

# REPORT TO THE PUBLIC DEFENDER COMMISSION

William F. Hooks, Chief Public Defender

April 5, 2016

Beginning with this report, Program 1 will submit quarterly reports to the Commission.

**Central Office Staff.** OPD's staff and contract attorneys in Montana's eleven regions and the Major Crimes Unit will provide legal services in more than 35,000 new cases in Fiscal Year 2016. The staff of the Central Office make this representation possible. The support function covers everything from providing equipment and office space, to ensuring that payroll and vouchers are paid, training and contract management, and data collection and reporting.<sup>1</sup> The staff provide support to every regional office, pay the bills for every private attorney case, and support the Commission. They are the foundation on which the agency operates.

**Accounting/Budget.** Carleen Green is our lead accountant. Carleen supervises a team which includes accountant Malia Soyland, accounting technicians Traci Brasier and Bekki Satterlee, and students Niki Murphy and Tayler Templin. The accounting team is based in the Butte headquarters.

**Administrative Specialist.** Cathy Doyle not only provides support to the Commission, but coordinates and oversees various other areas including records management, continuity planning, policy management, publications, and the internal and external websites.

**Human Resources.** Barb Kain is our human resource specialist. Barb is based in Helena. Malia Soyland assists her. They provide payroll and benefits assistance to OPD's 200+ full-time employees.

**Information Technology/Support.** Kyle Belcher is the supervisor of our IT component. Kyle is based in our Great Falls office. Team members include Jeb Myren (Missoula) and Steven St. John (Billings), and computer systems analyst John Coulthard (Butte).

Case Management System. Computer support specialist Marsha Parr is OPD's JustWare manager. Marsha is based in Missoula. JustWare is OPD's central repository for many types of information and functions. When an OPD office receives a court order to assign a case to an attorney, information about the client and the case is entered in JustWare. We can use this information to run checks to see if the new cases pose a conflict of interest. Court dates and other case-related information are calendared. Actions taken in the case – motions filed, contacts made – can be entered. Staff attorneys keep track of their time. Discovery and other documents can be entered into JustWare.

We are working to enhance our ability to collect and report on management information, such as eligibility decisions and case dispositions.

Investigative Staff. Mori Woods is OPD's supervisor for our 19 investigators. Mori is based in the Butte headquarters. Mori formerly served both as a part-time investigator and a part-time supervisor. We recently moved Mori to more of a management role.

Contract Management. Wendy Johnson manages and oversees OPD's contract program. Wendy splits her time between Helena and Butte. Lynn MacMillan is Wendy's administrative assistant. Wendy's responsibilities include oversight for private attorneys who work in all three programs, and vendors who provide non-attorney services for our attorneys. Wendy coordinates with the regional deputies, Mori Woods and with Kristina Neal in Program 3 to determine whether to issue Memorandums of Understanding to attorney, investigator and mental health contractors. Wendy also monitors and evaluates the contractors and determines whether to renew or terminate MOUs.

Part of the contract manager function requires that Wendy and Lynn MacMillan review and monitor the pre-approval request process by which attorneys can ask for authorization to retain experts and other third-party case support.<sup>2</sup>

Training. Peter Ohman, in Bozeman, is OPD's training coordinator. Peter provides training opportunities for all OPD attorneys and staff, and makes training opportunities available for the private attorneys who accept cases from OPD. Chris Thomas supports Peter in the training office. Chris is our expert in issues relating to client eligibility for

public defender services, and in this capacity she trains and assists our regional eligibility specialists.<sup>3</sup>

**Central Office Functions.** As noted in a paper issued in 2014 by the National Legal Aid and Defender Association, “[r]egularized data collection and analysis is a practice that will help defender managers carry out their core managerial functions more effectively, assess progress in meeting organizational goals and objectives and, in turn, help improve their program’s effectiveness.” Our data collection and reporting functions are the product of a team approach. Our staff and supervisors train the folks in the field offices and design and support the case management system. Regional staff enter the appropriate data into JustWare, and managers analyze and report the information.

For each month, we generate a report for each region on the actual number of cases opened in that month, by case type and by court. This provides us with a running tally of the numbers of cases and types of cases for each of Montana’s 207 trial courts. For example, we can see the number of misdemeanor cases opened each month in the Helena city court (region 4) and the number of dependent/neglect cases opened in district court in Hill County (region 6).

We produce a related report, which reports, by region, the total number of cases in the district courts and those in the courts of limited jurisdiction, and the percent increase or decrease from prior years. This report reveals that cases filed in all district courts in Region 8 increased 4% in FY 2014, and cases filed in the courts of limited jurisdiction increased 7% in FY 2015. We can look at prior years and based on monthly reports, develop trends and spikes in cases files in our regions.

We have two reports on the number of open cases: the number that are open and active, and the number that are open and inactive. We also track the number of “inactive” cases in which imposition of a criminal sentence was deferred, and those “inactive” cases which should be listed as “closed” because the deferral period has expired.

We generate a report that tracks the time recorded by each FTE attorney, for each month. At the regional level, we recently started having our investigators enter time in JustWare. We developed a number of tasks that investigators routinely perform. These

include appearing in court, discovery review, various forms of client consultation and communication, interviews, administrative/non-case-related work, case evaluations, report writing, training, and travel. Investigators can enter the amount of time spent on these functions, and this enables managers to assess resource needs and assess workloads.

We generate month-of-service reports for the regions. For example, we generate a month-of-service expense report for private attorneys who handle non-conflict cases. This report shows the amount each private attorney was paid per month, and provides a running total for the fiscal year, by region.

Each month, we produce and post to the OPD intranet site a report which gives the transaction details for payments made during the month and a year to date total by account. An email with a link to the OPD intranet is sent to all regional deputies and managers within the programs at the first of each month advising the report has been posted.

We have a number of private attorneys who are willing to accept case assignments in multiple OPD regions. We generate a report that shows how many cases a private attorney has, and the type of case, by region. Thus, when a regional deputy needs to assign an overflow case to a private attorney, she can access this data and assess the OPD-assigned workloads of those contract attorneys who are qualified to handle the case.

We collect data on the number of cases a staff attorney or a contract attorney has been assigned, per region, by case type and status as open, inactive, or closed. If no time has been entered in a case, that case is flagged in red. We also flag and note cases in which there is no pending action scheduled.

We also conduct internal audits and reviews of our functions. As part of our internal controls process Malia Soyland audits employee travel vouchers selected randomly, and produces a report. Traci Brasier conducts quarterly audits of contractor/third-party claims. Traci randomly selects claims from contract attorneys, mental health providers and other third-party vendors, who provide services to Program 1, Program 2, or

Program 3. In a recent audit report, Traci noted she audited 30 random claims, totaling almost \$71,000. She found mathematical errors of \$238, consisting in part of incorrect mileage rates.

Several of our managers have a state-issued credit card to cover expenses. This card is referred to as a “procard.” Traci monitors bills incurred by use of our procards and handles reporting obligations related to procard use.

**Regional Management Issues.** Regional deputy public defenders joined Program 1 supervisors and managers in meetings in May and December, 2015. Kristina Neal joined us for these meetings, as we have trial-level issues in common. During these meetings we developed a type of Program 1 Strategic Plan, to help guide our efforts during the process of revising the agency strategic plan. We also drafted proposals for consideration by the Public Defender Commission. A copy of our 2015 Program 1 Strategic Plan, with current updates noted, is attached to this Report. I want to call to the Commission’s attention three notable developments:

- Five of our managers attended a multi-day leadership and management conference presented by the National Association for Public Defense at Valparaiso Law School in May. The national conference was limited to 100 participants, and we were able to secure 5 slots. My goal is to have all of our leaders and managers attend this type of leadership training, to supplement the great work Peter and his staff present.
- Wendy Johnson, Kyle Belcher and Kristina Neal are making substantial progress toward developing enhancements to our electronic contractor billing system.
- OPD has been proactive in seeking ways to address the workload crisis brought on by increasing number of cases in which we are ordered by courts to assign counsel. As a member of the Governor’s Protect Montana Kids DN Task Force, I proposed two legislative developments which might alleviate some of the workload without adversely impacting the rights of our clients. One proposal would relieve OPD of the current obligation to assign counsel for alleged or putative parents whose identities are unknown. The second would create a kind

of “open” adoption in which a parent would have the opportunity for continued involvement in a child’s life, even after parental rights are terminated. The Task Force voted to recommend both proposals for consideration by Governor Bullock.

In addition to this Task Force, I serve on the Montana Board of Crime Control, the Commission on Courts of Limited Jurisdiction, and on the Forensic Sciences Laboratory Advisory Board.

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<sup>1</sup> OPD is required to provide annual reports to the Governor, the Legislature, the Supreme Court, and interim committees. The central office staff are responsible for collecting the data and submitting these reports.

**Sec. 47-1-105(9), MCA, requires :** Biennial report, reporting for the prior biennium

- (a) all policies or procedures in effect for the operation and administration of the statewide public defender system;
- (b) all standards established or being considered by the commission, the chief public defender, or the chief appellate defender;
- (c) the number of deputy public defenders and the region supervised by each;
- (d) the number of public defenders employed or contracted with in the system, identified by region;
- (e) the number of attorney and nonattorney staff supervised by each deputy public defender;
- (f) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;
- (g) the total number of persons represented by the office and the office of appellate defender, identified by region, court, and case type;
- (h) the annual caseload and workload of each public defender, except for the chief public defender, and of the office of appellate defender, identified by region, court, and case type;
- (i) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;
- (j) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and
- (k) detailed expenditure data by court and case type.

**47-1-201(10), MCA**

(10) (a) The office of public defender is required to report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the legislative fiscal analyst. The report must be provided in an electronic format and include

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unduplicated count data for all cases for which representation is paid for by the office of public defender, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type.

(b) The office of public defender is required to report to the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid. The report must be provided in an electronic format.

<sup>2</sup> The position of contract manager is set out in §47-1-\_\_\_, MCA.

<sup>3</sup> The position of training coordinator is set out in §47-1-\_\_\_, MCA.

**PROGRAM ONE STRATEGIC PLAN NOTES**  
**June, 2015 Draft**

Comments in *red* reflect updates and progress as of March 31, 2016.

**Goal: Ensure that the Client's Constitutional Right to Effective Assistance of Counsel is Preserved**

**Objective 1: Maintain a client-centered focus that promotes excellence.**

*A client-centered focus is an on-going effort.*

*Strategy:* Draw on the collective expertise of staff and contractors.

*Strategy:* Create a confidential intranet resource to enhance communication regarding current developments in law affecting our clients.

- *We are working on the web design and implementation of intranet resources*

**Objective 2: Enhance leadership and management skills.**

*Strategy:* Develop training programs and identify resources to support management skills development.

- *We are enhancing our management training opportunities for attorney-supervisors and office managers.*
- *In May, 2016 five supervisors attended leadership training sponsored by the National Association for Public Defense at Valparaiso Law School.*

*Strategy:* Enhance the ability of the Human Resources unit to provide management consultation and support, and enhance OPD's ability to identify and recruit to meet the needs of the agency and the people we serve.

*Strategy:* Identify sufficient Information Technology (IT) resources to meet agency technical priorities, and empower the full use of technical resources.

- *We are reviewing our IT resources, to determine equipment and IT priorities: tablets, mobile apps for JustWare; the key problem is how to pay for it all –we now pay for these items from our state special revenue account.*

*Strategy:* Establish regular strategic planning meetings with managers and supervisors.

- *We have been holding periodic conference calls with regional deputies, and will start doing so with our investigative work force.*



### **Objective 3: Monitor and address issues relating to attorney workloads**

*Strategy:* Continue to utilize attorney time-keeping and review and assess the case-weighting system, making changes where appropriate as determined by the joint Labor-Management Committee.

- We have emphasized with regional deputies the need for accurate timekeeping.
- Investigators have started entering time in JustWare.
- The Labor-Management Committee will meet in Helena on Friday, April 15.

*Strategy:* Take appropriate steps to limit OPD involvement in DN cases while ensuring the rights and best interests of our clients are protected, by filing motions to stay court orders directing OPD to assign counsel for a parent, if we cannot locate or contact the client after making sufficient and reasonable efforts.

- We file motions to stay orders to assign counsel for parents who cannot be identified or located; some courts will not grant the motions.
- We recommended to the Governor's Protect Montana's Kids DN Task Force that the laws be amended so putative parents whose identity is unknown will not be assigned a public defender.

*Strategy:* Seek to rescind appointments or withdraw from cases which fall outside of OPD's statutory mandate.

- OPD is opposing appointments in involuntary adoption cases following the Montana Supreme Court's decision in *In re A.W.S.* (2015).

*Strategy:* Consider whether, and under what circumstances/factors, OPD will continue to be involved in providing representation in treatment courts. Develop Practice Standards for representation in treatment courts, if OPD remains involved. Develop a "fixed fee" contract for representation by contract attorneys in treatment courts.

- We have a review of the various treatment courts in Montana; and have a draft of proposed Standards for Committee review.

### **Objective 4: Reevaluate conflict of interest policies and standards, and adopt criteria to determine the most appropriate and cost-effective assignment of each conflict case.**

- Following review of our practices state-wide, regional deputies and supervisors in Program 1 have been advised that a client's filing of a grievance or complaint

generally does not constitute sufficient grounds to refer the case to the conflict coordinator.

- We are working on a pilot project that will enable us to enter client complaints and management resolutions of those complaints into our JustWare case management system.

*Strategy:* Consider the current standards and policy provisions relating to conflicts in DN cases.

*Strategy:* Consider the current standards and policy provisions relating to cases in which the client presents or files a complaint or grievance regarding the representation provided by counsel assigned to the case.

*Strategy:* Consider modifying Practice Standard III.3, which establishes “vertical representation” or continuous representation as the appropriate practice standard.

*Strategy:* Evaluate the option of using staff attorneys to handle conflict cases in other regions. Because attorneys representing conflict cases must travel outside their own district to represent these cases, they may spend more time traveling and incur more travel costs than a private attorney from the originating region would spend/incur. This additional travel results in less attorney time available to represent cases and increased travel expenses.

**Objective 5: Develop procedures to enhance efficiencies and productivity**

*Strategy:* Enhance the ability of the Case Management System unit to provide uniform, consistent and regular support and training to all programs.

- This is an on-going effort, and will be discussed with office managers.
- We have implemented our electronic voucher system for contractors, and steps are underway to develop and implement enhancements.

*Strategy:* Develop a plan to assist regional offices and MCU in transitioning into a “paperless” office format.

- This is an on-going effort. Regions 6 and 7 are largely paperless. Additional steps are dependent on the ability to provide necessary resources and equipment.

**Objective 6: Allocate available resources fairly, in a manner consistent with OPD policies and priorities**

*Strategy:* Regularly evaluate the strengths and resource needs of the regions and units. Review and monitor allocation of full-time employee positions within regions.

- This is an on-going process.

**Goal: Ensure the Indigent Defense System is Accountable to Taxpayers.**

**Objective 1: Continue to improve the eligibility screening process. Consistent and reliable eligibility screening preserves OPD’s resources for the clients who need assistance the most.**

*Strategy:* Develop guidelines for use by Regional Deputy Public Defenders and eligibility specialists in the offices in making “hardship” determinations.

- Need to focus on hardship and make this project a priority

*Strategy:* Pursue efforts to address support staff turnover, which in turn creates difficulties in consistently and uniformly conducting the eligibility screening process.

- We are monitoring the impact of recently-implemented staff pay raises.

**Objective 2: Continue to improve data collection regarding eligibility determinations and verification of applications.**

- We can now report in several regions the total number of applications, the total number of applications in which the applicant was found eligible, and the criterion for eligibility (financial eligibility; presumptive eligibility; or substantial hardship), and whether the information provided by the applicant was verified. We continue to improve our practices in all regions.
- We have a plan to add FTE positions to bolster the eligibility specialist function.

**Objective 3: Continue to work on collection of court-ordered obligation to pay attorney fees.**

*Strategy:* Work with Executive Branch and Department of Administration

*Strategy:* Work with the Court Administrator's Office and the Judiciary.

- This effort is an on-going process. Meetings with other agencies have not proved fruitful, and it is unlikely that a third party/private entity will agree to take over this function. We are working on options. The preferable option is to relieve OPD from the obligation to collect attorney fee assessments. We have proposals to facilitate this step.

**Goal: Develop a Process to Monitor Progress and Adjust the Strategic Plan**

**Objective 1: Establish regular reporting.**

*Strategy:* Supervisors and managers will submit prospective work plans at the start of each fiscal year, and the work plans will be reviewed with senior management on a quarterly basis.

- This is an on-going project. Our goal is to develop region-specific work plans and follow up on progress in each region, and thereby empower regional deputies to identify problems and propose solutions.

*Strategy:* Adjust the strategic plan as required.

**Objective 2: Promote and Communicate the Strategic Plan.**

*Strategy:* Develop a plan to promote and communicate the strategic plan.

*Strategy:* Present strategic plan for all OPD employees.

*Strategy:* Establish regular meetings of managers and supervisors, and FTEs of attorneys, staff, investigators, and other interested stakeholders.

- These efforts will be ongoing

**Objective 3: Allocate resources to support the strategic plan.**

- These efforts will be ongoing

## STRATEGIC PLAN – PUBLIC DEFENDER COMMISSION

### **Goal: Reconfigure the Structure of the Commission**

#### **Objective 1: Create a Position of Executive Director.**

The Commission should establish a full-time employee position of Executive Director (ED). This position would be hired by and supervised by the Commission. The ED would oversee all operational aspects of the three existing programs, including budget and resource allocation issues. The ED also would have primary responsibility and authority in legislative matters. The chief public defender, chief appellate defender, and conflicts manager would report to the ED.

#### **Objective 2: Develop a Full-Time Employee Position for a Communications Director.**

### **Goal: Develop a Mechanism to Assess and Evaluate Support Staff and Investigator Workloads.**

We know from anecdotal reporting and experience that staff attorneys spend a significant amount of time performing tasks that could otherwise be performed by support staff (secretaries and legal assistants) and investigators. OPD budget requests have included funding for additional FTE staff and investigator positions to meet caseload demands. However, OPD does not have adequate procedures to measure the need for additional support staff and investigators.

The structure of support staff resources differs in OPD regional and branch offices. Staffing levels and position classifications differed among the offices when the agency was founded. These differences have continued as the agency has evolved. Currently, for example, the ratios of attorneys to support staff are not consistent within the largest regional offices.

#### **Objective 1: Using its Discretionary Funding, the Commission Will Retain the Services of an Outside Expert to Track and Analyze Attorney, Support Staff and Investigator Hours, and Use the Data to Support Management Decisions Regarding Staff Resources Necessary to Meet Estimated Caseloads.**

#### **Objective 2: Using its Discretionary Funding, the Commission Will Retain the Services of an Outside Expert or Consultant to Assess and Evaluate the Agency's Organizational Structure and Make Recommendations for Changes to Enhance Efficiencies and Productivity.**