

OFFICE OF THE STATE PUBLIC DEFENDER



STEVE BULLOCK
GOVERNOR

WILLIAM F. HOOKS
CHIEF PUBLIC DEFENDER

STATE OF MONTANA

Phone: (406) 496-6080
Fax: (406) 496-6098
www.publicdefender.mt.gov

44 WEST PARK STREET
BUTTE, MONTANA 59701

REPORT TO THE PUBLIC DEFENDER COMMISSION

William F. Hooks, Chief Public Defender

February 24, 2014

PROGRAM 1 OPERATING PLAN.

Workloads. The ability of our attorneys, staff and investigators to provide competent and effective legal services to thousands of clients remains in jeopardy.

It does not appear that significantly fewer people will need our services in the coming year. Many of our clients are indigent, in that their gross household income is at or less than 133% of the federal poverty level.¹ According to the Annie E. Casey Foundation², the percentage of people in the labor force in Montana who are unemployed increased from 3.1% in 2007 to 6.8 % in 2011. Also in 2011, 45,645 Montana children aged 0-17 lived in households that were below 100% of the federal poverty level. In 2012 in Montana, 126,545 people received assistance from the Supplemental Nutrition Assistance Program (SNAP), and 3,282 households received assistance through the Temporary Aid to Needy Families (TANF). The Substance Abuse and Mental Health Services Administration (SAMHSA) reports that in Montana, about 33,000 adults per year in 2008-2012 had a serious mental illness in the year prior to being surveyed.³

We have experienced substantial increases in the number of cases assigned to OPD in the past three years. From July 1, 2011 to June 20, 2012 (FY 2012), our total caseload, as measured by the number of new cases opened in all offices, increased 11.7%. Our caseload grew an additional 3.5% in the next fiscal year. In FY 2013, we opened 31,980 new cases state-wide.

Our resources have not kept up with the caseload increases. In FY 2014, I have taken steps to add positions in several of our regional offices, in an effort to meet demands posed by stressors. In Missoula (Region 2), we have seen a substantial increase in the number of Municipal Court cases filed in the past 18 months. The number of new felony cases we have opened spiked significantly in the first half of FY 2014, as did the number of dependent/neglect (DN) cases opened. The number of new felony cases in the

¹ Under the current federal poverty level guidelines, for a household of 3, the federal poverty guideline is \$19,790. Gross household income of \$26,321 would be 133% of the federal level.

² See, <http://datacenter.kidscount.org/>.

³ See, Behavioral Health Barometer, Montana 2013, www.samhsa.gov.

Hamilton branch office also increased significantly. New positions will be added in Region 2 to help take on the new cases.

We have also added a new attorney position in Havre, and are in the process of opening a branch office in Glasgow, by adding an attorney and a support staff position. Historically, the Havre office has covered the entirety of Region 6 that has almost 23,000 square miles and 22 courts, with only 2 attorneys, 1 support person and 1 investigator. I am hopeful the addition of full-time positions in Region 6 will alleviate the burdens on the existing staff, cut down on contractor costs, and help with the burgeoning caseload in Glendive (Region 10). We are seeing spikes in the numbers of new felony cases and new DN cases filed in Dawson County and Richland County, as compared to last year.

In the first half of FY 2013, our Billings office opened slightly more than 450 felony cases. We opened about 180 additional felony cases in the first half of FY 2014. We estimate that the office will be faced with over 1,200 felony cases this year, which would be an increase of over 200 new felonies. While the DN case filings are down right now, the increase in felonies will necessitate addition of attorneys and staff to address the caseload burdens.

The Helena office (Region 4) will see the largest increase in staff. Region 4 has experienced a number of problems, and the caseload burdens were felt most acutely in Helena.

Turnover. As reported previously, new Collective Bargaining Agreements with our support staff and investigator bargaining unit and with our attorney bargaining unit have been ratified. Our attorney work force received salary increases based on pay adjustments approved by the 2013 Legislature and implemented in a new pay plan. It appears that the turnover rate of our attorney work force has decreased substantially during the first half of FY 2014. The turnover rate for our support staff appear not to have decreased during this time frame.

Management Team. Peter Ohman, formerly our Region 8 deputy public defender, has taken over as OPD's training coordinator. I am pleased to announce that Annie DeWolf accepted my offer to replace Peter. Annie served as staff attorney in the Bozeman office, and the clients of Region 8 will continue to be well-served with Annie running the office.

Wendy Johnson has joined OPD as our new contracts manager. Wendy worked as a staff attorney in Region 4, and then transferred to the Appellate Defender Office. She returns to OPD after spending a couple of years in private practice.

Three retirements must be noted. Eric Olson and Larry Murphy are two of the founding members of OPD's management team. They came on board in the early days, before OPD started accepting cases, and Eric and Larry served the staff and clients of OPD with distinction. Eric retired from his training coordinator position at the end of the year, and Larry will be retiring as supervisor of the Major Crimes Unit at the end of February. Dick Phillips, the managing attorney of the felony staff in Billings, retired at the end of the year to spend more time with his grandkids. Dick was an invaluable resource for the staff and attorneys in the Billings office.

AUDIT UPDATES

Performance Audit Update. The Legislative Audit Division audited OPD's attorney contracting and indigency determination processes. A report was issued in May, 2012 and we have taken a number of steps to address recommendations made by the auditors.

Contractor process. The auditors recommend that we take steps to bolster our processes regarding performance evaluations of contract attorneys and define a process for taking remedial action. Our new contract manager is addressing these concerns.

Indigency determination process. The process by which we determine whether clients are eligible to receive services was a focal point of the performance audit. We have taken a number of steps to improve our practices and processes. The Commission approved a new, one-page application form, and we have been using this new form in Regions 6 and 8 as part of a pilot project. We developed a survey for users as part of this project, and it appears the new form is easier to use and enables staff to process the applications more efficiently.

Financial Audit. The Legislative Audit Division also will undertake a financial audit for fiscal years 2013 and 2014. This audit will determine what controls exist to ensure OPD's compliance with laws and regulations regarding financial operations. We are in the early stages of the audit process. It is expected to wrap up sometime this fall with a report issued to the Legislative Audit Committee shortly thereafter.

CAPITAL CASE UPDATE.

We currently have three pending capital cases. Two cases are pending in Richland County, and a third involves clemency proceedings for an inmate.⁴

STAKEHOLDER ACTIVITY

The role of the chief public defender includes working with stakeholders to develop policy initiatives and to generate support for agency goals and projects. Since our last meeting, I attended meetings of the Montana Board of Crime Control, the Commission on Courts of Limited Jurisdiction, and the Forensic Sciences Laboratory Advisory Board. We also are participating with the Court Administrator in the process for developing and implementing an electronic filing system for court documents.

Members of OPD's management team will appear before the Law and Justice Interim Committee on February 13, and the Legislative Finance Committee during its mid-March meeting.

⁴ The Montana Supreme Court *Standards for Competency of Counsel for Indigent Persons in Death Penalty Cases*, and the PDC Standards, refer to the American Bar Association, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*. Section 1.1 of these Guidelines provides that the Guidelines apply from the moment the client is taken into custody and extend to all stages of every case in which the jurisdiction may be entitled to seek the death penalty, including initial and ongoing investigation, pretrial proceedings, trial, post-conviction review, clemency proceedings and any connected litigation.