

To: Montana Public Defender Commission
Re: Public Comment, December 11, 2015
From: Jim Taylor, Legal Director, ACLU of Montana

I apologize to the Commission that I cannot be personally present today for the meeting, but there are a few things I would like to provide comment about, on behalf of the ACLU of Montana

1. Proposed Pilot Project on Holistic Defense. The ACLU is very supportive of this project. It is exactly the kind of innovative project OPD should be engaging it. This project benefits all of society because it seeks not only to deal with the immediate criminal problem of the client, but also to remedy the underlying contributing factors.
2. **Draft Strategic Plan.**
 - a. **Commission**
 - i. **Hire a full time executive director for the Commission.** The ACLU supports this idea in general, although because we were not able to have someone present at the meetings of the Strategic Planning Committee, we are not entirely clear on how this position would interface with OPD. It appears from the minutes that the ED would be the contact person for all parts of the public defender system to answer to, and that the ED would also be the point person as the Legislative contact.
 - ii. **Develop a formula for the most effective combination of FTEs and contracts.** We support this, and continue to urge the agency to expand its efforts to collect and report more meaningful data for the Legislature
 - iii. **Building strategic relationships.** We support this, and continue to urge the agency to build coalitions since there is no natural politically viable constituency for the agency.
 - iv. **Develop a public education program.** We support this and would be glad to participate in a strategy about how to structure the program.
 - v. **Create a linkage program with Montana colleges and universities.** We support this, and thank the Committee for expanding the definition to include tribal colleges. Commissioners Smith and Sherwood would be great sources of information about how to help create an outreach program for tribal colleges.

b. Program 1- General Public Defender Program

i. Improve eligibility determination process. These are all good recommendations which we support. The Legislature needs to understand that this process comes with a cost that they will need to fund. The Task Force is well situated to convey that message.

ii. Program 2- Appellate Defender Program

1. Although we are generally supportive of the idea of a *pro bono* program, it will take the buy-in from the State Bar and the Judiciary to make this a reality. Free training from the Bar, recognition for service by those participating, and a commitment from the Bar and Supreme Court to recruit members are critical.

iii. Program 3- Conflict Coordinator.

1. The reasons that attorneys won't take cases are clear. In areas like Eastern Montana where there are few attorneys, OPD doesn't pay enough. If the Legislature does not want to fund more FTE's, then OPD needs extra funding and the ability to be flexible in the rates that they pay.

2. The idea of breaking civil cases into a separate program is definitely an idea that has merit and needs further study.

c. Additions to the Strategic Plan for the Commission to consider.

These are our thoughts about additions to the proposed Strategic Plan.

1. Adopt a policy of aggressively seeking outside funding (grants), and direct agency resources to doing that either with FTEs or contract employees

2. Adopt a policy encouraging pilot programs for all Regions. The Task Force wants to see innovation from the agency, and an ongoing program fostering pilot programs around the State is a good way to accomplish that.

a. One possible focus for the pilot programs would be to ask for a funding stream and Legislative authorization to create alternative systems for dealing with CPS cases. Our current system is overwhelming our justice system, and OPD should be an innovator in creating solutions.

3. Indians in Montana are significantly over-represented in the criminal justice system, and it is incumbent on OPD to examine its role in the process and to assist in reducing that over-representation. In furtherance of that goal, the Agency should:

- a. Adopt a policy that the agency will commit to implementing ongoing training on issues relating to representing Indian clients. .
 - b. Adopt a policy committing to reducing the over-representation of Indians in our prison system by 50% in the next five years, from the current 20% in the men's prison and 36% in the women's prison to 10% at the men's prison, and 18% in the women's prison.
 - c. This could also be a focus of OPD's pilot projects.
 - 4. Expand your emphasis on data collection (including attorney time keeping). Identify critical OPD Standards compliance metrics, and track those throughout the system. We have been asking the Agency to do this for a number of years, and it also appears to be a focus of the Task Force.
 - 5. Adopt a policy requiring that staff and contract attorney evaluations contain meaningful metrics on compliance with OPD standards.
- 3. **Use of Discretionary funds.** The 2015 Legislature gave OPD \$500,000 to spend on something to improve the system. It is funding for the Commission to spend, and not for OPD.
 - a. We support the allocation of funding towards a workload study, and enhancement of the online billing system.
 - b. We acknowledge that there is a critical need for at least one and probably more FTEs for the Appellate defenders office. The problem with using these funds for that kind of position is that you may be running into exactly the same problem as the last session when the Agency used SB 410 money to fund positions that the Legislature later objected to. If you fund the positions now, you are still not creating additional FTEs, just temporary positions. We were not there for your consultations with other Legislative committees, however, and it may be that the Interim Committees would support that use of the funding. It does not seem to us, however, that this is the type of project the Legislature had in mind for the funding, regardless of the need.
 - i. We strongly recommend that the Agency put money into innovation, and ask the Commission to consider putting aside at least \$100,000 of the discretionary funds for pilot projects. OPD can become someone that the justice system looks to for answers, rather than as just another part of the problem.
 - ii. OPD has a demonstrated need for additional administrative assistance, whether that comes through the proposed Executive Director position, or through other positions under the Chief Defender. We ask the Commission to consider using some of the discretionary funds for that purpose.

Thank you for considering our comments. We would be happy to assist the Commission and the Agency any way that we can, and would be glad to answer any questions the Commission might have.