Court Act to Clarify District Court Sentencing Authority

Effective: October 1, 2011

What the Bill States: House Bill 126 gives the district court wider authority on offenses under which it may sentence a youth when the youth is already appearing in that court in accordance with 41-5-206

- Previously, if a youth appeared in district court for an offense outlined in 41-5-206, and was found guilty of that offense, the district court would sentence the youth for that offense. Any other, lesser offenses committed during commission of the crime that led to the youth appearing in district court were not the responsibility of the district court at sentencing.
- Now, if a youth is found guilty of the offense for which the youth is appearing in district court according to 41-5-206, the district court will sentence the youth for that offense AND sentence the youth for all other, lesser offenses committed during the commission of the offense which caused the youth to appear in district court.
- Also, if a youth is acquitted of the offense for which the youth is appearing in district court according to 41-5-206, the district court will sentence the youth for any lesser offenses for which the youth was found guilty, even though the youth was acquitted of the offense that landed them in district court.

What the Bill Means: The district court now holds the responsibility to sentence a youth if that youth is found guilty of lesser crimes that, on their own, would be sentenced in youth court, as long as the youth was first required to appear in district court according to 41-5-206.

Senate Bill 149 - Create the Crime of Predatory Loitering for Convicted Sex Offenders

Effective: October 1, 2011

What the Bill States: Senate Bill 149 creates a new misdemeanor offense to prevent convicted sex offenders from 'predatory loitering.' The bill states:

- The defendant in question must have been previously convicted of either a predatory sexual offense, as defined in 46-23-502, or sexual abuse of children
- The defendant must knowingly or purposely loiter in the vicinity of a pervious victim, or any frequented by minors of an age similar to the age of the victim in a previous offense.
- The defendant must have been asked to previously leave the area by a "person in authority," which is defined in the new statute.
- In order for charges to be brought against the defendant, proof must exist that the person in authority made a report to a law enforcement agency, and the agency must have documentation of the report.
- A person convicted of a first offense of predatory loitering may be fined not more than $500 and imprisoned for not more than 6 months. Second and subsequent convictions carry a fine of not more than $1,000 and imprisonment for not more than 1 year.

What the Bill Means: In summation, the bill creates a new law to protect children from predatory sex offenders, and outlines the prerequisites for charges to be brought against an individual.

House Bill 185 – An Act to Ban Synthetic Marijuana and Salvia

Effective: April 8, 2011

What the Bill States: House Bill 185 bans synthetic marijuana and salvia as follows:

- All forms of synthetic marijuana, including the drug known as "salvia," have been established as Schedule I drugs.

- All provisions in the law establishing possession of certain amounts of marijuana constituting a misdemeanor, and not a felony, do not apply to the synthetic marijuana ban enacted in HB 185.

What the Bill Means: The bill criminalizes all forms of synthetic marijuana, making them Schedule 1 drugs, and unlike small amounts of actual marijuana, treats their possession as a felony.

Senate Bill 152 – Increase the Penalty for Second and Subsequent Offenses of Sexual Assault

Effective: October 1, 2011

What the Bill States: Senate Bill 152 changes the penalties for second and subsequent offenses of sexual assault in the following way:

- Previously, all convictions of sexual assault as charged under 45-5-502 carried the same penalty: A fine not to exceed $500 and imprisonment not to exceed 6 months.
- According to Senate Bill 152, the first conviction of sexual assault under 45-5-502 would carry the previous penalty.
- A second conviction of sexual assault under the same statute will carry a penalty of a fine not to exceed $1,000 and imprisonment not to exceed 1 year.
- A third and subsequent conviction of sexual assault will carry a penalty of a fine not to exceed $10,000 and imprisonment not to exceed 5 years.

What the Bill Means: Persons convicted of sexual assault, according to 45-5-502 more than once will face stiffer penalties for subsequent violations.

Senate Bill 68 – Clarify the Duty of Driver in Accident Remain at the Scene

Effective: October 1, 2011

What the Bill States: Senate Bill 68 states:

- Any driver involved in an accident with another person or deceased person is required to immediately stop at the accident scene.
- If the person in the accident is injured, deceased, or otherwise incapacitated, the driver must remain on the scene until an on-duty peace officer gives the driver permission to leave. The driver may leave beforehand only for the purpose of seeking emergency medical care for any person involved in the accident.
- The penalty for not remaining at an accident, except for those accidents resulting in death or injury, is:
    - For the first offense, a fine of not less than $200 and not more than $300 as well as imprisonment for not more than 20 days.
    - For the second offense within 1 year of the first, a fine of not less than $300 or more than $400, and by imprisonment for not more than 30 days.
    - For a third offense, within 1 year of the first, a fine of not less than $400 or more than $500, and imprisonment for not more than 6 months.
- The penalty for any driver not remaining at an accident in which a person has been injured is:
    - A fine of not less than $100 or more than $5,000 and imprisonment for not less than 30 days or more than 1 year
- The penalty for any driver not remaining at an accident in which a person has been killed is:
    - A fine of not more than $50,000 and imprisonment for not less than 1 year or more than 10 years.

What the Bill Means: The penalties for a driver not remaining at an accident scene are now tied to the severity of the accident, with the penalties becoming greater as the accident becomes more severe.

Senate Bill 153 – Allow Judges' Discretion for Appointed Counsel in Guardian Ad Litem Laws

Effective: October 1, 2011

What the Bill States: Senate Bill 153 provides discretion for a judge concerning the appointment of counsel in abuse and neglect petitions in the following way:

- When a petition is filed pursuant to the rules governing abuse and neglect petitions as stated in 41-3-422, any child or youth involved in the proceeding shall immediately be assigned counsel by the court when a guardian ad litem is NOT appointed for the child or youth.
- Conversely, in the same proceedings, the court has the discretion to deem it appropriate to appoint counsel for a child or youth when a guardian ad litem is already appointed for that child or youth.
  - All parties of the proceedings are eligible to be assigned counsel through the office of the public defender pursuant to Title 47, Chapter 1.

What the Bill Means: During proceedings involving abuse and neglect petitions, the court now has the discretion to assign the office of the state public defender to represent a child even if a guardian ad litem is already representing the child.

Senate Bill 304 – Generally Revise Dependency and Neglect Laws

Effective: October 1, 2011

What the Bill States: Senate Bill 304 makes the following revisions to dependency and neglect laws:

- The State of Montana is provided jurisdiction over dependency and neglect cases whenever a youth or youth's parent or guardian resides in Montana.
- The State of Montana is provided jurisdiction over dependency and neglect cases if a whole or part of the abuse and neglect occurred in Montana, and the youth or youth's parent or guardian resided in Montana within 180 days before the filing of the petition.

- Venue is proper in the county in which the youth was located or has resided within 180 days before filing of the petition, or a county where the youth's parent or guardian resides or has resided within 180 days before the filling of the petition.
- All other rules in statute regarding jurisdiction of the State of Montana are still intact.
- A professional or official with the responsibility to report suspected cases of abuse or neglect must report the matter, regardless of the identity of the person suspected of causing the abuse or neglect.
- If a child is removed from a home due to the suspicion of immediate harm to the child, the district court MAY order further relief before the parents appear before the court.
- In a case in which it appears the child is abused or neglected or in danger of being abused or neglected, the county attorney, attorney general, or attorney hired by the county may file a petition for immediate protection and emergency protective services.
    - The petition and affidavit must contain information, if any, regarding statements made by the parents about the facts of he case.
- If from the alleged facts presented in the affidavit, it appears to the court that there is probable cause, the judge shall grant emergency protective services until the adjudication hearing or the temporary investigative hearing.
    - If it appears from the alleged facts contained in the affidavit that there is insufficient probable cause, the court shall dismiss the petition.
- If the parents, legal guardian, or person having custody of the children disputes the issues or facts in the affidavit, the person may request a contested show cause hearing within 10 days following service of the petition and affidavit.
- If the court finds probable cause in a petition requesting emergency protective services, the court may issue an order for immediate protection of the child.
    - The bill removes the provision in statute that the person filing the petition for immediate protection has the burden of presenting evidence establishing probable cause for the issuance of an order for immediate protection of the child.

- All services and rules should also conform to the federal Indian Child Welfare Act.

What the Bill Means: The bill provides an easier route for the court to order emergency protective services, even before the parents are able to appear in court. The bill also establishes jurisdiction in cases in which parents suspected of abuse might flee to another state to avoid intervention.

Senate Bill 187 – Generally Revise Public Defender Laws

Effective: July 1, 2011

What the Bill States: Senate Bill 187 enacts a vast array of changes to the laws governing the Public Defender Agency, most notably concerning the collection of money from defendants. The bill makes the following changes:

- Section 46-8-101 of the MCA entitles all persons accused of a felony or misdemeanor in which incarceration is a sentencing option, the defendant has the right to a public defender if they can not retain private counsel. This bill creates a provision that, if the offense is a misdemeanor and during the defendant's initial appearance with the court, the court may order that incarceration not be exercised as a sentencing option if the person is convicted, and thus the person would not be eligible for a public defender.
- Section 46-8-113 of the MCA outlines provisions for payments by defendants for assigned counsel. Senate Bill 187 says that, as part of a sentence imposed on an individual, the court shall determine whether that individual has the ability to pay the costs of assigned counsel.
    - If the defendant pleads guilty of a misdemeanor, but not a felony, and is found to have the ability to pay, the defendant shall pay $250 for cost of counsel
    - If the defendant pleads guilty to a felony and is found to have the ability to pay, the defendant shall pay $800 for cost of counsel.
    - If the defendant goes to trial and is found to have the ability to pay, the defendant shall pay the costs incurred by the office of the state public defender during trial.

        - In the above stated circumstance, the office of the state public defender shall file with the court a statement of hours spent on the case and expenses incurred.
    - When a court is determining whether a defendant possess the ability to pay the costs of counsel, the court shall question the defendant's ability to pay and inform the defendant that purposely false or misleading statements to the court may result in criminal charges.
    - The court may not order a defendant to pay costs unless a defendant is able to pay the costs, though the court may find that a defendant can pay a portion, but not all, of the costs.
    - Payments will be made to the clerk of the sentencing court for allocation as provided in Title 46, Chapter 18, Part 2 of the MCA, and subsequently deposited in the public defender account as established in 47-1-110.
    - All costs imposed by the court must be included in the court's judgment.
- When a defendant is provided an application and affidavit by the court for public defender services, the court must inform the defendant that false statements on the affidavit, application, and financial statement are subject to criminal charges. The affidavit must also create language establishing that false statements may be prosecuted as perjury.

What the Bill Means: The bill changes the amount of money a court can charge a defendant found to have the ability to repay public defender costs. The bill also changes the language governing a court's ability to determine the client's ability to pay for services. Furthermore, the bill creates the possibility of not allowing certain clients access to public defender services should they be accused of a misdemeanor if the court orders, during an initial appearance, that incarceration will not be an option at sentencing.

House Bill 96 – Allow Recovery of Public Defender Costs in Involuntary Commitment Cases

Effective: October 1, 2011

What the Bill States: House Bill 96 revises Section 47-1-110 of the MCA, a section dealing with the recoupment of public defender costs in the following way:

- A developmentally disabled person facing an involuntary commitment under 53-20-112 of the MCA may be responsible for the costs of public defender services as part of a judgment.
- Formerly, only people with access to public defenders in criminal cases were subject to the repayment of services. This bill adds involuntary commitment cases.
- While section 46-8-113 of the MCA outlines the specific amount a judge may levy against a public defender client in the judgment, House Bill 96 DOES NOT include a specific amount for involuntary commitment cases.
- As stated in 47-8-113, the court may not sentence a defendant to pay for costs of assigned counsel unless the court determines that client is capable of paying for costs.
- The same determination of ability to repay costs used by judges in accordance with 46-8-113 shall be used in involuntary commitment cases as well.

What the Bill Means: In summation, defendants are now also subject to repaying the costs of an involuntary commitment case, should the judge rule that the defendant has the ability to pay such costs.

2011 OPD SUPPORT STAFF TRAINING CONFERENCE
Tuesday-Wednesday, June 28-29
MSU – Great Falls

TUESDAY AGENDA

Noon – 12:30: Lunch and Registration

12:30 – 1:00 PM: Introduction and Welcome

1:00 – 2:00 PM: General Session: Records Management (Patti Borsberry)

2:00 – 3:30 PM: BREAKOUT WORKSHOPS #1
Blue Group: Session A
Gold Group: Session B
Red Group: Session C

3:30 – 5:00 PM: BREAKOUT WORKSHOPS #2
Blue Group: Session C
Gold Group: Session A
Red Group: Session B

WEDNESDAY AGENDA

8:00-8:30 AM: Team Building

8:30 – 10:00 AM: BREAKOUT WORKSHOPS #3
Blue Group: Session B
Gold Group: Session C
Red Group: Session A

10:00 – Noon: Principles of Efficient Office Dynamics (Julie Benson-Rosston) [120 minutes]

TOPICS COVERED IN BREAKOUT WORKSHOPS
(90 Minutes each)

Session A:
- OPD Records Management (Cathy Doyle) [15 minutes]
- Conflicts of Interest (Brian Yowell) [30 minutes]
- Orientation Policy for Support Staff (Craig McKillop) [15 minutes]
- Central Office Issues (Carleen Green) [30 minutes]

Session B:
- The Law of Discovery and Disclosure in Montana (Eric Olson and Mori Woods) [30 minutes]
- Professionalism, Communication and Interpersonal Dynamics (Diane Stenerson) [30 minutes]
- OPD Policies and the Auditing Process (Eric Olson) [30 minutes]

Session C:
- JustWare and Your Office (Marsha Parr) [90 minutes]

Representing Immigrant Defendants After Padilla v. Kentucky

Training Agenda

- Padilla v. Kentucky (130 S. Ct. 1473)
- How to integrate immigration consequences into your practice
- Basic introduction to immigration consequences of criminal conduct
- Crafting plea agreements
- Secure Communities
- Resources

PART I

Padilla v. Kentucky

(130 S. Ct. 1473)

Padilla v. Kentucky
The Facts

- Who was Jose Padilla?
- Lawful permanent resident for 40 years
- Vietnam War veteran
- Charged with marijuana possession and trafficking for having marijuana in his commercial truck
- Pled guilty (plea agreement) for marijuana trafficking after defense attorney told him he did not have to worry about deportation because he had lived in US for so long

Padilla v. Kentucky Holding

- Sixth Amendment requires defense counsel to provide affirmative, competent advice to a noncitizen defendant regarding the immigration consequences of a guilty plea
- Absent such advice, a noncitizen may raise a claim of ineffective assistance of counsel.

Padilla
Key Points -- 1

- Analysis based on
  Strickland v. Washington (*104 S. Ct. 3562)*
- The Sixth Amendment requires affirmative, competent advice regarding immigration consequences.
- Non-advice (silence) is insufficient (ineffective).

Padilla
Key Points – 2

- Every noncitizen client must be advised as specifically as the law allows of the immigration consequences of pleading guilty.
- "Lack of clarity in the law . . . does not obviate the need to say something about the possibility of deportation, even though it will affect the scope and nature of counsel's advice." 130 S. Ct. at 1483 n.10.

Padilla
Key Points – 3

- The Court endorsed "informed consideration" of deportation consequences by both defense and the prosecution during plea-bargaining" 130 S. Ct. at 1486.

PART II

Duties of the Criminal Defense Bar: Integrating Immigration Advisal

Steps to Effective Representation After Padilla

1) Intake form: Gather Information. Copy all documents.

2) Use Intake form to Make Immigration Analysis

3) Identify Client's Priorities and Advise Client

4) Defend Case According to Client's Priorities

To facilitate consultations, please have the following information when you call, along with a record of **all prior charges** from all states/countries and information about the **current criminal case**.

Client's Name: _____ Date of Birth: _____

Nationality	
When did the client enter U.S.?	
How did the client enter U.S.? (examples at right)	Lawful permanent resident (LPR)/ Green card Temporary visa (e.g., tourist, student, business) Cross border without documents Refugee Other (_____)
What is the client's current status? (examples at right)	Lawful permanent resident (LPR)/ Green card (date client became LPR _____) Temporary visa (in status) Undocumented (visa overstay/expired) Undocumented (crossed border, never got status) Asylee/Refugee Temporary Protected Status (TPS) Other (_____)
Has the client ever been ordered deported/ removed?	
Immigration status of family members: - **spouse** - **parents** - **children**	

Step 1: Intake: Determine Your Client's Status

Routinize: "Where were you born?"

Be sensitive:

- From the client's perspective you are part of the system.
- Establish trust and explain why you're asking.

Avoid asking for legal conclusions:

- Ask "Where were you born," not "Are you a citizen?"
- Ask "Do you have a green card," not "Are you legal?"

Never assume status from rap sheet, name, appearance, language, accent or anything else

Step 1: Intake (cont.) Types of Immigration Status

- U.S. Citizen
  - Birth; Naturalization; Automatic Derivation/Acquisition
- Lawful Permanent Resident ("green card")(LPR)
- Nonimmigrant Visa (tourist, student, business professional, seasonal worker)
- Asylee/refugee
- Temporary Protected Status
- Visa Overstay
- Entered Without Inspection ("EWI")

Step 1: Intake (cont.) Immigration/ Criminal History

For all clients, obtain:

Copy all documents

Date of first entry into U.S.(dates of all departures and re-entry)

First lawful admission in any status

How the client entered the U.S.

Immediate family members' status

Complete prior criminal history

Has the client ever been deported or removed

For LPRs:

Date received LPR status

Step 2: Determine Immigration Consequences

- Investigation + crim history + goal =advisal
- Develop expertise yourself (assistance from resources) or consult with criminal immigration experts
  - And
- Advise on both clear and unclear immigration consequences of the charge, the offer and any alternate plea dispositions that may be attainable in the case

Consequences of Criminal Offenses

- Mandatory removal from the U.S.
- Inability to return to the U.S.
- "Good moral character" bar to naturalization (INA §101(f))
- Denial of LPR status
- Bar to asylum/withholding of removal
- Inability to renew green card or travel
- Mandatory detention

Step 3: Identify Client's Priorities

- Client may need to choose whether immigration consequences or criminal sentence concerns are most important
- Give client immigration analysis regardless of their stated desire to fight deportation, give the client the basic information as to what might happen next

Step 4: Defend the Case According to the Client's Priorities

- If immigration consequences are client's priority, conduct defense with this in mind: Padilla, 130 S. Ct. at 1484
- a) If current offer fits client goals with most favorable immigration outcome = take offer
- b) If offer doesn't fit client goals, maybe:
  - Negotiate plea offer to particular section of statute
  - Litigate case towards motions hearing and trial if less risky than immigration consequences of the plea
  - If applicable, negotiate sentencing concession
  - Remember Padilla's instruction on prosecutor's duty

PART III

Overview of the Immigration Consequences of Criminal Offenses

Inadmissibility v. Deportability

INA § 212, 8 U.S.C. § 1182

INA § 237, 8 U.S.C. § 1227

INADMISSIBILITY

- Applies to noncitizens seeking lawful admission (or readmission) to the US
- Non-LPRs (including refugees, asylees, and undocumented people) should focus on avoiding inadmissibility
- LPRs traveling outside the US may also need to focus on inadmissibility

DEPORTABILITY

- Applies to noncitizens lawfully "admitted" into the US
- LPRs in the US should focus primarily on deportability

Immigration Consequences of Crimes Summary Checklist *

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CRIMINAL INADMISSIBILITY GROUNDS

– Will or may prevent a noncitizen from being able to obtain lawful status in the U.S. May also prevent a noncitizen who already has lawful status from being able to return to the U.S. from a trip abroad in the future.

Conviction or admitted commission of a **Controlled Substance Offense**, or DHS reason to believe that the individual is a drug trafficker

Conviction or admitted commission of a **Crime Involving Moral Turpitude** (CIMT), which category includes a broad range of crimes, including:

- Crimes with an *intent to steal or defraud* as an element (e.g., theft, forgery)
- Crimes in which *bodily harm* is caused or threatened by an intentional act, or *serious bodily harm* is caused or threatened by a reckless act (e.g., murder, rape, some manslaughter/assault crimes)
- Most sex offenses

Petty Offense Exception – for one CIMT if the client has no other CIMT + the offense is not punishable >1 year + does not involve a prison sentence > 6 mos.

Prostitution and Commercialized Vice

Conviction of **two or more offenses** of any type + **aggregate prison sentence of 5 yrs.**

CRIMINAL BARS ON 212(h) WAIVER OF CRIMINAL INADMISSIBILITY based on extreme hardship to USC or LPR spouse, parent, son or daughter

- Conviction or admitted commission of a **Controlled Substance Offense** other than a single offense of simple possession of 30 g or less of marijuana
- Conviction or admitted commission of a **violent or dangerous crime** will presumptively bar 212(h) relief
- In the case of an LPR, conviction of an **Aggravated Felony** [see Criminal Deportation Gds], or any **Criminal Inadmissibility** if removal proceedings initiated before 7 yrs of lawful residence in U.S.

CRIMINAL BARS ON ASYLUM based on well-founded fear of persecution in country of removal OR WITHHOLDING OF REMOVAL based on threat to life or freedom in country of removal

Conviction of a "**Particularly Serious Crime**" (PSC), including the following:

- **Aggravated Felony** [see Criminal Deportation Gds]
  - All aggravated felonies will bar asylum
  - Aggravated felonies with aggregate 5 years sentence of imprisonment will bar withholding
  - Aggravated felonies involving unlawful trafficking in controlled substances will presumptively bar withholding of removal
- **Violent or dangerous crime** will presumptively bar asylum
- **Other PSCs** – no statutory definition; see case law

CRIMINAL BARS ON 209(c) WAIVER OF CRIMINAL INADMISSIBILITY based on humanitarian purposes, family unity, or public interest (only for persons who have asylum or refugee status)

- DHS reason to believe that the individual is a **drug trafficker**
- Conviction or commission of a **violent or dangerous crime** will presumptively bar 209(c) relief

CRIMINAL DEPORTATION GROUNDS

– Will or may result in deportation of a noncitizen who already has lawful status, such as a lawful permanent resident (LPR) green card holder.

Conviction of a **Controlled Substance Offense** EXCEPT a single offense of simple possession of 30g or less of marijuana

Conviction of a **Crime Involving Moral Turpitude** (CIMT) [see Criminal Inadmissibility Gds]

- One CIMT committed within 5 years of admission into the US and for which a prison sentence of 1 year or longer may be imposed
- Two CIMTs committed at any time "not arising out of a single scheme"

Conviction of a **Firearm or Destructive Device Offense**

Conviction of a **Crime of Domestic Violence, Crime Against Children, Stalking, or Violation of Protection Order** (criminal or civil)

Conviction of an **Aggravated Felony**

- *Consequences*, in addition to deportability:
  - Ineligibility for most waivers of removal
  - Permanent inadmissibility after removal
  - Enhanced prison sentence for illegal reentry
- *Crimes included*, probably even if not a felony:
  - **Murder**
  - **Rape**
  - **Sexual Abuse of a Minor**
  - **Drug Trafficking** (including most sale or intent to sell offenses, but also including possession of more than 5 grams of crack or any amount of flunitrazepam and possibly including certain second or subsequent possession offenses where the criminal court makes a finding of recidivism)
  - **Firearm Trafficking**
  - **Crime of Violence + at least 1 year prison sentence ****
  - **Theft or Burglary + at least 1 year prison sentence ****
  - **Fraud or tax evasion + loss to victim(s) >10, 000**
  - **Prostitution business offenses**
  - **Commercial bribery, counterfeiting, or forgery + at least 1 year prison sentence ****
  - **Obstruction of justice or perjury + at least 1 year prison sentence ****
  - **Various federal offenses** and possibly state analogues (money laundering, various federal firearms offenses, alien smuggling, failure to register as sex offender, etc.)
  - **Other offenses listed at 8 USC 1101(a)(43)**
  - **Attempt or conspiracy** to commit any of the above

CRIMINAL BARS ON LPR CANCELLATION OF REMOVAL based on LPR status of 5 yrs or more and continuous residence in U.S. for 7 yrs after admission (only for persons who have LPR status)

- Conviction of an **Aggravated Felony**
- **Offense** triggering removability referred to **in Criminal Inadmissibility Grounds if committed before 7 yrs of continuous residence in U.S.**

CRIMINAL BARS ON OBTAINING U.S. CITIZENSHIP

– Will prevent an LPR from being able to obtain U.S. citizenship.

Conviction or admission of the following crimes bars the finding of good moral character required for citizenship for up to 5 years:

- **Controlled Substance Offense** (unless single offense of simple possession of 30g or less of marijuana)
- **Crime Involving Moral Turpitude** (unless single CIMT and the offense in not punishable > 1 year (e.g., in New York, not a felony) + does not involve a prison sentence > 6 months)
- 2 or more offenses of any type + aggregate prison sentence of 5 years
- 2 gambling offenses
- **Confinement** to a jail for an aggregate period of 180 days

Conviction of an **Aggravated Felony** on or after Nov. 29, 1990 (and conviction of murder at any time) *permanently* bars the finding of moral character required for citizenship

"CONVICTION" as defined for immigration purposes

A formal judgment of guilt of the noncitizen entered by a court, **OR**, if adjudication of guilt has been withheld, where:

(i) A judge or jury has found the noncitizen guilty or the noncitizen has entered a plea of guilty or *nolo contendere* or has admitted sufficient facts to warrant a finding of guilt, and

(ii) the judge has ordered some form of punishment, penalty, or restraint on the noncitizen's liberty to be imposed

THUS:

- A court-ordered drug treatment or domestic violence counseling alternative to incarceration disposition IS a conviction for immigration purposes if a guilty plea is taken (even if the guilty plea is or might later be vacated)
- A deferred adjudication without a guilty plea IS NOT a conviction
- NOTE: A youthful offender adjudication IS NOT a conviction if analogous to a federal juvenile delinquency adjudication

*For more comprehensive legal resources, visit IDP at www.immigrantdefenseproject.org or call 212-725-6422 for individual case support.

** The "at least 1 year" prison sentence requirement includes a suspended prison sentence of 1 year or more.

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Criminal Grounds of Inadmissibility INA § 212(a)(2)

Does not always require conviction

- Crime involving moral turpitude (CIMT)- conviction or admitted commission
  - CIMT: intent to steal or defraud; bodily harm by intentional act; serious bodily harm by reckless act; most sex offenses
  - Petty Offense Exception: single CIMT if max. possible penalty is not greater than 1yr and actual penalty ≤ 6mos.
- Controlled Substance Offense- conviction or admitted commission (substance enumerated in federal CSA)(controlled substance act)
  - NO marijuana exception
- Multiple convictions w/ aggregate sentence of 5 years
- Reason to Believe Drug Trafficker- no conviction required
- Prostitution & Commercialized Vice- no conviction require

Criminal Grounds of Deportability INA § 237, 8 U.S.C. § 1227

- Controlled substance conviction (substance numerated in federal CSA)
  - Or drug abuser or addict
- CIMT conviction
  - CIMT: intent to steal or defraud; bodily harm by intentional act; serious bodily harm by reckless act; most sex offenses
  - 1 within 5 years of admission + potential sentence of 1 year or more
  - 2 CIMTs after admission “not arising out of a single scheme”
- Firearm or destructive device conviction
- Domestic violence
  - Crime of domestic violence
  - Stalking conviction
  - Child abuse, neglect, or abandonment
  - Violation of order of protection (civil or criminal finding)
- Aggravated felony conviction (AF)

Examples of Montana Offenses That Are or May Be a CIMT

- Probable/definite CIMTs:
- Assault with a weapon:
  mca § 45-5-213
- Misdemeanor assault:
  mca § 45-5-201
- Theft:
  mca § 45-6-301
- Forgery:
  mca § 45-6-325

- Sexual offenses:
  mca§ 45-5-502

- Possible CIMTs:
- Both DUI(alcohol) and Driving While Suspended.

Examples of Montana Offenses That Are Aggravated felony (AF)

- Sexual abuse of children:

  mca § 45-5-625
- Criminal Possession with intent to distribute:

  mca § 45-9-103
- Deliberate homicide:

  mca § 45-5-102
- Promoting Prostitution

  mca § 45-5-602

PART IV

Crafting Plea Agreements

What is a conviction?

- Deportability usually requires “conviction”
  - INA § 101(a)(48); 8 U.S.C. § 1101(a)(48)
- A conviction is:
  - A formal judgment of guilt entered by a court

    or
- Where adjudication of guilt has been withheld,
  - Δ admits facts sufficient to warrant a finding of guilt

    and
  - Court has ordered some form of punishment, penalty, or restraint on liberty.

Definition of "Conviction": MONTANA

MCA§ 45-2-101 (16)

Conviction" means a judgment of conviction or sentence entered upon a plea of guilty or nolo contendere or upon a verdict or finding of guilty of an offense rendered by a legally constituted jury or by a court of competent jurisdiction authorized to try the case without a jury.

Mitigation Strategies

- In addition to seeking to negotiate non- removable plea/sentence, strategies may include:
  - Avoiding sentencing trigger (e.g. 364 days, 179 days)
  - Pre-plea diversion
  - Control allocution of potentially removable offense:
  - Avoid admissions of any conduct beyond bare elements of offense (esp. for potential CIMTs)
  - Sanitize record
  - Loss amount strategies

Mitigation Strategies (cont)

- Negotiate prosecutor's sponsorship of S or U visa for cooperators/cross-complainants
- Avoid ICE contact via jail or probation
- File appeal
- Seek post-conviction relief
- Avoid sex offender registry

ICE Contact with Clients(ICE LOOK AT THESE)

- Arrest to arraignment
- Criminal custody facilities
- Green card renewal
- Other applications: Adjustment of Status, citizenship
- Return from travel abroad
- Sex offenders

Detainers

- Detainer- request by ICE to be held for pick up
- Plead to deportable offense after jail time accrued, not before
- Detainer does not prevent release from DOC custody, but client will be held for pickup by ICE
- 48 hour rule(excluding Holidays and weekends)
- Client has right to refuse ICE interview in DOC custody (DO NOT TALK TO ICE)
- Never lie to ICE about citizenship

ICE: SECURE COMMUNITIES

- Ice has an agreement with the Montana Department of Justice
- By 2013 ICE plans to mandate that all local law enforcement agencies enroll in secure communities.
- The system take the finger print from the arresting agency and send it to the FBI and ICE. ICE will then issue a detainer to the arresting officer
- Lewistown, Missoula and Yellowstone

RESOURCES: Consultation

- Collect data on intake form (included)
- Have complaint & rap sheet available
- Contact Knandlal@mt.gov
- Contact CQuinn@mt.gov

RESOURCES: Web

- Immigrant Defense Project
  - www.immigrantdefenseproject.org
- Defending Immigrants Partnership
  - www.defendingimmigrants.org
- National Immigration Project, NLG
  - www.nationalimmigrationproject.org

RESOURCES: Print

- M. Vargas, “Tips on How to Work With an Immigration Lawyer to Best protect Your Noncitizen Defendant Client” (handout materials)
- N. Tooby, Tooby’s Guide to Criminal Immigration Law (2008)
  free download @ www.criminalandimmigrationlaw.com
- N. Tooby, Criminal Defense of Immigrants (4th ed.)
- N. Tooby, Safe Havens (2005)

HYPOTHETICAL

PLEASE REFER TO THE ATTACHED HYPOTHETICAL

QUESTIONS