

Public Defender News



Chief's Corner

Special points of interest:

- [Budget Update](#)
- [Stiffarm Decision](#)
- [Jurors' Insight Project](#)



The Legislative Session is into its seventh week and a little more than 40% over. Needless to say, I am counting the days. The transmittal date is February 24. This is the date by which any bill, other than revenue or appropriations bills, must be heard and voted on in the originating house and transferred to the other chamber. Both houses are busy trying to get all of their bills heard. We track all the bills which will impact our operation. On some, we generate a fiscal note which basically contains financial information on what the cost to us will be if a specific bill becomes law. For example, if a bill creates a new crime, then we estimate how many cases will be charged and how many hours of representation will be involved to determine the cost.

Much legislative attention is being focused on DUI legislation. There are bills to increase the penalties, make third offense a felony, criminalize

failure to blow, and provide for an aggravated DUI. The aggravated DUI bill introduced by Senator Larry Jent provides for one to three years of probation conditioned on participation in DUI courts or other long-term treatment. Failure can result in one year being revoked. The sponsor and others maintain the crime is a misdemeanor. We expect that there may be clarifying amendments made in the House.

A bill to eliminate jail time for certain offenses requested by the Legislative Finance Committee was tabled by the Senate Judiciary Committee. OPD and the Public Defender Commission also requested several pieces of legislation. The access to jails bill was tabled in Senate Judiciary and appears dead. HB 97, the bill to separate the Appellate Office and put it under the Commission, passed the House and is now in the Senate. The bill to allow us to assess fees in certain guardianships, HB 96, also passed the House.

After transmittal, the surviving legislation will be heard again and process through the second legislative chamber, and some will go to the Governor and become law before the session concludes. I will keep everyone informed as this happens.

Thanks for all that you do,

Randi

Inside this issue:

Budget Update	2
Data Disaster?	2
Jurors' Insight Project	3
Dan Boucher's New Gig	3
OPD Spotlight	4
Appellate News	5
Support Staff Training	5

New Attorney Liaison Chosen

The attorney union recently elected Nick Aemisegger from the Kalispell office as the new liaison to the Public Defender Commission, succeeding Laura Simonson. Chairman Fritz Gillespie expressed his gratitude to Laura, saying "Thank you for the contributions you have made to the agency, not only as the liaison, but on the LMC and in your daily work. We all have a part to play and together we will continue to make the agency better and a better place to work."



Budget Update

By Randi Hood

Supplemental Funding

You may have heard recently that our agency is requesting supplemental funding from the legislature for this fiscal year, ending June 30. Supplemental funding is needed when we don't have enough appropriation to pay the bills for the remainder of the biennium. We are requesting an additional \$850,000 to get us through this fiscal year.

The last legislature approved about \$20 million per fiscal year in funding for the 2010-2011 biennium. We immediately knew that this wouldn't be sufficient, and at times we estimated that we were as much as \$1.5 million short per year (or \$3 million for the two fiscal years in our budget). The shortfall was primarily caused by the requirement for additional vacancy savings, an across the board reduction, and funding the attorney pay ladder.

Thanks to the hard work of everyone in the agency, we were able to take measures to reduce this shortfall to \$850,000 while still providing quality services to our clients.

*"It's a long way to
the end of the
session and
anything can
happen, so stand by."*

Budget Hearings

The Joint Appropriations Subcommittee on the Judicial Branch, Law Enforcement, and Justice closed its hearings in the week ending February 18. The next steps in the budget process are House Appropriations Committee, the House Floor, the Senate Finance and Claims Committee, the Senate Floor, then a Conference Committee for final approval. It's a long way to the end of the session and anything can happen, so stand by.

Are You Risking a Data Disaster?

Will you be able to retrieve your documents when your computer crashes? If you are storing them on your C (hard) drive, the answer is no! What to do?

Backing up to an external device (including a flash drive) is an inappropriate option unless the device is encrypted using a special procedure. A lost device containing sensitive information could put you, your clients and the agency at risk. In addition, these devices are apt to become corrupted, so they aren't a good way to store critical work documents.

However, if you store your documents on your P (personal) or S (shared) drives, or in the JustWare file cabinet, they are backed up nightly and can be restored by your IT staff if needed. Case related files belong in the JustWare file cabinet. Files that you share with others in your region should be stored on the S drive, and files that contain personal or personnel information belong on the P drive.

If you need help changing the default location for storing your documents, or moving your documents off of your C drive or a flash drive, contact your IT support person.



The Jurors' Insight Project is Under Way!

As of January 3, Lindsey Pilecki and Tom Schoenleben, students at the University of Montana Law School, began a six month project to gather insights from jurors on criminal cases. Their goal is to contact every individual who sits on a criminal jury trial between January 1 and July 1, 2011 and interview each of them about the juror's impressions of the trial process (not the facts of the individual cases themselves).

This project can only receive maximum success if Lindsey and Tom receive the information requested— either during trial or immediately thereafter. If you have a jury trial between January 1 and June 30, 2011, we would appreciate your assistance in sending Lindsey or Tom (Lindsey-LPilecki@mt.gov; Tom-TSchoenleben@mt.gov) an email advising them of that fact. Upon receiving your email they will get in touch with your office and get the juror contact information.

Lindsey and Tom will compile all answers and share the results this summer with any interested parties, including OPD staff and attorneys.

Thank you very much for your help.

If you have a criminal jury trial between January 1 and June 30, 2011, Lindsey and Tom would appreciate your assistance in sending them an email advising them of that fact.

Dan Boucher Sworn in as 12th Judicial District Judge

On November 24, Governor Brian Schweitzer announced he had selected Dan Boucher to serve as the District Judge for the 12th Judicial District, covering Hill, Chouteau, and Liberty Counties. Boucher replaced Judge David Rice who retired November 30.

Dan served as regional deputy public defender in Havre and was an invaluable member of our new public defender system from its inception. He is admitted to practice law in the Montana Supreme Court, the U.S. District Court for Montana, Rocky Boy Tribal Court and Fort Belknap Tribal Court. In addition to his public defender and private practice work, Boucher also served as a part-time deputy county attorney for Hill County.

Dan had an interesting work history prior to getting his law degree from the U of M School of Law in 1984. He worked as a forester, a beekeeper, a teamster and a bookkeeper.

We were delighted to have Dan as part of the OPD team for the last five plus years, and wish him the best of luck in his new endeavor.



Dan Boucher is sworn in as 12th Judicial District Judge by Judge Perry Miller of Blaine County



OPD SPOTLIGHT

Annie Peterson, Assistant Public Defender, Helena

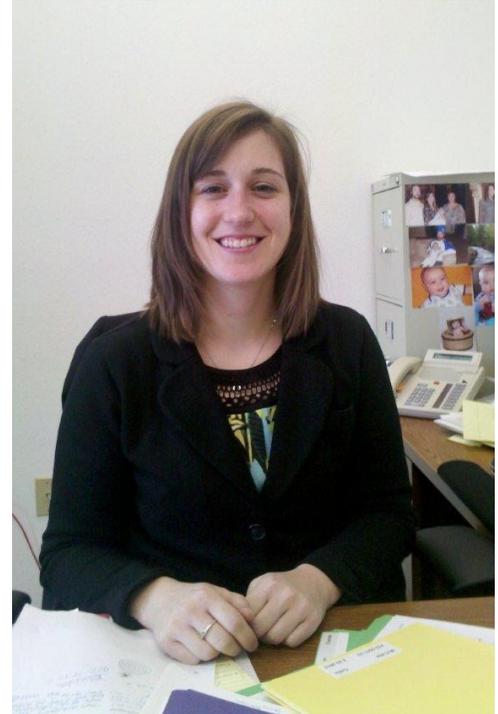
By Jon Moog

300. Annie's case load has been hovering around that number for the last several months. The bulk of these are high-turnover Helena municipal court misdemeanor cases involving traffic, thefts, assaults, DUI's, and the like, but a substantial percentage include dependent neglect, involuntary mental health commitments, regional and Lewis and Clark County justice court overflow assignments, and quite a few felony files her current clients pick up along the way (as occurs frequently in our business). It is amazing to watch her handle this gigantic caseload, always with a determined, optimistic smile on her face, and with no sign of cynicism-creep that defenders in the trenches have all experienced.

Despite her already daunting tasks, Annie has recently volunteered to spearhead OPD's involvement in the planned Lewis and Clark County drug court, which includes a 5-day planning seminar in Denver, Colorado. This court is being supported by Judge Jim Reynolds, the First District's newly elected fourth judge, and Annie immediately volunteered based on an obvious dedication to her clients.

You may have seen the emails recently touting Annie's jury trial acquittals, but what is not advertised are the small victories throughout the week—getting a client into treatment instead of jail; convincing the city attorney to amend a DUI to a wet reckless; getting warrants recalled; finding a less restrictive placement for a client facing Warm Springs; advocating for the rights of parents, etc. The list is endless, but the bottom line is that Annie makes a difference to her community, and by extension the state and nation at large.

Finally, and Annie's most admirable quality distinct from her great lawyering, is her dedication to her toddler Dean, whom she is raising nearly single-handedly while husband Scott finishes his juris doctorate at U of M.



Paula Pacente, Investigator, Billings

By Mori Woods and David Duke

Paula Pacente is an experienced investigator, a licensed polygraph examiner, and makes an excellent Chicago pizza pie.

Although Paula has lived in Montana for many years she is originally from Chicago, and you can still hear the distinct accent that she brought with her. Paula graduated from the University of Illinois at Chicago with a B.A. in History and Criminal Justice in 1976. She continued her education and graduated from the Chicago Professional Polygraph Center and obtained her polygraph license. Paula administered polygraphs for the private industry and government for many years in Illinois, and occasionally here in Montana.

She became an investigator for the Yellowstone County Public Defenders office in 2005 which came into the state agency of the Office of the State Public Defender in 2006. Prior to that time she worked as a Correctional Officer at the Montana Women's Prison in Billings. She has recently received appreciation from around the state for helping facilitate transcriptions in cases on a short time line.

And if you are interested, she would probably share her recipe for Chicago pizza pie.

Appellate News

By Joslyn Hunt



“When the plain language of the statute says that a defendant cannot be revoked until he begins serving his suspended sentence, indeed, the plain language is correct.”

The Office of the Appellate Defender has been busy with cases, trainings, and the legislative session. Colin Stephens, a contract attorney for OAD, achieved a great result in one of his most recent cases, *State v. Stiffarm*, 2011 MT 9. Mr. Stephens convinced the Montana Supreme Court that when the plain language of the statute says that a defendant cannot be revoked until he begins serving his suspended sentence, indeed, the plain language is correct. Mr. Stephens was able to make this argument on appeal because Jim Spangelo preserved the argument at the district court level.

If you have a client whom the Department of Corrections has revoked prior to that client having begun serving his suspended sentence, attack that revocation in a habeas petition. The Department of Corrections is not construing the *Stiffarm* decision as meaning that the probation officer cannot use conduct prior to the defendant serving his suspended sentence as justification for revocation once the defendant begins serving the suspended sentence. This means that the Department of Corrections will still file a petition to revoke on the day a defendant is due to be paroled from prison if, for example, that defendant has not completed sex offender treatment prior to his parole. Also, the Department of Corrections is not currently compiling a list of clients whom this decision may affect. Please contact OAD at (406) 444-9505 if you have questions or concerns regarding the decision. We have been brainstorming ways to challenge the clients' cases that are affected by this decision.

Lisa Korchinski just returned from a National Legal Aid and Defender Association training in New Orleans targeting appellate advocacy. She learned how to argue more persuasively for her clients, and she made great contacts while she was in the Big Easy. She is appreciative to this agency for sending her, and she is willing to share the expertise she gained with whomever would like to email or call her.

Finally, HB 97 passed its third reading in the House. This piece of legislation memorializes what has already been in policy for the OAD, for the Chief Appellate Defender to report directly to the Public Defender Commission. Representative Mike Menahan carried the bill. Fritz Gillespie, Chairman of the Public Defender Commission spoke as a proponent of the bill, and Joslyn Hunt, Chief Appellate Defender, appeared as an informational witness. The bill is expected to be transmitted to the Senate sometime in February.

OAD appreciates the appeals we have been receiving, as arguments are being better preserved. Thanks to everyone for their continued hard work. Go Team Orange!

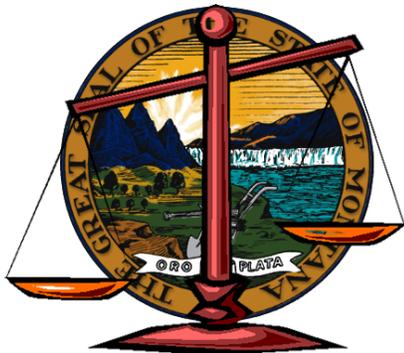
Whaddaya Know? (or want to know?)

We are exploring the idea of having a monthly video conference for an hour or so on Friday afternoons for support staff, similar to those that are regularly scheduled for our attorneys. We could train on policies and procedures or share best practices with one another.

If you have an idea for a session please contact Randa Colling at rcolling@mt.gov or call her at (406) 523-5147. Please let her know if you would like to develop a presentation and/or be a presenter or facilitator of a session.

OFFICE OF THE STATE
PUBLIC DEFENDER

44 W. PARK
BUTTE, MT 59701
Phone: 406-496-6080
Fax: 406-496-6098



ENSURING EQUAL ACCESS
TO JUSTICE STATEWIDE

The Office of the State Public Defender is responsible for statewide Public Defender Services, provided statewide through Regional Offices.

The mission of the Office of the State Public Defender is to ensure equal access to justice for the State's indigent and those who are statutorily entitled to services in civil cases, as well as to provide appellate representation to indigent clients.

Randi M. Hood is the Chief Public Defender for the State of Montana. She was appointed by the Public Defender Commission, currently chaired by Fritz Gillespie. For more information, please visit our website, www.publicdefender.mt.gov.



Upcoming Training Events

Friday Satellite Presentations (3:15-4:45)

March 25: *Immigration Consequences of Criminal Convictions (Krishna Nandlal)*

June 24: *2011 Legislative Update*

=====

Lunch Hour Civil Practice Update Conferences

These discussions will be conducted by telephone conference call and will include guest speakers. Intended for practitioners within the focus area. **February 25:** DI; **March 25:** DN; **April 29:** DJ

=====

March 10-11: *MTACDL Annual Conference (Chico Hot Springs)*

May 12-13: *CAP-Sponsored DN Statewide Training Summit (Billings)*