Montana Public Defender Commission

Fiscal Year 2011 Report to the Governor, Supreme Court and Legislature

December, 2011

- Letter from Chairman Richard E. "Fritz" Gillespie
- Commission Membership
- Mission Statement
- Assessments and Collections
- FTE vs. Contractor Hourly Rates
- Regional Statistics
- Required Reports
  - Staffing Report
  - Training Report
  - Case Counts
  - Caseload and Workload
  - Expenditure Data
  - Legislative Finance Committee Reporting
  - Policies and Procedures
  - Standards

MONTANA PUBLIC DEFENDER COMMISSION

BRIAN SCHWEITZER
GOVERNOR

RICHARD E. GILLESPIE
CHAIR

STATE OF MONTANA

(406) 496-6080
Fax: (406) 496-6098

44 WEST PARK STREET
BUTTE, MONTANA 59701

December 1, 2011

Governor Brian Schweitzer
P.O. Box 200801
Helena, MT 59620-0801

The Montana Supreme Court
P.O. Box 203001
Helena, MT 59620-3001

The Montana Legislature
c/o Kevin Hayes
Legislative Services Division
P.O. Box 201706
Helena, MT 59620-1706

Dear Governor Schweitzer, Supreme Court Justices, and Legislators:

RE: Montana Public Defender Commission Report
to the Governor, Supreme Court and Legislature

Pursuant to 47-1-105 (9), MCA, the Montana Public Defender Commission must provide a biennial report to the Governor, Supreme Court and Legislature. Each interim, the Commission also specifically reports to the Law and Justice Interim Committee.

Description of Report

1. All policies and procedures in effect for the operation and administration of the statewide public defender system and all standards established or being considered by the Commission or the chief public defender.
2. The number of deputy public defenders and the region supervised by each; the number of public defenders employed or contracted within the system, identified

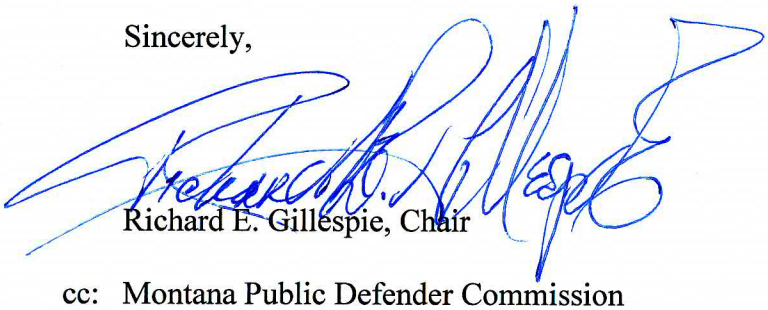
by region; and the number of attorney and non attorney staff supervised by each deputy public defender.

3. The number of new cases in which counsel was assigned to represent a party, identified by region, court and case type; and the total number of persons represented by the office, identified by region, court and case type.
4. The annual caseload and workload of each public defender, identified by region, court and case type.
5. The training programs conducted by the office and the number of attorney and non-attorney staff who attended each program; and the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted within the system.
6. Detailed expenditure data by court and case type.

This report is also available at http://www.publicdefender.mt.gov/2011GovReport/TOC.asp.

Please feel free to contact our Administrative Director, Harry Freebourn, if you have any questions regarding the information in this report. Mr. Freebourn can be reached at 496-6084, or hfreebourn@mt.gov.

Sincerely,



Richard E. Gillespie, Chair

cc: Montana Public Defender Commission
Dave Stenerson, Interim Chief Public Defender
Harry Freebourn, Administrative Director

Public Defender Commission Membership

as of December, 2011

Richard "Fritz" Gillespie, Chair P.O. Box 598 Helena, MT 59624 (406) 442-0230 REGillespie@kellerlawmt.com	Term ends July 1, 2013 *Qualification: attorney nominated by State Bar, who represents criminal defense lawyers*
Kenneth R. Olson, Vice-Chair 417 Central Ave. #4 Great Falls, MT 59401 (406) 727-6263 olsonlaw@mt.net or tish@kenolsonlaw.com	Term ends July 1, 2014 *Qualification: attorney nominated by the Montana Supreme Court*
Alfred F. Avignone 504 W Main St. Bozeman, MT 59715 (406) 582-8822 avignone@qwestoffice.net	Term ends July 1, 2013 *Qualification: attorney nominated by the Supreme Court*
Christopher Daem (406) 656-6621	Term ends July 1, 2014 *Qualification: member of organization advocating on behalf of people with mental illness and developmental disabilities*
Caroline Fleming jackncaroline@yahoo.com	Term ends: July 1, 2011 *Qualification: public representative nominated by House Speaker*
Terry Jessee TJessee@co.yellowstone.mt.gov	Term ends July 1, 2012 *Qualification: public representative nominated by Senate President*
Margaret Novak P.O. Box 720 Chester, MT 59522 margaretmnovak@gmail.com	Term ends July 1, 2013 *Qualification: member of organization advocating on behalf of indigent persons*
Charles Petaja 615 S. Oaks Helena MT 59601 (406) 442-3625 haloffices@qwestoffice.net	Term ends July 1, 2012 *Qualification: attorney nominated by State Bar, experienced in felony defense with one year as full-time public defender*
Majel Russell Mrussell@elkriverlaw.com	Term ends July 1, 2012 *Qualification: member of organization advocating on behalf of racial minorities*
Ann Sherwood P.O. Box 278 Pablo, MT 59855 (406) 675-2700 ext. 1125 annsherwood@hotmail.com	Term ends July 1, 2014 *Qualification: attorney nominated by State Bar, experienced in defense of juvenile delinquency and federal Indian Child Welfare Act*
William F. Snell Jr. 3122 Brayton St. Billings MT 59102 (406) 652-3640 psf@180com.net	Term ends July 1, 2013 *Qualification: employee of organization providing addictive behavior counseling*

Mission

¶1 The primary mission of the statewide public defender system is to provide effective assistance of counsel to indigent persons accused of crime and other persons in civil cases who are entitled by law to the assistance of counsel at public expense. *M.C.A. §47-1-102(1)*. This mission, arising out of fundamental principles on which our constitutions of the United States and the State of Montana are founded, was the obligation of the State of Montana long before the enactment of the Montana Public Defender Act in 2005.

¶2 "In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence." The implementation of this Sixth Amendment right traveled an arduous course before reaching *Gideon v. Wainwright*, 372 U.S. 335, 343-45 (1963), where the United States Supreme Court unanimously held that state courts are required under the Sixth Amendment to provide counsel in felony cases for defendants who are financially unable to retain private attorneys. *Argersinger v. Hamlin*, 407 U.S. 25, 37 (1972), held that, without a knowing and intelligent waiver, no person may be imprisoned for any offense, whether petty, misdemeanor or felony, unless represented by counsel at trial.

¶3 The Sixth Amendment and the Due Process Clause of the Fourteenth Amendment require that in proceedings for determining delinquency which may result in commitment to an institution in which the juvenile's freedom is curtailed, the child and his parents must be notified of the child's right to be represented by counsel retained by them, or counsel will be appointed to represent the child if they cannot afford counsel. *In re Gault*, 387 U.S. 1, 41 (1967). In Montana, minors have the same right to counsel as adults. *Mont. Const. Art. II, §15* (1972).

¶4 It is sufficient here to say that the right to counsel attaches at the "critical stages" of the criminal justice process. *Rothgery v. Gillespie County, Texas*, 554 U.S. 191, 212[FN16] (2008), noted that "critical stages" are defined as "... proceedings between an individual and agents of the State (whether 'formal or informal, in court or out,' see *United States v. Wade,* 388 U.S. 218, 226, ... (1967)) that amount to 'trial-like confrontations,' at which counsel would help the accused 'in coping with legal problems or ... meeting his adversary,' *United States v. Ash,* 413 U.S. 300, 312-313 (1973) ...."[1] As footnoted, a critical stage may happen earlier in a case but without doubt a defendant's initial appearance before a judicial officer is a critical stage that triggers the Sixth Amendment right to counsel. *Rothgery*, 554 U.S. at 213.

¶5 A defendant is guaranteed the right to assistance of counsel in criminal cases by our *Mont. Const. Art. II, §17* and *§24* (1972). *State v. Rardon*, 305 Mont. 78, 78-79 (2001); *State v.*

---

[1]Other critical stages where the right to counsel attaches include post-arrest interrogation, *Brewer v. Williams*, 430 U.S. 387, 399-401 (1977); *Miranda v. Arizona*, 384 U.S. 436, 479-81 (1966); line-ups, *United States v. Wade*, 388 U.S. 218, 236-37 (1967); other identification procedures, *e.g.*, one person "showup," *Moore v. Illinois*, 434 U.S. 220, 231-32 (1977); initial appearance, *Michigan v. Jackson*, 475 U.S. 625, 629[FN3] (1986); arraignments, *Hamilton v. Alabama*, 368 U.S. 52, 53 (1961); preliminary hearing, *Coleman v. Alabama*, 399 U.S. 1, 9-10 (1970); plea negotiations, *Brady v. United States*, 397 U.S. 742, 748 (1970) and *McMann v. Richardson*, 397 U.S. 759, 769-70 (1970); and direct appeals, *Douglas v. California*, 372 U.S. 353, 356-57 (1963).

Colt, 255 Mont. 399, 403 (1992), citing *State v. Enright*, 233 Mont. 225, 228 (1988). Due process guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and *Art. II, §17*, of the Montana Constitution requires the assistance of counsel in situations other than criminal cases where "fundamental liberty interests" are at stake. The Montana Supreme Court has cited U.S. Supreme Court cases in discussions about fundamental fairness calling for the assistance of an attorney so the individual can meaningfully participate and the procedure is fundamentally fair.[2]

¶6 Situations in which the right to the assistance of an attorney was deemed essential to fundamental fairness were codified before the statewide public defender system was created. Those situations are now catalogued in *M.C.A. §47-1-104(4)(b)*.

¶7 Reasonably effective assistance is the standard for performance any time counsel appears on behalf of an accused, *i.e.*, the representation must come within an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 688-89 (1984).[3] Montana follows

---

[2]For examples, see *In re A.F.-C.*, 307 Mont. 358, 368-70 (2001), citing *Lassiter v. Department of Social Services*, 452 U.S. 18, 24-25 & 32-33 (1981); *In re A.R.A.*, 277 Mont. 66, 70-71 (1996), citing *Stanley v. Illinois*, 405 U.S. 645, 651-52 (1972); *In re A.S.A.*, 258 Mont. 194, 198 (1993), and *Matter of R.B.*, 217 Mont. 99, 102-03 (1985), citing *Santosky v. Kramer*, 455 U.S. 745, 753-54 (1982) (a natural parent's right to the care and custody of his or her child is a "fundamental liberty interest" that must be protected by fundamentally fair procedures). Also see Professor Mary Helen McNeal's law review article, *Toward a "Civil Gideon" under the Montana Constitution: Parental Rights as the Starting Point*, 66 Mont. L. Rev. 81 (Winter 2005), for an extensive examination of *Mont. Const. Art. II, §16* (administration of justice), *Art. II, §4* (dignity and equal protection), *Art. II, §17* (due process), and *Art. II, §34* (unenumerated rights) clauses as cornerstones for the development of a "civil Gideon" in Montana.

[3]*Strickland*, 466 U.S. at 688-89: "... Representation of a criminal defendant entails certain basic duties. Counsel's function is to assist the defendant, and hence counsel owes the client a duty of loyalty, a duty to avoid conflicts of interest. See *Cuyler v. Sullivan*, *supra*., 446 U.S. [335] at 346, 90 S.Ct. at 1717 [(1980)]. From counsel's function as assistant to the defendant derive the overarching duty to advocate the defendant's cause and the more particular duties to consult with the defendant on important decisions and to keep the defendant informed of important developments in the course of the prosecution. Counsel also has a duty to bring to bear such skill and knowledge as will render the trial a reliable adversarial testing process. See *Powell v. Alabama*, 287 U.S. [45] at 68-69, 53 S.Ct. at 63-64 [(1932)].

"These basic duties neither exhaustively define the obligations of counsel nor form a checklist for judicial evaluation of attorney performance. In any case presenting an ineffectiveness claim, the performance inquiry must be whether counsel's assistance was reasonable considering all the circumstances. Prevailing norms of practice as reflected in American Bar Association standards and the like, *e.g.*, ABA Standards for Criminal Justice 4-1.1 to 4-8.6 (2d ed. 1980) ("The Defense Function"), are guides to determining what is reasonable, but they are only guides. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Any such set of rules would interfere with the constitutionally protected independence of counsel and restrict the wide latitude counsel must have in making tactical decisions. (*Citation omitted*). Indeed, the existence of detailed guidelines for representation could distract counsel from the overriding mission of vigorous

the *Strickland* objective standard of reasonableness when evaluating ineffective assistance claims in criminal cases. *Whitlow v. State*, 343 Mont. 90, 93-94 (2008). For the "civil cases" listed in *M.C.A. §47-1-104(4)*, standards used to evaluate claims of legal malpractice and the *Strickland* test simply do not go far enough to protect the liberty interests of individuals who may or may not have broken any law but who may indefinitely bear a social stigma. *In re A.S.*, 320 Mont. 268, 273-75 (2004), quoting from *In re Mental Health of K.G.F.,* 306 Mont. 1, 7, ¶33 (2001).

¶8 Providing effective assistance of counsel at critical stages in the types of cases delineated in *M.C.A. §47-1-104(4)* has not been optional or negotiable for a long time. The enactment of the Montana Public Defender Act in 2005 consolidated the delivery of the assistance of counsel in those cases through the statewide public defender system rather than through a hodgepodge of programs.

---

advocacy of the defendant's cause. ..."

Assessments and Payment of Costs for Assigned Public Defenders

Syllabus

To its other purposes SB 187 added that OPD "ensure that clients of the statewide public defender system pay reasonable costs for services provided by the system based on the clients' financial ability to pay." [¶1]

During FY2011 OPD received $123,994 from 1,088 of 3,324 clients who had an account receivable open with OPD. The amount received more than doubled the amount received in FY2010. 2875 clients, an increase of 1153 clients over FY2010, owed an accounts receivable balance that grew 35% to $900,298. [¶2, ¶31]

There are impediments and constraints of law and fact inhibiting OPD from recovering more of the costs of representation from its clients. [¶3] Due process and equal protection remain as possible constraints on recouping costs. [¶¶11-12] The primary function of OPD is the representation of people within 133% of the poverty level or those who for various reasons do not have the financial ability to retain a lawyer. [¶30] M.C.A. §46-8-113(2) and the sentencing statutes, M.C.A. §46-18-201, et seq., impede OPD from recovering more from clients whose ability to pay for all of the costs of their representation is tenuous from the outset. [¶¶4-5] There are incentives for courts, particularly courts of limited jurisdiction, to levy fines and assess the payment of other costs on OPD clients before taxing the payment of the costs of their representation, the statutorily designated last priority. [¶¶5-6, ¶8] The sum of other assessments levied can be substantial. [¶6, ¶¶8-10]

The courts rather than OPD are tasked with determining who should pay for the cost of their representation and deciding how much those defendants should pay. [7] For quite some time there has been a well defined process in place for ensuring that public defender clients pay reasonable costs for services based on the clients financial ability to pay. [¶¶13-16] Already in place is the procedure for a defendant's compliance when ordered to pay toward the costs of representation. [¶¶17-18] At the sentencing stage and during a contempt proceeding the public defender has a constitutional and ethical duty to develop and present any defenses the defendant may have to the payment of restitution, charges, fees, fines, and the assessment of costs, including the cost of representation; present those defenses at the hearing; and preserve those issues for appeal if necessary. [¶¶19-21] An OPD client can return to the sentencing court for a change in the amount of the payments ordered on the basis of manifest hardship. [¶21]

Many courts have consistently concluded that the vast majority if not all of the people represented by public defenders cannot or will not be able to pay the cost of representation. [¶22]

How the defendant's ability or inability to pay is proven and what evidence is admissible, seemingly, is not settled in courts that do levy costs. [¶¶22-26]

While an increasing number of courts have been assessing greater amounts for the costs of representation, for a variety of reasons OPD has had and continues to have difficulty reconciling amounts received and determining who may be delinquent. [¶¶27-31] Payments for the costs of representation can be delayed significantly given those costs have the last statutory priority after restitution, mandatory charges, supervisory fees, other costs, and fines are paid and because in practice the courts or the court administration in charge of collecting payments usually create a schedule or allows the defendant to make the payments during the term of the sentence. [¶27 & ¶29] Lump sum payments received from courts frequently have not been accompanied with breakdowns and assistance on followup for client information has been mixed. [¶29 & ¶31] OPD cannot identify the courts from which payments came or for whom credits are due from the county collection reports. [Id.] Identifying either from calls to the county treasurers and then the court administration has resulted in limited success. [Id.]

Efforts at recovering costs may be impractical under the circumstances of a particular case. Pursuing noncompliance can be more costly in time and resources than it is cost-effectively worth, especially when the OPD client has too few resources left after paying restitution, charges, fees, other costs, and fines. [¶¶32-35]

¶1 To its other purposes *M.C.A. §47-1-102*[1] Senate Bill 187 (2011) [SB 187] added that the Office of the State Public Defender [OPD] "ensure that clients of the statewide public defender system pay reasonable costs for services provided by the system based on the clients' financial ability to pay." The meaning of this purpose may range from a belief that the clients do not have the financial ability to pay if qualified for public defender services to an opinion that

lifelong levies of the full cost of representation should be imposed on all convicted public defender clients without the protections other debtors have. How well the agency does in fulfilling this purpose will likely be measured differently by each observer somewhere along the line of divergence between these perspectives.

¶2 During FY2011 OPD received $123,994[2] from 1,088 of 3,324 clients who had an account receivable open with OPD. The $123,994 came from $30,845 paid by 202 of 707 clients with judgment assessments other than those imposed under Senate Bill 263 [SB 263], and $93,149 paid by 886 of 2,617 clients taxed with SB 263 assessments. 449 clients paid their assessments in full during FY2011. The balance for accounts receivable rose from $586,315 owed by 1,722 clients to $900,298 owed by 2,875 clients. The clients ordered to pay have climbed steadily each year. The amount deposited into the special revenue account for FY2010 doubled the amount received for FY 2009. FY2011 receipts doubled FY2010. Also, during the first quarter of FY2012 $180,410 has been assessed and deposits of $40,944 have been made into the special revenue account which includes $2,740.51 from payments ordered after *M.C.A. §46-8-113* was amended by SB 187 (2011).

¶3 The amount received may not seem like much given the number of clients served. However, the impediments and constraints of law and fact should provide insight into a better evaluation of how well the agency has done and how well it may do under current circumstances.

¶4 The priorities set for the allocation of payments of restitution, charges, fees, costs, and fines in *§46-18-251(2)* are an impediment in the way of OPD recovering more of the costs of representation:

> (2) Except as otherwise provided in *46-18-236(7)(b)* and this section, if a defendant is subject to payment of restitution and any combination of fines, costs, charges under the provisions of *46-18-236*, or other payments, 50% of all money collected from the defendant must be applied to payment of restitution and the balance must be applied to other payments in the following order:
>
> (a) payment of charges imposed pursuant to *46-18-236*;
>
> (b) payment of supervisory fees imposed pursuant to *46-23-1031*;
>
> (c) payment of costs imposed pursuant to *46-18-232* or *46-18-233*;
>
> (d) payment of fines imposed pursuant to *46-18-231* or *46-18-233*; and
>
> (e) any other payments ordered by the court.

¶5 Arguably, the priority for recouping the costs of representation was on the *§46-18-251(2)(c)* level before July 1, 2011, although there is no indication any court designated that level or that anyone collecting charges, fees, costs or fines for the courts gave the cost of legal assistance that middle priority as payments were made.[3] Nonetheless, while SB 187 was working its way through the legislature an amendment was drafted for making the cost of public defender representation the highest priority ahead of charge payments only to have the bill on passage expressly make those costs the last priority.[4] The *§46-18-251(2)(c)* priority argument was dashed by the enactment of SB 187 since a particular statutory provision, *§46-8-113(2)*, is paramount to the more general sentencing provisions in chapter 18.[5] It is now guaranteed that

OPD will be the last paid after a defendant has paid all of the other charges, fees, costs and fines taxed.

¶6 The sum of other assessments levied can be substantial. A sentence must require payment of full restitution to the victim if the sentencing judge finds that a victim has sustained a pecuniary loss.[6] The costs of supervising the payment of restitution are charged at a rate of 10% of the restitution ordered, but not less than $5.[7] All courts of original jurisdiction must tax upon conviction or upon forfeiture of bond or bail a charge that is in addition to other taxable court costs, fees, or fines of (a) $15 for each misdemeanor charge; (b) the greater of $20 or 10% of the fine levied for each felony charge; and (c) an additional $50 for each misdemeanor and felony charge under title 45, *§61-8-401*, or *§61-8-406*.[8] Other financial obligations put on indigent defendants can further impede the recovery of the costs of OPD representation. *§46-18-201(4)(d)*, *(e)*, and *(f)* allow the sentencing judge to impose conditions for the payment of the costs of confinement, payment of a fine as provided in *§46-18-231*, and payment of costs as provided in *§46-18-232*. *§46-18-232(1)* costs include the costs of jury service, the costs of prosecution, and the costs of pretrial, probation, or community service supervision in misdemeanor or felony cases. These costs must be limited to expenses specifically incurred by the prosecution or other agency in connection with the proceedings against the defendant, or $100 per felony case or $50 per misdemeanor case, whichever is greater. A maximum fine allowed in felony cases is usually set at $50,000. The maximum fine for most misdemeanors is $500 although it can be higher for some offenses.

¶7 It is within the foregoing context that the courts are tasked with deciding who should pay for the cost of their representation and the courts are charged with the duty of determining how much those defendants should pay.[9] OPD has never had the responsibility for doing either.

¶8 First, there are incentives for assessing fines and other costs before ordering defendants to pay for the costs of their representation. Courts are encouraged to assess a fine or costs because a court is required to waive payment of the *§46-18-236(1)* mandatory charges if it determines under *§46-18-231(3)* and *§46-18-232(2)* that the person is not able to pay a fine and costs or make payment within a reasonable time.[10] With a possible exception in drug cases, the clerks of the district courts pay fines and costs collected into the state general fund.[11] However, 50% of the fines and costs collected in justice courts are distributed into the county general fund with the remainder going into the state general fund.[12] *M.C.A. §46-18-236(1)(a)* ($15) and *(1)(b)* ($20 or 10%) charges collected are earmarked for paying the salaries of deputy county attorneys, other salaries in the office of the county attorney, or the salaries of city and town attorneys and deputies.[13]

¶9 Of course, payments for the costs of representation are deposited into a state special revenue account which may be used only for the operation of OPD without the counties receiving any share of those funds.[14] Moreover, OPD is a state agency funded from the state general fund. A visit to county websites produces some information for comparison with the assessments of the costs of representation although one difficulty lies in being certain of the sources deposited into accounts designated differently from “fines” or “fines and forfeitures.” It must also be kept in mind that “forfeitures” suggest the persons charged did not have any legal representation and that all “fines” were not levied against OPD clients. Cascade County reported

fines on a modified accrual basis of accounting in the amount of $503,103, $1,411,362, $476,136, and $399,334 for fiscal years 2007 through 2010, respectively. During the same period the Cascade County district and justice courts did not assess any defendant to pay into the OPD special revenue account. Also on a modified accrual basis of accounting, Butte-Silver Bow County reported fines and forfeitures on page 199 of its "Comprehensive Annual Financial Report for Fiscal Year Ended 2010" totaling $582,229, $643,978, $632,353 (or $436,261 on page 30), and $675,297 (or $520,570 on page 30) for fiscal years 2007 through 2010, respectively, *i.e.*, a total ranging between $2,183,038 and $2,533,857, while the courts assessed $2,677.90 (FY2008), $1,635.80 (FY2009) and $7,074.48 (FY2010), *i.e.*, $11,388.18 for the cost of representation, during the same four years. In Gallatin County $748,252 in fines and forfeitures were reported during FY2008 while the district and justice courts assessed $574 for the costs of representation; $1,064,206 compared to assessing $3,068 during FY2009; and $324,847 in fines and forfeitures while $2,387.03 was ordered for payment into the OPD special revenue account in FY2010.

¶10 The "Financial and Compliance" reports indicate Ravalli County reported fines and forfeitures in the amounts of $254,836 (FY2007), $140,299 (FY2008), $237,331 (FY2009) and $150,750 (FY2010), *i.e.*, $783,216 for the county general fund. During those same fiscal years the district and justice courts ordered OPD clients to pay $3,303, $213, $66,611.40 and $12,019, respectively, *i.e.*, $82,146.40 for their cost of representation. $57,127 of the $66,611 assessed in FY2009 for the OPD special revenue account was imposed in the sentence of Anne Marie Stout who is serving life in prison for the murder of her husband Bill.

¶11 In some cases, due process and equal protection remain possible constraints on recovering the costs of representation. In the past, the amount assessed had to be limited to the cost incurred by OPD for providing the defendant with counsel.[15] Thus, the client should not have been charged a mandatory amount if the public defender devoted less than $150 or $500 worth of time on the defense. There was an example where a court of limited jurisdiction assessed less than $150 on a defendant when the public defender reported the two tenths of an hour spent in the office with the client and the few minutes in court as about 15 minutes. The attorney could have been held in contempt if more or less time than that spent had been reported. Fraud would have been committed on the defendant if the time spent on the case had been inflated or the public defender had recommended the statutory $150 be assessed. $150 for 15 minutes equaled $600 an hour, an exorbitant rate by any measure, and many times in excess of the *§46-8-113(2)* (2009) prohibition against assessing costs greater than those incurred by OPD.

¶12 Even though SB 187 removed the limitation on the amount assessed to be no greater than the cost OPD incurred, an assessment of some amount, including $250 or $800, might take on unconstitutional "elements of punitiveness and discrimination which violate the rights of citizens to equal treatment under the law."[16] Provisions similar to those in *§46-8-113(4)* and *(5)* are permissible under constitutional principles regarding the availability of legal counsel.[17] *State v. Ellis*[18] affirms the constitutionality of *§46-8-113(4)* and *(5)*. *State v. Farrell* involved the pronouncement of a maximum sentence based on the length of time the court thought it would take the defendant to make restitution and pay for the costs of his representation. The Supreme Court went through an extensive review of U.S. Supreme Court decisions about the

appropriateness of a due process or equal protection analysis[19] before concluding "[d]ue process requires only that indigency or poverty not be used as the touchstone for imposing the maximum allowable punishment" and the admonishment that "[u]pon remand, the trial court is free to reconsider the possibility of a ten year suspended sentence, but only upon grounds which give fair consideration to Farrell's financial condition." Much can be drawn from a review of *Farrell* but helpful here is a quote taken from *Bearden v. Georgia*, 461 U.S. 660, 666, fn. 8 (1983):

> A due process approach has the advantage in this context of directly confronting the intertwined question of the role that a defendant's financial background can play in determining an appropriate sentence. When the court is initially considering what sentence to impose, a defendant's level of financial resources is a point on a spectrum rather than a classification. Since indigency in this context is a relative term rather than a classification, fitting "the problem of his case into an equal protection framework is a task too Procrustean to be rationally accomplished," *North Carolina v. Pearce*, 395 U.S. 711, 723, ... (1969). The more appropriate question is whether consideration of a defendant's financial background in setting or resetting a sentence is so arbitrary or unfair as to be a denial of due process.

A situation like the one cited earlier can happen again. Qualifying for OPD services means a $250 or $800 assessment on a plea can have such a significant impact on the defendant's financial resources that the imposition will take on unconstitutional elements of punitiveness and discrimination. A levy of $250 for 15 minutes of legal assistance would equal $1,000 per hour, an hourly rate arguably so arbitrary and unfair as to be a denial of due process.

¶13 Historically, before the statewide public defender system went into effect on July 1, 2006, a court could impose the cost of reasonable compensation and costs incurred by the court-appointed counsel as part of or as a condition under the sentence.[20] These subsections were amended to provide that the costs assessed would be within those incurred by OPD after the statewide system began operations.[21] SB 263 amended *§46-8-113(1)* (2009) to require the courts to levy an assessment of $150 for misdemeanors and $500 for felonies as a part of or a condition under a sentence of a convicted defendant who was represented by a public defender. SB 187 made some significant changes to *§46-8-113(1)*. The SB 263 requirement for the courts to make an assessment of $150 or $500 as a part of or a condition under a sentence was replaced with a provision that "... the court shall determine whether a convicted defendant should pay the costs of counsel assigned ...."[22] The assessment structure changed from $150 to $250 for misdemeanors and $500 to $800 for felonies if an OPD client pleads guilty prior to trial.[23] Additionally, there is now a statutory presumption that the entire cost incurred by OPD is to be levied if the case goes to trial.[24]

¶14 Nevertheless, each court has long had the obligation under *§46-8-113* to determine whether the defendant has or will have the ability to pay and, if so in cases now, how much of $250, $800, or the entire cost of representation can the defendant pay. Each court is now expressly required to determine "whether a convicted defendant should pay the costs of counsel assigned" before imposing any payment requirement.[25] During that proceeding the court must question the defendant about the ability to pay after informing the defendant "that purposely

false or misleading statements may result in criminal charges against the defendant."[26] "In determining the amount and method of payment of costs, the court shall take into account the financial resources of the defendant and the nature of the burden that payment of costs will impose."[27] The court may not sentence a defendant to pay the costs for assigned counsel "unless the defendant is or will be able to pay the costs imposed by subsection (1).[28] Further, "[t]he court may find that the defendant is able to pay only a portion of the costs assessed."[29] Finally, "[a]ny costs imposed under this section must be included in the court's judgment."[30]

¶15 In many respects the SB 187 amendments only codified existing case law. A court could not and cannot reserve the right to change a sentence or add conditions later and, absent statutory authority, lacks the jurisdiction to modify the sentence later.[31] Before sentencing a defendant to pay for the cost of representation, courts were and are supposed to conduct a *§46-8-113* inquiry into the ability of the defendant to pay and, upon consideration of the available evidence, make a determination of the extent to which the defendant was or would be able to pay.[32] A full-fledged adversarial inquiry was and is not required but any defenses to payment asserted by the defendant should be fully considered.[33] An order for the payment of the cost of representation could not and cannot stand without a meaningful inquiry into the defendant's financial status and findings on the record that there are sufficient resources to repay the costs.[34] A sentence was and will still be illegal if the court does not make an affirmative finding that the defendant can afford to pay the amount ordered.[35]

¶16 For quite some time there has been a well defined process in place for ensuring that public defender clients pay reasonable costs for services based on the clients financial ability to pay. At sentencing the court supposedly conducts a meaningful inquiry into the ability of the defendant to pay. Presented through the appointed public defender, any defenses to payment the defendant can assert should be fully considered by the court. In determining the amount and method of payment of costs, the court should take into account the financial resources of the defendant and the nature of the burden the payment of costs will impose on the defendant and those who are dependent upon the OPD client. Upon consideration of the available evidence, the court presumptively determines the extent to which the defendant is or will be able to pay, makes findings on the record, and expresses the extent to which there are resources for paying some, all, or none of the costs of the services provided by OPD in the sentencing judgment. Of course, how much of the costs of representation a court can order paid is limited by the remaining financial ability of the defendant after paying the restitution, charges, fees, other costs, and fines ordered.

¶17 Already in place is the procedure for a defendant's compliance when ordered to pay toward the costs of representation. *§46-8-115* provides for penalties that can be imposed by the sentencing court if a person ordered to pay the costs of defense is in default. This statute appears to be modeled after the recoupment statute approved by the United States Supreme Court in *Fuller v. Oregon*.[36] A person in default on the payment of the cost of representation ordered can be brought into court by the prosecutor or the court on a show cause citation or an arrest warrant to show why the default should not be treated as a contempt of court.[37] The court may modify the terms of payment or revoke the payment of any unpaid portion in whole or in part if the court determines the default is not contempt.[38] Conversely, *§46-8-115(2)* permits the court to find the

default constitutes civil contempt if the accused fails to show a good faith effort to make the payment or that the default was not attributable to an intentional refusal to obey the court's order to pay the cost. *§46-8-115(3)* sets the imprisonment penalty for a finding of contempt:

> The term of imprisonment for contempt for nonpayment of the costs of assigned counsel must be set forth in the judgment and may not exceed 1 day for each $25 of the payment, 30 days if the order for payment of costs was imposed upon conviction of a misdemeanor, or 1 year in any other case, whichever is the shorter period. A person committed for nonpayment of costs must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.

¶18 Further, *§46-8-115(5)* establishes the procedure for the collection of payments on which there has been a default:

> A default in the payment of costs or any installment may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for the collection of costs may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected.

¶19 A financially eligible person cited to show cause should be entitled to representation by a public defender since there is a potential for incarceration upon a finding the person is in civil contempt for not paying the cost of representation by a public defender in an earlier proceeding. A role of the public defender at the sentencing stage and during a contempt proceeding is to develop and present any defenses the defendant may have to the payment of restitution, charges, fees, fines, and the assessment of costs, including the cost of representation, and present those defenses at the hearing. Those issues are thereby preserved for appeal if there is something illegal about an order for payment.

¶20 The failure of a public defender in fulfilling this role raises the issue of ineffective assistance of counsel perhaps because there would be no record on which a reviewing court could determine there was a meritorious defense. Further, an appellate court generally will not review sentencing issues on appeal that were not raised in the lower court by an objection.[39] The *Lenihan*[40] case provides an exception to the general rule but only allows appellate review of a sentence that is alleged to be illegal or in excess of statutory mandates.[41] A sparingly used common law plain error review might be available but that review is discretionarily determined on the basis of the particular facts and circumstances of each case compelling a finding that (a) not reviewing the claimed error may result in a manifest miscarriage of justice, (b) may leave unsettled the question of the fundamental fairness of the trial or proceedings, or (c) may compromise the integrity of the judicial process.[42]

¶21 Absent an appellate review, the defendant could return to the sentencing court for a change in the amount of the payments ordered on the basis of manifest hardship.[43] Similar provisions have been in *§46-8-113* since 1981. Even later the defendant could argue a good faith effort to pay the cost of representation was made or that the default was not attributable to an intentional refusal to obey the court's order at a *§46-8-115* civil contempt hearing. The

opportunity to show at any time that recovery of the costs of legal defense will impose "manifest hardship" is one of the reasons Montana's procedure passes constitutional muster.[44] There are similar provisions for relief from charges, fees, costs, and fines.[45] Obviously, it is important for public defenders to advocate the defenses against sentences ordering the payment of the cost of representation so lawful assessments are entered and so burdensome, unnecessary, costly, time consuming appeals and post-sentence hearings are reduced, if not avoided.

¶22 46 judges preside over 56 district courts in 22 judicial districts and 112 judges serve 61 justice courts, 84 city courts and 6 municipal courts of limited jurisdiction in Montana. These courts have long displayed disparity in how the cost of representation issues are decided.[46] Many courts have consistently concluded that the vast majority if not all of the people represented by public defenders cannot or will not be able to pay the cost of representation. Only 41 district courts and 62 courts of limited jurisdiction have assessed costs since July 1, 2006. How the defendant's ability or inability to pay is proven and what evidence is admissible, seemingly, is not settled in courts that do levy costs. For instance, in at least one jurisdiction the prosecutors are reluctant at having plea agreements allow for a *§46-8-113* determination, instead insisting the defendant promise to pay $250 or $800. "As set by the legislature" is a position taken by judges in that jurisdiction if there is no agreement between the prosecutor and the defendant. These prosecutorial and judicial positions are abrogations of *§46-8-113* and case law rights and responsibilities. So is a preconceived conclusion that indigent defendants cannot or will not be able to pay any costs.

¶23 As evidence of ability or inability, the judges in the preceding illustration have suggested filing under seal the indigency questionnaire [IQ] form "Application for Court-appointed Counsel" used by OPD in determining eligibility for services at the outset. Some prosecutors want the completed questionnaire as proof of the ability or inability to pay the costs of representation. Concerns about OPD doing either arise out of *§47-1-111(2)(c)* (2005): "Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing."

¶24 Too vast to recount here, many stories have circulated about the impropriety of political, judicial and prosecutorial interference with the delivery of the assistance of counsel for indigent defendants. One of the purposes for creating OPD was to "ensure that the system is free from undue political interference and conflicts of interest."[47] The enabling act of OPD instructed the Public Defender Commission [PDC] to establish procedures and adopt rules for determining the eligibility for public defender services on the basis of indigency.[48] Among those instructions the PDC was charged with ensuring that the eligibility determination process is fair and consistent statewide and required it to prohibit individual public defenders from performing eligibility screening.[49]

¶25 In what looks like a circumvention of *Rios v. Justice Court*,[50] a court in eastern Montana reportedly is now making eligibility determinations by examining the financial resources information on the IQ forms defendants are submitting when applying for the appointment of a public defender. This is being done by the judge acting as the witness called for on the IQ form. *Rios*[51] examined *§47-1-111(1)* (2005) and concluded that OPD has the duty

of making the initial determination of eligibility subject to the court's review and approval. Since *Rios* the third sentence in subsection (2)(b) and the second sentence in subsection (1)(d)[52] have been added so courts can inquire into the truth of the information contained in the defendant's affidavit and the propriety of the eligibility determination by OPD. However, the scope of inquiry remains statutorily in the context of the defendant's eligibility for OPD services. Beyond eligibility, *§47-1-111(2)(c)* restricts the admissibility of information in the eligibility documents for purposes of impeachment or in a subsequent prosecution for perjury or false swearing. In this atmosphere OPD has been reluctant at sharing information gathered during eligibility determination even though it has been noted by the Supreme Court that *§47-1-111* does not provide that the information on a defendant's application for counsel is confidential.[53]

¶26 Yet, *§46-8-113* and the *Starr*, *Hirt*, and *Farrell* cases cited in the endnotes clearly require courts to determine the extent of a defendant's ability to pay. Prosecutors shouldn't have to take the word of a defendant during plea agreement negotiations any more than prosecutorial representations must be taken as true by the defense without production of the evidence. While information on the IQ documents may not be admissible, the evidence underlying that information should not be rendered inadmissible merely because of its reflection on the eligibility documents. Pay stubs, tax returns, divorce decrees, mortgages and loan documents, bills, receipts, and so on are best evidence a public defender may need in proving a client's inability to pay $250, $800, or the full costs of representation as much as the prosecution may need such evidence when trying to prove some ability to pay. The costs incurred by OPD cannot be determined without knowing the time devoted by the public defender in presenting the defense. The court cannot make sustainable findings on the record without this combination of evidence.[54]

¶27 During the existence of OPD the courts have been able to order payment of the OPD cost assessed "... to be made within a specified period of time or in specified installments."[55] When a court defers imposition of a sentence or suspends all or a portion of execution of the sentence the judge may impose the payment of the cost of a public defender as a condition during the deferred imposition or suspension of the sentence.[56] In most instances a sentence can be deferred for a period not exceeding 1 year for a misdemeanor or for a period not exceeding 3 years for a felony.[57] However the period of deferment can be doubled if a financial obligation is imposed as a condition of the sentence.[58] Suspended sentences falling outside of these ranges should undergo a *Farrell* analysis.[59] Paying the costs of representation can be delayed significantly given those costs have the last statutory priority after restitution, mandatory charges, supervisory fees, other costs, and fines.[60]

¶28 While an increasing number of courts have been assessing greater amounts for the costs of representation, for a variety of reasons OPD has had and continues to have difficulty reconciling amounts received and determining who may be delinquent. At pages 59 - 61 of the benchbook[61] presumably used by the courts of limited jurisdiction there are alternative forms for sentences that the judges may use when sentencing; however, the courts have not and are not now sending sentences in either of those forms to the OPD central office for tracking payments. Rather, various different forms have been developed by courts that notify OPD about the cost assessments. Most of those forms merely indicate whether assessments have or have not been

imposed without telling OPD what amounts, if any, have been assessed for fines or other payments before OPD becomes eligible for payment or if a schedule had been set for any of those payments. OPD has not known when other payments were made or if schedules changed unless the court notified OPD. Rarely if ever have either happened. Before July 1, 2011, OPD clients were frequently told to send payments for their representation directly to OPD. At the same time some clerks of other courts of limited jurisdiction have forwarded payments from assessed clients with breakdowns of who paid. More often lump sums have been sent without the breakdowns. Assistance on followup for the client information has been mixed.

¶29 From the district courts OPD has received the names of those ordered to pay some amount of the costs of representation. Most of the sentencing judgments have not provided a schedule for the payment of any of the charges, fees, costs, or fines. While *§46-18-234* provides payment is due immediately if permission by the court is not granted for payment within a specified time or on a schedule, in practice court administration in charge of collecting payments usually creates a schedule or allows the defendant to make the payments during the term of the sentence. As with the courts of limited jurisdiction, before July 1, 2011, there was a mixture of court administrators collecting payments and OPD clients paying OPD directly. However, payments on judgments assessed since July 1, 2011 are collected through the district or justice courts and sent to the county treasurers rather than to OPD and in turn have been deposited with the department of revenue using the code for the OPD special revenue account on the "county collection report." The clerks have 10 days within which to deposit the funds with the treasurers who in turn have 20 more days in which to transfer funds to the department of revenue. OPD cannot identify the courts from which payments came or for whom credits are due from the county collection reports. Identifying either from calls to the treasurers and then the court administration has resulted in limited success.

¶30 The SB 187 amendment of *§46-8-114* again has the clerks of the sentencing courts collecting and allocating *§46-8-113* payments in accordance with *§46-18-251(2)*. At least now the court clerks, parole/probation officers, or others collecting payments can inform the courts or prosecutors if OPD clients are delinquent in their payments.

¶31 However, problems remain. The first technical note on the SB 187 fiscal note said:

> 1. Section 4 of this legislation requires the clerk of the sentencing court to collect fees from OPD clients and forward the funds to the Department of Revenue for deposit in OPD state special revenue fund. OPD will need information from each clerk for each fee assessed to its clients as well as any cash paid by a client so that it may do proper accounting and reporting. If this information is not provided to OPD, it will not be able to comply with required legislative reporting.

How the clerks of the municipal, city and town courts are making deposits is not clear. The clerks of the district and justice courts make deposits into the OPD special revenue account through the county treasurers. The county treasurers do not have the information about which clients paid how much. It is problematic in finding out which court made a deposit during any given period when OPD doesn't necessarily learn clients made payments until up to 30 days or more later. Getting the information from some clerks is as difficult as it was before July 1, 2011.

¶32 There are other significant impediments to cost recovery. The Anne Marie Stout case provides an example. The $57,127 she was ordered to pay in 2009 makes up 6% of the $900,298 of accounts receivables owed at the end of FY2011. Collecting $57,000 from her is fraught with difficulty. Anne Marie Stout is serving life in prison for the murder of her husband Bill with whom she had jointly owned a home. The same sentence ordering her to pay OPD also orders the reimbursement of Ravalli County in the amounts of $2,794.47 for the cost of prosecution and $11,776.52 for the costs of jury service. *§46-18-251(2)(c)* gives payment to Ravalli County priority over deposits into the OPD special revenue account. The court found the jointly owned home had been sale listed for $795,000 with about $204,300 owed against it. Since sentencing on February 5, 2009, OPD has received $33.32 toward the $57,127 assessed against her. OPD has not executed against the property because it doesn't have the financial ability to retire the remainder of the $204,300 and the balance due, if any, on the $14,571 owed Ravalli County at a sheriff's sale before beginning to recover the balance it is owed. Moreover, Bill Stout's heirs, presumably his surviving children, are entitled to $125,000 of the $250,000 homestead exemption while, arguably, Anne Marie is entitled to the other half that is exempt from execution. OPD would have to bid somewhere in the neighborhood of $500,000 or more to buy the property for resale. The hope would be someone bid more at the first sale so OPD could receive $57,094. Incidentally, this scenario also pretty much explains why Stout was represented by OPD rather than by a lawyer she retained.

¶33 OPD clients can be ordered to show cause why they are not paying for the costs of their representation or any of the other assessments ordered. Doing that takes OPD, judicial, prosecutorial, parole/probation, and/or law enforcement time and resources. Revocation of suspended or deferred sentences or jail time for contempt are the severest penalties that can be exacted for noncompliance. Courts are very reluctant to do so, and rarely if ever do, because of the jail time cost to the state, county or city. In the final analysis, OPD represents indigents, people within 133% of the poverty level or those who for various reasons do not have the financial ability to retain a lawyer in private practice.

¶34 Sentencing judges obviously have frequently determined within the foregoing framework of law and fact that the vast majority of the people represented by public defenders cannot or will not be able to pay the cost of representation. An OPD client may have precious few resources left if too much was ordered paid in restitution, charges, fees, other costs, and fines. Since the inception of the statewide system more than 120,000 clients have been represented by the end of fiscal year 2011 and the courts have imposed the payment of some amount of the cost on 3,591 defendants in criminal cases. The report accounting for the payment of costs demonstrates that amounts assessed have grown from $44,351 on 74 clients for FY2007, to $129,749 on 281 more clients in FY2008, to $218,714 on 480 clients in FY2009, to $329,585 on 1,154 clients in FY2010 to $437,977 on 1,602 clients in FY2011. OPD clients have paid a total of $260,078 over five fiscal years, of which $123,944 was paid in FY2011.

¶35 While greater assessments are being ordered on more defendants and more of them are paying more each year, more people (1,722) owed more ($900,298) at the end of FY2011 than at any other time. This trend is consistent with the situation in other public defender programs. Multiple studies have been done but in 2010 the Brennan Center for Justice at the

New York University School of Law published a study entitled "Criminal Justice Debt: A Barrier to Reentry" that can be accessed at http://brennan.3cdn.net/c610802495d901dac3_76m6vqhpy.pdf. Charges used by fifteen states other than Montana were studied and conclusions were drawn about the consequences of imposing those charges on the indigent as well as the negative impact the efforts at collecting those charges have on the justice system as a whole including the courts, court staff, prosecutors and defenders, law enforcement, prisons and jails. Plenty can be found in the report to distinguish the situation in Montana from the findings in the report. However, careful study and consideration must continue to be given to whether the same negative consequences the report found will emerge in Montana before more emphasis is put on charging more indigent defendants for more of the cost of their representation and collection efforts are ramped up.

---

1. **47-1-102**. **Purpose**. The purposes of this chapter are to:

(1) establish a statewide public defender system to provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public expense;

(2) ensure that the system is free from undue political interference and conflicts of interest;

(3) provide that public defender services are delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state;

(4) establish a system that utilizes state employees, contracted services, or other methods of providing services in a manner that is responsive to and respective of regional and community needs and interests;

(5) ensure that adequate public funding of the statewide public defender system is provided and managed in a fiscally responsible manner; and

(6) ensure that clients of the statewide public defender system pay reasonable costs for services provided by the system based on the clients' financial ability to pay.

2. Included is the accounting report for the collection of the costs of representation assessed by courts on convicted criminal defendants as a part of or a condition under a sentence imposed. Segregating SB 263 (2009) by fiscal year, the report details the number of people upon whom the courts assessed a payment of costs, the total amounts assessed in a fiscal year, the amounts collected by year, the number of people who paid in full their accounts receivable during a year, the number of people who had accounts receivable open at the end of a year, and the accounts receivable balances owed at the end of a year.

3. Before July 1, 2011, *§46-18-201(3)(a)(ii)* and *§46-18-201(4)(g)* provided, and still provide, the judge could impose the "payment of the costs of assigned counsel as provided in *46-8-113*." *§46-18-232(1)* then provided, and still provides, that "[a] court may require a convicted defendant in a felony or misdemeanor case to pay costs, as defined in *25-10-201*, plus ...." As it remains, *§46-18-251(2)(c)* then provided the middle priority level for the "payment of costs imposed pursuant to *46-18-232* or *46-18-233*" ahead of fines and "other payments" ordered. Relying on this statutory structure, *§46-18-251(2)(c)* could have been amended for clarity to provide "payment of costs imposed pursuant to *46-8-113*, *46-18-232* or *46-18-233*." Deposit of the *46-8-113* cost payments into the OPD special revenue account would have been assured by *§47-1-110(2)(a)*.

4. *M.C.A. §46-8-113(2)* (2011).

5. *M.C.A. §1-2-102* (2011); *State v. Brown*, 354 Mont. 329, 333, ¶12 (2009).

6. *M.C.A. §46-18-201(5)* (2011).

7. *M.C.A. §46-18-241(2)* (2011).

8. *M.C.A. §46-18-236(1)* (2011).

9. *M.C.A. §46-8-113* (2011).

10. *M.C.A. §46-18-236(2)* (2011).

11. *M.C.A. §46-18-235(1)* (2011).

12. *M.C.A. §3-10-601(2)* and *(3)* (2011); *M.C.A. §46-18-235(2)* (2011).

13. *M.C.A. §46-18-236(6)* (2011).

14. *M.C.A. §46-8-114* (2011) and *§47-1-110* (2011). The Montana Public Defender Act of 2005 established a public defender account in the state special revenue fund which can receive deposits from several sources including "payments for the cost of a public defender ordered by the court pursuant to *§46-8-113* as part of a sentence in a criminal case." *M.C.A. §47-1-110*. Before the system went into effect payments were made to the clerks of the district courts who, in turn, forwarded the payments to the department of revenue for deposit into the state general fund. *M.C.A. §46-8-114* (2005). If ordered in justice courts, 50% should have been paid into the county general fund and the other half deposited into the state general fund. *M.C.A. §3-10-601(3)* and *§46-18-235(2) (2005).* After the system became operational most of the payments came directly from the clients, although some payments were collected by clerks of court and forwarded to OPD, for deposit into the special revenue account. SB 187 amended *M.C.A. §46-8-114* (2011) to require the payments be made to the clerk of the sentencing court for allocation according to *M.C.A. §46-18-251(2)(e)* (2011) and deposit in the special revenue account. *M.C.A. §46-8-113(2)* (2011). The SB 187 amendments guarantee that the money deposited into the special revenue account will be collected by the court clerks from the last money OPD clients pay after making restitution and paying mandatory charges, supervisory fees, other costs assessed, and fines. The money deposited can be used only for the operation of the statewide public defender system. *M.C.A. §47-1-110*. One use will be for public defender commission [PDC] staff positions "only when the public defender account established pursuant to *47-1-110* has received sufficient revenue pursuant to *46-18-113(1)(a)* and *(1)(b)* to maintain a balance in the account that would sustain any staff position approved by the commission for at least 1 year." *M.C.A. §2-15-1028(6)(b)* (2011).

15. *M.C.A. §46-8-113(2)* (2009).

16. *State v. Ellis*, 339 Mont. 14, 18, ¶14 (2007), quoting from *James v. Strange*, 407 U.S. 128, 142 (1972).

17. *State v. Farrell*, 207 Mont. 483, 492 (1984), citing *Fuller*, 417 U.S. 40.

18. *Ellis*, 339 Mont. at 18-19, ¶¶16-17.

19. *Farrell* 207 Mont. at 494-99.

20. *M.C.A. §46-8-113(1)* and *(2)* (2005).

21. *Id*.

22. *M.C.A. §46-8-113(1)* (2011).

23. *Id*.

24. *Id*.

25. *Id*.

26. *M.C.A. §46-8-113(3)* (2011).

27. *M.C.A. §46-8-113(4)* (2011).

28. *Id*.

29. *Id*.

30. *M.C.A. §46-8-113(6)* (2011).

31. *State v. Hirt*, 329 Mont. 267, 271, ¶¶19-20 (2005).

32. *Hirt*, 329 Mont. at 271, ¶20; *State v. Hubbel*, 304 Mont. 184, 192-93, ¶37 (2001).

33. *State v. Farrell*, 207 Mont. 483, 492 (1984), quoting from *United States v. Bracewell*, 569 F.2d 1194, 1200 (2nd Cir. 1978).

34. *Hirt*, 329 Mont. at 271, ¶22, citing *Farrell*.

35. *State v. Starr*, 339 Mont. 208, 210, ¶10 (2007).

36. *State v. Lenihan*, 184 Mont. 338, 344-45 (1979).

37. *M.C.A. §46-8-115(1)* (2005).

38. *M.C.A. §46-8-115(4)* (2005).

39. *State v. Kotwicki*, 335 Mont. 344, 347, ¶8 (2007).

40. *Lenihan*, 184 Mont. at 343.

41. *Kotwicki*, 335 Mont. at 347, ¶8.

42. *State v. Upshaw*, 335 Mont. 162, 165, ¶12 (2006).

43. *M.C.A. §46-8-113(5)*; *§46-18-232(2)*; *§46-18-246* (2011).

44. *Farrell*, 207 Mont. at 492, citing *Fuller v. Oregon*, 417 U.S. 40, 47 (1974).

45. The court is required to waive payment of the *§46-18-236(1)* charges if it determines under *§46-18-231(3)* and *§46-18-232(2)* that the person is not able to pay the fine and costs or make payment within a reasonable time. *M.C.A. §46-18-236(2) (2011)*. A court may not sentence a defendant to pay a fine or costs unless it is determined the person is or will be able to pay. *M.C.A. §46-18-231(3)* and *§46-18-232(2)* (2011). A defendant may seek remission for the payment of *§46-18-232(1)* costs. *M.C.A. §46-18-232(3)* (2011). *§46-18-233(2)* prohibits the revocation of a deferred or suspended sentence upon default if the default is not attributable to an intentional refusal to obey the court's order or a failure to make a good faith effort to make the payment. The payment of restitution may be modified or waived. *M.C.A. §46-18-246* (2011). If the person ordered to pay restitution is not able to pay any restitution due to circumstances beyond his or her control the court may order the performance of community service for which the person must be given credit. *M.C.A. §46-18-241(3)* (2011).

46. Included is a chart showing the amounts each of 103 courts have ordered paid and the amounts received.

47. *M.C.A. §47-1-102(2)* (2005).

48. *M.C.A. §47-1-111(6)* (2005).

49. *Id*.

50. *Rios v. Justice Court*, 334 Mont. 111 (2006).

51. *Rios*, 334 Mont. at 114, ¶9.

52. **47-1-111. Eligibility--determination of indigence--rules**. (1)(a) When a court orders the office to assign counsel, the office shall immediately assign counsel prior to a determination under this section.

(b) If the person for whom counsel has been assigned is later determined pursuant to this section to be ineligible for public defender services, the office shall immediately notify the court so that the court's order may be rescinded.

(c) A person for whom counsel is assigned is entitled to the full benefit of public defender services until the court's order requiring the assignment is rescinded.

(d) Any determination pursuant to this section is subject to the review and approval of the court. The propriety of an assignment of counsel by the office is subject to inquiry by the court, and the court may deny an assignment.

(2)(a) An applicant who is eligible for a public defender because the applicant is indigent shall also provide a detailed financial statement and sign an affidavit. The court shall advise the defendant that the defendant is subject to criminal charges for any false statement made on the financial statement.

(b) The application, financial statement, and affidavit must be on a form prescribed by the commission. The affidavit must clearly state that it is signed under the penalty of perjury and that a false statement may be prosecuted. The judge may inquire into the truth of the information contained in the affidavit.

(c) Information disclosed in the application, financial statement, or affidavit is not admissible in a civil or criminal action except when offered for impeachment purposes or in a subsequent prosecution of the applicant for perjury or false swearing.

53. *Office of State Public Defender v. Whitefish City Court*, 342 Mont. 141, 146, ¶19 (2008).

54. *Starr*, ¶10.

55. *M.C.A. §46-8-114* (2005).

56. *M.C.A. §46-18-201(4)(g)* (2011).

57. *M.C.A. §46-18-201(1)(a)(i)* (2011).

58. *M.C.A. §46-18-201(1)(a)(ii)* (2011).

59. *State v. Pritchett*, 302 Mont. 1 (2000).

60. *M.C.A. §46-18-251(2)* (2011).

61. 2004 is the latest version of the benchbook found on the Montana Supreme Court website at http://courts.mt.gov/lcourt/default.mcpx.

Office of the State Public Defender
Judgments,Assessments and
Collections of Legal Fees
Title 47-1-201(9)(b)

	FY 2007	FY 2008	FY 2009	FY 2010	FY2011
JUDGMENTS PRE SB 263 AND OPD ASSESSMENTS					
Balance of A/R @ Beg of Year	$ -	$ 36,333	$ 131,263	$ 317,404	$ 292,318
Assessments by Year	44,351	129,749	218,714	14,371	20,475
Total Collections by Year	(8,018)	(34,818)	(32,574)	(39,456)	(30,845)
# of Clients represented by Collections Total	20	81	228	242	202
Total Balance of A/R @ End of Year **	$ 36,333	$ 131,263	$ 317,404	$ 292,318	$ 281,948
Total # of Clients with open A/R @ Beg of Year	-	66	310	729	689
# of Clients Assessments by Year	74	281	480	14	18
Total # of Clients paid in full during fiscal year	(8)	(37)	(61)	(54)	(38)
Total # of Clients with open A/R @ End of Year	66	310	729	689	669
SENATE BILL 263					
Balance of A/R @ Beg of Year	$ -	$ -	$ -	$ -	293,997
Assessments by Year	-	-	-	315,214	417,503
Total Collections by Year	-	-	-	(21,218)	(93,149)
# of Clients represented by Collections Total	-	-	-	224	886
Total Balance of A/R @ End of Year **	$ -	$ -	$ -	$ 293,997	$ 618,350
Total # of Clients with open A/R @ Beg of Year	-	-	-	-	1,033
# of Clients Assessments by Year	-	-	-	1,140	1,584
Total # of Clients paid in full during fiscal year	-	-	-	(107)	(411)
Total # of Clients with open A/R @ End of Year	-	-	-	1,033	2,206
TOTAL ALL JUDGMENTS AND ASSESSMENTS INCLUDING SENATE BILL 263					
Balance of A/R @ Beg of Year	$ -	$ 36,333	$ 131,263	$ 317,404	$ 586,315
Assessments by Year	44,351	129,749	218,714	329,585	437,977
Total Collections by Year **	(8,018)	(34,818)	(32,574)	(60,674)	(123,994)
# of Clients represented by Collections Total	20	81	228	466	1,088
Total Balance of A/R for Reporting Year **	$ 36,333	$ 131,263	$ 317,404	$ 586,315	$ 900,298
Total # of Clients with open A/R @ Beg of Year	-	66	310	729	1,722
# of Clients Assessments by Year	74	281	480	1,154	1,602
Total # of Clients paid in full during fiscal year	(8)	(37)	(61)	(161)	(449)
Total # of Clients with open A/R @ End of Year	66	310	729	1,722	2,875

OFFICE OF THE STATE PUBLIC DEFENDER
ASSESSMENTS AND COLLECTIONS
For the Period of July 1, 2006 - June 30, 2011
FY 2007 - FY 2011

REGION	COUNTY	COURT	FY 2007 ASSESSMENTS	FY 2008 ASSESSMENTS	FY 2009 ASSESSMENTS	FY 2010 ASSESSMENTS	FY2011 ASSESSMENTS	TOTAL ASSESSMENTS
1	Flathead	Columbia Falls City Court	$ 4,442.96	$ 8,708.95	$ 5,175.50	$ 5,487.00	$ 11,283.60	$ 35,098.01
1	Flathead	Flathead County D.C.	16,050.00	44,616.06	67,823.34	69,042.00	66,100.00	263,631.40
1	Flathead	Flathead County Justice	304.50	2,658.06	2,560.00	1,615.00	2,920.80	10,058.36
1	Flathead	Kalispell Municipal Court	-	-	-	5,955.56	7,405.00	13,360.56
1	Lake	Lake County D.C.	-	350.00	500.00	200.00	100.00	1,150.00
1	Lake	Lake County Justice Court	-	-	-	-	97.15	97.15
1	Lincoln	Lincoln County D.C.	250.00	12,085.00	15,060.00	9,750.00	10,400.00	47,545.00
1	Lincoln	Lincoln County Justice	-	-	-	350.00	1,200.00	1,550.00
1	Lincoln	Lincoln City Court	-	150.00	150.00	-	150.00	450.00
1	Sanders	Sanders County D.C.	-	454.40	-	500.00	1,000.00	1,954.40
1	Sanders	City of Thompson Falls	-	-	20.00	20.00	-	40.00
		TOTAL	**$ 21,047.46**	**$ 69,022.47**	**$ 91,288.84**	**$ 92,919.56**	**$ 100,656.55**	**$ 374,934.88**
2	Mineral	Mineral County D.C.	$ -	$ -	$ 700.00	$ 2,000.00	$ 500.00	$ 3,200.00
2	Mineral	Mineral County Justice Court	-	-	100.00	100.00	1,000.00	1,200.00
2	Missoula	Missoula County D.C.	3,000.00	21,204.10	16,281.02	88,241.20	97,240.00	225,966.32
2	Missoula	Missoula County Justice Court	550.00	800.00	1,320.00	22,335.00	30,820.50	55,825.50
2	Missoula	Missoula City Court	-	-	-	-	1,385.60	1,385.60
2	Ravalli	Stevensville City Court	-	-	150.00	-	-	150.00
2	Ravalli	Ravalli County D.C.	3,303.00	-	66,461.40	11,052.00	18,050.00	98,866.40
2	Ravalli	Ravalli County Justice Court	-	213.00	150.00	967.00	3,325.70	4,655.70
2	Ravalli	Hamilton City Court	-	-	150.00	1,010.00	1,692.20	2,852.20
		TOTAL	**$ 6,853.00**	**$ 22,217.10**	**$ 85,312.42**	**$ 125,705.20**	**$ 154,014.00**	**$ 394,101.72**
3	Cascade	Great Falls Municipal	$ -	$ -	$ 1,685.00	$ 5,258.00	$ 9,105.00	$ 16,048.00
3	Cascade	Cascade County Sheriff	-	-	-	-	-	-
3	Cascade	Cascade County D.C.	-	-	-	-	500.00	500.00
3	Cascade	Cascade County Justice Court	-	-	-	-	150.00	150.00
3	Glacier	Glacier County D.C.	-	-	-	-	500.00	500.00
3	Teton	Teton County Justice Court	-	-	-	-	300.00	300.00
3	Teton	Teton County D.C.	-	-	-	500.00	-	500.00
3	Teton	Choteau City Court	-	-	-	-	300.00	300.00
3	Cascade	City of Great Falls	-	-	-	6.93	-	6.93
		TOTAL	**$ -**	**$ -**	**$ 1,685.00**	**$ 5,764.93**	**$ 10,855.00**	**$ 18,304.93**
4	Jefferson	Jefferson County D.C.	$ 2,635.00	$ 3,085.00	$ 1,652.00	$ 760.00	$ -	$ 8,132.00
4	Lewis & Clark	Lewis & Clark County D.C	-	-	-	-	1,145.00	1,145.00
4	Lewis & Clark	Lewis & Clark County Justice Court	-	951.02	377.50	-	800.00	2,128.52
4	Broadwater County	Broadwater County Justice Court	-	-	106.50	-	-	106.50
4	Jefferson	City of Boulder	-	-	-	150.00	-	150.00
4	Lewis & Clark	Helena City Court	-	213.00	486.50	-	300.00	999.50
4	Lewis & Clark	East Helena City Court	-	71.00	-	-	350.00	421.00
		TOTAL	**$ 2,635.00**	**$ 4,320.02**	**$ 2,622.50**	**$ 910.00**	**$ 2,595.00**	**$ 13,082.52**

OFFICE OF THE STATE PUBLIC DEFENDER
ASSESSMENTS AND COLLECTIONS
For the Period of July 1, 2006 - June 30, 2011
FY 2007 - FY 2011

REGION	COUNTY	COURT	FY 2007 ASSESSMENTS	FY 2008 ASSESSMENTS	FY 2009 ASSESSMENTS	FY 2010 ASSESSMENTS	FY2011 ASSESSMENTS	TOTAL ASSESSMENTS
5	Beaverhead	Beaverhead County D.C.	$ 2,479.00	$ 7,044.00	$ 2,910.12	$ 1,000.00	$ 3,745.15	$ 17,178.27
5	Silver Bow	Butte City Court	-	-	-	6,339.05	17,400.00	23,739.05
5	Powell	Powell County D.C.	-	1,959.60	-	1,082.90	-	3,042.50
5	Powell	Powell County Justice	-	695.80	-	-	-	695.80
5	Deer Lodge	Deer Lodge County Justice Court	-	-	-	-	180.90	180.90
5	Silver Bow	Silver Bow County D.C.	-	2,677.90	1,635.80	7,074.48	884.40	12,272.58
5	Silver Bow	Silver Bow County Justice Court	-	-	-	-	150.00	150.00
5	Madison	Madison County D.C.	-	1,150.00	3,550.00	1,250.00	500.00	6,450.00
5	Madison	Madison County Justice Court	-	-	-	450.00	150.00	600.00
5	Madison	City Court Of Ennis	-	-	-	1,412.90	-	1,412.90
		TOTAL	**$ 2,479.00**	**$ 13,527.30**	**$ 8,095.92**	**$ 18,609.33**	**$ 23,010.45**	**$ 65,722.00**
6	Blaine	Blaine County D.C.	$ 1,000.00	$ 1,500.00	$ -	$ 2,550.00	$ 3,650.00	$ 8,700.00
6	Choteau	Choteau County D.C.	-	-	-	-	1,150.00	1,150.00
6	Valley	Valley County D.C.	600.00	200.00	500.00	1,000.00	1,000.00	3,300.00
6	Valley	Glasgow City Court	-	-	150.00	-	-	150.00
6	Hill	Hill County Justice Court	678.00	-	-	-	-	678.00
6	Hill	Hill County D.C.	45.00	-	-	6,600.00	15,900.00	22,545.00
		TOTAL	**$ 2,323.00**	**$ 1,700.00**	**$ 650.00**	**$ 10,150.00**	**$ 21,700.00**	**$ 36,523.00**
7	Fergus	Fergus County D.C.	$ 5,325.00	$ 225.00	$ 1,609.77	$ 1,351.32	$ 1,650.00	$ 10,161.09
7	Fergus	Fergus County Justice Court	-	404.70	75.00	-	-	479.70
7	Fergus	Lewistown City Court	-	355.00	-	-	150.00	505.00
7	Golden Valley	Golden Valley Justice Court	-	-	-	-	150.00	150.00
7	Golden Valley	Golden Valley D.C.	-	-	-	500.00	-	500.00
7	Meagher	Meagher County D.C.	-	-	-	1,675.00	-	1,675.00
7	Meagher	Meagher County Justice Court	-	-	100.50	-	-	100.50
7	Musselshell	Musselshell County D.C.	965.40	75.00	2,961.70	-	4,000.00	8,002.10
7	Judith Basin	Judith Basin County Justice Court	-	-	-	300.00	-	300.00
7	Judith Basin	Judith Basin County D.C.	-	-	-	300.00	-	300.00
		TOTAL	**$ 6,290.40**	**$ 1,059.70**	**$ 4,746.97**	**$ 4,126.32**	**$ 5,950.00**	**$ 22,173.39**
8	Gallatin	Belgrade City Court	$ -	$ -	$ 50.00	$ 3,320.00	$ 2,744.50	$ 6,114.50
8	Gallatin	Bozeman Municipal Court	-	-	-	284.00	8,651.00	8,935.00
8	Park	Park County D.C.	-	-	-	-	500.00	500.00
8	Sweet Grass	Sweet Grass County Justice Court	-	-	-	-	450.00	450.00
8	Gallatin	Gallatin County D.C.	-	574.00	3,068.00	871.00	500.00	5,013.00
8	Gallatin	Gallatin County Justice Court	-	-	-	1,516.03	2,601.00	4,117.03
		TOTAL	**$ -**	**$ 574.00**	**$ 3,118.00**	**$ 5,991.03**	**$ 15,446.50**	**$ 25,129.53**

OFFICE OF THE STATE PUBLIC DEFENDER
ASSESSMENTS AND COLLECTIONS
For the Period of July 1, 2006 - June 30, 2011
FY 2007 - FY 2011

REGION	COUNTY	COURT	FY 2007 ASSESSMENTS	FY 2008 ASSESSMENTS	FY 2009 ASSESSMENTS	FY 2010 ASSESSMENTS	FY2011 ASSESSMENTS	TOTAL ASSESSMENTS
9	Big Horn	Big Horn County D.C.	$ -	$ -	$ -	$ 75.00	$ 1,000.00	$ 1,075.00
9	Big Horn	Hardin City Court	-	-	-	-	275.00	275.00
9	Carbon	Carbon County D.C.	-	-	-	-	500.00	500.00
9	Carbon	Carbon County Justice Court	-	-	-	300.00	300.00	600.00
9	Carbon	Red Lodge City Court	-	-	-	1,250.00	2,250.00	3,500.00
9	Carbon	Fromberg City Court	-	-	-	150.00	300.00	450.00
9	Carbon	Bridger City Court	-	-	-	-	50.00	50.00
9	Carbon	Joliet City Court	-	-	-	150.00	150.00	300.00
9	Stillwater	Stillwater County Justice Court	-	-	-	600.00	1,950.00	2,550.00
9	Yellowstone	Billings Municipal Court	-	85.20	-	-	-	85.20
9	Yellowstone	Yellowstone County D.C.	-	-	100.00	21,920.00	47,669.00	69,689.00
9	Yellowstone	Yellowstone County Justice Court	-	-	-	18,350.00	25,800.00	44,150.00
		TOTAL	**$ -**	**$ 85.20**	**$ 100.00**	**$ 42,795.00**	**$ 80,244.00**	**$ 123,224.20**
10	Dawson	Dawson County D.C.	$ 1,080.00	$ 9,014.27	$ 4,585.34	$ 10,596.55	$ 4,568.30	$ 29,844.46
10	Dawson	Glendive City Court	-	-	-	150.00	3,675.00	$ 3,825.00
10	Dawson	Dawson County Justice Court	-	-	-	500.00	-	$ 500.00
10	McCone	McCone County D.C.	-	-	1,000.00	500.00	500.00	$ 2,000.00
10	McCone	McCone County Justice Court	-	-	-	300.00	-	$ 300.00
10	Prairie	Prairie County D.C.	500.00	500.00	-	250.00	-	$ 1,250.00
10	Prairie	Prairie County Justice Court	-	-	-	150.00	-	$ 150.00
10	Richland	Richland County D.C.	1,082.31	1,644.00	8,095.95	2,158.00	2,922.51	$ 15,902.77
10	Richland	Sidney City Court	-	-	363.84	150.00	500.00	$ 1,013.84
10	Roosevelt	Roosevelt County D.C.	-	-	3,280.20	-	500.00	$ 3,780.20
10	Sheridan	Sheridan County D.C.	-	-	500.00	500.00	351.75	$ 1,351.75
10	Wibaux	Wibaux County D.C.	-	150.00	-	-	4,221.00	$ 4,371.00
		TOTAL	**$ 2,662.31**	**$ 11,308.27**	**$ 17,825.33**	**$ 15,254.55**	**$ 17,238.56**	**$ 64,289.02**
11	Carter	Carter County	$ -	$ 4,934.50	$ -	$ 150.00	$ -	$ 5,084.50
11	Custer	Custer County D.C.	-	-	942.02	3,500.00	300.00	4,742.02
11	Custer	Custer County Justice Court	-	-	-	450.00	150.00	600.00
11	Fallon	Baker City Court	-	-	-	-	300.00	300.00
11	Fallon	Fallon County D.C.	-	500.00	-	200.00	1,000.00	1,700.00
11	Treasure	Hysham City Court	-	-	-	-	150.00	150.00
11	Rosebud	Colstrip City Court	-	-	-	-	600.00	600.00
11	Rosebud	Forsyth City Court	-	-	-	-	150.00	150.00
11	Rosebud	Rosebud County Justice Court	-	-	-	150.00	900.00	1,050.00
11	Rosebud	Rosebud County D.C.	-	-	0.33	2,150.00	2,717.00	4,867.33
		TOTAL	**$ -**	**$ 5,434.50**	**$ 942.35**	**$ 6,600.00**	**$ 6,267.00**	**$ 19,243.85**
		Miscellaneous	**$ 60.83**	**$ 500.00**	**$ 2,326.67**	**$ 759.08**	**$ -**	**$ 3,646.58**
		Grand Total	**$ 44,351.00**	**$ 129,748.56**	**$ 218,714.00**	**$ 329,585.00**	**$ 437,977.06**	**$ 1,160,375.62**

OFFICE OF THE STATE PUBLIC DEFENDER
ASSESSMENTS AND COLLECTIONS
For the Period of July 1, 2006 - June 30, 2011
FY 2007 - FY 2011

REGION	COUNTY	COURT	FY 2007 COLLECTIONS	FY 2008 COLLECTIONS	FY 2009 COLLECTIONS	FY 2010 COLLECTIONS	FY 2011 COLLECTIONS	TOTAL COLLECTIONS	RECEIVABLES BALANCE
1	Flathead	Columbia Falls City Court	$ (4,367.96)	$ (7,415.95)	$ (4,958.50)	$ (4,342.00)	$ (3,164.60)	$ (24,249.01)	**$ 10,849.00**
1	Flathead	Flathead County D.C.	(2,023.08)	(5,409.91)	(9,875.88)	(11,475.45)	(9,212.97)	(37,997.29)	**225,634.11**
1	Flathead	Flathead County Justice	(242.00)	(3,021.06)	(1,831.00)	(1,760.00)	(2,795.30)	(9,649.36)	**409.00**
1	Flathead	Kalispell Municipal Court	-	-	-	(955.56)	(10,073.29)	(11,028.85)	**2,331.71**
1	Lake	Lake County D.C.	-	-	(3.55)	(4.30)	(14.44)	(22.29)	**1,127.71**
1	Lake	Lake County Justice Court	-	-	-	(97.15)	-	(97.15)	**-**
1	Lincoln	Lincoln County D.C.	-	(3,585.00)	(3,604.54)	(2,052.18)	(3,311.48)	(12,553.20)	**34,991.80**
1	Lincoln	Lincoln County Justice	-	-	-	(200.00)	(1,220.00)	(1,420.00)	**130.00**
1	Lincoln	Lincoln City Court	-	-	-	-	(200.00)	(200.00)	**250.00**
1	Sanders	Sanders County D.C.	-	-	-	-	(7.97)	(7.97)	**1,946.43**
1	Sanders	City of Thompson Falls	-	-	(20.00)	(20.00)	-	(40.00)	**-**
		TOTAL	**$ (6,633.04)**	**$ (19,431.92)**	**$ (20,293.47)**	**$ (20,906.64)**	**$ (30,000.05)**	**$ (97,265.12)**	**$ 277,669.76**
2	Mineral	Mineral County D.C.	$ -	$ -	$ (36.91)	$ (65.30)	$ (145.07)	$ (247.28)	**$ 2,952.72**
2	Mineral	Mineral County Justice Court	-	-	(8.75)	(37.38)	(32.81)	(78.94)	**1,121.06**
2	Missoula	Missoula County D.C.	-	(100.00)	(1,352.79)	(4,720.26)	(8,309.47)	(14,482.52)	**211,483.80**
2	Missoula	Missoula County Justice Court	-	(50.00)	(252.80)	(6,033.24)	(34,357.73)	(40,693.77)	**15,131.73**
2	Missoula	Missoula City Court	-	-	-	-	(1,385.60)	(1,385.60)	**-**
2	Ravalli	Stevensville City Court	-	-	-	-	(107.20)	(107.20)	**42.80**
2	Ravalli	Ravalli County D.C.	-	(37.62)	(43.47)	(893.45)	(658.89)	(1,633.43)	**97,232.97**
2	Ravalli	Ravalli County Justice Court	-	(40.00)	(173.00)	(150.00)	(592.00)	(955.00)	**3,700.70**
2	Ravalli	Hamilton City Court	-	-	-	-	-	-	**2,852.20**
		TOTAL	**$ -**	**$ (227.62)**	**$ (1,867.72)**	**$ (11,899.63)**	**$ (45,588.77)**	**$ (59,583.74)**	**$ 334,517.98**
3	Cascade	Great Falls Municipal	$ -	$ -	(35.00)	(2,193.00)	$ (5,110.00)	$ (7,338.00)	**$ 8,710.00**
3	Cascade	Cascade County Sheriff	-	-	-	(6.93)	-	(6.93)	**(6.93)**
3	Cascade	Cascade County D.C.	-	-	-	-	(1.66)	(1.66)	**498.34**
3	Cascade	Cascade County Justice Court	-	-	-	-	(150.00)	(150.00)	**-**
3	Glacier	Glacier County D.C.	-	-	-	-	-	-	**500.00**
3	Teton	Teton County Justice Court	-	-	-	-	(270.00)	(270.00)	**30.00**
3	Teton	Teton County D.C.	-	-	-	-	(3.51)	(3.51)	**496.49**
3	Teton	Choteau City Court	-	-	-	-	(300.00)	(300.00)	**-**
3	Cascade	City of Great Falls	-	-	-	-	-	-	**6.93**
		TOTAL	**$ -**	**$ -**	**$ (35.00)**	**$ (2,199.93)**	**$ (5,835.17)**	**$ (8,070.10)**	**$ 10,234.83**
4	Jefferson	Jefferson County D.C.	$ -	$ (2,330.00)	$ (880.00)	$ (405.00)	$ (100.00)	$ (3,715.00)	**$ 4,417.00**
4	Lewis & Clark	Lewis & Clark County D.C	-	-	-	-	(154.03)	(154.03)	**990.97**
4	Lewis & Clark	Lewis & Clark County Justice Court	-	(146.00)	(349.85)	(74.49)	(151.94)	(722.28)	**1,406.24**
4	Broadwater County	Broadwater County Justice Court	-	-	-	-	-	-	**106.50**
4	Jefferson	City of Boulder	-	-	-	(150.00)	-	(150.00)	**-**
4	Lewis & Clark	Helena City Court	-	-	-	(289.00)	(300.00)	(589.00)	**410.50**
4	Lewis & Clark	East Helena City Court	-	-	(71.00)	(50.00)	-	(121.00)	**300.00**
		TOTAL	**$ -**	**$ (2,476.00)**	**$ (1,300.85)**	**$ (968.49)**	**$ (705.97)**	**$ (5,451.31)**	**$ 7,631.21**

OFFICE OF THE STATE PUBLIC DEFENDER
ASSESSMENTS AND COLLECTIONS
For the Period of July 1, 2006 - June 30, 2011
FY 2007 - FY 2011

REGION	COUNTY	COURT	FY 2007 COLLECTIONS	FY 2008 COLLECTIONS	FY 2009 COLLECTIONS	FY 2010 COLLECTIONS	FY 2011 COLLECTIONS	TOTAL COLLECTIONS	RECEIVABLES BALANCE
5	Beaverhead	Beaverhead County D.C.	$ (675.00)	$ (1,520.00)	$ (2,055.83)	$ (2,971.00)	$ (350.42)	$ (7,572.25)	**$ 9,606.02**
5	Silver Bow	Butte City Court	-	-	-	-	(939.05)	(939.05)	**22,800.00**
5	Powell	Powell County D.C.	-	-	-	-	(700.00)	(700.00)	**2,342.50**
5	Powell	Powell County Justice	(175.00)	(520.80)	-	-	-	(695.80)	**-**
5	Deer Lodge	Deer Lodge County Justice Court	-	-	-	-	-	-	**180.90**
5	Silver Bow	Silver Bow County D.C.	-	-	(312.10)	(381.26)	(410.09)	(1,103.45)	**11,169.13**
5	Silver Bow	Silver Bow County Justice Court	-	-	-	-	-	-	**150.00**
5	Madison	Madison County D.C.	-	-	(1,750.00)	-	(750.00)	(2,500.00)	**3,950.00**
5	Madison	Madison County Justice Court	-	-	-	-	(150.00)	(150.00)	**450.00**
5	Madison	City Court Of Ennis	-	-	-	(1,412.90)	-	(1,412.90)	**-**
		TOTAL	**$ (850.00)**	**$ (2,040.80)**	**$ (4,117.93)**	**$ (4,765.16)**	**$ (3,299.56)**	**$ (15,073.45)**	**$ 50,648.55**
6	Blaine	Blaine County D.C.	$ (439.75)	$ (1,435.00)	$ (406.25)	$ (134.03)	$ (884.08)	$ (3,299.11)	**$ 5,400.89**
6	Choteau	Choteau County D.C.	-	-	-	-	(10.76)	(10.76)	**1,139.24**
6	Valley	Valley County D.C.	-	(600.00)	(78.00)	-	-	(678.00)	**2,622.00**
6	Valley	Glasgow City Court	-	-	-	(150.00)	-	(150.00)	**-**
6	Hill	Hill County Justice Court	-	-	-	(2.39)	-	(2.39)	**675.61**
6	Hill	Hill County D.C.	(45.00)	-	-	(201.83)	(1,981.27)	(2,228.10)	**20,316.90**
		TOTAL	**$ (484.75)**	**$ (2,035.00)**	**$ (484.25)**	**$ (488.25)**	**$ (2,876.11)**	**$ (6,368.36)**	**$ 30,154.64**
7	Fergus	Fergus County D.C.	$ -	$ (225.00)	$ (4.13)	$ (622.88)	$ (11.56)	$ (863.57)	**$ 9,297.52**
7	Fergus	Fergus County Justice Court	-	-	-	-	(75.00)	(75.00)	**404.70**
7	Fergus	Lewistown City Court	-	-	(255.00)	-	-	(255.00)	**250.00**
7	Golden Valley	Golden Valley Justice Court	-	-	-	-	(150.00)	(150.00)	**-**
7	Golden Valley	Golden Valley D.C.	-	-	-	-	(500.00)	(500.00)	**-**
7	Meagher	Meagher County D.C.	-	-	-	-	-	-	**1,675.00**
7	Meagher	Meagher County Justice Court	-	-	-	(100.50)	-	(100.50)	**-**
7	Musselshell	Musselshell County D.C.	-	(347.60)	(12.35)	(4.30)	(511.69)	(875.94)	**7,126.16**
7	Judith Basin	Judith Basin County Justice Court	-	-	-	-	(50.00)	(50.00)	**250.00**
7	Judith Basin	Judith Basin County D.C.	-	-	-	(300.00)	-	(300.00)	**-**
		TOTAL	**$ -**	**$ (572.60)**	**$ (271.48)**	**$ (1,027.68)**	**$ (1,298.25)**	**$ (3,170.01)**	**$ 19,003.38**
8	Gallatin	Belgrade City Court	$ -	$ -	$ -	$ (1,290.00)	$ (1,589.50)	$ (2,879.50)	**$ 3,235.00**
8	Gallatin	Bozeman Municipal Court	-	-	-	-	(2,850.00)	(2,850.00)	**6,085.00**
8	Park	Park County D.C.	-	-	-	-	(12.79)	(12.79)	**487.21**
8	Sweet Grass	Sweet Grass County Justice Court	-	-	-	-	-	-	**450.00**
8	Gallatin	Gallatin County D.C.	-	-	(90.00)	(947.50)	(133.87)	(1,171.37)	**3,841.63**
8	Gallatin	Gallatin County Justice Court	-	-	-	(150.00)	(801.00)	(951.00)	**3,166.03**
		TOTAL	**$ -**	**$ -**	**$ (90.00)**	**$ (2,387.50)**	**$ (5,387.16)**	**$ (7,864.66)**	**$ 17,264.87**

OFFICE OF THE STATE PUBLIC DEFENDER
ASSESSMENTS AND COLLECTIONS
For the Period of July 1, 2006 - June 30, 2011
FY 2007 - FY 2011

REGION	COUNTY	COURT	FY 2007 COLLECTIONS	FY 2008 COLLECTIONS	FY 2009 COLLECTIONS	FY 2010 COLLECTIONS	FY 2011 COLLECTIONS	TOTAL COLLECTIONS	RECEIVABLES BALANCE
9	Big Horn	Big Horn County D.C.	$ -	$ -	$ -	$ (75.00)	$ (14.10)	$ (89.10)	**$ 985.90**
9	Big Horn	Hardin City Court	-	-	-	-	-	-	**275.00**
9	Carbon	Carbon County D.C.	-	-	-	-	-	-	**500.00**
9	Carbon	Carbon County Justice Court	-	-	-	-	-	-	**600.00**
9	Carbon	Red Lodge City Court	-	-	-	(150.00)	-	(150.00)	**3,350.00**
9	Carbon	Fromberg City Court	-	-	-	-	(300.00)	(300.00)	**150.00**
9	Carbon	Bridger City Court	-	-	-	-	-	-	**50.00**
9	Carbon	Joliet City Court	-	-	-	(150.00)	-	(150.00)	**150.00**
9	Stillwater	Stillwater County Justice Court	-	-	-	-	(600.00)	(600.00)	**1,950.00**
9	Yellowstone	Billings Municipal Court	-	(49.70)	-	-	-	(49.70)	**35.50**
9	Yellowstone	Yellowstone County D.C.	-	-	-	(1,397.31)	(1,618.45)	(3,015.76)	**66,673.24**
9	Yellowstone	Yellowstone County Justice Court	-	-	-	(300.00)	(1,665.00)	(1,965.00)	**42,185.00**
		TOTAL	**$ -**	**$ (49.70)**	**$ -**	**$ (2,072.31)**	**$ (4,197.55)**	**$ (6,319.56)**	**$ 116,904.64**
10	Dawson	Dawson County D.C.	$ -	$ (1,810.13)	$ (2,769.78)	$ (5,314.08)	$ (7,397.87)	$ (17,291.86)	**$ 12,552.60**
10	Dawson	Glendive City Court	-	-	-	(150.00)	(450.00)	(600.00)	**3,225.00**
10	Dawson	Dawson County Justice Court	-	-	-	-	(500.00)	(500.00)	**-**
10	McCone	McCone County D.C.	-	-	(275.00)	(785.00)	(500.00)	(1,560.00)	**440.00**
10	McCone	McCone County Justice Court	-	-	-	(300.00)	-	(300.00)	**-**
10	Prairie	Prairie County D.C.	-	(500.00)	-	-	(617.87)	(1,117.87)	**132.13**
10	Prairie	Prairie County Justice Court	-	-	-	-	(150.00)	(150.00)	**-**
10	Richland	Richland County D.C.	-	(15.18)	(961.96)	(4,886.02)	(3,081.47)	(8,944.63)	**6,958.14**
10	Richland	Sidney City Court	-	-	(100.00)	(263.84)	(350.00)	(713.84)	**300.00**
10	Roosevelt	Roosevelt County D.C.	-	-	-	-	(50.00)	(50.00)	**3,730.20**
10	Sheridan	Sheridan County D.C.	-	-	-	(500.00)	(851.75)	(1,351.75)	**-**
10	Wibaux	Wibaux County D.C.	-	(150.00)	-	-	(4,221.00)	(4,371.00)	**-**
		TOTAL	**$ -**	**$ (2,475.31)**	**$ (4,106.74)**	**$ (12,198.94)**	**$ (18,169.96)**	**$ (36,950.95)**	**$ 27,338.07**
11	Carter	Carter County	$ -	$ (4,934.50)	$ -	$ (150.00)	$ -	$ (5,084.50)	**$ -**
11	Custer	Custer County D.C.	-	-	-	(1,238.31)	(1,373.70)	(2,612.01)	**2,130.01**
11	Custer	Custer County Justice Court	-	-	-	-	(150.00)	(150.00)	**450.00**
11	Fallon	Baker City Court	-	-	-	-	(150.00)	(150.00)	**150.00**
11	Fallon	Fallon County D.C.	-	(75.00)	-	-	(735.00)	(810.00)	**890.00**
11	Treasure	Hysham City Court	-	-	-	-	(150.00)	(150.00)	**-**
11	Rosebud	Colstrip City Court	-	-	-	-	(300.00)	(300.00)	**300.00**
11	Rosebud	Forsyth City Court	-	-	-	-	-	-	**150.00**
11	Rosebud	Rosebud County Justice Court	-	-	-	-	(150.00)	(150.00)	**900.00**
11	Rosebud	Rosebud County D.C.	-	-	(0.33)	(150.00)	(2,467.97)	(2,618.30)	**2,249.03**
		TOTAL	**$ -**	**$ (5,009.50)**	**$ (0.33)**	**$ (1,538.31)**	**$ (5,476.67)**	**$ (12,024.81)**	**$ 7,219.04**
		Miscellaneous	**$ (50.00)**	**$ (500.00)**	**$ (5.82)**	**$ (221.49)**	**$ (1,158.62)**	**$ (1,935.93)**	**$ 1,710.65**
		Grand Total	**$ (8,017.79)**	**$ (34,818.45)**	**$ (32,573.59)**	**$ (60,674.33)**	**$ (123,993.84)**	**$ (260,078.00)**	**$ 900,297.62**

OFFICE OF THE STATE PUBLIC DEFENDER

Calculations and Assumptions to Determine the Hourly Cost per FTE and Contract Attorney

This paper provides the calculations and underlying assumptions behind the agency study that produced a cost per hour for an FTE attorney and for a contract attorney. The costs included in this study are from the agency's unaudited financial statements for FY 2011.

The results of the study are as follows: the cost for an FTE (staff attorney) in FY 2011 was $72 per hour and the cost for a contract attorney was $95 per hour.

Here are the calculations and assumptions included in the study:

1. The cost information came from the agency's FY 2011 unaudited financial statements. The agency expended $21,297,670 during FY 2011 (excluding capital defense costs).

2. The average cost per FTE attorney with benefits and insurance is about $35 per hour.

3. Contract attorneys are paid $60 per hour. They are also reimbursed for certain other costs including travel, lodging, etc. which are an insignificant part of the total cost.

4. During FY 2011 the agency recorded the receipt of 27,664 new cases. Of these, 20,388 or 74% were assigned to FTE attorneys and 7,276 or 26% were assigned to contract attorneys. This 74/26% split was used to allocate most of the central office cost types between FTE and contract attorneys.

5. Total payments to contract attorneys during FY 2011 were $5,256,546 or 25% of the total expended. This is a direct cost related only to the efforts of contract attorneys.

6. Total payments during FY 2011 for expert witnesses, mental health evaluations, and other outside services provided for client defense totaled $801,940 or 4% of the total cost. This cost was allocated to FTE/contract attorneys on a 74/26% basis as both FTE and contractors use outside services in client defense.

7. The total amount expended during FY 2011 to provide central services to the agency was $1,889,397 or 9% of the total cost. Much of this cost was allocated to FTE/contract attorneys on a 74/26% basis. The cost related to the agency's human resources department was only allocated to the FTE attorney area and the costs associated with contract management were allocated 100% to the contract attorney area.

8. The remaining $13,349,787 or 63% of expenditures was for regional public defender operations, the major crimes unit, and for the appellate program. This cost was allocated as per assumption 12 noted below. These operations use both FTE attorneys and contract attorneys to provide services to clients.

9. During FY 2011 it is assumed that contract attorneys billed the agency about 87,609 hours. This calculation was based on the total cost of $5,256,546 paid directly to contract attorneys divided by the rate of $60 per hour. This number was used to derive the contractor cost per hour in assumption 18.

10. Non-managerial FTE attorneys are assumed to be paid for 2080 hours during the fiscal year, during which they are assumed to work on cases at least 80% of the time or 1664 hours. This calculation was necessary to develop the number that would be used to calculate the FTE attorney cost per hour in assumption 17.

11. Management FTE attorneys are assumed to be paid for 2080 hours during the fiscal year, during which they are assumed to work on cases in accordance with agency policy 114. This policy sets the number of hours to be worked by managers on cases between 600 and 1700 depending factors noted in the policy.

12. Regional and appellate costs are allocated between FTE and contract attorneys for their respective areas using an 85% FTE and 15% contract attorney allocation for large and medium regions and the appellate, and a 60% FTE and 40% contract attorney allocation for the small regions (a region's size is based on the caseload of a region and not in terms of geography). This distribution represents the fact that these functions provide management and oversight of both FTE and contract attorneys serving clients in their respective areas. For example, the Kalispell region's costs, excluding those paid to contract attorneys and to other contractors, total $1,967,240. Offices in Polson and Kalispell include both public defender and regional operations. Regional personnel manage all FTE and contract public defender activities in the Kalispell region (comprised of all of the courts and clients in Flathead, Lake, Lincoln, and Sanders counties). Of the $1,967,240 noted above, $295,086 or 15% is allocated to the oversight and management of the contract attorneys that provide services to the region while the remaining cost remains with the FTE attorneys.

13. The total FTE attorney counts were taken from the agency's FY 2011 staffing report by region. That report reflected 117.75 FTE attorneys.

14. FTE attorneys providing central office functions were assumed to work cases zero percent of the time during FY 2011. These attorneys include the Chief Public Defender, the Training Coordinator, and the Contract Manager. The MCU supervisor, who is also an attorney, is assumed to work on cases zero percent of the time.

15. Other FTE attorneys providing regional or program management that are not listed in assumption 14 above, were assumed to work cases in accordance with agency policy 114. If an attorney in this category worked more or less than noted in agency policy 114 and these increased or decreased hours were used in the calculations, the hourly cost per FTE would decrease or increase as the case may be. The study assumes that any overages or shortages offset each other.

16. Hours worked by an FTE attorney over the 2080 hours were not included in this study. If excess hours were included, the cost per hour would be reduced from the current hourly rate. However, hours *not* worked by an FTE aside from the allowances noted above were also excluded. The study assumes that any overages or shortages offset each other.

17. Hourly cost per FTE attorney: using the assumptions noted above the $72 per hour rate was derived as follows:

    a. The total cost allocated to FTE attorneys was $12,993,349.
    b. The total number of FTE attorneys was 117.75 and this was reduced to 109.20 based on assumptions 11, 14 and 15.
    c. The total cost of FTE attorneys is $12,993,349, divided by 109.20 or an average of $118,989 per attorney.
    d. The hourly cost is $118,989 divided by 1664 hours (see assumption 10 above) or $72 per hour.

18. Hourly cost per contract attorney: using the assumptions noted above the $95 per hour rate was derived as follows:
    a. The total cost allocated to contract attorneys was $8,304,322.
    b. The total hours billed based on assumption 9 above was 87,609.
    c. The hourly cost is $8,304,322 divided by 87,609 hours or $95 per hour.

Note: The hourly costs for investigators are $27 per hour for FTE and $46 per hour for contractors. The fee schedule for contract mental health services follows.

MENTAL HEALTH PROFESSIONAL:

OPD Protocol Governing Referral and Examination

November, 2007

The focus of the Mental Health Referral and Examination Protocol is to mainstream the nature and extent of examinations to specifically address the referral question(s). This will standardize the referral and examination process. As the process is standardized, there will be more efficient use of time resulting in cost savings for the case.

The Office of the State Public Defender (OPD) is aware of the fact that different referral questions require different abilities and skills of different Mental Health (MH) Professionals. Therefore, for the purposes of the OPD, referrals must be tailored to fit the specific case in question and hence serve our defendants in the most efficient and cost effective manner possible.

A collaborative and synergistic relationship must exist between OPD and MH Professionals. "MH Professional" will be defined as those indicated in the Montana Code Annotated (MCA) 53-21-102(11):

> *"Mental health professional" means:*
> *(a) a certified professional person;*
> *(b) a physician licensed under Title 37, chapter 3;*
> *(c) a professional counselor licensed under Title 37, chapter 23;*
> *(d) a psychologist licensed under Title 37, chapter 17;*
> *(e) a social worker licensed under Title 37, chapter 22; or*
> *(f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.*

(Italics added.)

For the purpose of this protocol, the use of *Mental Health* includes both clinical and substance use disorders and concerns. Therefore, *Mental Health* also takes into consideration co-occurring disorders.

For the purpose of this protocol, *Mental Disorder* is as defined in 53-21-102 (9) MCA:

> *(a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.*
> *(b) The term does not include:*
> *(i) addiction to drugs or alcohol;*
> *(ii) drug or alcohol intoxication;*
> *(iii) mental retardation; or*
> *(iv) epilepsy.*
> *(c) A mental disorder may co-occur with addiction or chemical dependency.*

(Italics added.)

The *Specialized Assessment* includes Competency to proceed to adjudication/ Fitness to proceed evaluations as indicated in 46-14-101 MCA:

> *(1) The purpose of this section is to provide a legal standard of mental disease or defect under which the information gained from examination of the defendant, pursuant to part 2 of this chapter, regarding a defendant's mental condition is applied. The court shall apply this standard:*
>
> *(a) in any determination regarding:*
>
> *(i) a defendant's fitness to proceed and stand trial;*
>
> *(ii) whether the defendant had, at the time that the offense was committed, a particular state of mind that is an essential element of the offense; and*
>
> *(b) at sentencing when a defendant has been convicted on a verdict of guilty or a plea of guilty or nolo contendere and claims that at the time of commission of the offense for which the defendant was convicted, the defendant was unable to appreciate the criminality of the defendant's behavior or to conform the defendant's behavior to the requirements of the law.*
>
> *(2) (a) As used in this chapter, "mental disease or defect" means an organic, mental, or emotional disorder that is manifested by a substantial disturbance in behavior, feeling, thinking, or judgment to such an extent that the person requires care, treatment, and rehabilitation.*
>
> *(b) The term "mental disease or defect" does not include:*
>
> *(i) an abnormality manifested only by repeated criminal or other antisocial behavior;*
>
> *(ii) a developmental disability, as defined in* 53-20-102*;*
>
> *(iii) drug or alcohol intoxication; or*
>
> *(iv) drug or alcohol addiction.* (Italics added.)

When an attorney deems there may be a “Mental Health issue” with a case, the attorney reviews and completes the Mental Health Consultation and Referral Form to help clarify mental health issues that may be present in the case.

The protocol explains in some detail each of the four elements governing referral and evaluation. One or more of the following protocols should be employed, as appropriate:

A) Consultation with the OPD Mental Health (MH) Consultant,
B) Consultation with a MH Professional,
C) Screening by a MH Professional or,
D) Examination by a MH Professional.

For additional information and Protocol forms, please see
http://www.publicdefender.mt.gov/

Attachment C
Estimated Cost Schedule
Fees Not to Exceed

	Psychologist, M.D,*	LCSW	LCPC	LAC
Consultation (phone or in person)				
Per 15 minutes	31.25	18.75	18.75	18.75
Screening				
Per hour	125.00	75.00	75.00	
Examination for diagnostic information (within screening category)				
Screening/2hr	250.00	75.00	75.00	
Document review/hr	125.00	75.00	75.00	
Analysis/Conclusion/Report Writing/Administrative (e.g., preparation of case specific forms, compiling files, archiving files, writing letters to attorney, etc.) and Case Management (e.g., TPC w/ attorneys, TPC w/ examinees, collateral interviews/TPC etc.)/hr	125.00	75.00	75.00	
Specify if diagnostic tool is used				
Personally Administered/ hr	125.00	75.00	75.00	
Computer generated	Per cost	Per cost	Per cost	
CD specific examination (see Attachment F)				
Full CD evaluation	300.00	300.00	300.00	300.00
Computer generated	Per cost	Per cost	Per cost	Per cost
Additional Document review or assessment/hr (must be required AND pre-approved)	125.00	75.00	75.00	75.00
Specialized Examination (Competency, fitness to proceed, sex offender, etc.)				
For Screening/2hr	250.00	-----	-----	-----
Document review/hr	125.00	-----	-----	-----
Specify evaluative tool used				
Personally administered/hr	125.00	-----	-----	-----
Computer generated	Per cost	-----	-----	-----
Analysis/Conclusion/hr	125.00	-----	-----	-----
Sex Offender Evaluations (Includes Risk Assessment)	1500.00	1500.00	1500.00	

Travel

Travel time will be calculated at 50% of the Protocol-indicated hourly rate with a cap of $60 per hour.
Mileage reimbursement will be calculated at State Rate for all disciplines.
Miles calculated via State site http://www.mdt.mt.gov/travinfo/scripts/citydist.pl
Overnight lodging and per diem per State Rate

Court Testimony

To be paid at 150% of the Professional's Protocol-indicated hourly rate. Testimony is to include wait time at the court house.

No Show (NS) for appointment

To be paid for one hour at 50% the Protocol-indicated hourly rate.

*__APRN__ paid at 90% that of Ph.D./M.D. rate

Professional Record of Billing form is to be used (please see attachment H).

Under extraordinary circumstances, the Commission authorizes the Chief Public Defender to pay outside of the rate structure.

Approved February 29, 2008

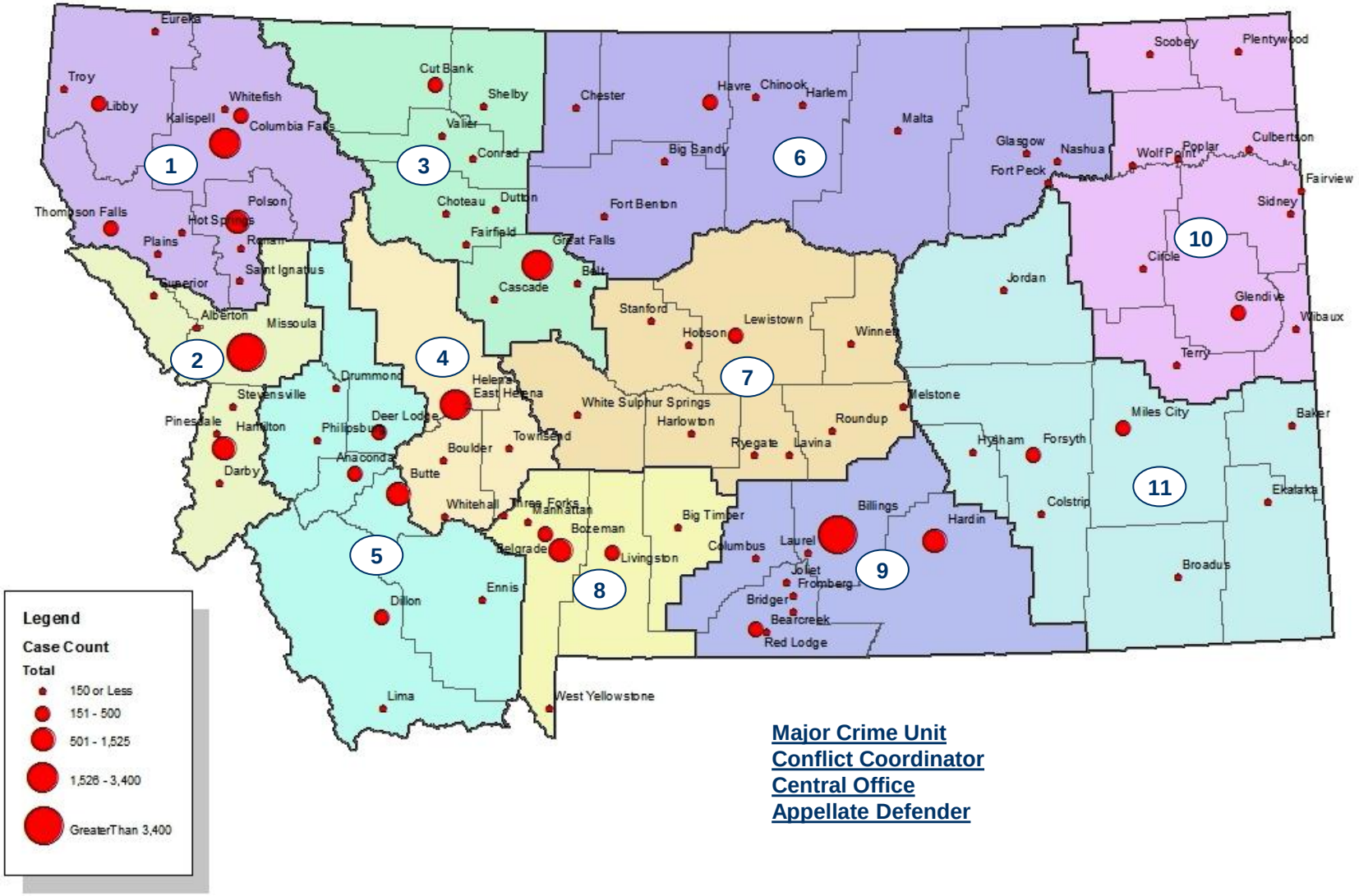
OFFICE OF THE STATE PUBLIC DEFENDER

Regional Statistics

with FY 12 Staffing

December 2011

NEW CASES BY CITY – FY 2011: DETAILS ON EACH REGION



Major Crime Unit
Conflict Coordinator
Central Office
Appellate Defender

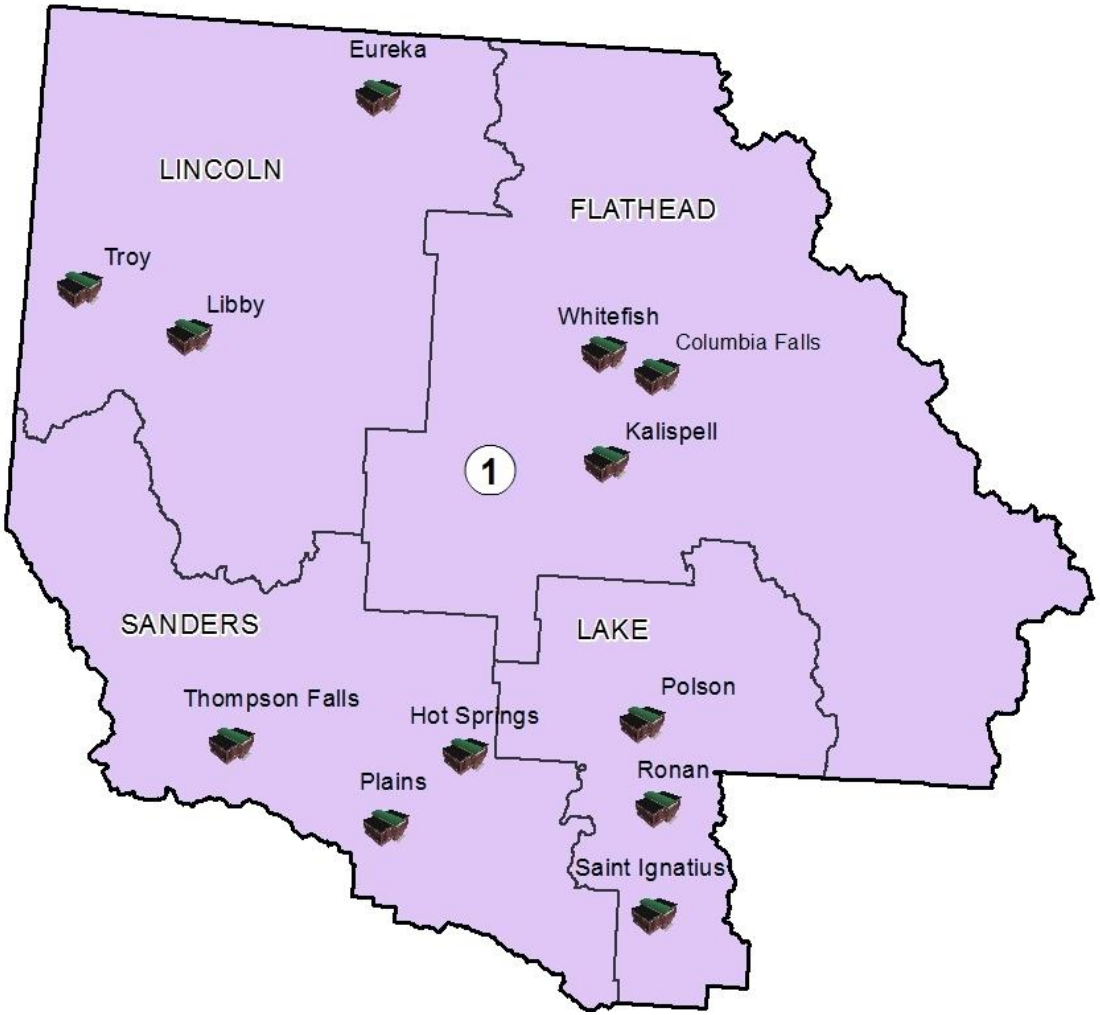
Region 1 – Kalispell

Attorneys: 17.5
Support Staff: 8
Investigators: 2
Contract Attorneys: 24
FYE 2011 Cases Opened: 4,361

- District Court Cases: 1,510
- Cases in Courts of Limited Jurisdiction: 2,851

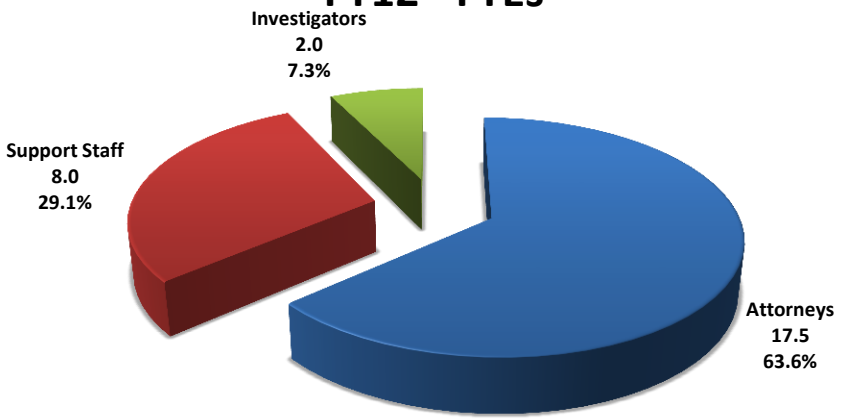
District Courts: 4
Lower Courts : 16
Sq. Miles: 12,967

Return to Map of Regions



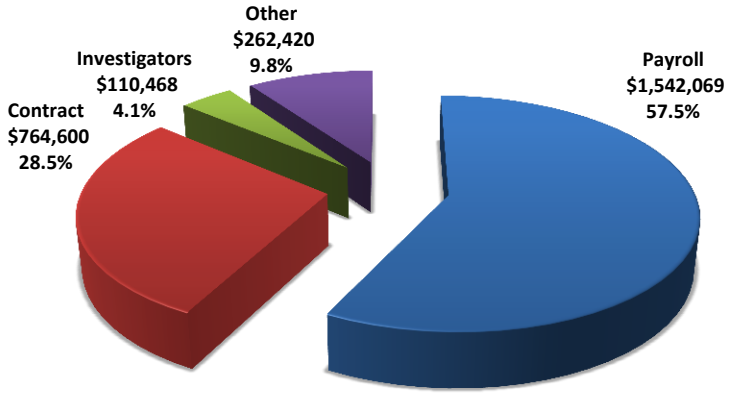
Office of State Public Defender
Region 1 - 2012 Snapshot

FY12 - FTEs



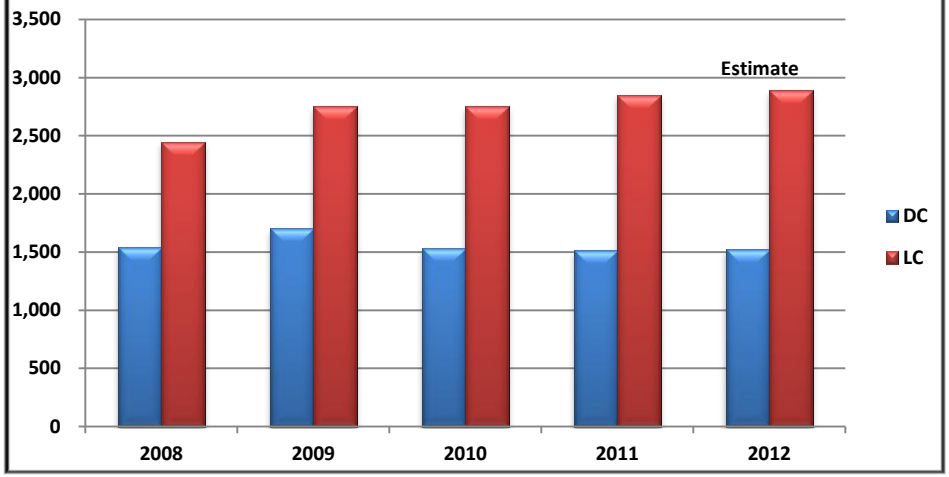
% of Total FTEs: 14.6%

FY12 - Budget

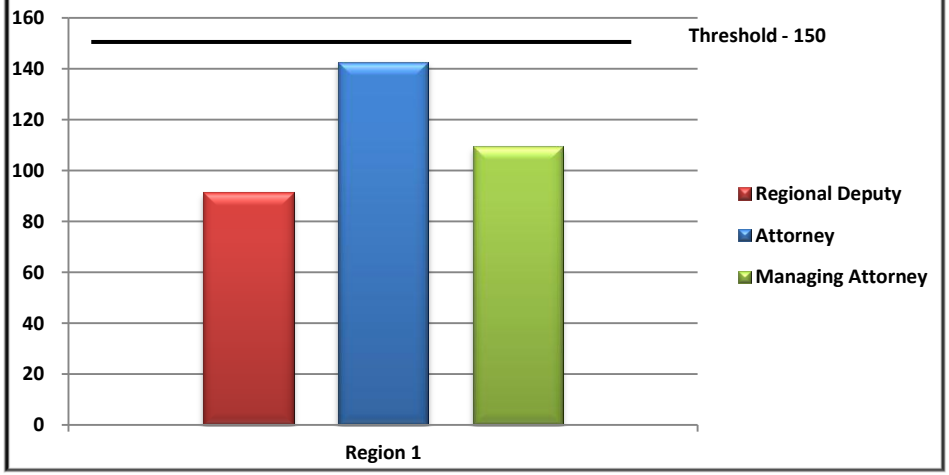


% of 2012 Budget: 14.3%

New Cases



Case Weight as of June 30, 2011



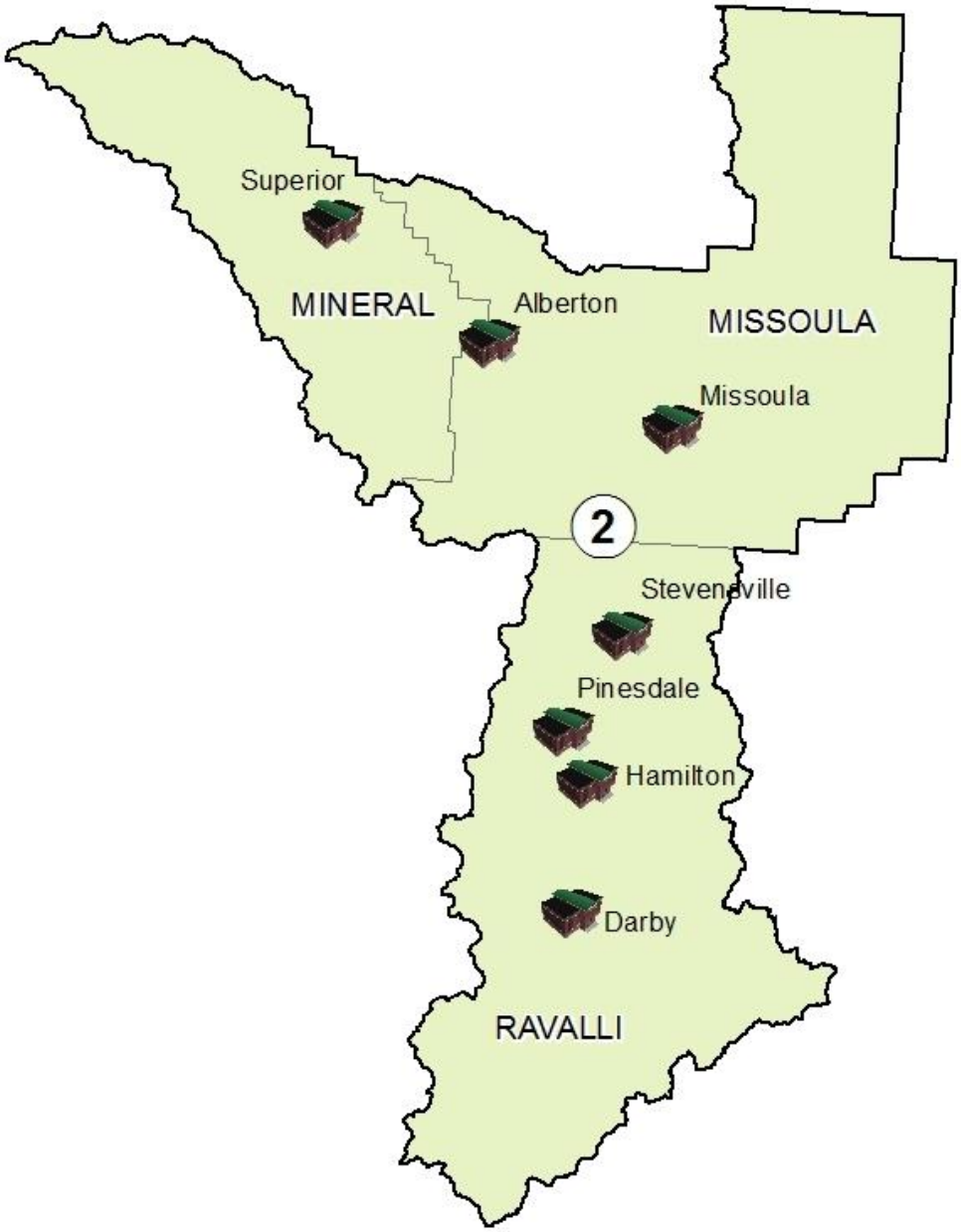
Region 2 – Missoula

Attorneys: 22.50
Support Staff: 10
Investigators: 3
Contract Attorneys: 47
FYE 2011 Cases Opened: 4,831

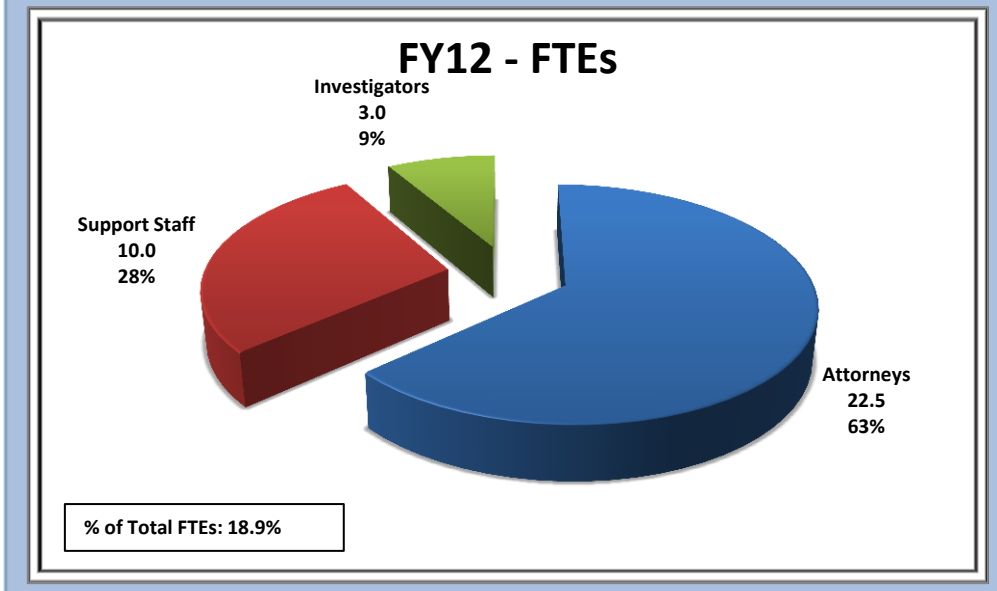
- District Court Cases: 1,477
- Cases in Courts of Limited Jurisdiction: 3,354

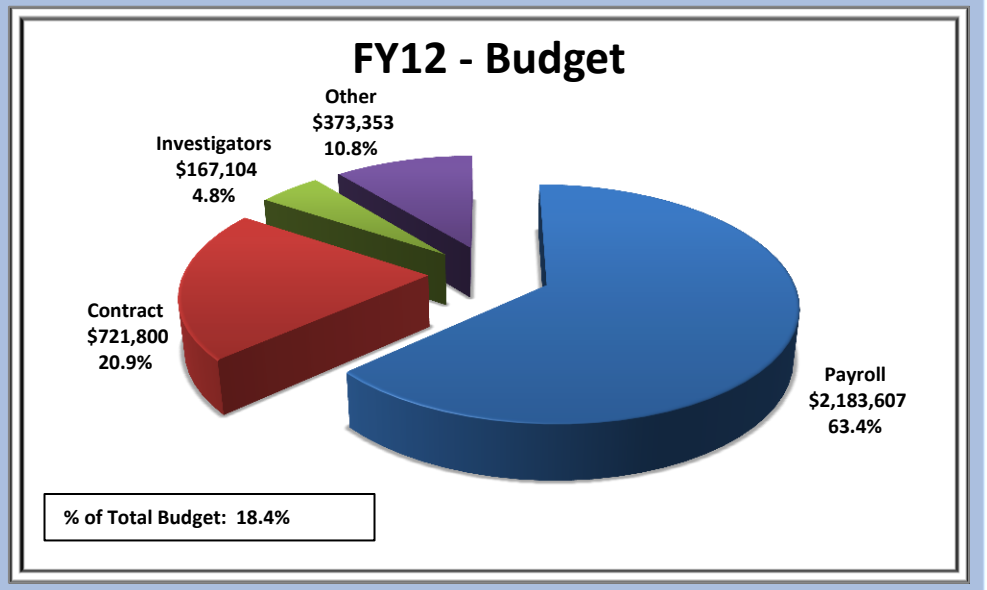
District Courts: 3
Lower Courts: 10
Sq. Miles: 6,212

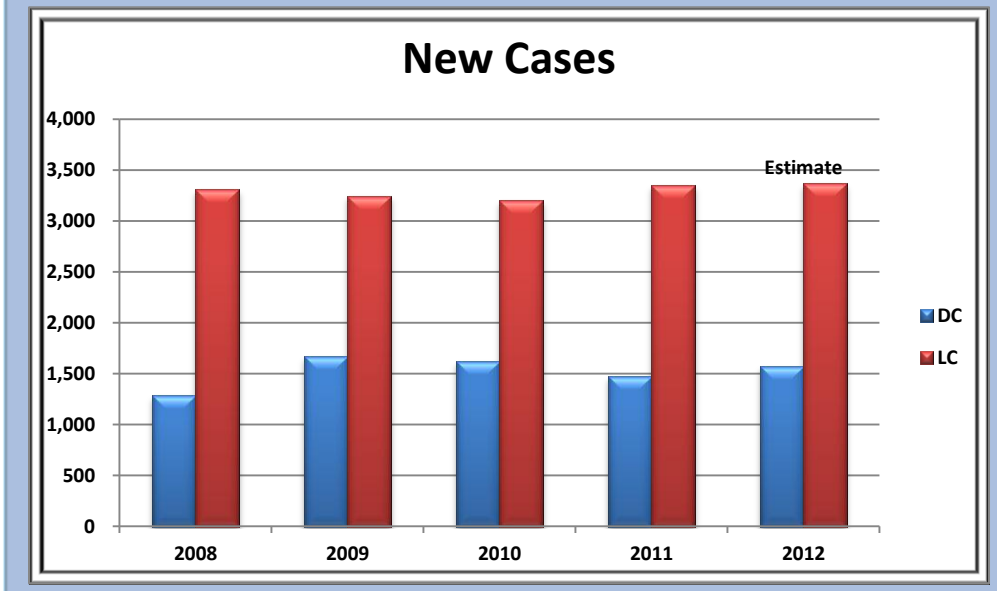
Return to Map of Regions

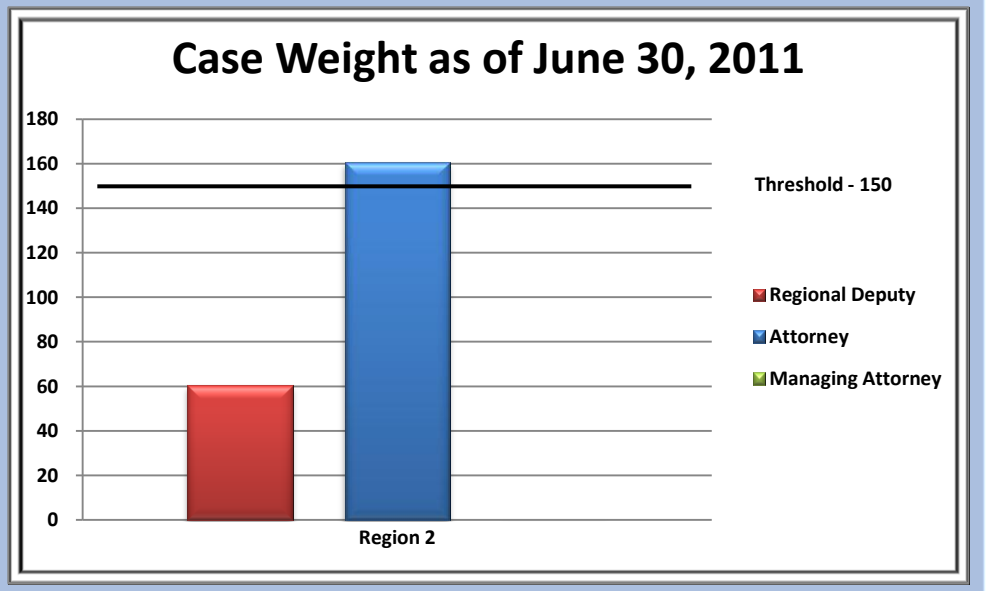


Office of State Public Defender
Region 2 - 2012 Snapshot









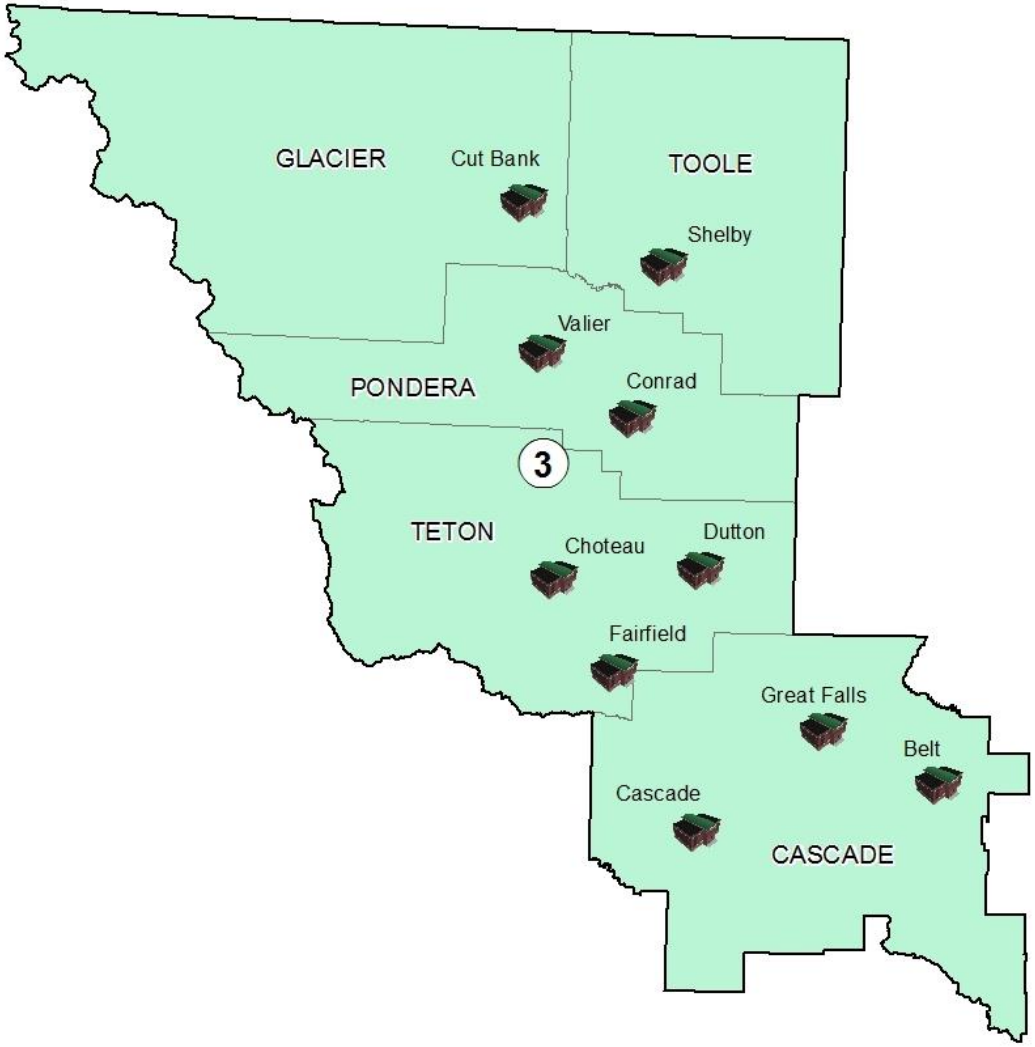
Region 3 – Great Falls

Attorneys: 12
Support Staff: 6
Investigators: 3
Contract Attorneys: 26
FYE 2011 Cases Opened: 3,116

- District Court Cases: 1,642
- Cases in Courts of Limited Jurisdiction: 1,474

District Courts: 5
Lower Courts: 16
Sq, Miles: 11,501

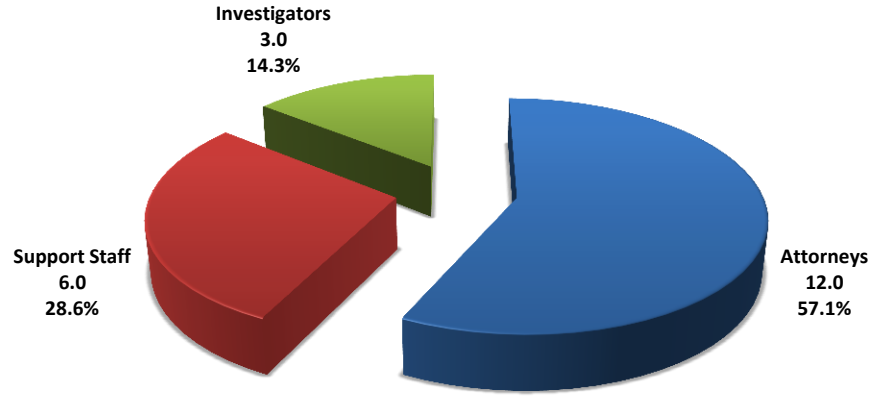
Return to Map of Regions



Office of State Public Defender
Region 3 - 2012 Snapshot

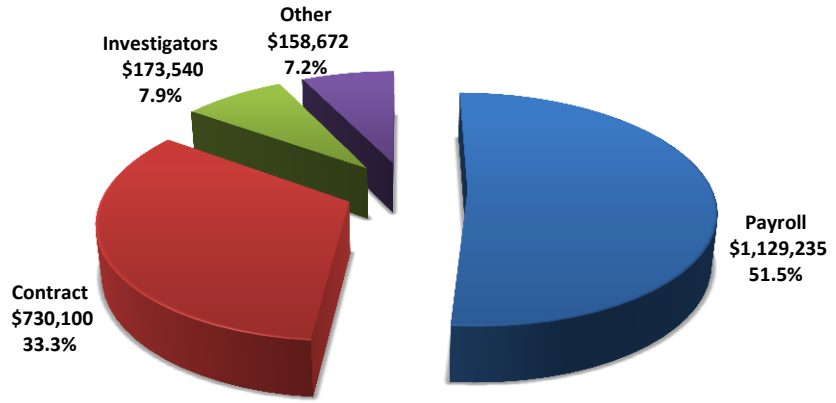
Office of the State Public Defender

FY12 - FTEs



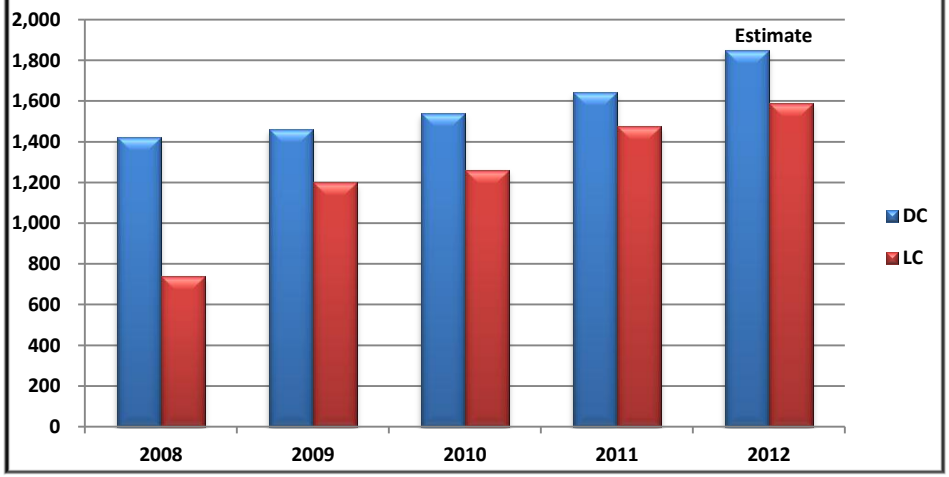
% of Total FTEs: 11.2%

FY12 - Budget

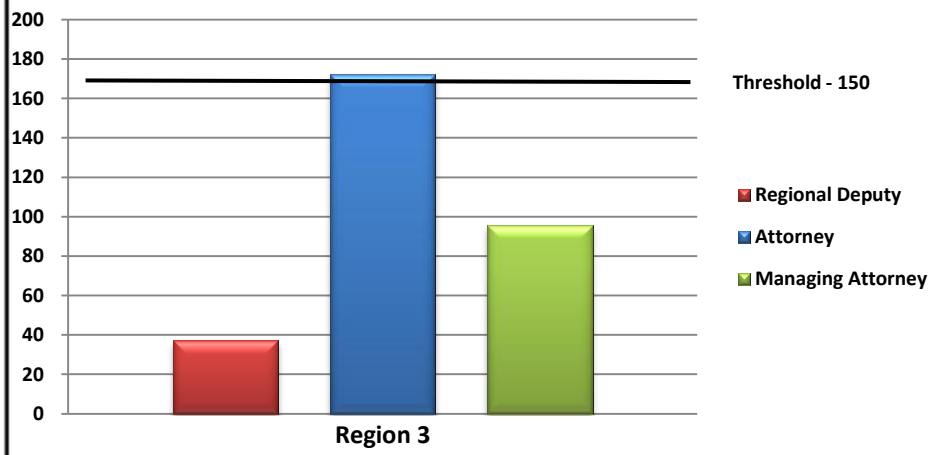


% of 2012 Budget: 11.7%

New Cases



Case Weight as of June 30, 2011



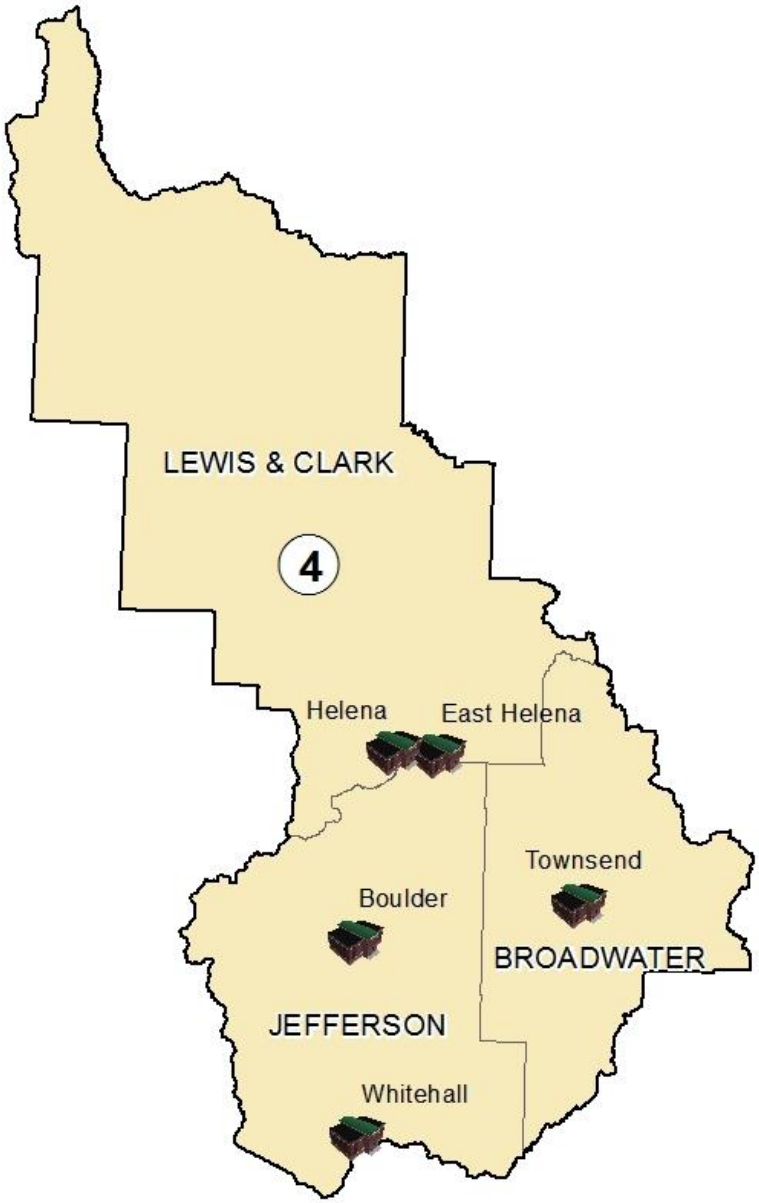
Region 4 – Helena

Attorneys: 11
Support Staff: 4
Investigators: 1
Contract Attorneys: 13
FYE 2011 Cases Opened: 2,644

- District Court Cases: 796
- Cases in Courts of Limited Jurisdiction: 1,848

District Courts: 3
Lower Courts: 8
Sq. Miles: 6,309

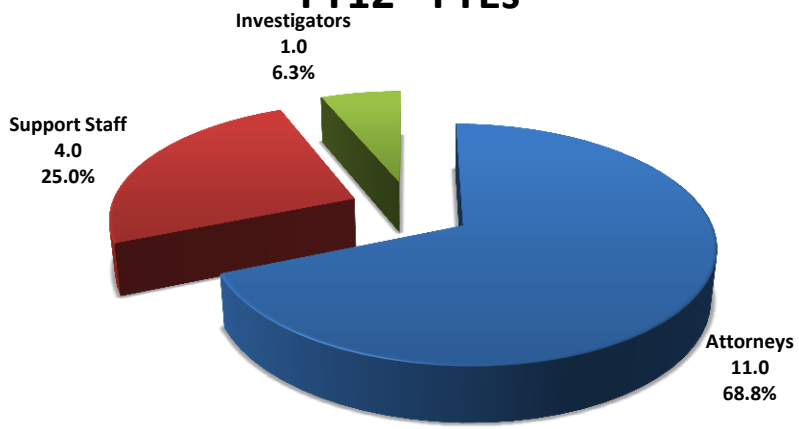
Return to Map of Regions



Office of State Public Defender
Region 4 - 2012 Snapshot

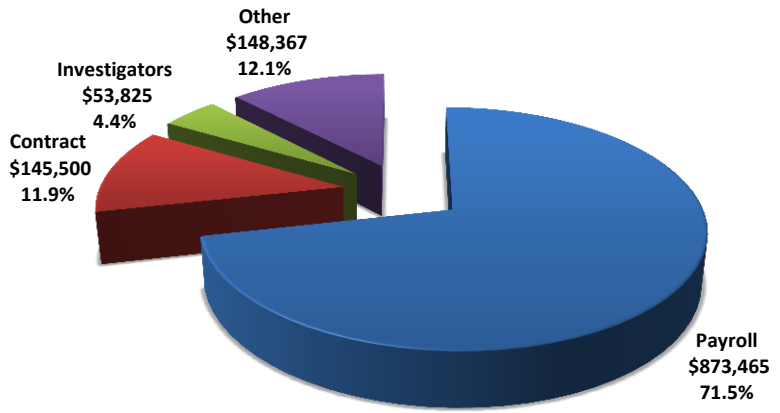
Office of the State Public Defender

FY12 - FTEs



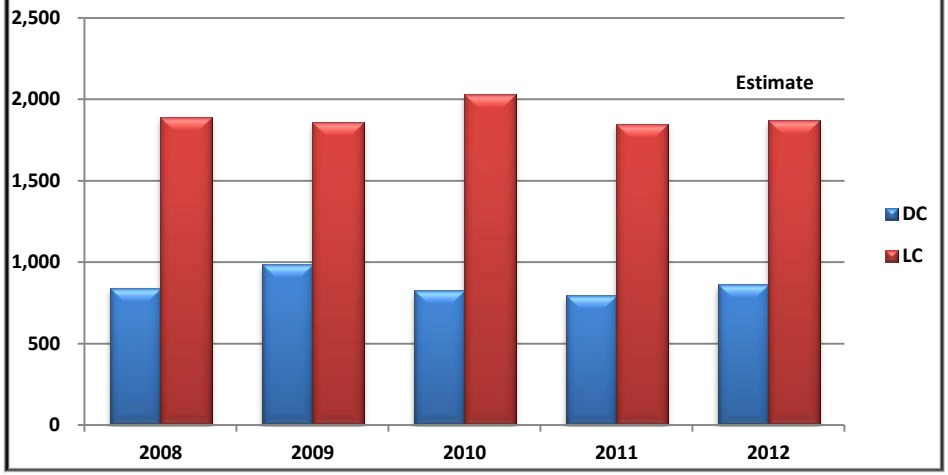
% of Total FTEs: 8.5%

FY12 - Budget

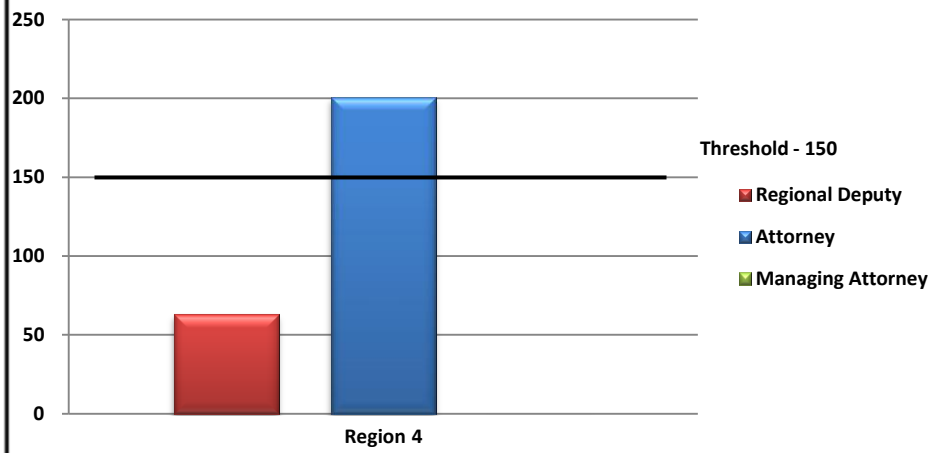


% of 2012 Budget: 6.5%

New Cases



Case Weight as of June 30, 2011



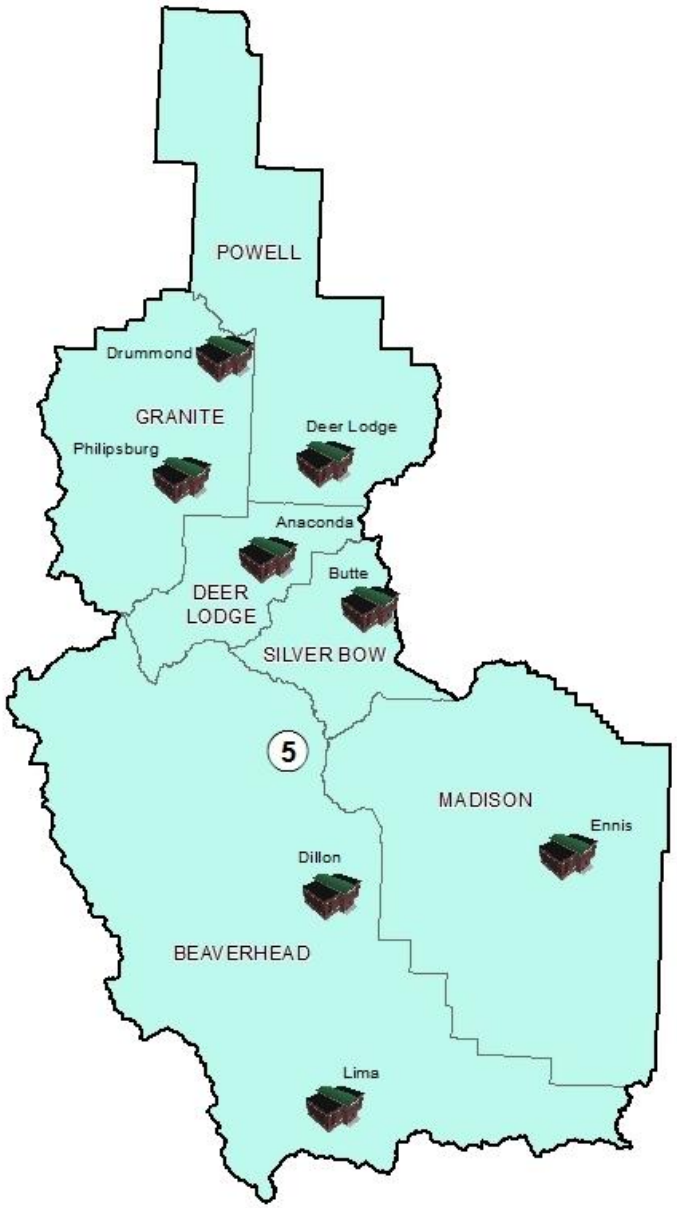
Region 5 – Butte

Attorneys: 9
Support Staff: 4
Investigators: 1.5
Contract Attorneys: 7
FYE 2011 Cases Opened: 1,573

- District Court Cases: 693
- Cases in Courts of Limited Jurisdiction: 890

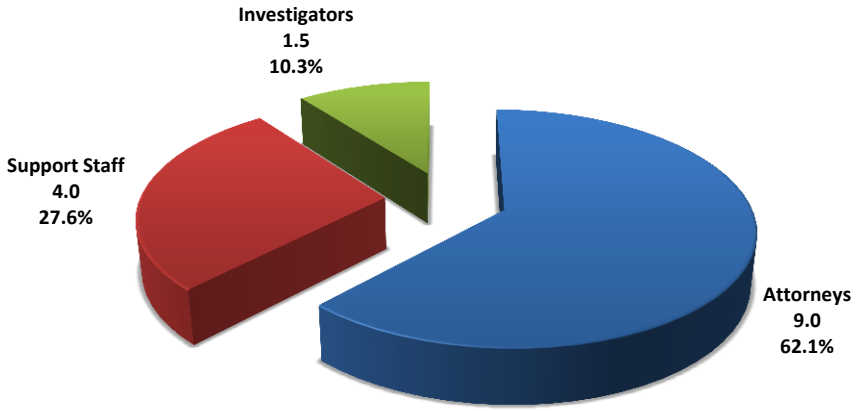
District Courts: 6
Lower Courts: 14
Sq. Miles: 14,638

Return to Map of Regions



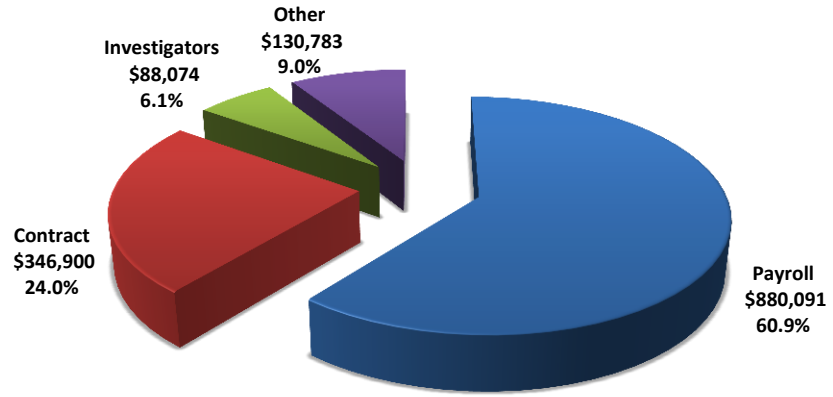
Office of State Public Defender
Region 5 - 2012 Snapshot

FY12 - FTEs



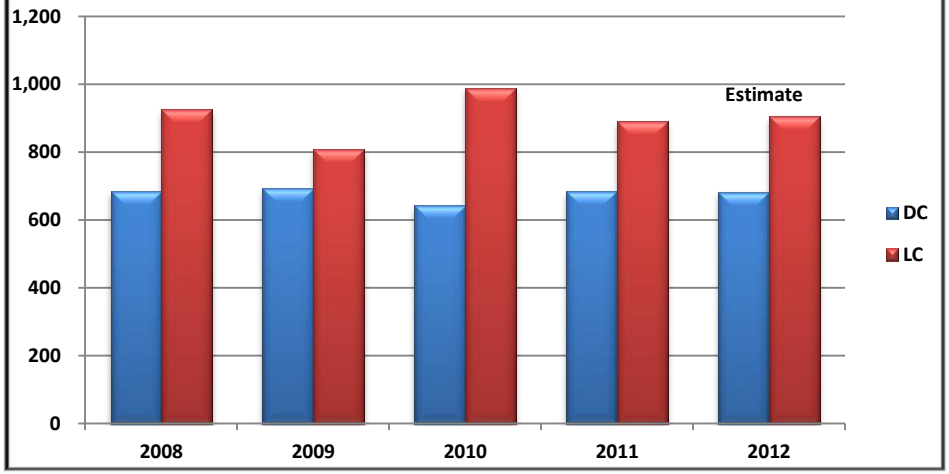
% of Total FTEs: 7.7%

FY12 - Budget

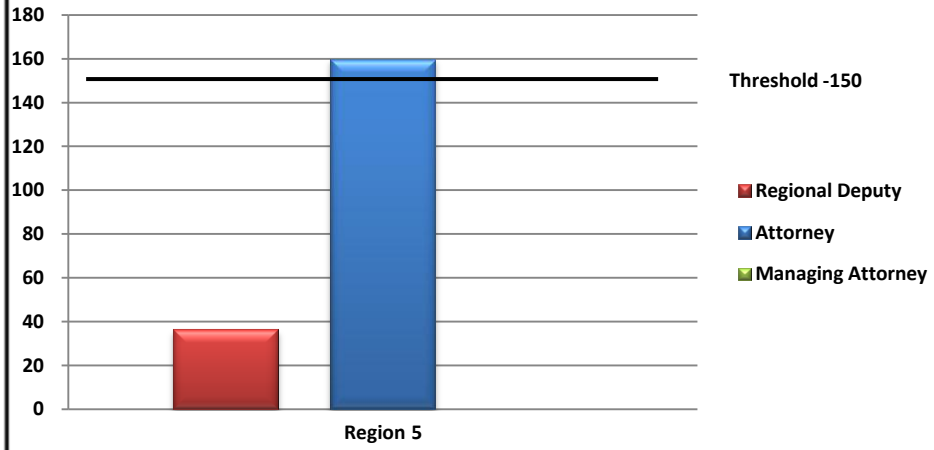


% of 2012 Budget: 7.7%

New Cases



Case Weight as of June 30, 2011



Region 6 – Havre

Attorneys: 2

Support Staff: 1

Investigators: 1

Contract Attorneys: 10

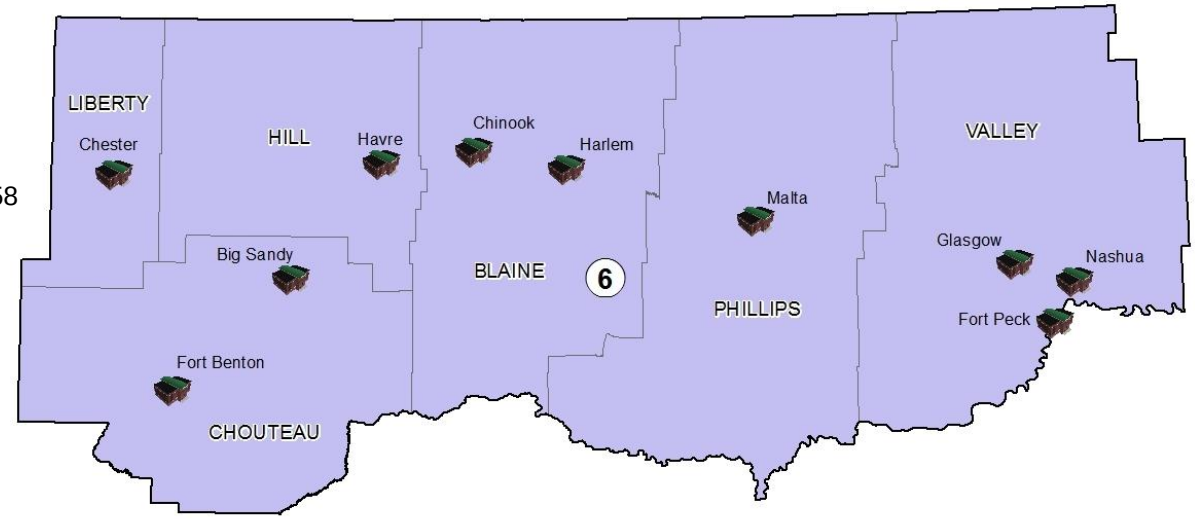
FYE 2011 Cases Opened: 774

- District Court Cases: 416
- Cases in Courts of Lower Jurisdiction: 358

District Courts: 6

Lower Courts: 16

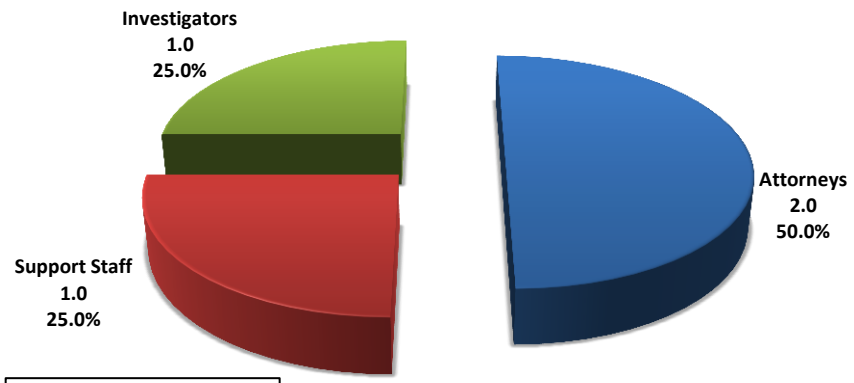
Sq. Miles: 22,586



Return to Map of Regions

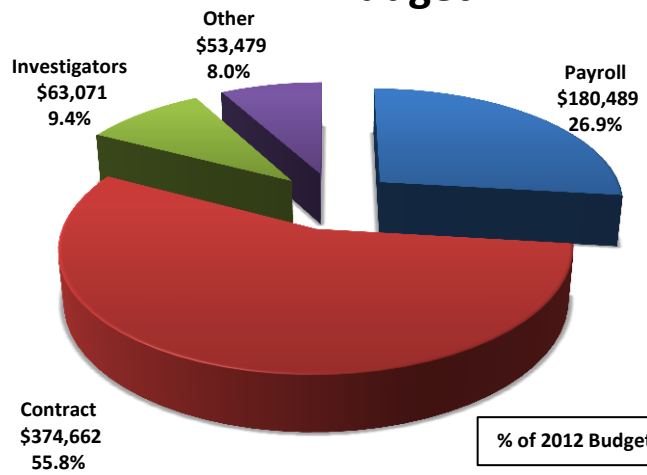
Office of State Public Defender
Region 6 - 2012 Snapshot

FY12 - FTEs



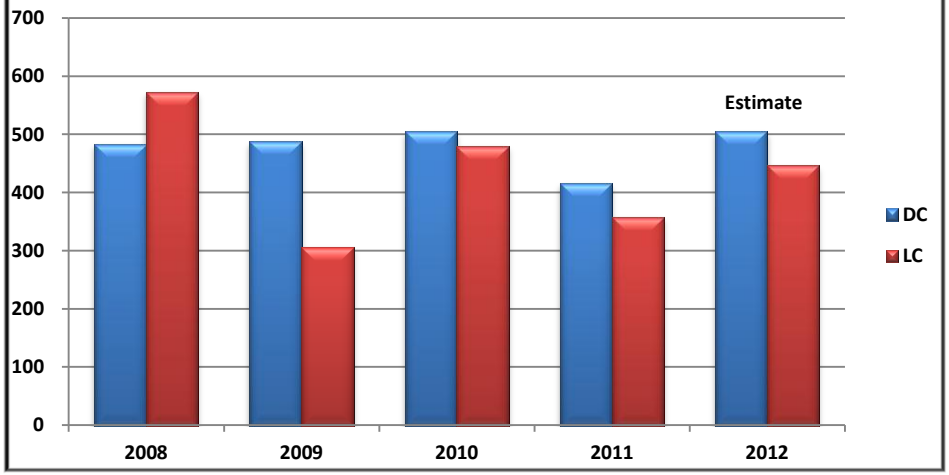
% of Total FTEs: 2.1%

FY12 - Budget

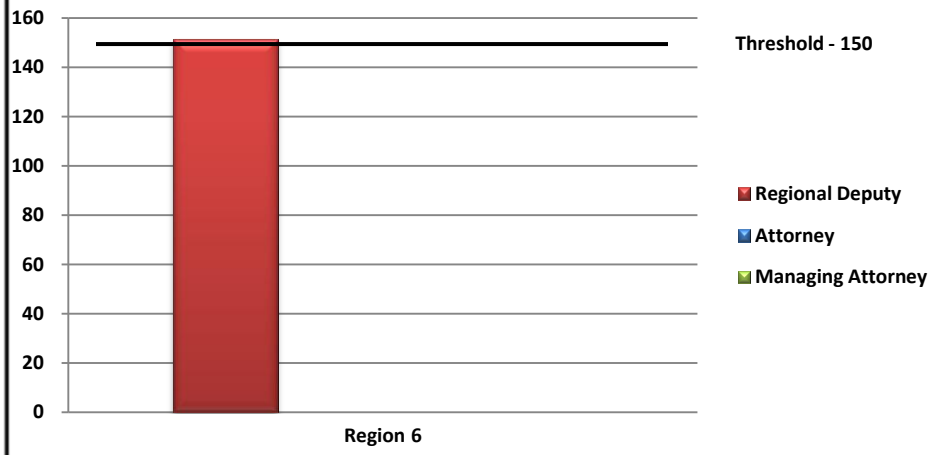


% of 2012 Budget: 3.6%

New Cases



Case Weight as of June 30, 2011



Region 7 – Lewistown

Attorneys: 2

Support Staff: 1

Investigators: 0.5

Contract Attorneys: 18

FYE 2011 Cases Opened: 520

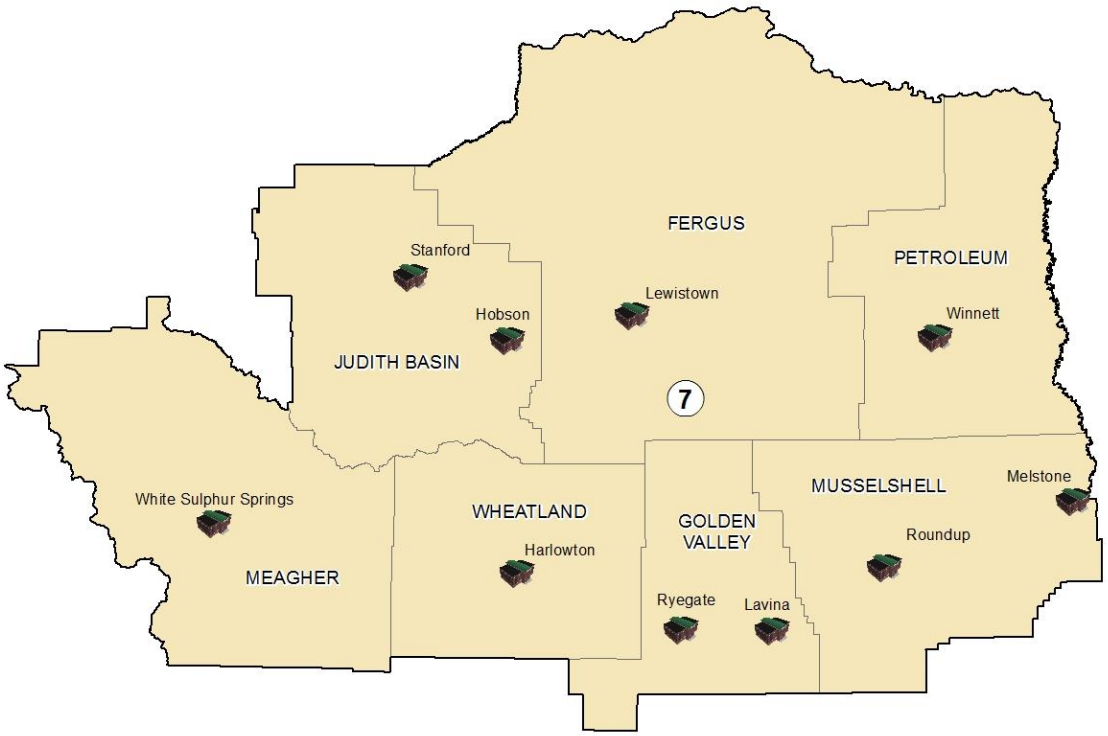
- District Court Cases: 281
- Cases in Courts of Limited Jurisdiction: 239

District Courts: 7

Lower Courts: 17

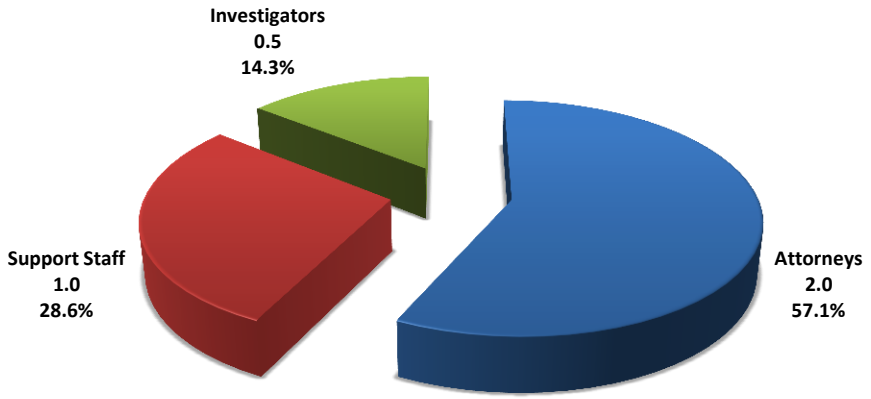
Sq. Miles: 14,720

Return to Map of Regions



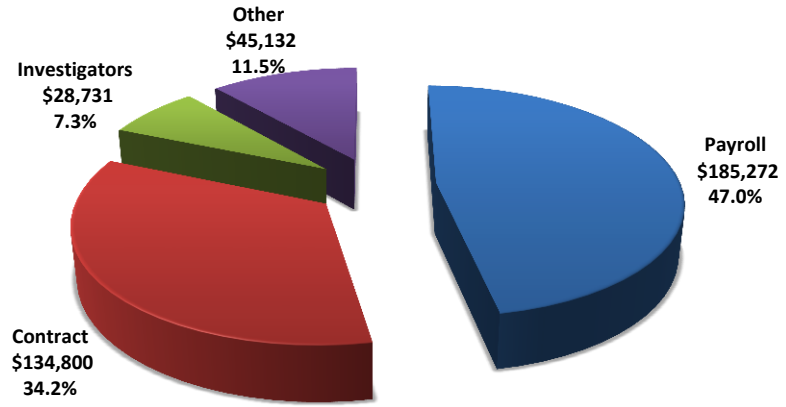
Office of State Public Defender
Region 7 - 2012 Snapshot

FY12 - FTEs



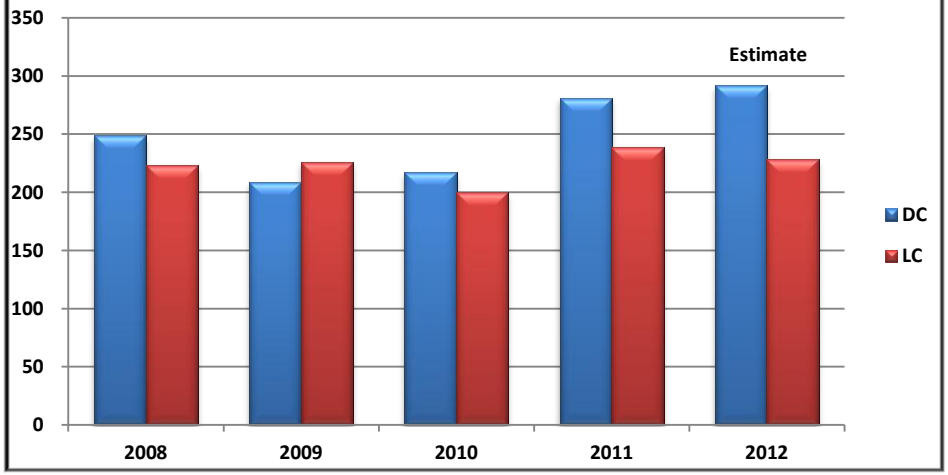
% of Total FTEs: 1.9%

FY12 - Budget

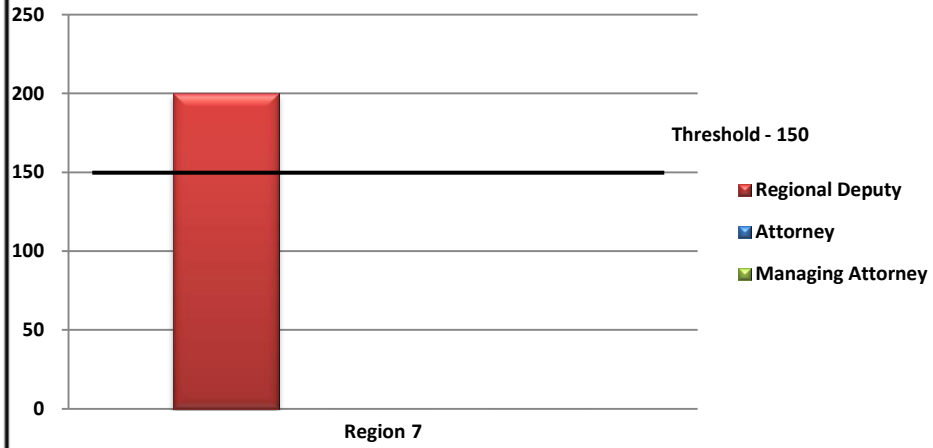


% of 2012 Budget: 2.1%

New Cases



Case Weight as of June 30, 2011



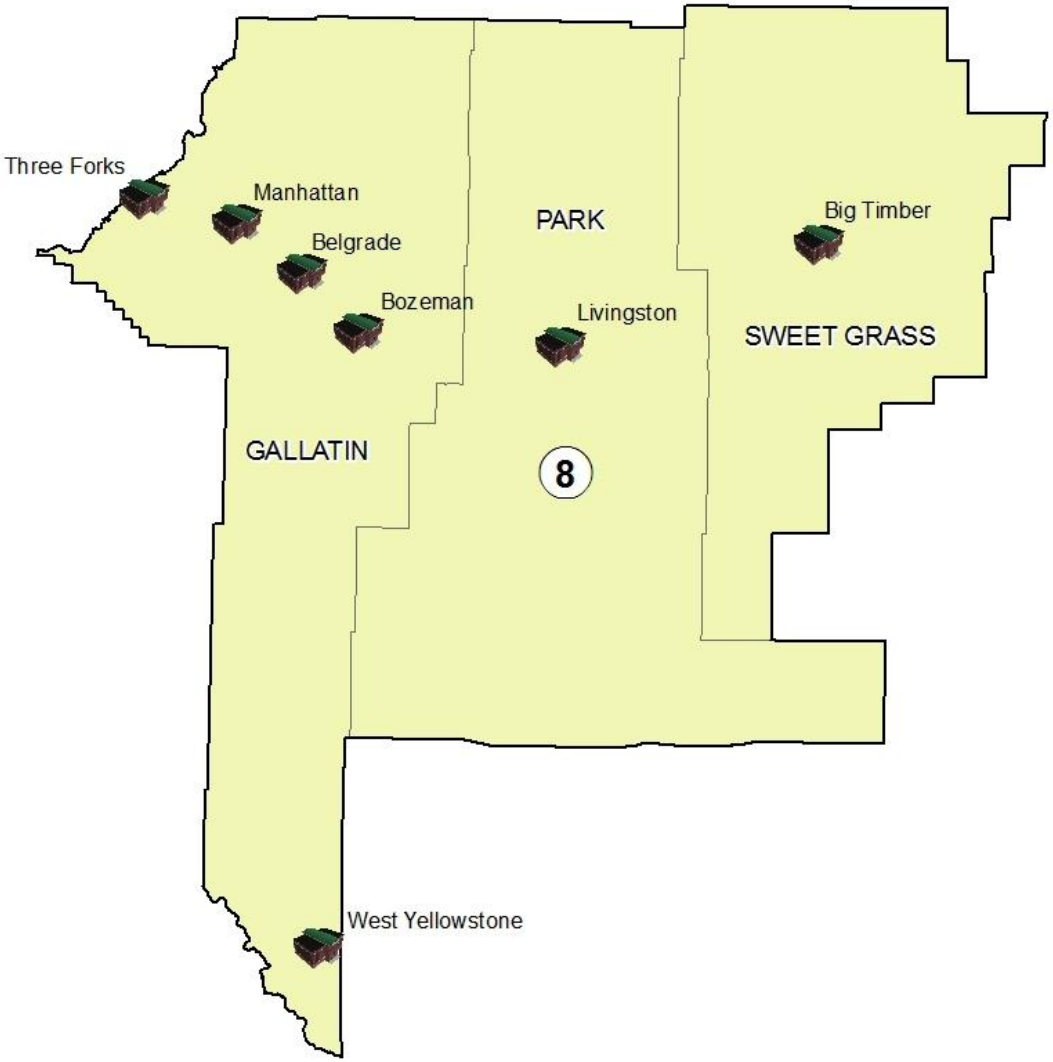
Region 8 – Bozeman

Attorneys: 10
Support Staff: 6
Investigators: 2
Contract Attorneys: 27
FYE 2011 Cases Opened: 2,251

- District Court Cases: 772
- Cases in Courts of Limited Jurisdiction: 1,529

District Courts: 3
Lower Courts: 14
Sq. Miles: 7,263

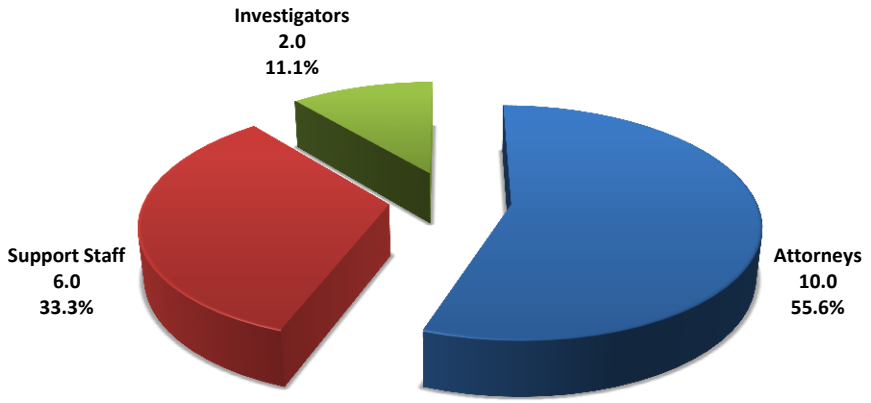
Return to Map of Regions



Office of State Public Defender
Region 8 - 2012 Snapshot

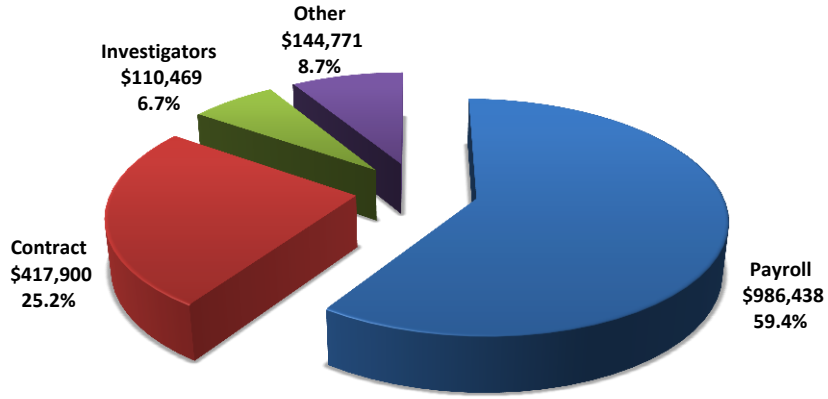
Office of the State Public Defender

FY12 - FTEs



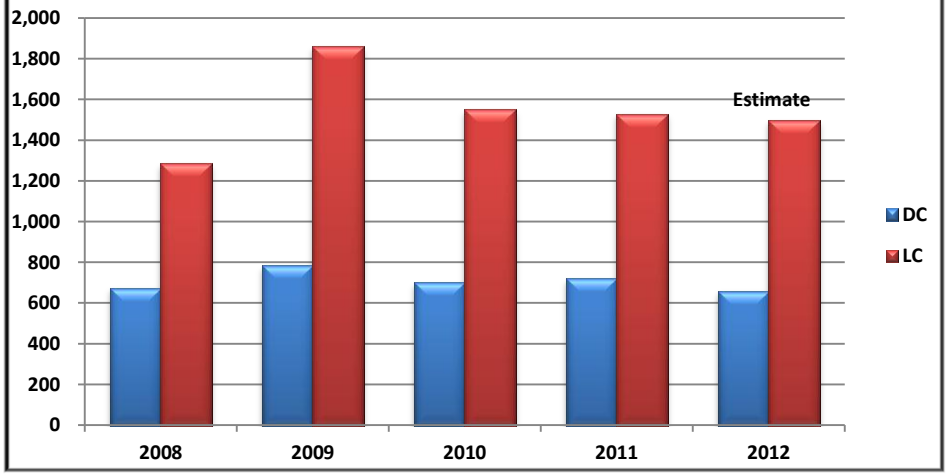
% of Total FTEs: 9.6%

FY12 - Budget

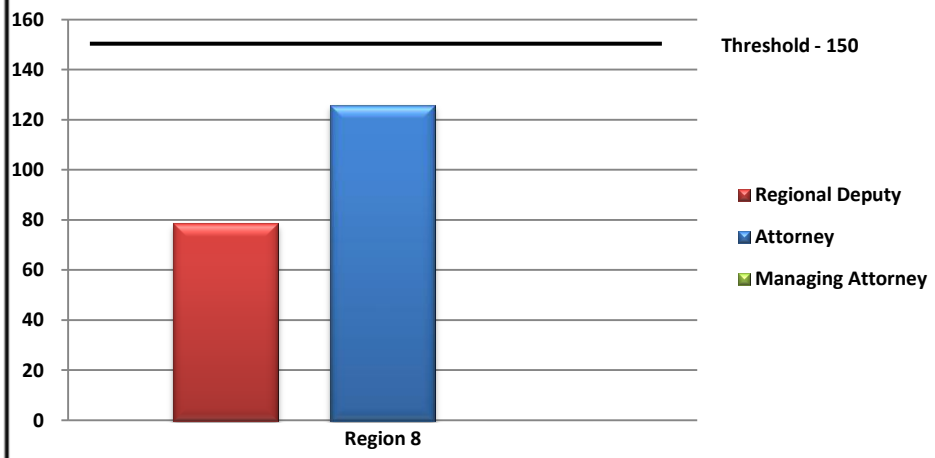


% of 2012 Budget: 8.9%

New Cases



Case Weight as of June 30, 2011



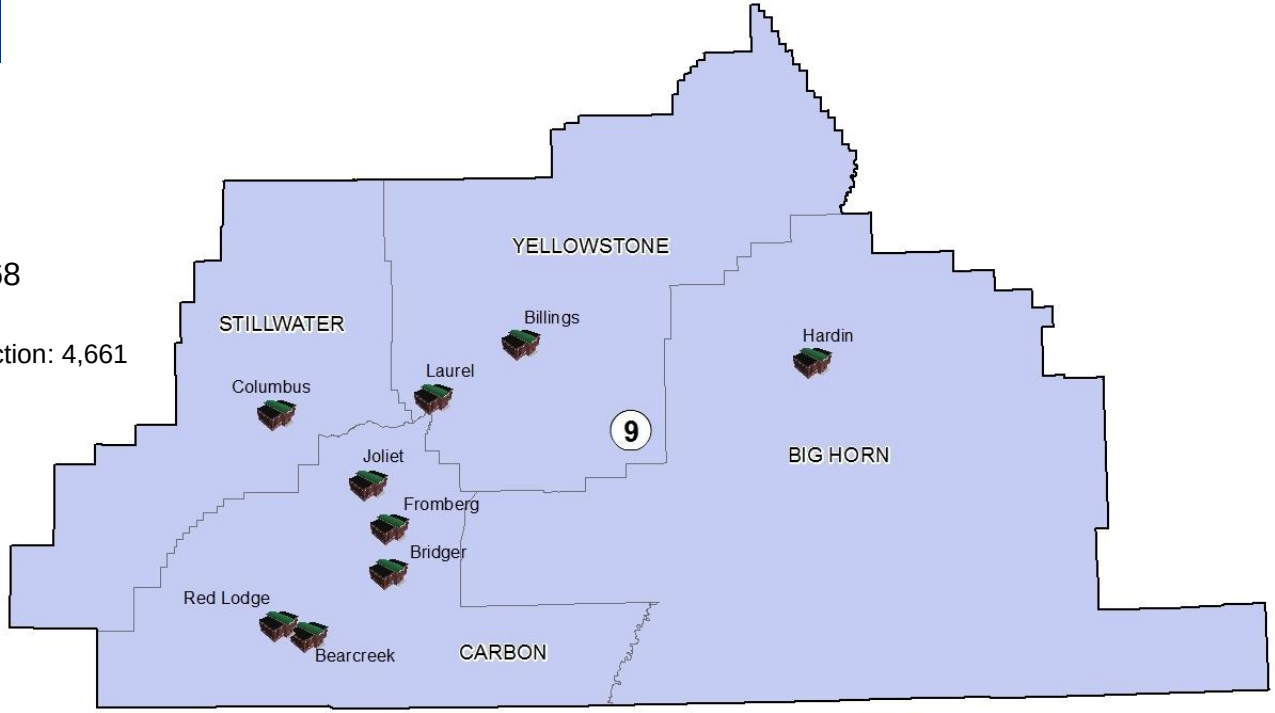
Region 9 – Billings

Attorneys: 19.75
Support Staff: 10
Investigators: 3
Contract Attorneys: 38
FYE 2011 Cases Opened: 6,568

- District Court Cases: 1,907
- Cases in Courts of Limited Jurisdiction: 4,661

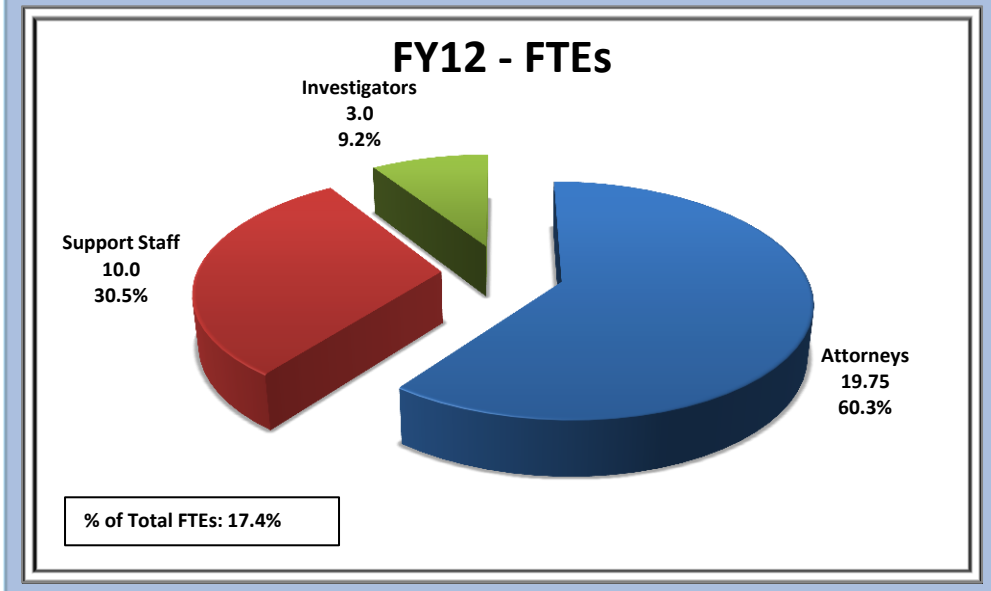
District Courts: 4
Lower Courts: 13
Sq. Miles: 11,473

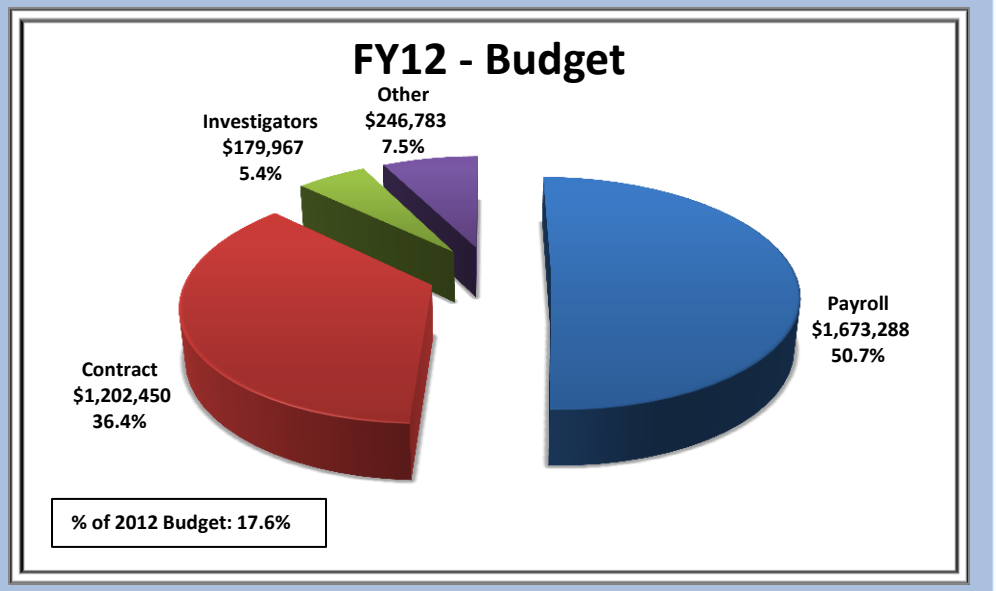
Return to Map of Regions

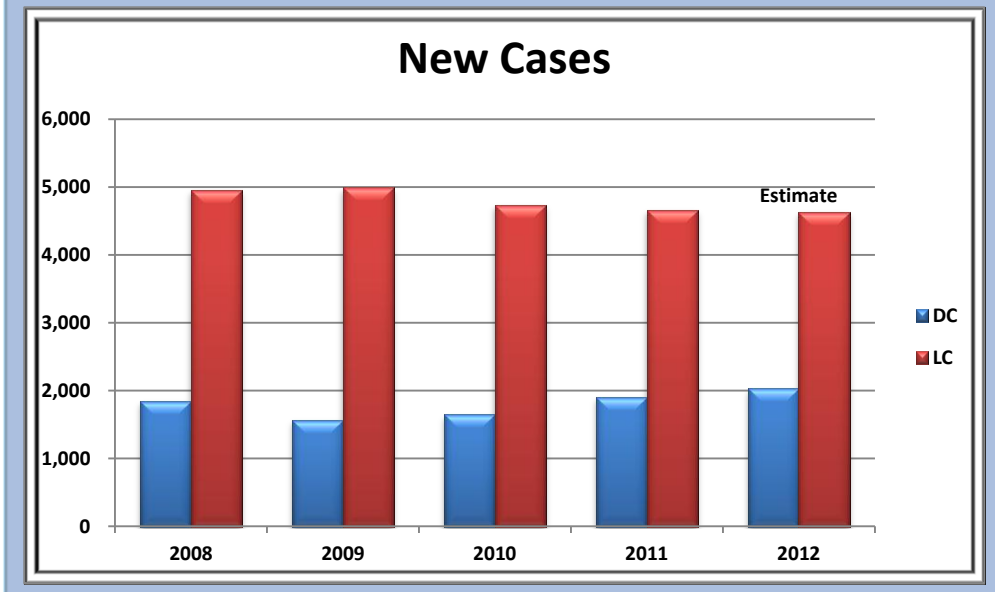


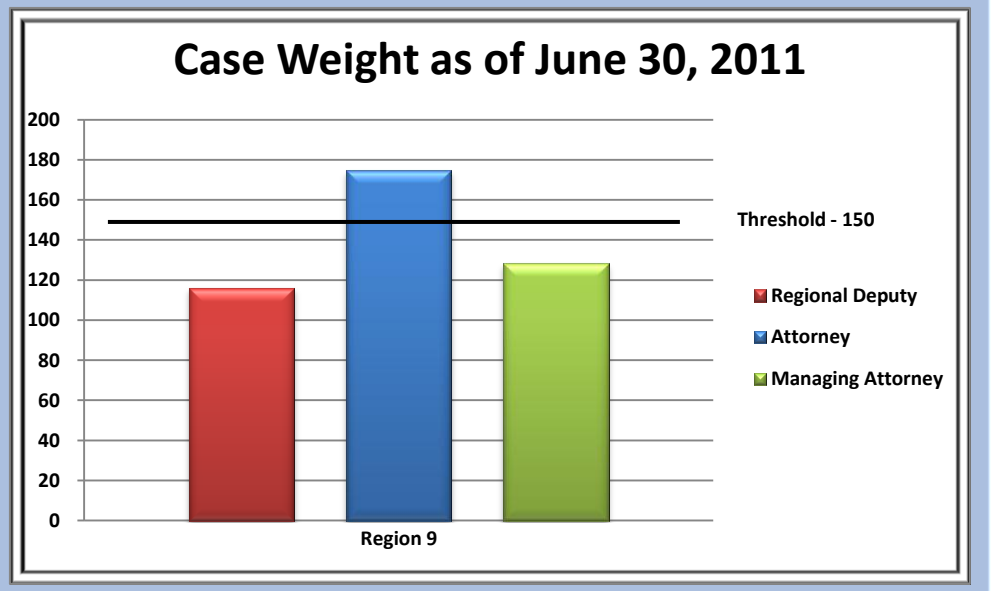
Office of State Public Defender
Region 9 - 2012 Snapshot

Office of the State Public Defender









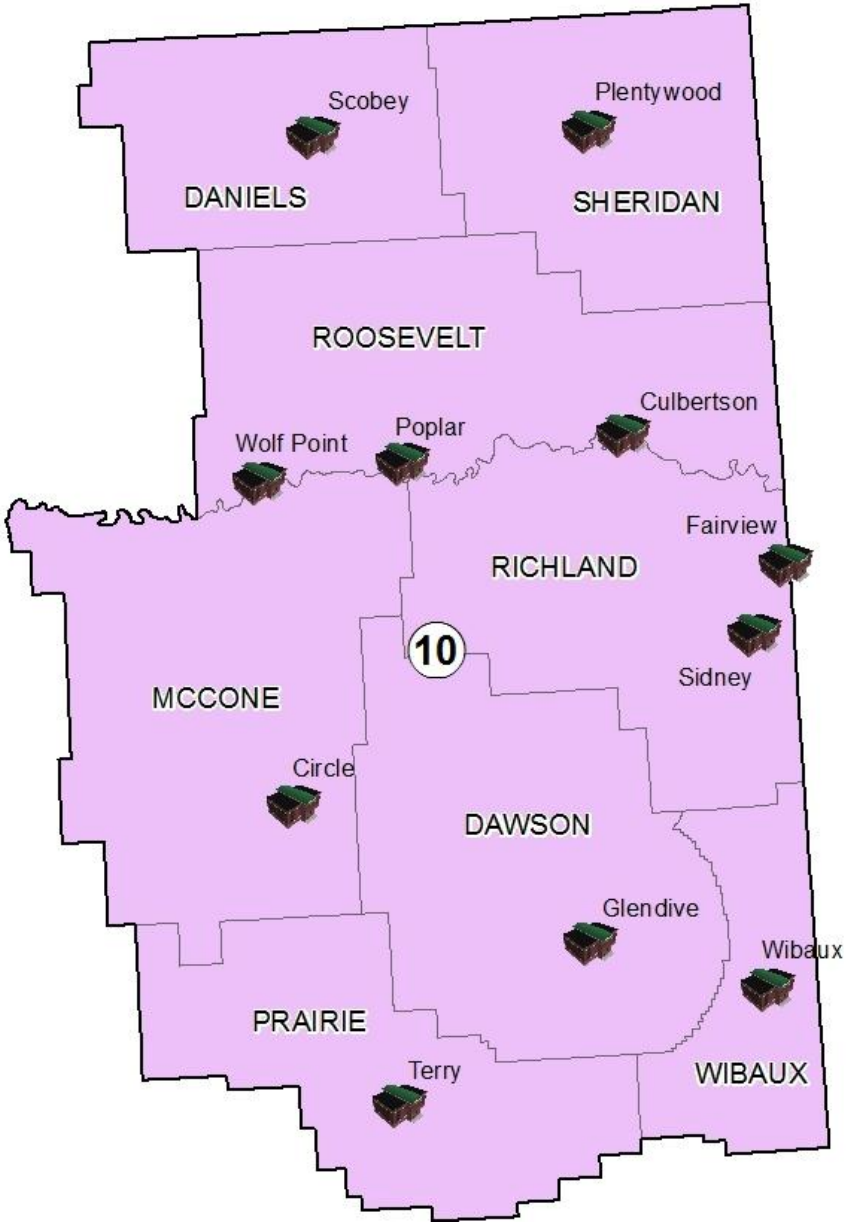
Region 10 – Glendive

Attorneys: 3
Support Staff: 1
Investigators: 1
Contract Attorneys: 10
FYE 2011 Cases Opened: 517

- District Court Cases: 285
- Cases in Courts of Limited Jurisdiction: 232

District Courts: 8
Lower Courts: 19
Sq. Miles: 15,184

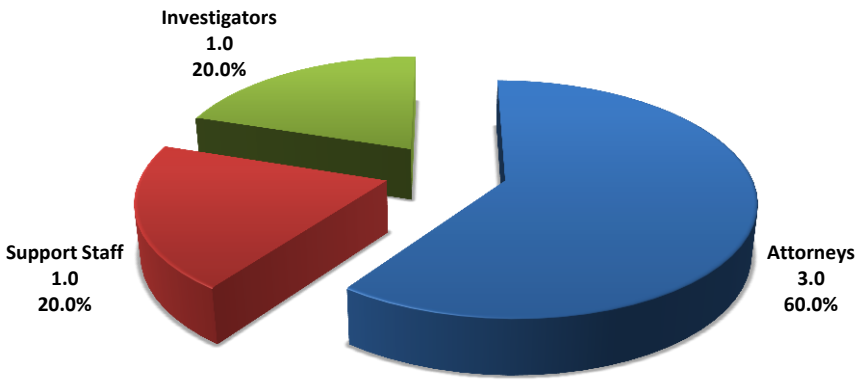
Return to Map of Regions



Office of State Public Defender
Region 10 - 2012 Snapshot

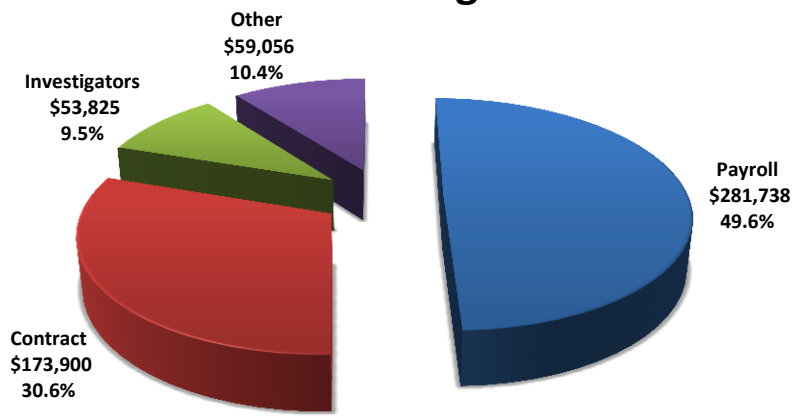
Office of the State Public Defender

FY12 - FTEs



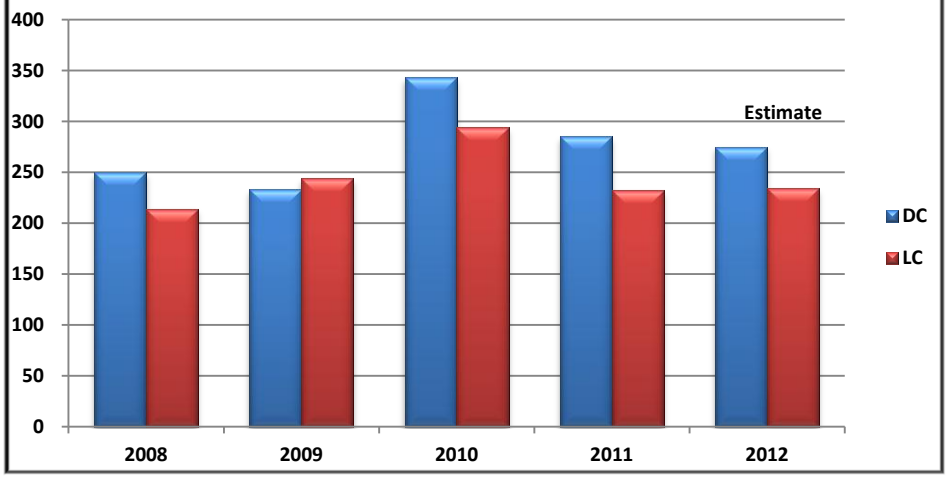
% of Total FTEs: 2.7%

FY12 - Budget

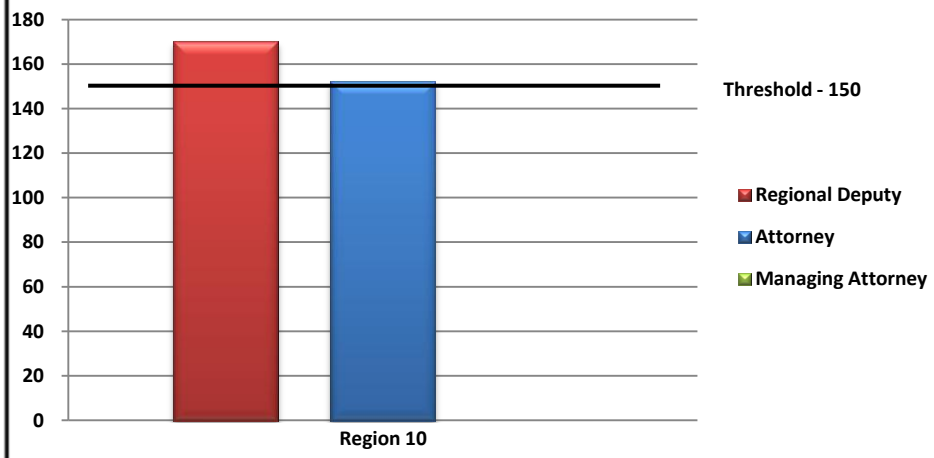


% of 2012 Budget: 3.0%

New Cases



Case Weight as of June 30, 2011



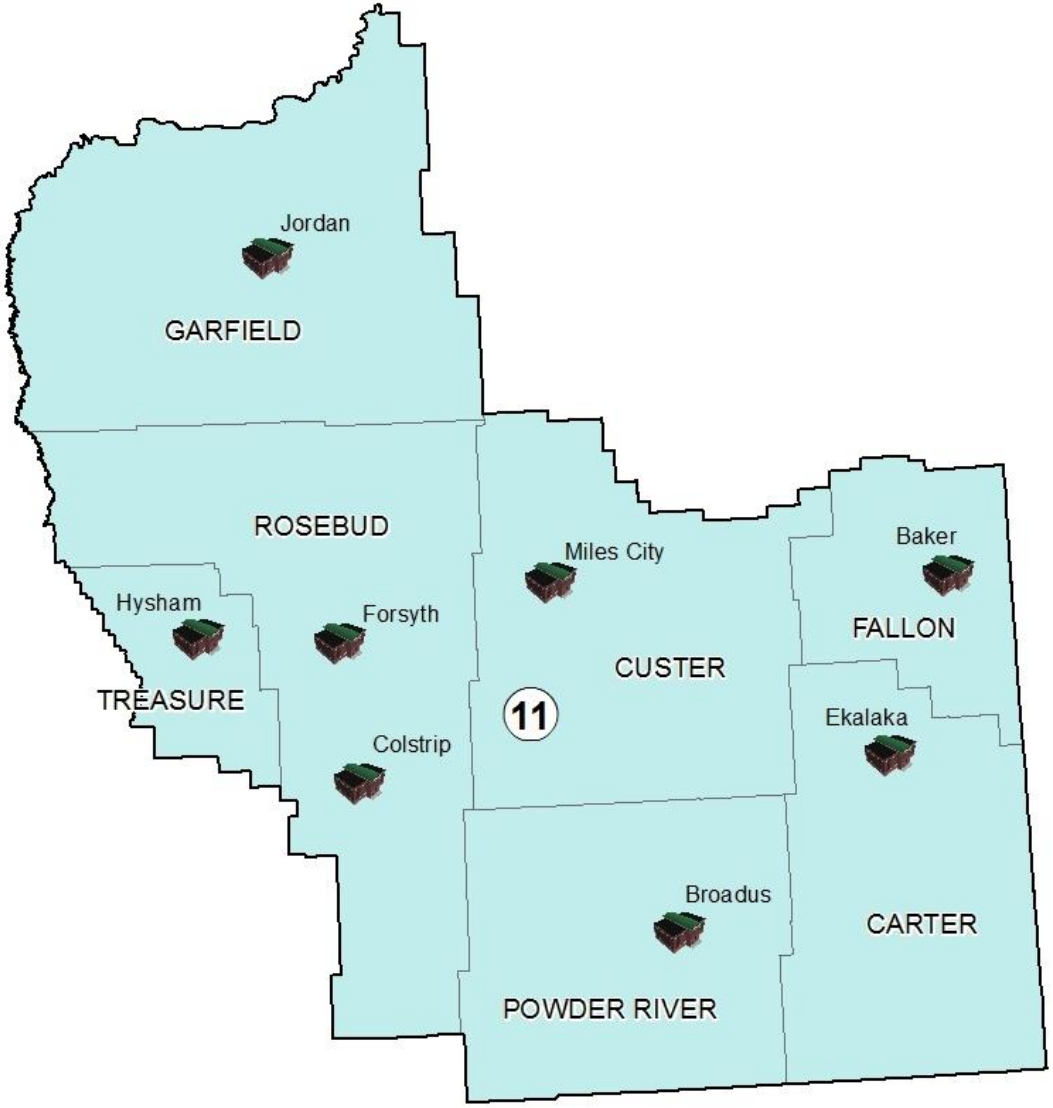
Region 11 – Miles City

Attorneys: 2
Support Staff: 1
Investigators: 1
Contract Attorneys: 17
FYE 2011 Cases Opened: 509

- District Court Cases: 268
- Cases in Courts of Limited Jurisdiction: 241

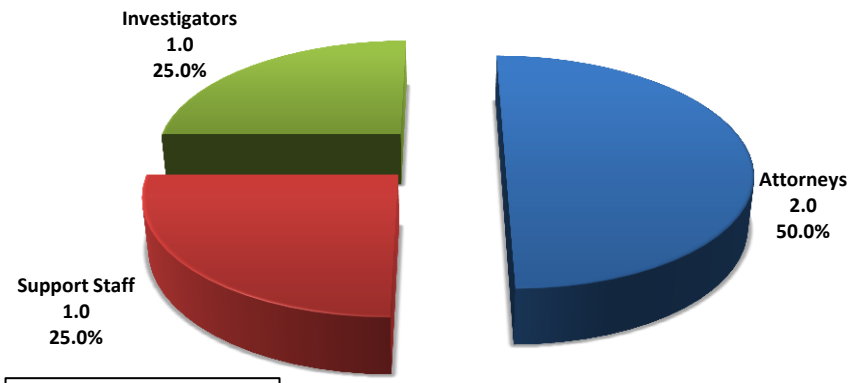
District Courts: 7
Lower Courts: 14
Sq. Miles: 22,700

Return to Map of Regions



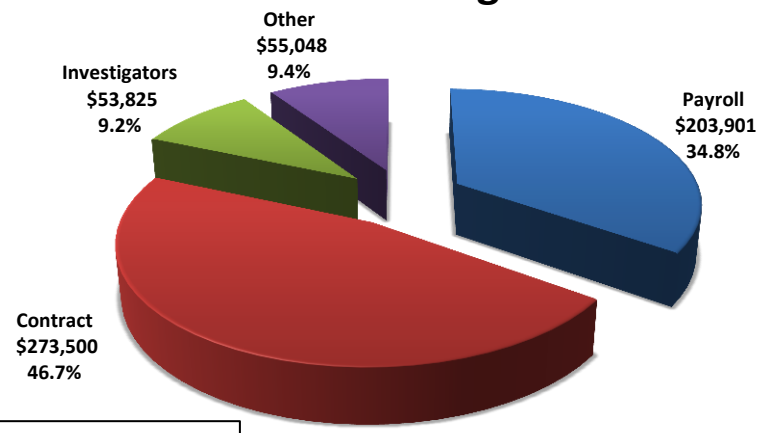
Office of State Public Defender
Region 11 - 2012 Snapshot

FY12 - FTEs



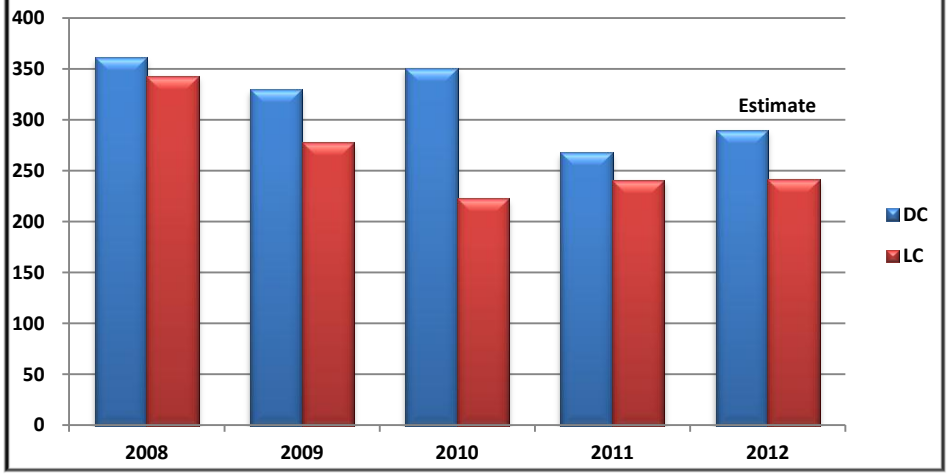
% of Total FTEs: 2.1%

FY12 - Budget

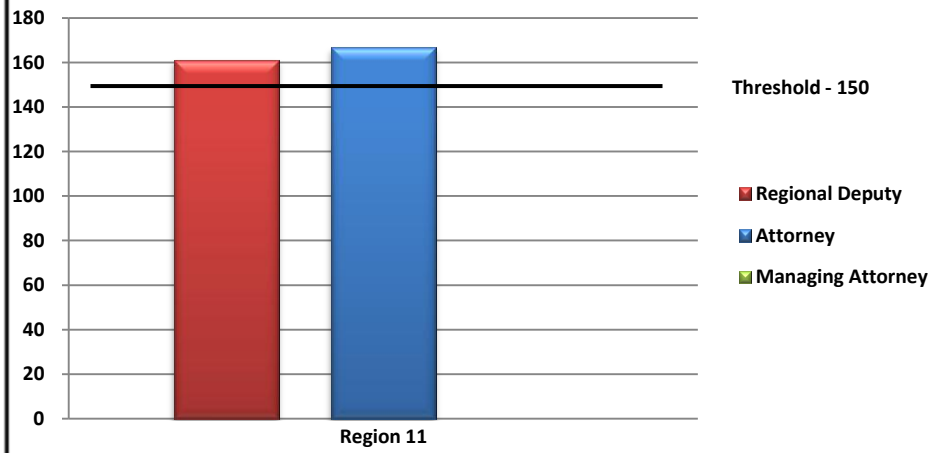


% of 2012 Budget: 3.1%

New Cases



Case Weight as of June 30, 2011



Major Crimes Unit

Major Crimes Unit – Serves Entire State

Attorneys: 4.5
Support Staff: 2

Return to Map of Regions

Conflict Coordinator

Conflict Coordinator

Attorneys: 0.5

Return to Map of Regions

Central Office

Central Office - Butte

Attorneys: 3.5 (Non Practicing)

Support Staff: 15

Investigators: 0.5

Return to Map of Regions

Appellate Defender

Appellate - Helena

Attorneys: 9

Support Staff: 2

Contract Attorneys: 2

Supreme Court: 1

Return to Map of Regions

Office of the State Public Defender

STAFFING REPORT
as of 6/30/11

			Current Number of Staff (FTE)		Number of Vacant Positions			
Region	**Location**	**Regional Deputy Public Defenders**	**Attorney**	**Non-Attorney**	**Attorney**	**Non-Attorney**	**FY 2011 Budget**	**Number of Contractors by Region****
	Central Office	-	2.50	13.25			15.75	
1	Kalispell	1.00	15.50	8.00	0.50	1.00	26.00	24
2	Missoula	1.00	21.50	13.00			35.50	47
3	Great Falls	1.00	9.00	9.00	1.00		20.00	26
4	Helena	1.00	8.50	3.50			13.00	13
5	Butte	1.00	8.00	5.00			14.00	7
6	Havre	1.00		2.00			3.00	10
7	Lewistown	1.00	-	1.50			2.50	18
8	Bozeman	1.00	10.00	7.00		0.50	18.50	27
9	Billings	1.00	16.75	12.00			29.75	38
10	Glendive	1.00	1.00	1.50			3.50	10
11	Miles City	1.00	1.00	1.50			3.50	17
	Major Crimes	-	4.50	2.00			6.50	
Subtotal		**11.00**	**98.25**	**79.25**	**1.50**	**1.50**	**191.50**	
	Appellate Defender	-	7.00	2.00		-	9.00	2
Total FTE		**11.00**	**105.25**	**81.25**	**1.50**	**1.50**	**200.50**	

Total Current FTE	***197.50***	***Total Vacant FTE***	***3.00***	***200.50***

***** 199 Total unique contractors--some are available to work in multiple regions***

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 *

Immigrant Defense Project

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.

© 2010 Immigrant Defense Project

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

Montana Public Defender Commission
Report to the Governor, Supreme Court and Legislature
New Cases Assigned
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT				LIMITED COURTS			
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**All Limited Jurisdiction**	**Grand Total**	**PERCENT**
RGN 1-KALISPELL	**ALL**	849	28	169	139	325	2,851	**4,361**	**15.76%**
RGN 2-MISSOULA	**ALL**	765	56	268	253	135	3,354	**4,831**	**17.46%**
RGN 3-GR. FALLS	**ALL**	892	17	50	117	566	1,474	**3,116**	**11.26%**
RGN 4-HELENA	**ALL**	547	14	42	64	129	1,848	**2,644**	**9.56%**
RGN 5-BUTTE	**ALL**	388	14	85	37	159	890	**1,573**	**5.69%**
RGN 6-HAVRE	**ALL**	256	12	26	65	57	358	**774**	**2.80%**
RGN 7-LEWISTOWN	**ALL**	127	13	61	20	60	239	**520**	**1.88%**
RGN 8-BOZEMAN	**ALL**	419	21	88	45	149	1,529	**2,251**	**8.14%**
RGN 9-BILLINGS	**ALL**	1,142	38	88	181	458	4,661	**6,568**	**23.74%**
RGN 10-GLENDIVE	**ALL**	150	3	27	23	82	232	**517**	**1.87%**
RGN 11-MILES CITY	**ALL**	125	6	11	27	99	241	**509**	**1.84%**
	ALL	**5,660**	**222**	**915**	**971**	**2,219**	**17,677**	**27,664**	**100.00%**
PERCENTAGES		**20.5%**	**0.8%**	**3.3%**	**3.5%**	**8.0%**	**63.9%**	**100.00%**	

Source: Agency Case Management System

TOTAL CASE COUNTS
FY 2011

Montana Public Defender Commission
Report to the Governor, Supreme Court and Legislature
New Cases Assigned
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT				LIMITED COURTS			
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**All Limited Jurisdiction**	**Grand Total**	**PERCENT**
REGION 1-KALISPELL									
FLATHEAD	DISTRICT	559	23	130	98	215	-	1,025	23.50%
COLUMBIA FALLS	CITY	-	-	-	-	-	203	203	4.65%
WHITEFISH	CITY	-	-	-	-	-	90	90	2.06%
FLATHEAD CTY	JUSTICE	-	-	-	-	-	871	871	19.97%
KALISPELL	MC	-	-	-	-	-	685	685	15.71%
LAKE	DISTRICT	187	1	18	21	36	-	263	6.03%
POLSON	CITY	-	-	-	-	-	55	55	1.26%
RONAN	CITY	-	-	-	-	-	49	49	1.12%
ST IGNATIUS	CITY	-	-	-	-	-	5	5	0.11%
LAKE CTY	JP	-	-	-	-	-	378	378	8.67%
SANDERS	DISTRICT	25	1	11	4	34	-	75	1.72%
HOT SPRINGS	CITY	-	-	-	-	-	29	29	0.66%
PLAINS	CITY	-	-	-	-	-	11	11	0.25%
THOMFALLS	CITY	-	-	-	-	-	31	31	0.71%
SANDERS CTY	JP	-	-	-	-	-	87	87	1.99%
LINCOLN	DISTRICT	78	3	10	16	40	-	147	3.37%
EUREKA	CITY	-	-	-	-	-	30	30	0.69%
LIBBY	CITY	-	-	-	-	-	111	111	2.55%
TROY	CITY	-	-	-	-	-	9	9	0.21%
LINCOLN CTY	JP	-	-	-	-	-	207	207	4.75%
REGION 1		**849**	**28**	**169**	**139**	**325**	**2,851**	**4,361**	**100.00%**

Montana Public Defender Commission
Report to the Governor, Supreme Court and Legislature
New Cases Assigned
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT					LIMITED COURTS		
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**All Limited Jurisdiction**	**Grand Total**	**PERCENT**
REGION 2-MISSOULA									
MISSOULA	DISTRICT	550	51	242	192	95	-	1,130	23.39%
MISSOULA CTY	JP	-	-	-	-	-	1,128	1,128	23.35%
MISSOULA	MC	-	-	-	-	-	1,277	1,277	26.43%
RAVALLI	DISTRICT	204	4	21	54	37	-	320	6.62%
DARBY	CITY	-	-	-	-	-	56	56	1.16%
HAMILTON	CITY	-	-	-	-	-	267	267	5.53%
PINESDALE	CITY	-	-	-	-	-	-	-	0.00%
STEVENSVILLE	CITY	-	-	-	-	-	12	12	0.25%
RAVALLI CTY	JP	-	-	-	-	-	529	529	10.95%
MINERAL	DISTRICT	11	1	5	7	3	-	27	0.56%
ALBERTON	CITY	-	-	-	-	-	1	1	0.02%
SUPERIOR	CITY	-	-	-	-	-	12	12	0.25%
MINERAL CTY	JP	-	-	-	-	-	72	72	1.49%
REGION 2		**765**	**56**	**268**	**253**	**135**	**3,354**	**4,831**	**100.00%**

Source: Agency Case Management System

TOTAL CASE COUNTS
FY 2011

Montana Public Defender Commission
Report to the Governor, Supreme Court and Legislature
New Cases Assigned
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT				LIMITED COURTS			
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**All Limited Jurisdiction**	**Grand Total**	**PERCENT**
REGION 3-GREAT FALLS									
CASCADE	DISTRICT	757	14	43	100	438	-	1,352	43.39%
GREAT FALLS	CITY	-	-	-	-	-	190	190	6.10%
CASCADE	CITY	-	-	-	-	-	133	133	4.27%
BELT	CITY	-	-	-	-	-	-	-	0.00%
CASCADE CTY	JP	-	-	-	-	-	309	309	9.92%
GREAT FALLS	MC	-	-	-	-	-	507	507	16.27%
TOOLE	DISTRICT	36	1	2	7	16	-	62	1.99%
SHELBY	CITY	-	-	-	-	-	7	7	0.22%
TOOLE CTY	JP	-	-	-	-	-	39	39	1.25%
PONDERA	DISTRICT	18	-	1	6	32	-	57	1.83%
CONRAD	CITY	-	-	-	-	-	44	44	1.41%
VALIER	CITY	-	-	-	-	-	-	-	0.00%
PONDERA CTY	JP	-	-	-	-	-	25	25	0.80%
TETON	DISTRICT	20	1	2	1	31	-	55	1.77%
CHOTEAU	CITY	-	-	-	-	-	12	12	0.39%
DUTTON	CITY	-	-	-	-	-	-	-	0.00%
FAIRFIELD	CITY	-	-	-	-	-	-	-	0.00%
TETON CTY	JP	-	-	-	-	-	10	10	0.32%
GLACIER	DISTRICT	61	1	2	3	49	-	116	3.72%
CUTBANK	CITY	-	-	-	-	-	111	111	3.56%
GLACIER CTY	JP	-	-	-	-	-	87	87	2.79%
REGION 3		**892**	**17**	**50**	**117**	**566**	**1,474**	**3,116**	**100.00%**

Source: Agency Case Management System

TOTAL CASE COUNTS
FY 2011

Montana Public Defender Commission
Report to the Governor, Supreme Court and Legislature
New Cases Assigned
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT					LIMITED COURTS		
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**All Limited Jurisdiction**	**Grand Total**	**PERCENT**
REGION 4-HELENA									
LEWIS & CLARK	DISTRICT	487	9	36	48	118	-	698	26.40%
EAST HELENA	CITY	-	-	-	-	-	43	43	1.63%
HELENA	CITY	-	-	-	-	-	1,044	1,044	39.49%
LEWIS & CLARK CTY	JP	-	-	-	-	-	593	593	22.43%
BROADWATER	DISTRICT	26	-	-	15	-	-	41	1.55%
TOWNSEND	CITY	-	-	-	-	-	26	26	0.98%
BROADWATER CTY	JP	-	-	-	-	-	52	52	1.97%
JEFFERSON	DISTRICT	34	5	6	1	11	-	57	2.16%
BOULDER	CITY	-	-	-	-	-	24	24	0.91%
WHITEHALL	CITY	-	-	-	-	-	2	2	0.08%
JEFFERSON CTY	JP	-	-	-	-	-	64	64	2.42%
REGION 4		**547**	**14**	**42**	**64**	**129**	**1,848**	**2,644**	**100.00%**

Source: Agency Case Management System

TOTAL CASE COUNTS
FY 2011

Montana Public Defender Commission
Report to the Governor, Supreme Court and Legislature
New Cases Assigned
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT				LIMITED COURTS			
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**All Limited Jurisdiction**	**Grand Total**	**PERCENT**
REGION 5-BUTTE									
SILVER BOW	DISTRICT	201	2	51	26	73	-	353	22.44%
BUTTE	CITY	-	-	-	-	-	278	278	17.67%
SILVER BOW CTY	JP 1	-	-	-	-	-	116	116	7.37%
BEAVERHEAD	DISTRICT	39	6	6	6	12	-	69	4.39%
DILLON	CITY	-	-	-	-	-	81	81	5.15%
LIMA	CITY	-	-	-	-	-	-	-	0.00%
BEAVERHEAD CTY	JP	-	-	-	-	-	41	41	2.61%
MADISON	DISTRICT	27	3	3	2	8	-	43	2.73%
ENNIS	CITY	-	-	-	-	-	9	9	0.57%
MADISON CTY	JP	-	-	-	-	-	50	50	3.18%
POWELL	DISTRICT	63	2	6	1	18	-	90	5.72%
DEER LODGE	CITY	-	-	-	-	-	29	29	1.84%
POWELL CTY	JP	-	-	-	-	-	46	46	2.92%
DEER LODGE	DISTRICT	47	1	18	2	48	-	116	7.37%
ANACONDA	CITY	-	-	-	-	-	-	-	0.00%
DEER LODGE CTY	JP	-	-	-	-	-	230	230	14.62%
GRANITE	DISTRICT	11	-	1	-	-	-	12	0.76%
DRUMMOND	CITY	-	-	-	-	-	-	-	0.00%
PHILIPSBURG	CITY	-	-	-	-	-	-	-	0.00%
GRANITE CTY	JP	-	-	-	-	-	10	10	0.64%
REGION 5		**388**	**14**	**85**	**37**	**159**	**890**	**1,573**	**100.00%**

Source: Agency Case Management System

TOTAL CASE COUNTS
FY 2011

Montana Public Defender Commission
Report to the Governor, Supreme Court and Legislature
New Cases Assigned
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT				LIMITED COURTS			
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**All Limited Jurisdiction**	**Grand Total**	**PERCENT**
REGION 6-HAVRE									
PHILLIPS	DISTRICT	12	5	2	5	5	-	29	4.17%
MALTA	CITY	-	-	-	-	-	7	7	0.00%
PHILLIPS CTY	JP	-	-	-	-	-	11	11	0.47%
HILL	DISTRICT	179	2	14	33	28	-	256	30.87%
HAVRE	CITY	-	-	-	-	-	114	114	25.95%
HILL CTY	JP	-	-	-	-	-	128	128	11.74%
CHOTEAU	DISTRICT	11	-	-	4	-	-	15	2.75%
FT BENTON	CITY	-	-	-	-	-	4	4	0.57%
BIG SANDY	CITY	-	-	-	-	-	-	-	0.00%
CHOTEAU CTY	JP	-	-	-	-	-	21	21	0.76%
VALLEY	DISTRICT	39	2	9	7	20	-	77	3.88%
FT PECK	CITY	-	-	-	-	-	-	-	0.09%
GLASGOW	CITY	-	-	-	-	-	18	18	2.84%
NASHUA	CITY	-	-	-	-	-	-	-	0.09%
VALLEY CTY	JP	-	-	-	-	-	17	17	2.08%
BLAINE	DISTRICT	13	3	1	16	4	-	37	3.60%
HARLEM	CITY	-	-	-	-	-	9	9	0.85%
CHINOOK	CITY	-	-	-	-	-	5	5	1.33%
BLAINE CTY	JP	-	-	-	-	-	23	23	5.87%
LIBERTY	DISTRICT	2	-	-	-	-	-	2	0.47%
CHESTER	CITY	-	-	-	-	-	-	-	0.09%
LIBERTY CTY	JP	-	-	-	-	-	1	1	1.52%
REGION 6		**256**	**12**	**26**	**65**	**57**	**358**	**774**	**100.00%**

Source: Agency Case Management System

TOTAL CASE COUNTS
FY 2011

Montana Public Defender Commission
Report to the Governor, Supreme Court and Legislature
New Cases Assigned
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT				LIMITED COURTS			
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**All Limited Jurisdiction**	**Grand Total**	**PERCENT**
REGION 7-LEWISTOWN									
FERGUS	DISTRICT	67	11	59	8	57	-	202	38.85%
LEWISTOWN	CITY	-	-	-	-	-	89	89	17.12%
FERGUS CTY	JP	-	-	-	-	-	63	63	12.12%
MUSSELLSHELL	DISTRICT	36	1	-	10	2	-	49	9.42%
MELSTONE	CITY	-	-	-	-	-	-	-	0.00%
ROUNDUP	CITY	-	-	-	-	-	12	12	2.31%
MUSSELLSHELL CTY	JP	-	-	-	-	-	22	22	4.23%
JUDITH BASIN	DISTRICT	3	-	1	-	-	-	4	0.77%
HOBSON	CITY	-	-	-	-	-	-	-	0.00%
STANFORD	CITY	-	-	-	-	-	-	-	0.00%
JUDITH BASIN CTY	JP	-	-	-	-	-	28	28	5.38%
WHEATLAND	DISTRICT	6	1	1	1	1	-	10	1.92%
HARLOWTON	CITY	-	-	-	-	-	4	4	0.77%
WHEATLAND CTY	JP	-	-	-	-	-	5	5	0.96%
MEAGHER	DISTRICT	10	-	-	1	-	-	11	2.12%
W.S.SPRINGS	CITY	-	-	-	-	-	3	3	0.58%
MEAGHER CTY	JP	-	-	-	-	-	8	8	1.54%
GOLDEN VALLEY	DISTRICT	3	-	-	-	-	-	3	0.58%
LAVINA	CITY	-	-	-	-	-	-	-	0.00%
RYEGATE	CITY	-	-	-	-	-	-	-	0.00%
GOLDEN VALLEY CTY	JP	-	-	-	-	-	3	3	0.58%
PETROLEUM	DISTRICT	2	-	-	-	-	-	2	0.38%
WINNETT	CITY	-	-	-	-	-	-	-	0.00%
PETROLEUM CTY	JP	-	-	-	-	-	2	2	0.38%
REGION 7		**127**	**13**	**61**	**20**	**60**	**239**	**520**	**100.00%**

Source: Agency Case Management System

TOTAL CASE COUNTS
FY 2011

Montana Public Defender Commission
Report to the Governor, Supreme Court and Legislature
New Cases Assigned
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT				LIMITED COURTS			
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**All Limited Jurisdiction**	**Grand Total**	**PERCENT**
REGION 8-BOZEMAN									
GALLATIN	DISTRICT	288	17	69	38	52	-	464	20.61%
BELGRADE	CITY	-	-	-	-	-	171	171	7.60%
MANHATTAN	CITY	-	-	-	-	-	5	5	0.22%
THREE FORKS	CITY	-	-	-	-	-	10	10	0.44%
W.YELLOW	CITY	-	-	-	-	-	18	18	0.80%
GALLATIN CTY	JP	-	-	-	-	-	403	403	17.90%
BOZEMAN	MC	-	-	-	-	-	658	658	29.23%
SWEET GRASS	DISTRICT	61	-	-	-	2	-	63	2.80%
BIG TIMBER	CITY	-	-	-	-	-	10	10	0.44%
SWEET GRASS CTY	JP	-	-	-	-	-	34	34	1.51%
PARK	DISTRICT	70	4	19	7	95	-	195	8.66%
LIVINGSTON	CITY	-	-	-	-	-	120	120	5.33%
PARK CTY	JP	-	-	-	-	-	100	100	4.44%
REGION 8		**419**	**21**	**88**	**45**	**149**	**1,529**	**2,251**	**100.00%**

Source: Agency Case Management System

TOTAL CASE COUNTS
FY 2011

Montana Public Defender Commission
Report to the Governor, Supreme Court and Legislature
New Cases Assigned
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT				LIMITED COURTS			
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**All Limited Jurisdiction**	**Grand Total**	**PERCENT**
REGION 9-BILLINGS									
YELLOWSTONE	DISTRICT	945	37	84	151	400	-	1,617	24.62%
LAUREL	CITY	-	-	-	-	-	98	98	1.49%
YELLOWSTONE CTY	JP	-	-	-	-	-	890	890	13.55%
BILLINGS	MC	-	-	-	-	-	2,963	2,963	45.11%
CARBON	DISTRICT	66	-	3	3	16	-	88	1.34%
BEARCREEK	CITY	-	-	-	-	-	-	-	0.00%
BRIDGER	CITY	-	-	-	-	-	7	7	0.11%
FROMBERG	CITY	-	-	-	-	-	8	8	0.12%
JOLIET	CITY	-	-	-	-	-	11	11	0.17%
RED LODGE	CITY	-	-	-	-	-	41	41	0.62%
CARBON CTY	JP	-	-	-	-	-	62	62	0.94%
BIG HORN	DISTRICT	102	-	1	17	41	-	161	2.45%
HARDIN	CITY	-	-	-	-	-	310	310	4.72%
BIG HORN CTY	JP	-	-	-	-	-	197	197	3.00%
STILLWATER	DISTRICT	29	1	-	10	1	-	41	0.62%
COLUMBUS	CITY	-	-	-	-	-	8	8	0.12%
STILLWATER CTY	JP	-	-	-	-	-	66	66	1.00%
REGION 9		**1,142**	**38**	**88**	**181**	**458**	**4,661**	**6,568**	**100.00%**

Source: Agency Case Management System

TOTAL CASE COUNTS
FY 2011

Montana Public Defender Commission
Report to the Governor, Supreme Court and Legislature
New Cases Assigned
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT				LIMITED COURTS			
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**All Limited Jurisdiction**	**Grand Total**	**PERCENT**
REGION 10-GLENDIVE									
DAWSON	DISTRICT	64	-	11	9	53	-	137	26.50%
GLENDIVE	CITY	-	-	-	-	-	91	91	17.60%
DAWSON CTY	JP	-	-	-	-	-	29	29	5.61%
ROOSEVELT	DISTRICT	24	1	2	-	1	-	28	5.42%
CULBERTSON	CITY	-	-	-	-	-	-	-	0.00%
POPLAR	CITY	-	-	-	-	-	-	-	0.00%
WOLFPOINT	CITY	-	-	-	-	-	9	9	1.74%
ROOSEVELT CTY	JP	-	-	-	-	-	13	13	2.51%
RICHLAND	DISTRICT	44	1	7	14	13	-	79	15.28%
FAIRVIEW	CITY	-	-	-	-	-	2	2	0.39%
SIDNEY	CITY	-	-	-	-	-	33	33	6.38%
RICHLAND CTY	JP	-	-	-	-	-	28	28	5.42%
SHERIDAN	DISTRICT	9	1	3	-	9	-	22	4.26%
PLENTYWOOD	CITY	-	-	-	-	-	3	3	0.58%
SHERIDAN CTY	JP	-	-	-	-	-	3	3	0.58%
DANIELS	DISTRICT	1	-	-	-	6	-	7	1.35%
SCOBEY	CITY	-	-	-	-	-	5	5	0.97%
DANIELS CTY	JP	-	-	-	-	-	2	2	0.39%
McCONE	DISTRICT	4	-	2	-	-	-	6	1.16%
CIRCLE	CITY	-	-	-	-	-	-	-	0.00%
MCCONE CTY	JP	-	-	-	-	-	8	8	1.55%
PRAIRIE	DISTRICT	4	-	1	-	-	-	5	0.97%
TERRY	CITY	-	-	-	-	-	-	-	0.00%
PRAIRIE CTY	JP	-	-	-	-	-	6	6	1.16%
WIBAUX	DISTRICT	-	-	1	-	-	-	1	0.19%
WIBAUX	CITY	-	-	-	-	-	-	-	0.00%
WIBAUX CTY	JP	-	-	-	-	-	-	-	0.00%
REGION 10		**150**	**3**	**27**	**23**	**82**	**232**	**517**	**100.00%**

Source: Agency Case Management System

TOTAL CASE COUNTS
FY 2011

Montana Public Defender Commission
Report to the Governor, Supreme Court and Legislature
New Cases Assigned
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT				LIMITED COURTS			
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**All Limited Jurisdiction**	**Grand Total**	**PERCENT**
REGION 11-MILES CITY									
POWDER RIVER	DISTRICT	4	1	-	1	9	-	15	2.95%
BROADUS	CITY	-	-	-	-	-	-	-	0.00%
POWDER RIVER CTY	JP	-	-	-	-	-	11	11	2.16%
CUSTER	DISTRICT	69	3	9	16	35	-	132	25.93%
MILES CITY	CITY	-	-	-	-	-	75	75	14.73%
MILES CITY	JP	-	-	-	-	-	-	-	0.00%
CUSTER CTY	JP	-	-	-	-	-	21	21	4.13%
ROSEBUD	DISTRICT	37	1	2	9	49	-	98	19.25%
COLSTRIP	CITY	-	-	-	-	-	38	38	7.47%
FORSYTH	CITY	-	-	-	-	-	6	6	1.18%
ROSEBUD CTY	JP	-	-	-	-	-	61	61	11.98%
TREASURE	DISTRICT	2	-	-	1	-	-	3	0.59%
HYSHAM	CITY	-	-	-	-	-	2	2	0.39%
TREASURE CTY	JP	-	-	-	-	-	2	2	0.39%
FALLON	DISTRICT	11	-	-	-	6	-	17	3.34%
BAKER	CITY	-	-	-	-	-	21	21	4.13%
FALLON CTY	JP	-	-	-	-	-	2	2	0.39%
CARTER	DISTRICT	-	-	-	-	-	-	-	0.00%
EKALAKA	CITY	-	-	-	-	-	-	-	0.00%
CARTER CTY	JP	-	-	-	-	-	1	1	0.20%
GARFIELD	DISTRICT	2	1	-	-	-	-	3	0.59%
JORDAN	CITY	-	-	-	-	-	-	-	0.00%
GARFIELD CTY	JP	-	-	-	-	-	1	1	0.20%
REGION 11		**125**	**6**	**11**	**27**	**99**	**241**	**509**	**100.00%**

OFFICE OF THE STATE PUBLIC DEFENDER
STATE OF MONTANA

Brian Schweitzer
Governor

Chief Public Defender
Randi Hood

CASE WEIGHT SYSTEM - RULES

as developed and approved by the Labor Management Committee
Revised February 25, 2011

Every Regional Deputy Public Defender and Managing Attorney will receive this set of rules and instructions that explains how to use the case weighting system and a Monthly Report Form that will be used to track and report monthly cases assigned. Every region will follow these rules, best practices, and use the Monthly Report Form.

BEST PRACTICES: (how to administer and use this system)

Step 1: VALUE THE CASE
Assign a case weight to each case *when assigned* – this means DAILY, as the cases come in, then write the value on the appointment sheet.

Step 2: DAILY TRACKING
This system is designed to help evenly distribute cases among attorneys and to monitor how many cases each attorney receives each month. You should be looking at the reports DAILY as you assign cases. Again, this is a DAILY process, as the appointment sheets are received from the court.

Step 3: GENERATE MONTHLY REPORT
Because you are tracking assignments and assigning weights DAILY, you simply need to print off the report you have been working on all month.

Step 4: ATTACH SUPPORTING DOCUMENTS TO THE REPORT
JustWare report for the month with the assigned weight written in the margin next to the case name - or other pertinent documents.

Step 5: ATTORNEY REVIEWS MONTHLY REPORT
At the close of the month distribute the monthly report to the attorneys. If there are questions, concerns, or changes, the attorney can write in the comment section on the form and talk to the manager about changes.

Step 6: SIGN AND DATE MONTHLY REPORT
After adjustments, attorney and manager sign and date the report.

44 West Park Street Butte, Montana 59701
406.496.6080 (fax) 406.496.6098
publicdefender.mt.gov

Step 1: Value the Case

1. The Regional Deputy Public Defender and/or Managing Attorney will assign and track cases by attorney for the office or region. If the Regional Deputy Public Defender or Managing Attorney is absent they will appoint a backup person who will be an attorney to assign and track cases. Every region will provide the Central Office with a list of those individuals that are approved to assign and track cases including all backup personnel **(see page 4-7 for specifics on values).**

Step 2: Daily Tracking

2. Cases will be assigned DAILY and entered into the Monthly Report Form DAILY. This information will be reported to the Central Office within 10 calendar days after the end of each month.

3. There will be a separate Monthly Report Form for each attorney, displaying the number of cases assigned, and the corresponding weight assigned.

4. This case weighting system is designed to monitor case assignments rather than open cases therefore; there is no incentive for a staff attorney to keep cases open.

5. One case is any number of tickets or charges an individual received in a specific incident and assigned to one jurisdiction for adjudication (i.e. traffic stop results in a speeding ticket, criminal distribution of dangerous drugs and possession – if litigated in the same court – all one case).

6. *When an attorney's monthly case weight reaches 12.5, the Regional Manager or Managing Attorney must meet with the staff attorney to discuss the attorney's caseload.*

7. This tool is not a performance measure but is simply used to assess whether resources are being properly distributed and help assure that the agency is not exceeding ethical caseload limits.

Step 3 – Step 6: Generate, Attach, Review, Sign and Date

8. At the close of each month, print off the Monthly Report Form and distribute to every attorney. Attach any relevant documentation, for instance, a JustWare report for the month with the assigned weight written in the margin next to the case name. The attorney then has a chance to review the Monthly Report Form for errors, questions, concerns, and can write their comments in the space provided on the form. Once the review is completed and adjustments are made, if any, both the attorney and manager sign the Monthly Report Form.

9. The Monthly Report Form must be sent to the Central Office within 10 calendar days after the end of each month.

Summary Report (generated by Central Office)

10. The Monthly Report Form will be used by Central Office to generate a summary form for each attorney. The summary form will have 12 months for each attorney and a sum of the activity for the 12 month period at the bottom of each column.

11. On the summary form for a new attorney, any month that does not have actual information for case assignments will have 12.5 units in place of the non-existent actual information. Therefore each attorney will begin with 150 units or case assignments (12 months times 12.5 units = 150).

12. Actual monthly case units will replace the 12.5 unit place holder and become part of the calculation of total annual units.

13. This is a "rolling month" process so the most recent actual information replaces the old information and the total is recalculated.

14. New hires: Central Office will backfill the summary report with the total number of cases transferred to the attorney at 12.5 units per month beginning with the current month until all cases that have been transferred are accounted for. Backfill to fill out the year with 12.5.

Special Circumstances

15. Warrants: If a case goes to warrant status, make no adjustments.

16. Similarly, if a case comes back from warrant status to active, make no adjustments unless the case has been re-assigned to another attorney. (Generally, these cases will most likely return to the attorney's caseload within the year.)

17. Conflicts: If a case is conflicted out of the office after it has been assigned, subtract the appropriate case units from the attorney to whom it was assigned. (Management retains discretion to leave the case credit on the original attorney's count if the case goes to conflict at a late stage after the attorney has worked the case for some time or if the attorney has expended significant hours.)

Adjustments should be made in the month in which the transfer takes place, regardless of when the appointment was made.

18. Co-counsel: If an attorney is full co-counsel, give that attorney a full credit. If the attorney is a trial-only co-counsel, give the attorney one-half of the allotted unit credit.

19. When a case is transferred from one attorney to another the case credit moves with the case (subtract from the original attorney, add to the new attorney). Adjustment should be made in the month in which the transfer takes place.

CASE WEIGHT VALUES

Misdemeanor:

0.25 units - Fugitive / Out of County warrants

0.3 units

-ALL Traffic Offenses (Title 61) (chapters 3, 5, 6, 7, 8 9, 11, 13)
Except (DUI / PerSe – 61-8-401 and 61-8-406)

-Crimes (ONLY these three) Disorderly Conduct 45-8-101
Obstructing 45-7-302
Minor in Possession 45-5-624

-All City Ordinance Violations

0.7 units

-DUI / PerSe (Title 61) (DUI 61-8-401 and PerSe 61-8-406)

-Crimes (ALL Title 45) (chapters 2, 5, 6, 7, 8, 9, 10)
Except Disorderly Conduct 45-8-101
Obstructing 45-7-302
Minor in Possession 45-5-624

-If there are **5 or more charges** in one case

Add 0.5 to the month when a trial occurs.
Add 0.5 to the case total for appeals from Justice/Municipal/City court upon the appeal
Add 0.5 to the units assigned if the case is outside of the assigned region.
(Example: Kidnapping charged in Kalispell, but the attorney comes from Missoula = person crime + 0.5 for travel, assign 2.5.)
Add 2.0 to the **month** for those who practice in courts located outside of the city where their office is located.

****

Assign the unit based on the highest crime charged, then no units for the other charges

EXAMPLES

1- Disorderly, DUI, and open container = 0.7
(because DUI is worth the most, don't count the others)
2- No insurance, obstructing, and driving while suspended = 0.3
(that's the highest unit for any one of them)
3- No insurance, obstructing, no DL, speeding, minor in possession, which goes to trial = 1.2
(even though all are in the 0.3 category, because there are 5 or more charges assign 0.7 + 0.5 because a trial occurred)

Felony:

0.25 units - Fugitive / Out of County warrants

0.5 units - Petition To Revoke

1.0 units

-Property Crimes (45-6-101 – 45-6-341)
-Offenses Against Public Administration (45-7-101 – 45-7-501)
-Offenses Against Public Order (45-8-103 – 45-8-408)

1.5 units

-Dangerous Drugs (45-9-101 – 45-9-132)
-Felony DUI (61-8-401, 61-8-406)

2.0 units

-Offenses Against the Person (45-5-201 – 45-5-634)
Except Homicide charges

5.0 units

-Homicide (45-5-101 – 45-5-106)

Add 0.5 to the units assigned if there are 3 or 4 charges in the case
Add 0.5 to the units assigned if the case is outside of the assigned region.
(Example: Kidnapping charged in Kalispell, but the attorney comes from Missoula – person crime + 0.5 for travel, assign 2.5.)
Add 1.0 to the month when a trial occurs
Add 1.0 to the units assigned if there are 5 or more charges in the case
Add 2.0 to the **month** for those who practice in courts located outside of the city where their office is located.

Inchoate Offenses (**Solicitation, Conspiracy, and Attempt**), assign units according to the underlying crime.
Example: attempted robbery, assign points for robbery, 45-5-401 = 2.0 units

****

Assign the units based on the highest crime charged, then look at the number of charges for extra points:

EXAMPLES

1- Possession of Dangerous Drugs, Stalking = 2.0
(since stalking is worth the most, don't assign points for PODD)
2- Criminal Mischief, Arson, Burglary = 1.5
(even though all are in the 1.0 category, add .5 since there are THREE charges)
3- Attempted negligent homicide = 5.0
(even though its attempted homicide, look at underlying charge of homicide)

Civil / Juveniles:

0.5 units

-DG (Guardianship)
Add 0.5 if the case goes to final contested hearing (total possible points 1.0)

-DI (Involuntary Commitment)
Add 0.5 if goes to contested judge hearing (total possible points 1.0)
Add 1.0 if goes to contested jury trial (total possible points 1.5)

-DJ (Juveniles - misdemeanor / status offense)
Add 0.5 to the month when a trial occurs
Add 0.7 -If there are **5 or more charges** in one case

1.0 units

-DD (Developmentally Disabled)

-DJ (Juveniles - Felony)
Add 1.0 to the month when a trial occurs
Add 0.5 to the units assigned if there are 3 or 4 charges in the case
Add 1.0 to the units assigned if there are 5 or more charges in the case

2.0 units

-DN (Dependent Neglect)
Add 1.0 if goes to contested termination (total possible points 3.0)

Note: DN case weighting is based upon the cause number of the parent(s), not the number of children, and includes termination proceedings, so trial level preparation is necessary.

Add 0.5 to the units assigned if the case is outside of the assigned region.
Add 2.0 to the **month** for those who practice in courts located outside of the city where their office is located.

DUI / Treatment Court:

Add 2.0 units every month for each treatment court the attorney is assigned to.

Each treatment court is separate and distinct, unless they are consolidated for the purpose of staffing, hearing and case work. For example, some courts have separate official names, but don't require separate attorney time because all court and case work is done at the same time.

Jail Run / Initial Appearances:

Add 7.0 units every month for the attorney who is the "designated daily jail attorney" for their office (applies to Regions 1, 2, 3, 4, 5, 8 and 9). This value applies when there is only ONE person doing the jail run and initial appearances for the entire office. This does not apply in offices that use a rotation to cover the jail run and initial appearances.

OFFICE OF THE STATE PUBLIC DEFENDER
CASE WEIGHT SYSTEM

MONTHLY REPORT FORM

Month/Year
Region/Office
Attorney

			Value	No. of Cases	Total Value
Felonies					
	Property Crime		1	0	0
	DUI/Dang. Drug		1.5	0	0
	Crimes Against Person		2	0	0
	Homicide		5	0	0
3 or 4 Charges			0.5	0	0
5 or more charges			1	0	0
Felony Trials			1	0	0
Misdemeanor					
	Ordinance/DOC/				
	Obstructing/Traffic		0.3	0	0
	All other Misd		0.7	0	0
	Cases with five or more charges		0.7	0	0
Misd Trial			0.5	0	0
Appeal from Muni/Just/City (upon appeal)			0.5	0	0
Petition to Revoke			0.5	0	0
Fugitive/OCW			0.25	0	0
Civil Cases					
	Dependent Neglect		2	0	0
	Contested Termination		1	0	0
	Guardianship		0.5	0	0
	Final Contested Hearing		0.5	0	0
	Civil Commitments		0.5	0	0
	Contested Judge Hearing		0.5	0	0
	Contested Jury Trial		1	0	0
	Developmental Disability		1	0	0
	Juvenile				
	Felony		1	0	0
	felony trial		1	0	0
	3 or 4 charges		0.5	0	0
	5 or more charges		1	0	0
	Misdemeanor		0.5	0	0
	misdemeanor trial		0.5	0	0
	5 or more charges		0.7	0	0
MISC	Designated Daily Jail Attorney		7	0	0
	Case Outside Home Region		0.5	0	0
	Treatment Court (2.0 for each different court)		2	0	0
	Practice in Court outside city of office	Yes/No	2	0	0
TOTAL					0

COMMENTS:

_____ _____

Attorney Regional/Managing Attorney

OFFICE OF THE STATE PUBLIC DEFENDER CASELOAD MANAGEMENT REPORT
For the Period of 7/1/2010 to 1o 6/30/2011

Region >>	1	1	1	1	1	1	1	1	1	1
Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
Case Mgt. ID	201	7238	7747	77344	10530	12347	15650	17587	11746	97771
2010 July	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 August	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010 September	11.00	6.75	11.25	15.20	12.00	0.00	10.50	4.00	13.30	17.20
2010 October	11.50	8.00	12.50	14.40	10.75	0.00	10.25	10.50	14.30	15.70
2010 November	10.75	1.00	12.50	7.60	12.00	0.00	8.25	4.50	16.00	12.40
2010 December	11.00	2.00	14.00	14.70	12.25	18.50	3.00	5.00	16.80	13.80
2011 January	13.50	7.25	13.00	14.20	12.00	16.50	13.75	12.00	12.60	7.20
2011 February	5.50	1.50	12.50	10.80	7.25	18.00	12.50	9.50	12.80	8.30
2011 March	3.50	8.50	13.50	12.30	15.50	18.00	12.75	3.40	16.90	6.10
2011 April	11.50	5.00	9.75	13.50	10.00	21.70	9.50	4.50	16.10	11.90
2011 May	6.50	3.00	9.50	15.50	9.75	13.00	8.00	4.90	15.20	9.00
2011 June	0.00	9.50	15.60	16.00	14.50	6.50	15.50	8.00	16.00	16.20
	109.75	77.50	149.10	159.20	141.00	137.20	129.00	91.30	175.00	142.80

OFFICE OF THE STATE PUBLIC DEFENDER CASELOAD MANAGEMENT REPORT
For the Period of 7/1/2010 to 1o 6/30/2011

	Region >>	1	1d	1	1	1	1	1	1	2	2	2
	Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
	Case Mgt. ID	72035	98497	12345	6425	77897	116504	119332	115668	20418	19035	5006
2010	July	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	August	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	September	17.00	4.40	8.50	9.40	9.34	12.50	12.50	7.40	12.50	1.10	12.20
2010	October	6.70	6.50	2.50	7.80	4.15	13.90	12.50	11.10	10.70	9.70	11.00
2010	November	19.70	10.40	9.50	9.05	10.95	12.00	12.50	13.30	18.75	9.30	12.40
2010	December	24.30	8.30	6.50	13.25	8.90	14.10	13.50	14.20	22.50	12.80	7.20
2011	January	9.55	6.90	7.00	15.55	12.70	14.90	13.20	14.20	22.50	12.00	13.60
2011	February	12.60	8.80	0.50	12.90	4.50	12.70	12.50	10.00	5.00	9.70	6.00
2011	March	12.80	13.05	2.50	10.50	10.40	16.40	17.50	14.60	19.20	11.50	18.50
2011	April	13.70	8.80	2.00	13.30	7.50	14.20	14.40	14.90	10.00	9.00	14.70
2011	May	14.90	5.40	2.00	11.70	6.00	14.00	14.60	12.40	12.50	3.70	20.50
2011	June	18.00	10.60	2.00	12.90	5.50	15.20	16.70	15.40	3.50	4.40	15.00
		174.25	95.65	68.00	141.35	104.94	164.90	164.90	152.50	162.15	108.20	156.10

OFFICE OF THE STATE PUBLIC DEFENDER CASELOAD MANAGEMENT REPORT
For the Period of 7/1/2010 to 1o 6/30/2011

	Region >>	2	2	2	2	2	2	2	2	2	2	2	2
	Position	**Attorney**	**Attorney**	**Attorney**	**Attorney**	**Attorney**	**Attorney**	**Attorney**	**Attorney**	**Attorney**	**Attorney**	**Attorney**	**Attorney**
	Case Mgt. ID	**2376**	**6746**	**9475**	**20049**	**9989**	**24001**	**22082**	**38907**	**10212**	**19639**	**12123**	**16611**
2010	**July**	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	**August**	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	**September**	10.10	11.50	13.20	12.50	14.60	25.30	16.50	17.50	11.50	16.00	18.40	8.10
2010	**October**	6.70	8.45	5.70	12.50	14.20	13.60	9.00	8.95	8.00	7.75	12.50	0.00
2010	**November**	8.20	7.50	15.20	12.50	16.85	10.80	15.95	13.00	10.50	11.30	20.60	0.30
2010	**December**	9.55	8.00	21.20	2.00	31.55	21.10	10.15	16.40	16.50	21.45	16.80	5.60
2011	**January**	3.00	7.00	17.30	12.05	11.80	17.30	19.30	20.25	19.40	27.70	28.40	0.60
2011	**February**	4.70	5.45	7.80	14.90	22.50	16.20	15.50	11.50	18.20	18.40	15.60	0.00
2011	**March**	13.00	16.20	18.70	26.00	14.50	22.30	16.60	21.10	20.30	19.90	22.80	2.10
2011	**April**	16.80	14.40	17.30	15.80	12.50	22.40	15.80	15.30	15.70	21.00	22.70	0.30
2011	**May**	13.70	21.00	20.60	21.00	13.50	21.10	16.80	-	15.80	25.20	22.30	1.40
2011	**June**	22.50	20.75	21.10	18.95	11.50	24.20	14.00	24.50	16.10	24.10	22.00	2.00
		133.25	145.25	183.10	173.20	188.50	219.30	174.60	173.50	177.00	217.80	227.10	45.40

OFFICE OF THE STATE PUBLIC DEFENDER CASELOAD MANAGEMENT REPORT
For the Period of 7/1/2010 to 1o 6/30/2011

	Region >>	2	2	2	2	2	2	2	2	3	3	3
	Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
	Case Mgt. ID	98497	82591	10795	13533	14857	122055	20675	58167	16253	6163	19893
2010	July	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	August	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	September	0.07	12.90	11.90	18.20	5.60	12.50	9.70	11.20	16.00	15.00	10.30
2010	October	5.70	11.40	14.70	13.90	11.60	12.50	4.60	13.70	14.50	14.50	6.00
2010	November	1.40	20.90	13.60	13.20	13.20	12.50	10.80	19.00	8.00	14.00	6.80
2010	December	9.60	7.80	17.90	30.20	23.30	12.50	0.00	31.05	18.00	11.00	3.80
2011	January	6.70	22.60	9.30	12.65	10.40	12.50	1.40	5.60	23.50	18.50	12.50
2011	February	11.70	16.00	10.40	10.80	12.10	7.90	3.00	12.00	21.50	15.00	12.70
2011	March	2.90	2.00	23.90	12.60	15.30	12.30	0.00	11.00	11.50	14.75	11.00
2011	April	4.70	9.40	7.20	16.90	5.20	2.00	0.00	8.40	18.50	16.50	11.50
2011	May	1.20	9.00	9.75	7.40	7.70	5.60	3.00	4.05	14.50	16.50	17.10
2011	June	15.00	8.10	10.00	19.70	12.20	5.90	3.00	13.15	14.50	16.00	20.80
		71.47	145.10	153.65	180.55	141.60	121.20	60.50	154.15	185.50	176.75	137.50

OFFICE OF THE STATE PUBLIC DEFENDER CASELOAD MANAGEMENT REPORT
For the Period of 7/1/2010 to 1o 6/30/2011

	Region >>	3	3	3	3	3	3	3	3	4	4	4
	Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
	Case Mgt. ID	3460	28675	12133	2794	80137	14348	93100	102666	59891	63245	28144
2010	July	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	August	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	September	10.50	12.50	11.00	2.50	7.00	0.50	12.50	11.50	9.50	10.70	13.20
2010	October	7.50	13.00	12.00	9.50	17.40	0.25	12.50	23.40	15.40	9.20	5.90
2010	November	6.00	8.00	6.00	13.50	21.20	1.75	12.50	26.10	17.50	9.00	17.95
2010	December	6.00	14.00	13.00	15.00	27.40	0.00	12.50	14.60	19.20	15.80	7.00
2011	January	6.50	21.00	4.00	23.00	36.70	0.00	12.50	13.60	20.45	13.70	12.75
2011	February	7.50	22.50	14.00	20.00	16.10	0.00	12.50	22.90	12.70	13.50	10.50
2011	March	6.00	9.50	13.50	11.00	17.90	7.00	12.50	17.40	8.25	18.25	11.00
2011	April	8.00	15.75	12.00	5.50	22.60	0.50	12.50	13.00	11.50	12.80	18.70
2011	May	8.50	18.00	6.00	13.00	5.00	2.00	4.00	15.10	18.50	17.00	20.40
2011	June	4.00	12.50	35.00	21.25	18.37	0.00	18.90	25.00	22.50	8.40	22.80
		95.50	171.75	151.50	159.25	214.67	37.00	147.90	207.60	180.50	130.65	165.20

OFFICE OF THE STATE PUBLIC DEFENDER CASELOAD MANAGEMENT REPORT
For the Period of 7/1/2010 to 1o 6/30/2011

	Region >>	4	4 b	4	4	4	4	4	5	5	5	5	5
	Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
	Case Mgt. ID	26947	15628	95917	98470	101077	87995	101076	33423	30333	24134	3651	24117
2010	July	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	August	12.50	6.25	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	September	3.25	6.80	18.10	18.70	33.40	12.50	35.90	1.50	12.90	15.50	14.70	13.80
2010	October	0.00	7.50	14.40	22.50	24.40	12.50	35.30	0.00	12.10	16.80	8.60	9.15
2010	November	4.10	4.00	16.10	20.00	28.10	12.50	24.90	0.00	16.80	13.90	14.45	6.40
2010	December	7.70	9.00	12.20	41.00	23.40	12.50	45.10	0.00	11.80	15.65	13.70	11.60
2011	January	4.70	2.00	14.60	17.35	31.25	12.50	21.60	0.00	10.60	16.80	18.05	18.20
2011	February	10.80	0.00	19.50	7.80	17.60	25.90	10.30	0.00	17.30	10.40	5.00	7.00
2011	March	0.00	0.00	22.70	14.40	27.35	15.40	44.60	0.00	16.45	19.00	27.10	15.90
2011	April	2.30	8.00	14.30	22.70	24.60	11.90	21.90	5.00	9.40	6.50	3.10	11.20
2011	May	2.50	4.70	7.80	19.10	15.85	11.50	26.60	1.50	7.30	12.55	6.40	6.50
2011	June	2.50	18.90	8.85	21.00	0.70	14.00	39.80	3.40	9.40	25.40	16.00	20.00
		62.85	73.40	173.55	229.55	251.65	166.20	331.00	36.40	149.05	177.50	152.10	144.75

OFFICE OF THE STATE PUBLIC DEFENDER CASELOAD MANAGEMENT REPORT
For the Period of 7/1/2010 to 1o 6/30/2011

	Region >>	5	5	5	5	6	7	8	8	8	8	8
	Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
	Case Mgt. ID	24135	121145	96968	106250	39086	5211	2566	39619	81213	38962	57485
2010	July	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	August	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	September	12.05	12.50	15.60	20.90	6.40	7.10	11.50	9.45	11.80	12.50	14.60
2010	October	16.50	12.50	12.80	11.60	3.40	8.20	9.40	9.50	8.60	10.75	14.75
2010	November	16.20	12.50	15.20	14.80	6.40	29.60	8.50	10.00	7.10	6.25	9.50
2010	December	13.40	12.50	10.85	12.30	1.25	18.40	9.25	10.00	12.00	4.00	5.50
2011	January	17.70	12.50	12.70	13.80	26.50	20.20	12.25	9.00	12.80	7.50	8.50
2011	February	5.10	19.60	16.40	9.35	19.30	19.40	8.25	4.50	11.70	7.50	9.30
2011	March	13.90	14.40	17.40	11.60	23.60	11.60	11.70	10.00	18.80	9.00	12.30
2011	April	18.35	9.15	20.35	10.05	19.00	15.95	7.00	7.50	10.50	8.00	14.50
2011	May	7.50	16.00	11.30	16.40	8.70	27.30	4.75	7.00	5.30	4.50	9.00
2011	June	17.10	11.10	20.50	11.70	11.90	17.35	6.75	7.25	11.90	10.00	10.00
		162.80	157.75	178.10	157.50	151.45	200.10	114.35	109.20	135.50	105.00	132.95

OFFICE OF THE STATE PUBLIC DEFENDER CASELOAD MANAGEMENT REPORT
For the Period of 7/1/2010 to 1o 6/30/2011

	Region >>	8	8	8	8	8	8	9	9	9	9	9	9
	Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
	Case Mgt. ID	68437	60630	75544	16168	98303	98467	39077	39078	51608	78570	98463	43105
2010	July	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	August	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	September	19.00	8.50	13.30	4.50	11.10	11.40	15.50	1.50	4.50	17.00	13.00	4.00
2010	October	11.70	9.20	10.60	8.50	9.50	9.90	12.50	5.50	3.00	22.25	16.50	5.00
2010	November	9.60	13.80	5.50	7.00	9.50	9.30	13.00	13.00	1.50	21.00	18.50	3.00
2010	December	12.40	8.45	10.30	4.50	9.80	10.00	6.00	10.50	3.00	9.75	9.50	6.50
2011	January	8.90	6.50	11.80	6.50	6.20	12.60	14.00	15.00	8.10	13.00	14.50	8.00
2011	February	12.60	9.10	14.20	7.50	0.00	10.50	14.50	13.00	7.20	14.00	13.00	7.50
2011	March	18.60	17.60	21.30	8.70	0.00	19.60	15.20	20.00	10.50	17.00	26.00	15.50
2011	April	13.60	12.60	11.80	3.50	0.00	9.60	24.00	23.50	43.50	9.70	24.00	7.50
2011	May	9.00	7.40	7.70	2.50	12.30	9.70	14.50	19.00	4.80	9.50	14.00	11.50
2011	June	11.10	10.60	10.70	0.50	12.90	15.70	17.50	18.00	5.00	16.20	12.00	13.50
		151.50	128.75	142.20	78.70	96.30	143.30	171.70	164.00	116.10	174.40	186.00	107.00

OFFICE OF THE STATE PUBLIC DEFENDER CASELOAD MANAGEMENT REPORT
For the Period of 7/1/2010 to 1o 6/30/2011

	Region >>	9	9	9	9	9	9	9	9	9	9	9
	Position	**Attorney**	**Attorney**	**Attorney**	**Attorney**	**Attorney**	**Attorney**	**Attorney**	**Attorney**	**Attorney**	**Attorney**	**Attorney**
	Case Mgt. ID	**116597**	**125946**	**106447**	**116585**	**121706**	**39090**	**113312**	**39074**	**100099**	**100098**	**51592**
2010	**July**	12.50	12.50	12.50	12.50	12.50	7.81	12.50	12.50	12.50	12.50	12.50
2010	**August**	12.50	12.50	12.50	12.50	12.50	7.81	12.50	12.50	12.50	12.50	12.50
2010	**September**	12.50	12.50	12.50	12.50	12.50	12.00	20.90	7.00	23.70	28.60	17.60
2010	**October**	17.00	12.50	19.50	20.60	12.50	0.00	10.80	6.00	12.80	5.50	18.00
2010	**November**	13.10	12.50	16.30	14.30	12.50	0.50	10.30	8.00	8.00	7.50	12.10
2010	**December**	18.60	12.50	12.70	18.60	12.50	0.00	11.50	8.00	10.50	6.50	15.60
2011	**January**	18.20	12.50	11.70	18.40	12.50	10.50	18.10	1.00	15.50	11.50	14.10
2011	**February**	18.70	12.50	13.50	18.20	16.40	0.00	22.40	14.50	16.00	13.50	17.60
2011	**March**	26.80	12.50	12.90	15.10	27.20	7.50	21.10	6.50	21.00	8.50	26.60
2011	**April**	22.80	12.50	3.60	0.00	31.60	8.00	28.20	8.00	24.00	57.50	20.20
2011	**May**	16.50	28.30	14.60	0.00	24.60	7.00	22.10	20.00	15.00	17.50	19.20
2011	**June**	24.70	25.20	20.50	12.60	20.40	1.50	22.50	13.50	19.00	21.00	8.50
		213.90	178.50	162.80	155.30	207.70	62.12	212.90	117.50	190.50	202.60	194.50

OFFICE OF THE STATE PUBLIC DEFENDER CASELOAD MANAGEMENT REPORT
For the Period of 7/1/2010 to 1o 6/30/2011

	Region >>	9	10	10	10	11	MCU	MCU	MCU	MCU
	Position	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney	Attorney
	Case Mgt. ID	43104	108480	125475	21647	3022	19633	27742	101	110253
2010	July	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	August	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50	12.50
2010	September	13.80	13.20	12.50	16.50	15.70	12.50	(4.50)	0.00	7.50
2010	October	10.10	13.20	12.50	11.10	12.80	12.50	5.00	1.00	12.00
2010	November	12.60	13.90	12.50	11.70	7.75	12.50	0.00	0.50	0.00
2010	December	12.70	4.50	12.50	14.20	8.00	15.50	7.50	0.00	13.50
2011	January	18.90	11.00	12.50	9.20	22.70	8.50	11.00	0.00	(6.50)
2011	February	17.00	13.10	12.50	8.50	26.80	7.50	0.00	6.00	7.00
2011	March	19.20	12.90	12.50	10.90	10.90	1.00	0.00	9.00	1.00
2011	April	21.50	10.85	12.50	24.80	30.50	2.50	0.00	2.50	3.50
2011	May	12.80	8.00	24.70	29.30	0.00	0.00	0.00	2.00	2.00
2011	June	11.10	11.20	17.80	9.00	1.00	0.00	2.00	0.00	0.00
		174.70	136.85	167.50	170.20	161.15	97.50	46.00	46.00	51.50

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT					LIMITED COURTS		
Court	Type	Criminal	Guardianship	Involuntary Commitment	Juvenile	Neglect	Limited Jurisdiction ALL	GRAND TOTAL	PERCENT
RGN 1-KALISPELL	ALL	$ 1,624,422	$ 33,251	$ 46,540	$ 112,878	$ 388,815	$ 1,040,831	$ 3,246,737	16.02%
RGN 2-MISSOULA	ALL	1,621,114	42,938	118,547	163,674	723,553	1,152,712	3,822,539	18.86%
RGN 3-GR. FALLS	ALL	1,310,586	7,776	54,111	113,889	408,007	525,156	2,419,524	11.94%
RGN 4-HELENA	ALL	734,149	6,218	14,252	33,085	122,257	421,769	1,331,730	6.57%
RGN 5-BUTTE	ALL	822,688	7,189	23,021	29,298	182,522	411,194	1,475,912	7.28%
RGN 6-HAVRE	ALL	396,808	7,240	16,413	58,936	76,136	206,264	761,796	3.76%
RGN 7-LEWISTOWN	ALL	247,271	4,953	28,127	32,399	54,762	72,717	440,231	2.17%
RGN 8-BOZEMAN	ALL	824,784	10,449	27,356	66,672	283,796	702,190	1,915,247	9.45%
RGN 9-BILLINGS	ALL	1,532,099	31,897	28,914	119,195	605,863	1,221,485	3,539,452	17.46%
RGN 10-GLENDIVE	ALL	297,259	1,139	11,606	17,415	130,896	170,787	629,102	3.10%
RGN 11-MILES CITY	ALL	348,771	3,439	4,298	60,551	117,332	151,909	686,301	3.39%
	ALL	$ 9,759,952	$ 156,488	$ 373,186	$ 807,991	$ 3,093,940	$ 6,077,014	$ 20,268,571	100.00%

Additional Costs:
Capital Cases $ 149,787

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT					LIMITED COURTS		
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**Limited Jurisdiction ALL**	**GRAND TOTAL**	**PERCENT**
REGION 1-KALISPELL									
FLATHEAD	DISTRICT	$ 936,036	$ 27,378	$ 30,814	$ 72,406	$ 263,926	$ -	$ 1,330,560	40.98%
COLUMBIA FALLS	CITY						42,223	42,223	1.30%
WHITEFISH	CITY						57,348	57,348	1.77%
FLATHEAD CTY	JUSTICE						293,335	293,335	9.03%
KALISPELL	MC						214,199	214,199	6.60%
LAKE	DISTRICT	441,076	163	3,067	17,062	80,684	-	542,052	16.70%
POLSON	CITY						16,655	16,655	0.51%
RONAN	CITY						17,009	17,009	0.52%
ST IGNATIUS	CITY						2,240	2,240	0.07%
LAKE CTY	JP						191,116	191,116	5.89%
SANDERS	DISTRICT	98,591	22	4,287	7,664	12,377	-	122,942	3.79%
HOT SPRINGS	CITY						6,654	6,654	0.20%
PLAINS	CITY						8,039	8,039	0.25%
THOMFALLS	CITY						9,040	9,040	0.28%
SANDERS CTY	JP						43,519	43,519	1.34%
LINCOLN	DISTRICT	148,719	5,687	8,372	15,746	31,828	-	210,352	6.48%
EUREKA	CITY						6,215	6,215	0.19%
LIBBY	CITY						42,914	42,914	1.32%
TROY	CITY						2,856	2,856	0.09%
LINCOLN CTY	JP						87,468	87,468	2.69%
REGION 1		**$ 1,624,422**	**$ 33,251**	**$ 46,540**	**$ 112,878**	**$ 388,815**	**$ 1,040,831**	**$ 3,246,737**	**100.00%**

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT					LIMITED COURTS		
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**Limited Jurisdiction ALL**	**GRAND TOTAL**	**PERCENT**
REGION 2-MISSOULA									
MISSOULA	DISTRICT	$ 1,087,320	$ 39,676	$ 103,942	$ 122,874	$ 565,369	$ -	$ 1,919,180	50.21%
MISSOULA CTY	JP						405,308	405,308	10.60%
MISSOULA	MC						397,890	397,890	10.41%
RAVALLI	DISTRICT	500,358	2,210	11,169	31,836	133,239	-	678,811	17.76%
DARBY	CITY						24,887	24,887	0.65%
HAMILTON	CITY						84,397	84,397	2.21%
PINESDALE	CITY						-	-	0.00%
STEVENSVILLE	CITY						5,949	5,949	0.16%
RAVALLI CTY	JP						162,696	162,696	4.26%
MINERAL	DISTRICT	33,437	1,053	3,436	8,964	24,945	-	71,835	1.88%
ALBERTON	CITY						1,980	1,980	0.05%
SUPERIOR	CITY						7,111	7,111	0.19%
MINERAL CTY	JP						62,494	62,494	1.63%
REGION 2		**$ 1,621,114**	**$ 42,938**	**$ 118,547**	**$ 163,674**	**$ 723,553**	**$ 1,152,712**	**$ 3,822,539**	**100.00%**

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT					LIMITED COURTS		
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**Limited Jurisdiction ALL**	**GRAND TOTAL**	**PERCENT**
REGION 3-GREAT FALLS									
CASCADE	DISTRICT	$ 1,109,304	$ 6,721	$ 41,970	$ 91,123	$ 333,614	$ -	$ 1,582,732	65.42%
GREAT FALLS	CITY						-	-	0.00%
CASCADE	CITY						14,250	14,250	0.59%
BELT	CITY						-	-	0.00%
CASCADE CTY	JP						89,131	89,131	3.68%
GREAT FALLS	MC						211,654	211,654	8.75%
TOOLE	DISTRICT	55,835	393	573	4,378	11,950	-	73,129	3.02%
SHELBY	CITY						1,829	1,829	0.08%
TOOLE CTY	JP						24,486	24,486	1.01%
PONDERA	DISTRICT	26,350	186	8,064	8,782	22,090	-	65,471	2.71%
CONRAD	CITY						30,301	30,301	1.25%
VALIER	CITY						-	-	0.00%
PONDERA CTY	JP						20,196	20,196	0.83%
TETON	DISTRICT	42,179	446	1,955	8,411	17,985	-	70,975	2.93%
CHOTEAU	CITY						12,695	12,695	0.52%
DUTTON	CITY						-	-	0.00%
FAIRFIELD	CITY						-	-	0.00%
TETON CTY	JP						7,748	7,748	0.32%
GLACIER	DISTRICT	76,918	30	1,549	1,195	22,368	-	102,060	4.22%
CUTBANK	CITY						70,259	70,259	2.90%
GLACIER CTY	JP						42,606	42,606	1.76%
REGION 3		**$ 1,310,586**	**$ 7,776**	**$ 54,111**	**$ 113,889**	**$ 408,007**	**$ 525,156**	**$ 2,419,524**	**100.00%**

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT					LIMITED COURTS		
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**Limited Jurisdiction ALL**	**GRAND TOTAL**	**PERCENT**
REGION 4-HELENA									
LEWIS & CLARK	DISTRICT	$ 544,891	$ 2,738	$ 11,592	$ 24,228	$ 104,278	$ -	$ 687,727	51.64%
EAST HELENA	CITY						10,730	10,730	0.81%
HELENA	CITY						254,274	254,274	19.09%
LEWIS & CLARK CTY	JP						62,642	62,642	4.70%
BROADWATER	DISTRICT	32,426	-	-	7,575	4,394	229	44,625	3.35%
TOWNSEND	CITY						6,079	6,079	0.46%
BROADWATER CTY	JP						33,060	33,060	2.48%
JEFFERSON	DISTRICT	156,831	3,480	2,659	1,283	13,584	26,630	204,467	15.35%
BOULDER	CITY						6,665	6,665	0.50%
WHITEHALL	CITY						272	272	0.02%
JEFFERSON CTY	JP						21,188	21,188	1.59%
REGION 4		**$ 734,149**	**$ 6,218**	**$ 14,252**	**$ 33,085**	**$ 122,257**	**$ 421,769**	**$ 1,331,730**	**100.00%**

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT					LIMITED COURTS		
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**Limited Jurisdiction ALL**	**GRAND TOTAL**	**PERCENT**
REGION 5-BUTTE									
SILVER BOW	DISTRICT	$ 327,397	$ 753	$ 10,968	$ 21,570	$ 98,461	$ -	$ 459,148	31.11%
BUTTE	CITY						79,849	79,849	5.41%
SILVER BOW CTY	JP 1						44,920	44,920	3.04%
BEAVERHEAD	DISTRICT	95,780	2,485	2,611	3,803	20,858	-	125,537	8.51%
DILLON	CITY						65,540	65,540	4.44%
LIMA	CITY						-	-	0.00%
BEAVERHEAD CTY	JP						37,979	37,979	2.57%
MADISON	DISTRICT	44,843	3,112	1,492	1,046	3,914	-	54,407	3.69%
ENNIS	CITY						7,250	7,250	0.49%
MADISON CTY	JP						80,726	80,726	5.47%
POWELL	DISTRICT	239,607	450	3,011	98	10,024	-	253,190	17.15%
DEER LODGE	CITY						10,501	10,501	0.71%
POWELL CTY	JP						15,735	15,735	1.07%
DEER LODGE	DISTRICT	86,736	389	4,719	2,782	43,663	187	138,476	9.38%
ANACONDA	CITY						-	-	0.00%
DEER LODGE CTY	JP						63,343	63,343	4.29%
GRANITE	DISTRICT	28,326	-	219	-	5,603	-	34,147	2.31%
DRUMMOND	CITY						-	-	0.00%
PHILIPSBURG	CITY						-	-	0.00%
GRANITE CTY	JP						5,163	5,163	0.35%
REGION 5		**$ 822,688**	**$ 7,189**	**$ 23,021**	**$ 29,298**	**$ 182,522**	**$ 411,194**	**$ 1,475,912**	**100.00%**

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT					LIMITED COURTS		
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**Limited Jurisdiction ALL**	**GRAND TOTAL**	**PERCENT**
REGION 6-HAVRE									
PHILLIPS	DISTRICT	$ 15,295	$ 3,760	$ 4,602	$ 6,955	$ 8,356	$ -	$ 38,967	5.12%
MALTA	CITY						3,462	3,462	0.45%
PHILLIPS CTY	JP						5,620	5,620	0.74%
HILL	DISTRICT	214,287	1,655	5,072	30,080	22,219	-	273,313	35.88%
HAVRE	CITY						65,531	65,531	8.60%
HILL CTY	JP						57,421	57,421	7.54%
CHOTEAU	DISTRICT	44,469	-	-	4,470	-	-	48,939	6.42%
FT BENTON	CITY						3,748	3,748	0.49%
BIG SANDY	CITY						-	-	0.00%
CHOTEAU CTY	JP						15,496	15,496	2.03%
VALLEY	DISTRICT	75,041	1,584	6,268	3,075	42,491	-	128,459	16.86%
FT PECK	CITY						-	-	0.00%
GLASGOW	CITY						19,221	19,221	2.52%
NASHUA	CITY						-	-	0.00%
VALLEY CTY	JP						8,828	8,828	1.16%
BLAINE	DISTRICT	39,279	241	471	14,356	3,071	-	57,417	7.54%
HARLEM	CITY						5,879	5,879	0.77%
CHINOOK	CITY						1,500	1,500	0.20%
BLAINE CTY	JP						16,717	16,717	2.19%
LIBERTY	DISTRICT	8,437	-	-	-	-	-	8,437	1.11%
CHESTER	CITY						-	-	0.00%
LIBERTY CTY	JP						2,841	2,841	0.37%
REGION 6		**$ 396,808**	**$ 7,240**	**$ 16,413**	**$ 58,936**	**$ 76,136**	**$ 206,264**	**$ 761,796**	**100.00%**

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT					LIMITED COURTS		
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**Limited Jurisdiction ALL**	**GRAND TOTAL**	**PERCENT**
REGION 7-LEWISTOWN									
FERGUS	DISTRICT	$ 93,061	$ 3,064	$ 26,883	$ 22,350	$ 32,140	$ -	$ 177,497	40.32%
LEWISTOWN	CITY						17,798	17,798	4.04%
FERGUS CTY	JP						19,439	19,439	4.42%
MUSSELLSHELL	DISTRICT	116,737	1,016	-	8,746	21,923	-	148,422	33.71%
MELSTONE	CITY						-	-	0.00%
ROUNDUP	CITY						5,989	5,989	1.36%
MUSSELLSHELL CTY	JP						9,454	9,454	2.15%
JUDITH BASIN	DISTRICT	6,352	-	763	127	-	-	7,242	1.65%
HOBSON	CITY						-	-	0.00%
STANFORD	CITY						-	-	0.00%
JUDITH BASIN CTY	JP						7,894	7,894	1.79%
WHEATLAND	DISTRICT	20,932	655	482	1,072	-	-	23,140	5.26%
HARLOWTON	CITY						581	581	0.13%
WHEATLAND CTY	JP						4,094	4,094	0.93%
MEAGHER	DISTRICT	6,051	218	-	105	54	-	6,428	1.46%
W.S.SPRING	CITY						1,120	1,120	0.25%
MEAGHER CTY	JP						3,699	3,699	0.84%
GOLDEN VALLEY	DISTRICT	3,551	-	-	-	645	-	4,196	0.95%
LAVINA	CITY						-	-	0.00%
RYEGATE	CITY						-	-	0.00%
GOLDEN VALLEY CTY	JP						2,359	2,359	0.54%
PETROLEUM	DISTRICT	589	-	-	-	-	-	589	0.13%
WINNETT	CITY						-	-	0.00%
PETROLEUM CTY	JP						291	291	0.07%
REGION 7		**$ 247,271**	**$ 4,953**	**$ 28,127**	**$ 32,399**	**$ 54,762**	**$ 72,717**	**$ 440,231**	**100.00%**

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT					LIMITED COURTS		
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**Limited Jurisdiction ALL**	**GRAND TOTAL**	**PERCENT**
REGION 8-BOZEMAN									
GALLATIN	DISTRICT	$ 710,794	$ 7,889	$ 24,138	$ 59,333	$ 210,387	$ -	$ 1,012,540	52.87%
BELGRADE	CITY						71,983	71,983	3.76%
MANHATTAN	CITY						4,250	4,250	0.22%
THREE FORKS	CITY						8,811	8,811	0.46%
W.YELLOW	CITY						11,934	11,934	0.62%
GALLATIN CTY	JP						153,099	153,099	7.99%
BOZEMAN	MC						319,287	319,287	16.67%
SWEET GRASS	DISTRICT	7,839	-	116	377	2,596	-	10,928	0.57%
BIG TIMBER	CITY						6,038	6,038	0.32%
SWEET GRASS CTY	JP						21,394	21,394	1.12%
PARK	DISTRICT	106,151	2,559	3,103	6,962	70,814	-	189,589	9.90%
LIVINGSTON	CITY						63,983	63,983	3.34%
PARK CTY	JP						41,410	41,410	2.16%
REGION 8		**$ 824,784**	**$ 10,449**	**$ 27,356**	**$ 66,672**	**$ 283,796**	**$ 702,190**	**$ 1,915,247**	**100.00%**

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT					LIMITED COURTS		
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**Limited Jurisdiction ALL**	**GRAND TOTAL**	**PERCENT**
REGION 9-BILLINGS									
YELLOWSTONE	DISTRICT	$ 1,267,363	$ 31,476	$ 24,867	$ 101,156	$ 493,763	$ -	$ 1,918,624	54.21%
LAUREL	CITY						114,356	114,356	3.23%
YELLOWSTONE CTY	JP						254,000	254,000	7.18%
BILLINGS	MC						540,348	540,348	15.27%
CARBON	DISTRICT	73,857	-	372	1,942	35,665	-	111,837	3.16%
BEARCREEK	CITY						-	-	0.00%
BRIDGER	CITY						7,088	7,088	0.20%
FROMBERG	CITY						14,252	14,252	0.40%
JOLIET	CITY						12,159	12,159	0.34%
RED LODGE	CITY						42,975	42,975	1.21%
CARBON CTY	JP						45,614	45,614	1.29%
BIG HORN	DISTRICT	127,739	-	3,675	9,945	76,070	-	217,428	6.14%
HARDIN	CITY						74,812	74,812	2.11%
BIG HORN CTY	JP						57,005	57,005	1.61%
STILLWATER	DISTRICT	63,140	421	-	6,152	365	-	70,078	1.98%
COLUMBUS	CITY						6,703	6,703	0.19%
STILLWATER CTY	JP						52,173	52,173	1.47%
REGION 9		**$ 1,532,099**	**$ 31,897**	**$ 28,914**	**$ 119,195**	**$ 605,863**	**$ 1,221,485**	**$ 3,539,452**	**100.00%**

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT					LIMITED COURTS		
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**Limited Jurisdiction ALL**	**GRAND TOTAL**	**PERCENT**
REGION 10-GLENDIVE									
DAWSON	DISTRICT	$ 77,869	$ -	$ 4,995	$ 7,642	$ 69,449	$ -	$ 159,956	25.43%
GLENDIVE	CITY						52,287	52,287	8.31%
DAWSON CTY	JP						21,136	21,136	3.36%
ROOSEVELT	DISTRICT	46,945	113	699	-	17,001	-	64,757	10.29%
CULBERTSON	CITY						-	-	0.00%
POPLAR	CITY						2,294	2,294	0.36%
WOLFPOINT	CITY						3,244	3,244	0.52%
ROOSEVELT CTY	JP						9,326	9,326	1.48%
RICHLAND	DISTRICT	87,677	768	3,846	8,683	18,786	-	119,761	19.04%
FAIRVIEW	CITY						9,106	9,106	1.45%
SIDNEY	CITY						18,783	18,783	2.99%
RICHLAND CTY	JP						31,686	31,686	5.04%
SHERIDAN	DISTRICT	16,630	152	219	727	3,446	-	21,174	3.37%
PLENTYWOOD	CITY						1,880	1,880	0.30%
SHERIDAN CTY	JP						2,786	2,786	0.44%
DANIELS	DISTRICT	333	-	-	-	9,469	-	9,802	1.56%
SCOBEY	CITY						1,761	1,761	0.28%
DANIELS CTY	JP						86	86	0.01%
McCONE	DISTRICT	26,355	-	1,156	71	-	-	27,582	4.38%
CIRCLE	CITY						-	-	0.00%
MCCONE CTY	JP						12,036	12,036	1.91%
PRAIRIE	DISTRICT	38,623	106	258	132	12,516	-	51,636	8.21%
TERRY	CITY						-	-	0.00%
PRAIRIE CTY	JP						4,355	4,355	0.69%
WIBAUX	DISTRICT	2,827	-	433	160	229	-	3,648	0.58%
WIBAUX	CITY						-	-	0.00%
WIBAUX CTY	JP						20	20	0.00%
REGION 10		**$ 297,259**	**$ 1,139**	**$ 11,606**	**$ 17,415**	**$ 130,896**	**$ 170,787**	**$ 629,102**	**100.00%**

Montana Public Defender Commission
Report to the Governor, Legislature and Supreme Court
Expenditure Data-Program 1
[47-1-105 (9) (f) (g) (k)]
FY 2011

		DISTRICT COURT					LIMITED COURTS		
Court	**Type**	**Criminal**	**Guardianship**	**Involuntary Commitment**	**Juvenile**	**Neglect**	**Limited Jurisdiction ALL**	**GRAND TOTAL**	**PERCENT**
REGION 11-MILES CITY									
POWDER RIVER	DISTRICT	$ 8,492	$ 970	$ -	$ 2,080	$ 5,281	$ -	$ 16,823	2.45%
BROADUS	CITY						-	-	0.00%
POWDER RIVER CTY	JP						10,319	10,319	1.50%
CUSTER	DISTRICT	199,629	1,515	2,817	48,219	54,090	-	306,269	44.63%
MILES CITY	CITY						34,301	34,301	5.00%
MILES CITY	JP						-	-	0.00%
CUSTER CTY	JP						24,593	24,593	3.58%
ROSEBUD	DISTRICT	114,620	658	1,481	6,550	43,598	-	166,908	24.32%
COLSTRIP	CITY						23,951	23,951	3.49%
FORSYTH	CITY						1,284	1,284	0.19%
ROSEBUD CTY	JP						38,043	38,043	5.54%
TREASURE	DISTRICT	1,173	-	-	3,701	730	-	5,605	0.82%
HYSHAM	CITY						847	847	0.12%
TREASURE CTY	JP						1,420	1,420	0.21%
FALLON	DISTRICT	23,080	94	-	-	13,633	-	36,807	5.36%
BAKER	CITY						11,606	11,606	1.69%
FALLON CTY	JP						5,181	5,181	0.75%
CARTER	DISTRICT	-	-	-	-	-	-	-	0.00%
EKALAKA	CITY						-	-	0.00%
CARTER CTY	JP						304	304	0.04%
GARFIELD	DISTRICT	1,777	203	-	-	-	-	1,979	0.29%
JORDAN	CITY						-	-	0.00%
GARFIELD CTY	JP						61	61	0.01%
REGION 11		**$ 348,771**	**$ 3,439**	**$ 4,298**	**$ 60,551**	**$ 117,332**	**$ 151,909**	**$ 686,301**	**100.00%**

OFFICE OF THE STATE PUBLIC DEFENDER

BRIAN SCHWEITZER
GOVERNOR

RANDI HOOD
CHIEF PUBLIC DEFENDER

STATE OF MONTANA

Phone: (406) 496-6080
Fax: (406) 496- 6098

44 WEST PARK STREET
BUTTE, MONTANA 59701

September 30, 2011

Legislative Finance Committee
c/o Representative Jon Sesso, Chairman
P.O. Box 201711
Helena, MT 59620-1711

Dear Chairman Sesso and Members of the Legislative Finance Committee:

Enclosed with this letter are three reports that are due from the Office of the State Public Defender to the Legislative Finance Committee by September 30, 2011 as per Title 47-1-201 (9) (a) and (b).

The first report provides for FY 2011 the number of cases opened, the number of cases closed, the number of cases that remain open and active, and the number of cases that remain open but are inactive. This is as per Title 47-1-201 (9) (a).

The second report provides for FY 2011 the number of days between case openings and closings for each case type. This is as per Title 47-1-201 (9) (a).

The third report provides for FY 2011 the amount of funds collected as reimbursements 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. This is as per Title 47-1-201 (9) (b).

Please contact me if you need any clarification of this information at 406-496-6080.

Sincerely,

Randi M. Hood
Chief Public Defender

cc: Richard E. Gillespie, Chair, Public Defender Commission
Amy Carlson, Legislative Fiscal Analyst
Greg DeWitt, Legislative Fiscal Division
Brent Doig, Office of Budget and Program Planning

OFFICE OF THE STATE PUBLIC DEFENDER
CASES OPENED AND CLOSED IN FY 2011
ACTIVE AND INACTIVE CASES REMAINING OPEN
TITLE 47-1-201 (9)(a)

		CASES
6/30/2010 Beg. Balance		18,051
FY 2011	Cases Opened	27,830
FY 2011	Cases Closed	(25,098)
6/30/2010 Ending Balance		20,783

Active Cases	17,469
Inactive Cases	3,314
	20,783

OFFICE OF THE STATE PUBLIC DEFENDER
AVERAGE NUMBER OF DAYS OPEN BY CASE TYPE
CASES CLOSED DURING FY 2011
TITLE 47-1-201 (9)(a)

CASE TYPE NAME	CODE	2011 AVG. DAYS OPEN
Criminal	DC	239
Guardianship	DG	294
Involuntary Commitment	DI	56
Juvenile	DJ	165
Dependent & Neglect	DN	327
Courts of Limited Jurisdiction	LC	168

Office of the State Public Defender
Judgments,Assessments and
Collections of Legal Fees
Title 47-1-201(9)(b)

	FY 2007	FY 2008	FY 2009	FY 2010	FY2011
JUDGMENTS PRE SB 263 AND OPD ASSESSMENTS					
Balance of A/R @ Beg of Year	$ -	$ 36,333	$ 131,263	$ 317,404	$ 292,318
Assessments by Year	44,351	129,749	218,714	14,371	20,475
Total Collections by Year	(8,018)	(34,818)	(32,574)	(39,456)	(30,845)
# of Clients represented by Collections Total	20	81	228	242	202
Total Balance of A/R @ End of Year **	$ 36,333	$ 131,263	$ 317,404	$ 292,318	$ 281,948
Total # of Clients with open A/R @ Beg of Year	-	66	310	729	689
# of Clients Assessments by Year	74	281	480	14	18
Total # of Clients paid in full during fiscal year	(8)	(37)	(61)	(54)	(38)
Total # of Clients with open A/R @ End of Year	66	310	729	689	669
SENATE BILL 263					
Balance of A/R @ Beg of Year	$ -	$ -	$ -	$ -	293,997
Assessments by Year	-	-	-	315,214	417,503
Total Collections by Year	-	-	-	(21,218)	(93,149)
# of Clients represented by Collections Total	-	-	-	224	886
Total Balance of A/R @ End of Year **	$ -	$ -	$ -	$ 293,997	$ 618,350
Total # of Clients with open A/R @ Beg of Year	-	-	-	-	1,033
# of Clients Assessments by Year	-	-	-	1,140	1,584
Total # of Clients paid in full during fiscal year	-	-	-	(107)	(411)
Total # of Clients with open A/R @ End of Year	-	-	-	1,033	2,206
TOTAL ALL JUDGMENTS AND ASSESSMENTS INCLUDING SENATE BILL 263					
Balance of A/R @ Beg of Year	$ -	$ 36,333	$ 131,263	$ 317,404	$ 586,315
Assessments by Year	44,351	129,749	218,714	329,585	437,977
Total Collections by Year **	(8,018)	(34,818)	(32,574)	(60,674)	(123,994)
# of Clients represented by Collections Total	20	81	228	466	1,088
Total Balance of A/R for Reporting Year **	$ 36,333	$ 131,263	$ 317,404	$ 586,315	$ 900,298
Total # of Clients with open A/R @ Beg of Year	-	66	310	729	1,722
# of Clients Assessments by Year	74	281	480	1,154	1,602
Total # of Clients paid in full during fiscal year	(8)	(37)	(61)	(161)	(449)
Total # of Clients with open A/R @ End of Year	66	310	729	1,722	2,875

Policies and Procedures

100 Public Defender Operations

105 Determination of Indigence
106 Closing Cases
107 Client File Destruction
108 Case Status Reporting/Review
110 Client Grievance Procedure
114 Management Caseload Limitations
115 Assigning Cases
116 Conflict Cases
117 Caseload Management
118 Mentoring
119 Determining Conflicts of Interest
120 Outside Employment
121 Staff Investigators
125 Pre-Approval of Client Costs
130 Contract Counsel
131 Contract Mental Health Services
132 Contract Investigative Services
135 Proficiency Determination, Contract Counsel
136 Standards Compliance
140 Witness Fees
150 Major Crimes Unit
170 Lead Attorneys
180 Incentive Awards

200 General Operations

205 Accounting Reports
210 Caseload Data Collection
215 JustWare Case Management Program
220 Vehicle Management
225 Cellular Devices and Services
230 Media
235 Public Participation

300 Appellate Defender Operations

301 Management of the Appellate Defender Office

500 Human Resources

501 Telephone Use
502 Computer Use
503 Vehicle Use
504 Reimbursement for Personal Vehicle Use
505 Fuel Card Use
510 Overtime and Comp Time: Non-Exempt Employees
511 Alternative Work Schedule
515 Performance Evaluations
525 Pro Bono Legal Services
530 Workplace Safety
531 Drug-Free Workplace
535 Release of Information
540 Broadband Pay

Office of the State Public Defender
Administrative Policies

Subject: **Determination of Indigence**	Policy No.: **105**
Title **47**	Pages: **7**
Section: **1-111**	Last Review Date: **6-15-10**
Effective Date: **7-1-06**	Revision Date: **6-15-10**

1.0 POLICY

1.1 The Office of the State Public Defender (OPD) will provide public defender services to applicants that qualify under 47-1-111, MCA.

1.2 When a court orders OPD to assign counsel, the office shall immediately assign counsel prior to a determination of indigence.

2.0 PREPARATION AND DELIVERY OF INDIGENCE FORM

2.1 All district and limited courts will send appointment forms to Regional Public Defender Offices. The appointment form is provided by the Central Office, and provides information about the applicant for public defender services.

2.2 The Central Office shall provide the Regional Public Defender Offices with indigence questionnaire (IQ) forms as prepared by OPD and approved by the Montana Public Defender Commission.

2.3 Regional Deputy Public Defenders or their staff will deliver forms to all jails and courthouses and any other venue deemed appropriate.

2.4 An applicant for public defender services will be assigned provisional counsel prior to the determination of the applicant's indigence.

2.5 An applicant for public defender services must complete the IQ form, sign it, and return it to the Regional Public Defender Office within ten days of appointment. The office will move to rescind the appointment if the required materials are not provided.

2.5.1 An applicant may be required to provide documentation of income, including pay stubs and/or tax returns.

2.6 An Indigence Determination Specialist (IDS) will aid any applicant requesting assistance. Information on the IQ form is confidential.

2.6.1 Each Regional Deputy Public Defender will appoint a support staff person as IDS for the region, and a designated staff backup if appropriate. The Central Office will maintain a list identifying the IDS and backup IDS for each region.

2.6.2 The Regional Deputy Public Defender will not act as the IDS.

3.0 DETERMINATION OF INDIGENCE

3.1 The IDS will review the IQ form, fill in any missing information, and assure that the IQ form is signed by the applicant.

3.2 The IDS will determine eligibility for services based on:

3.2.1 Gross household income falls within the Gross Income Guidelines (Attachment A), which are based on the federal poverty level; or

3.2.2 Retaining private counsel would result in substantial hardship to the applicant or his/her household. Both disposable income (gross household income less expenses) and assets will be reviewed when qualifying an applicant under this section. The crime charged shall also be a factor considered in the determination.

3.3 If the IDS has a question regarding an applicant's eligibility for public defender services, the Regional Deputy Public Defender will make a ruling.

4.0 ELIGIBILITY VERIFICATION

4.1 The IDS will verify income and assets for all applicants seeking qualification under 3.2.2. Verification may include requiring pay stubs and/or tax returns and doing a property records search.

4.2 The IDS will verify income and assets for every tenth applicant seeking qualification under 3.2.1.

4.3 New or additional information regarding an applicant's income or assets may result in a redetermination of eligibility.

5.0 QUALIFIED APPLICANTS

5.1 If the applicant is eligible for public defender services, a written notice of approval shall be sent to the applicant and the appropriate public defender office or contract attorney.

5.2 The court will be advised that the person has qualified for public defender representation.

6.0 DISQUALIFIED APPLICANTS

6.1 If the applicant does not qualify for public defender services, a written notice of disqualification and notice of the right to have the court review the finding will be sent to the applicant.

6.2 The Regional Deputy Public Defender shall immediately notify the court of record when it is determined that an applicant does not qualify for public defender services (refer to Attachment B, Standard Letter of Notification of Denial, and Attachment C, Motion to Rescind Appointment).

6.3 The judge must rescind the appointment of counsel when notified that an applicant does not qualify for public defender services.

6.4 A judge may overrule a determination that an applicant is not eligible for public defender services. If overruled, OPD will provide public defender services to the applicant.

7.0 RECOVERY OF ATTORNEY FEES BY OPD

7.1 If an applicant is found guilty by plea or trial, the Regional Deputy Public Defender or his/her designee shall determine the amount owed for public defender services.

7.2 If the defendant has some ability to pay, then in determining both the amount and method of payment any payment plan must take into consideration the financial resources of the defendant and the nature of the burden that payment of costs will impose.

7.3 The hourly rate for public defender services is set at $67.00 plus third-party costs;

7.3.1 The amount of time spent on a case shall conform to the amount of time reported on the public defender's timesheet.

7.3.2 A copy of the bill along with notification of where payments shall be made will be provided to the client and placed in the client's file.

7.4 If the person is acquitted or the charges are dismissed, no reimbursement will be sought.

8.0 CLOSING

Questions about this policy should be directed to the OPD Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

ATTACHMENT A

GROSS INCOME GUIDELINES

2011

Number of Persons in Household	Gross Household Income Guidelines
1	$14,484
2	$19,564
3	$24,645
4	$29,725
5	$34,806
6	$39,887
7	$44,967
8	$50,048
Each Additional Member Add:	$5,081

ATTACHMENT B

STANDARD LETTER OF NOTIFICATION OF DENIAL

Name
Regional Deputy Public Defender
Region (#)
(Address)

(Date)

(Client Name)
(Client Address)

Dear (Client):

Please be advised that in applying the criteria outlined in Section 47-1-111 MCA to the information you provided on your indigency questionnaire, I have determined that you do not qualify for public defender services. The Office of the State Public Defender will ask the Court to rescind the appointment of a public defender. You must hire a private attorney within 10 days of this letter or represent yourself.

Your next court appearance is scheduled for (date) (time) in _____ Court.

If you do not agree with this determination, you have the right to ask the judge in your case to review your financial status. If you do ask for review, we are required to make your indigency questionnaire available to the judge and the prosecutor for inspection.

Sincerely,

Regional Deputy Public Defender
Region (#)

ATTACHMENT C

MOTION TO RESCIND APPOINTMENT OF PUBLIC DEFENDER

Name
Regional Deputy Public Defender
Region (#)
(Address)

Telephone:

MONTANA (XXXXX) JUDICIAL DISTRICT COURT, (XXXX) COUNTY

STATE OF MONTANA, Plaintiff, v. _____, Defendant.	)))))))))))	Cause No. _____ MOTION TO RESCIND APPOINTMENT OF PUBLIC DEFENDER

COMES NOW, (RDPD), attorney for Defendant, (Name), and hereby moves the Court to rescind the appointment of the Office of the State Public Defender because the Defendant does not meet the criteria set out in Section 47-1-111, MCA, to be eligible for representation by the Office of the State Public Defender.

The Defendant has been notified of this determination as well as his right to ask this Court to review the determination.

DATED this _____day of _____, 200__.

_____
(Name)
Regional Deputy Public Defender
Region (#)

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed a true and accurate copy of the foregoing MOTION TO RESCIND APPOINTMENT, postage prepaid, by U.S. mail, to the following:

Dated this _____day of _____, 200___.

_____

Office of the State Public Defender
Administrative Policies

Subject: **Closing Cases**	Policy No.: **106**
Title	Pages: **2**
Section:	Last Review Date: **02/20/09**
Effective Date: **10/01/07**	Revision Date: **04/28/09**

1.0 POLICY

The Office of the State Public Defender has established the following procedures for closing cases.

2.0 PROCEDURES

2.1 CRIMINAL CASES

2.1.1 Felony criminal cases shall be closed not later than:

2.1.2.1 After dismissal; or

2.1.2.2 After receipt of the official judgment and the client has been advised of his appeal and sentence review rights.

2.1.2 Misdemeanor criminal cases shall be closed:

2.1.2.1 After dismissal; or

2.1.2.2 After sentencing.

2.1.3 Criminal cases shall be deemed inactive:

2.1.2.1 When the client is missing and there is no real expectation that s/he will turn up in a few weeks (true absconders).

2.1.2.2 When the client is serving time in another state and there is not expectation that the prosecution will do anything until the client's release.

2.2 YOUTH COURT CASES

2.2.1 Youth court cases shall be closed:

2.2.2.1 After dismissal; or

2.2.2.2 Upon receipt of the Order of Adjudication and the time for appeal has expired without an appeal being filed.

2.2.2 Youth court cases shall be deemed inactive:

2.2.2.1 When the client is missing and there is no real expectation that s/he will turn up in a few weeks (true absconders).

2.2.2.2 When the client is in placement out-of-state and there is not expectation that the prosecution will do anything until the client's release.

2.3 INVOLUNTARY COMMITMENT CASES

Involuntary commitment cases shall be closed:

2.3.1 After dismissal; or

2.3.2 After commitment and the time for appeal has expired without an appeal being filed.

2.4 INCAPACITATED PERSONS CASES

2.4.1 Incapacitated persons cases shall be closed:

2.4.1.1 After dismissal of the petition; or

2.4.1.2 Upon termination of the guardianship

2.4.2 Incapacitated persons cases shall be deemed inactive:

2.4.2.1 After the guardianship and/or conservatorship is granted, but yearly reporting by the guardian and/or conservator is ordered.

2.5 DEPENDENT/NEGLECT CASES

2.5.1 Dependent/neglect cases shall be closed:

2.5.1.1 After dismissal; or

2.5.1.2 After the relinquishment of parental rights by the client; or

2.5.1.3 After receipt of an Order Terminating Rights and the time for appeal has expired without an appeal being filed.

2.6 APPEALS OF ALL CASES

2.6.1 All appeal cases shall be closed after a decision by the Montana Supreme Court, and the time for a motion to reconsider has expired without the filing of said motion. If a motion for reconsideration is filed, the case shall be closed upon final decision pursuant to the motion.

2.6.2 Appeal cases shall be deemed inactive when awaiting the Court's decision.

2.7 SENTENCE REVIEW

Sentence review cases shall be closed after the decision of the Sentence Review Board has been issued and received.

3.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park
Butte, MT 59701
Phone: 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Client File Retention**	Policy No.: **107**
Title:	Pages: **3**
Section:	Last Review Date:
Effective Date: **3-15-10**	Revision Date: **03-10-11**

1.0 POLICY

1.1 All Office of the State Public Defender (OPD) client files are the property of the State of Montana and disposition of files must follow the rules established by the Montana Secretary of State.

1.2 OPD has established the following procedures for disposition of client files. This policy applies to all client files, whether maintained by OPD offices or by contract attorneys.

1.3 This retention schedule applies to investigative files that are maintained separately from the case file.

1.4 This retention schedule applies to mental health consultation files that are maintained separately from the case file.

2.0 PROCEDURE

2.1 All client files will be retained by calendar year for the appropriate retention period by case type and disposition as described below.

2.2 Destruction will occur in January or February for all client files that fulfilled the retention period as of December of the prior year. The Central Office will notify all offices when the destruction request for that year has been approved by the Secretary of State.

2.3 Paper files will be shredded. Duplicate electronic files will be deleted.

3.0 CRIMINAL CASES

3.1 FELONY CASE FILES

3.1.1 DEFERRED SENTENCES
Destroy eight years after judgment.

3.1.2 SUSPENDED SENTENCES
Destroy after completion of the sentence including any suspended portion. If the sentence is for a period of commitment followed by a suspended sentence, the file will be destroyed after completion of the suspended portion of the sentence.

3.1.3 COMMITMENT SENTENCES
If the sentence is one of commitment *with no suspended portion*, destroy five years after the entry of judgment, or upon completion of sentence if earlier.

3.1.4 Individual offices will retain the file, within their discretion, when:

3.1.4.1 The file is that of a client whom the office believes will be a client again; or

3.1.4.2 The file contains briefs or pleadings that may be of use in new cases but have not yet been entered into a brief bank.

3.1.5 If the client dies before sentencing, the file will be retained for three years.

3.2 MISDEMEANOR CASE FILES
Destroy three years following judgment unless there is a pending Order to Show Cause, Petition to Revoke or warrant relating to the case.

3.3 JUVENILE CASE FILES
Destroy when the youth reaches the age of 21, unless the Court has extended jurisdiction to the age of 25 years.

3.4 EXTRADITION CASE FILES
Destroy three years following the date of decision.

4.0 POST-JUDGMENT

4.1 APPELLATE CASES
Destroy ten years after the Supreme Court opinion is issued.

4.2 POSTCONVICTION RELIEF
Destroy three years following the date of decision, after notification to the client that the file will be destroyed.

4.3 SENTENCE REVIEW
Destroy three years following the date of decision.

4.4 PETITIONS FOR RELIEF OF DUTY TO REGISTER AS A VIOLENT OR SEX OFFENDER
Destroy three years following the date of decision.

5.0 CIVIL CASES

5.1 DEPENDENT/NEGLECT CASE FILES
Destroy when:

5.1.1 The case has been closed for five years; or

5.1.2 The concerned children have reached the age of 18; or

5.1.3 The children have been adopted.

5.2 INVOLUNTARY COMMITMENT OR GUARDIANSHIP CASE FILES
Destroy five years after the date of commitment.

6.0 OTHER

6.1 INDIGENCY DETERMINATION AND APPOINTMENT FILES
Destroy three years following the appointment.

6.2 RESCINDED APPOINTMENT
Destroy one year following rescission.

6.3 SUBSTITUTION OF COUNSEL
Destroy three years following the substitution.

6.4 DISMISSED CASE FILES
Destroy three years following dismissal.

6.5 ACQUITTED CASE FILES
Destroy one year after judgment.

7.0 DECEASED CLIENTS

7.1 If a client dies prior to sentencing, the file will be destroyed three years after the case is closed.

7.2 If a client dies after sentencing, the retention period is equal to the defined retention period based on case type and disposition.

8.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park, Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Case Status Reporting/Review**	Policy No.: **108**
Title	Pages: **3**
Section:	Last Review Date:
Effective Date: **11/01/07**	Revision Date: **11/02/2009**

1. POLICY

The Office of the State Public Defender (OPD) has established the following procedures to provide uniform case data and to enable the comparison of case assignments across the public defender system.

2. ENTRY IN CASE MANAGEMENT SYSTEM

All OPD cases are to be entered into the case management database using the following definitions and procedures.

2.1. Standard Definitions

Standard definitions of Case Status and Case Type are defined in Attachment A.

2.2. Procedures

2.2.1. All cases must first be entered with an opened status before they are put into a closed or inactive status. This is necessary to account for all cases processed through OPD.

2.2.2. All cases must be assigned an attorney. If the attorney is undetermined, elect “Attorney Pending” in the database until a determination of assignment has been made.

2.2.3. Cases are to be opened on a daily basis. If the opening of a case is delayed, the “Receive Date” must accurately reflect the intake date. All opened cases for a particular month must be entered into the database within five days of month end.

2.2.4. Each OPD attorney employee (FTE) shall close cases in conformity with this policy on a weekly basis. Refer to Policy 106, Closing Cases, for criteria to use in determining when to close a case.

2.2.5. All closures must be entered into the database within 10 days of month end. It is essential that the “Date Closed” entered in the database reflect the actual date of closure, NOT the date of data entry.

3.0 CASE STATUS REVIEW

The status of each case must be reviewed and certified to the Central Office on a regular basis.

3.1. Monthly Review

3.1.1 All FTE attorneys must review their assigned open and inactive cases within the first week of the month using the Open Case by Attorney Report.

3.1.2 Changes to case status must be identified on this report, and provided to an assigned support staff member in the office, so that all changes are updated in the database within 10 days of month end.

3.1.3 Support staff will initial each change made to case status, certifying that the database has been updated, and/or that notations were made to the case status notes on the file.

3.1.4 The aging reports will be maintained by each attorney on a monthly basis.

3.2. Quarterly Review

3.2.1 On a quarterly basis, a reviewing manager (managing attorney and/or Regional Deputy Public Defender) must meet with each FTE Attorney to review their caseload. This review is intended to ensure that the status of each case is current in the database.

3.2.2 The reviewing manager will certify that this review process is complete by signing the report (Open Case by Attorney Report) and scanning a copy to the Central Office.

4.0 CLOSING

Questions about this policy should be directed to the State Office at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park
Butte, MT 59701
Phone: 406-496-6080

CASE STATUS

OPD has defined three standard case statuses to be used statewide: OPEN, CLOSED, and INACTIVE (the only valid statuses begin with all caps).

1. **OPEN CASE STATUS**

   OPEN – FTE (All cases assigned to an OPD-employed attorney)
   OPEN – Conflict (Conflict case assigned to a contract attorney)
   OPEN – Contract (Non-conflict case assigned to a contract attorney)
   OPEN – Sentence Review
   OPEN – Warrant (Actively being worked on)
   OPEN – Remanded (Includes cases from Supreme Court or District Court)
   OPEN – Appeal (ADO use only—Supreme Court appeals)

2. **CLOSED CASE STATUS**

   CLOSED – Denied (Case not accepted by OPD)
   CLOSED – Dismissed
   CLOSED – Convicted Trial
   CLOSED – Convicted Plea
   CLOSED – Adjudication
   CLOSED – Acquitted
   CLOSED – Private Counsel Elected
   CLOSED – Contract/Conflict (Outside Counsel)
   CLOSED – Awaiting Judgment
   CLOSED – Other
   CLOSED – Commitment (DI Cases)
   CLOSED – Rights Terminated (DN)
   CLOSED – Relinquished (DN)
   CLOSED – Consent Decree (DJ Cases)
   CLOSED – Affirmed (ADO use only)
   CLOSED – Granted (ADO use only)
   CLOSED – Remanded (ADO use only)

3. **INACTIVE CASE STATUS**

   INACTIVE – Warrant (Client has absconded)
   INACTIVE – Deferred (Includes both deferred prosecution and deferred imposition)
   INACTIVE – 5 Justice Panel (ADO use only)
   INACTIVE – Submitted to EB (ADO use only)
   INACTIVE – Guardian (DG)

CASE TYPE

Case types have been defined to include all courts serviced by OPD. The naming convention is based on the cause numbers issued by the courts.

CR	Lower Court Criminal Complaint
DA	Supreme Court Appeal (ADO only)
DC	District Court
DD	Developmentally Disabled
DG	Guardianship
DI	Involuntary Mental Health Commitment
DJ	Youth Court
DN	Abuse and Neglect
DV	Post Conviction Relief
OP	Writ
TK	Lower Court Ticket

Office of the State Public Defender
Administrative Policies

Subject: **Client Grievance Procedure**	Policy No.: **110**
Title: **47**	Pages: **2**
Section: **1-202(10)**	Last Review Date: **12/22/10**
Effective Date: **7/1/06**	Revision Date: **01/26/11**

1.0 POLICY

It is the policy of the Office of the State Public Defender to address client grievances in an efficient, timely, and courteous manner. The following procedures for are established for clients alleging grievance against the public defender attorney assigned to the client's case. For purposes of this policy the grieving client is referred to as the complainant.

2.0 PROCEDURE

2.1 WRITTEN COMPLAINT

Any client alleging grievance against the public defender attorney assigned to the client's case shall complete a written statement of grievance and submit it to the appropriate regional deputy public defender. All complaints must be submitted only by the client or by an individual that has the legal authority to act on behalf of the client.

2.2 ACTION ON RECEIPT OF WRITTEN COMPLAINT

Upon receipt of a signed, written complaint against a public defender, the regional deputy shall take the following actions:

A. Provide the respondent attorney with a complete copy of the complaint and follow up statement, if any;

B. Carefully review the complaint; and

C. Consult with the respondent attorney to discuss appropriate action to be taken.

In addition, the regional deputy may choose to contact the complainant (either in person or via telephone call) for the purpose of obtaining further clarification regarding the facts alleged.

2.3 DECISION BY REGIONAL DEPUTY PUBLIC DEFENDER

Following step 2.2, the regional deputy shall make an initial decision regarding action, if any, to be taken by the respondent attorney and shall, thereafter, advise the complainant of the decision.

2.4 DETERMINATION DENYING CHANGE OF COUNSEL; APPEAL PROCESS

A. **Failure of the Complaint to Set Forth Adequate Grounds for Change of Counsel**: If the regional deputy determines that the complaint fails to establish adequate grounds for change of counsel, the regional deputy

shall so advise the complainant. Any decision denying a complainant's request for change of attorney shall inform the complainant of the right to file a request for further review by the Grievance Review Officer for the Office of the State Public Defender, as designated by the Chief Public Defender.

B. **Appeal to Grievance Review Officer**: If the complainant disagrees with the decision of the regional deputy public defender, the complainant shall notify the regional deputy of that fact at the time the regional deputy notifies the complainant of the fact of denial. In such event, the regional deputy shall provide the grievance packet (containing a copy of the original complaint and a copy of the regional deputy's decision) to the Grievance Review Officer.

C. **Review and Decision by Grievance Review Officer**: The Grievance Review Officer shall issue a written decision either upholding the regional deputy's decision or reversing it with instructions to implement an immediate change of counsel in a timely manner. The Grievance Review Officer may, but is not required to, consult with the complainant prior to issuing the decision.

D. **Motion for Change of Counsel**: If the complainant decides, after proper notification from the Grievance Review Officer, that the complainant nonetheless wishes to pursue the grievance with the court of record, the Grievance Review Officer shall notify counsel of record in writing to file an appropriate motion.

2.5 DETERMINATION APPROVING CHANGE OF COUNSEL

Adequacy of the Complaint to Support Change of Counsel: If the regional deputy decides that the complaint does provide adequate grounds for change of counsel, the regional deputy shall immediately effectuate a substitution of counsel and shall advise the complainant, the attorney of record, new counsel, and the court. Reasons for the change shall be documented in the regional deputy's file but shall not be provided to the court, to new counsel, or to opposing counsel. The notice of substitution shall conform to standard pleadings of the jurisdiction.

3.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Management Caseload Limitations**	Policy No.: **114**
Title: **47**	Pages: **2**
Section: **1-215(2)(h)**	Last Review Date: **8-30-10**
Effective Date: **4-23-10**	Revision Date: **9-3-10**

1.0 POLICY

Pursuant to Section 47-1-215(2)(h), MCA, the following policy sets maximum caseloads for the Chief Public Defender, Chief Appellate Defender, Regional Deputy Public Defenders and Managing Attorneys. The policy is intended to serve the requirements of managers to maintain a caseload alongside the attorneys they supervise, while also providing effective management.

2.0 PROCEDURE

2.1 Maximum caseloads as are defined herein are intended to be strongly recommended while understanding that unusual circumstance in any office may make them unrealistic.

2.2 Maximum caseload limits are expressed in terms of hours per calendar year.

2.3 The maximum caseload limit for the Chief Public Defender is 300 hours.

- **2.3.1** Any trial work done shall be done as second chair.
- **2.3.2** In determining the hours attributable to the maximum caseload, time spent mentoring other public defenders is not included.

2.4 The maximum caseload limit for the Chief Appellate Defender is 1000 hours.

2.5 The maximum caseload limits for each Regional Deputy Public Defender are as follows:

2.5.1	Region 1	600 hours
2.5.2	Region 2	600 hours
2.5.3	Region 3	1000 hours
2.5.4	Region 4	1000 hours
2.5.5	Region 5	1000 hours
2.5.6	Region 6	1400 hours
2.5.7	Region 7	1400 hours
2.5.8	Region 8	1000 hours
2.5.9	Region 9	600 hours
2.5.10	Region 10	1400 hours
2.5.11	Region 11	1400 hours

2.6 The maximum caseload limits for each Managing Attorney are as follows:

2.6.1	Kalispell	1040 hours
2.6.2	Polson	1500 hours
2.6.3	Hamilton	1500 hours
2.6.4	Great Falls	1700 hours

2.7 The Chief Public Defender will monitor the caseloads of the Regional Deputy Public Defenders and the Regional Deputy Public Defenders will monitor the caseloads of the Managing Attorneys, where applicable. Caseloads will be monitored on a monthly basis, taking into consideration the following variables and any others relevant at the time:

2.7.1 Capabilities of the individual
2.7.2 Number of personnel supervised
2.7.3 Attorney vacancies
2.7.4 Management structure
2.7.5 Nature and status of cases being handled
2.7.6 Travel requirements
2.7.7 Extraordinary, temporary circumstances

3.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Assigning Cases**	Policy No.: **115**
Title **47**	Pages: **1**
Section: **1-202**	Last Review Date: **02/20/09**
Effective Date: **7/01/06**	Revision Date: **04/29/09**

1.0 POLICY

1.1. Upon the receipt of a Notice of Appointment of the Office of the State Public Defender, or receipt of a case in any other fashion, the following are the responsibilities of the Regional Deputy Public Defender:

A. When a contract attorney is being used:
   i. Determine whether the contract attorney is willing to be assigned to the case;
   ii. Prepare and file with the court from which the case comes, a notice of who will be the attorney of record;
   iii. Send a copy of the notice to the contract attorney who has agreed to handle the case;
   iv. Keep a permanent file of said notices;
   v. Maintain a database of appointments on a system determined by the Office of the State Public Defender.

B. When an attorney employed in a public defender office is being used:
   i. Submit the information concerning the case to the appropriate public defender office.

1.2. Upon the receipt of a case from the Regional Deputy Public Defender, the Managing Attorney in a public defender office will:

A. Assign the case to an attorney in the office;

B. Prepare and file with the court from which the case comes, a notice of who will be the attorney of record;

C. Maintain a database of appointments on a system determined by the Office of the State Public Defender.

2.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Conflict Cases**	Policy No.: **116**
Title: **47**	Pages: **1**
Section: **1-202**	Last Review Date: **02-20-09**
Effective Date: **5-11-07**	Revision Date: **04-29-09**

1.0 POLICY

The Office of the State Public Defender (OPD) has established the following procedures to ensure that when a case that is assigned to the office presents a conflict of interest for a public defender, the conflict is identified and handled appropriately and ethically.

2.0 PROCEDURE

2.1 When a case is determined to be a conflict of interest, the Regional Deputy Public Defender shall assign the case to a contract attorney whose name is maintained on the conflict attorney list or to a public defender employed outside his/her region.

2.2 The conflict attorney shall submit bills for the payment of attorney time to the Contract Manager. In reviewing bills, the Contract Manager shall:

- **2.2.1** Review the total hours of work claimed;
- **2.2.2** Review the work expended without reference to the charge or the parties involved;
- **2.2.3** Review any costs claimed, referencing any pre-approval requirements.

2.3 Costs, other than attorney fees, expected to be incurred by a conflict attorney, which exceed $200, will be pre-approved by the Training Coordinator.

- **2.3.1** In determining the disposition of the pre-approval request, the Training Coordinator will not disclose any information about the case to the Contract Manager or the Chief Public Defender.
- **2.3.2** The review of requests for pre-approval of costs shall, in most cases, only investigate whether other options are available that are more cost-effective and just as good.
- **2.3.3** For pre-approval of costs that are extraordinary or questionable, the Training Coordinator may ask the Public Defender Commission's Contracts Process and Approvals Committee for assistance.

2.4 The Chief Public Defender, Contract Manager, and Training Coordinator will confer with each other about the availability of experts or other options relating to costs in cases without reference to the specifics of any case.

3.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Caseload Management**	Policy No.: **117**
Title: **47**	Pages: **2**
Section: **1-105**	Last Review Date:
Effective Date: **10-1-07**	Revision Date:

1.0 POLICY

1.1 A mission of the Office of the State Public Defender (OPD) is to insure that no attorney doing public defender work, either as an employee or as a contract attorney, has a workload of such an amount that clients are not being adequately represented and/or the wellbeing of the attorney is jeopardized.

1.2 The regional deputy public defenders and the managing attorneys in each public defender office are responsible for managing the workloads of the attorneys they supervise.

2.0 PROCEDURE

2.1 Contract Attorneys

Regional deputy public defenders will review the number of open cases that each contract public defender is carrying to ensure that the workload is manageable and will, at the time any new case is assigned, ascertain that the contract attorney has a workload that allows sufficient time to be devoted to the new case and client.

When a contract attorney's workload will not allow time to adequately represent a client, the client's case shall be assigned to another contract public defender. If another local contract attorney can not be found, the Chief Public Defender shall be so advised and assist in locating counsel for the client.

2.2 Employed Attorneys

Regional deputy public defenders and managing attorneys will discuss workload at least monthly with each employed public defender they supervise. When a public defender expresses a problem with his/her workload, the supervising attorney shall work with the public defender to alleviate the workload. The supervising attorney shall consider doing any of the following:

A. discontinue assigning cases to the public defender for a specified time;
B. discontinue assigning specific kinds of cases to the public defender for a specified time;
C. assign other public defenders to assist on particular cases;
D. assign extra staff or an investigator to assist on particular cases;
E. reassign particular cases; and/or
F. negotiate time off work for the public defender.

The supervising attorney shall consider any other solutions that the public defender suffering excessive caseload may have.

2.3 The regional deputy public defenders and managing attorneys shall keep the Chief Public Defender fully informed about workload problems expressed by the attorneys they manage. The Chief Public Defender shall report to the Public Defender Commission as workload problems arise.

3.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Mentoring**	Policy No.: **118**
Title:	Pages: **1**
Section:	Last Review Date:
Effective Date: **8-17-09**	Revision Date:

1.0 POLICY

The Office of the State Public Defender (OPD) recognizes the need and benefit of using the expertise of experienced attorneys in the system to mentor other attorneys. OPD recognizes the benefit to clients of the sharing of knowledge of each of us throughout the system. For these reasons, OPD establishes the following procedures.

2.0 PROCEDURE

2.1 There is, for purposes of this policy, a Mentoring Panel made up of the Chief Public Defender, the Training Officer, the Contracts Manager and at least two other experienced public defenders selected by the Chief Public Defender. The two other experienced public defenders shall be selected on a case-by-case basis.

2.2 Any public defender who is preparing a case to go to trial on a felony involving a crime in Title 45, Chapter 5, Parts 1, 3, 4, 5 shall contact the Chief Public Defender at least 90 days before trial and request a meeting with the Mentoring Panel. The Chief Public Defender shall select the participants and arrange the meeting which can be in person, by telephone, or by VisionNet, as needed at the time.

2.3 The trial attorney will be prepared to present to the Panel a synopsis of the facts from the perspective of the prosecution, the anticipated theory of defense, and any requests for experts, second-chair assistance, travel arrangements, investigative needs, etc.

2.4 Any public defender who anticipates trying a case other than those listed above, may request a meeting with the Mentoring Panel by contacting the Chief Public Defender and the same procedure will be used.

3.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Determining Conflicts of Interest**	Policy No.: **119**
Title	Pages: **2**
Section:	Last Review Date: 9/28/09
Effective Date: **10/01/07**	Revision Date: **10/16/09**

1.0 POLICY

1.1 Conflicts of interest are of paramount concern to the Office of the State Public Defender (OPD). Every office within the system must be scrupulous in avoiding conflicts of interest.

1.2 This policy specifically recognizes that waivers of conflicts of interest are, occasionally, in the best interest of the client and should be used where appropriate.

2.0 PROCEDURES

2.1 When a client is qualified for OPD services under Policy 105, Determination of Indigence:

- **2.1.1** The case information will be entered into the case management system as soon as possible.
- **2.1.2** If the case management system flags a potential conflict of interest, the Regional Deputy Public Defender will do sufficient inquiry into the nature of the conflict.
- **2.1.3** The Regional Deputy Public Defender will make a determination as to whether an actual conflict of interest exists.
- **2.1.4** If a conflict of interest does exist, the Regional Deputy Public Defender will assign the case to a private contract attorney or to a public defender employed outside his or her region as per Policy 116, Conflict Cases.

2.2 When an attorney in a public defender office is assigned a case and, during the course of representation, a conflict of interest becomes evident, the public defender shall bring the conflict of interest to the attention of the Regional Deputy Public Defender.

- **2.2.1** The Regional Deputy Public Defender shall make a determination of a conflict of interest as described in 2.1.
- **2.2.2** If the public defender assigned to the case disagrees with the finding of the Regional Deputy Public Defender, the decision may be appealed to the Training Officer.
- **2.2.3** Any appeal taken to the Training Officer shall be in writing and set forth all relevant facts, while preserving confidentiality, related to the conflict of interest question.

2.2.4 The Training Officer shall review the materials and determine whether a conflict of interest, in fact, exists. If a conflict does exist, he will refer the matter back to the Regional Deputy Public Defender for assignment to a private attorney

2.2.5 The finding of the Training Officer shall be final.

3.0 CLOSING

Questions about this policy should be directed to the State Office at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park
Butte, MT 59701
Phone: 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Outside Employment**	Policy No.: **120**
Title:	Pages: **1**
Section:	Last Review Date:
Effective Date: **8-17-10**	Revision Date:

1.0 POLICY

1.1 In conformance with constitutional and case law, the Office of the State Public Defender (OPD) intends to limit outside employment by full-time employees to prevent conflict of interest situations or the clear appearance thereof.

1.2 Any employee engaged in outside employment must advise their regional deputy public defender or supervisor of the nature and details of their outside employment.

2.0 PUBLIC DEFENDERS

2.1 Full-time public defenders are restricted from the outside practice of law while on state time or with the use of any state property or resources, except as provided for in the Pro Bono Policy (OPD Policy 525).

2.2 Full-time public defenders may not take cases in the outside practice of law that would place the public defender in a conflict of interest situation as defined by Rules 1.7 and 1.8 of the Montana Rules of Professional Conduct.

2.3 A public defender engaged in the outside practice of law shall not enter into any agreements for representation with persons who have qualified for public defender services.

3.0 NON-ATTORNEY STAFF

3.1 Other OPD employees shall be restricted from outside employment if the outside employment creates a conflict of interest situation or the clear appearance thereof.

4.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Time Reporting**	Policy No.: **120**
Title **47**	Pages: **1**
Section: **1-202**	Last Review Date:
Effective Date: **7/01/06**	Revision Date:

1.0 POLICY

1.1 All attorneys employed by the Office of Public Defender shall maintain and report work time for each case to which they are assigned.

1.2 In maintaining and reporting time, each attorney will:

A. Report time worked on each case on a bi-weekly basis consistent with pay periods;

B. Designate each case by:

i. Office of Public Defender number and

ii. Amount of time spent during each week;

C. Report time in increments of .10 of an hour;

D. Transmit electronically, by the Monday of the following week, the compilation of time worked on each case to the regional administrative assistant or public defender office manager on the forms provided.

2.0 CLOSING

Questions about this policy should be directed to the State Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Staff Investigators**	Policy No.: **121**
Title:	Pages: **2**
Section:	Last Review Date:
Effective Date: **8-10-10**	Revision Date:

1.0 POLICY

1.1 The Office of the State Public Defender (OPD) has full-time investigators, throughout the state. The number of investigators, however, is small and the caseloads are very high. To insure the best and most effective use of this limited resource, the following policy is adopted.

1.2 The regional deputy public defenders, managing attorneys and team leaders in each public defender office are responsible for managing the workloads of the investigators they supervise.

2.0 PRIORITY CASES

2.1 It shall be the priority of every OPD office that its full-time investigators work primarily on felony cases.

2.2 Investigators are not, however, prohibited from working on misdemeanor cases or civil cases.

3.0 PROCEDURES

The attorney seeking investigative assistance shall do the following:

3.1 Submit an Investigation Request form (Attachment A) to the Regional Deputy Public Defender, Managing Attorney or Team Leader for approval.

3.2 The request must set forth sufficient detail such that the supervisor can make a sufficient determination of the necessity for investigation.

3.3 The request does not need to include all available discovery.

3.4 The supervisor must discuss the request with the investigator or investigators, to determine if they have the necessary time to do the investigation sought.

3.5 An investigator may only begin working on a case, when an approved request, signed by the appropriate individual, has been received.

3.6 Each attorney, after obtaining an approved request, shall supply the investigator every piece of discovery received by that attorney from the inception of the case and into the trial. The attorney shall not impede the investigator's ability to do their job thoroughly by deciding what items to provide to the investigator.

3.7 Exceptions to the prior approval requirement may be made in emergency situations where an attorney needs immediate photographs of an injured client in jail; photos of a crime scene as it is released by law enforcement; or, other such circumstance.

4.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

ATTACHMENT A

OFFICE OF THE STATE PUBLIC DEFENDER

BRIAN SCHWEITZER
GOVERNOR

RANDI HOOD
CHIEF PUBLIC DEFENDER

STATE OF MONTANA

Phone: (406) 496-6080
Fax: (406) 496- 6098

44 WEST PARK STREET
BUTTE, MONTANA 59701

Investigation Request

Attorney requesting investigation: _____ Date: _____

Case Number : _____ OPD #: _____

Defendant's Name: _____

Attorney's Investigation Request: (Please identify what you want investigated, names of people to be interviewed, what questions you desire, any photos needed to be taken and additional information needed to assist in your case, any deadlines known)

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

Was discovery provided with request: Yes_____ No_____

Date request received_____ Investigator _____

For Regional Use Only
[APPROVED / DENIED]

_____ _____
RDPD Signature Date

Office of the State Public Defender
Administrative Policies

Subject: **Pre-Approval of Client Costs**	Policy No.: **125**
Title:	Pages: **11**
Section:	Last Review Date: **01-29-10**
Effective Date: **5-1-07**	Revision Date: **5-04-10**

1.0 POLICY

1.1 The Office of the State Public Defender (OPD) requires pre-approval of all client costs expected to exceed $200 per task in all cases.

1.2 All cases involving salaried (FTE), contract and conflict attorneys, including appellate and Major Crime Unit cases, are subject to this policy.

2.0 DEFINITIONS

2.1 Client costs, hereinafter called costs, shall be defined as all monies to be expended in the preparation, investigation and litigation of public defender cases.

2.2 A task shall be defined as work performed by a non-attorney in the preparation, investigation and litigation of a public defender case.

3.0 PROCEDURE

3.1 All Costs Exceeding $200

3.1.1 The pre-approval process for all costs expected to exceed $200 per task shall commence with the completion of the appropriate Request for Pre-approval of Costs form by the attorney assigned to the case. There are separate forms and procedures for mental health and investigative services (see below), and for all other services (Attachment A).

3.1.2 Requests for pre-approval of costs that include travel must separate travel costs from the task costs. Any travel arrangement involving airline travel and/or overnight lodging will be arranged or delegated by the Central Office. The requesting attorney will contact the Central Office for travel arrangements not less than two weeks before the day of travel.

3.1.3 The pre-approval request form must be signed and dated by the requesting attorney and forwarded to one of the following persons for approval:

3.1.3.1 For non-conflict cases assigned to an FTE or contract attorney, submit the request to the Regional Deputy Public Defender (RDPD) assigning the case; or

3.1.3.2 For Major Crime Unit cases, submit the request to the Major Crime Unit Manager;

3.1.3.3 For conflict cases, submit the request to the Training Coordinator; or

3.1.3.4 For appellate cases, submit the request to the Chief Appellate Defender. Appellate transcript requests are exempt from this policy.

3.1.4 The RDPD, Major Crime Unit Manager, Training Coordinator or Chief Appellate Defender shall review the request and shall explore alternative, fiscally responsible options with the attorney before approving or denying said request by checking the

appropriate box on the form and then signing and dating the same.

3.1.5 The RDPD and Major Crime Unit Manager will submit all requests to the Central Office for final approval. The Chief Public Defender will review FTE requests. The Contract Manager will review contract attorney requests.

3.1.6 The original form is to be retained by the person approving or denying the request and a copy thereof forwarded to the requesting attorney.

3.2 Pre-approval of Costs for Mental Health Services

3.2.1 The requesting attorney will consult with the OPD Mental Health Consultant regarding the proposed service prior to initiating the pre-approval request.

3.2.2 If the Mental Health Consultant concurs, the attorney will complete the Mental Health pre-approval form (Attachment B) and submit it to the appropriate person for approval, as per sections 3.1.2 through 3.1.5 above.

3.3 Pre-approval of Costs for Investigative Services

3.3.1 The requesting attorney will consult with the OPD Investigator Supervisor regarding the proposed service prior to initiating the pre-approval request.

3.3.2 If the Investigator Supervisor concurs, the attorney will complete the Investigator pre-approval form (Attachment C) and submit it to the appropriate person for approval, as per sections 3.1.2 through 3.1.5 above.

3.4 The requesting attorney is responsible for keeping the pre-approved costs within the pre-approved amount. He or she must be familiar with the task being provided and the cost of the task as funds are being expended. If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of the new amount prior to incurring any costs on the appropriate Supplemental Request form (Attachments D-F).

3.5 Post-approval of costs will not be granted except in extraordinary circumstances.

3.6 The original pre-approval forms are to be used to track the pre-approved costs, and are to be attached to the claim form when they are forwarded to the Central Office for final payment. Tasks that are billed incrementally are to have a copy of the pre-approval attached with a notation indicating the remaining funds available.

3.7 Costs incurred without pre-approval will not be paid. Costs that exceed the pre-approved amount without a supplemental approval will not be paid.

4.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Attachment A

State of Montana

Office of the State Public Defender

REQUEST FOR PRE-APPROVAL OF CLIENT COSTS

All client costs (including travel) exceeding $200 per task in each case must be pre-approved by submitting this request form to the appropriate person as follows:

- The Regional Deputy Public Defender in cases assigned to an FTE, or a non-conflict case assigned to a contract attorney
- The Conflict Manager in cases assigned to conflict attorneys *(Eric Olson, 610 N. Woody, Missoula MT 59802)*
- The Chief Appellate Defender in appellate cases *(Jim Wheelis, P.O. Box 200145, Helena MT 59620)*

Requesting Attorney's Name	Date
Case Name	OPD Case ID Number
Task Provider's Name	Region Case Originated
Requested Pre-Approval Amount for Task	Requested Pre-Approval Amount for Travel (time & miles)

Note: travel reimbursement is paid at the ***current state rate*** *for mileage, lodging and per diem.*

The requesting attorney is responsible for keeping the pre-approved costs within the pre-approved amount. If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of a supplemental amount on a new form prior to incurring any additional costs. It is imperative for the requesting attorney to monitor costs expended to date so as not to delay the supplemental process.

Short Justification for Task and Cost: _____

_____

_____

_____

Requesting Attorney Signature _____ Date _____

The Requesting Attorney must complete and forward this form to the appropriate person for approval (see above).

Authorized Signature _____ ☐ Approve ☐ Deny Date _____

NOTE: *Regional Deputy Public Defenders must submit all requests to the Central Office for approval* ***regardless of the amount requested.*** *The Chief Public Defender will review FTE attorney requests. The Contract Manager will review contract attorney requests.*

For Central Office Use Only—*Non-Conflict Requests*

☐ Approve ☐ Deny

Contract Manager/Chief Public Defender _____ Date _____

Attachment B

State of Montana

Office of the State Public Defender

REQUEST FOR PRE-APPROVAL OF CLIENT COSTS

MENTAL HEALTH PROFESSIONAL

All client costs exceeding $200 per task in each case must be pre-approved by submitting this request form to the appropriate person as follows:

- The Regional Deputy Public Defender in cases assigned to an FTE, or a non-conflict case assigned to a contract attorney
- The Training Coordinator in cases assigned to conflict attorneys
  (Eric Olson, 610 N. Woody, Missoula MT 59802)

Requesting Attorney's Name	Date
Case Name	OPD Case Number
Task Provider's Name	Region Case Originated
Requested Pre-Approval Amount for Evaluation	Requested Pre-Approval Amount for Travel (time & miles)

Note: travel reimbursement is paid at the ***current state rate*** *for mileage, lodging and per diem.*

The requesting attorney is responsible for keeping costs within the pre-approved amount. If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of a supplemental amount on a new form **prior to incurring any costs over the pre-approved amount**. It is imperative for the requesting attorney to monitor costs expended to date so as not to delay the supplemental process.

Per Protocol, type of MH Professional involvement requested:

☐ MH Professional Consultation
☐ MH Professional Screening
☐ MH Professional Evaluation (comprehensive evaluation)
☐ Chemical Dependency Evaluation
☐ Sentencing Options
☐ Fitness to Proceed
☐ Sex Offender Evaluation
☐ Testimony

Justification for task, referral questions and cost:_____

_____

_____

_____

Next scheduled court appearance _____

Type and Estimated number of pages for Professional to review:

☐ Legal documents (_____ pages) ☐ Medical record (_____ pages)

☐ Other records requested and have not arrived to date

I. Have you consulted with the OPD Mental Health Consultant regarding this request? *(Required for all evaluations except sex offender evaluations)*

☐ Yes Date and time of consultation _____

☐ OPD MH Consultant has reviewed and concurs with request *(Attach documentation or signature)*

II. Have you completed and attached the MH Referral Question Checklist?

☐ Yes

_____ _____

Requesting Attorney Signature Date

The Requesting Attorney must complete and forward this form to the appropriate person for approval (see page 1).

_____ _____

Authorized Signature ☐ Approve ☐ Deny Date

Regional Deputy Public Defenders: **All requests, regardless of the amount requested, are to be submitted to the Central Office for approval.** The Chief Public Defender will review FTE attorney requests. The Contract Manager will review contract attorney requests.

For Central Office Use Only—Non-Conflict Requests

☐ Approve ☐ Deny

_____ _____

Contract Manager/Chief Public Defender Date

Notes to mental health professional: (1) A *Memorandum of Understanding, Mental Health Professional* must be on file with OPD prior to commencing services. (2) **Immediately contact the referring attorney at the first indication that additional time is necessary to answer the referral question!** Supplemental approval must be provided for payment over and above the initial pre-approved amount. Justification must be provided regarding the specifics of what additional time spent on the case will entail.

Attachment C

State of Montana

Office of the State Public Defender

REQUEST FOR PRE-APPROVAL OF CLIENT COSTS INVESTIGATOR

All client costs exceeding $200 per task in each case must be pre-approved by submitting this request form to the appropriate person as follows:

- The Regional Deputy Public Defender in cases assigned to an FTE, or a non-conflict case assigned to a contract attorney
- The Training Coordinator in cases assigned to conflict attorneys *(Eric Olson, 610 N. Woody, Missoula MT 59802)*

_____	_____
Requesting Attorney's Name	Date
_____	_____
Case Name	OPD Case ID Number
_____	_____
Task Provider's Name	Region Case Originated
_____	_____
Requested Pre-Approval Amount for Task	Requested Pre-Approval Amount for Travel (time & miles)

Note: travel reimbursement is paid at the ***current state rate*** *for mileage, lodging and per diem.*

The requesting attorney is responsible for keeping the pre-approved costs within the pre-approved amount. If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of a supplemental amount on a new form prior to incurring any additional costs. It is imperative for the requesting attorney to monitor costs expended to date so as not to delay the supplemental process.

Justification for Task: _____

_____

_____

_____

Next scheduled court appearance _____

I. Have you consulted with the OPD Investigator Supervisor regarding this request?

☐ Yes Date and time of consultation _____

☐ OPD Investigator Supervisor has reviewed and concurs with request
(Attach documentation or signature)

II. Have you completed and attached the Investigative Request?

☐ Yes

_____ _____

Requesting Attorney Signature Date

Please be advised that a ***Memorandum of Understanding, Investigator*** must be completed prior to beginning work on this case.

INVESTIGATOR: Immediately contact the referring attorney at the first indication that additional time is necessary to complete the investigation! If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of a supplemental amount on the approved form prior to incurring any additional costs. Justification must be provided regarding the specifics of what additional time spent on the case will entail. **Post-approval of costs will not be granted except in extraordinary circumstances.**

The Requesting Attorney must complete and forward this form to the appropriate person for approval (see above).

_____ _____

Authorized Signature ☐ Approve ☐ Deny Date

Regional Deputy Public Defenders: **All requests, regardless of the amount requested, are to be submitted to the Central Office for approval.** The Chief Public Defender will review FTE attorney requests. The Contract Manager will review contract attorney requests.

For Central Office Use Only—Non-Conflict Requests

☐ Approve ☐ Deny

_____ _____

Contract Manager/Chief Public Defender Date

Attachment D

State of Montana

Office of the State Public Defender

SUPPLEMENTAL REQUEST

FOR PRE-APPROVAL OF CLIENT COSTS

The assigned attorney is responsible for keeping the pre-approved costs within the pre-approved amount. If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of a supplemental amount on this form prior to incurring any additional costs. ***It is imperative for the requesting attorney to monitor costs expended to date so as not to delay the supplemental process.***

_____
Date

_____ _____
Task Provider's Name Requesting Attorney's Name

_____ _____
Case Name OPD Case ID Number

Original Pre-Approved Amount (attach copy of pre-approval form) _____

Amount of Supplemental Request for Additional Work _____

Amount of Supplemental Request for Travel _____

Note: travel reimbursement is paid at the ***current state rate*** *for mileage, lodging and per diem.*

Revised Total Amount Requested for Pre-Approval _____

Justification for supplemental request: _____

_____

_____

_____ _____
Requesting Attorney Signature Date

The Requesting Attorney must complete and forward this form to the appropriate person for approval:

- The Regional Deputy Public Defender in cases assigned to an FTE, or a non-conflict case assigned to a contract attorney
- The Training Coordinator in cases assigned to conflict attorneys *(Eric Olson, 610 N. Woody, Missoula MT 59802)*
- The Chief Appellate Defender in appellate cases *(Jim Wheelis, P.O. Box 200145, Helena MT 59620)*

_____ _____
Authorized Signature ☐ Approve ☐ Deny Date

NOTE: *Regional Deputy Public Defenders must submit all requests to the Central Office for approval* ***regardless of the amount requested.*** *The Chief Public Defender will review FTE attorney requests. The Contract Manager will review contract attorney requests.*

.

For Central Office Use Only (Non-Conflict Cases)

☐ Approve ☐ Deny

_____ _____
Contract Manager/Chief Public Defender Date

Attachment E

State of Montana

Office of the State Public Defender

SUPPLEMENTAL REQUEST

FOR PRE-APPROVAL OF CLIENT COSTS
MENTAL HEALTH PROFESSIONAL

The assigned attorney is responsible for keeping the pre-approved costs within the pre-approved amount. If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of a supplemental amount on this form prior to incurring any additional costs. ***It is imperative for the requesting attorney to monitor costs expended to date so as not to delay the supplemental process.***

_____
Date

_____ _____
Task Provider's Name Requesting Attorney's Name

_____ _____
Case Name OPD Case ID Number

Original Pre-Approved Amount (attach copy of pre-approval form) _____

Amount of Supplemental Request for ☐ Evaluation **or** ☐ Testimony (check one) _____

Amount of Supplemental Request for Travel _____

Note: travel reimbursement is paid at the ***current state rate*** *for mileage, lodging and per diem.*

Revised Total Supplemental Amount Requested _____

Justification for supplemental request, including travel: _____

_____

_____

_____

Have you consulted with the OPD Mental Health Consultant regarding this request?

☐ Yes Date and time of consultation _____

☐ OPD MH Consultant has Reviewed and Concurs with request
(attach documentation or signature)

_____ _____
Requesting Attorney Signature Date

The Requesting Attorney must complete and forward this form to the appropriate person for approval:

- The Regional Deputy Public Defender in cases assigned to an FTE, or a non-conflict case assigned to a contract attorney
- The Training Coordinator in cases assigned to conflict attorneys
  (Eric Olson, 610 N. Woody, Missoula MT 59802)

_____ _____

Authorized Signature ☐ Approve ☐ Deny Date

NOTE: *Regional Deputy Public Defenders must submit all requests to the Central Office for approval* ***regardless of the amount requested.***

The Chief Public Defender will review FTE attorney requests. The Contract Manager will review contract attorney requests.

For Central Office Use Only—Non-Conflict Cases

☐ Approve ☐ Deny

_____ _____

Contract Manager/Chief Public Defender Date

Attachment F

State of Montana

Office of the State Public Defender

INVESTIGATOR SUPPLEMENTAL REQUEST

FOR PRE-APPROVAL OF CLIENT COSTS

The assigned attorney is responsible for keeping the pre-approved costs within the pre-approved amount. If costs are anticipated to exceed the pre-approved amount, the task must be resubmitted for approval of a supplemental amount on this form prior to incurring any additional costs. ***It is imperative for the requesting attorney to monitor costs expended to date so as not to delay the supplemental process.***

_____
Date

_____ _____
Task Provider's Name Requesting Attorney's Name

_____ _____
Case Name OPD Case ID Number

Original Pre-Approved Amount (attach copy of pre-approval form) _____

Amount of Supplemental Request for Additional Work _____

Amount of Supplemental Request for Travel _____

Note: travel reimbursement is paid at the ***current state rate*** *for mileage, lodging and per diem.*

Revised Total Amount Requested for Pre-Approval _____

Justification for supplemental request: _____

_____

Have you consulted with the OPD Investigator Supervisor regarding this request?

☐ Yes Date and time of consultation _____

☐ OPD Investigator Supervisor has reviewed and concurs with request
(Attach documentation or signature)

_____ _____
Requesting Attorney Signature Date

The Requesting Attorney must complete and forward this form to the appropriate person for approval:

- The Regional Deputy Public Defender in cases assigned to an FTE, or a non-conflict case assigned to a contract attorney
- The Training Coordinator in cases assigned to conflict attorneys *(Eric Olson, 610 N. Woody, Missoula MT 59802)*

_____ _____
Authorized Signature ☐ Approve ☐ Deny Date

NOTE: *Regional Deputy Public Defenders must submit all requests to the Central Office for approval* ***regardless of the amount requested.*** *The Chief Public Defender will review FTE attorney requests. The Contract Manager will review contract attorney requests.*

For Central Office Use Only (Non-Conflict Cases)

☐ Approve ☐ Deny

_____ _____
Contract Manager/Chief Public Defender Date

Office of the State Public Defender
Administrative Policies

Subject: **Contract Counsel**	Policy No.: **130**
Title: **47**	Pages: **2**
Section: **1-216**	Last Review Date: **01-10-11**
Effective Date: **7-1-06**	Revision Date: **01-26-11**

1.0 POLICY

1.1 The Office of the State Public Defender (OPD) may enter into agreements with outside counsel to provide services pursuant to the Montana Public Defender Act (Act). These attorneys are independent contractors and are referred to herein as contract attorneys.

1.2 District court judges, the Supreme Court Administrator, and the counties may not contract for public defender/indigent defense services in those cases deemed the responsibility of OPD under the Act.

1.3 Contractor services are viewed as a cost-effective manner in which to ensure that public defender/indigent defense services are available in those areas where full time staff public defender services are unavailable, when conflict situations arise, or to alleviate workload issues.

2.0 PROCEDURE

2.1 Prospective contract counsel must complete the Attorney's Summary of Education and Experience as provided on the OPD website at http://publicdefender.mt.gov.

2.2 Upon receipt of the Attorney's Summary of Education and Experience information, the OPD Contract Manager will review the information and provide qualified applicants with a Memorandum of Understanding (MOU).

2.3 After returning the signed MOU, prospective contract counsel are placed in a pool based on their qualifications and the Region(s) in which they choose to work.

2.4 The Regional Deputy Public Defender is responsible for assigning specific cases to attorneys from the regional pool, ensuring that the attorney has the qualifications to handle the specific type of case being assigned.

2.5 The Regional Deputy Public Defender will monitor the performance of the contract counsel and will participate in the annual proficiency determination of each contract counsel.

3.0 STANDARDS COMPLIANCE

3.1 Prospective contract counsel acknowledge that they have read and agree to abide by the *Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act*.

3.2 Contract counsel are required to complete Continuing Legal Education training annually, as determined by the Public Defender Commission.

4.0 DURATION OF REPRESENTATION

4.1 Following sentencing, it is the responsibility of contract counsel to explain appeal options to the client, including the applicable timeframe during which the decision to appeal must be made. It is the client's decision whether or not to appeal.

4.2 If the client chooses to appeal, contract counsel will refer the case to the Office of the Appellate Defender (OAD) per the OAD procedure at www.publicdefender.mt.gov/forms/pdf/AppellateContractorProcedure.pdf

4.3 Contract counsel shall not move to withdraw from representing a client until the case has been referred to the OAD, or until the appeal time on the case has expired.

4.3.1 Client retains the option to change the decision to proceed with an appeal at any time until the appeal time has expired.

5.0 PAYMENTS FOR SERVICES

5.1 The OPD shall directly pay contracted counsel for services rendered.

5.2 Contract counsel services shall be paid at the rate of $60 per hour for non-death penalty cases, and at the rate of $120 per hour for death penalty cases.

5.3 Pre-approved travel expenses shall be paid at the state travel rates.

5.4 OPD shall offer a stipend of up to $25 per month to help defray office costs such as telephone, postage, and copies.

5.5 Other expenses shall be paid if pre-approved per OPD Policy 125, Pre-Approval of Client Costs.

6.0 PAYMENT AND PROCEDURES

6.1 It is understood that contract counsel services will be supervised by the Regional Deputy Public Defender and the OPD Central Office.

6.2 Contract counsel shall submit an itemized claim on the appropriate payment form for conflict and non-conflict cases by the tenth of the month following the date of service. The forms and accompanying instructions are posted on the OPD web site at http://publicdefender.mt.gov. Hourly time shall be billed in tenths of an hour. Each form must contain the case number assigned by the regional office.

6.3 Claims for non-conflict services shall be submitted to the supervising Regional Deputy Public Defender for review, who shall within five (5) days review and forward the claim to the Central Office. The OPD Contract Manager will review, approve and pay said claim within thirty (30) days of receipt of the same. Claims for conflict services are to be submitted directly to the Contract Manager. Payment may be delayed if the claims are returned for corrections, clarification or for failure to include the assigned case number.

6.4 Claims submitted more than 45 days from the last day of the month of service will be denied.

7.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Contract Mental Health Services**	Policy No.: **131**
Title: **47**	Pages: **2**
Section: **1-216**	Last Review Date:
Effective Date: **11-02-09**	Revision Date:

1.0 POLICY

1.1 The Office of the State Public Defender (OPD) may enter into contracts with non-attorney professionals as necessary to deliver public defender services pursuant to the Montana Public Defender Act (Act).

2.0 PROCEDURE

2.1 Prospective contract mental health providers must complete the Memorandum of Understanding as provided on the OPD website at http://publicdefender.mt.gov and attach a Summary of Education and Experience.

2.2 Prospective contractors acknowledge that they have read and agree to abide by the ethical and practice Standards of their profession by signing the MOU and returning it to OPD. The MOU also requires that contractors complete required continuing educational units in courses relating to their profession, including training requirements established by OPD's Training Coordinator.

2.3 Cases will be referred to mental health professionals based on qualifications and experience. OPD is not obligated to assign any specific number of cases to a contractor, nor are contractors obligated to accept any case referred for assignment.

2.4 All contract mental health services are subject to OPD's pre-approval policy (Policy 125).

3.0 PAYMENTS FOR SERVICES

3.1 The OPD shall pay contractors directly for services rendered.

3.2 Contract mental health professionals shall be paid according to the rate schedule adopted by the Montana Public Defender Commission (Attachment A).

3.3 Pre-approved travel expenses shall be paid at the state travel rates.

3.4 Other expenses shall be paid as pre-approved under OPD procedures.

4.0 PAYMENT AND PROCEDURES

It is understood that contract mental health services will be supervised by the Regional Deputy Public Defender and the OPD Central Office.

Contract mental health providers shall submit an itemized claim on the appropriate payment form for conflict and non-conflict cases by the tenth of the month following the date of service. The forms and accompanying instructions are posted on the OPD web site at http://publicdefender.mt.gov. Each form must contain the case number assigned by the Regional Office.

Claims for non-conflict services shall be submitted to the supervising Regional Deputy Public Defender for review, who shall within five (5) days review and forward the claim to the Central Office. The OPD Contract Manager will review, approve and pay said claim within thirty (30) days of receipt of the same. Claims for conflict services are to be submitted directly to the Contract Manager. Payment may be delayed if the claims are returned for corrections, clarification or for failure to include the assigned case number.

Claims submitted more than 45 days from the last day of the month of service will be denied.

5.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Contract Investigative Services**	Policy No.: **132**
Title: **47**	Pages: **2**
Section: **1-216**	Last Review Date:
Effective Date: **11-02-09**	Revision Date:

1.0 POLICY

1.1 The Office of the State Public Defender (OPD) may enter into contracts with non-attorney professionals as necessary to deliver public defender services pursuant to the Montana Public Defender Act (Act).

1.2 State contracts are viewed as a cost-effective manner in which to ensure that public defender/indigent defense services are available in those areas where full time staff services are unavailable, when conflict situations arise, or to alleviate workload issues.

2.0 PROCEDURE

2.1 Prospective contract investigators must complete the Summary of Education and Experience as provided on the OPD website at http://publicdefender.mt.gov.

2.2 Upon receipt of the Summary of Education and Experience information, the OPD Investigator Supervisor will review the information and provide qualified applicants with a Memorandum of Understanding (MOU).

2.3 Prospective contractors acknowledge that they have read and agree to abide by the ethical and practice Standards of their profession by signing the MOU and returning it to OPD. The MOU also requires that contractors complete required continuing educational units in courses relating to their profession, including training requirements established by OPD's Training Coordinator.

2.4 Cases will be referred to investigators based on qualifications and experience. OPD is not obligated to assign any specific number of cases to a contractor, nor are contractors obligated to accept any case referred for assignment.

2.5 All contract investigative services are subject to OPD's pre-approval policy (Policy 125).

3.0 PAYMENTS FOR SERVICES

3.1 The OPD shall pay contractors directly for services rendered.

3.2 Contract investigator services shall be paid at the rate of $46 per hour.

3.3 Pre-approved travel expenses shall be paid at the state travel rates.

3.4 Other expenses shall be paid as pre-approved under OPD procedures.

4.0 PAYMENT AND PROCEDURES

It is understood that contract investigative services will be supervised by the Regional Deputy Public Defender and the OPD Central Office.

Contract investigators shall submit an itemized claim on the appropriate payment form for conflict and non-conflict cases by the tenth of the month following the date of service.

The forms and accompanying instructions are posted on the OPD web site at http://publicdefender.mt.gov. Hourly time shall be billed in minutes. Each form must contain the case number assigned by the Regional Office.

Claims for non-conflict services shall be submitted to the supervising Regional Deputy Public Defender for review, who shall within five (5) days review and forward the claim to the Central Office. The OPD Contract Manager will review, approve and pay said claim within thirty (30) days of receipt of the same. Claims for conflict services are to be submitted directly to the Contract Manager. Payment may be delayed if the claims are returned for corrections, clarification or for failure to include the assigned case number.

Claims submitted more than 45 days from the last day of the month of service will be denied.

5.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Proficiency Determination, Contract Counsel**	Policy No.: **135**
Title: **47**	Pages: **2**
Section: **1-202(9)**	Last Review Date:
Effective Date: **12-6-06**	Revision Date:

1.0 POLICY

1.1 Each private attorney providing contract services the Office of the State Public Defender (OPD) shall undergo a proficiency determination on an annual basis.

2.0 PROCEDURE

2.1 The proficiency determination shall be conducted by a combination of the following:

A. Chief Public Defender; and
B. OPD Training Coordinator; and / or
C. Regional Deputy Public Defender from the region within which the contract attorney renders contract services; and / or
D. OPD Contracts Manager.

2.2 In making the proficiency determination, OPD will observe the contract attorney in court and may, in the discretion of the Chief Public Defender, obtain information from any of the following:

A. Clients;
B. The Regional Deputy Public Defender from the region within which the contract attorney renders contract services;
C. Judges and other court personnel;
D. Faculty from any training programs which the contract attorney attends during the preceding contract year.

2.3 OPD shall meet with the contract attorney once a year as part of the annual proficiency determination

2.4 As a condition of performing any contract services for OPD, the contract attorney shall complete and submit the OPD "Experience Survey." OPD shall maintain the completed "Experience Survey" on file and shall ensure that said "Survey" is updated annually.

3.0 PROFICIENCY DETERMINATION

3.1 Upon completion of the annual proficiency determination, OPD shall certify the contract attorney's proficiency within any area of public defense law in Montana unless OPD determines, following the annual proficiency determination, that the contract attorney is not proficient.

3.2 If OPD certifies proficiency, the contract attorney shall sign the proficiency certification form. Once the Chief Public Defender and the contract attorney have signed the proficiency evaluation, a copy will be provided to the contract attorney.

3.3 If OPD determines, following the proficiency determination, that the contract attorney is not proficient:

A. OPD shall immediately inform the contract attorney of its determination;
B. OPD shall recommend remedial training or other steps aimed at permitting the contract attorney to regain proficiency;
C. The contract attorney may request a meeting with the Chief Public Defender and may also submit a written objection.

4.0 RECORDS

Originals of all records generated in the course of the proficiency determination process will be placed in the contract attorney's OPD file and maintained throughout the duration of time that the contract attorney is rendering professional services for the OPD, and then for as long as is required by state retention of records policy.

5.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Standards Compliance**	Policy No.: **136**
Title:	Pages: **1**
Section:	Last Review Date:
Effective Date: **7-15-10**	Revision Date:

1.0 POLICY

The Office of the State Public Defender is committed to ensuring that all public defenders, whether state-employed or independent contract attorney, comply with the *Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act* (hereinafter referred to as "Standards.")

2.0 PROCEDURE

2.1 The Regional Deputy Public Defender is responsible for day to day monitoring of each attorney's compliance with the Standards.

2.2 The Training Officer or his/her designee will conduct random compliance checks as follows:

- **2.2.1** The Training Officer will call or visit with not less than 10 public defenders per month on a random basis.
- **2.2.2** Prior to contacting the public defender, the Training Officer will select three of the attorney's recently closed cases for discussion and review of compliance with the Standards.
- **2.2.3** If the public defender is not in compliance, the Training Office will discuss the failing with the public defender. The Training Officer will also identify training issues and develop a training plan for the region, to be shared with the Regional Deputy Public Defender and the Chief Public Defender.
- **2.2.4** The Training Officer shall keep a record of each contact made and the results of the compliance review.

2.3 The Chief Appellate Defender shall be responsible for alerting the Training Officer if any appellate attorney notes non-compliance with the Standards during review of a transcript.

3.0 CLOSING

Questions about this policy should be directed to the OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Witness Fees**	Policy No.: **140**
Title **26**	Pages: **4**
Section: **2-501 through 2-503**	Last Review Date: **8-19-09**
Effective Date: **2-20-09**	Revision Date: **8-24-09**

1.0 POLICY

1.1 The Office of the State Public Defender (OPD) will pay witnesses a fee of $10 per day plus mileage as required by state law.

1.2 OPD will also pay other expenses incurred by witnesses, including lodging, commercial transportation and per diem, in accordance with State of Montana travel policy.

1.3 This policy applies to witnesses that testify voluntarily at the request of OPD, and to witnesses that appear to testify because they were issued a subpoena by OPD.

2.0 PROCEDURES

2.1 A witness is entitled to $10 per day plus mileage at the current state rate.

2.2 The witness must complete the Witness Fee and Travel Information form (Attachment A) for payment to be processed.

2.3 The Witness Fee and Travel Information form, along with a completed W-9 form (Attachment B), the subpoena if applicable, and receipts for any additional expenses are to be mailed to the OPD Central Office.

2.4 The office manager is responsible for providing the required forms to each witness testifying at the request of an OPD office, and for verifying the witness's appearance in court.

2.5 Contract attorneys are responsible for providing the required forms to each witness testifying at the request of their office, and for verifying the witness's appearance in court.

3.0 CLOSING

This policy shall be followed unless it conflicts with specific statutes, which shall take precedence to the extent applicable.

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park, Butte, MT 59701
Phone: 406-496-6080

4.0 Cross-Reference Guide

MCA 26-2-501, et seq.
MOM 1-0300, Travel Policy

OFFICE OF THE STATE PUBLIC DEFENDER
44 West Park Street ▪ Butte, Montana 59701
406.496.6080

Witness Fee and Travel Information

If you have appeared to testify at the request of the Office of the State Public Defender, the following information is needed to process your $10/day witness fee and travel claim.

- Please complete this form and the attached W-9 immediately after attending the court proceeding at which you testified. **Please print legibly.**
- Attach your subpoena unless you testified voluntarily.
- Attach *original* receipts for expenses purchased *by you* (motel room, airline or bus ticket, rental car, airport parking, etc.)
- Meal receipts are not required; however, if you are claiming meals, you *must* include departure/return times. You will be reimbursed at the prevailing state rate, not at actual cost.
- Mail both forms and all attachments to:
  Office of the State Public Defender
  44 W. Park
  Butte MT 59701

NAME	**MAILING ADDRESS**
PHONE NUMBER	**DATE(S) OF TESTIMONY (ATTACH SUBPOENA)**
DATE OF DEPARTURE (MONTH/DAY/YEAR)	**TIME OF DEPARTURE** (A.M./P.M.)
DEPARTURE AND DESTINATION CITIES	
DATE OF RETURN (MONTH/DAY/YEAR)	**TIME OF RETURN** (A.M./P.M.)

MODE OF TRAVEL

- ❑ Private Car (total number of miles) _____
- ❑ Commercial Transportation (attach receipt) _____
- ❑ Other (please explain) _____

_____

_____

❑ **MEALS: Please indicate by date which meals you would like to be reimbursed for (B) Breakfast, (L) Lunch, (D) Dinner,**

_____

_____

You must indicate departure/return times above so it can be determined whether you are eligible for meal reimbursement.

SIGNATURE (please sign in ink)	**DATE**

State of Montana
Department of Administration
SW9 (4/2009)

State Accounting Division
PO Box 200102
125 North Roberts Street
Mitchell Bldg – Room 255
Helena, MT 59620
Phone: 406-444-3092
Send faxes to: 406-444-2812

Substitute **W-9**

DO NOT send to IRS

Taxpayer Identification Number (TIN) Verification

Print or Type
Please see attachment or reverse for complete instructions.

Legal Name
(as entered with IRS) If Sole Proprietorship, enter your Last, First, MI

Trade Name
If doing business as (DBA) or enter business name of Sole Proprietorship

Primary Address (for 1099 form)
PO Box or Number and Street, City, State, ZIP + 4

Remit Address (where payment should be mailed, if different from Primary Address) PO Box or Number and Street, City, State, ZIP + 4

Entity Designation (check only one type)

- ☐ Corporation
  - ☐ S-Corp ☐ C-Corp
  - Do you provide medical services?
  - ☐ Yes ☐ No
- ☐ Individual
- ☐ Sole Proprietorship
- ☐ Partnership
  - ☐ General ☐ Limited
  - ☐ LLC (for federal tax purposes taxed as)
    - ☐ S-Corp ☐ C-Corp
- ☐ Estate/Trust
- ☐ Other Groups of Individuals
- ☐ Organization Exempt from Tax (under Section 501 (a)(b)(c)(d)(e))
- ☐ Government Entity

Exempt from Backup Withholding

☐ Yes ☐ No

Taxpayer Identification Number (TIN) (Provide Only One) (If sole proprietorship provide FEIN, if applicable)

Social Security Number	Federal Employer Identification No

Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number, AND
2. I am not subject to backup withholding because (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding.
3. I am a U.S. person (including a US resident alien).

Printed Name	Printed Title	Telephone Number

Signature	Date

Optional Direct Deposit Information (used at agency discretion) (all fields required to receive electronic payments) (Must Include a Voided Check, No Direct Deposit Slips Accepted)

Your Bank Account Number	☐ Checking ☐ Savings	Name on Bank Account	Bank Routing No. (ABA)

THIS IS A:

☐ New Direct Deposit ☐ Change of Existing ☐ Additional Direct Deposit ☐ Email Change Only

Email Address (Please make this LEGIBLE)

If you provide bank information and an email address, we will send a message notifying you when an electronic payment is issued. We will **NOT** share your email address with anyone or use it for any other purpose than communicating information about your electronic payments to you. **If you have questions about completing this form, please call the Warrant Writer Unit at 406-444-3092.**

Instructions for Completing Taxpayer Identification Number Verification (Substitute W-9)

Legal Name As entered with IRS

Individuals: Enter Last Name, First Name, MI
Sole Proprietorships: Enter Last Name, First Name, MI
LLC Single Owner: Enter owner's Last Name, First Name, MI
All Others: Enter Legal Name of Business

Trade Name

Individuals: Leave Blank
Sole Proprietorships: Enter Business Name
LLC Single Owner: Enter LLC Business Name
All Others: Complete only if doing business as a D/B/A

Primary Address

Address where 1099 should be mailed.

Remit Address

Address where payment should be mailed. Complete only if different from primary address.

Entity Designation

Check *ONE* box which describes the type of business entity.

Taxpayer Identification Number

LIST ONLY ONE: Social Security Number OR Employer Identification Number. ***See "What Name and Number to Give the Requester" at right***.

If you do not have a TIN, apply for one immediately. Individuals use federal form SS-05 which can be obtained from the Social Security Administration. Businesses and all other entities use federal form SS-04 which can be obtained from the Internal Revenue Service.

Certification

You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to furnish your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, or contributions you made to an IRA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not furnish a TIN to a payer. Certain penalties may also apply.

What Name and Number to Give the Requester

For this type of account:	Give name and SSN of:
1. Individual	The individual
2. Two or more individuals (joint account)	The actual owner of the account or, if combined funds, the first individual no the account [1]
3. Custodian account of a minor (Uniform Gift to Minors Act)	The minor [2]
4. a. The usual revocable savings trust (grantor is also trustee)	The grantor-trustee [1]
b. So-called trust account that is not a legal or valid trust under state law	The actual owner [1]
5. Sole proprietorship or Single-Owner LLC	The owner [3]
For this type of account:	**Give name and EIN of:**
6. Sole Proprietorship or Single-Owner LLC	The owner [3]
7. A valid trust, estate, or pension trust	Legal entity [4]
8. Corporate or LLC electing corporate status on Form 8832	The corporation
9. Association, club, religious, charitable, educational, or other tax-exempt organization	The organization
10. Partnership or multi-member LLC	The partnership
11. A broker or registered nominee	The broker or nominee
12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district or prison) that receives agricultural program payments	The public entity

[1] List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.
[2] Circle the minor's name and furnish the minor's SSN.
[3] **You must show your individual name**, but you may also enter your business or "DBA" name. You may use either your SSN or EIN (if you have one).
[4] List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.)

NOTE: If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Office of the State Public Defender
Administrative Policies

Subject: **Major Crimes Unit**	Policy No.: **150**
Title	Pages: **3**
Section:	Last Review Date: 9-19-11
Effective Date: **11/02/09**	Revision Date: **9-19-11**

1.0 POLICY

The Office of the State Public Defender (OPD) recognizes the need and benefit of creating an employee unit capable of handling complex and high profile cases. A Major Crimes Unit has been established, consisting of attorneys and support staff in numbers as designated by the Chief Public Defender. One of the attorneys will be designated Supervisor of the unit.

2.0 PURPOSE

The purpose of the Major Crimes Unit (MCU) is to:

2.1 Create a unit of attorneys and support staff capable of independently trying complex cases, up to and including death penalty cases;

2.2 Significantly reduce reliance on Regional Deputy Public Defenders and other top management in defending major crimes;

2.3 Reduce workload strain in the regions caused by defending time-intensive major crimes;

2.4 Handle difficult cases in remote areas of the state cost-effectively; and

2.5 Train less-experienced attorneys on criminal defense in complex cases statewide.

2.6 It is not the intent or purpose of the MCU to remove the ability or opportunity to defend individuals accused of committing homicide from the attorneys in local offices.

2.7 While conflicts may be considered in determining case assignment, the MCU is not intended for use solely as a conflict office.

3.0 MAJOR CRIME CASE ASSIGNMENT

3.1 The Regional Deputy Public Defender shall submit the Notice of Major Crime form, found on the OPD intranet home page, and contact the MCU Supervisor within 24 hours of any homicide or attempted homicide. The Regional Deputy Public Defender and the Supervisor shall discuss the case so as to reach a decision as to assignment of counsel. The assignment options are:

3.1.1 Assign the case to the MCU attorneys;

3.1.2 Assign the case to an attorney in the MCU and an attorney in the local area; or

3.1.3 Leave the case with the region for assignment as the region sees fit.

3.2 If the case involves a law enforcement officer, or a prominent local political figure, the case shall be referred to the MCU and will not be handled by local counsel.

3.3 Other felony cases that possess a high probability to go to trial and which appear to have a high degree of complexity/difficulty may be referred to the MCU. The Supervisor shall review the request and determine whether to accept the case.

3.3.1 In making a decision, the Supervisor shall consider the case load of the unit, the complexity of the case, and whether contract counsel would have to be used to handle the case if the unit declines the referral.

3.3.2 It is anticipated that the MCU will be more actively involved in cases in areas that rely on contract attorneys.

3.4 In the event of a complicated case with multiple defendants, death penalty issues, law enforcement, political figures, or other case load/complexity concerns, the Supervisor may request that OPD's most experienced attorneys be assigned as counsel as long as the request is in conformity with the Management Caseload Limitations Policy, #114.

3.5 The Regional Deputy Public Defender and the Supervisor shall take into account the following factors in discussing the case assignment:

3.5.1 The complexity of the case;

3.5.2 The assessment, if possible with initial information, as to whether the case will go to trial;

3.5.3 The work load of the MCU;

3.5.4 The work load of the local attorneys;

3.5.5 The qualifications of the available local attorneys;

3.5.6 That both experienced local counsel and attorneys in the MCU need to have the opportunity to represent defendants in homicide cases as lead counsel;

3.5.7 The ability of the MCU to provide training of lesser experienced attorneys by involving them as second chair attorneys in homicide cases;

3.5.8 Whether the case would have to be handled by contract counsel if the case is left with the region; and

3.5.9 Any other considerations specific to each case.

3.6 To assist the Regional Deputy Public Defender and the Supervisor in making the decision as to case assignments, the MCU will maintain a list of all homicide cases assigned state-wide to OPD attorneys including the names of the attorneys assigned to those cases. The MCU will also maintain a list of all attorneys qualified to handle homicide cases, including all attorneys listed as homicide attorneys under schedule B of the career pay ladder (as adopted by the state and the union), and any other attorneys whom a Regional Deputy Public Defender has recommended and the Chief Public Defender has certified as homicide attorneys.

4.0 PROCEDURE

Once the Regional Deputy Public Defender and the Supervisor reach an assignment decision, they shall follow the following process.

4.1 If the decision is to assign the case to the MCU, the Supervisor will designate the lead attorney. The Regional Deputy Public Defender shall direct staff to

transfer the case to the MCU in JustWare and send any documentation to the MCU staff immediately, preferably via email or the JustWare filing cabinet.

4.1.1 The Supervisor may request that the Regional Deputy Public Defender assign a local attorney to work with the MCU for routine court appearances, routine contact with clients who are in jail, and so forth.

4.2 If the decision is to assign the case to a combination of MCU and local attorneys, the Supervisor will immediately designate the lead attorney. The Regional Deputy Public Defender will designate the local attorney in consultation with the Supervisor. The Regional Deputy Public Defender shall direct staff to transfer the case to the MCU in JustWare and send any documentation to the MCU staff immediately, preferably via email or the JustWare filing cabinet.

4.2.1 The assignment decision is to be based on the experience of the local attorney, and is given to persons identified as progressing in felony trial work.

4.2.2 Case assignments will not be based on a rotation system just to provide experience in trial work (general experience shall be acquired with less complicated cases within local offices).

4.3 If the decision is to assign the case to the regional office, the Regional Deputy Public Defender will designate the lead attorney.

4.4 If the Regional Deputy Public Defender and the Supervisor cannot reach agreement as to how the case shall be assigned, the Supervisor will make the assignment decision.

4.5 All major crime case assignments are subject to final approval and/or assignment by the Chief Public Defender.

5.0 CONFLICTS OF INTEREST

The members of the MCU and/or the Regional Deputy Public Defender will identify possible conflicts of interest.

If a conflict is identified, all cases under 3.1 and 3.2 shall be immediately given to the Supervisor. All other cases will be referred to the Conflict Coordinator. The Supervisor shall, in consultation with management and the Conflict Coordinator, take the necessary steps to resolve the conflict with existing internal resources. If the conflict cannot be resolved, the case shall be assigned by the Conflict Coordinator.

6.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Team Leader Attorneys**	Policy No.: **170**
Title:	Pages: **2**
Section:	Last Review Date: **6-01-10**
Effective Date: **5-10-10**	Revision Date: **6-28-10**

1.0 POLICY

The Office of the State Public Defender uses the team leader attorney model in some of its offices throughout the state. The responsibilities of the team leader attorney are defined as follows.

2.0 DEFINITION

In the team leader attorney model, an experienced public defender is designated by the Regional Deputy Public Defender (RDPD) as the team leader for teams doing comparable cases in an office. Example: an experienced felony public defender is designated team leader for those public defenders handling felony cases in that office.

3.0 PROCEDURE

3.1 Team Leader Attorney Responsibilities

3.1.1 To hold weekly meetings with the attorney team to discuss cases and case issues;

3.1.2 To routinely and individually meet with attorneys to monitor workloads;

3.1.3 To designate a second chair for trials, when necessary;

3.1.4 To provide mentoring as needed or as requested;

3.1.5 To monitor the attorney team's compliance with requirements to keep and enter time on cases;

3.1.6 To ensure that attorneys who are assigned to a case have the experience and skills to handle the case. If the attorney does not have the experience and skills, the lead attorney may still assign the case to the attorney if a sufficient mentoring plan is developed and used.

3.1.7 To assist the attorney team in recognizing conflict questions and presenting them to the RDPD;

3.1.8 To meet at least twice a month with the RDPD to advise him of work load, case, court or legal issues being addressed by the attorney team.

3.2 Additional Team Leader Attorney Responsibilities when the Regional Deputy Public Defender is Unavailable

3.2.1 To assign cases to team members;

3.2.2 To approve vacation and comp time accrued or used;

3.2.3 To provide guidance and direction to staff and investigators on work related to the team.

4.0 TRAINING

It will be the responsibility of the Regional Deputy Public Defender and the Training Officer to train the team leader attorney on successfully complying with this policy and their job responsibilities.

5.0 CLOSING

Questions about this policy should be directed to the OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Incentive Awards**	Policy No.: **180**
Title:	Pages: **6**
Section:	Last Review Date:
Effective Date: **8-5-10**	Revision Date:

1.0 POLICY

This policy establishes uniform guidelines for administering the employee incentive award program in the Office of the State Public Defender.

The incentive award program rewards documented outcomes and achievements approved by agency management for implementation.

2.0 PROCEDURE

2.1 Summary

2.1.1 An idea, innovation, suggestion, or prototype is submitted to management.

2.1.2 Management approves the idea, suggestion, innovation, or prototype for implementation after determining it will result in cost savings or improvements to agency operations.

2.1.3 The new idea, suggestion, innovation, or prototype realizes:

- **2.1.3.1** improved effectiveness or improved services without increasing the cost of operations,
- **2.1.3.2** measureable cost savings, and/or
- **2.1.3.3** achievements or outcomes eliminating or reducing the agency's expenditures.

2.1.4 The employee, group or team of employees, or non-employee is nominated for an incentive award.

2.1.5 The Chief Public Defender or designee grants the incentive award and determines its monetary value.

2.2 Eligibility

An employee, a group or team of employees, or a non-employee may receive an incentive award. They do not need to be employed by the agency benefiting from the achievement or outcome or granting the incentive award.

2.3 Nomination Submissions

2.3.1 After the idea, suggestion, or prototype has been approved and implemented by management, incentive award nominations may be submitted.

2.3.2 Nominations may come from current agency employees, employees of other state agencies and from non-employees.

2.3.3 Nominations for incentive awards are public information and available for review upon request. Requests should be directed to the Central Office, Human Resource Officer or by calling 406-496-6080.

2.3.4 Nominations for incentive awards may be submitted on the incentive award nomination form (Attachment A) or in another written format. Nomination forms are available on the OPD website or from the Office of the State Public Defender Central Office, 44 W. Park, Butte, Montana 59701.

2.3.5 The nomination must include:

2.3.5.1 Name, address, email, and telephone number of person(s) submitting the nomination for an incentive award.

2.3.5.2 Name(s) of individual or group or team of employees nominated, if applicable.

2.3.5.3 The date submitted.

2.3.5.4 A description of how the outcome, achievement or savings exceeds normal expectations for the employee, or group or team of employees, or has an impact on the delivery of service to the public or other customer.

2.3.5.5 The dollar value of the documented savings, including the method used to determine the value.

2.3.6 Submit nominations to the Central Office, attention Human Resource Officer, 44 W. Park, Butte, Montana 59701.

2.4 Incentive Award Committee

2.4.1 The incentive award committee is made up of three employees appointed by the Chief Public Defender.

2.4.2 The Chief Public Defender will appoint an incentive award program coordinator. This person serves as the chairperson of the incentive award committee. Other responsibilities include tracking nominations, promoting the program, notifying submitters of the status of proposals, arranging presentation ceremonies, obtaining monetary awards, publicizing awards to the agency and media, and preparing the annual award report listing the type and amount of awards the agency presented.

2.5 Nomination Review Process

2.5.1 The committee completes the initial evaluation of the nominations for incentive awards, reviewing each nomination received and

making the following non-binding recommendations to the Chief Public Defender:

2.5.1.1 Approval or disapproval of a nomination for an award, and

2.5.1.2 An appropriate value for a monetary or leave award.

2.5.2 The Chief Public Defender makes the final decision to grant incentive awards, and resolves any and all disputes related to granting incentive awards. If the award is to be divided between two or more people, the Chief Public Defender determines the amount each person is to receive.

2.6 Evaluation Criteria

The incentive award committee uses the following criteria to evaluate and prioritize the award nominations:

2.6.1 Evaluate the impact of the outcome, accomplishment or savings on delivery of services to the public or other customers.

2.6.2 Evaluate the outcome, accomplishment or savings in terms of how directly and to what degree they contribute to the agency's objectives, goals and mission.

2.6.3 Compare the outcome, accomplishment, or savings to what is normally expected from the employee, or group or team of employees, through the duties and responsibilities of their positions.

2.6.4 Determine if cost savings or cost avoidance results from activities that are highly original or creative involving innovative or novel approaches developed by the employee or by members of the group or team.

2.6.5 Determine if the results significantly exceed the level of effort or diligence normally expected from the employee's position(s).

2.6.6 Determine if the results required cooperative work efforts possible only through initiatives of group or team members that go above and beyond what is normally expected through existing work structure or organization.

2.7 Presentation of Awards

2.7.1 Once awards are approved by the Chief Public Defender, the incentive award program coordinator will process the awards and coordinate the presentation ceremony.

2.7.2 Incentive awards will be presented at least annually.

3.0 CROSS REFERENCE

Employee Incentive Program, Section 2-18-1101-1103, 1105-1107, MCA
Incentive Award Program, Section 2.21.6701-6703, 6708-6709 ARM

4.0 CLOSING

The Office of the State Public Defender will make reasonable accommodations for persons with disabilities who wish to participate in the Incentive Award Program. To request an accommodation, or for questions about this policy, contact OPD at the following address:

Office of the State Public Defender
Human Resource Officer
44 West Park
Butte, MT 59701
Phone 406-496-6080

Attachment A

INCENTIVE AWARD NOMINATION FORM

Office of the State Public Defender

The nomination must include the following information. Incomplete submissions will be returned. Questions about this process should be direct the Human Resource Officer at 496-6080 or DOAOPDHRPayroll@mt.gov.

Please type or print clearly.

The Office of the State Public Defender will make reasonable accommodations for persons with disabilities who wish to participate in the Incentive Award Program. To request an accommodation, contact the Human Resource Officer at 44 W. Park, Butte MT 59701, 496-6080, or fax 496-6098.

All nominations for incentive awards are public information and available for review.

Employee, Group or Team Nominated		
Name(s) of Person(s) Nominated	Location	Telephone Number(s)

Description of outcome, achievement or savings
Attach additional sheets if necessary. Describe the outcome, achievement or savings and how it
1. Exceeds normal expectations for the employee, or group or team of employees, or 2. Has an impact on the delivery of service to the public or other customer, or 3. Directly and to what degree contributes to the agency's objectives, goals and mission.

Documented Savings
1. Dollar value of the documented savings: $ _____ 2. Describe in detail the method used to determine the value:

Signature(s)	
Signature of the submitter(s) _____	Date: _____
Address: _____	Phone number: _____
Signature of the submitter(s) _____	Date: _____
Address: _____	Phone number: _____

For Agency Use	
Received by: _____	Date: _____

Office of the State Public Defender
Administrative Policies

Subject: **Accounting Reports**	Policy No.: **205**
Title: **47**	Pages: **1**
Section: **1-202(6)**	Last Review Date: **6-23-09**
Effective Date: **7/1/06**	Revision Date: **6-23-09**

1.0 POLICY

1.1 The Office of the State Public Defender will produce the following monthly reports and provide them to the Chief Public Defender, Administrative Director, Department managers and Regional Deputy Public Defenders (RDPDs):

1.1.1 Monthly Budget Variance Report
1.1.2 Contractor Expenditure Report
1.1.3 Monthly Organization Detail Report
1.1.4 Contract Attorney by Month of Service Report

2.0 PROCEDURE

2.1 The accounting department will produce and distribute these reports monthly.

2.2 Department managers and RDPDs will review the monthly reports and report any errors or omissions to the accounting department.

2.3 The Administrative Director will monitor the monthly reports and compare the reports to individual budgets.

3.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **Caseload Data Collection**	Policy No.: **210**
Title: **47**	Pages: **2**
Section: **1-202(5)**	Last Review Date: **12-01-09**
Effective Date: **6-20-07**	Revision Date: **12-01-09**

1.0 POLICY

1.1 The Office of the State Public Defender (OPD) will use information technology and caseload management systems to ensure that detailed expenditure and caseload data is accurately collected, recorded, and reported.

2.0 DEFINITIONS

2.1 "Case ID Number" is the Office of the State Public Defender case number.

2.2 "State Public Defender" is an attorney hired by OPD as a state employee to provide public defender services.

2.3 "Contract Attorney" is an attorney providing public defender services on behalf of OPD as an independent contractor.

2.4 "Case Management System" is an automated system that holds and reports on case information.

3.0 PROCEDURE

3.1 Collection & Recording

3.1.1 Upon receipt of a notice of appointment of OPD to represent a client in need of public defender services, the Regional Deputy Public Defender (RDPD) determines whether the case will be assigned to a contract attorney or to a state public defender.

3.1.2 All case information, for cases assigned to contract attorneys or to state public defenders, is entered into the case management system and a case ID number is attached as an identifier to that case.

3.1.3 Mandatory information entered into the JustWare case management system includes:

3.1.3.1 Specific court
3.1.3.2 Specific county
3.1.3.3 Violation type
3.1.3.4 Court docket number
3.1.3.5 Date of appointment
3.1.3.6 Attorney assignment
3.1.3.7 Basic client information
3.1.3.8 Specific charges by statute
3.1.3.9 Charging history
3.1.3.10 Involved parties to the violation

3.1.3.11 All calendared events
3.1.3.12 Judgment & sentencing details
3.1.3.13 Any other information deemed useful by OPD

3.2 Case Count Detail Reporting

Case counts shall be reported by region, by court, and by case type.

3.3 Detailed Expenditure Data

Existing or future technology shall provide detailed expenditure information. OPD currently uses the Statewide Accounting, Budgeting and Human Resource System (SABHRS) to record all accounts payable, accounts receivable, general ledger and human resource transactions.

3.3.1 Accounts Payable

All cases are assigned a case ID number, and all direct payments associated with a particular case (i.e., contract attorney costs, other professional fees, photocopy charges, travel costs, etc.) are processed through SABHRS using the case ID number.

3.3.2 Payroll Expenditures

Each state public defender is responsible for daily time keeping. All time is to be maintained in JustWare Timekeeping. The state public defender identifies time worked by case ID number. This information is necessary to produce detailed expenditure reporting.

4.0 CLOSING

Questions about this policy should be directed to the OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

Office of the State Public Defender
Administrative Policies

Subject: **JustWare Case Management Program**	Policy No.: **215**
Title: **47**	Number of Pages: **4**
Section: **1-202 (5)**	Last Review Date: 6-10-10
Effective Date: **10-1-09**	Revision Date: **9-30-10**

1.0 POLICY

JustWare is the agency's core application to collect and report data and assist in the representation of indigent Montanans. All employees of the agency shall use JustWare as required by their job responsibilities.

2.0 PURPOSE

2.1 As an agency of the State of Montana, the Office of the State Public Defender (OPD) is accountable to the legislature for the funds it receives. To receive adequate funding, the agency needs to be able to accurately report data to the legislature.

2.2 The ability of the agency to represent indigent Montanans requires that attorneys, staff and investigators accurately keep and record information about individual cases.

2.3 Indigent Montanans are required to pay costs of assigned counsel per 46-8-113 MCA. Those costs must be limited to the costs incurred by OPD, so the agency must be able to track and assign individual costs to individual cases.

3.0 PROCEDURE

3.1 INITIAL CASE INFORMATION

Regional Deputy Public Defenders (RDPDs) shall ensure that cases are assigned and opened in a timely manner. RDPDs will be responsible for reviewing their regional reports to assure that data has been input in a uniform manner pursuant to OPD Policy 210, Caseload Data Collection.

3.2 DISPOSITIONAL INFORMATION

RDPDs shall ensure that dispositional information is entered into JustWare in a timely manner after the conclusion of a case.

3.3 TIME TRACKING

3.3.1 Attorneys shall keep daily track of time, in increments of one tenth of an hour, on all cases for all courts. Pending time shall be submitted on a weekly basis.

3.3.2 Attorneys shall input time into the JustWare system and not delegate the task to staff, outside of unusual circumstances.

3.3.3 Attorneys shall associate time worked to individual cases. Time shall be allocated to the most applicable general time tracking type.

3.3.4 All time spent on general administrative time shall be allotted to administrative time tracking.

3.3.5 Attorneys shall allocate time spent on general court matters not associated with a particular case to the most applicable general court tracking category. Each attorney should have a general time tracking category for each court in which the attorney makes regular appearances.

3.4 TIME ENTRY REVIEW

3.4.1 RDPDs and/or Managing Attorneys shall review attorneys' time submissions on a weekly basis to ensure that attorneys are inputting required time.

3.4.2 RDPDs shall review Managing Attorneys' time submissions on a weekly basis to ensure that Managing Attorneys are inputting required time.

3.4.3 The Chief Public Defender shall review the time submissions for RDPDs' and all other attorneys not specifically assigned to a region on a weekly basis to ensure that they are inputting required time.

3.4.4 When an attorney is not tracking time on a weekly basis, it is the responsibility of the supervisor to work with the attorney to insure the attorney has time available and adequate training to enter time.

3.4.5 If, after efforts of the supervisor to assist, an attorney still does not track time, the attorney will be given a formal disciplinary letter with a corrective action plan. The letter of discipline will be maintained in the attorney's personnel file for six months.

3.5 CALENDARS

3.5.1 Attorneys, staff and investigators shall calendar case events, appointments and case deadlines in JustWare.

3.5.2 Attorneys are professionally required to maintain an independent back up calendar.

3.5.3 Attorneys within a region shall have access to other attorneys' calendars within that region. The Chief Public Defender, the Training Coordinator, and RDPDs shall have access to each other's calendars.

3.5.4 Staff shall assist attorneys and investigators in maintaining accurate calendars.

3.6 JUSTWARE NOTES

Attorneys, staff and investigators, when possible, are required to input notes in JustWare detailing case work and contacts with clients. Notes may be input at the time of timekeeping or separately recorded within the case record.

3.7 CLIENT CONTACT INFORMATION

Attorneys, staff and investigators shall maintain updated and accurate contact information for clients in JustWare.

3.8 AUDITING PROGRAM

3.8.1 RDPDs and Managing Attorneys shall periodically audit client JustWare files to make sure that attorneys, staff and investigators are inputting required information.

3.8.2 The Chief Public Defender shall periodically audit the files of RDPDs and attorneys not assigned to regions.

3.9 ELECTRONIC FILING CABINET

3.9.1 To the extent possible, RDPDs shall ensure that information received electronically is maintained electronically in the JustWare filing cabinet.

3.9.2 Offices shall comply with all developing OPD standards for both electronic filing and electronic records management to assure client records are complete and maintained consistently throughout the system.

3.9.3 The use of electronic copies, electronic service on opposing parties, and electronic retention of case materials is encouraged throughout the agency to reduce overhead costs and the impact on the environment.

3.9.4 Offices shall arrange for clients to receive documents electronically if the client consents.

3.10 DOCUMENT GENERATION

The Central Office shall support regional and local offices in the development of local documents required to comply with local court rules.

3.11 ATTORNEY REPORTS

The Central Office shall support regional and local offices in the development of reports required to maintain regional and local operations.

3.12 USER RIGHTS

User rights within JustWare are based on each individual employee's duties and responsibilities. Requests for changes in user rights shall be made through the employee's supervisor.

3.13 VIOLATION

Violation of any provision of this policy may result in disciplinary action up to and including termination.

4.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender
44 West Park
Butte, Montana 59701
Phone: (406) 496-6080

Office of the State Public Defender
Administrative Policies

Subject: Vehicle Management Policy	**Policy No.: 220**
Title	**Pages: 2**
Section:	**Last Review Date:**
Effective Date: 3/30/10	**Revision Date:**

1. POLICY

The Office of the State Public Defender provides owned or leased state cars to each office. An Office Fleet Manager will be designated in writing for each office to serve as liaison to the Central Office regarding vehicles assigned to the local office.

2. PROCEDURE

2.1 The Regional Deputy Public Defender or Managing Attorney will designate an Office Fleet Manager and a back-up fleet manager in writing and the Central Office will keep this information on file.

2.2 All agency vehicles, owned or leased, will be assigned confidential license plates, and will have the following in the glove compartment:

2.2.1 A fuel card to be used for fuel, car washes and incidentals such as windshield washer fluid. The fuel card may be used for other maintenance on owned vehicles only with pre-approval from the Central Office.

2.2.2 Registration including the confidential plate number. The original motor pool registration and the original motor pool license plates are to be kept in the trunk for leased vehicles.

2.2.3 Incident report forms.

2.2.4 Motor pool leased vehicles will also have the motor pool guidelines in the glove box.

2.3 The Office Fleet Manager will be responsible for:

2.3.1 Scheduling and calendaring the use of all vehicles assigned to the office.

2.3.2 Ensuring the security of vehicle keys.

2.3.3 Ensuring that routine maintenance is performed as scheduled.

2.3.4 Reporting the monthly mileage to the Central Office based on the vehicle log.

2.3.5 Notifying vehicle users in writing if a state vehicle is not available for their planned itinerary.

2.3.6 Ensuring that incident reports are completed, photographs taken, and the appropriate signatures are obtained prior to submitting the report to the Central Office.

2.4 The vehicle user will be responsible for:

2.4.1 Maintaining the vehicle log each time the car is used.

2.4.2 Ensuring that the vehicle has at least half a tank of gas upon return.

2.4.3 Removing trash from the vehicle and leaving it clean for the next user.

2.4.4 Ensuring that the exterior of the vehicle is clean enough for safe driving.

2.4.5 Reporting needed maintenance or repairs to the Office Fleet Manager.

2.4.6 Reporting accidents to the Office Fleet Manager and completing the incident report.

4. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions about this policy can be directed to your supervisor or to the OPD Central Office at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

(406) 496-6080

Office of the State Public Defender
Administrative Policies

Subject:	**Cellular Devices and Services**	**Policy No.:**	**225**
Title		**Pages:**	**9**
Section:		**Last Review Date:**	**12/15/10**
Effective Date:	**11/10/10**	**Revision Date:**	**3/30/11**

1. POLICY

Cellular devices and services are provided to state employees for official State business use, and are issued when their benefits outweigh their costs. State devices are assigned to meet State business needs and are not a part of any State employee benefit program. The Office of the State Public Defender will provide cellular devices to employees who need them to perform their job duties.

2. DEFINITIONS

2.1 Cellular device: A portable device, including cellular telephones, satellite phones, air cards, Blackberry devices and other Personal Data Assistant (PDA) devices, with cellular communications capability. These devices may be State owned/leased (State device) or private owned/leased (private device).

2.2 Essential personal calls: Personal calls of minimal duration that cannot be made at another time or from a different telephone. Examples of essential personal calls are calls to arrange for unscheduled or immediate care of a dependent, a family emergency, or to alert others of an unexpected delay due to a change in work or travel schedule.

3. REQUIREMENTS FOR ISSUING A STATE DEVICE

3.1 Cellular devices shall be issued when it is more cost effective and efficient than landlines/desk phones, pagers and State contract calling cards. State devices are issued to an individual.

3.2 The Chief Public Defender or designee shall review and approve requests for cell equipment and services consistent with these requirements.

3.3 An authorization form (Attachment A) must be completed before a cellular device can be issued.

3.4 State devices shall be issued based on one or more of the following job requirements:

3.4.1 Employee's job requires field work where landline phones are inaccessible or inefficient

3.4.2 Employee's job requires immediate or on-call availability

3.4.3 Employee's job requires travel and availability via cellular device

4. REQUIREMENTS FOR USING A STATE DEVICE

4.1 Personal use of state devices shall be limited to State business and essential personal calls.

4.2. State device numbers may be ported (transferred) from one vendor to another. The following types of number porting are prohibited:

4.2.1 Porting of a state landline business number to any cellular device (state or private device)

4.2.2 Porting of a private device number to a state device account

4.2.3 Porting of a State device number to a private device account

4.3. User responsibilities specified in policy ENT-SEC-081 User Responsibility and ENT-SEC-041 Transmission Privacy apply in so far as a cellular device under this policy provides a capability listed in those policies.

4.4 Users of mobile devices that interact with the State of Montana's Microsoft Exchange mobile device connection interface will be required to sign a Managed Mobile Device Email User Agreement (Attachment B).

5. REQUIREMENTS FOR REIMBURSEMENT OF PRIVATE DEVICE COSTS

If a private device is used for business purposes a reimbursement request may be made (Attachment C):

5.1 Any reimbursement shall be for verifiable costs in excess of the employee's plan or other fees and taxes incurred as a direct result of the business use.

5.2 Fixed Monthly Rate Option: The agency may reimburse employees approved to use a private device for state business at a fixed monthly rate:

5.2.1 This reimbursement is available to those employees who are required to maintain a private device:

5.2.1.1 for the performance of their job duties and have not been issued a State device, or

5.2.1.2 because their agency has determined it either is more efficient or is essential for the performance of their job duties.

5.2.2 The fixed monthly rate shall be no higher than a current State contract plan that would have otherwise been selected based on the number of minutes appropriate for the employees job-related duties.

5.2.3 Employees who receive a monthly fixed reimbursement shall be responsible for all state, local and federal taxes.

5.2.4 Employees who are issued a State device are not eligible to be reimbursed at a fixed monthly rate.

5.2.5 If reimbursement requests are submitted regularly, the employee's supervisor should consider assigning a State device to the employee.

6. RESPONSIBILITIES

6.1 The agency:

6.1.1 Is responsible for the appropriate use of cellular devices and services, including employee eligibility, plan usage and proper billing, and enforcement.

6.1.2 Is responsible to determine cost/benefit criteria for requiring their use of cellular devices based upon the requirements of this policy and applicable business requirements.

6.1.3 Shall designate one or more Cellular Managers

6.2 Cellular Manager(s) will:

6.2.1 Work with employee supervisors to determine best use of cellular devices and plans

6.2.2 Review all approved cellular device requests

6.2.3 Determine the most efficient use of minutes and cell plan

6.2.4 Resolve billing errors applicable to State device contracts

6.2.5 Maintain inventory records of authorized use of cellular devices to include:

6.2.5.1 Employee-device assignment

6.2.5.2 Assigned plan

6.2.5.3 Justification

6.3 Employee Supervisors will:

6.3.1 Ensure their employees understand this policy and its requirements

6.3.2 Review individual cellular device assignments quarterly to determine if there is a continuing need and if the cost is justified

6.3.3 Review vendor billing statements on a monthly basis for overage minutes, incorrect, and reimbursable charges.

6.4 Employees using cellular devices:

6.4.1 Are responsible for State device equipment and proper use of the equipment in their possession

6.4.2 Shall notify their supervisor or appropriate management immediately in the event of damage, loss or theft of cellular devices. The employee shall provide written notification within five business days.

6.4.3 Are responsible for operating State or private vehicles, or operating other potentially hazardous equipment while in the performance of

State business, in a safe and prudent manner while using cellular devices. State employees are strongly encouraged not to use handheld cell phones or other handheld electronic communications devices or objects while operating state vehicles or personal vehicles on state business. (ARM, 2.6.210 CELL PHONE USE).

6.4.4 May request approval to use their private device for State business if they are required to carry a State device. The employee's supervisor may grant or deny such requests.

6.4.5 Shall check the monthly statement for accurate billing, highlighting calls of a personal nature.

6.4.6 Shall reimburse the State for all personal calls that result in additional charges to the State

6.4.7 Shall return State devices to their supervisor when the employee leaves their position or is no longer an authorized cellular device user.

7. ENFORCEMENT

Enforcement actions for violations of this policy include but are not limited to revocation of cellular device privileges and/or possible disciplinary action up to and including termination.

8. CROSS REFERENCE GUIDE

8.1 Policy for Establishing and Implementing Statewide Information Technology Policies and Standards (pending)

8.2 ENT-SEC-081, User Responsibilities

8.3 ENT-SEC-041, Transmission Privacy

8.4 ARM, 2.6.210, Cell Phone Use

8.5 ARM, 2.13.102, Use of the State's Telecommunications Systems

8.6 1-1103.01, MOM, Use of the State Telephone System (not available online)

9. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions about this policy can be directed to your supervisor or to the OPD Central Office at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

(406) 496-6080

Attachment A

Office of the State Public Defender

CELLULAR DEVICE REQUEST AND AUTHORIZATION FORM

Request date: _____ Request is for ❒ Cell Phone ❒ Smart Phone

Supervisor making the request (print): _____

Job responsibilities that justify issuing a cellular device: _____

_____

_____

_____

Approval Signature: _____ Date: _____
Supervisor

Approval Signature: _____ Date: _____
Chief Public Defender

The employee using the cellular device is responsible for reading the policy and signing below.

I have read the Policy for Cellular Devices and Services and agree with its terms and conditions. In addition, I agree to follow all employee responsibilities as described in the policy.

Employee name (print): _____Signature: _____

Office Location: _____

Organization Number: _____

Cellular Manager Use Only

Device phone number:_____ Activation date: _____

Telephone model:_____ Serial Number: _____

Plan/Minutes: _____

User Name:
User ID (CM#):
Phone #:

Attachment B

Office of the State Public Defender

Managed Mobile Device Email User Agreement

This user agreement covers ONLY the use of a Managed Mobile Device that interacts with the State of Montana's Microsoft Exchange mobile device connection interface.

For a definition of a managed mobile device or to find out more information about the E-MAIL MOBILE service, go to the Service Catalog located on the MINE Portal.

The user acknowledges and agrees:

1. The Department of Administration, Information Technology Services Division (ITSD), may wipe my managed mobile device, **STATE OR PERSONAL**, without any notification, resulting in loss of all data on the managed mobile device and setting the managed mobile device back to factory default settings. ITSD will make a reasonable effort to contact the appropriate agency personnel to inform them of the managed mobile device wipe, and reasons for the wipe, in a timely manner. Some of the common reasons to wipe a managed mobile device are listed below:
   a. If the managed mobile device is suspected of being compromised and poses a threat to the State.
   b. If the user of the managed mobile device violates State policies and statutes concerning the use of the mobile device.
   c. If a technical issue arises that requires the managed mobile device to be wiped to resolve.
   d. If the mailbox associated with the managed mobile device is disabled.
   e. If the owner of the managed mobile device resigns, is terminated or suspended with/without pay.

2. During the initial synchronization with the Exchange infrastructure, a default Exchange Security Configuration (ESC) will be pushed to my managed mobile device. For information regarding the ESC read the "Managed Mobile Device Email Security Configuration" document. This ESC is meant to protect and secure the State's information on my managed mobile device. This ESC may change the way my managed mobile device works when I connect it to the Exchange infrastructure and could disable or enable features on my managed mobile device. If I require features that were changed by the ESC, then I may apply for the UNMANAGED Mobile Device policy through my agency or not use the E-MAIL MOBILE service.

3. The ESC may change because it is periodically reviewed. ITSD will attempt to inform customers before any changes, but in the case of an emergency change, this contact may not be possible.

4. If I lose my managed mobile device that is configured to connect to the State of Montana's Exchange Infrastructure, I am required to take the actions listed below as soon as possible, but no later than 24 hours from losing my managed mobile device.
   a. Contact my Security Officer and report the loss.
   b. Wipe all data from the managed mobile device via the Outlook Web Access *Options* page. http://mine.mt.gov/it/pro/win2kadmin/exchange/managingmobiledevicethroughowa.mcpx

c. Contact the cellular company that provides my service and have the managed mobile device deactivated.

d. Change my Active Directory password.

e. Open an incident with ITSD's Service Desk, either via email to ServiceDesk@mt.gov or by calling 444-2000 to notify ITSD's Exchange Infrastructure Administrators of the loss and what actions have been taken. After being notified of a lost managed mobile device, the Exchange Infrastructure Administrators will confirm the data wipe of the managed mobile device.

5. DOA ITSD's responsibility is limited to verification that the mobile device connection interface is up and available and that a DOA ITSD test mobile device can use the mobile device connection interface. DOA ITSD WILL NOT provide troubleshooting or support for managed mobile devices.

6. Support of the managed mobile device is provided by the mobile device provider or other agency designated staff.

7. My use of managed mobile device is also governed by the following polices and laws, Electronic Mail ENT-Net-042; User Responsibility ENT-SEC-081; Internet Acceptable Use ENT-INT-011; and 2-15-114 and 2-17-534, MCA.

8. All network activity conducted while doing State business and being conducted with State resources is the property of the State of Montana; and, the State reserves the right to monitor and log all network activity including email, text messages, Twitter messages, Internet use, and all other social media, with or without notice. Therefore, I have no expectations of privacy in the use of these resources and the content of the messages sent using these resources.

By signing this agreement, I acknowledge that I have been made aware of and understand the appropriate uses of managed mobile devices with the State of Montana Exchange infrastructure and I have reviewed the MANAGED MOBILE DEVICE EMAIL SECURITY CONFIGURATION document associated with this service. I also acknowledge that I have read and understand the policies and laws referenced in this agreement and agree to comply with these policies and laws.

MANAGED MOBILE EMAIL USER

Signature: _____ Date: _____ (DD/MM/YYYY)

Print Name: _____

AGENCY SECURITY OFFICER

Signature: _____ Date: _____ (DD/MM/YYYY)

Print Name: _____

The information above may not be altered in any way. This space may be used for approval information including plan and equipment details.

_____

_____

_____

Mail the signed original of this form to: OPD Central Office, 44 W. Park, Butte MT 59701.

Attachment C

Office of the State Public Defender

Personal Cellular Device Fixed Monthly Reimbursement Request Form

Use this form to request a fixed monthly reimbursement for use of a personal cellular device for State of Montana business. See section 5.2 of the Office of the State Public Defender (OPD) Cellular Devices and Services policy for eligibility, restrictions and more information.

INSTRUCTIONS: Complete parts 1 thru 4 and submit to the Central Office for approval and processing.

PART 1 – WHO - COMPLETE THE FOLLOWING FOR THE EMPLOYEE REQUESTING A MONTHLY REIMBURSEMENT:

NAME:_____

TITLE:_____

OFFICE LOCATION/ORG_____

EMPLOYEE ID:_____

EMPLOYEE CELL PHONE NUMBER:_____

PART 2 – JUSTIFICATION - WRITE A BRIEF JUSTIFICATION FOR THE REIMBURSEMENT REQUESTED AND **ATTACH SUPPORTING DOCUMENTATION**, INCLUDING A COPY OF YOUR PHONE BILL. **YOU MUST DEMONSTRATE THAT USE OF YOUR PERSONAL DEVICE FOR STATE BUSINESS INCREASES YOUR COST.**

PART 3 – AMOUNT - COMPLETE THE FOLLOWING TO DETERMINE THE REIMBURSEMENT AMOUNT:

The amount of the reimbursement can be no more than the amount the state would otherwise pay to provide the service.

ESTIMATED MONTHLY AVERAGE VOICE USAGE FOR STATE BUSINESS:_____MINUTES

Use of your cell phone for state business will be reimbursed at $15 per month.

Requests for reimbursement for data use will be addressed on a case by case basis, and if approved will be reimbursed at $40 per month.

MONTHLY REIMBURSEMENT AMOUNT REQUESTED:_____

PART 4 – EMPLOYEE/SUPERVISOR RESPONSIBILITIES AND AUTHORIZATION:

YOUR SIGNATURE BELOW AFFIRMS YOU HAVE READ AND UNDERSTAND THE OPD CELLULAR DEVICES AND SERVICES POLICY. This fixed monthly reimbursement shall expire no later than one year from the date of approval of this request by the Central Office.

EMPLOYEE: I am aware that maintaining a personal cellular account and device are my responsibility and necessary as part of my job responsibilities. I am responsible for all state, local and federal taxes related to this reimbursement. I understand that my personal cell phone number may be listed or published as needed for job requirements and my cell phone records must be furnished to the State upon request, and that I have no expectation of privacy in the number or the records.

Requesting Employee Signature: _____

Date: _____

SUPERVISOR: I am aware that reviewing personal cellular device reimbursements quarterly to determine if there is a continuing need and cost justification are my responsibility.

Supervisor Approval Signature_____

Date: _____

PART 5 – CENTRAL OFFICE APPROVAL AND PROCESSING:

Chief Public Defender Approval Signature: _____

Date: _____

AMOUNT APPROVED: _____ EXPIRATION DATE: _____

OPD Cellular Manager Signature (For Tracking and Processing):_____ Date: _____

OPD CELLULAR MANAGER SHALL RETAIN THE ORIGINAL FOR VERIFICATION AND RETURN AN ELECTRONIC COPY TO THE EMPLOYEE AND CENTRAL OFFICE ACCOUNTING.

Office of the State Public Defender
Administrative Policies

Subject: **Media Policy**	Policy No.: **230**
Title	Pages: **2**
Section:	Last Review Date:
Effective Date: **04/23/09**	Revision Date:

1.0 POLICY

The purpose of this policy is to establish guidelines for the Office of the State Public Defender's (OPD or the agency) response to media inquiries.

The agency will:

- Respond to media inquiries in a timely, appropriate, and professional manner;
- Give all members of the media equal access to public information;
- Do its best to ensure that all information is accurate and up-to-date;
- Uphold the constitutional right of all Montanans to know what their government is doing on their behalf; and
- Take into account the constitutional right of individuals to privacy, and state and federal laws that mandate confidentiality in specific situations.

Any employee who has questions about whether specific information is public or private should contact the Administrative Director at 496-6080.

2.0 PROCEDURES/REQUIREMENTS

2.1 Media Inquiries

The Chief Public Defender, Administrative Director and Regional Deputy Public Defenders may give interviews to or respond to media requests for information. They may delegate this responsibility to other employees on specific projects, issues or topics as appropriate.

Employees should refer media inquiries to their supervisor, Regional Deputy Public Defender, Administrative Director or the Chief Public Defender. If the employee is unable to reach any of these individuals, the employee should provide the requested information to the media representative or refer them to the best source of the information. All questions concerning OPD policy should be forwarded to the Central Office prior to responding.

Anyone who responds to a media inquiry should notify their supervisor, Regional Deputy Public Defender, Administrative Director **and** the Chief Public Defender by e-mail. The e-mail should include:

- The reporter's name, affiliation, and phone number;
- The date/time of the contact;
- The topic of the reporter's call; and
- A brief synopsis of the employee's response.

2.2 News Releases and Press Conferences

All news releases and press conferences must be approved by the Administrative Director or the Chief Public Defender prior to release or scheduling.

2.3 Publications

State agencies are required by law to send a minimum of one electronic copy and up to 17 paper copies of all publications to the State Library Publications Center Coordinator.

All agency publications must include:

- Cost disclosure information as required in Section 18-7-306, MCA (provided by the Department of Administration Print and Mail Services office);
- An accessibility statement: "Alternative accessible formats of this publication will be provided by request. For further information call xxx-xxxx or TTY 711."

3.0 CLOSING

Questions about this policy should be directed to the Central Office at the following address:

Office of the State Public Defender, Administrative Services Division
44 West Park
Butte, MT 59701
Phone: 406-496-6080

4.0 CROSS-REFERENCE GUIDE

Montana Constitution Article II, Sections 9 (right to know) & 10 (privacy)
2-6-101, MCA et seq. Public Records

Office of the State Public Defender
Administrative Policies

Subject: **Public Participation Guidelines**	Policy No.: **235**
Title	Pages: **1**
Section:	Last Review Date:
Effective Date: **01/09/09**	Revision Date:

1.0 POLICY

These guidelines are intended to insure that the public has a reasonable opportunity to participate in deliberations and decisions that are of significant public interest. Montana's Constitution and statutes guarantee this right.

2.0 PROCEDURES

2.1 Post a meeting or hearing notice at least 72 hours in advance of the meeting or hearing.

2.2 Post the meeting or hearing notice on the state's electronic calendar, on the agency website, and personally to those who have previously shown an interest in the matter.

2.3 Include adequate details of potential or proposed action items.

2.4 Give notice of any closed session. Such sessions will be held and conducted in accordance with state law.

2.5 Include a full agenda for any meeting or hearing with a time allotted for public comment.

2.6 Provide a contact name, address, phone number, mailing and emailing addresses, including where to seek special needs or ADA accommodation.

2.7 Record minutes of meetings in accordance with 2-3-212, MCA, and make all minutes available for public inspection.

3.0 CLOSING

This policy shall be followed unless it conflicts with specific statutes, which shall take precedence to the extent applicable.

Questions about this policy should be directed to the State Office at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park
Butte, MT 59701
Phone: 406-496-6080

4.0 Cross-Reference Guide

Art. II, Sec.8, MT Constitution
MCA 2-3-101, et seq.
ARM 1.3.101

Office of the State Public Defender
Administrative Policies

Subject: **Management of the Appellate Defender Office**	Policy No.: **301**
Title: **47**	Pages: **2**
Section: **1-205**	Last Review Date:
Effective Date: **5-5-10**	Revision Date:

1.0 POLICY

1.1 The Office of the State Public Defender encompasses the Appellate Defender Office (ADO) by statute. The following management structure has been established to conform with the requirements of Section 47-1-205, MCA. This structure has been in place since inception of the agency and is now formalized in policy.

2.0 PROCEDURE

2.1 Chief Public Defender

2.1.1 The Chief Public Defender shall appoint the Chief Appellate Defender who is a state employee exempt from the state classification and pay plan.

2.1.2 The Chief Public Defender shall determine the pay for the Chief Appellate Defender.

2.1.3 The Chief Public Defender shall ultimately be responsible for budget submissions for the ADO. The ADO budget shall be monitored by the Chief Public Defender in conjunction with the Chief Appellate Defender.

2.2 Chief Appellate Defender

2.2.1 The Chief Appellate Defender shall have exclusive management authority in the ADO in the following areas:

2.2.1.1 All personnel issues, including hiring, discipline and firing of staff;

2.2.1.2 Day-to-day operation of the office;

2.2.1.3 Assignment of cases, including determining which cases are to be contracted out and to whom;

2.2.1.4 Review and determination of issues to be raised, including the issue of ineffective assistance of counsel;

2.2.1.5 Determination as to whether an extraordinary writ should be filed; and

2.2.1.6 Approval of all invoices, contractor bills and special costs.

2.2.2 The Chief Appellate Defender shall assist in the development and monitoring of the program's budget in conjunction with the Chief Public Defender.

3.0 CLOSING

Questions about this policy should be directed to OPD at the following address:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

Phone 406-496-6080

Office of the State Public Defender
Administrative Policies
Human Resources

Subject: Montana State Telephone Network Use	**Policy No.:** 501
Title	**Pages:** 2
Section:	**Last Review Date:** 4-1-07
Effective Date: 7-1-06	**Revision Date:**

1. POLICY

The state's telecommunications facilities are provided for the conduct of state business. The use of the state's telecommunications facilities for essential personal business must be kept to a minimum and not interfere with the conduct of state business. All Office of the State Public Defender employees are required to acknowledge that they understand and will adhere to this policy by signing the Telephone Use Acknowledgement Form (attachment A).

2. PERMITTED USE

In addition to state business, the state's telecommunications facilities may be used by state employees and officials for local and long distance calls to latch-key children, teachers, doctors, day care centers, baby sitters, and family members to inform them of unexpected schedule changes and other essential personal business. All in-state and out-of-state calls made on the State Telecommunications Network are billed to the originating state telephone number. Essential personal long distance calls must be collect, charged to a personal third-party number, or charged to a personal credit card.

3. COVERED FACILITIES

The state's telecommunications facilities include any state-owned, leased, contracted for, operated, or maintained telecommunications equipment, services, or facilities, including private branch exchanges, telephone key systems, teleconferencing systems, local and long distance telecommunications circuits, cellular telephones, data communications equipment, video capabilities, land mobile radio equipment, telephone credit cards, facsimile equipment, and voice mail.

4. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Violation of any provision of this policy may result in disciplinary action up to and including termination.

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park, Butte, MT 59701
(406) 496-6091

ATTACHMENT A

TELEPHONE USE
ACKNOWLEDGEMENT FORM

By signing this form I acknowledge that I have read the “Montana State Telephone Network Use” policy and I understand that I am bound by the requirements in that policy.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

PRINT NAME:_____

SIGNATURE:_____

DATED:_____

This form must be signed and returned to:

Office of the State Public Defender
Human Resource Office
44 West Park
Butte, MT 59701

(406) 496-6091

Office of the State Public Defender
Administrative Policies
Human Resources

Subject: Computer Use	Policy No.: 502
Title	Pages: 4
Section:	Last Review Date: 4-1-07
Effective Date: 11-01-06	Revision Date:

1. POLICY

The state's computer system and all programs on it belong to the State of Montana and are provided for the conduct of state business. The use of the state's computer facilities for essential personal business must be kept to a minimum and not interfere with the conduct of state business. All Office of the State Public Defender employees are required to acknowledge that they understand and will adhere to this policy by signing the Computer Use Acknowledgement Form (attachment A).

2. PROCEDURES

2.1 By using the state computer system, including but not limited to the Internet and e-mail system, employees understand that management may monitor, read and review any and all information accessed or stored in the system and/or on your assigned state computer.

2.2 The State of Montana has a business requirement to monitor or retrieve information on its computer system for a variety of reasons that include, but are not limited to, trouble shooting software problems, retrieval of work files, preventing system misuse and assuring compliance with software distribution policies. Employees do not have a right to privacy in any materials created, accessed, sent or received on state computer equipment whether password protected or not. Passwords may be overridden by the State.

2.3 *Very limited*, *reasonable* personal use of the state's email system may occur to send a personal email that does not contain foul, offensive, defamatory or pornographic information. Just like the use of the state telephone system, personal use of email should be limited and brief. Email sent over the state system, whether personal or state work related, should be proper in its content.

2.4 An employee may access a nonobscene, nonoffensive Web site on break time only. *Use common sense and good judgment.* Misuse of the state computer system by falsifying time sheets and recording nonwork time as work time can lead to disciplinary action up to and including termination.

2.5 To insure that the above guidelines are being met the state reserves the right to filter out or block inappropriate Internet sites and will from time to time conduct unannounced surveillance of any and all computer use by state employees. While the State will take steps to block offensive material and delete it when discovered, that does not mean that all accessible material is appropriate.

2.6 Documents deleted from any of your directories, including Outlook, may continue to exist and can be retrieved off of the system. A list of all Internet sites accessed by employees is available to management when management requests it or computer security personnel observe and report inappropriate use to management.

2.7 Logon IDs and passwords (e.g., CM numbers) are assigned to individuals for access to the Office of the State Public Defender data. The individual assigned an ID and password is responsible for the security of this ID. Passwords must be kept confidential. You may be liable for unauthorized access of information using your ID and password.

3. PROHIBITED USE

3.1 No one may use the state computer system or any of its programs for non job related purposes to access or send foul, offensive, defamatory or pornographic information.

3.2 The state has a zero tolerance policy for sexual harassment. Accessing or sending harassing or derogatory information such as comments demeaning a person's sex, race, religion, disabilities and sexual orientation will not be tolerated.

3.3 Do not use a personal email account such as Hotmail outside of the of the state Email system unless you have been granted an exception by the State Information Security Officer. Downloading an outside system on to the state system can open the door to viruses and other serious problems.

3.4 Prohibited activities include but are not limited to:
3.4.1 chain letters
3.4.2 communications to solicit voluntary participation in athletic betting pools, political causes, religious causes or personal organizations.

3.5 The state computer system may not be used to conduct or operate a personal commercial business or "forprofit" or "nonprofit" activities.

4.0 ITSD POLICIES

The enterprise policies found at http://itsd.mt.gov/policy/itpolicy.asp are also incorporated in the OPD policy by reference. These policies numbers start with ENT (enterprise), followed by the category (INT=Internet, Net=Network/Telecommunications, PCS=Personal Computers, SEC=Security) and a reference number.

5. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

If you have a question about a particular use ask your supervisor before you use the state computer system for that purpose and potentially expose yourself to disciplinary action.

Violation of any provision of this policy may result in disciplinary action up to and including termination.

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

(406) 496-6091

ATTACHMENT A

COMPUTER USE
ACKNOWLEDGEMENT FORM

By signing this form I acknowledge that I have read the “Computer Use” policy and I understand that I am bound by the requirements in that policy.

I understand that the State computer system (including the computer assigned to me by the Office of the State Public Defender) is the property of the State. I know that my supervisor may monitor or retrieve information created, stored, accessed by me or sent to or from me on the state computer system with or without notice.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

PRINT NAME:_____

SIGNATURE:_____

DATED:_____

This form must be signed and returned to:

Office of the State Public Defender
Human Resource Office
44 West Park
Butte, MT 59701
(406) 496-6091

Office of the State Public Defender

VEHICLE USE
ACKNOWLEDGEMENT FORM

I have received and read a copy of the State of Montana Vehicle Use Policy (also found in the Administrative Rules of Montana, ARM, 2.6.201 through 2.6.214).

I truthfully state that I have a valid, non-conditional driver's license and that my license is not currently under suspension.

My signature below indicates that I have received and read a copy of the Office of the Public Defender Vehicle Use Policy, I understand the penalties for particular driving offenses (Attachment B), and the requirements of notice to my employer should the status of my driving record change.

I have also read and understand the Office of the State Public Defender Fuel Conservation Strategy, and I agree to abide by the Vehicle User/Operator Guidelines.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

PRINT NAME: _____

SIGNATURE: _____

DATED: _____

This form must be signed and returned to:

Office of the State Public Defender
Human Resource Office
44 West Park
Butte, MT 59701

(406) 496-6091

Office of the State Public Defender
Administrative Policies
Human Resources

Subject: Vehicle Use	**Policy No.: 503**
Title	**Pages: 7**
Section:	**Last Review Date: 1-29-08**
Effective Date: 03-27-06	**Revision Date:**

1. POLICY

The Office of the State Public Defender (OPD) has adopted the State of Montana Vehicle Use Policy (Attachment A), found in the Administrative Rules of Montana, ARM 2.6.201-2.6.214. All OPD employees are required to acknowledge that they understand and will adhere to this policy, and that they understand the penalties for particular driving offenses (Attachment B), by signing the Vehicle Use Acknowledgement Form (Attachment C).

2. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Violation of any provision of this policy may result in disciplinary action up to and including termination.

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

(406) 496-6091

ATTACHMENT A

ADMINISTRATIVE RULES OF MONTANA

CHAPTER 6

RISK MANAGEMENT AND TORT DEFENSE

Sub-Chapter 2

State Vehicle Use

2.6.201 INTRODUCTION
(1) The following rules define acceptable uses for state-owned or leased motor pool vehicles as provided in 2-17-424, MCA. State employees or authorized individuals may be subject to additional guidelines, policies, insurance coverage exclusions, or regulations for vehicle/equipment fleet operations, provided that they do not conflict with these rules.
(2) Drivers and passengers must use installed seat belts at all times.
(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

2.6.202 DEFINITIONS As used in this sub-chapter, the following definitions apply:
(1) "State" as defined in 2-9-101, MCA.
(2) "State employee" as defined in 2-9-101, MCA.
(3) "State vehicle" means a motor vehicle, semi-trailer, snowplow, or other vehicle designed for travel on public roads that is subject to motor vehicle registration, including any machinery or apparatus attached to the vehicle. The term includes the following:
- (a) a "leased vehicle" obtained by the state through an open-ended lease or lease with an option to buy contract;
- (b) a "loaned vehicle" provided to the state as a gratuity;
- (c) an "owned vehicle" to which the state has title; and
- (d) a "rented vehicle" rented by the state for a fee, typically for short-term use in Montana or for out-of-state travel.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

2.6.203 AUTHORIZED DRIVERS AND USES
(1) Except as otherwise provided in this rule, the following individuals may operate a state vehicle if the driver possesses a valid driver's license appropriate to the type of vehicle to be driven, meets driver requirements set out in ARM 2.6.205, and the uses are as provided below:
- (a) a state employee to conduct business on behalf of the state;
- (b) a state employee in travel status to obtain food and lodging and to respond to medical emergency situations;
- (c) a state employee required to conduct state business to obtain items needed while in travel status;
- (d) a state employee may park a state vehicle overnight at the employee's residence if the employee must begin travel the next day or if the employee is

subject to emergency response, on-call, or other off-shift duty associated with state employment;

(e) a state employee required to stay overnight at a location other than the employee's established work location during nonwork time to drive to a cultural, recreational, or leisure activity or to conduct other personal business, if the activity is within 30 miles of the employee's lodging;

(f) a non-state employee enrolled and registered as a student at a university of the state to conduct university business;

(g) a non-state employee to aid or assist a disabled state employee if the aide has completed the risk management and tort defense division's (RMTD) vehicle use agreement and obtained authorization from the agency head or designee prior to the use;

(h) a non-state employee to assist a state employee or other individual during a medical emergency for transportation and related purposes. Prior approval is not required;

(i) a non-state employee who is an independent contractor or an employee of a temporary employment agency contracting with the state with prior approval from the agency head when a state employee is not available to operate the vehicle. The contractor must complete the RMTD's vehicle use agreement. The agreement must be signed by the agency head and presented to the motor pool or affected state agency prior to the use; and

(j) a non-state employee accompanying a state employee on official state business where the state employee becomes ill, fatigued, or is otherwise rendered physically or mentally incapable of driving and/or a compelling state interest is served by allowing the non-state employee to drive. Prior approval is not required.

(2) Any exception to the authorized drivers and uses requires the prior written approval of the risk management and tort defense division.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

2.6.204 AUTHORIZED PASSENGERS AND USES

(1) Except as otherwise provided in this rule, the following individuals may ride as passengers in a state vehicle:

(a) a state employee conducting business on behalf of the state; or

(b) a non-state employee who is:

(i) an independent contractor conducting business on behalf of the state;

(ii) an aide rendering assistance to a disabled state employee;

(iii) a guest or client of the state, including a public employee, if conducting, participating in, or providing a benefit to the conduct of state business;

(iv) rendering assistance during an emergency situation; or

(v) a nursing infant if the parent is an authorized driver or passenger.

(2) Any exception to the authorized passengers and uses requires the prior written approval of the risk management and tort defense division.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

2.6.205 DRIVER REQUIREMENTS

(1) Non-probationary employees required to drive as part of their job who have accumulated 12 or more conviction points according to the schedule specified in 61-11-203, MCA, over the most recent 36 months may not drive a state vehicle or personal vehicle for state business until having successfully completed a certified safe driver course approved by the RMTD and received authorization to drive from their agency head and RMTD. State employee drivers who have accumulated 15 or more conviction points according to the schedule specified in 61-11-203, MCA, may not drive a state vehicle or a personal vehicle for state business until the accumulated point total is less than 12 within the past 36 months.

(2) Non-probationary employees who have accumulated 18 or more points in the immediately preceding 36 months may not drive a state vehicle or a personal vehicle for state business until two years have passed during which they have not accumulated any conviction points according to the schedule specified in 61-11-203, MCA, have successfully completed a certified safe driver course approved by RMTD, and received authorization to drive from their agency head and RMTD.

(3) A state employee required to drive as part of the employee's job shall report any single driving infraction of five or more conviction points according to the schedule in 61-11-203, MCA, accumulated while driving a state vehicle or a personal vehicle for state business to the employee's supervisor within 10 days of conviction.

(4) A state employee required to drive as part of the employee's job shall report an accumulation of conviction points of 12 or more according to the schedule in 61-11-203, MCA, for the past 36 months immediately preceding the infraction, whether accumulated while driving a state vehicle, a personal vehicle for state business or accumulated while driving a motor vehicle for any purpose within 10 days of the accumulation of 12 or more points to the employee's supervisor.

(5) Authorized drivers are responsible for promptly paying all penalties following the court procedures established for contesting citations.

(6) The above requirements also apply to those individuals authorized to drive under the conditions listed in ARM 2.6.205.

(7) The requirements specified in this rule apply to conviction points received after October 12, 2001.

(8) An agency has the authority to restrict employees otherwise authorized as drivers from using state vehicles when it knows they are unsafe drivers from means other than the accumulation of conviction points.

(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

Rules 06 through 08 reserved

2.6.209 ALCOHOL AND DRUGS

(1) No person under the influence of alcohol, illegal drugs, or improperly used prescription drugs may drive a vehicle for state business.

(2) No person may drive a vehicle for state business under the influence of any legally prescribed drug if that drug affects the person's ability to safely operate the vehicle.

(3) No person may have an alcoholic beverage container in the passenger compartment of a state-owned, leased, or loaned vehicle.
(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

2.6.210 CELL PHONE USE
(1) State employees shall drive in a careful and prudent manner so as not to unduly or unreasonably endanger the life, limb, property, or rights of a person entitled to use a street or highway.
(2) State employees are strongly encouraged not to use handheld cell phones or other handheld electronic communications devices or objects while operating state vehicles or personal vehicles on state business. Exceptions to this rule are law enforcement and emergency response personnel.
(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

Rules 11 through 13 reserved

2.6.214 DISCIPLINE
(1) Failure to comply with the requirements of these rules may result in disciplinary action, including suspension or termination. Any supervisor who becomes aware of any violation of these rules by an employee they supervise shall take appropriate disciplinary action, according to the state discipline policy set forth in ARM 2.21.6501 through 2.21.6509, 2.21.6515, and 2.21.6522.
(History: 2-17-424, MCA; IMP, 2-9-201, 2-9-305, and 2-17-424, MCA; NEW, 2001 MAR p. 2013, Eff. 10/12/01.)

ATTACHMENT B

Definition of "points" against a driving license (61-11-203 MCA)

15 points —deliberate homicide resulting from the operation of a motor vehicle.

12 points —mitigated deliberate homicide, negligent homicide resulting from operation of a motor vehicle, or negligent vehicular assault; or
—any offense punishable as a felony under the motor vehicle laws of Montana or any felony in the commission of which a motor vehicle is used.

10 points —driving while under the influence of intoxicating liquor or narcotics or drugs of any kind or operation of a motor vehicle by a person with alcohol concentration of 0.10 or more.

8 points —failure of the driver of a motor vehicle involved in an accident resulting in death or injury to any person to stop at the scene of the accident and give the required information and assistance.

6 points —operating a motor vehicle while the license to do so has been suspended or revoked.

5 points —reckless driving, or
—illegal drag racing or engaging in a speed contest in violation of the law, or
—any of the mandatory motor vehicle liability protection offenses.

4 points —willful failure of the driver involved in an accident resulting in property damage of $250 to stop at the scene of the accident and give the required information or failure to otherwise report an accident in violation of the law.

3 points —speeding, except as provided in 61-8-725 MCA, "A violation of a speed limit imposed pursuant to 61-8-303 is not a criminal offense within the meaning of 3-1-317, 45-2-101, 46-18-236, 61-8-104, and 61-8-711 and may not be recorded or charged against a driver's record, and an insurance company may not hold a violation of a speed limit against the insured or increase premiums because of the violation if the speed limit is exceeded by no more than: 10 miles an hour during the daytime; or 5 miles an hour during the nighttime."

2 points —operating a motor vehicle without a license to do so, (this does not apply to operating a motor vehicle within a period of 180 days from the date the license expired); or
—all other moving violations.

ATTACHMENT C

VEHICLE USE
ACKNOWLEDGEMENT FORM

I have received and read a copy of the State of Montana Vehicle Use Policy (also found in the Administrative Rules of Montana, ARM, 2.6.201 through 2.6.214).

I truthfully state that I have a valid, non-conditional driver's license and that my license is not currently under suspension.

My signature below indicates that I have received and read a copy of the Office of the Public Defender Vehicle Use Policy, I understand the penalties for particular driving offenses (Attachment B), and the requirements of notice to my employer should the status of my driving record change.

I have also read and understand the Office of the State Public Defender Fuel Conservation Strategy, and I agree to abide by the Vehicle User/Operator Guidelines.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

PRINT NAME: _____

SIGNATURE: _____

DATED: _____

This form must be signed and returned to:

Office of the State Public Defender
Human Resource Office
44 West Park
Butte, MT 59701

(406) 496-6091

Office of the State Public Defender
Administrative Policies
Human Resources

Subject:	**Reimbursement for Personal Vehicle Use**	**Policy No.:**	**504**
Title		**Pages:**	**1**
Section:		**Last Review Date:**	**2/10/10**
Effective Date:	**9/1/09**	**Revision Date:**	**3/30/10**

1. POLICY

The Office of the State Public Defender has made considerable effort and financial investment in making state cars available in each office. Because of budget constraints as well as the need to maximize the use of the state vehicles, the following policy is adopted.

2. PROCEDURE

2.1 An employee must use a state car when traveling on state business in any instance when a state car is available or when carpooling in a state car is an option.

2.2 If an employee chooses to drive their own vehicle *for any reason* when a state car is available, the employee will not be reimbursed for mileage.

2.3 An employee seeking mileage reimbursement when a state car is unavailable must attach written documentation from the Office Fleet Manager stating the travel date, destination, and that a state car is unavailable on that date. For Helena employees, notification from the State Motor Pool stating that a state car is unavailable is also required. The travel voucher itself does not constitute appropriate documentation that a vehicle is unavailable.

2.4 Any exceptions to employee reimbursement under this policy must be pre-approved prior to travel by the Chief Public Defender or their designee.

3. CROSS-REFERENCES

OPD Policy 220, Vehicle Management Policy
MOM 1-310, State Travel Policy

4. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

(406) 496-6091

Office of the State Public Defender
Administrative Policies
Human Resources

Subject: Fuel Card Policy	**Policy No.: 505**
Title	**Pages: 6**
Section:	**Last Review Date:**
Effective Date: 10-29-10	**Revision Date:**

1. POLICY

The Office of the State Public Defender (OPD) has adopted the State of Montana Fuel Card Policy (Attachment A). All OPD employees are required to acknowledge that they understand and will adhere to this policy by signing the Fuel Card Use Employee Agreement Form (Attachment B).

2. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Violation of any provision of this policy may result in disciplinary action up to and including termination and possible criminal charges.

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

(406) 496-6091

Montana Operations Manual ***Policy***	**Policy Number**	1-0790.00
	Effective Date	9/22/2010
	Last Revised	
Issuing Authority	Department of Administration	

Fuel Card Policy

I. PURPOSE

The policy establishes the requirements for managing and using fuel cards for efficient and cost-effective fuel and maintenance purchases when conducting State business.

II. SCOPE

This policy applies to Executive Branch agencies that operate agency-owned, fuel-powered vehicles and equipment. The Montana Department of Transportation's daily-use and agency-leased motor pool vehicles are exempt from this policy.

III. PROCEDURES / REQUIREMENTS / RESPONSIBILITIES

A. Agencies must:

1. Use the Department of Administration's (DOA) State Procurement Bureau's exclusive fuel card contracts.

2. Designate an authorizing official(s) to oversee its fuel card procedures. Provide the authorizing official's personal contact information to the DOA's State Procurement Bureau.

3. Establish procedures and assign responsibilities to manage fuel card use. Procedures and responsibilities must include the following:

    a. Collect and compare monthly vehicle odometer readings to the vehicle's monthly fuel transactions to ensure fuel consumption is appropriate for the vehicle.

    b. Retain monthly statements.

    c. Resolve billing disputes.

    If an error is found on a statement (e.g., employee did not make the transaction, incorrect amount, etc.), the vendor must be contacted by the agency to try to resolve the dispute. If the vendor agrees an error has occurred, the account is credited on the next statement.

If the vendor does not agree an error has occurred, the disputed transaction will be identified and submitted in writing to the card provider within 60 days of the transaction date. The amount due on the next monthly statement will be reduced by the amount of the disputed item until the transaction dispute is resolved. If a dispute is not submitted within 60 days of the transaction date, the agency is responsible for paying the disputed item.

4. Establish internal controls for using fuel cards. Available controls include:

    a. Limit on the number of transactions during a certain time period (day, month, week).
    b. Limit dollar amount per transaction.
    c. Limit Merchant Category Codes.
    d. Restrict purchases to specific hours of the day or days of the week.
    e. Require odometer reading at the point-of-sale.

Note: Default fuel card controls limit purchases to fuel and maintenance and allow three transactions per day up to a total of $500.

B. Authorizing Official(s) will:

1. Assign a fuel card to each agency-owned vehicle showing the vehicle's license plate number on the front of the card.

2. Issue separate fuel cards for non-vehicular uses (e.g., lawn mower).

3. Require each employee authorized to operate an agency-owned vehicle to read the Fuel Card Policy and sign the Fuel Card Use Employee Agreement Form (attached) before they receive a Personal Identification Number (PIN).

4 Retain the signed Fuel Card Use Employee Agreement Form for two years after the employee's termination date.

5. Assign a unique PIN to each authorized employee. Generic PINs are prohibited.

6. Manage internal controls in accordance with the agency's procedures.

7. Immediately cancel fuel cards that are lost, stolen, or assigned to a vehicle that is transferred, sold, or surplused.

8. Maintain a record of the agency's approved exceptions to the Fuel Card Use policy.

C. Employees authorized to use fuel cards must:

1. Read the Fuel Card Policy.

2. Sign the Fuel Card Use Employee Agreement Form acknowledging their responsibilities for fuel card use.

   Note: Employees are prohibited from using premium grade fuel unless required by the vehicle operation manual.

D. Supervisors of authorized employees must:

Review and approve monthly fuel card transactions for each authorized employee under their supervision and ensure fuel card use is consistent with the employees' work assignments.

IV. REQUEST FOR EXCEPTIONS

The authorizing official may submit a request for an exception to any part of this policy to the DOA's State Procurement Bureau. The State Procurement Bureau will determine if an exception is granted based on the following criteria:

A. The policy has created an undue hardship on the agency;

B. The circumstances are non-traditional and require unique accommodation; or

C. The exception will not compromise internal controls.

V. VIOLATIONS

Each agency is responsible for policy enforcement and investigating all alleged violations and complaints. Agencies will take appropriate disciplinary action including, but not limited to, cancellation of an employee's fuel card privileges, termination, and possible criminal charges.

VI. DEFINITIONS

A. Authorized Employee: An employee designated to use a fuel card.

B. Authorizing Official: An individual(s) designated by the agency to authorize and cancel fuel cards, manage internal controls, and maintain a record of the agency's exceptions.

C. Card Provider: The State's contracted fuel card provider.

D. Ethanol-Blended Gasoline: A fuel mixture of gasoline and ethanol produced from agricultural products as defined in 2-17-414, MCA.

E. Generic PIN: A PIN not directly assigned to a single individual. Generic PINs are prohibited.

F. Merchant Category Code: A number used by the fuel card vendor to classify suppliers into market segments.

G. Personal Identification Number (PIN): A unique number assigned to an individual.

H. Vehicle Maintenance: Expenses including gas, oil, repairs, labor, storage, and service.

I. Vendor: The point-of-sale for a fuel or vehicle maintenance purchase.

J. Non-Vehicular Use: Uses associated with equipment such as a lawn mower, snow sweeper, leaf blower, or chainsaw.

VII. CROSS REFERENCE GUIDE

The following laws, rules, or policies contain provisions relevant to fuel purchasing cards. This list is not exhaustive; other policies may apply.

A. ARM 2.6.203 Authorized Driver – definition.

B. 2-17-414, MCA State vehicles use of ethanol-blended gasoline – definition

C. 2-17-418, MCA Agency records on fuel efficiency measures

D. 2-17-421, MCA Use – state business only – exception, compensation for driving personal vehicle – penalty for private use

E. 2-17-425, MCA Limit on use of state vehicle to commute to worksite – definitions

F. Title 18, Chapter 4, MCA Montana Procurement Act

VIII. CLOSING

For questions about this policy, contact the State Procurement Bureau at:

Department of Administration
State Procurement Bureau
125 N. Roberts Street, Mitchell Building, Room 165
Helena, MT 59620-0135

406-444-2575
Devin Garrity, email: dgarrity@mt.gov

ATTACHMENT B

STATE OF MONTANA
FUEL CARD USE EMPLOYEE AGREEMENT

1. I have read, understand, and will comply with the Fuel Card Policy.
2. I understand I am required to use ethanol-blended gasoline when the manufacturer allows and I am prohibited from using premium grade fuel unless required by the vehicle operations manual.
3. I agree to use the card for all fuel purchases unless obtained from a state-owned bulk site with a manual transaction process.
4. I will immediately notify the authorizing official if a card is lost or stolen or if my PIN is compromised.
5. I understand that I am required to comply with internal control procedures.
6. I agree not to share my Personal Identification Number (PIN) with any other person.
7. I understand I can only use the card for fuel and authorized vehicle maintenance purchases for state-owned vehicles.
8. If I misuse the card for personal purchases, I authorize the State to deduct from my salary or from other monies owed me, an amount equal to the total of the personal purchases. I also agree to allow the State to collect any amounts owed by me even if the State no longer employs me.
9. I understand improper use of this card may result in disciplinary actions, including termination of employment and criminal action.
10. I understand the State may terminate my card use privileges at any time for any reason.

Employee Signature	Authorizing Official's Signature
Employee Printed Name	Authorizing Official Printed Name
Date	Date

This form must be signed and returned to:
Office of the State Public Defender
Human Resource Office
44 West Park
Butte, MT 59701
(406) 496-6091

Office of the State Public Defender
Administrative Policies
Human Resources

Subject: Overtime and Compensatory Time for Non-Exempt Employees	Policy No.: 510
Title	Pages: 4
Section:	Last Review Date: 4-1-07
Effective Date: 5-1-06	Revision Date:

1. BACKGROUND

On April 17, 1989, the Attorney General, of the State of Montana issued an opinion that state and local government employees who are covered by the Federal Fair Labor Standards Act (FLSA), are not subject to the provisions of the Montana Minimum Wage and Hour Act. This opinion allows agencies flexibility in administering overtime provisions for non-exempt employees.

2. POLICY

It is the policy of the Office of State Public Defender (OPD) to comply with the FLSA, its regulations (29 CFR 553), state rules (Montana Operations Manual, Volume III, Policy 3-0211), and this policy in the administration of overtime compensation and non-exempt compensatory time. Compensatory time for employees exempt from the FLSA will be administered consistent with the provisions found in the state's Exempt Compensatory Time Policy (MOM, Volume III, Policy 3-0210).

3. DEFINITIONS

A. “Non-exempt compensatory time" means time accrued at a rate of one and one-half hours for each hour of employment for which overtime compensation is required pursuant to the FLSA, its regulations, and this policy. Accrued time may be taken as approved time off at a later date.

B. "Non-exempt or covered employee" means an employee subject to the overtime provisions of the FLSA and its regulations. It does not mean certain employees exempt from the overtime provisions of the FLSA in a position designated as executive, administrative, professional, or outside salesmen, as these terms are defined in 29 CFR 541.

C. "Overtime" means time worked by a non-exempt employee in excess of 40 hours in a workweek. The rate of overtime pay will be one and one-half times the employee's regular hourly wage, with the exception of on-call

reimbursement, which will be reimbursed at the regular rate of pay unless the employee is called in to work.

D. "Workweek" means a regular recurring period of 168 hours in the form of seven consecutive 24-hour periods. The workweek need not be the same as the calendar week. The workweek may begin on any day of the week and at any hour of the day. Once established, a workweek may not be changed unless the change is intended to be permanent.

4. PROCEDURE

A. The Office of State Public Defender may grant non-exempt employees who work overtime either cash overtime pay or non-exempt compensatory time off.

B. If a covered employee would like to accrue and use non-exempt compensatory time, the covered employee must request this option by completing the “Overtime/Compensatory Time Selection” agreement (Attachment A) and returning it to the appropriate supervisor and the OPD Human Resource Office. Covered employees will be paid cash for overtime hours worked unless they complete the agreement. A new employee will make their request at the time of hire. Employees electing to receive non-exempt compensatory time may change their selection to receive overtime on a quarterly basis, such change to be effective with the pay periods of January 1, April 1, July 1 and October 1 unless approved by the immediate supervisor.

C. The Office of State Public Defender may, at any time, pay cash for all or any portion of a covered employee's accrued non-exempt compensatory time balance.

D. All hours worked in a pay status, with the exception of on-call hours, are counted as hours worked for the purpose of calculating a workweek for overtime pay requirements. A supervisor may adjust a covered employee’s work schedule in a workweek or require the employee to take time off without pay so that the employee does not become eligible for the payment of overtime or the accrual of nonexempt compensatory time.

E. Overtime and non-exempt compensatory time is earned and recorded on the time and attendance form in no smaller than one-half hour increments.

F. Non-exempt compensatory time must be taken off in no less than one-half hour increments. The employee’s immediate supervisor must approve requests for use of compensatory time off in advance.

G. A non-exempt employee may accrue a maximum balance of 120 hours of

non-exempt compensatory time. When the non-exempt compensatory time balance exceeds 120 hours, the covered employee will be paid cash overtime compensation.

H. If a non-exempt employee changes from non-exempt to exempt status through a personnel action such as a promotion, or the employee terminates employment with OPD, the office will cash out any unused non-exempt compensatory time.

5. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable

Questions about the administration of overtime compensation or non-exempt compensatory time in lieu of overtime compensation should be discussed with your immediate supervisor or with the Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6091

ATTACHMENT A

OVERTIME/COMPENSATORY TIME SELECTION

For completion by employees in non-exempt status.

NAME: _____

JOB TITLE: _____

FISCAL YEAR: _____

Select one of the following options for your preferred compensation of overtime worked for the fiscal year, or until a new form is submitted.

1. Overtime Pay: _____
   (Pay at one and one-half times your hourly rate.)

2. Compensatory Time: _____
   (Time off at one and one-half hours for every overtime hour worked.)

I understand that the Office of the State Public Defender management reserves the right to approve the granting of FLSA compensatory time in lieu of overtime pay. The Office of the State Public Defender may at any time pay cash for all or any portion of a covered employee's accrued FLSA compensatory time. I may submit a selection form reversing my previous selection on a quarterly basis, effective with the pay periods of January 1, April 1, July 1, and October 1.

_____ _____
Employee's Signature Date

APPROVED BY:

_____ _____
Supervisor's Signature Date

This form must be signed and returned to:
Office of the State Public Defender
Human Resource Office
44 West Park
Butte, MT 59701

Office of the State Public Defender
Administrative Policies
Human Resources

Subject: Alternate Work Schedules	Policy No.: 511
Title	Pages: 5
Section:	Last Review Date:
Effective Date: 02-05-09	Revision Date:

1. POLICY

It is the policy of the Office of the State Public Defender (OPD) that alternate work schedules may be implemented provided that they do not interfere with mandatory office hours or the business goals of the agency.

This policy applies to employees in all OPD offices. Provisions of this policy apply only to alternate work schedules requested by the employee, and not to work schedules established by management. Nothing in this policy limits the authority of the agency to establish or change work schedules as necessary for the successful operation of the Office of the State Public Defender (OPD).

2. OBJECTIVE

OPD recognizes that alternate work schedules can sometimes benefit both employees and the agency. Regional Deputy Public Defenders, the Chief Appellate Defender or the Administrative Director (management) may extend the privilege of alternate work schedules at the request of employees in accordance with the guidelines, procedures and standards detailed in this policy.

Alternate work schedules may be approved only when the needs of the individual office can be met. Before approving or denying employee requests for alternate work schedules, management must ensure that such schedules:

a. Provide for adequate staff coverage of the office;
b. Ensure that client needs will be met;
c. Ensure that court schedules will be adhered to;
d. Do not impede the overall productivity of the individual office.

Alternate work schedules may not be granted where they would result in an office not maintaining adequate staffing coverage during the statutorily required office hours of 8:00 a.m. to 5:00 p.m. on business days (Sec. 2-16-117, MCA).

3. DEFINITIONS

3.1. CORE WORK HOURS: Core work hours are from 8:00 a.m. to 5:00 p.m. Monday through Friday. Other work schedules may be established by Management to effectively operate programs and meet objectives.

3.2. ALTERNATE WORK SCHEDULE: A schedule that allows an employee's workday to start and/or end at an earlier or later time than the core work hours.

3.3. MANAGEMENT: For the purposes of this policy, “management” refers specifically to a Regional Deputy Public Defender, the Chief Appellate Defender or the Administrative Director. It does *not* include Managing Attorneys or Office Managers.

4. PROCEDURES

4.1. HOURS

4.1.1 Because Montana law requires all state offices to be open from 8:00 a.m. to 5:00 p.m., Monday through Friday, except for state holidays, all offices must provide adequate staff coverage during those hours.

4.1.2 A non-paid break period (meal break) may be a minimum of half an hour and a maximum of two hours long. All employees are encouraged to take at least a half-hour non-paid break period. Requests to skip a meal break must be approved by management.

4.1.3 An employee’s request regarding the time at which to take a non-paid break period must be approved by management. Management must also approve exceptions.

4.1.4 Employees may, with the approval of their immediate supervisor, make temporary deviations from their established work schedule provided hours worked comply with this policy.

4.1.5 Alternate work hours or non-paid break periods may occasionally be changed beyond the limits of this policy to accommodate unusual circumstances such as external training course schedule requirements. Approval by management is required.

4.1.6 Employees may take one paid 15-minute duty-free break for every four hours worked, as long as this break does not interfere with the successful operation of the office.

4.1.7 Employees may not delay the beginning of their workday, extend their non-paid break period or terminate the end of their workday early to compensate for the paid duty-free breaks not taken.

4.1.8 No overtime or compensatory time is earned as a result of working an alternate work schedule unless it results in the employee working more than 40 hours in a workweek.

4.1.9 Holiday benefits will be paid according to the State Holiday Policy MOM 3-0325. No employee may receive more than 8 hours of pay for the holiday benefit. Employees who are scheduled **by management** to work more than an 8 hour workday may be required to take appropriate leave or, with management approval, make up time during the same workweek. If an employee is required to work on a holiday the employee will receive the holiday benefit as a banked benefit to use in the future in addition to reimbursement for the actual hours worked.

4.2. APPLICATION PROCEDURE

4.2.1 Any employee working in an office where alternate work schedules have been implemented may request an alternate schedule from management. The request should specify the hours of work desired, the desired time for a non-paid break period (meal break) the proposed effective date and the approximate desired duration of the schedule.

4.2.2 Employees must submit requests for alternate work schedules in writing to management.

4.2.3 Any employee who has been denied a requested alternate work schedule may request a review by the Chief Public Defender. The decision of the Chief Public Defender shall be final. Denial of an alternate work schedule is not grievable under the State Grievance Procedure, MOM 3-0125.

4.2.4 The employee shall be notified in writing of approval or denial of the request for an alternate work schedule.

4.2.5 Each employee will be responsible for maintaining and posting a schedule of the employee's alternative work schedule hours and making sure that there is a current version on file with the front desk, and management.

4.2.6 Employees beginning or ending their work day before or after the core hours of 8:00 a.m. and 5:00 p.m. Monday through Friday are required to notify office staff of their alternate office hours. Employees using voice mail or electronic (Outlook) calendars will reflect the alternate work schedule as appropriate.

4.3. CRITERIA FOR APPROVAL

4.3.1 Management may approve alternate work schedules on a trial basis to determine if the needs of the agency are met.

4.3.2 When establishing alternate work schedules, management must assure coverage of essential functions during the core work hours or at such other times as the accommodation of the public or the proper transaction of business requires.

4.3.3 If two or more employees desire the same alternate work schedule hours, management will review the request and will resolve the issue in the best interest of the mandatory office hours and or the business goals of the agency. Rotating hours may be allowed to resolve conflicts if they do not place an undue burden on office operations.

4.3.4 Approval of alternate work schedules shall be made with regard to the best interests of the state as well as the desires of the requesting employee. Where the interests of the state require the presence of the employee during core business hours, the interests of the state override the employee's interest.

4.4. CHANGING ALTERNATE WORK SCHEDULES

4.4.1 Temporary deviations from an employee's established alternate work schedule need only verbal approval as specified in section 4.1.4 of this policy. Employees are required to notify office staff of their alternate office hours. Employees using voice mail or electronic (Outlook) calendars will reflect the alternate work schedule as appropriate.

4.4.2 Employees wishing to change established alternate work schedules must notify management at least 10 days before the proposed date of change. Approval or denial of the request must be made in writing no later than five days from the date of the request.

4.4.3 Management may change any employee's working hours as deemed necessary for the successful operation of OPD programs, or if they inhibit maximum efficiency of office operations. An employee's hours may not change without 10 working days notice. If the employee agrees, the change in hours may take place immediately.

4.4.4 The Chief Public Defender may withdraw approval for an alternate work schedule.

4.5. SUPERVISION

4.5.1 Management in each office is to maintain a staffing schedule for their area of responsibility. It should be reviewed, at a minimum, when changes are requested to ensure both adequate coverage and supervision.

4.5.2 Management is responsible for ensuring that the office's productivity is satisfactory and that established alternate work schedules are implemented and followed according to this policy.

4.5.3 In the event that alternate work schedules have an impact on the individual's ability to meet performance standards or have an impact on overall agency operations, management will use standard disciplinary procedures on an individual basis.

5. CROSS REFERENCE GUIDE

The following laws, rules or policies may contain provisions that might modify a decision relating to Alternate Work Schedules. The list should not be considered exhaustive—other policies may apply.

<u>State Laws</u>

2-16-117, MCA Mandatory Office Hours

<u>State Personnel Policies</u>

MOM 3-0210 Overtime and Nonexempt Compensatory Time
MOM 3-0211 Exempt Compensatory Time
MOM 3-0305 Annual Leave
MOM 3-0310 Sick Leave

MOM 3-0125 Grievances
MOM 3-0320 Disaster and Emergency Leave
MOM 3-0325 Holidays

6. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions concerning this policy can be directed to the Regional Deputy Public Defender, the Chief Appellate Defender, the Administrative Director or to the Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6091

Office of the State Public Defender
Administrative Policies
Human Resources

Subject:	**Performance Evaluations**	**Policy No.:**	**515**
Title	**47**	**Pages:**	**2**
Section:	**1-202(9)**	**Last Review Date:**	**10/28/09**
Effective Date:	**3/14/07**	**Revision Date:**	**11/10/09**

1. POLICY

Each employee of the Office of the State Public Defender shall have their work performance evaluated on a yearly basis.

2. PROCEDURE

2.1 Performance evaluations shall be conducted by the following on a form approved by the Chief Public Defender:

2.1.1 Regional Deputy Public Defenders shall be evaluated by the Chief Public Defender.

2.1.2 Managing Attorneys shall be evaluated by the Regional Deputy Public Defender. The Chief Public Defender will review the evaluation before it is discussed with the employee.

2.1.3 Assistant Public Defenders shall be evaluated by the Managing Attorney. The Regional Deputy Public Defender will review the evaluation before it is discussed with the employee.

2.1.4 Support staff will be evaluated by the supervising attorney (Regional Deputy Public Defender or Managing Attorney). The Regional Deputy Public Defender will review the evaluation before it is discussed with the employee if the Managing Attorney conducted the evaluation.

2.1.5 Investigators will be evaluated by the Regional Deputy Public Defender in conjunction with the Investigator Supervisor(s). The Investigator Supervisor(s) will be evaluated by the Chief Public Defender.

2.2 In conducting the evaluation, the evaluator may obtain information from any of the following:

2.2.1 Clients;

2.2.2 Co-workers (attorneys, investigators, office staff);

2.2.3 Judicial personnel;

2.2.4 Faculty from any training the employee attends.

2.3 In addition, attorneys will be observed in court by the evaluator.

2.4 The employee shall be interviewed pursuant to the performance evaluation.

2.5 The person conducting the performance evaluation shall meet with the employee to review and discuss the evaluation. If the employee disagrees with the appraisal, s/he has the right to submit, within 10 working days of receipt of the appraisal, a written rebuttal to be attached to the document.

2.6 A permanent employee may file a grievance under the state grievance procedure outlined in MOM 3-0115 Performance Management and Evaluation.

2.7 Once all parties have signed the performance evaluation, a copy will be given to the employee. If the employee refuses to sign the form, the supervisor will document on the form that the employee refused to sign the document. The original will be placed in the employee's personnel file along with any written comments received from the employee. The performance evaluation will be maintained throughout the term of employment and retained in compliance with the State Records Retention Schedule.

3. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions about this policy should be address to the OPD Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6091

Office of the State Public Defender
Administrative Policies
Human Resources

Subject: Pro Bono Legal Services	**Policy No.: 525**
Title	**Pages: 6**
Section:	**Last Review Date:**
Effective Date: 3-14-07	**Revision Date:**

1. PURPOSE AND SCOPE

This policy addresses the performance of pro bono legal services by attorneys employed by the Office of the State Public Defender (OPD).

2. DEFINITIONS

2.1 "Pro bono legal services" means legal services described in Mont.R.Prof.Conduct 6.1, which are performed without the expectation of compensation for:

a. low income individuals who otherwise lack the ability to retain attorneys to provide legal services for them;

b. charitable, civic, community, governmental, health and education organizations in matters which are designed to assist person of limited means;

c. individuals, groups or organizations seeking to secure or protect civil rights; or

d. improve the law, legal system or the legal profession.

3. GENERAL POLICY

Approximately 190,000 low income Montanans are eligible for free legal assistance from the Montana Legal Services Association (MLSA) based on applicable income eligibility guidelines. Currently MSLA is staffed at a level of one attorney for each 17,270 eligible recipients. This compares with a ratio of one Montana attorney for every *330* residents. The Helena MLSA office has one full-time lawyer devoted to more than four counties. By any standard, there is a large unmet need for legal services for low income persons in Montana. The Montana Supreme Court has adopted a Rule of Professional Conduct that "[e]very lawyer has a professional responsibility to provide legal services to those unable to pay" and that "[a] lawyer should render at least 50 hours of pro bono public legal services per year." Mont.R.Prof. Conduct 6.1. It is the policy of the Public Defender's Office to encourage attorneys to volunteer to provide pro bono legal services in compliance with this policy and other applicable provisions of Montana law and the Montana Rules of Professional Conduct for lawyers.

4. USE OF AGENCY RESOURCES

4.1 Hours of Work

Public defender attorneys are encouraged to seek pro bono opportunities that can be accomplished outside of scheduled working hours.

However, pro bono legal services activities may sometimes occur during work hours. Supervisors are encouraged to be flexible and to accommodate, where feasible, the efforts of the attorneys they supervise to perform pro bono services. Employees seeking to participate in pro bono activities during regularly scheduled work hours may be granted annual leave, compensatory time off, or leave without pay, consistent with policies governing the use of such leave by state employees generally. Supervisor's decisions as to the authorization of leave may not be influenced by a supervisor's personal views regarding the substance of the pro bono activity.

4.2 Use of Office Equipment

Pro bono legal services are services provided in the public interest and in satisfaction of an ethical obligation of all attorneys to ensure that legal services are made available to persons of limited economic means. The Congress of the United States has recognized that this is not a private matter by authorizing the expenditure of tax dollars for the support of the national Legal Services program. Pro bono legal services therefore do not constitute the "private business" of the attorney for purposes of Mont. Code Ann. § 2-2-121(2)(a). Nevertheless, respect for the public trust requires that public agency attorneys refrain from inappropriate use of state resources for purposes not connected to the agency's mission. Use of law books or on-line resources for which there is no usage-based charge in the performance of pro bono services involves only a negligible additional expense, if any, and is therefore permissible. When office computers, printers, and telephones are used in moderation for pro bono legal services, there is only negligible additional expense to the State for electricity, ink, and wear and tear, and such use therefore is permissible as long as the agency is reimbursed for supplies in accordance with Section 8, below.

This policy does not authorize the use for pro bono services of commercial electronic services for which there is a usage-based charge to the State.

Consistent with this policy, executive branch attorneys may use office telephone and facsimile machines for essential pro bono-related communication as long as no long distance or other additional usage-based charges to the State are incurred, the agency is reimbursed for any

fax paper used in connection with the pro bono services, and the usage does not interfere with official business.

This policy does not supersede agency policies designed to protect the safety or security of computer or local area network operations. Any use of agency-provided equipment for pro bono activities must be consistent with such policies.

This policy is also subject to any restrictions arising from law or contract on the use of agency equipment or supplies.

Public defender attorneys should contact their supervisors if there is any question as to whether an activity involves “negligible additional expense,” interferes or threatens to interfere with official business, and is consistent with agency computer security policies or legal or contract restrictions on use of equipment or supplies.

4.3 Clerical Support

An attorney may not assign or otherwise require pro bono legal services of clerical or administrative support personnel. Office support personnel who are willing to volunteer to assist with the provision of pro bono legal services by agency attorneys may do so as long as the volunteer work does not interfere with the performance of the primary responsibilities to official duties. Professional support staff who serve as volunteers in pro bono services shall take leave or compensatory time for time used during the work day or develop a flexible work schedule with their supervisor in accordance with office policy.

4.4 Letterhead

A public defender attorney may not use office letterhead or agency or office business cards in the performance of pro bono legal services.

5. CONFLICT OF INTEREST

5.1 General

Public defender attorneys are bound by the Rules of Professional Conduct for attorneys and the ethical rules governing state employees to avoid conflicts of interest. These attorneys may not accept pro bono clients in matters which create or appear to create a conflict of interest with their work for the State. Such a conflict exists, among other situations, if a pro bono representation would require the attorney’s recusal in a matter involved in the attorney’s official duties.

5.2 Prohibited actions

Given the public defender’s role in criminal cases and in cases involving the State of Montana, public defender attorneys may not undertake pro bono representation in any case involving: (a) actual or suspected abuse

against a partner or family member, or any other criminal conduct by one or both parties: or (b) an administrative or judicial proceeding in which the State of Montana or any political subdivision thereof is a party, or in which state interests are likely to be involved, *except* that a public defender attorney may participate in a case in which the State of Montana. Department of Public Health and Human Services ("DPHHS") is providing child support enforcement services under Title IV-D of the Social Security Act to one or more of the parties. [See Mont. Code Ann. § 40-5-202(5)]. In any such case, the public defender attorney must make it clear to both the client and DPHHS that the attorney is acting in his or her individual capacity and that the attorney will not continue to represent the client should there be an appeal to the Montana Supreme Court.

6. FORMALITIES OF REPRESENTATION

6.1 Retainer Agreement

Public defender attorneys subject to this policy shall use the model retainer agreement attached (Attachment A) to this policy, making explicit to a pro bono client that the attorney is acting in his or her individual capacity and not as a representative of the State of Montana. The client must sign the agreement acknowledging that fact.

6.2 Malpractice Insurance

The State of Montana does not provide malpractice insurance coverage for the pro bono activities of its attorneys, since such activities are outside the course and scope of the attorney's official duties. See Mont. Code Ann. § 2-9-305.

7. USE OF OFFICIAL POSITION OR PUBLIC OFFICE

Public defender attorneys subject to this policy who provide pro bono legal services may not indicate or represent in any way that they are acting on behalf of the State or any agency or office of the State, or in their official capacity. The incidental identification of the public defender attorney as a State agency employee - for example, when an office post office box address or telephone number is used - is not prohibited. The public defender attorney is responsible for making it clear to the client, any opposing parties, or others involved in the pro bono case, that the attorney is acting in his or her individual capacity as a volunteer and not as a representative of the State or any of its agencies. Generally, state offices may not be used for meetings with clients or opposing counsel in a pro bono case unless the office space is a common area in a building not associated only with the public defender's office.

8. REIMBURSEMENT

Public defender attorneys subject to this policy must reimburse their agencies for costs associated with printing, photocopying, long distance telephone charges, or faxing. When a public defender attorney accepts a pro bono case, the attorney shall keep a log of the number of pages printed on office printers, the number of pages copied on office photocopiers, and the number of pages received over an office facsimile machine. The attorney shall reimburse the state at the rate of fifteen cents per page, payable in one lump sum by May 31 of each fiscal year. Public defender attorneys should use their personal credit cards for any long distance phone charges; however, if a long distance telephone call must be made that results in a charge to the state, the attorney shall report the call on the case log and reimburse the office for the actual amount of the call. The attorney shall request prior permission from his or her supervisor if the anticipated costs exceed $50 per case.

9. DISCLAIMER

This policy is intended only to encourage increased pro bono activities by public defender attorneys and is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party, against the State of Montana, its agencies, officers, or any person.

10. PERSONAL FAMILY LEGAL MATTERS

Notwithstanding any other provision of this policy, a public defender attorney may perform personal and family legal services including counseling family members in matters involving criminal law, provided the activity does not interfere with the proper and effective performance of the attorney's official duties.

11. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions about this policy should be address to the OPD Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6091

ATTACHMENT A

RETAINER AGREEMENT

The undersigned client (CLIENT) engages the undersigned attorney (ATTORNEY) for legal representation in the following matter:

_____

_____

_____

_____

ATTORNEY will make no charge to the client for attorney fees in the matter. CLIENT acknowledges that ATTORNEY is acting in ATTORNEY'S individual capacity and is not acting as a representative of the State of Montana, Office of the State Public Defender, or any other state agency.

CLIENT will cooperate fully with ATTORNEY and will provide all information known by or available to CLIENT which may aid ATTORNEY in representing CLIENT.

CLIENT authorizes and directs ATTORNEY to take all actions which ATTORNEY deems advisable on CLIENT's behalf. ATTORNEY agrees to notify CLIENT promptly of all significant developments and to consult with CLIENT in advance as to any significant decisions concerning those developments.

ATTORNEY will represent CLIENT diligently but makes no promises or representations as to the success of those efforts. ATTORNEY may terminate representation of CLIENT: (1) if ATTORNEY believes further action is not justified on behalf of CLIENT, or (2) if CLIENT does not cooperate with ATTORNEY.

CLIENT is responsible for any costs incurred other than attorney's fees. Efforts shall be made to waive costs whenever possible.

This Retainer does not cover an appeal. In the event an appeal becomes possible, ATTORNEY will decide at that time whether or not to further represent CLIENT.

_____	_____
DATE	CLIENT
	_____
	ATTORNEY

Office of the State Public Defender
Administrative Policies
Human Resources

Subject: Workplace Safety	Policy No.: 530
Title 39	Pages: 5
Section: 71	Last Review Date:
Effective Date: 09-01-07	Revision Date:

1.0 POLICY

1.1 It is the purpose of this policy to promote employee health and safety and to establish and administer a safety program pursuant to the Workers' Compensation provisions of MCA 39-71 and the Montana Safety Culture Act, MCA 39-71-1501. The Montana Safety Culture act requires each public or private employer to establish and administer a safety program in accordance with rules adopted by the Department of Labor pursuant to 39-71-1505.

1.2 The frequency and severity of workplace accidents and injuries will be minimized by:

A. Creating an Office of the State Public Defender (OPD) Safety Committee; and
B. Assigning authority, responsibility and accountability to OPD employees and supervisors for implementing the OPD Safety Program.

2.0 RESPONSIBILITIES/REQUIREMENTS

2.1 Chief Public Defender

The Chief Public Defender is ultimately responsible for minimizing work-related losses and accidents by encouraging and supporting an agency-specific safety program. To accomplish this, the Chief Public Defender will:

A. Ensure this safety policy is followed by all public defender offices statewide.
B. Appoint a Safety Committee Chairperson (SCC) to work with the Regional Deputy Public Defenders and the Managing Attorneys (supervisors) in implementing the safety program.
C. Require that all supervisors be responsible for providing new employees an orientation which includes a safety component.
D. Require that all employee job profiles and performance appraisals include safety-related requirements.

2.2 Safety Committee

It is the responsibility of the Safety Committee to:

A. Recommend to supervisors safety training and awareness programs or topics that could be made available to OPD employees.
B. Recommend to supervisors safety policies, practices and procedures.
C. Assist supervisors in training OPD employees on safety-related topics.
D. Assist supervisors in monitoring the workplace for safe practices.
E. Develop incentive programs to promote safety.
F. Gather and review safety checklists created by safety professionals and others that relate to work environments within the OPD. These checklists will be available to assist supervisors with monitoring and addressing work place issues for obvious safety hazards within their work area.

G. Assist supervisors in finding new members for building Employee Safety Units (ESU). ESU's are groups of employees designated to take responsibility for various roles in the event of an emergency evacuation of a building.
H. Assist supervisors in educating employees on the Emergency Action Plans for each occupied building. Suggest appropriate updates to these plans.
I. Assist the SCC in creating and maintaining a Safety Committee website where safety guidelines and prepared safety information is available.
J. Suggest replacements for Committee members who can no longer serve.

2.3 Safety Committee Chairperson

The SCC will:

A. Organize and chair meetings of the Safety Committee.
B. Meet at least quarterly with supervisors to give updates on Committee activity and other safety issues.
C. Serve as the OPD liaison to the Department of Administration Safety Committee.

2.4 Human Resource Officer

The OPD Human Resource Officer will:

A. Work with the Safety Committee to make sure that appropriate safety information is provided during new employee orientation and other appropriate times. New employees are required to sign a statement that they have received the OPD Workplace Safety Policy.
B. Work with supervisors:
   1. To ensure that any documented special needs of employees regarding safety are met.
   2. Assist supervisors in including safety performance standards in performance appraisals by providing model language.
   3. Work with supervisors to ensure enforcement of safety standards and requirements are included in job profiles.
   4. Provide resource information to supervisors for office inspections by seeking assistance and training services from the Department of Labor and Industry's Employment Relations Division, the State Fund, the Risk Management and Tort Defense Division and worker's compensation program manager.
   5. Provide training to supervisors on how to report workplace accidents.
C. Serve as the main point of contact for reporting accidents to the State Fund and report all accidents to the State Fund within 48 hours.

2.5 Risk Management and Tort Defense Division

The Risk Management and Tort Defense Division will:

A. Assist the Safety Committee with risk management advice and training related to auto, property and other risks.
B. Provide suggestions regarding changes in practices, training, policies, and procedures as requested.

2.6 Office of the State Public Defender Supervisors

OPD Supervisors will:

A. Report workplace accidents and injuries to the Human Resource Officer within 24 hours on the "First Report of Injury" form. Additional forms may also be required.

B. Actively participate in safety training and keep abreast of safety initiatives. Work with Safety Committee members concerning the Emergency Action Plan. Conduct safety inspections of the work area. Monitor and address work place issues for obvious safety hazards. This document can be edited to meet the requirements of individual offices.
C. Encourage employees to feel free to report any potential safety problems or change in process that would make the job or work space safer.
D. Ensure employees receive, and discuss with them, prepared workplace safety information.
E. Ensure that new employees or employees new to a specific job receive safety orientation on how to conduct their jobs safely.
F. Ensure that personal protective equipment is used by employees and that it is available, maintained, and replaced when necessary.
G. Ensure that emergency contact information and General Services Division (GSD) Safety Guidelines are available to employees. Current GSD Safety Guidelines can be found here. .
H. Work with the Human Resources Officer to ensure that safety performance is part of each employee's written performance appraisal and job profile.
I. Supervisors will perform safety inspections, at least quarterly, of offices.

2.7 Office of the State Public Defender Employees

Every employee of the Office of the State Public Defender is responsible to maintain an awareness of safety concerns, use common sense and comply with all state and federal safety and health regulations and policies.

OPD Employees will:

A. Participate in new employee orientation as required at time-of-hire.
B. Participate in on-the-job safety training.
C. Report incidents and accidents to their supervisor or designee, regardless if medical attention is required. The "First Report of Injury" form must be completed by the employee and supervisor within 24 hours of the incident or accident.
D. Assist in accident investigations and early-return-to-work programs.
E. Participate in Safety Committee meetings when requested.
F. Use required personal protective equipment.
G. Report safety hazards to supervisor and/or safety representative.

3.0 PROCEDURES

Employees and Supervisors must regularly check for and take appropriate action to provide for a safe work environment:

A. Obstruction of fire exits
B. Misuse of heating appliances
C. Overloading of electrical circuits and plug-ins
D. Electrical hazards
E. Proper illumination for exit signs
F. Excessive flammables stored in offices
G. Excessive clutter in offices or storage spaces
H. Blocked hallways

4.0 APPENDICES

All appendices listed in this policy can be found on the Office of the State Public Defender Intranet site. For assistance in locating this site, please contact your supervisor, network support personnel or the Human Resource Officer.

5.0 CROSS-REFERENCE GUIDE

The following laws, rules or policies may contain provisions that might modify a decision relating to this policy. The list should not be considered exhaustive; other policies may apply.

5.1 Federal Laws

Family Medical Leave Act
Americans with Disabilities Act

5.2 State Laws

Section 39-71-101 – 39-71-123, MCA	Compensation Act
Section 39-71-1505, MCA	Safety Culture Act
Section 49-10101 – 49-4-501, MCA	Montana Human Rights Act

5.3 State Policies (Montana Operations Manual)

MOM 3-0335 Annual Vacation Leave
MOM 3-0310 Sick Leave
MOM 3-0311 Sick Leave Fund
MOM 3-0315 Disability and Maternity
MOM 3-0320 Disaster and Emergency Leave
MOM 3-0330 Leave of Absence Without Pay
MOM 3-0130 Discipline Handling Policy

State of Montana Capitol Complex Disaster and Emergency Plan (available from the General Services Division)

6.0 CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Violation of any provision of this policy may result in disciplinary action up to and including termination. Any violations of this policy should be reported to your supervisor or the Human Resource Officer.

Questions about this policy can be directed to your supervisor or to the OPD Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

(406) 496-6091

ATTACHMENT A

WORKPLACE SAFETY ACKNOWLEDGEMENT FORM

By signing this form I acknowledge that I have read the “Workplace Safety” policy and I understand that I am bound by the requirements in that policy.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

PRINT NAME: _____

SIGNATURE: _____

DATED: _____

This form must be signed and returned to:

Office of the State Public Defender
Human Resource Office
44 West Park
Butte, MT 59701

(406) 496-6091

Office of the State Public Defender
Human Resource Policies

Subject: **Drug-Free Workplace**	Policy No.: **531**
Title:	Pages: **2**
Section:	Last Review Date:
Effective Date: **7-15-10**	Revision Date:

1.0 POLICY

The Office of the State Public Defender (OPD) is committed to a drug-free workplace. It is the policy of OPD and the State of Montana that the unlawful manufacture, distribution, dispensing, possession, use or solicitation of a controlled substance by any employee in the workplace is prohibited.

2.0 PROCEDURE

2.1 In compliance with the Drug-Free Workplace Act, an employee who is performing work under a covered federal grant will:

2.1.1 Abide by the terms of the state's policy statement requiring a drug-free workplace; and

2.1.2 Notify the agency of any conviction of a criminal drug statute which is the result of a violation which occurred in the workplace. The agency must be notified no later than five days after the conviction.

2.2 OPD shall take one of the following actions within 30 days of receiving notice of a conviction from an employee:

2.2.1 Take appropriate action against the employee, up to and including discharge; or

2.2.2 Require such employee to participate satisfactorily in an approved drug abuse assistance or rehabilitation program. Drug counseling and rehabilitation may be covered by the Employee Group Benefits Plan. The State Health Care and Benefits Division should be contacted for further information on specific coverage. The State benefits plan also provides an employee assistance program.

2.3 An employee who violates this prohibition is subject to disciplinary action, up to and including discharge, as provided in the Discipline Handling Policy, ARM 2.21.6505 et seq.

2.4 Each employee working under a federal grant, as defined in the Drug-Free Workplace Act of 1988, must receive a copy of this policy.

3.0 CLOSING

This policy statement is adopted in compliance with the Drug-Free Workplace Act of 1988 (Pub. L. 100-690, Title V, Subtitle D).

Questions about this policy should be directed to the OPD Human Resource Officer at the following address:

Office of the State Public Defender, Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6080

ATTACHMENT A

DRUG-FREE WORKPLACE ACKNOWLEDGEMENT FORM

My signature below indicates that I have received a copy of the Drug-Free Workplace Policy and memorandum addressed to Office of the State Public Defender employees explaining the requirements of the act.

I know that I may direct any and all questions about the policy to my supervisor or the Human Resource Officer before signing or at any time in the future.

PRINT NAME: _____

Employment Location: indicate below the office street address, city, state, zip code, and county.

_____

Office

_____

Street Address

_____

City, State and Zip Code

_____

County

SIGNATURE: _____

DATED: _____

This form must be signed and returned to:

Office of the State Public Defender
Human Resource Office
44 West Park
Butte, MT 59701

Office of the State Public Defender
Administrative Policies
Human Resources

Subject:	**Release of Information**	**Policy No.:**	**535**
Title		**Pages:**	**5**
Section:		**Revision Date:**	**11-17-08**
Effective Date:	**9-1-07**	**Effective Date:**	**11-17-08**

1. POLICY

1.1 It is the purpose of this policy to establish guidelines for the release of accurate and timely information of concern to clients; judges; attorneys; co-workers; city, county, and state agency personnel; and the public, which balances the right to know and an individual's right to privacy.

1.1.1 Right to Know: No person shall be deprived of the right to examine documents or to observe the deliberations of all public bodies or agencies of state government and its subdivisions, except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure. *(Article II, section 9 of the Montana Constitution)*

1.1.2 Right to Privacy: The right of individual privacy is essential to the well-being of a free society and shall not be infringed without the showing of a compelling state interest. *(Article II, section 10 of the Montana Constitution)*

1.2 Employees must be careful not to disseminate confidential information. Employees are to refer questions relating to a specific client and/or case to the attorney representing the client. Release of information relating to employees is to be referred to the supervisor or the Human Resource Officer.

1.3 All Office of the State Public Defender (OPD) employees are required to acknowledge that they understand and will adhere to this policy by signing the Confidentiality Agreement (Attachment A).

2. DEFINITIONS

2.1 “Public Information” is defined as information that is not designated as confidential by State or Federal law.

2.2 “Confidential Information” includes verbal, written or computerized information and may include, but is not limited to, client records, notes of discussions with clients, attorney-client privileged information, medical records, case strategy, addresses, social security numbers, birth dates, financial information, billing statements, personnel records, verbal conversations concerning clients or co-workers where confidential information is discussed. Confidential information does not include information authorized to be disclosed by attorneys, or employees disclosing information based on the direction of an attorney, in

compliance with the Montana Rules of Professional Conduct.

2.3 "Employee" is defined as a volunteer, temporary, short term, student intern or permanent employee of the state.

3. PROCEDURES

3.1 General

Employees may be asked to respond to information requests from clients; judges; attorneys; co-workers; city, county and state agency personnel; or the public. Requests received, processed and maintained by the Office of the State Public Defender must be treated as confidential. OPD clients and employees are entitled to a high degree of confidence that information furnished to the agency is protected against unauthorized use, inspection or disclosure. Thus, employees handling confidential or sensitive information must always exercise caution.

Information which is of public record is to be disseminated in a timely and polite manner. Questions are to be referred to your supervisor.

Confidential information requests must be referred to the supervisor or to the attorney familiar with the specific client or case.

3.2 Client Information

Employees can not disclose confidential information regarding clients to *anyone except the client,* unless the client has completed a signed Release, the Release is on file with the Office of the State Public Defender, and the employee has obtained approval from either the supervisor or the client's assigned attorney. This includes, but is not limited to, family members, current or former spouses, significant others, individuals claiming to have power of attorney, and friends.

Employees other than attorneys shall not provide the public or any individual with legal advice.

Employees, except for attorneys or employees acting at the direction of an attorney, shall refrain from making public comment when asked about specific clients or cases, pursuant to the Montana Rules of Professional Conduct.

3.3 Employee Information

3.3.1 CONFIDENTIAL EMPLOYEE INFORMATION

Information requested by other State agencies, State employees, co-workers or the general public concerning issues relating to an employee (including, but not limited to, information relating to payroll, benefit payments, recruitment and selection, performance appraisal, disciplinary action, grievances, reduction in work force, disabled person's employment preference, veteran's employment preference, or medical information) must be treated as confidential information which may require authorization from the employee, a constitutionally valid legal order, or specific statutory authority to release the information. Questions regarding these requests are to be referred to the Human Resource Officer prior to the release of any information.

3.3.2 PUBLIC EMPLOYEE INFORMATION

An employee's position title, dates and duration of employment, salary, and claims for vacation, holiday or sick leave pay are public information and must be released on request. The Office of the State Public Defender may require that the request be in writing but may not require justification for the request.

3.3.3 REFERENCE CHECKS

Employees or supervisors contacted by other employers regarding current or former employee references are to refer the inquiry to the Human Resource Officer.

3.4 Media

Employees contacted by the media regarding issues specific to a client or case are to refer the inquiry to the supervisor or the attorney handling the case.

Questions regarding policy issues are to be forwarded to the Managing Attorney, the Regional Deputy Public Defender, or to the Chief Public Defender prior to responding to the request.

All contacts with the media are to be reported to the Chief Public Defender or the Administrative Director in the Central Office (496-6080).

3.5 Legislative Activities

3.5.1 REQUESTS FROM LEGISLATORS

To help ensure that requests from legislators or legislative staff are fulfilled promptly, thoroughly and accurately, an employee receiving a request from a legislator or legislative staff must notify their immediate supervisor as soon as possible. Supervisors must notify the Central Office of all such requests as soon as possible. It may be necessary for the Central Office to contact the Governor's office for policy guidance before responding to a request.

3.5.2 LOBBYING

Employees who are not registered as lobbyists are not to attend committee hearings or floor sessions on State time unless requested or approved by the Chief Public Defender.

An employee who lobbies on his or her own behalf during regular working hours must take annual leave, compensatory time or leave without pay to do so. An employee involved in personal lobbying or attending hearings who identifies him or herself as a state employee must state that they are not representing the agency and that they are on approved leave. An employee lobbying on their own behalf may not release information obtained as an employee of the Office of the State Public Defender.

A bargaining unit employee who attends committee hearings or floor sessions at the request of the union must notify the Chief Public Defender

that they will be in attendance. An employee who attends on behalf of the union during regular working hours must take annual leave, compensatory time or leave without pay to do so. An employee involved in lobbying or attending hearings who identifies him or herself as a state employee must state that they are not representing the agency and that they are on approved leave.

3.6 Requests Related to Electronic Information

Employees are liable for any misuse of information obtained using their computer user ID (CM number) or password. Passwords are confidential and are not to be shared with anyone, including IT staff.

3.7 Regional and Local Offices

Procedures for individual Regional or Public Defender Offices may exist to define specific guidelines for requests for information. This policy does not change those procedures, but is meant to cover areas that do not have more specific procedures.

4. CROSS-REFERENCE GUIDE

The following laws, rules or policies may contain provisions that might pertain to a decision relating to public information. The list should not be considered exhaustive; other policies may apply.

4.1 State Laws

Montana Constitution Article II, Sections 8, 9, and 10.
Montana Criminal Justice Information Act, MCA 44-5-101 to 311

4.2 State Policies (Montana Operations Manual)

MOM 3-0165 Recruitment & Selection
MOM 3-0110 Employee Record Keeping

5. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable

Questions regarding this policy can be directed to your supervisor or the Human Resource Officer at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701

Phone (406) 496-6091

ATTACHMENT A

Confidentiality Agreement

As an employee of the Office of the State Public Defender (OPD) you may have access to confidential information regarding clients and co-workers. It is critical for OPD employees to maintain confidentiality at all times. Confidential information regarding clients and co-workers includes, but is not limited to, written or computerized client records, notes of discussions with clients, attorney-client privileged information, medical records, case strategy, addresses, social security numbers, birth dates, financial information, billing statements, personnel records, or verbal conversations concerning clients or co-workers where confidential information is discussed.

The Office of the State Public Defender is committed to complying with the Constitution of the State of Montana, specifically Article II, Section 8, Right of Participation; Article II, Section 9, Right to Know; Article II, Section 10, Right of Privacy; Montana Criminal Justice Information Act, MCA 44-5-101 to 311; Health Insurance Portability and Accountability Act (HIPAA), Rules of Professional Conduct, and other State and Federal laws protecting clients' or co-workers' privacy.

Violation of the provisions of State and/or Federal Law can result in civil and/or criminal penalties as well as disciplinary action up to and including termination of employment.

Guidelines for maintaining confidentiality:

1. Access only those records you need to perform your duties or as authorized by your supervisor.
2. Do not share or discuss confidential information you access or become aware of regarding clients or co-workers, except for work-related reasons and with the appropriate individuals.
3. Do not repeat conversations regarding clients or co-workers to anyone, whether internal or external to the Office of the State Public Defender, except for work-related reasons.
4. Do not provide any confidential information to the general public when asked about specific clients or cases.
5. Provide confidential information only to those persons who are authorized to receive it.
6. If you have questions about whether specific information is public or private, contact your supervisor, the attorney assigned to a case, or the Human Resource Officer (496-6091).

Acknowledgement:
I understand that if I am volunteer, temporary, short term or student intern worker in the Office of the State Public Defender I am bound by the same laws on confidentiality as if I were a permanent employee.

My signature indicates that I have read and understand the Office of the State Public Defender employee guidelines regarding confidentiality, and I agree to abide by these guidelines. I understand that unauthorized use or disclosure of confidential information concerning clients, or personal information regarding co-workers, to any unauthorized person internal or external to the Office of the State Public Defender, violates confidentiality and or legal ethics. I also understand the penalties for non-compliance.

_____ _____
Printed Employee name Date

This form must be signed and returned to:

Office of the State Public Defender, Human Resource Office
44 West Park
Butte, MT 59701
(406) 496-6091

Office of the State Public Defender
Administrative Policies
Human Resources

Subject: Broadband Pay Plan	**Policy No.: 540**
Title	**Pages: 12**
Section:	**Last Review Date:**
Effective Date: 5-21-09	**Revision Date:**

1. **Purpose**
   The purpose of this policy is to establish consistent application of the Broadband Pay Plan in accordance with 2-18-301 through 2-18-303, MCA.

2. **Scope**
   This policy applies to all Office of the State Public Defender (OPD) employees excluding positions listed under 2-18-103 MCA: the chief public defender appointed by the public defender commission pursuant to the Montana Public Defender Act, Title 47, chapter 1, and the employees in the positions listed in 47-1-201(3)(a), who are appointed by the chief public defender.

   If this policy conflicts with collective bargaining agreements, the collective bargaining agreements take precedence.

3. **Objective**
   The Office of the State Public Defender (OPD) believes that competent employees are a critical component in the agency's ability to fulfill its mission and goals, and that the Broadband Pay Plan will enhance employees' opportunities for rewards and recognition. Market factors, employee competence and contributions should be important considerations in determining compensation that is fair and equitable. The main objectives of the OPD Broadband Pay Plan are to be internally equitable, externally competitive and sufficiently motivating to more closely reflect an employee's true value to the organization; to provide a closer relationship to the marketplace; and recognize knowledge and performance levels that contribute to the agency mission, dependent upon OPD's ability to fund pay adjustments based on legislative appropriation.

4. **Definitions**
   The following definitions apply to this pay plan policy:

   4.1 Agency – Office of the State Public Defender (OPD).

   4.2 Agency Head – the Chief Public Defender.

   4.3 Appointing Authority – an agency official or designee with the delegated authority to hire or discharge employees.

4.4 Base Salary – the amount of compensation paid to an employee, excluding: state contributions to group benefits provided in 2-18-703 MCA; overtime; fringe benefits as defined in 39-2-903 MCA and longevity allowance provided in 2-18-304 MCA.

4.5 Bonus – a lump-sum payment that does not affect the employee's base pay.

4.6 Break in Service – a period of time in excess of five working days between state employments.

4.7 Broadband Pay Plan – a pay plan using a pay hierarchy of broad pay bands based on the broadband classification plan.

4.8 Classification – a process of evaluating the work performed in a given job to determine the appropriate occupation and pay band.

4.9 Classified Position – an executive branch position subject to this broadband pay policy.

4.10 Competencies – sets of measurable and observable knowledge, skills, and behaviors that contribute to success in a job.

4.11 Competency Pay – a wage adjustment type based on job-related competencies considered to be a benefit to the agency.

4.12 Competitive Pay Zone – means that portion of the pay range for a band level of an occupation that is most consistent with the pay being offered by competing employers for fully competent employees within that occupation.

4.13 Demotion – assigning an employee to an occupation with a lower pay range or a lower pay band.

4.14 Department – the department of administration.

4.15 Entry Salary – the entry-level base salary for each occupation will be 20 percent below the median base salary that other employers pay to employees in comparable occupations as determined by the department's 2006 salary survey of the relevant labor market.

4.16 Longevity Allowance – a salary increase of 1.5% or 2.0% times the base salary for each completed five years of contiguous, uninterrupted state service, as provided in 2-18-304 MCA.

4.17 Market Pay – a wage adjustment type up to 100% of the market salary for

that occupation. Market pay adjustments are determined by the OPD pay plan.

4.18 Market Salary – the median base salary that other employers pay to employees in comparable occupations as determined by the department's 2006 salary survey of the relevant labor market.

4.19 Maximum Salary – the maximum level base salary for each occupation will be 20 percent above the median base salary that other employers pay to employees in comparable occupations as determined by the department's 2006 salary survey of the relevant labor market.

4.20 New Hire – an individual who has never worked for state government or a previous state employee returning after a break in service of more than five working days.

4.21 Non-Classified Position – an executive branch position not subject to this Broadband Pay Plan policy.

4.22 Occupation – a generalized family of jobs having substantially similar duties and requiring similar qualifications, education and experience.

4.23 Occupation Job Code – the unique identifier of an occupation and pay band used by the department based on the Standard Occupational Classification (SOC) numbering convention, maintained by the U.S. Department of Labor, Bureau of Labor Statistics.

4.24 Pay Band – a wide salary range covering a number of different occupations.

4.25 Performance Pay – a wage adjustment type based upon the documented evaluation of the employee's performance.

4.26 Position – a collection of duties and responsibilities currently assigned or delegated by competent authority, requiring the full-time, part-time, or intermittent employment of one person.

4.27 Promotion – assigning an employee to an occupation with a higher pay range or a higher pay band.

4.28 Reclassification – assignment of a position from one occupational job code to another. Changes are based on a review of current duties and responsibilities.

4.29 Results Pay – a wage adjustment type given to an employee or an employee team based on measurable outcomes.

4.30 Situational Pay – a wage adjustment type based on atypical situations in the majority of jobs in state government.

4.31 Statutory Wage Adjustment – a wage adjustment authorized by law entitling all eligible state employees to receive the increase.

4.32 Strategic Pay – a wage adjustment type used to attract and retain an employee with competencies critical or vital to the achievement of an agency's mission or strategic goals.

4.33 Training Assignment – a period of employment created at an agency's discretion to allow a candidate to obtain the required knowledge, skills, and behaviors necessary to perform all of the duties of a job.

4.34 Transfer – a change of employment including but not limited to inter-agency or intra-agency changes or movement from non-classified to classified positions without a break in service.

5. Occupations and Market Salary Information

OPD will use the occupations and market salary information established by the State Human Resources Division and union contract. OPD will be proactive in working with the State Human Resources Division and Labor Relations to ensure that markets are appropriate for occupations employed by OPD.

6. Establishing Wage Rates

The Broadband Pay Plan allows agencies to address pay issues such as internal equity, external competitiveness, and recognition for employee contributions and added job competencies. Pay decisions must be fiscally responsible using the following guidelines.

6.1 New Hires

Typically, new employees are placed in the pay band for the occupation according to the candidate's qualifications in relation to the job profile requirements and agency salary relationships. Entry is meeting the minimum of the job profile requirement. Additional qualifications and work experience can be considered to place the candidate between entry and market. When determining the employee's base pay, the agency shall consider criteria including but not limited to:

1. The employee's job-related qualifications and competencies
2. Existing salary relationships within the occupation; work unit; and agency
3. The agency's ability to pay
4. The competitive labor market

Questions to be considered when establishing the wage offer include:

5. Whether the applicant's education, training and/or work experience exceed the minimum qualifications required based on the job profile.
6. Are there recruitment problems associated with filling positions in this occupation or location?
7. How unique is the position or applicant in terms of training and experience?
8. Are there other special circumstances such as previous employment with OPD but had a break in service?
9. What is the effect on current employees in the same job title? Do the differences in qualifications and performance justify a salary difference? (This must be addressed in every situation.)

Strategic, market-based and situational pay components may be used when retention is a problem, recruitment of qualified candidates has been difficult, or supervisors have been unable to attract candidates into positions (see section 7). Written justification addressing the above questions must be provided to use these components and must be submitted to the Human Resource Officer for approval by the Chief Public Defender and the Administrative Director prior to an offer being made to the successful candidate.

6.2 Training Assignments

1. OPD may use a training assignment to address recruitment, transfer, reorganization or promotion interests.
2. Training assignments may not last more than two years.
3. Employees in a training assignment may be paid below the entry salary.
4. Conditions of the training assignment will be stated in writing and signed by the employee, supervisor and Human Resource Officer. A copy of the written training assignment will be filed in the employee's permanent personnel record and must include:
    a. the wage rate at the beginning of the training assignment, any increases allowed during the training assignment and the wage rate at the end of the training assignment;
    b. the duration of the training assignment;
    c. the knowledge, skills, behaviors, training and experience the employee must acquire during the training assignment; and
    d. measures of the employee's performance in areas where knowledge, skills, behaviors, training and experience must be acquired by the employee.

5. At the completion of the training assignment, the employee's base salary will be set according to the agency pay plan.

6. If the employee does not satisfactorily complete the training assignment, the agency may:
    a. return the employee to the position held before the training assignment;
    b. assign the employee to another position for which the employee is qualified;
    c. extend the training assignment for a period not to exceed two years; or
    d. discharge the employee, in compliance with the Discipline Policy, ARM 2.21.6505 et seq. If the employee is under a probationary period discharge must be in compliance with ARM 2.21.3810.

6.3 Supervisory Pay

Employees may be eligible for additional pay when performing supervisory duties. When an employee who is performing supervisory duties is classified in the same occupation and band as their subordinates, OPD may recognize these additional duties with a pay adjustment approved by the Chief Public Defender. When determining the amount of additional pay, the agency will consider levels of supervisory duties performed and internal equity.

6.4 Promotions

A promotion is the advancement of an individual to an occupation with a higher pay range, either within a band or to a higher-level band, based on qualifications and a significant change in work content. The salary of an employee being promoted to a higher occupation or higher pay band will normally be set by considering the employee's relative job-related qualifications (experience, knowledge, skills and abilities). The salary of a promoted employee will be determined by the Chief Public Defender up to the maximum salary for the occupation, based on existing salary relationships within the agency, the agency’s ability to pay, and internal equity.

6.5 Temporary Promotions

Pay for temporarily assigned duties which require additional competencies must be based on an assessment of the additional competencies required in the temporary assignment. The salary of an employee who is temporarily promoted will be determined by the Chief Public Defender up to the maximum salary for the occupation, based on existing salary relationships within the agency, the agency’s ability to pay, and internal equity.

An employee placed in a temporary assignment must be given written notice of the assignment. The notice must contain the length of time the assignment is anticipated to last and include the date the temporary promotion takes effect. The temporary assignment may not exceed two

years. Upon completion of the temporary assignment, the employee's pay will be set at the base salary they had prior to the temporary promotion, plus any scheduled salary increases that may have occurred during the temporary assignment.

6.6 Demotions

The base salary for an employee moving to a lower occupation or lower pay band will normally be set by considering the employee's relative job-related qualifications (experience, knowledge, skills and abilities). The salary of an employee who is demoted will be determined by the Chief Public Defender up to the maximum salary for the occupation, based on existing salary relationships within the agency, the agency's ability to pay, and internal equity. The new base salary will not be less than the entry rate for the pay band unless a training assignment has been established under 6.2.

OPD may at its discretion protect the employee's current base salary for a period not to exceed 180 calendar days. The Regional Deputy Public Defender or supervisor must submit a request to the Human Resource Officer, for approval by the Chief Public Defender, to protect the employee's current base salary for up to 180 calendar days. At the end of the protected period, if applicable, the agency must set the employee's base salary between entry up to the maximum of the new pay band.

The employee must be notified in writing of the wage rate prior to the change.

This rule does not apply to disciplinary and/or voluntary demotions.

6.7 Transfers

The salary for employees moving from one position to another at the same occupation and pay band will not change, unless the circumstances of the move involve strategic or situational pay components.

6.8 Classification

The Broadband Pay Plan has nine "broad bands." All positions are placed in an occupation and pay band using the Benchmark Factoring Method (BFM) and the state classification standards. This plan uses a single factor, complexity, which is applied to the predominant work performed in a position.

The pay bands and classification standards are designed so that an employee's salary will fall within the minimum and maximum salaries in the appropriate pay band. No employee is paid below entry unless they are in a training assignment.

Classification reviews of positions are reduced since the focus is on an employee's progression within the pay band. Competency pay, market pay, performance pay, results pay, and strategic pay components may be used to make these adjustments.

The Broadband Pay Plan allows OPD flexibility to ensure employees are compensated for increased duties and responsibilities, achievements, and demonstrated competencies.

When it is determined that an employee's salary should be adjusted within the pay band, the Regional Deputy Public Defender or supervisor must make a written request on the Wage Adjustment Request Form and forward the request to the Human Resource Officer.

Once the Wage Adjustment Request Form is received a review will be conducted of the employee's job-related qualifications and competencies; existing salary relationships within the agency, the agency's ability to pay, and internal equity. It will be the responsibility of the Chief Public Defender or the Administrative Director to approve or deny the request prior to implementation.

6.9 Reclassification

In the rare circumstance when reclassification of a position is considered, the Regional Deputy Public Defender and supervisor will make a written request for a position review to the Human Resource Officer. Supervisors will be required to submit an electronic copy of an updated job profile. Once the job profile is received by the Human Resource Officer, a review of the position will be conducted to determine the proper occupation and pay band placement. Once the review is completed the Human Resource Officer will forward a recommendation to the Regional Deputy Public Defender, supervisor and the Chief Public Defender for approval.

Compensation for a reclassified position will be determined using the same process and criteria as outlined in the sections titled "Demotions" and "Promotions."

6.10 Change from Non-Classified Position to Classified Position

When an employee's position is changed from non-classified to classified, OPD may set the base salary within a range from the entry rate of the classified occupation up to a base salary that maintains the employee's current base salary as long as it is within the pay range established for the newly-assigned occupation.

OPD may at its discretion protect the employee's current base salary for a period not to exceed 180 calendar days. The Regional Deputy Public Defender or supervisor must submit a request to the Human Resource

Officer, for approval by the Chief Public Defender, to protect the employee's current base salary. At the end of the protected period, if applicable, the agency must set the employee's base salary between entry up to the maximum of the new pay band.

The employee must be notified in writing of the wage rate prior to the change.

7. Wage Adjustment Types

Wage adjustments must be approved by the Chief Public Defender or the Administrative Director and properly recorded in SABHRS. The following wage adjustments may be given based upon the availability of agency funds:

7.1 Competency Pay

Employees may be eligible to receive additional pay based on their competency. Competencies must be identifiable, observable, measurable and compared to like positions for internal equity purposes. Competency pay may be given as a bonus or as an increase to the base salary.

7.2 Market Pay

Employees whose base salary is below the market salary for their occupation may be eligible for a market pay adjustment. Market pay adjustments may be used to address recruitment and retention issues. Market pay adjustments should not be used to increase an employee's wage above the market of their occupation. An employee's wage may be adjusted above the market rate using one or more of the other wage adjustment types.

7.3 Performance Pay

Employees may be eligible to receive additional pay based on their performance. Prior to implementing performance pay, a performance appraisal tool must be in place that has been approved by the Chief Public Defender or designee. This increase is based on the agency's ability to pay, performance criteria linked to actual results compared with expected results, and internal equity. Performance pay may be given as a bonus or as an increase to the base salary.

7.4 Results Pay

Employees may be eligible to receive additional pay based on the results of their efforts and/or team efforts which can be measured by comparing accomplishments to established goals. Results pay must be given as a bonus.

7.5 Situational Pay

Employees may be eligible to receive additional pay based on atypical situations or working conditions. OPD may use situational pay to address

recruitment or retention issues related to certain requirements of the position such as location, extensive travel, unusual work hours, or unusual physical demands. Situational pay may be given as a bonus or as an increase to the base salary.

7.6 Strategic Pay
Employees may be eligible to receive additional pay based on the agency's strategy to recruit or retain critical or vital competencies. Strategic pay may be given as a bonus or as an increase to the base salary.

8. Longevity Allowance

A longevity allowance must be added to an employee's hourly base salary on the first day of the pay period in which eligibility occurs. The longevity allowance is calculated after all other wage adjustments have been added to the employee's base salary.

9. Effective Dates For Pay

The effective date for pay actions will be the first day of the pay period in which the request for a reclassification or pay adjustment has been approved by the Chief Public Defender or the Administrative Director.

10. Ensuring Equity Across the Agency

OPD has developed several review processes and criteria to ensure consistency and compliance in the application of the competency based performance management and compensation system. OPD will implement this system in compliance with state and federal laws and according to the requirements of the Montana Operations Manual (MOM) 3-0115, the State Performance Management and Evaluation Policy; MOM 3-05-1, the Broadband Pay Plan Policy; Collective Bargaining Agreements with AFSCME; MCA 2-18-303 and MCA 39-31-305.

To ensure equity across the agency, the Chief Public Defender, Regional Deputy Public Defenders, the Administrative Director and the Human Resource Officer will review all pay component requests prior to implementation.

Requests for pay adjustments will be accompanied by a performance review conducted within the last 12 months. The request will depict how the employee meets or exceeds expectations. A statement indicating how the pay increase impacts the budget will also be required.

11. Performance Management

OPD intends to use the performance management system as a way to promote employee growth and offer opportunities for competency related feedback. Through utilizing dependable performance management tools, supervisors and employees will be able to identify areas of strength and weakness in an

employee's performance. Then, employees can be rewarded for their strengths and offered training opportunities to improve areas of weakness.

Recognizing that employees desire development opportunities, OPD is committed to providing the training foundation necessary for employees to evolve in their profession. Training opportunities for employees will be an integral part of the OPD strategic plan.

OPD supervisors will provide regular, effective performance communication.

OPD intends to use the performance communication process as a way to provide worthwhile feedback to employees. This feedback will indicate performance in regard to the position's work, competencies required, meeting proficiency levels and addressing employee development.

The result will be:

- Employee and supervisor understanding and documenting the performance of the employee
- Identifying development needs and desires of the employee and supervisor
- Defining work goals and objectives for the coming year for the employee

OPD has established a performance appraisal review process to ensure consistency and objectivity in the application of the performance management tools. Performance expectations are documented in the appraisal form and the evaluator is required to provide written comments (including specific examples) on ratings where the employee does not exhibit a specific behavior or exceeds expectations. The plan includes weighted factors for reaching evaluation decisions.

The employee's immediate supervisor will complete the initial evaluation. The employee will be allowed 10 working days from the date of the evaluation to submit a written response if they so choose. Responses will be retained with the evaluation in the employee's personnel file. As stated in MOM-3-0115, the State Performance Management and Evaluation Policy, no employee may file a grievance based on the content of a performance management plan, the evaluation, or the reviewer's comments.

The completed performance appraisal will be reviewed by OPD management to ensure consistency and objectivity in the evaluations. OPD supervisors will be held accountable for completing appropriate performance evaluations (including periodic feedback) through the performance evaluation process. OPD is also committed to providing training and technical assistance to employees and management in the implementation and administration of the competency based performance management and compensation system through supervisory training and assistance provided by the Human Resource Office.

OPD will develop a system that summarizes performance with an overall rating. OPD will maintain statistics to ensure there are no adverse impacts on protected classes or other inconsistencies.

12. CROSS REFERENCE GUIDE

The following laws, rules or policies may contain provisions that might modify a decision relating to the Broadband Pay Plan. The list should not be considered exhaustive—other policies may apply.

State Laws

2-18-303 MCA	Procedures for administering broadband pay plan.
39-31-305 MCA	Duty to bargain collectively -- good faith.

State Personnel Policies

MOM 3-0115	State Performance Management and Evaluation Policy
MOM 3-05-1	Broadband Pay Plan Policy

13. CLOSING

This policy shall be followed unless it conflicts with negotiated labor contracts or specific statutes, which shall take precedence to the extent applicable.

Questions concerning this policy can be directed to your immediate supervisor or the Human Resource Office at:

Office of the State Public Defender
Administrative Service Division
44 West Park
Butte, MT 59701
Phone 406-496-6091

STANDARDS

for Counsel Representing Individuals Pursuant to the Montana Public Defender Act

OCTOBER 2010

TABLE OF CONTENTS

I. INTRODUCTION 5
1. Purpose 5
2. Application 6
3. Discrimination 6

II. CASE SELECTION 6
1. Nature of Case 6
2. Publicizing of Services 6

III. THE ATTORNEY-CLIENT RELATIONSHIP 7
1. Nature of Representation 7
2. Initial Contact 7
3. Duration of Representation 8
4. Conflicts of Interest: 8
5. Conflict Cases 15

IV. ADMINISTRATION OF DEFENDER SERVICES 16
1. Attorney-Client Communication 16
2. Delivery of Services 17
3. Accounting and Billing System 19
4. Performance Evaluations 19
5. Proficiency Determination for Contract Attorneys 20

V. CASELOADS 20
1. Governing Principle 21
2. Caseload Evaluation 21

VI. QUALIFICATIONS AND DUTIES OF COUNSEL 22
1. General Duties of Defense Counsel 23
2. Obligations of Counsel Regarding Pretrial Release 24
3. Counsel's Interview with Client 24
4. Counsel's Duty in Pretrial Release Proceedings 28
5. Counsel's Duties at Preliminary Hearing 28
6. Duty of Counsel to Conduct Investigation 29
7. Formal and Informal Discovery: 30
8. Development of a Theory of the Case 30
9. The Duty to File Pretrial Motions 30
10. Preparing, Filing, and Arguing Pretrial Motions 31
11. Continuing Duty to File Pretrial Motions 31
12. Duty of Counsel in Plea Negotiation Process 31
13. The Process of Plea Negotiations 32
14. The Decision to Enter a Plea of Guilty 34

15. Entering the Negotiated Plea before the Court 34
16. Counsel's Duty of Trial Preparation 35
17. Jury Selection 37
18. Opening Statement 38
19. Preparation for Challenging the Prosecution's Case 39
20. Presenting the Defendant's Case 40
21. Preparation of the Closing Argument 41
22. Jury Instructions 42
23. Obligations of Counsel at Sentencing Hearing 42
24. Sentencing Options, Consequences and Procedures 43
25. Preparation for Sentencing 44
26. The Prosecution's Sentencing Position 45
27. The Sentencing Process 45
28. A Motion for a New Trial 46
29. The Defendant's Right to an Appeal 46
30. Defendant's Right to Apply to the Sentence Review Panel 46
31. Defendant's Right to Postconviction Relief 47
32. Representation in Ancillary Proceedings 47

VII. STANDBY COUNSEL IN CRIMINAL CASES 47
1. Duties of defense counsel acting as standby counsel 48
2. Assumption of representation of the Defendant 48

VIII. FACILITIES AND SUPPORT SERVICES 48

IX. COMPENSATION 49

X. REPRESENTATION STANDARDS FOR APPELLATE ADVOCACY 50

XI. REPRESENTATION STANDARDS FOR POSTCONVICTION PROCEEDINGS 52

XII. REPRESENTATION STANDARDS FOR SENTENCE REVIEW 54

XIII. STANDARDS FOR REPRESENTATION OF YOUTH IN YOUTH COURT PROCEEDINGS 55

XIV. REPRESENTATION OF A RESPONDENT IN A PROCEEDING FOR INVOLUNTARY COMMITMENT – MENTAL ILLNESS 62

XV. REPRESENTATION OF A RESPONDENT IN A PROCEEDING FOR INVOLUNTARY COMMITMENT – SERIOUS DEVELOPMENTAL DISABILITY 70

XVI. REPRESENTATION OF A MINOR WHO IS VOLUNTARILY COMMITTED TO A MENTAL HEALTH FACILITY UNDER §53-21-112, MCA 76

XVII. REPRESENTATION OF PARENTS IN DEPENDENT/NEGLECT CASES 82

XVIII. REPRESENTATION OF A RESPONDENT IN A GUARDIANSHIP OR CONSERVATORSHIP PROCEEDING 87

XIX. REPRESENTATION OF PERSONS IN A PROCEEDING TO DETERMINE PARENTAGE UNDER THE UNIFORM PARENTAGE ACT 95

XX. REPRESENTATION OF PARENTS OR A GUARDIAN IN A PROCEEDING FOR THE INVOLUNTARY COMMITMENT OF A DEVELOPMENTALLY DISABLED PERSON 97

XXI. REPRESENTATION OF A RESPONDENT IN A PROCEEDING FOR INVOLUNTARY COMMITMENT – ALCOHOLISM 100

INDEX 107

Standards for Counsel Representing Individuals Pursuant to the Montana Public Defender Act

I. INTRODUCTION

1. Purpose:

These standards are intended to encourage and allow attorneys representing indigent and all other persons entitled to public legal representation to perform to a high standard of representation and to promote excellence and professionalism in the representation of those persons. The following standards are adopted to foster a legal representation system in which:

A. The public legal representation function, including the selection, funding, and payment of counsel for indigent clients, is as independent from political influence and judicial supervision as possible given the geographic and demographic diversity of the State of Montana;

B. Those persons entitled to public legal representation are adequately represented through a legal services delivery system consisting of defender offices, the active participation of the private bar, or both;

C. Applicants requesting legal services based upon indigence are screened for eligibility based upon uniform standards, then assigned and notified of an appointment as soon as is practically possible;

D. Counsel has sufficient time, confidential space, and confidential electronic communications to converse with the client;

E. Counsel's workload matches counsel's capability;

F. Counsel's ability, training, and experience match the complexity of the case;

G. To the extent possible, the same attorney continuously represents the client until completion of the case;

H. Counsel for a client entitled to public legal representation has parity of resources with opposing counsel and is included as an equal partner in the justice system; and,

I. Counsel is required to obtain continuing legal education and training.

2. Application:

A. These standards are intended to be used as a guide to professional conduct and performance. They are not intended to be used as criteria for the judicial evaluation of alleged misconduct of counsel to determine the effectiveness of representation. They may or may not be relevant in such judicial evaluation, depending upon all the circumstances.

B. These standards apply generally to all counsel who represent persons at state expense pursuant to the Montana Public Defender Act. In cases where these standards conflict with or contradict the standards established for representation in certain specific types of cases, the more specific standards shall apply.

3. Discrimination:

A**.** No government agency or any entity contracting with a government agency, in its selection of an attorney, firm, or agency to provide public legal representation, nor the attorneys selected, in their hiring practices or in their representation of clients, shall discriminate on the basis of race, color, religion, national origin, age, marital status, sex, sexual orientation or disability. Government entities, defender offices, contract counsel, and assigned counsel shall comply with all federal, state, and local non-discrimination laws.

II. CASE SELECTION

1. Nature of Case:

A. Counsel may be assigned to represent persons in all cases as described in the Montana Public Defender Act and in any other case deemed appropriate by the Montana Supreme Court.

2. Publicizing of Services:

A. The availability of public defender services should be publicized by the Office of the State Public Defender, regional public defender offices, and local public defender offices. Reasonable efforts should be made to ensure that notices containing information about public defender services and how to access those services are posted conspicuously in police stations, jails and wherever else it is likely to give effective notice.

III. THE ATTORNEY-CLIENT RELATIONSHIP

1. Nature of Representation:

Goal: The paramount obligation of counsel is to provide quality representation and diligent advocacy to the client at all stages of the representation.

A. To provide quality representation and diligent advocacy, counsel must preserve, protect, and promote the client's rights and interests, and be loyal to the client.

B. Public defenders, contract counsel, shall provide services to all clients in a professional, skilled manner consistent with the Montana Rules of Professional Conduct, case law, applicable court rules defining the duties of counsel and the rights of their clients, and these Standards.

2. Initial Contact:

Goal: Counsel shall be made available to indigent defendants at the earliest opportunity.

A. Effective representation should be available to an eligible person upon request of the person, or someone acting on the person's behalf, to a court, a public defender office, or contract counsel as soon as the person is under investigation, arrested, charged with a criminal offense, becomes a party to any litigation in which the person is entitled to public legal representation, or when the interests of justice require representation. This standard does not create a duty of counsel to provide indigent legal representation to a person beyond those duties imposed by statutes and case law.

B. A person not in custody shall be advised of the right to representation and, if eligible, offered the services of counsel at the person's first appearance before a judicial officer. Assigned counsel shall make an appointment at counsel's earliest convenience, prior to the next court appearance, to personally meet with any prospective client. A person in custody who is not represented by retained counsel shall be entitled to consult with a public defender for not less than fifteen minutes prior to his or her first court appearance. If feasible, counsel should offer representation for the initial appearance for the purposes of making a bond argument. When a court incarcerates a person who appears before it and that person requests indigent representation, counsel shall make personal contact with the person within three working days.

C. When it is determined that a person is ineligible for public legal representation, counsel should decline the case and advise the person of how to appeal the determination of ineligibility. However, should immediate service be necessary to protect that person's interests, such service should be rendered until the person has the opportunity to retain counsel. In that event, the Office of the State Public Defender shall be reimbursed for counsel's services at the current hourly rate for contract counsel.

3. Duration of Representation:

Goal: Once a case is assigned to an attorney, continuous and uninterrupted representation by the same attorney is the most effective method of representation.

A. Counsel shall provide continuous and uninterrupted representation to eligible clients from time of entry into the case through final disposition in the trial court. The Appellate Defender's Office shall provide appellate representation before the Montana Supreme Court.

B. In the event that counsel is no longer employed by a public defender office or private counsel no longer does cases for the Office of the State Public Defender (OPD), either the Regional Deputy Public Defender or Contract Coordinator, in his or her discretion, may direct that counsel shall continue to represent the client through final disposition of the case at the rate of compensation for assigned counsel set forth in these Standards. Completion of a client's case shall not be required if counsel is unable to continue representation or is relocating to a residence outside the Region. These Standards shall not prohibit counsel from withdrawing from a case in which a court has recognized a conflict of interest for counsel or in which a client is found to be ineligible for indigent legal services.

C. In the event that a court should deem it appropriate to set an evidentiary hearing on a *pro se* petition for postconviction relief, the Office of the State Public Defender shall assign previously assigned counsel for the petitioner, unless the petition raises an issue of ineffective assistance of counsel. Ineffective assistance of counsel shall be handled by the Office of the Appellate Defender.

4. Conflicts of Interest::

Goal: The duty of loyalty to the client is paramount.

A. Organization of the State Public Defender System*:* The State Public Defender System is made up of eleven Regional Public Defender Offices, the Office of the Appellate Defender, the Major Crimes Unit, and various local offices and contract attorneys. The Office of the Appellate Defender is independent from all trial division offices.

Each local office is under the direct supervision of a Regional Deputy Public Defender. The Major Crimes Unit is under the direct supervision of a manager who is responsible for directing, coordinating, and evaluating the work of attorneys employed in the unit. The Major Crimes Unit manager is solely responsible for providing guidance to and determining litigation strategy for attorneys assigned to his supervision. The Regional Deputy Public Defenders are responsible for directing, coordinating, and evaluating the work of attorneys employed in the local office and any contract attorneys

that are also assigned to his or her overall supervision. The Regional Deputy Public Defenders are solely responsible for providing guidance to and determining litigation strategy for attorneys assigned to their supervision.

Each regional office and the Major Crimes Unit has its own support staff and investigators separate from those employed by any other independent office. Each office is physically separate from the others. No supervisor or staff from one independent office has access to files or premises of another independent office. However, a supervisor or staff from a regional office has access to the files and premises of a local office that is under that regional office's supervision. Each office has its own phone numbers, facsimile equipment, and computers. Although computer networks will be linked for purposes of reporting statistical information, confidential client information shall be separated by appropriate firewalls or other screening devices.

Neither the Chief Public Defender nor anyone assigned to the State Public Defender System administrative division exercises general control or influence over the handling of individual trial division or appellate division cases, has access to client files or client confidences, has keys to any independent office, or has unsupervised access to the premises of any independent office. The Chief Public Defender, the Training Officer, and the Contract Officer will take cases as assigned. The only other exception to this rule is for major litigation cases in which the State Public Defender's office may provide assistance through its Major Crimes Unit. While the Office of the State Public Defender must sign off on all expenditures and coordinate in advance on some expenditures for expert witnesses, certain other investigative assistance, and equipment purchases, these requirements are only to ensure compliance with State disbursement procedures and promote sound fiscal practices; they do not dictate trial strategy, which remains the exclusive province of the Regional Public Defender's Office or Major Crimes Unit.

B. State Public Defender System Organization and Conflicts of Interest*:* Each independent regional office, including any local office under its supervision, is a separate "firm" for purposes of representing clients. The Major Crimes Unit is a separate "firm" for purposes of representing clients. Accordingly, a client with a conflict of interest with one regional office may be represented by another regional office or the Major Crimes Unit. In such an event, the client shall be screened through appropriate devices and procedures from having contact with any confidential information concerning any other case in the conflicting region. A local office may not represent a client in conflict with a client of its regional parent office, or vice versa.

The Office of the Appellate Defender is also a separate "firm" for purposes of client representation. The Office of the Appellate Defender may represent a client in conflict with a client of any regional or local office, or in conflict with any contract attorney. In representing the former client or a trial division office, the Office of the Appellate Defender may take the position that a regional or local office attorney, or a contract attorney, did not provide the client constitutionally effective assistance of counsel.

C. Examination for Potential Conflicts of Interest: Early detection of a potential conflict of interest is crucial to its appropriate resolution. As soon as is practicable following appointment to represent a client, a Regional Public Defender Office or the Major Crimes Unit must examine its records to determine whether it may have a conflict of interest involving another current or former client, or otherwise. An office must promptly update this examination as it investigates the case and receives discovery, with particular attention paid to finding out if conflicts may exist with anticipated witnesses for the prosecution or defense. In the event that a potential conflict of interest develops, the matter shall be referred to the Training Coordinator, who shall be provided sufficient facts to decide the issue.

Clients and potential witnesses may also have information that will assist in uncovering possible conflicts of interest. Accordingly, each local public defender office should use standard questions for its client intake interviews and witness interviews that are designed to uncover conflicts on forms developed by the State Public Defender's Office.

In a situation in which a public defender's office makes an initial appearance on behalf of codefendants, the clients must be cautioned at the first opportunity not to disclose confidential information concerning the case until a determination can be made if a conflict exists.

D. Policy and Guidance on Potential Conflicts of Interest: It is the policy of the Office of the State Public Defender that all State Public Defender System offices will comply with all legal requirements and ethical guidelines relating to conflicts of interest in the representation of clients. The Rules of Professional Conduct are mandatory authority. To the extent that this Standard may be interpreted as inconsistent with the Rules, the latter controls.

The difficulty in developing case-specific policies is that it is impossible to formulate rules that will apply in every situation. The following guidance contains examples of situations where conflicts are likely to result and others that are probably not conflicts of interest. This is not an exclusive list; however, this list contains many situations expected to arise in cases. Any potential conflicts must be resolved on a case-by-case basis.

E. Codefendants: Public defender offices within a region or the Major Crimes Unit will not represent codefendants except in rare situations when it is clear that each codefendant's interests are completely consistent with the others and each codefendant agrees. Even so, the better course of action is to represent only one codefendant. If possible, the regional public defender should keep one of the cases. If the public defender can make a choice of codefendants before obtaining privileged information from either one, the choice should be the codefendant with the most serious or difficult case. Otherwise, the local public defender should keep the first codefendant to which the office is appointed and make arrangements for other counsel for the other codefendant.

F. Simultaneous representation of a defendant and a potential prosecution witness or alleged victim: There will almost always be a conflict of interest in this situation. There may not be a conflict if the prosecution witness's credibility or the alleged victim's character is not at issue, and the prosecution witness' testimony is not a crucial factor in the defendant's case. This issue should always be referred to the Training Coordinator.

G. A former client is a potential prosecution witness or alleged victim: This is not a *per se* conflict of interest, but a conflict will often exist in this situation. There may not be a conflict of interest if the prosecution witness's credibility or the alleged victim's character is not at issue, and the prosecution witness's testimony is not a crucial factor in the defendant's case. In other cases, there may not be a conflict of interest if the local public defender's office has no privileged information about the former client that would be useful in representing the defendant.

H. Investigation reveals that another person may have committed the charged crime and that other person is a former client: This will almost always be a conflict of interest. This presents a conflict of interest if the local public defender's office has privileged information about the former client that would further the theory that the former client is the perpetrator.

I. An employee of the local public defender's office is a potential prosecution witness or an alleged victim: Either situation is a conflict of interest.

J. The defendant was convicted in a previous case while represented by the local public defender's office and has a colorable claim of ineffective assistance of counsel in that case: This presents a conflict of interest as long as the ineffective assistance claim is unresolved.

K. Situations that do not present *per se* conflicts of interest: The following are not *per se* conflicts of interest. However, if the particular situation actually degrades the quality of client representation or creates an appearance from which a reasonable person would doubt that a local public defender's office can exercise independent professional judgment on behalf of a client, a conflict would exist. The individual circumstances control. They include:

a. A dispute between client and attorney or other member of the local public defender's office staff.
b. A client refuses to follow an attorney's advice, unless it involves the commission of a future crime.
c. A client files a grievance against the attorney with the attorney's supervisor or the Office of Disciplinary Counsel. A client should not be allowed to manipulate appointment of counsel by filing a frivolous grievance against an assigned attorney. However, a non-frivolous grievance may create a conflict of interest. A client complaint, even if not creating a conflict of interest, should usually justify the local public defender in changing assigned counsel as a matter of supervisory discretion.

d. An alleged victim or potential prosecution witness has a friend or relative in the local public defender office.
e. A witness for the defense is a present or former client, unless there is a reasonable possibility the testimony could turn adverse to the defendant or the theory of defense may implicate the present or former client.
f. An employee of the public defender office is closely related by blood or marriage, is engaged to be married, or otherwise has a close relationship with an employee of a State, county, or city office that has prosecution, law enforcement, or child welfare responsibilities. Appropriate steps must be taken to disclose the relationship, ensure protection of privileged information, and reinforce confidence in the independent judgment and zealous representation of the public defender officer. A "close relationship" would include sharing a household and extended dating.
g. An employee of the public defender office is a former employee of a State, county, or city office that has prosecution, law enforcement, or child welfare responsibilities. However, if the former employee of such office participated personally and substantially in a case, the public defender office would have a conflict of interest and be disqualified. If the former employee of such office did not participate personally and substantially in the case, a timely deployed "ethical wall" will prevent disqualification of the public defender office.
h. An employee of the public defender office is a former employee of another public defender office or other law firm that represented clients in conflict with the public defender office where the employee is now employed. This situation sometimes occurs when Public Defender System employees transfer from one public Defender System office to another, and when personnel are hired from law firms that handle criminal or juvenile cases. Apply the same process as above.
i. An employee of the prosecutor's office is a former employee of the public defender's office. Apply the same process as above.
j. A public defender appears before a judge who is a former associate in the public defender office. In such cases, appearances before former associates are proper when there has been full disclosure.
k. An employee of the public defender office is closely related by blood or marriage, or is engaged to be married, to a judge before which the public defender office appears, or otherwise has a close relationship with a judge before which the public defender office appears. A "close relationship" would include sharing a household or extended dating. Such a relationship must be disclosed in any case where the public defender office appears before the judge and each party given the opportunity to request recusal.
l. A public defender has applied for or been offered a job in a state, county, or city office that has prosecution, law enforcement, or child welfare responsibilities, or is running for election as a prosecutor or law enforcement officer. In such cases, the Office of the State Public Defender may give the public defender and his or her supervisor guidance

concerning campaign ethics laws, the public defender's caseload, and other matters to ensure client and public confidence in the continued zealous advocacy by the public defender and the public defender office.

m. A public defender has applied for appointment to a judgeship.

L. Action after identifying a possible conflict of interest: There is no one-size-fits-all solution here, either. However, there are a couple "must do's" and several "maybe should do's" when a possible conflict is uncovered. They include:

a. Seek advice from supervisors and others: A "must do." The first source of advice should be the office supervisor. An office staff meeting is a good vehicle for hashing out these issues. In addition, the Training Coordinator of the Office of the State Public Defender is available to help answer questions of professional ethics.

b. Full disclosure to the client: Another "must do," even if the attorney does not think there is an actual conflict. If the situation doesn't present a real conflict, the attorney should explain that to the client and obtain his or her acknowledgment that continued representation is appropriate. If the client doesn't agree and wants the attorney removed, or isn't mentally competent, the attorney can then make a decision on how to proceed. But, attorney must never withhold information from the client about any potential conflict. The attorney should document the disclosure and the client's response. The attorney should inform the client of his or her right to file a grievance of the issue and the right to raise the issue to the court.

c. Request for waiver from the defendant or other current client: If there is an actual conflict of interest, the client may want to waive the conflict and retain the attorney after full disclosure of the conflict and what it means to continued representation by counsel. The attorney should document the disclosure and any waiver on the forms provided by the Office of the State Public Defender. The attorney should use sound judgment in deciding whether to ask a current client to waive a conflict. Some conflicts are so serious that the attorney should move to withdraw, even though the client likes the attorney so much that he or she would be willing to waive anything.

d. Request for waiver from a prior client: If, for example, a prior client is a witness or an alleged victim in a current case, the attorney can ask him or her to waive a conflict. This would most likely involve consent for disclosure of privileged information or use of the conviction for which a public defender office represented the prior client as impeachment or character attack. Again, the attorney should use sound judgment in deciding whether to ask for such a waiver, as some conflicts are so serious that waiver will not remove the appearance of impropriety. *See also Montana Rules of Professional Conduct,* Rules 1.9 (Duties to Former Clients), 4.3 (Dealing with Unrepresented Person). Again, the attorney should document the disclosure and any waiver.

e. Building an "ethical wall": In rare cases, an "ethical wall" may cure a conflict of interest. This type of procedure will always be used when an attorney from another Region or the Major Crimes Unit comes into a new Region to handle a conflict matter. An "ethical wall" will screen the attorney from information except that necessary for his case. The "ethical wall" shall screen the attorney from both hard copies of other files, as well as any electronic information concerning the other clients, whether in the case management software, email, or other electronic data.
f. Disclosure to the court and prosecutor: If the attorney is confident that the situation doesn't present an actual conflict, the client agrees, and the attorney documented the client disclosure and acknowledgment, then the attorney may not need to disclose the situation to the court and prosecutor. The attorney may not want to inform others if doing so might tip trial strategy, compromise privileged information, reveal attorney work product, or cause undue invasion of someone's privacy. However, if the attorney's instincts indicate that it is too big of an issue to keep under wraps, or might come back to haunt him or her, then it's time to bring in the judge and opposing counsel. Certainly, any actual conflict of interest should be brought to all parties' attention, even if the client is willing to waive it.
g. Making a record: If the matter is disclosed to the court and prosecutor, the attorney must make sure there is a record of it with all parties present. The client's on-the-record waiver or agreement that there is no actual conflict of interest, after full disclosure that is also on the record, will close the door on almost any controversy. If the attorney's position is that there is no conflict, the attorney will be required to elaborate; a simple denial of a conflict is insufficient.
h. Moving to withdraw: If there is an actual conflict and there is no waiver, the office must withdraw. If multiple current clients are in conflict, the attorney may be able to keep one of the cases if he or she identified the conflict early enough. If so, the attorney should try to keep the most serious or difficult case. If that is not feasible, then the attorney should try to keep the first client in the door. Often, however, the conflicts among current clients aren't discovered until the office is well into its representation of all. If so, the office usually must withdraw from all cases. If the attorney must move to withdraw, keep in mind that, as a general rule, the attorney doesn't have to reveal the factual basis for the conflict. The attorney should resist requests to reveal anything more than is necessary to articulate the conflict and must protect privileged information.
i. Resolve close cases in favor of the most conservative action: If an attorney's instincts indicate something is a potential conflict, then it probably is. If an attorney is uncertain whether a situation presents an actual conflict, then it likely does. If an attorney is ambivalent about telling the court about a possible conflict that he or she thinks was resolved, then the attorney probably should.

M. Joint Defense Agreements: In the event of a multiple defendant case involving a public defender office, or a contract attorney, and any outside counsel, the following guidelines should apply to any joint defense agreements entered into. A joint defense agreement should be in writing, signed by all counsel and clients after consultation, and should provide the following:

a. The agreement must not create any kind of an attorney-client relationship between co-defendants;
b. Information that is shared under the agreement is privileged;
c. Anyone who withdraws from the agreement remains bound by confidentiality as to any information obtained through the joint defense agreement;
d. All parties agree that in the event one withdraws to cooperate with the government, any potential conflict of interest is waived by all parties. Anyone who withdraws from the agreement shall provide notice to all other parties prior to withdrawing, and return all documents provided pursuant to the agreement prior to withdrawing. A log should be kept of all meetings attended under the joint defense agreement, as well as any information and documents shared pursuant to the agreement**;**
e. In the event that any defendant in the agreement testifies at trial, he or she agrees to waive the confidentiality provisions of the joint defense agreement to allow any other remaining party to the agreement to cross-examine him or her on the basis of information he or she has shared through the joint defense agreement;
f. The agreement must recite a procedure for withdrawing from the agreement;
g. All documents provided pursuant to the joint defense agreement must be returned upon the termination of the agreement.

5. Conflict Cases:

A. When a case is determined to be a conflict of interest, the Regional Deputy Public Defender shall assign the case to a private attorney whose name is maintained on the conflict attorney list.

B. Once the Regional Deputy Public Defender assigns a conflict case, the Regional Deputy Public Defender and all staff including investigators within that office shall have no involvement in the case whatsoever.

C. The conflict attorney shall submit bills for the payment of attorney time to the Contracts Manager. In reviewing bills, the Contract Manager shall:

a. Review the total hours of work claimed;
b. Review the work expended without reference to the charge or the parties involved;
c. Review any costs claimed, referencing any pre-approval requirements.

D. Costs, other than attorney fees, expected to be incurred by a conflict attorney which exceed $200, will be pre-approved by the Training Coordinator.

a. In determining pre-approval, the Training Coordinator will not disclose any information about the case to the Contracts Manager or the Chief Public Defender.
b. The review of pre-approval costs shall, in most cases, only question if other options are available that are more cost-effective and just as good.

E. The Chief Public Defender, Contracts Manager, and Training Coordinator will confer with each other about the availability of experts or other options relating to costs in cases without reference to the specifics of any case.

IV. ADMINISTRATION OF DEFENDER SERVICES

1. Attorney-Client Communication:

Goal: Regular and confidential communication between attorneys and clients is a necessary part of effective representation.

A. Effective representation of an accused client requires prompt and effective communication with the client. This communication includes personal and telephone contacts with a client in custody.

B. To ensure the privacy essential for confidential communication between counsel, public defender staff, and client, adequate facilities should be available for private discussions in jails, prisons, courthouses, healthcare facilities, and other places where accused clients must confer with counsel.

C. Personnel of jails, prisons, custodial institutions, and healthcare facilities should be prohibited from examining or otherwise interfering with any communication or correspondence between client, defense counsel, or public defender staff relating to legal action arising out of charges or incarceration.

D. Each jail or detention facility should make available an unmonitored and unrecorded toll-free telephone for purposes of allowing indigent clients to contact and confer with counsel and public defender staff on at least a daily basis. Counsel should be allowed personal contact with an incarcerated client at any time upon counsel's request.

E. A public defender office policy, contract for indigent defense services, and individual assignments of counsel shall include a requirement that a client in custody must speak with counsel either in person or by telephone at least weekly, unless otherwise agreed between the client and counsel.

F. The Regional Public Defender Offices shall take appropriate action to ensure these standards are implemented.

2. Delivery of Services:

Goal: Counsel shall strive for excellence in the representation of the indigent client.

A. Counsel representing indigent clients should be free from political influence and should be subject to judicial supervision only in the same manner and to the same extent as are lawyers in private practice. The selection of counsel for specific cases should not be made by the judiciary, but should be arranged for by the administrators of the public defender office, assigned counsel, and contract-for-service programs.

B. The Chief Public Defender and his or her staff should be compensated at a rate commensurate with their experience and skill sufficient to attract career personnel and comparable to that provided for their counterparts in prosecutorial offices.

C. The Office of the State Public Defender shall award contracts for indigent legal services only after determining that counsel or the firm chosen can meet the standards set forth herein. Under no circumstances should a contract be awarded based solely on the lowest bid or provide compensation to contractors based solely on a fixed fee paid irrespective of the number of cases assigned. Counsel or firms bidding for contracts must demonstrate their ability to meet these standards. While the Office of the State Public Defender may, in the sole discretion of the Chief Public Defender, choose to consult with judges, the Attorney General's Office, city attorneys, county prosecutors, and law enforcement officers in deciding who to select as attorneys to provide services as assigned counsel, those parties may neither select nor prohibit the selection of any counsel or law firm.

D. Contracts for public legal representation services should be awarded for at least one-year terms. Removal of the contracting counsel or firm before the agreed term should be for good cause only. The contract shall define "good cause" as "a failure by contracting counsel to comply with the terms of the contract that impairs the delivery of services to clients, or a willful disregard by contracting counsel of the rights and best interest of clients."

E. Contracts for services must be awarded on a competitive process and must involve the following considerations:

a. The categories of cases in which contracting counsel is to provide services;
b. The term of the contract and the responsibility of contracting counsel for completion of cases undertaken within the contract term;
c. Identification of counsel who will perform legal representation under the contract and prohibition of substitution of counsel without prior approval;

d. Allowable representation workloads for individual counsel, including the amount of private practice engaged in outside the contract, and measures to address excessive workloads, consistent with these Standards;
e. Minimum levels of experience and specific qualification standards for contracting counsel, including special provisions for complex matters, compliance with standards established by the Montana Supreme Court in capital cases, and compliance with the standards of the Montana Public Defender Commission for capital cases;
f. A policy for conflict of interest cases and the provision of funds outside of the contract to compensate conflict counsel for fees and expenses;
g. Reasonable compensation levels consistent with these standards and a designated method of payment;
h. Sufficient support services and provision for reasonable expenses, subject to prior approval as outlined by the Office of the State Public Defender in its policy manual, for paralegal and investigative services, expert witnesses, and other litigation costs to be paid on an "as needed" basis in addition to the contract compensation;
i. A process for the professional development of assigned counsel, including supervision, evaluation, and training in accordance with standards set by the Montana Public Defender Commission;
j. Protection of client confidences, attorney-client information, and work product related to contract cases, except under a legal court order to divulge, or after receiving a voluntary, knowing, and intelligent waiver from the client in the case, or to a subsequent attorney in the case;
k. A system of case management and reporting as required by the Office of the State Public Defender;
l. The grounds for termination of the contract by the parties;
m. A requirement that contracting counsel provide for retention of client files in a manner that affords protection of the client's confidentiality interest for three years from the date of conclusion of the matter in the trial court, or until the client is no longer subject to State supervision, whichever is longer.

F. Determination of indigence after initial representation by retained counsel.
a. It is of primary importance to the members of the bar and to the public that a lawyer who undertakes representation of a client in criminal proceedings continues to represent the client at least through the trial stage of the proceedings, unless the continued representation would result in the violation of a disciplinary rule. Continuity of counsel in proceedings should be mandated in order to protect the rights of the client by avoiding, wherever possible, the adverse effect and possible prejudice to the client caused by an attorney's withdrawal.
b. The Office of the State Public Defender shall assign counsel to a client initially represented by retained counsel only after a written motion has been made by retained counsel.

c. If retained counsel has filed a written motion for a determination of indigence and to withdraw from the case no later than sixty days after counsel has either filed a notice of appearance or actually made a court appearance on behalf of the client, and not less than thirty days prior to trial or any evidentiary hearing, OPD, subject to a determination of indigence, shall assign new counsel to the client.
d. When retained counsel makes a written motion for a determination of the client's indigence at a time other than that set forth in paragraph (c), above, and the client meets the financial eligibility requirements for indigent services, OPD shall assign the moving counsel to provide legal services for the client.
e. If, upon motion by the Regional Public Defender's Office, a court determines that the foregoing practice has led to abuse by an attorney who has in the past repeatedly requested a determination of his client's indigence after undertaking representation as retained counsel, the court may order continued representation by that attorney without assignment by the public defender's office or cost to the public.

G. The Chief Public Defender and Regional Public Defenders shall provide for contract oversight and enforcement to assure compliance with these Standards and applicable Montana statutes. For conflict of interest cases, the Conflicts Coordinator shall provide such oversight.

3. Accounting and Billing System:

Goal: A transparent standardized accounting and billing system that maintains client confidentiality is the best way to achieve financial accountability.

4. Performance Evaluations

A. Each attorney employed as a public defender shall have their work performance evaluated on a yearly basis.

B. The evaluation will be conducted by a combination of the Chief Public Defender, and the Training Coordinator, and/or the Regional Deputy Public Defender in the region in which the public defender is employed and/or the Managing Attorney in the office in which the public defender is employed.

C. The performance evaluation shall be done on forms approved by the Office of the State Public Defender.

D. In conducting the evaluation, the evaluators may obtain information from a variety sources including clients, other public defenders, office staff, judicial personnel and faculty from trainings the public defender has attended.

E. The public defender shall be interviewed during the evaluation process.

F. At the conclusion of the process, the evaluation will be reviewed and discussed with the public defender.

G. If the public defender disagrees with the results of the evaluation the public defender has the right to submit a written rebuttal which shall be attached to the evaluation. A permanent employee may file a grievance as provided by state law.

H. Performance evaluations shall remain in the personnel file for the duration of employment and in conformity with state policy.

5. Proficiency Determination for Contract Attorneys

A. Each private attorney providing contact services to the Montana Office of the State Public Defender shall undergo a proficiency determination annually.

B. The proficiency determination will be conducted by a combination of the following: the Chief Public Defender, and OPD Training Coordinator, and/or Regional Deputy Public Defender from the region in which the contract attorney renders services, and the OPD Contracts Manager.

C. In conducting the determination, the contract attorney will be observed in court and information may be obtained from clients, the Regional Deputy Public Defender in any region in which the contract attorney renders public defender services, judicial personnel and faculty from training the contract attorney attends during the preceding contract year.

D. The contract attorney will meet with OPD during the determination process.

E. The contract attorney will submit an “experience survey” and update it annually.

F. Upon the completion of the determination process, OPD shall certify the contract attorney’s proficiency within all applicable areas of public defense law.

G. A proficiency certification will be signed by the contract attorney , the Chief Public Defender, and the Contracts Manager.

H. If the contract attorney is determined to not be proficient in an area of public defense law, OPD will recommend remedial steps to obtain proficiency. The contract attorney may file an objection with the OPD and meet with the Chief Public Defender.

V. CASELOADS

Goal: Caseloads must not be oppressive, and should match counsel's experience, training, and expertise.

1. Governing Principle:

Counsel caseloads should be governed by the following:

A. Individual Public Defender. Caseload levels are the single biggest predictor of the quality of public defense representation. Not even the most able and industrious lawyers can provide effective representation when their work loads are unmanageable. Whenever a salaried or contracting counsel determines, in the exercise of counsel's best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases, will lead to furnishing representation lacking in quality or the breach of professional obligations, the attorney is required to inform the Regional Public Defender's Office, who shall inform the Chief Public Defender. The Chief Defender will then inform the Montana Public Defender Commission.

B. Chief Public Defender. The caseload of public defense attorneys should allow each lawyer to give each client the time and effort necessary to ensure effective representation. Whenever the Chief Public Defender determines, in the exercise of his or her best professional judgment, that the acceptance of additional cases or continued representation in previously accepted cases will, by reason of their excessive size and complexity, interfere with the rendering of quality representation, or the breach of professional obligations, the Chief Public Defender is required to inform the Montana Public Defender Commission, which in turn will inform the Law and Justice Interim Committee, the Legislative Finance Committee, and the Office of Budget and Program Planning and shall take all reasonable steps to alleviate the situation.

2. Caseload Evaluation:

A. In attempting to establish caseload standards for public defender offices, the Commission encountered a number of difficulties. In considering maximum caseload standards, it is inherently difficult to compare the work required for different types of cases. Each case is so individually different, that it is nearly impossible to set rigid numerical objectives. Also, physical and geographical factors can influence an office's caseload capacity as well. An office which from a single location in a geographically large jurisdictional area is required to serve numerous distant scattered courts has a lower caseload capacity per attorney than an office in a geographically small jurisdiction or one in which all of the courts, the jail, and the public defender's office are housed in a single building.

B. The caseload of counsel should allow him or her to give each client the time and effort necessary to ensure effective representation. Regional public defender offices, contract counsel, and assigned counsel should not accept workloads that, by

reason of their excessive size, interfere with the rendering of quality representation. Caseload limits should be determined by the number and type of cases being accepted, and on the local prosecutors charging and plea-bargaining practices. It is the Commission's intention in considering caseloads, that the caseload of each counsel shall be considered by the criteria of reasonableness. One measure of the reasonableness of an attorney's caseload is to assess the amount of time an attorney would spend on a case under these standards. An accepted national standard for public defender attorneys is to work approximately 2,000 hours per year. One serious case requiring 50-100 hours to bring to trial, limits the time an attorney can devote to his or her remaining cases. In setting these maximum caseload levels, it is the Commission's intent that the maximum caseload levels of each attorney be judged by considering the complexity of the case, trial preparation, and travel. In other words, if a public defender works diligently and efficiently as required by the employment agreements, then the number of cases he or she is able to handle would be considered reasonable. Conversely, to require a public defender attorney to work diligently and efficiently more than the time required by the employment agreements would be considered an unreasonable caseload.

C. A "case" consists of all charges against a single defendant arising out of a single event, transaction, or occurrence, or all charges arising out of a series of related incidents charged in a single information or complaint (including collateral matters such as probation violations which do not require a separate dispositional hearing) and should be counted and reported as one case. If a separate probation revocation hearing is required, the probation hearing shall be counted as a separate misdemeanor case. If two or more defendants are charged in a single information or complaint, the charges against each defendant should be counted and reported as separate cases.

D. The Montana Public Defender Commission intends to review numerical caseload standards from time to time. These suggested caseload numbers shall be posted on the Public Defender Web site and may be modified from time to time.

E. The standard applicable to each category of cases is intended to be a suggestion only and is not intended to be a maximum limitation on the average current caseloads of each attorney employed as a public defender. Based on the standard of reasonableness, the numerical limits found on the Website may have to be adjusted in rural areas where attorneys may travel great distances between courts or upon the complexity of each case.

VI. QUALIFICATIONS AND DUTIES OF COUNSEL

Goal: Counsel must meet these minimum standards before accepting a case. In order to provide effective representation, counsel must engage in regular and ongoing training.

A. In order to assure that clients receive the effective assistance of counsel to which they are constitutionally and statutorily entitled, counsel providing public legal representation should meet the following minimum professional qualifications:

a. Satisfy the minimum requirements for practicing law in Montana as determined by the Montana Supreme Court;
b. Complete twenty hours of continuing legal education within each calendar year from courses, offered or approved by the Office of the State Public Defender, relating to public defender practice or representing persons whose liberty is at risk as a result of State-initiated proceedings;
c. Comply with all other training requirements established by the Training Coordinator of the Office of the State Public Defender and approved by the Public Defender Commission; including, but not limited to, mental health disabilities, cultural competency, and drug dependency.
d. In order to provide quality legal representation, counsel must be familiar with the substantive criminal law and the law of criminal procedure and its application in the State of Montana. Counsel has a continuing obligation to stay abreast of changes and developments in the law;
e. The foregoing requirements shall be deemed satisfied if counsel is representing clients pursuant to the Student Practice Rule and is being directly supervised by a supervising attorney who meets the standards required for felony defense set forth below.

B. Additional trial attorneys' qualifications according to type of case:

a. Death penalty representation. Each attorney acting as lead counsel in a death penalty case shall meet the standards for competency of counsel for indigent persons in death penalty cases adopted by the Montana Supreme Court, and those set forth in the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases (rev. ed. 2003);
b. Juvenile cases. See Standard Number 4;
c. Involuntary commitments. See Standard Number 5, 6, 7, and 11;
d. Abuse and neglect cases. See Standard Number 8;
e. Felony representation. See Standard Number 1;
f. All other cases. Each attorney shall meet the requirements set forth herein and in the Montana Rules of Professional Conduct.

C. Counsel should only request or accept an assignment if counsel is able to provide quality representation and diligent advocacy for the client.

D. Trial Standards for Non-capital Cases.

1. General Duties of Defense Counsel:

A. Before agreeing to act as counsel, counsel has an obligation to make sure that counsel has available sufficient time, resources, knowledge, and experience to offer effective representation to a defendant in a particular matter. If it later appears that

counsel is unable to offer effective representation in the case, counsel should move to withdraw.

B. Counsel must be alert to all potential and actual conflicts of interest that would impair counsel's ability to represent a client. When appropriate, counsel may be obliged to seek an advisory opinion on any potential conflicts.

C. Counsel has the obligation to keep the client informed of the progress of the case.

D. If a conflict develops during the course of representation, counsel has a duty to notify the client and the court in accordance with the Rules of Professional Conduct and in accordance with the Disciplinary Rules of the State Bar of Montana.

2. Obligations of Counsel Regarding Pretrial Release:

A. Counsel has an obligation to meet with incarcerated defendants as stated previously in these Standards, and shall take other prompt action necessary to provide quality representation, including:

a. Invoking the protections of appropriate constitutional provisions, federal and State laws, statutory provisions, and court rules on behalf of a client, and revoke any waivers of these protections purportedly given by the client, as soon as practicable via a notice of appearance or other pleading filed with the State and court.
b. Attempting to secure the pretrial release of the client.

3. Counsel's Interview with Client:

A. Preparing for the Interview. After being assigned to a case and prior to conducting the initial interview, the attorney should, where possible, do the following:

a. be familiar with the elements of the offense(s) and the potential punishment(s), where the charges against the client are already known; and,
b. obtain copies of any relevant documents which are available, including copies of any charging documents, recommendations and reports made by bail agencies concerning pretrial release, and law enforcement reports that might be available. In addition, where the client is incarcerated, the attorney should:
    i. be familiar with the legal criteria for determining pretrial release and the procedures that will be followed in setting those conditions;
    ii. be familiar with the different types of pretrial release conditions the court may set and whether private or public agencies are available to act as a custodian for the client's release; and,
    iii. be familiar with any procedures available for reviewing the bail determination.

B. Conducting the Interview. The attorney should, where possible, do the following:

a. The purpose of the initial interview is to acquire information from the client concerning the case, the client, and pre-trial release, and also to provide the client with information concerning the case. Counsel should ensure at this and all successive interviews and proceedings that barriers to communication, such as differences in language or literacy, disability, or different cultural backgrounds, can be overcome. In addition, counsel should obtain from the client all release forms necessary to obtain client's medical, psychological, education, military, and prison records, or other records as may be pertinent.

b. Counsel shall complete the interview form provided by the Office of the State Public Defender for use at the initial interview. Information that should be acquired from the client includes, but is not limited to, the following:

i. The client's version of arrest, with or without warrant; whether client was searched and if anything was seized, with or without warrant or consent; whether client was interrogated and, if so, whether a statement given; client's physical and mental status at the time any statement was given; whether any exemplars were provided and whether any scientific tests were performed on client's body or bodily fluids;

ii. The names and custodial status of all co-defendants and the name of counsel for co-defendants, if counsel has been appointed or retained;

iii. The names and locating information of any witnesses to the crime and/or the arrest, regardless of whether these are witnesses for the prosecution or for the defense; the existence of any tangible evidence in the possession of the State, which counsel should take steps to insure is preserved;

iv. The client's ties to the community, including the length of time he or she has lived at the current and former addresses, any prior names or aliases used, family relationships, immigration status if applicable, employment record and history, and social security number;

v. The client's physical and mental health, educational, vocational and armed services history;

vi. The client's immediate medical needs including the need for medication, detoxification programs and/or substance abuse treatment;

vii. The client's past criminal record, if any, including arrests and convictions for adult and juvenile offenses and prior record of court appearances or failure to appear in court; counsel should also determine whether the client has any pending charges or outstanding warrants from other jurisdictions or agencies and also whether he or she is on probation or parole and the client's past or present performance under supervision;

viii. The names of individuals or other sources that counsel can contact to verify the information provided by the client; counsel should obtain the permission of the client before contacting these individuals;
ix. For clients who are incarcerated, the ability of the client to meet any financial conditions of release;
x. Where appropriate, evidence of the client's competence to stand trial and/or mental state at the time of the offense, including releases from the client for any records of treatment or testing for mental health or developmental disability; and
xi. The client's citizenship status.

C. Information to be provided to the client includes, but is not limited to, the following:

a. a general overview of the procedural progression of the case, where possible;
b. an explanation of the charges and the potential penalties;
c. an explanation of the attorney-client privilege and instructions not to talk to anyone, including prisoners, about the facts of the case without first consulting with the attorney;
d. the names of any other persons who may be contacting the client on behalf of counsel;
e. any potential impact of Federal prosecution;
f. an explanation of the procedures that will be followed in setting the conditions of pretrial release;
g. an explanation of the type of information that will be requested in any interview that may be conducted by a pretrial release agency and also an explanation that the client should not make statements concerning the offense;
h. a warning of the dangers with regard to the search of a client's cell and personal belongings while in custody and the fact that telephone calls, mail, and visitations may be monitored by jail officials.

D. Counsel must be alert to potential issues concerning the client's incompetency, mental illness or developmental disability. If counsel or the client raises a potential claim based on any of these conditions, counsel should consider seeking an independent psychological evaluation. Counsel should be familiar with the legal criteria for any plea or defense based on the defendant's mental illness or developmental disability, and should become familiar with the procedures related to the evaluation and to subsequent proceedings. Also:

a. Counsel should be prepared to raise the issue of incompetency during all phases of the proceedings, if counsel's relationship with the client reveals information that presents genuine issues of competency;
b. Where appropriate, counsel should advise the client of the potential consequences of raising questions of competency, as well as the defense of mental disease and defect, both as it relates to guilt and to sentencing. Prior to any proceeding, counsel should consider interviewing any professional who has evaluated the client. Counsel should be familiar with all aspects of the evaluation and should seek additional expert advice where appropriate. Counsel has an issue to raise legitimate issues of competency even over the objection of the client.

E. If special conditions of release have been imposed, such as random drug screening, or other orders restricting the client's conduct have been entered, such as a no contact order, the client should be advised of the legal consequences of failure to comply with such conditions. In the event the court orders routine contact with the attorney is a condition of release, the attorney shall not waive attorney-client privilege as to contact with the client.

F. If counsel is meeting with the client before his assignment to the case pursuant to these Standards, counsel should only obtain information necessary to advise the client concerning the initial hearing and advise the client not to discuss confidential information concerning the merits of the case.

4. Counsel's Duty in Pretrial Release Proceedings:

A. Counsel should be prepared to present to the appropriate judicial officer a statement of the factual circumstances and the legal criteria supporting release and, where appropriate, make a proposal concerning conditions of release.

B. Where the client is not able to obtain release under the conditions set by the court, counsel should consider pursuing modification of the conditions of release under the procedures available.

C. If the court sets conditions of release which require the posting of a monetary bond or the posting of real property as collateral for release, counsel should make sure the client understands the available options and the procedures that must be followed in posting such assets.

D. The decision as to whether or not the client should testify at any bond hearing shall be made after consultation between counsel and the client. In the event that the client and counsel decided that it would be in the best interests of the client to testify regarding bond, counsel should instruct his or her client not to answer any questions that do not pertain strictly to the issue of bond.

5. Counsel's Duties at Preliminary Hearing:

A. If the client is entitled to a preliminary hearing, counsel should take steps to see that the hearing is conducted in a timely fashion, unless there are strategic reasons for not doing so.

B. In preparing for the preliminary hearing, counsel should become familiar with:

a. the elements of each of the offenses alleged;
b. the law of the jurisdiction for establishing probable cause;
c. factual information which is available concerning probable cause;
d. the subpoena process for obtaining compulsory attendance of witnesses at preliminary hearing and the necessary steps to be taken in order to obtain a proper recordation of the proceedings; and,
e. the potential impact on the admissibility of any witness' testimony if they are later unavailable at trial.

6. Duty of Counsel to Conduct Investigation:

A. Counsel has a duty to conduct a prompt investigation of each case. Counsel should, regardless of the client's wish to admit guilt, ensure that the charges and disposition are factually and legally correct and that the client is aware of potential defenses to the charges.

B. Sources of investigative information and relevant procedures may include the following:

a. Arrest warrant, accusation, complaint and/or information, along with any supporting documents used to establish probable cause, should be obtained and examined to determine the specific charges that have been brought against the accused;
b. The relevant criminal statues and case law precedents should be examined to identify:
   i. the elements of the offense(s) with which the accused is charged;
   ii. the defenses, ordinary and affirmative, that may be available;
   iii. any lesser included offenses that may be available; and,
   iv. any defects in the charging documents, constitutional or otherwise, such as statue of limitations or double jeopardy.
c. Interviewing witnesses. Counsel should consider the necessity to interview the potential witnesses, including any complaining witnesses and others adverse to the accused, as well as witnesses favorable to the accused. Interviews of witnesses should be conducted in a manner that permits counsel to effectively impeach the witness with statements made during the interview.
d. The police and prosecution reports and documents. Counsel should make efforts to secure information in the possession of the prosecution or law enforcement authorities, including police reports. Where necessary, counsel should pursue such efforts through formal and informal discovery unless sound tactical reasons exist for not doing so. Counsel should obtain CJIN (NCIC or criminal history records from other states) records for the client and for the prosecution witnesses.
e. Physical evidence. Where appropriate, counsel should make a prompt request for any physical evidence or expert reports relevant to the offense or sentencing. Counsel should examine any such physical evidence.
f. The scene of the incident. Where appropriate, counsel should attempt to view the scene of the alleged offense as soon as possible after counsel is appointed. This should be done under circumstances as similar as possible to those existing at the time of the alleged incident, including the same weather, time of day, and lighting conditions.
g. Securing the assistance of experts. Counsel should secure the assistance of experts where it is necessary or appropriate to:
   i. the preparation of the defense;
   ii. adequate understanding of the prosecution's case; or
   iii. rebut the prosecution's case.

7. Formal and Informal Discovery:

A. Counsel should consider seeking discovery, at a minimum, of the following items by written motion:

a. Potential exculpatory information;
b. Potential mitigating information;
c. The names and addresses of all prosecution witnesses, their prior statements, and criminal record, if any;
d. All oral and/or written statements by the client, and the details of the circumstances under which the statements were made;
e. The prior criminal record of the client and any evidence of other misconduct that the government may intend to use against the client;
f. All books, papers, documents, photographs, tangible objects, buildings or places, or copies, descriptions, or other representations, or portions thereof, relevant to the case;
g. All results or reports of relevant physical or mental examinations, and of scientific tests or experiments, or copies thereof;
h. Statements of co-defendants;
i. All investigative reports by all law enforcement and other agencies involved in the case;
j. All records of evidence collection and retained by law enforcement; and,
k. Counsel shall file with the court a receipt of all materials received.

8. Development of a Theory of the Case:

During investigation and trial preparation, counsel should develop and continually reassess a theory of the case and develop strategies for advancing the appropriate defenses on behalf of the client.

9. The Duty to File Pretrial Motions:

A. Counsel should consider filing an appropriate motion whenever there exists a good faith reason to believe that the defendant is entitled to relief which the court has discretion to grant.

B. The decision to file pretrial motions should be made after considering the applicable law in light of the known circumstances of each case.

C. Counsel should withdraw or decide not to file a motion only after careful consideration and determining whether the filing of a motion may be necessary to protect the defendant's rights, including later claims of waiver or procedural default.

D. Counsel should consider the advisability of disqualifying or substituting the presiding judge. This consideration should include any information about the judge's history in aligning himself with the prosecution on bail issues, motion rulings, trial

rulings, any routine refusals of plea bargains, the client's experience with the judge, and any specific dislike of counsel, other public defenders, or public defenders in general.

a. Prior to filing a motion to disqualify or substitute the judge, counsel shall consult with the managing attorney in his office and/or his or her Regional Deputy Dublic Defender.
b. The decision to disqualify a judge shall only be made when it is a reasoned, strategic decision and in the best interest of the client. The final decision rests with counsel.

10. Preparing, Filing, and Arguing Pretrial Motions:

A. Motions should be filed in a timely manner, should comport with the formal requirements of the court rules, and should succinctly inform the court of the authority relied upon. In filing a pretrial motion, counsel should be aware of the effect it might have upon the defendant's speedy trial rights.

B. When a hearing on a motion requires the taking of evidence, counsel's preparation for the evidentiary hearing should include:

a. investigation, discovery, and research relevant to the claim advanced;
b. the subpoenaing of all helpful evidence and the subpoenaing and preparation of all helpful witnesses;
c. full understanding of the burdens of proof, evidentiary principles, and trial court procedures applying to the hearing, including the benefits and potential consequences of having the client testify; and
d. familiarity with all applicable procedures for obtaining evidentiary hearings prior to trial.

C. In every case, counsel should examine whether it is appropriate to file a motion to suppress evidence or statements.

D. In every case that proceeds to trial, counsel should file timely and appropriate motions in limine to exclude any improper evidence or prosecutorial practices.

11. Continuing Duty to File Pretrial Motions:

A. Counsel should be prepared to raise during the subsequent proceedings any issue which is appropriately raised pretrial but could not have been so raised because the facts supporting the motion were unknown or not reasonably available. Further, counsel should be prepared to renew a pretrial motion if new supporting information is disclosed in later proceedings.

12. Duty of Counsel in Plea Negotiation Process:

A. Counsel should explore with the client the possibility and desirability of reaching a negotiated disposition of the charges rather than proceeding to a trial and, in

doing so, should fully explain the rights that would be waived by a decision to enter a plea and not to proceed to trial.

B. Counsel should keep the client fully informed of any continued plea discussion and negotiations and promptly convey to the accused any offers made by the prosecution for a negotiated settlement.

C. Counsel shall not accept any plea agreement without the client's express authorization.

D. The existence of ongoing tentative plea negotiations with the prosecution should not prevent counsel from taking steps necessary to preserve a defense nor should the existence of ongoing plea negotiations prevent or delay counsel's investigation into the facts of the case and preparation of the case for further proceedings, including trial.

13. The Process of Plea Negotiations:

A. In order to develop an overall negotiation plan, counsel should be aware of, and make sure the client is aware of the following:

a. the maximum term of imprisonment, fine or restitution that may be ordered, and any mandatory sentence, as well as the possible adverse impact on those with a guilty plea;
b. the possibility of forfeiture of assets;
c. other consequences of conviction including, but not limited to, deportation, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, the prohibition from carrying a firearm, the suspension of a motor vehicle operator's license, the loss of the right to vote, the loss of the right to hold public office, and potential federal prosecutions;
d. any possible and likely sentence enhancements or parole consequences, and the actual possibility of programs from the Department of Corrections;

B. In developing a negotiation strategy, counsel should be completely familiar with:

a. concessions that the client might offer the prosecution as part of a negotiated settlement, including, but not limited to, the following:
    i. not to proceed to trial on merits of the charges;
    ii. to decline from asserting or litigating any particular pretrial motions;
    iii. an agreement to fulfill specified restitution conditions and/or participation in community work or service programs, or in rehabilitation or other programs; and
    iv. providing the prosecution with assistance in prosecuting or investigating the present case or other alleged criminal activity.
b. benefits the client might obtain from a negotiated settlement, including, but not limited to, an agreement that provides:

i. that the prosecution will not oppose the client's release on bail pending sentencing or appeal;
ii. to dismiss or reduce one or more of the charged offenses either immediately, or upon completion of a deferred prosecution agreement;
iii. that the defendant will not be subject to further investigation or prosecution for uncharged alleged criminal conduct;
iv. that the defendant will receive, with the agreement of the court, a specified sentence or sanction or a sentence, or one within a specified range;
v. that the prosecution will take, or refrain from taking, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, a specified position with respect to the sanction to be imposed on the client by the court;
vi. that the prosecution will not present, at the time of sentencing and/or in communications with the preparer of the official pre-sentence report, certain information; and,
vii. that the defendant will receive, or the prosecution will recommend, specific benefits concerning the client's place and/or manner of confinement and/or release on parole, and the information concerning the client's offense and alleged behavior that may be considered in determining the client's date of release from incarceration, taking into consideration availability of probation from Department of Corrections.

c. the position of any alleged victim with respect to conviction and sentencing. In this regard, counsel should:
i. consider whether interviewing the alleged victim or victims is appropriate and, if so, who the best person to do so is and under what circumstances;
ii. consider to what extent the alleged victim or victims might be involved in the plea negotiations;
iii. be familiar with any rights afforded the alleged victim or victims under Montana law; and,
iv. be familiar with the practice of the prosecutor and/or victim-witness advocate working with the prosecutor and to what extent, if any, they defer to the wishes of the alleged victim.

C. In conducting plea negotiations, counsel should be familiar with:
a. the various types of pleas that may be agreed to, including a plea of guilty, a plea of *nolo contendere*, and a plea in which the defendant is not required to personally acknowledge his or her guilt - see North Carolina v. Alford plea;
b. the advantages and disadvantages of each available plea according to the circumstances of the case;
c. whether the plea agreement is binding on the court, prison, and parole authorities; and,
d. possibilities of pre-trial diversion.

D. In conducting plea negotiations, counsel should attempt to become familiar with the practices and policies of the particular jurisdiction, judge and prosecuting authority, and probation department which may affect the content and likely results of negotiated plea bargains.

14. The Decision to Enter a Plea of Guilty:

A. Counsel should inform the client of any tentative negotiated agreement reached with the prosecution and explain to the client the full content of the agreement, as well as the advantages and disadvantages of the potential consequences of the agreement.

B. The decision to enter a plea of guilty rests solely with the client; counsel should not tempt to unduly influence that decision.

C. If the client is a juvenile being prosecuted as an adult, consideration should be given to the request that a guardian be appointed to advise the juvenile if an adult family member is not available to act in a surrogate role.

D. A negotiated plea should be committed in writing.

15. Entering the Negotiated Plea before the Court:

A. Prior to the entry of the plea, counsel should:

a. make certain that the client understands the rights he or she will waive by entering the plea and that the client's decision to waive those rights is knowing, voluntary and intelligent;
b. make certain that the client receives a full explanation of the conditions and limits of the plea agreement and the maximum punishment, sanctions, and collateral consequences the client will be exposed to by entering a plea;
c. explain to the client the nature of the plea hearing and prepare the client for the role he or she will play in the hearing, including answering questions of the judge and providing a statement concerning the offense; and,
d. make certain that if the plea is non-binding, the client is informed that once the plea has been accepted by the court, it may not be withdrawn after the sentence has been pronounced by the court.

B. Counsel must become familiar with the consequences of a plea or finding of guilty in state court upon any current or future federal prosecution. These consequences include, without limitation, the following:

a. Federal Lacey Act prosecutions for fish and game violations;
b. Federal firearms charges, including those resulting in mandatory minimum sentences when firearms are associated with the possession or distribution of dangerous drugs;

c. The possibility of a separate federal prosecution based upon the same transaction, without the defense of double jeopardy, in charges alleging dangerous drug distribution, possession and sale of drug paraphernalia, bank robbery, fraud, environmental crimes, arson, intimidation, kidnapping, murder, civil rights violations, bribery, and child pornography;
d. The impact of a conviction on the United States Sentencing Guidelines when determining the client's criminal history category;
e. Racketeering Influenced and Corrupt Organization (RICO) prosecutions for engaging in a pattern of conduct which includes state crimes stemming from violence or gambling;
f. Money laundering prosecutions for engaging in financial transactions associated with or involving income derived from certain criminal conduct;
g. Hobbs Act prosecutions for state crimes of intimidation, arson, and violent crimes impeding or affecting interstate commerce;
h. Firearm restrictions on those convicted of felonies and certain misdemeanor convictions;
i. Immigration consequences of convictions of re-entry into the United States after certain felony convictions.
j. Impact of the Adam Walsh Act

C. When entering the plea, counsel should make sure that a written plea agreement containing the full content and conditions of the plea agreement are placed on the record before the court.

D. After entry of the plea, counsel should be prepared to address the issue of release pending sentencing. Where the client has been released pretrial, counsel should be prepared to argue and persuade the court that the client's continued release is warranted and appropriate. Where the client is in custody prior to the entry of the plea, counsel should, where practicable, advocate for and present to the court all reasons warranting the client's release on bail pending sentencing.

16. Counsel's Duty of Trial Preparation:

A. The decision to proceed to trial with or without a jury rests solely with the client after consultation with counsel. Counsel should discuss the relevant strategic considerations of this decision with the client and maintain a record of the advice provided to the client, as well as the client's decision concerning trial.

B. Where appropriate, counsel should have the following materials available at the time of trial:
a. copies of all relevant documents filed in the case;
b. relevant documents prepared by investigators;
c. *voir dire* questions;
d. outline or draft of opening statement;

e. cross-examination plans for all possible prosecution witnesses;
f. direct examination plans for all prospective defense witnesses;
g. copies of defense subpoenas;
h. prior statements of all prosecution witnesses, such as transcripts or police reports; counsel should have prepared transcripts of any audio or video taped witness statements;
i. prior statements of all defense witnesses;
j. reports from defense experts;
k. a list of all defense exhibits and the witnesses through whom they will be introduced;
l. originals and copies of all documentary exhibits;
m. proposed jury instructions with supporting case citations;
n. a list of the evidence necessary to support the defense requests for jury instructions;
o. copies of all relevant statutes and cases; and,
p. outline or draft of closing argument.

C. Counsel should be fully informed as to the rules of evidence, court rules, and the law relating to all stages of the trial process; counsel should be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial.

D. Counsel should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial, such as the use of prior convictions to impeach the defendant, and, where appropriate, prepare motions and memoranda for such advance rulings.

E. Throughout the trial process, counsel should endeavor to establish a proper record for appellate review. Counsel must be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review and should ensure that a sufficient record is made to preserve appropriate and potentially meritorious legal issues for such appellate review, unless there are strategic reasons for not doing so.

F. Where appropriate, counsel should advise the client as to suitable courtroom dress and demeanor. If the client is incarcerated, counsel should ensure that the client has appropriate clothing and that the court personnel follow appropriate procedures so as not to reveal to jurors that the defendant is incarcerated. Counsel should ensure that the client is not seen by the jury in any form of physical restraint.

G. Counsel should plan with the client the most convenient system for conferring throughout the trial. Where necessary, counsel should seek a court order to have the client available for conferences.

H. Throughout preparation and trial, counsel should consider the potential effects that particular actions may have upon sentencing if there is a finding of guilt.

I. Counsel shall take necessary steps to ensure full official recordation of all aspects of the court proceeding.

17. Jury Selection:

A. Preparing for Voir Dire:

a. Counsel should be familiar with the procedures by which a jury venue is selected in the particular jurisdiction and should be alert to any potential legal challenges to the composition or selection of the venire.

b. Counsel should be familiar with the local practices and the individual trial judge's procedures for selecting a jury from a panel of the venire, and should be alert to any potential legal challenges to these procedures.

c. Prior to jury selection, counsel should obtain a prospective juror list, and the standard jury questionnaires. Counsel should also consider requesting use of a separate questionnaire that is tailored to the client's case.

d. Counsel should develop *voir dire* questions in advance of trial and tailor *voir dire* questions to the specific case. *Voir dire* should be integrated into and advance counsel's theory of the case. Among the purposes *voir dire* questions should be designed to serve are the following:

i. to elicit information about the attitudes of individual jurors, which will inform counsel and client about peremptory strikes and challenges for cause;

ii. to convey to the panel certain legal principles which are critical to the client's case;

iii. to preview the case for the jurors so as to lessen the impact of damaging information which is likely to come to their attention during the trial;

iv. to present the client and his or her case in a favorable light, without prematurely disclosing information about the defense case to the prosecutor; and,

v. to establish a relationship with the jury.

e. Counsel should be familiar with the law concerning mandatory and discretionary *voir dire* inquiries so as to be able to defend any request to ask particular questions of prospective jurors.

f. Counsel should be familiar with the law concerning challenges for cause and peremptory strikes. Counsel should also be aware of the law concerning whether peremptory challenges need to be exhausted in order to preserve for appeal any challenges for cause which have been denied.

g. Where appropriate, counsel should consider whether to seek expert assistance in the jury selection process.

B. Examination of the Prospective Jurors:

a. Counsel should personally *voir dire* the panel.

b. Counsel should take all steps necessary to protect the *voir dire* record for appeal, including, where appropriate, filing a copy of the proposed *voir dire* questions or reading proposed questions into the record.

c. If the *voir dire* questions may elicit sensitive answers, counsel should consider requesting that questioning be conducted outside the presence of

the other jurors and that the court, rather than counsel, conduct the *voir dire* as to those sensitive questions.

d. In a group *voir dire*, counsel should avoid asking questions which may elicit responses which are likely to prejudice other prospective jurors.

C. Challenging the Jurors for Cause:

Counsel should consider challenging for cause all persons about whom a legitimate argument can be made for actual prejudice or bias relevant to the case when it is likely to benefit the client.

18. Opening Statement

A. Prior to delivering an opening statement, counsel should ask for sequestration of witnesses, unless a strategic reason exists for not doing so.

B. Counsel should be familiar with the laws of the jurisdiction and the individual trial judge's rules regarding the permissible content of an opening statement.

C. Counsel should consider the strategic advantages and disadvantages of disclosure of particular information during opening statement and of deferring the opening statement until the beginning of the defense case. It should only be in exceptional circumstances that the opening statement is not made at the first opportunity.

D. Counsel's objective in making an opening statement may include the following:

a. to provide an overview of the defense case;
b. to identify the weaknesses of the prosecution's case;
c. to emphasize the prosecution's burden of proof;
d. to summarize the testimony of witnesses and the role of each in relationship to the entire case;
e. to describe the exhibits which will be introduced and the role of each in relationship to the entire case;
f. to clarify the jurors' responsibilities;
g. to state the ultimate inferences which counsel wishes the jury to draw; and,
h. to establish counsel's credibility with the jury.

E. Counsel should consider incorporating the promises of proof the prosecutor makes to the jury during opening statement in the defense summation.

F. Whenever the prosecutor oversteps the bounds of proper opening statement, counsel should consider objecting, requesting a mistrial, or seeking cautionary instructions, unless tactical considerations suggest otherwise.

19. Preparation for Challenging the Prosecution's Case

A. Counsel should attempt to anticipate weaknesses in the prosecution's proof and consider researching and preparing corresponding motions for judgment of acquittal.

B. Counsel should consider the advantages and disadvantages of entering into stipulations concerning the prosecution's case.

C. In preparing for cross-examination, counsel should be familiar with the applicable laws and procedures concerning cross-examinations and impeachment of witnesses. In order to develop material for impeachment or to discover documents subject to disclosure, counsel should be prepared to question witnesses as to the existence of prior statements which they may have made or adopted.

D. In preparing for cross-examination, counsel should:

a. consider the need to integrate cross-examination, the theory of the defense, and closing argument;
b. consider whether cross-examination of each individual witness is likely to generate helpful information;
c. anticipate those witnesses the prosecutor might call in its case-in-chief or in rebuttal;
d. consider a cross-examination plan for each of the anticipated witnesses;
e. be alert to inconsistencies in a witness' testimony;
f. be alert to possible variations in witness' testimony;
g. review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
h. have prepared a transcript of all audio or video tape recorded statements made by the witness;
i. where appropriate, review relevant statutes and local police policy and procedure manuals, disciplinary records, and department regulations for possible use in cross-examining police witnesses;
j. be alert to issues relating to witness credibility, including bias and motive for testifying; and,
k. have prepared, for introduction into evidence, all documents which counsel intends to use during the cross-examination, including certified copies of records such as prior convictions of the witness or prior sworn testimony of the witness.

E. Counsel should consider conducting a *voir dire* examination of potential prosecution witness who may not be competent to give particular testimony, including expert witnesses whom the prosecutor may call. Counsel should be aware of the applicable law of the jurisdiction concerning competency of witnesses in general and admission of expert testimony in particular in order to be able to raise appropriate objections.

F. Before beginning cross-examination, counsel should ascertain whether the prosecutor has provided copies of all prior statements of the witnesses as required by applicable law. If counsel does not receive prior statements of prosecution witnesses until they have completed direct examination, counsel should consider making appropriate motions or sanctions and, at a minimum, request adequate time to review these documents before commencing cross-examination.

G. Where appropriate, at the close of the prosecution's case and out of the presence of the jury, counsel should move for a judgment of acquittal on each count charged. Counsel should request, when necessary, that the court immediately rule on the motion so that counsel may make an informed decision about whether to present a defense case.

20. Presenting the Defendant's Case

A. Counsel should develop, in consultation with the client, an overall defense strategy. In deciding on defense strategy, counsel should consider whether the client's interests are best served by not putting on a defense case and instead relying on the prosecution's failure to meet its constitutional burden of proving each element beyond a reasonable doubt. Counsel should also consider the tactical advantage of having final closing argument when making the decision whether to present evidence other than the client's testimony.

B. Counsel should discuss with the client all of the considerations relevant to the client's decision to testify. Counsel should also be familiar with his or her ethical responsibilities that may be applicable if the client insists on testifying untruthfully. Counsel should maintain a record of the advice provided to the client and the client's decision concerning whether to testify.

C. Counsel should be aware of the elements of any affirmative defense and know whether, under the applicable law of the jurisdiction, the client bears a burden of persuasion or a burden of production.

D. In preparing for presentation of a defense case, counsel should, where appropriate, do the following:

a. develop a plan for direct examination of each potential defense witness;
b. determine the implications that the order of witnesses may have on the defense case;
c. determine which facts necessary for the defense case can be elicited through the cross-examination of the prosecution's witnesses;
d. consider the possible use of character witnesses;
e. consider the need for expert witnesses and what evidence must be submitted to lay the foundation for the expert's testimony;
f. review all documentary evidence that must be presented; and,
g. review all tangible evidence that must be presented.

E. In developing and presenting the defense case, counsel should consider the implications it may have for a rebuttal by the prosecutor.

F. Counsel should prepare all witnesses for direct and possible cross-examination. Where appropriate, counsel should also advise witnesses of suitable courtroom dress and demeanor.

G. Counsel should conduct redirect examination as appropriate.

H. At the close of the defense case, counsel should renew the motion for a directed verdict of acquittal on each charged count.

21. Preparation of the Closing Argument

A. Counsel should be familiar with the substantive limits on both prosecution and defense summation.

B. Counsel should be familiar with the court rules, applicable statutes and law, and the individual judge's practice concerning time limits and objections during closing argument, as well as provisions for rebuttal argument by the prosecution.

C. In developing closing argument, counsel's argument should reflect his or her theory of the case. Counsel should review the proceedings to determine what aspects can be used in support of defense summation and, where appropriate, should consider:

a. highlighting weaknesses in the prosecution's case;
b. describing favorable inferences to be drawn from the evidence;
c. incorporating into the argument:
    i. helpful testimony from direct and cross-examinations;
    ii. verbatim instructions drawn from the jury charge; and,
    iii. responses to anticipated prosecution arguments;
d. and the effects of the defense argument on the prosecutor's rebuttal argument.

D. Whenever the prosecutor exceeds the scope of permissible argument, counsel should consider objecting, requesting a mistrial, or seeking cautionary instructions unless tactical considerations suggest otherwise. Such tactical considerations may include, but are not limited to, the following:

a. whether counsel believes that the case will result in a favorable verdict for the client;
b. the need to preserve the objection for appellate review; or,
c. the possibility that an objection might enhance the significance of the information in the jury's mind.

22. Jury Instructions

A. Counsel should be familiar with the appropriate rules of court and the individual judge's practices concerning ruling on proposed instructions, charging the jury, use of standard charges, and preserving objections to the instructions.

B. Counsel should always submit proposed jury instructions in writing.

C. Where appropriate, counsel should submit modifications of the standard jury instructions in light of the particular circumstances of the case, including the desirability of seeking a verdict on a lesser included offense. Counsel should provide citations to appropriate law in support of the proposed instructions.

D. Where appropriate, counsel should object to and argue against improper instructions proposed by the prosecution.

E. If the court refuses to adopt instructions requested by counsel, or gives instructions over counsel's objection, counsel should take all steps necessary to preserve the record, including ensuring that a written copy of proposed instructions is included in the record along with counsel's objection.

F. During delivery of the charge, counsel should be alert to any deviations from the judge's planned instructions, object to deviations unfavorable to the client, and, if necessary, request additional or curative instructions.

G. If the court proposes giving supplemental instructions to the jury, either upon request of the jurors or upon their failure to reach a verdict, counsel should request that the judge state the proposed charge to counsel before it is delivered to the jury. Counsel should renew or make new objections to any additional instructions given to the jurors after the jurors have begun their deliberations.

H. Counsel should reserve the right to make exceptions to the jury instructions above and beyond any specific objections that were made during the trial.

23. Obligations of Counsel at Sentencing Hearing

A. Among counsel's obligations in the sentencing process are the following:
   a. where a client chooses not to proceed to trial, to ensure that a plea agreement is negotiated with consideration of the sentencing, correctional, financial, and collateral implications;
   b. to ensure the client is not harmed by inaccurate information or information that is not properly before the court in determining the sentence to be imposed;
   c. to ensure all reasonably available mitigating and favorable information which is likely to benefit the client is presented to the court;

d. to develop a plan which seeks to achieve the least restrictive and burdensome sentencing alternative that is most acceptable to the client and which can reasonably be obtained based on the facts and circumstances of the offense, the defendant's background, the applicable sentencing provisions, and other information pertinent to the sentencing decision;
e. to ensure all information presented to the court which may harm the client and which is not shown to be accurate and truthful, or is otherwise improper, is stricken from the text of the pre-sentence investigation report before distribution of the report; and,
f. to consider the need for and availability of sentencing specialists, and to seek the assistance of such specialists whenever warranted and possible.

24. Sentencing Options, Consequences and Procedures

A. Counsel should be familiar with the sentencing provisions and options applicable to the case, including:

a. any minimum sentences and any exceptions;
b. deferred sentences, suspended sentences, and diversionary programs;
c. the effect of confidential criminal justice information;
d. probation or suspension of sentence and permissible conditions of probation;
e. the potential of recidivist sentencing;
f. fines, associated fees, court costs;
g. victim restitution;
h. reimbursement of attorneys' fees;
i. imprisonment including any mandatory minimum requirements;
j. the effects of mental disease or defect, or the implication of MCA §46-14-311,312, "Guilty But Developmentally Disabled"; and,
k. civil forfeiture implications of a guilty plea.

B. Counsel should be familiar with direct and collateral consequences of the sentence and judgment, including:

a. credit for pre-trial detention and credit against fines imposed;
b. parole eligibility and applicable parole release ranges;
c. place of confinement, level of security, and classification criteria used by Department of Corrections;
d. eligibility for correctional and educational programs;
e. availability of drug rehabilitation programs, psychiatric treatment, health care, and other treatment programs;
f. deportation and other immigration consequences;
g. loss of civil rights;
h. impact of a fine or restitution and any resulting civil liability;
i. possible revocation of probation or possible revocation of parole status if client is subject to a prior sentence;
j. suspension of a motor vehicle operator's permit;
k. prohibition of carrying a firearm;

l. other consequences of conviction including, but not limited to, the forfeiture of professional licensure, the ineligibility for various government programs including student loans, registration as a sex offender and/or violent offender, loss of public housing, and the loss of the right to hold public office; and,
m. potential federal consequences.

C. Counsel should be familiar with the sentencing procedures, including:
a. the effect that plea negotiations may have upon the sentencing discretion of the court;
b. the availability of an evidentiary hearing and the applicable rules of evidence and burdens of proof at such a hearing;
c. the use of "Victim Impact" evidence at any sentencing hearing;
d. the right of the defendant to speak prior to being sentenced;
e. any discovery rules and reciprocal discovery rules that apply to sentencing hearings;
f. the use of any minimum sentences;
g. any restrictions that may be placed on parole or other early release; and,
h. the possibility of any increases in sentencing due to a persistent felony offender notice and any possible challenges to such notice.

D. Where the Court uses a pre-sentence report, counsel should be familiar with:
a. the practices of the officials who prepare the pre-sentence report and the defendant's rights in that process;
b. the access to the pre-sentence report by counsel and the defendant;
c. the prosecution's practice in preparing a memorandum on punishment; and,
d. the use of a sentencing memorandum by the defense.

E. Counsel shall, where appropriate, attend any interview with the client, review any pre-sentencing homework, and review the pre-sentence investigation report with the client.

25. Preparation for Sentencing

A. In preparing for sentencing, counsel should consider the need to:
a. Inform the client of the applicable sentencing requirements, options, and alternatives, and the likely and possible consequences of the sentencing alternatives;
b. Maintain regular contact with the client prior to the sentencing hearing, and inform the client of the steps being taken in preparation for sentencing;
c. Obtain from the client relevant information concerning such subjects as his or her background and personal history, prior criminal record, employment history and skills, education, medical history and condition,

financial status, and family obligations, as well as sources through which the information provided can be corroborated;

d. Inform the client of his or her right to speak at the sentencing proceeding and assist the client in preparing the any statement to be made to the court, taking into consideration the possible consequences that any admission of guilt may have upon an appeal, subsequent retrial, or trial on other offenses;
e. Inform the client of the effects that admissions and other statements may have upon an appeal, retrial, parole proceedings, or other judicial proceedings, such as forfeiture or restitution proceedings;
f. Prepare the client to be interviewed by the official preparing the pre-sentencing report and be present during any such interview. Counsel shall also review any pre-sentence investigation report with the client sufficiently in advance of the sentencing hearing to allow adequate time to rebut any inaccurate information in the PSI report.
g. Inform the client of the sentence or range of sentences counsel will ask the court to consider; if the client and counsel disagree as to the sentence or sentences to be urged upon the court, counsel shall inform the client of his or her right to speak personally for a particular sentence or sentences;
h. Collect documents and affidavits to support the defense position and, where relevant, prepare witnesses to testify at the sentencing hearing; where necessary, counsel should specifically request the opportunity to present tangible and testimonial evidence; and,
i. Inform the client of the operation of the Sentence Review Division and the procedures to be followed in submitting any possible sentence to them for review, if applicable.

26. The Prosecution's Sentencing Position

Counsel should attempt to determine whether the prosecution will advocate that a particular type or length of sentence be imposed, unless there is a sound tactical reason for not doing so.

27. The Sentencing Process

A. Counsel should be prepared at the sentencing proceeding to take the steps necessary to advocate fully for the requested sentence and to protect the client's interest.

B. Counsel should be familiar with the procedures available for obtaining an evidentiary hearing before the court in connection with the imposition of sentence.

C. In the event there will be disputed facts before the court at sentencing, counsel should consider requesting an evidentiary hearing. Where a sentencing hearing will be held, counsel should ascertain who has the burden of proving a fact unfavorable to the client, be prepared to object if the burden is placed on the defense, and be prepared to

present evidence, including testimony of witnesses, to contradict erroneous or misleading information unfavorable to the defendant.

D. Where information favorable to the defendant will be disputed or challenged, counsel should be prepared to present supporting evidence, including testimony of witnesses, to establish the facts favorable to the defendant.

E. Where the court has the authority to do so, counsel should request specific orders or recommendations from the court concerning the place of confinement, probation or suspension of part or all of the sentence, psychiatric treatment, or drug rehabilitation.

F. Where appropriate, counsel should prepare the client to personally address the court.

28. A Motion for a New Trial

A. Counsel should be familiar with the procedures available to request a new trial including the time period for filing such a motion, the effect it has upon the time to file a notice of appeal, and the grounds that can be raised.

B. When a judgment of guilty has been entered against the client after trial, counsel should consider whether it is appropriate to file a motion for a new trial with the trial court. In deciding whether to file such a motion, the factors counsel should consider include:

a. The likelihood of success of the motion, given the nature of the error or errors that can be raised; and,
b. The effect that such a motion might have upon the defendant's appellate rights, including whether the filing of such a motion is necessary to, or will assist in, preserving the defendant's right to raise on appeal the issues that might be raised in the new trial motion.

29. The Defendant's Right to an Appeal

A. Following conviction at trial, counsel should inform the client of his or her right to appeal the judgment of the court and the action that must be taken to perfect an appeal.

B. Where the client takes an appeal, trial counsel should cooperate in providing information to appellate counsel (where new counsel is handling the appeal) concerning the proceedings in the trial court.

30. Defendant's Right to Apply to the Sentence Review Panel

Where applicable, counsel should ensure that the client is informed of the procedure available for requesting a review of his or her sentence by the Sentence

Review Division of the Montana Supreme Court, as well as the advantages and disadvantages of seeking such review.

31. Defendant's Right to Postconviction Relief

Where applicable, counsel should ensure that the client is informed of the procedure available for requesting postconviction relief, as well as the advantages and disadvantages of seeking such review.

32. Representation in Ancillary Proceedings

A. The Public Defender Act authorizes assigned counsel to represent indigent clients only in limited instances. Nevertheless, it may be advantageous to any given client to resolve or initiate ancillary proceedings when reaching the global resolution of a case for which counsel has been assigned. For instance, if a client has been charged with DUI it may be possible to reach a global settlement of that charge which includes the Prosecution conceding the return of the client's driver's license in spite of the fact that the client refused to provide a breath sample at the time of the client's stop or arrest.

B. If counsel is able to reach a global settlement of a case which requires only entry of appearance of counsel in an ancillary proceeding **for the sole purpose** of finalizing a global settlement of matters which include a case for which counsel has been assigned, counsel may do so. If counsel is a contract lawyer counsel shall be reimbursed for counsel's time and expense incurred in making an appearance in an ancillary proceeding solely for the purpose of finalizing a global settlement and for counsel's time in reviewing or drafting a settlement or judgment pursuant to a settlement and appearance in court to affect the settlement. On the other hand, if the ancillary proceeding is, or has the possibility of becoming, adversarial or contested, OPD employees shall not represent a client in an ancillary proceeding and contract counsel shall not be compensated by OPD for representing a client in an ancillary proceeding.

C. Counsel shall inform a client of the client's right or opportunity to initiate an ancillary proceeding when that right or opportunity exists (e.g. Petitioning for Return of Driver's License after refusal to provide breath sample, filing a Federal Habeas Corpus Petition, filing a Claim or Counterclaim for violation of the client's Civil Rights Claim pursuant to 42 U.S.C. 1983, or filing an answer in a forfeiture proceeding) but shall also advise the client that the client must seek counsel outside the Public Defender System to represent the client in such matters.

VII. STANDBY COUNSEL IN CRIMINAL CASES.

Goal: To provide standby assistance to criminal defendants who are proceeding pro se while insuring their individual dignity and autonomy. Standby counsel's participation shall never destroy the jury's perception that the

defendant is representing himself and the defendant shall personally manage and conduct his own defense. Attorneys providing standby assistance shall comply with the general standards for public defenders as well as these specific standards.

1. Defense counsel acting as standby counsel shall:

A. Permit the accused to make the final decisions on all matters, including strategic and tactical matters relating to the conduct of the case.

B. If the defendant requests assistance, bring to the attention of the defendant matters beneficial to him;

C. Not actively participate in the conduct of the defense unless specifically asked to do so by the defendant.

D. Assist the defendant in overcoming routine procedural or evidentiary obstacles that the defendant has clearly shown he wishes to complete.

E. Help to ensure the defendant's compliance with basic rules of courtroom protocol and procedure.

2. Standby counsel shall be prepared to assume representation of the Defendant at any stage of the proceedings.

VIII. FACILITIES AND SUPPORT SERVICES:

1. Public defender offices should have a budget for operating expenses that provides for a professional quality office, library, and equipment comparable to the prosecutor's office.

2. Public defender office budgets should include funds for procurement of experts and consultants, ordering of minutes and transcripts on an expedited basis, and for the procurement of other necessary services.

3. In all assigned cases, reasonable compensation for expert witnesses necessary to preparation and presentation of the case shall be provided, subject to prior approval by the Office of the State Public Defender. Expert witness fees should be maintained and allocated from funds separate from those provided for legal services.

4. All public defender offices, and all contract attorneys, shall make arrangements to maintain the confidentiality of client information. This includes physical security for confidential documents, exhibits, and electronic communications. Part of this obligation includes requiring outside contractors that may have access to confidential

information to sign a confidentiality agreement on a form provided by the Office of the State Public Defender. Examples of personnel who might be required to sign such an agreement are IT personnel who have access to counsel's computer system and janitorial personnel who have physical access to counsel's office.

IX. COMPENSATION.

Goal: Parity of resources with the Prosecution is an essential part of effective representation. This includes parity in salaries for full time staff attorneys and a reasonable hourly rate for contract attorneys.

1. Counsel providing public legal representation and staff should be compensated at a rate commensurate with their training and experience. To attract and retain qualified personnel, compensation and benefit levels should be equal to those of attorneys and staff in prosecutorial offices in the area. Compensation should be computed as follows:

   A. Regional Public Defenders shall be compensated at no less than the rate and with the same adjustments, including experience and longevity, as the salary for the County Attorneys of the largest county in which the Regional Public Defender Office is located, including all retirement funding and benefits.
   B. The Chief Public Defender shall be compensated at a rate commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.
   C. In contracts for public legal representation, the contracting firm or counsel shall affirmatively represent in its contract that, in compensating counsel providing services pursuant to the terms of the contract, consideration has been given to the rate commensurate with an equally experienced assistant public defender in that county or the nearest county seat in which a public defender office is located.

2. Contracts not awarded on an hourly basis should provide for extraordinary compensation over and above the normal contract terms for cases which require an extraordinary amount of time and preparation, death penalty cases, and cases resulting in extended trials.

3. When compensating counsel providing services on an hourly basis, the Office of the State Public Defender shall pay at an hourly rate to be established by the Montana Public Defender Commission. The Commission shall review the rate at least annually to determine whether it is a reasonable amount. In the event the rate should be increased, requests shall be made to the appropriate funding authorities for additional funds.

4. Funding shall be sought for Fiscal Year 2008 to increase the contract rate.

X. REPRESENTATION STANDARDS FOR APPELLATE ADVOCACY

Goal: **To actively and effectively represent clients in the appellate process by presenting for appellate review all legal issues that have a reasonable probability of resulting in reversal of the client's conviction or commitment, or improving his or her legal position. Attorneys representing appellants shall comply with the general standards for public defenders as well as these specific Standards.**

1. TRAINING.

A. The attorney will receive a minimum of twenty (20) hours of training specific to the Rules of Appellate Procedure, including acceptable pleadings, deadlines, citations to the record and authority, procedural and substantive legal issues, and applicable rules of professional conduct.

B. Counsel shall reserve regular time to keep current with the statutes, rules, and cases regarding both procedural and substantive legal issues.

C. Counsel shall participate, whether as an instructor or student, in regular training events as directed by the Chief Appellate Defender and shall endeavor to improve professionally to the benefit of his or her clients.

2. HANDLING THE CASE[1]

A. As soon as feasible after conviction or commitment, appellate counsel should confer personally with the appellant to discuss the case. Counsel should explain the meaning and consequences of the court's judgment as well as the right to an appeal and a general outline of the appellate process.

B. Counsel shall, within the time frame set forth in the Rules of Appellate Procedure, request all transcripts and case records.

C. Counsel shall promptly review all transcripts and case records and discuss the matter with trial counsel.

D. After reviewing the record, counsel should confer with the appellant and discuss whether, in his or her professional judgment, there are meritorious grounds for appeal and the probable results of an appeal. Counsel should explain the advantages and disadvantages of an appeal. The decision whether to proceed with the appeal must be the client's own.

[1] These standards assume that trial counsel has filed all appropriate post-trial motions as well as a Timely Notice of Appeal

E. Counsel shall be diligent in expediting the timely submission of the appeal and shall comply with all applicable rules regarding conduct, pleadings, deadlines, and citations to authority.

F. Counsel shall not abandon an appeal solely on the basis of his or her own determination that the appeal lacks merit, but rather should advance any sound basis for changing the law. If, after conscientious analysis, counsel determines that there are no non-meritorious grounds for appeal, counsel should follow the procedures outlined in Anders v. California, 386 U.S. 738 (1967) and §46-8-103 MCA. Counsel shall discuss with the client the termination that counsel has made and give due consideration to the wishes of the client.

G. If counsel, after investigation, is satisfied that another lawyer who served in an earlier phase of the case did not provide effective assistance, and those facts appear on the record, he or she should seek appellate relief for the client on that ground. If counsel is satisfied that a prior attorney did not provide effective assistance and the facts do not appear on the record, counsel should advise the client regarding postconviction rights and, if the appeal is not successful, file the appropriate postconviction petitions.

H. After exercising independent professional judgment, which may include omitting issues too weak or tenuous to secure relief or distractive of superior claims, counsel should assert claims which are supported by the record and which will benefit the client if successful.

I. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies in the briefing and oral argument.

J. Counsel should seek editing assistance and legal feedback from at least one other attorney before filing a brief or a substantial motion. If oral argument is granted, counsel should prepare appropriately, including participating in a moot court session.

K. Counsel shall periodically apprise the client of the progress of the case and copy the client on all pleadings filed or received.

L. When an opinion is issued, counsel shall promptly communicate the outcome to the client and explain remaining remedies, including the right to postconviction relief, and the scope of further representation. This information, with particular emphasis on applicable deadlines, should be memorialized in a letter to the client.

M. Counsel shall apply professional judgment when determining whether to file a petition for re-hearing or a petition for *certiorari* to the United States Supreme Court. If counsel believes that the client has a valid claim of ineffective assistance of counsel, counsel should conduct the appropriate investigation and file a timely petition for postconviction relief.

N. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the records, transcripts, files, and other information pertinent to postconviction proceedings.

XI. REPRESENTATION STANDARDS FOR POSTCONVICTION PROCEEDINGS

GOAL: To actively and effectively represent clients in postconviction proceedings by evaluating the case, conducting the appropriate investigation, and presenting all factual and legal issues that have a reasonable probability of resulting in the vacation of the client's conviction or materially improving his or her legal position. Attorneys representing clients in postconviction proceedings shall comply with the general standards for public defenders as well as these specific Standards and with Section 46-21-101 et seq.

1. APPOINTMENT

A. When a court determines an attorney shall be appointed in a postconviction proceeding, the Appellate Defender Office shall assign the case to a contract attorney.

2. TRAINING

A. The attorney will receive a minimum of twenty (20) hours of training specific to the representation of clients in the postconviction process.

B. Counsel shall become familiar with the applicable statutes and case law including civil, pretrial discovery, and motions rules. Counsel shall be familiar with deadline issues, acceptable pleadings, as well as the procedural and substantive legal issues relating to the postconviction process.

C. Counsel shall reserve regular time to keep current with the statutes, rules, and cases regarding both procedural and substantive legal issues.

D. Counsel shall participate, whether as an instructor or student, in regular training events and shall endeavor to grow professionally to the benefit of his or her clients.

3. HANDLING THE CASE

A. As soon as feasible after appointment, counsel should confer personally with the client to discuss the case. Counsel should explain the scope of and procedures applicable to the postconviction process.

B. Counsel shall promptly request all transcripts and case records. Counsel shall request appropriate releases from the client and promptly request complete attorney files. Counsel shall conduct an appropriate investigation and interview relevant witnesses.

C. Counsel shall promptly review all transcripts and case records and discuss the matter with trial counsel as well as appellate counsel and conduct other appropriate investigation into matters that are not of record.

D. After reviewing the record and conducting the appropriate investigation, counsel should confer with the client and discuss, whether in his or her professional judgment there is the need for filing an amended petition for postconviction relief, including a petition for DNA testing, and probable results of pursuing this avenue. Counsel should explain the advantages and disadvantages of pursuing postconviction relief, as provided by these Standards.

E. If counsel, after investigation, is satisfied that another lawyer who served in an earlier phase of the case did not provide effective assistance, counsel should pursue relief for the client on that ground.

F. In preparing an amended petition, and after exercising independent professional judgment, which may include omitting issues too weak or tenuous to secure relief or distractive of superior claims, counsel should assert claims which are supported by the record and which will benefit the client if successful.

G. Counsel shall be diligent in expediting the timely submission of an amended petition for postconviction relief, keeping in mind the corresponding federal requirements for *habeas corpus* relief, and shall comply with all applicable rules regarding conduct, pleadings, submission of supporting evidence, deadlines, and citations to authority.

H. Counsel should be scrupulously accurate in referring to the record and the authorities upon which counsel relies in the briefing and oral argument.

I. Counsel should seek editing assistance and legal feedback from at least one other attorney before filing a brief or a substantial motion and shall prepare appropriately for hearings, including interviewing and subpoenaing witnesses and locating, obtaining, and preparing to present the appropriate evidence.

J. Counsel shall appear with the client at the client's hearing for postconviction relief and/or DNA testing. Counsel shall present the witnesses, exhibits, and arguments that, in his or her professional judgment, are most likely to result in relief for the client.

K. Counsel shall periodically apprise the client of the progress of the case and copy the client on all pleadings filed or received.

L. When an opinion is issued, counsel shall promptly communicate the outcome to the client and explain remaining remedies and the scope of further representation. This

information, with particular emphasis on subsequent deadlines, should be memorialized in a letter to the client. Counsel has a continuing duty to represent the client on appeal.

M. Counsel shall apply professional judgment when determining whether to file an appeal, a petition for *habeas corpus* relief in federal court, or a petition for *certiorari* to the United States Supreme Court. Any decision shall be reviewed by the Chief Appellate Defender.

N. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other pertinent information.

XII. REPRESENTATION STANDARDS FOR SENTENCE REVIEW

GOALS:

To actively and effectively represent clients in the sentence review process by evaluating the case and giving the client appropriate advice as to whether to pursue sentence review and, if the client elects to proceed, to present all information and arguments supporting the imposition of a more favorable sentence. Attorneys representing clients in sentence review proceedings shall comply with the general standards for public defenders as well as these specific Standards.

1. TRAINING:

A. The attorney will receive a minimum of twenty (20) hours of training specific to the representation of clients in the sentence review process.

B. Counsel shall become familiar with the rules of the Sentence Review Division as well as the applicable statutes and case law.

C. Counsel shall become familiar with the range of sentences imposed for a particular offense and the factors that have affected the imposition of a particular sentence within that range, as well as with methods of accessing that information.

2. HANDLING THE CASE:

A. If a client receives a qualifying sentence, trial counsel shall advise the client of the right to sentence review and give the client appropriate advice as to whether to pursue sentence review.

B. Counsel shall advise the client that, upon review and within the limits fixed by law, his or her sentence may be raised, lowered, or remain the same. Counsel shall discuss with the client whether in his or her professional judgment there is a reasonable chance of obtaining a more or less severe sentence. Counsel should explain the

advantages and disadvantages of proceeding to sentence review. The decision whether to proceed with the sentence review must be the client's own.

C. If the client decides to proceed to sentence review, counsel shall assist him or her in filing a timely application for sentence review.

D. Counsel shall gather and review all information relevant to the sentencing determination including, pre-sentence reports, and any other records, documents, or exhibits relevant to the review proceedings.

E. Counsel shall conduct an appropriate investigation and interview relevant witnesses.

F. Counsel shall make an evaluation as to whether the client's sentence is more or less harsh than sentences for similar offenses and shall determine what factors distinguish the client's case, either positively or negatively.

G. Counsel shall appear with the client at his or her sentence review hearing and present the witnesses, exhibits, and arguments that, in his or her professional judgment, are most likely to result in a sentence reduction.

XIII. STANDARDS FOR REPRESENTATION OF YOUTH IN YOUTH COURT PROCEEDINGS

GOALS:

A. To zealously defend youth charged with delinquency offenses and to protect their due process rights.

B. To serve the stated interest of the youth, be independent from the court and other participants in the litigation, including the youth's parents or guardians, and be unprejudiced and uncompromised in representing the youth.

C. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the youth. Attorneys representing a client subject to youth court proceedings shall comply with the general standards for public defenders providing representation of an adult charged with violations of the criminal law, as well as the specific Standards contained herein.

D. To recognize that youth are at a critical stage of development and that skilled juvenile defense advocacy will positively impact the course of clients' lives through holistic and zealous representation.

1. TRAINING:

A. To be eligible for assignment to represent youth in youth court, counsel shall receive a minimum of twenty (20) hours of training in representing youth in youth court, and complete a minimum of ten (10) hours of supervised on-the-job training in the duties, skills, and ethics of representing youth in youth court.

B. Counsel shall be knowledgeable in the following areas:

a. Titles 41 (Montana Youth Court Act), 45 (Crimes) & 46 (Criminal Procedure), Montana Code Annotated;
b. Child and adolescent development;
c. The services and treatment options for youth both locally and statewide;
d. The role and makeup of youth placement committees and kids' management authorities (KMAs);
e. Local and state experts who are available to consult on youth court cases as well as perform evaluations of youth;
f. Pre-dispositional and dispositional services and programs available through the court and probation;
g. Brain development and the effect of neglect and trauma on brain development;
h. The juvenile justice and child welfare systems;
i. Substance abuse issues;
j. Mental health issues;
k. Special education laws, rights and remedies;
l. School related issues including school disciplinary procedures and zero tolerance policies.

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers and other experts who understand the public defender's advocacy role to investigate the various health and social services that may be available to the youth in the community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to the youth.

C. Counsel shall advise the youth of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall advocate the youth's express wishes and shall not substitute his or her judgment about what is in the best interests of the youth. The primary role of counsel is to represent the perspective of the youth alone and not that of the youth's best interests or of the youth's parents or guardian. Appointment of a guardian-ad-litem to investigate the best interests of the child is a matter within the exclusive province of the court.

E. Counsel shall ensure that children do not waive appointment of counsel. Counsel should be assigned at the earliest possible stage of the youth court proceeding. Furthermore, counsel shall actively represent the youth at all stages of the proceeding. When the public defender becomes aware of the assignment, the public defender shall meet with the youth as soon as possible and sufficiently before any scheduled hearing or proceeding, including the probable cause or detention hearing, to permit effective preparation.

F. When meeting with the youth for the first time, counsel shall identify himself or herself by name and affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other healthcare facility, counsel shall explain that he or she is not a member of the facility staff. Counsel shall inform the youth their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others, including the youth's parent or guardian, in order to preserve the attorney-client confidentiality. Counsel shall also inform the youth that he or she has a right to remain silent.

G. Counsel shall maintain the attorney-client privilege with the understanding that the attorney represents the youth alone and not the youth's parents or guardians. The potential for a conflict of interest between the accused juvenile client and his or her parents should be clearly recognized and acknowledged. Counsel should inform the parent that he or she is counsel for the youth and that in the event of a disagreement between a parent or guardian and the youth, counsel is required to serve exclusively the interest of the youth.

H. During the conference, counsel shall:

a. Explain the charges and possible dispositions;
b. Explain the youth court process, timelines, and the role of all the parties involved, such as judge, prosecutor, probation staff, guardian ad-litem, counsel, youth and parent;
c. Inform the youth and parent not to make statements to anyone concerning the offense;
d. Obtain signed releases by the youth and parent for medical and mental health records, school records, employment records, and other necessary records. Counsel should advise the youth of the potential use of this information and the privileges that attach to this information;
e. Obtain information from the youth concerning the facts of arrest and charges and whether there were any statements made, witnesses, co-defendants, and other relevant information.

I. If the youth is detained, counsel must focus upon obtaining information relevant to the determination of pre-adjudication conditions of release. Such information should generally include:

a. Youth's residence and length of time at the residence;
b. Youth's legal custodian and physical custodian with names, addresses, and phone numbers;

c. Mental and physical health and employment background, if any;
d. School placement, status, attendance, and whether the youth qualifies for special education;
e. Whether the youth or the youth's family had previous contact with the youth court system and the outcome of that contact;
f. Adults possibly willing to assume responsibility for the youth;
g. Useful social information, including the youth's home behavior, school performance, involvement with special education services, past or present employment, and other information concerning the youth's ability to stay out of trouble if released, and the parent's ability to control and discipline the youth.

J. If counsel is unable to communicate with the youth because of language or other disability, counsel shall secure the assistance of such experts as are necessary to communicate with the youth.

K. Whenever the nature and circumstances of the case permit, counsel should explore the possibility of informal adjustment under § 41-5-130, MCA.

L. Counsel shall actively prepare the youth for any interview with the youth probation officer and accompany the youth at any such interview.

M. If the court requires the posting of a bond, counsel should discuss with the youth and his or her parent or guardian the procedures that must be followed. Where the youth is not able to obtain release under the conditions set by the court, counsel should consider pursuing modifications of those conditions.

3. HANDLING THE CASE:

A. In preparation for the probable cause hearing, counsel should:
a. Review all evidence to identify relevant and meritorious pretrial motions;
b. Be fully informed of the rules of evidence, court rules, and the law with relation to all stages of the hearing process; be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the adjudicatory hearing;
c. Be familiar with the substantive and procedural law regarding the preservation of legal error for appellate review;
d. Be aware of the confidentiality provisions that pertain to youth court proceedings;
e. Prepare the youth and, when appropriate, the youth's parent or guardian, for the proceeding by explaining the process and that the probation officer may contact them to get information; stress the importance of providing the probation officer with factually accurate information.

B. During the probable cause hearing, counsel should use the testimony at the hearing as a discovery tool and elicit as much information as possible about the facts and circumstances of the case.

C. If probable cause is found, counsel shall argue for the least restrictive placement for the youth pending arraignment.

D. Counsel shall promptly investigate the case. Regardless of whether the youth wishes to admit guilt, counsel shall ensure that the charges in the disposition are factually and legally correct and that the youth is aware of any potential defense to the charges.

E. When conducting the investigation, counsel should:

a. Obtain the arrest warrant, petition, and copies of all charging documents in the case to determine the specific charges that have been brought against the youth;
b. Obtain the police reports and any other records, documents, and statements;
c. Research relevant law to determine the elements of the offenses charged and defenses available; interview all witnesses favorable and adverse and obtain any criminal or juvenile history of the witnesses;
d. Ascertain if there is physical evidence and make prompt requests to examine and view the crime scene if possible;
e. Determine whether an expert is needed to assist in preparation of the defense or to rebut the prosecution's case.

F. In preparation for the adjudicative hearing, counsel should review all statements, reports, and other evidence to determine whether motions are appropriate.

G. At the adjudicative hearing, counsel shall, where it benefits the youth, examine
and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence.

H. Counsel shall offer evidence favorable to the youth's case and present lay and expert witnesses, if available.

I. Prior to engaging in plea negotiations, counsel must ensure that the youth and parent understand the concept of plea bargaining in general, as well as the details of any specific plea offer made to him or her.

J. Counsel should make it clear to the youth that the ultimate decision to enter the plea has to be made by the youth.

K. Counsel should investigate and candidly explain to the youth the prospective strengths and weaknesses of the case for the prosecution and defense, including the

availability of prosecution witnesses, concessions and benefits which are subject to negotiation, and the possible consequences of any adjudication of delinquency.

L. Counsel should also ascertain and advise the youth of the court's practices concerning disposition, recommendations, and withdrawal of pleas or admissions.

M. Counsel's recommendation on the advisability of a plea or admission should be based on a review of the complete circumstances of the case and the youth's situation. Such advice should not be based solely on the youth's acknowledgement of guilt or solely on a favorable disposition offer.

N. The youth shall be kept informed of the status of the plea negotiations.

O. Where counsel believes that the youth's desires are not in the youth's best interest, counsel may attempt to persuade the youth to change his or her position. If the youth remains unpersuaded, however, counsel should assure the youth that he or she will defend the youth vigorously.

P. Notwithstanding the existence of ongoing plea negotiations with the prosecution, counsel should continue to prepare and investigate the case in the same manner as if it were going to proceed to an adjudicatory hearing on the merits.

Q. Counsel should make sure that the youth is carefully prepared to participate in the procedures required and used in the particular court.

R. Counsel must also be satisfied that the plea is voluntary, that the youth understands the nature of the charges, that there is a factual basis for the plea or admission, that the witnesses are or will be available, and that the youth understands the right being waived.

S. Counsel must consider whether an admission will compromise the youth or the youth's family's public assistance or immigration status. If it does, the youth may need to reconsider the decision to plead.

T. Counsel should be aware of the effect the youth's admission will have on any other court proceedings or related issues, such as probation or school suspension.

U. In preparation for the disposition hearing, counsel should:

a. Explain to the youth and parent or guardian, if applicable, the nature of the dispositional hearing, the issues involved, and the alternatives open to the court;
b. Explain fully and candidly the nature, obligations, and consequences of any proposed dispositional plan, including the meaning of conditions of probation, the characteristics of any institution to which commitment is possible, and the probable duration of the youth's responsibilities under the proposed dispositional plan.

V. Counsel should be familiar with and consider:

a. The dispositional alternatives available to the court and any community services that may be useful in the formation of a dispositional plan appropriate to the youth's circumstances;
b. The official version of the youth's prior records, if any;
c. The position of the probation department with respect to the youth;
d. The prosecutor's sentencing recommendation;
e. Using a creative interdisciplinary approach by collaborating with educational advocates, social workers, and civil legal service providers;
f. The collateral consequences attaching to any possible disposition;
g. Any victim impact statement to be presented to the court;
h. Requesting a continuance for disposition at a later date; and,
i. Securing the assistance of psychiatric, psychological, medical, or other expert personnel needed for the purposes of evaluation, consultation, or testimony with respect to the formation of a dispositional plan.

W. Counsel shall provide the youth with continuous legal representation throughout the youth court process including, but not limited to, detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal, expungement, and sealing of records.

X. If counsel withdraws from representation of a youth following adjudication and disposition, counsel shall make all reasonable efforts to ensure that the youth is well represented in matters that stem from the youth's adjudication. This includes ensuring a smooth transfer of responsibility to new counsel or monitoring of the detention status, probation, treatment, and services provided an adjudicated youth.

4. YOUTH WHO ARE SUBJECT TO THE JURISDICTION OF THE DISTRICT COURT

A. To be eligible for assignment to represent youth who are prosecuted either under Section 41-5-206, MCA (filing in district court prior to formal proceedings in youth court) or Section 41-5-1602, MCA, (extended jurisdiction juvenile prosecution), counsel shall be qualified to represent adults charged with similar offenses and shall, in addition, have received a minimum of ten (10) hours of training and a minimum of five (5) hours of supervised on-the-job training on the handling of juvenile transfer cases.

B. In preparing for the transfer hearing or for a designation of extended jurisdiction, counsel of record shall:

a. Be aware of the statutory findings the court must make before transferring jurisdiction and the case law governing these findings;
b. Fully advise the youth of his or her right to a hearing and the possible consequence of transfer to youth court or remaining in the district court;

c. Investigate the offense with which the youth is charged sufficiently to address the question of whether the nature of the offense warrants prosecution in district court;
d. Investigate the issue of community protection by interviewing the youth's agents, teachers, counselors, psychologists, community members, probation officers, religious affiliates, employers, or any others who have knowledge of the youth and can speak to his or her lack of dangerousness;
e. Investigate the needs and stated interest of the youth, as well as the youth's circumstances;
f. Provide the youth with full information and legal advice sufficient for the youth to make decisions concerning the transfer issue;
g. Prepare to present evidence and testimony to prevent transfer, including testimony by people who can provide helpful insight into the youth's character and who have a positive personal and/or professional view of the youth; and,
h. Consider obtaining an independent evaluation from a defense expert.

XIV. REPRESENTATION OF A RESPONDENT IN A PROCEEDING FOR INVOLUNTARY COMMITMENT – MENTAL ILLNESS

GOALS:

A. To actively and professionally serve as a zealous advocate for the respondent who is the subject to a commitment proceeding for a mental disorder under §53-21-116, MCA.

B. To abide by specific mandatory standards of representation for Public Defenders as attorney for the respondent in an involuntary commitment proceeding.

C. To serve the stated interests of the respondent, to be independent from the court and other participants in the litigation, including the respondent's guardian, if any, and to be unprejudiced and uncompromised in representing the respondent.

D. To exercise independent and professional judgment in carrying out the duties assigned by the Court and to participate fully in the case on behalf of the respondent.

E. The term "involuntary commitment" in the following standards includes involuntary commitment and proceedings to extend the involuntary commitment period.

1. TRAINING AND COMPETENCY:

A. A public defender assigned to represent a respondent in an involuntary commitment proceeding shall have a thorough understanding of involuntary commitment law as well as the mental health system.

B. To be eligible for assignment to represent respondents in involuntary commitment proceedings, counsel shall receive a minimum of twenty (20) hours of training and complete a minimum of ten (10) hours of supervised on-the-job training in the duties, skills, and ethics of representing involuntary commitment respondents. This training shall include visits to a variety of treatment facilities including the Montana State Hospital. Counsel shall utilize training and support provided by the Office of the State Public Defender.

C. Counsel shall have basic knowledge of the classification of mental disorders and the ability to read and understand medical terminology related to mental disorders, developmental disabilities, chemical dependence and alcoholism. Counsel shall be familiar with the medications used to treat mental disorders, developmental disabilities, and alcoholism. Counsel shall be aware of how a particular mental disorder, developmental disability, chemical dependence or alcoholism will affect attorney-client communications and should recognize that communications may require special efforts on the part of counsel.

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the respondent's case and explore various mental health and social services that may be available to the respondent in the community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to the respondent.

C. Counsel shall advise the respondent of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall help the respondent find his or her objectives by advising him or her about the probability of success in pursuing these options. If the respondent expresses a desire to seek voluntary mental health treatment or related social services, counsel must give the respondent the necessary and appropriate advice and assistance to pursue those desires.

E. Counsel shall advocate the respondent's express wishes. The primary role of counsel is to represent the perspective of the respondent alone, not the perspective of the respondent's relatives, friends or guardian. In addition, counsel will not substitute his or her judgment about what is in the best interest of the respondent. To the extent that a respondent is unable or unwilling to express personal wishes, counsel must presume that respondent does not wish to be involuntarily committed.

F. Counsel shall meet with respondent as soon as possible after notification of his or her assignment to an emergency detention or involuntary commitment case. This meeting shall be conducted in private and shall be held sufficiently before any scheduled

emergency detention proceeding or involuntary commitment hearing to permit effective preparation and allow pre-hearing assistance to the respondent.

G. When meeting with the respondent for the first time, counsel shall identify himself or herself by name and by affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other health care facility, counsel shall make it clear to the respondent that he or she is not a member of the facility staff. Counsel shall inform the respondent that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve that attorney-client confidentiality. Counsel shall also inform the respondent that he or she has the right to remain silent prior to the commencement of any court-ordered examination and that the respondent cannot be examined without the presence of counsel.

H. During the conference, counsel shall obtain the respondent's version of the facts of the case, including:

a. The circumstances surrounding the filing of an involuntary commitment or emergency detention petition;
b. The names, addresses, and telephone numbers of all persons with knowledge of the circumstances surrounding the involuntary commitment petition or emergency detention;
c. Any information about past psychiatric hospitalization and treatment;
d. Information to aid the exploration of alternatives to commitment;
e. The name of a mental health professional of respondent's choice to conduct an independent evaluation.

I. During the conference, counsel shall also:

a. Explain what is happening and why, including the basis on which the respondent's involuntary commitment is sought, and offer a description of the psychiatric examination and judicial hearing procedures;
b. Explain the respondent's rights in the commitment process, including the right to treatment, the right to refuse treatment, and the right to an independent evaluation;
c. Explain that the respondent may retain his or her own counsel at his or her own expense rather than accept representation by the appointed public defender;
d. Explain the respondent's option to accept voluntary treatment, the procedures of exercising that option, and the legal consequences of voluntary admission to a mental health facility, including whether the respondent is willing to accept voluntary treatment in a mental health facility or other settings;
e. Obtain respondent's consent to enter into negotiations for settlement of the case with the county attorney and with mental health professionals if the respondent is willing and able to give informed consent to voluntary mental health care or related social services as an alternative to involuntary commitment;
f. Discuss the desirability of a court hearing with the respondent; and,

g. Request the respondent's written or oral permission to obtain access to relevant records, including any facility records or incident reports.

J. After being notified of the appointment, counsel shall, in preparation of any scheduled hearing, do the following:

a. Become thoroughly familiar with the statutory requirements governing involuntary commitment in the jurisdiction, as well as case law and court rules;
b. Thoroughly review the petition, detention order, or other documents used to initiate proceedings, the screening report, the prehearing examination reports, the medical records of the respondent, the facility records of any facility in which the respondent has recently resided, and any other document relevant to the proceedings;
c. Attempt to interview all persons who have knowledge of the circumstances surrounding the involuntary commitment petition or emergency detention, including the petitioners, the police officers who detained the respondent, the psychiatrists, social workers, and other persons who have examined or treated the respondent during the current involuntary commitment or emergency detention proceedings, previous mental health treatment providers, if any; the respondent's family, guardian or acquaintances; and any persons who may provide relevant information or who may be supporting or adverse witnesses at an emergency detention or involuntary commitment hearing;
d. Facilitate the exercise of the respondent's rights to be examined by a professional person of the respondent's choice;
e. Discuss with the respondent the various medications that the respondent has been prescribed to address the respondent's mental illness, including the effectiveness of the medication, and the long-term effects and side effects of each.

K. Counsel must ensure that a respondent's consent to voluntary treatment is knowing and not a result of coercion or undue influence. Counsel shall explain the benefits and privileges of voluntary treatment and care to all respondents as part of counsel's efforts to make respondents aware of all options available to them.

L. If the respondent indicates that he or she would consent to voluntary treatment, counsel shall:

a. Ascertain whether the respondent was indeed aware that by electing to convert to voluntary patient status, he or she was agreeing to enter or remain in a mental health facility or begin or continue to receive mental health services; and,
b. Make certain that this agreement was not the product of threats, unrealistic promise, or other forms of coercion.

M. If counsel has determined that the respondent's consent to voluntary treatment is knowing and uncoerced, counsel shall immediately take steps to secure the dismissal of the involuntary commitment proceeding.

N. When, due to the respondent's disability, the effect of medication, or other factors, counsel is unable to determine that the conversion to voluntary patient status was made knowingly and voluntarily, he or she shall investigate the circumstances of the respondent's stated desire to voluntarily receive treatment.

3. COURT PROCEEDINGS:

A. Counsel should seek the most expedient and timely resolution of the involuntary commitment proceeding possible while providing effective and zealous advocacy for the respondent. Counsel should only seek the continuance of any phase of the involuntary commitment proceeding if it is necessary to effectively advocate for the respondent.

B. Counsel should ensure that the respondent may exercise his or her right to a jury trial. Counsel shall inform the respondent of his or her right to a jury trial and explain the benefits and detriments of a jury trial and a hearing in front of the judge alone. Counsel shall immediately notify the court if respondent chooses a jury trial. If the respondent waives his or her right to a jury trial, counsel shall establish that the waiver is knowing and voluntary.

C. Counsel shall ensure that a respondent actively participates in every stage of the involuntary commitment process. Counsel shall encourage the respondent to exercise his or her right to be present at all hearings. Counsel shall advise the respondent of the legal basis under which the court will order discharge, emergency detention, commitment, conditional release, revocation or modification of a trial visit, outpatient or community commitment, or an extension of the commitment period, and how the court will determine the length of commitment.

D. Counsel shall avoid using his or her authority to waive respondent's presence at the hearing, except when attending would seriously jeopardize the respondent's mental or physical condition and an alternative location for the hearing in surroundings familiar to the respondent would not prevent such adverse effects upon the respondent's mental condition.

E. If the respondent waives the right to be present, counsel shall make a record of his or her advice to the respondent regarding the right to be present and the choice to waive that right. In such circumstances, counsel shall make a record of the facts relevant to the respondent's absence from the hearing.

F. If, at the time of hearing, a respondent is under the influence of psychotropic or other prescribed medications, counsel should consider introducing evidence regarding the nature of the medication and its likely effects upon the respondent's demeanor.

G. Counsel should zealously and effectively engage in all aspects of trial advocacy.

H. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in involuntary commitment proceedings, such as hospital and medical records.

I. Counsel shall focus the court's attention on the legal issues to be decided, such as whether the criteria for detention or commitment have been met. Thus, in emergency detention proceedings, counsel shall seek to bifurcate the determination of whether there is probable cause for an emergency detention and the determination of the least restrictive setting for that detention. In involuntary commitment proceedings, counsel shall seek to bifurcate the determination of whether the respondent requires commitment and the post trial disposition hearing if it will advantage the respondent. Counsel shall plan objections to the admissibility of evidence regarding previous commitment and pending criminal charges so as to preclude their consideration at least until the adjudicative issue of whether commitment is warranted has been determined.

J. During the involuntary commitment hearing, counsel shall, where it benefits the respondent, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

a. Whether the case for detention or commitment is based on dangerousness to self or to the person or property of others;
b. Whether there is any real factual basis for the determination of dangerousness;
c. The probability of dangerous behavior in the future;
d. How well the respondent is currently functioning and whether any indications of poor functioning are due to the respondent's social situation or to mental disorder;
e. Whether there is any useful purpose to hospitalization and whether possible alternatives exist or have been explored;
f. Whether mental health examinations and screenings were thorough;
g. Whether the respondent had recently been exhibiting abnormal or unusual behavior; and,
h. The factual basis of conclusory opinions about the respondent's suitability for detention or commitment under the applicable legal standards.

K. Counsel should be aware of the basis for and file a motion to seek release from custody in the form of a *writ of habeas corpus* when appropriate.

L. Counsel shall offer evidence favorable to the respondent's case and present lay and expert witnesses, including an impartial, independent mental health expert who has examined the respondent, if possible.

M. After discussions with the respondent and with his or her consent, counsel shall present all favorable evidence available regarding appropriate alternatives to involuntary commitment including, but not limited to, voluntary mental health treatment and commitment to community-based mental health treatment and care.

N. Whether or not the commitment hearing, the post trial dispositional hearing, the detention proceeding, or the detention placement determination are bifurcated, counsel shall offer evidence favorable to the respondent regarding the least restrictive placement for the commitment during the proceeding or part of the proceeding that constitutes the post trial dispositional hearing or detention placement determination.

O. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of committing the respondent to the most restrictive setting available, such as the Montana State Hospital. Counsel should explore and consider offering evidence of the respondent's compliance with treatment, success in community treatment programs, and family support in the community.

P. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of an involuntary medication order. Counsel should explore and consider offering evidence regarding the medications that the respondent has found to be effective, as well as those medications which have not been effective or cause significant long-term or side effects.

Q. Counsel should consider the condition of the respondent in determining the degree to which the hearing procedures should conform strictly to the applicable rules, as some respondents may not be able to consent knowingly and voluntarily to the waiver of any procedural or evidentiary rights. Counsel should argue strict application for the burden of proof and the law; at all times, counsel should endeavor to preserve the record for appeal. Counsel shall review all orders and seek the amendment of orders as necessary, including the deletion of provisions not supported by the record.

R. Counsel should provide continuity in representation for the respondent throughout the involuntary commitment process. If the court has ordered the involuntary commitment, counsel shall advocate for an appropriate treatment and discharge plan to be developed which is reasonably designed to achieve the end sought in the commitment order. The treatment plan should be tailored to the respondent's needs. Counsel shall argue for the exclusion of all provisions that are unnecessarily restrictive or unsupported by the record. The treatment plan should include the following elements;

a. All assessments of the respondent's problems and needs;
b. A brief description of the nature and effects of service and treatment already administered to the respondent;
c. A description of services and treatment to be administered, their possible side effects, and feasible alternatives, if any;

d. The identities of agencies and specific individuals who will provide the services and treatment in the future;
e. The settings in which the services and treatment will be provided;
f. A time table for attaining the goals or benefits of treatment or care to be administered;
g. A statement of the criteria for transition to less restrictive placements or for conditional or unconditional discharge from involuntary mental health services and treatment, as well as the date for transfer or discharge; and,
h. A statement of the least restrictive conditions necessary to achieve the purposes of hospitalization.

S. The discharge plan should include the following:
a. An anticipated discharge date;
b. Criteria for discharge;
c. Identification of the facility staff member responsible for discharge planning;
d. Identification of the community-based agency or individual who is assisting in arranging post-discharge services;
e. Referrals for financial assistance needed by the patient upon discharge; and,
f. Other information necessary to ensure an appropriate discharge and adequate post-discharge services.

T. Counsel who represented a respondent preceding and during a court hearing should make every effort to maintain responsibility for the respondent's legal representation so long as the respondent remains an involuntary patient or subject to a conditional release.

U. If counsel who represented the respondent during the commitment proceeding does not continue to represent the respondent after commitment is ordered, he or she shall make all reasonable efforts to ensure that the respondent is well represented in all matters that stem from the respondent's commitment. Specific objectives include:
a. A smooth transfer of responsibility to new counsel who assumes representation in post-hearing matters, including motions for amended findings, stays of the commitment order pending appeal, appeals, petitions for writs, periodic review hearings, court ordered release to alternative placement or treatment, and other available legal actions to contest commitment, as well as continued representation in proceedings to revoke conditional release, to extend conditions of release or the commitment period in a more restrictive setting, and other legal proceedings to extend commitment.
b. Monitoring of the treatment and services provided a committed respondent to ensure the quality of the treatment and services.

XV. REPRESENTATION OF A RESPONDENT IN A PROCEEDING FOR INVOLUNTARY COMMITMENT – SERIOUS DEVELOPMENTAL DISABILITY

GOALS:

- **A. To actively and professionally serve as a zealous advocate for the respondent who is the subject of a proceeding for commitment or re-commitment as an individual with a serious developmental disability under §53-20-112, MCA.**
- **B. To abide by mandatory standards of representation for public defenders as attorney for the respondent in an involuntary commitment proceeding.**
- **C. To serve the stated interests of the respondent, to be independent from the court and other participants in the litigation, including the respondent's guardian, if any, and to be unprejudiced and uncompromised in representing the respondent.**
- **D. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the respondent.**
- **E. In the following standards, "involuntary commitment" refers to both involuntary commitment and recommitment proceedings.**

1. TRAINING AND COMPETENCY:

A. A public defender assigned to represent a respondent in an involuntary commitment proceeding shall have a thorough understanding of involuntary commitment law as well as the developmental disabilities and mental health systems.

B. To be eligible for assignment to represent respondents in involuntary commitment proceedings, counsel shall receive a minimum of twenty (20) hours of training and complete a minimum of ten (10) hours of supervised on-the-job training in the duties, skills, and ethics of representing involuntary commitment respondents. This training shall include visits to a variety of treatment facilities including the Montana Developmental Center and community service providers and group homes within the area served by the public defender. Counsel shall utilize training and support provided by the office of the public defender.

C. Counsel shall have basic knowledge of the classification of developmental disorders and the ability to read and understand medical terminology related to developmental disabilities, mental illness, and co-occurring disorders or dual diagnosis. Counsel shall be familiar with the medications used to treat mental disorders and developmental disabilities. Counsel shall be aware of how a particular developmental disability, mental disorder, chemical dependency, or alcoholism will affect the attorney-client communications and shall recognize that communications may require assistance or special efforts on the part of counsel.

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the respondent's case and explore developmental health and social services that may be available to the respondent in the community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to the respondent.

C. Counsel shall advise the respondent of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall help the respondent determine the respondent's objectives by advising the respondent about the probability of success in pursuing those options.

E. Counsel shall advocate the respondent's express wishes. The primary role of counsel is to represent the perspective of the respondent alone, and not the perspective of the respondent's relatives, friends, or guardian. In addition, counsel shall not substitute his or her judgment about what is in the best interests of the respondent. To the extent that a respondent is unable or unwilling to express personal wishes, counsel must presume that respondent does not wish to be involuntarily committed.

F. Counsel shall meet with respondent as soon as possible after notification of his or her assignment to an involuntary commitment case. This meeting shall be conducted in private and shall be held sufficiently before any scheduled hearing to permit effective preparation and allow pre-hearing assistance to the respondent.

G. When meeting with the respondent for the first time, counsel shall identify himself or herself by name and by affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other health care facility, counsel shall make it clear to the respondent that he/she is not a member of the facility staff. Counsel shall inform the respondent that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve attorney-client confidentiality. Counsel should inform the respondent that he or she has the right to remain silent prior to the commencement of any court-ordered examination and that the respondent cannot be examined without the presence of counsel.

H. During the conference, counsel shall obtain the respondent's version of the facts of the case, including:

a. The circumstances surrounding the filing of the involuntary commitment;
b. The names, addresses, and telephone numbers of all persons with knowledge of the circumstances surrounding the petition;
c. Information about past treatment either in the community or at the Montana Developmental Center or any past psychiatric hospitalization;
d. Information to aid the exploration of alternatives to commitment;

e. The name of a developmental disabilities expert of respondent's choice to conduct an independent evaluation.

I. During the conference, counsel shall also:

a. Explain what is happening and why, including the basis on which the respondent's involuntary commitment is sought, and offer a description of the examination conducted by the residential facility screening team and judicial hearing procedures;
b. Explain the respondent's rights in the commitment process, including the right to treatment and the right to refuse treatment;
c. Explain that the respondent may retain his or her own counsel at his or her own expense rather than accept representation by the appointed public defender;
d. Explain the respondent's option to accept voluntary health care or other services, the procedures to exercise that option, and the legal consequences of voluntary acceptance of such services; discuss whether respondent is willing to accept those voluntary services;
e. As an alternative to involuntary commitment, obtain respondent's consent to enter into negotiations for settlement of the case with the county attorney if the respondent is willing and able to give informed consent to voluntary health or other services;
f. Discuss the desirability of a court hearing with the respondent; and,
g. Request the respondent's written or oral permission to obtain access to relevant records, including any facility records and incident reports.

J. After being notified of appointment to the case, counsel shall, in preparation of any scheduled hearing, do the following:

a. Become thoroughly familiar with the statutory requirements governing involuntary commitment in the jurisdiction, as well as case law and court rules;
b. Thoroughly review the petition or other documents used to initiate the commitment proceedings, the report of the residential facilities screening team, the report by the QMRP or other case manager, prehearing examination reports, the medical records of the respondent, and the facility records of any facility in which the respondent has recently resided and any other document relevant to the proceedings;
c. Consider the advisability of seeking the services of a qualified mental retardation professional;
d. Attempt to interview all persons who have knowledge of the circumstances surrounding the involuntary commitment petition:
    i. The petitioners;
    ii. The developmental disabilities professional, community services providers, facility staff, social workers, case managers, mental health professionals, and other persons who have examined or treated the respondent during the current involuntary commitment proceedings;

iii. Previous service providers, if any;
iv. The respondent's family, guardian or acquaintances;
v. The responsible person and the person's advocate, if any; and,
vi. The persons who may provide relevant information or who may be supporting or adverse witnesses at a commitment hearing.

e. Facilitate the exercise of the respondent's right to be examined by a professional person of the respondent's choice.

K. Counsel must ensure that a respondent's consent to receive voluntary services is knowing and not a result of coercion or undue influence. Counsel shall explain the benefits and privileges of voluntary services and care to all respondents as a part of counsel's efforts to make respondents aware of all options available to them.

L. If the respondent indicates that he or she would consent to receive voluntary services, counsel shall:

a. Ascertain whether the respondent was indeed aware that by electing to convert to voluntary status, he or she was agreeing to enter or remain in services voluntarily; and
b. Make certain that this agreement was not the product of threats, unrealistic promise, or other forms of coercion

M. If counsel has determined that the respondent's consent to receive voluntary services is knowing and uncoerced, counsel shall immediately take steps to secure the dismissal of the voluntary commitment proceeding.

3. COURT PROCEEDINGS:

A. Counsel should seek the most expedient and timely resolution of the involuntary commitment proceeding possible while providing effective and zealous advocacy for the respondent. Counsel should only seek the continuance of any phase of the involuntary commitment proceeding if it is necessary to effectively advocate for the respondent.

B. Counsel should ensure that a respondent actively participate in every stage of the involuntary commitment proceeding. Counsel shall encourage the respondent to exercise his or her right to be present at all hearings. Counsel shall advise the respondent of the legal basis under which the court will order discharge, commitment, or recommitment, and the length of commitment.

C. Counsel shall avoid using his or her authority to waive respondent's presence at the hearing except in the following extraordinary cases:

a. When the respondent unequivocally refuses to attend and cannot be encouraged to do so;
b. When attending would seriously jeopardize the respondent's mental or physical condition; or,

c. When the respondent's presence at the hearing would completely disrupt and prevent a meaningful proceeding.

D. If the respondent waives the right to be present, counsel shall make a record of his or her advice to the respondent regarding the right to be present and the choice to waive that right. In such circumstances, counsel shall make a record of the facts relevant to the respondent's absence from the hearing.

E. If at the time of hearing, a respondent is under the influence of prescribed medications, counsel shall consider introducing evidence regarding the nature of the medication and its likely effects upon the respondent's demeanor.

F. Counsel shall zealously and effectively engage in all aspects of trial advocacy.

G. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in involuntary commitment proceedings such as hospital and medical records.

H. Counsel shall focus the court's attention on the legal issues to be decided, such as whether the criteria for commitment have been met. Counsel shall plan objections to the admissibility of evidence regarding previous commitment and pending criminal charges, if any, so as to preclude their consideration at least until the adjudicative issue of whether commitment is warranted has been determined.

I. During the involuntary commitment hearing, counsel shall, where it benefits the respondent, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

a. Whether the case for commitment is based upon self-help deficits so severe so as to require total care;
b. Whether there is a real factual basis for the determination of these deficits that would prevent safe and effective habilitation in community-based services;
c. Whether the case for commitment is based on imminent danger to self or others;
d. Whether there is any real factual basis for the determination of imminent danger;
e. The probability of dangerous behavior in the future;
f. Whether any indications of poor functioning are due to the respondent's social situation or to a mental disorder;
g. Whether the information and the interpretation of that information relied upon by the residential facility screening team was accurate;
h. Whether health examinations and screenings were thorough;
i. Whether the respondent had recently been exhibiting abnormal or unusual behavior; and,
j. The factual basis of conclusory opinions about the respondent's suitability for commitment under the applicable legal standards.

J. Counsel shall offer evidence favorable to the respondent's case and present lay and expert witnesses, including an impartial, independent developmental disabilities expert who has examined the respondent if possible.

K. After discussions with the respondent and with his or her consent, counsel shall present all evidence available that is favorable to the respondent regarding appropriate alternatives to involuntary commitment, including, but not limited to, the ability of the respondent to be served in the community, including the respondent's history of successful placement in the community, the availability of community-based services or other mechanisms to support the respondent in the community, including powers of attorney, guardianship or conservatorship.

L. Counsel shall offer evidence favorable to the respondent regarding the least restrictive placement for the commitment during the proceeding.

M. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of committing the respondent to the most restrictive setting available, such as the Montana Developmental Center. Counsel shall explore and consider offering evidence of the respondent's compliance with treatment, success in community treatment programs, and family and other support in the community.

N. Counsel shall consider the condition of the respondent in determining the degree to which the hearing procedures shall conform strictly to the applicable rules, as some respondents may not be able to consent knowingly and voluntarily to the waiver of any procedural or evidentiary rights. Counsel shall argue strict application for the burden of proof and the law and at endeavor at all times to preserve the record for appeal. Counsel shall review all orders and seek the amendment of orders as necessary, including the deletion of provisions not supported by the record.

O. Counsel shall provide continuity in representation for the respondent throughout the involuntary commitment process. If the court has ordered involuntary commitment, counsel shall advocate for an appropriate individualized treatment plan to be developed, including a post-institutionalization plan which contains all the elements required by law and is tailored to the respondent's needs and is reasonably designed to maximize the resident's abilities and enhance the resident's ability to cope with the environment. Counsel shall argue for the exclusion of all provisions that are unnecessarily restrictive or unsupported by the record. The plan should include the following elements:

a. All assessments of the respondent's specific limitations and needs;
b. A description of intermediate and long range habilitation goals, with a projected timetable for their attainment;
c. A statement of and an explanation for the plan of habilitation necessary to achieve the habilitation goals of the resident;

d. A specification of the professionals and other staff members who are responsible for the particular resident's attaining these rehabilitation goals;
e. Criteria for release to less restrictive settings for habilitation, based on the resident's needs including criteria for discharge and a projected date for discharge.

P. Counsel who has represented a respondent preceding and during a court hearing shall make every effort to maintain responsibility for the respondent's legal representation so long as the respondent remains committed.

Q. If counsel who represented the respondent during the commitment proceedings does not continue to represent the respondent after commitment is ordered, he or she shall make all reasonable efforts to ensure that the respondent is well represented in all matters that stem from the respondent's commitment. Specific objectives include:

a. A smooth transfer of responsibility to new counsel who assumes representation in post-hearing matters, including motions for amended findings, stays of the commitment order pending appeal, appeals, petitions for writs, periodic review hearings, recommitment proceedings and other available legal actions to contest commitment;
b. Monitoring of the treatment and services provided a committed respondent to ensure the quality of the treatment and services.

XVI. REPRESENTATION OF A MINOR WHO IS VOLUNTARILY COMMITTED TO A MENTAL HEALTH FACILITY UNDER §53-21-112, MCA

GOALS:

A. To actively and effectively represent minor children in proceedings where they or, if under the age of 16, their parents or guardian, have consented to mental health services treatment under §53-21-112, MCA, in an effective and professional manner throughout all phases of the representation.

B. To abide by specific mandatory standards of representation for public defenders as attorney for the minor.

C. To serve the stated interests of the minor, to be independent from the court and other participants in the litigation, including the minor's parents or guardian, and to be unprejudiced and uncompromised in representing the minor.

D. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the minor.

1. TRAINING AND COMPETENCY:

A. A public defender assigned to represent minors who have been voluntarily admitted to mental health services under §53-21-112, MCA, shall have a thorough understanding of involuntary commitment case law, statutes, and rules, as well as the mental health system.

B. To be eligible for assignment to represent minors who have been voluntarily admitted, counsel shall receive a minimum of five (5) hours of training, or the equivalent thereof, as certified by the Training Officer, completed the necessary hours for involuntary commitment training in the duties, skills, and ethics of representing involuntary commitment respondents. This training shall include visits to a variety of youth treatment facilities. Counsel shall utilize training and support provided by the Office of the State Public Defender.

C. Counsel shall be familiar with the public defender standards for representation of a respondent in a proceeding for involuntary commitment.

D. Counsel shall have basic knowledge of the classification of mental disorders and the ability to read and understand medical terminology related to mental disorders, developmental disabilities, alcoholism, and chemical dependency. Counsel shall be familiar with the medications used to treat mental disorders, developmental disabilities, alcoholism, and chemical dependency. Counsel shall be aware of how the minor's age, or a particular mental disorder, developmental disability, alcoholism, or chemical dependency will affect attorney-client communications and should recognize that communications may require special efforts on the part of counsel.

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the minor's case and explore the range of mental health and social services that may be available to the minor in the minor's community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to the minor.

C. Counsel shall advise the minor of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall help the minor determine his or her objectives by advising him or her about the probability of success in pursuing those options. If the minor expresses a desire to seek voluntary mental health treatment in a particular setting or related social services, counsel must give the minor the necessary and appropriate advice and assistance to pursue those desires.

E. Counsel shall advocate the minor's express wishes. The primary role of counsel is to represent the perspective of the minor alone, and not the perspective of the minor's relatives, friends, or guardian. This is true regardless of the age of the minor. In addition, counsel will not substitute his or her judgment about what is in the best interest of the minor. To the extent that a minor is unable or unwilling to express personal wishes, counsel must presume that the minor wishes to reside in the least restrictive environment.

F. Counsel shall meet with the minor as soon as possible after notification of his or her assignment to represent the minor. This meeting shall be conducted in private and shall be held sufficiently before any scheduled legal proceeding to permit effective preparation and allow pre-hearing assistance to the minor.

G. When meeting with the minor for the first time, counsel shall identify himself or herself by name and by affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other healthcare facility, counsel shall make it clear to the minor that he or she is not a member of the facility staff. Counsel shall inform the minor that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve the attorney-client confidentiality. Counsel shall also inform the minor client of the right to remain silent prior to the commencement of any court-ordered examination and that the minor cannot be examined without the presence of counsel.

H. During the conference, counsel shall obtain the following:

a. The circumstances that brought about the attorney's assignment, including the voluntary admission, the minor's age at admission, the extent to which the minor's parents or guardian participated in that decision, and the reason that the minor asked for counsel if that request brought about the assignment;
b. The names, addresses, and telephone numbers of all persons with knowledge of those circumstances;
c. Any information about the minor's past mental health treatment;
d. Information to aid the exploration of the minor's choices for treatment;
e. The name of a mental health professional of the minor's choice to conduct an independent evaluation.

I. During the conference, counsel shall also:

a. Explain what is happening and why, including a description of the judicial hearing if one is pending;
b. Explain the minor's rights in that process as well as the minor's rights regarding voluntary admission to mental health services; and
c. Explain that the minor may retain his or her own counsel at his or her own expense rather than accept representation by the appointed public defender.

J. Immediately after being assigned, counsel should review the file and should inform other parties and other counsel of his or her assignment and that, as counsel of record, he or she should receive copies of any pleadings, discovery exchanges, and reasonable notification of hearings and major changes of circumstances in the case.

K. Immediately after being assigned, counsel should meet with the minor adapting all communications to the minor's level of education, cognitive development, cultural background, and degree of language acquisition. Counsel should inform the minor about the court system, the proceedings, and counsel's responsibilities. Counsel should elicit and assess a minor's views and concerns of the case.

L. Counsel shall encourage and support the minor in maintaining contact with family members and friends if the minor so desires and when doing so would benefit the minor.

M. Counsel should thoroughly explain to the minor the requirements for a valid voluntary admission to a mental health facility under §53-21-111, MCA, and discuss all practical and legal considerations that flow from their admission.

N. If counsel believes it to be appropriate, counsel should seek to have a medical evaluation of the minor done by a qualified physician of the minor's choosing, and preserve said examination for further use on behalf of the minor.

O. Counsel should conduct thorough, continuing and independent investigations, including reviewing the minor's social service records, mental health records, if applicable, drug and alcohol related records, medical records, law enforcement records, and other records relevant to the case.

P. If the public defender was assigned to the case because there is an upcoming legal proceeding, such as an involuntary commitment proceedings, counsel will follow the appropriate public defender standards as well as these Standards.

Q. Counsel must ensure that a minor's consent to voluntary treatment is knowing and not a result of coercion or undue influence. Counsel shall explain the benefits and privileges of voluntary treatment and care to the client.

R. If the minor indicates that he or she would consent to voluntary treatment, counsel shall:

a. Determine whether the minor was indeed aware that by electing to receive voluntary patient status, he or she was agreeing to enter or remain in mental health services; and,
b. Make certain that this agreement was not the product of threats, unrealistic promise, or other forms of coercion.

S. If counsel has determined that the minor's consent to voluntary treatment is knowing and uncoerced, counsel shall immediately take steps to secure the dismissal of the involuntary commitment proceeding.

T. When, due to the minor's disability, the effect of medication, or other factors, counsel is unable to determine that the consent to voluntary patient status was made knowingly and voluntarily, he or she shall investigate the circumstances of the minor's stated desire to voluntarily receive treatment.

3. HANDLING THE CASE:

A. In preparation for court hearings, counsel must thoroughly prepare for trial, the examination of both law and expert witnesses, submission of trial briefs and stipulations, and all evidentiary considerations.

B. At any court proceedings, counsel should present and cross examine witnesses, offer exhibits as necessary, introduce evidence where appropriate, make arguments on the minor's behalf, and ensure that a written order is made and conforms to the court's oral rulings and statutorily required findings and notices. Counsel should abide by the minor's decisions about the representation with respect to each issue on which the minor is competent to direct counsel. Counsel should pursue the minor's expressed objectives.

C. Counsel should participate in and, when appropriate, initiate negotiations and settlement discussions if authorized by the client. Counsel should also participate in all depositions, pre-trial conferences, and hearings.

D. Counsel should determine and advocate for, on behalf of the minor, the least restrictive alternatives to meet the needs and wishes of the minor.

E. After the initial disposition of the case, counsel should discuss the end of the legal representation with the minor and discuss all avenues of appeal and other assistance in the future on behalf of the minor.

F. When counsel's representation terminates, counsel shall cooperate with the minor and any succeeding counsel in the transmission of the record, transcripts, file, and other pertinent information.

G. Counsel should provide continuity in representation for the minor. Counsel shall advocate for an appropriate treatment and discharge plan to be developed. The treatment plan should be tailored to the minor's needs. Counsel shall argue for the exclusion of all provisions that are unnecessarily restrictive or unsupported. The treatment plan should include the following elements:

a. All assessments of the minor's problems and needs;
b. A brief description of the nature and effects of service and treatment already administered to the minor;

c. A description of services and treatment to be administered, their possible side effects and feasible alternatives, if any;
d. The identities of agencies and specific individuals who will, in the future, provide the services and treatment;
e. The settings in which the services and treatment will be provided;
f. A time table for attaining the goals or benefits of treatment or care to be administered;
g. A statement of the criteria for transition to less restrictive placements, as well as the date for transfer or discharge; and,
h. A statement of the least restrictive conditions necessary to achieve the purposes of treatment.

H. The discharge plan should include the following:
a. An anticipated discharge date;
b. Criteria for discharge;
c. Identification of the facility staff member responsible for discharge planning;
d. Identification of community-based agency or individual who is assisting in arranging post discharge services;
e. Referrals for financial assistance needed by the patient upon discharge; and,
f. Other information necessary to ensure an appropriate discharge and adequate post discharge services.

I. Counsel who has represented a minor pursuant to §53-21-112, MCA, should make every effort to maintain responsibility for the minor's legal representation so long as the respondent remains a minor subject to a voluntary admission or involuntary commitment.

J. If counsel who represented the minor does not continue to represent the minor, he or she shall make all reasonable efforts to ensure that the respondent is well represented in all matters that stem from the minor's admission pursuant to §53-21-112, MCA. Specific objectives include:
a. A smooth transfer of responsibility to new counsel who assumes representation of the minor, including representation in matters including the periodic review of the minor's status; and,
b. Monitoring of the treatment and services provided a committed respondent to ensure the quality of the treatment and services.

XVII. REPRESENTATION OF PARENTS IN DEPENDENT/NEGLECT CASES

GOALS:

A. To actively, professionally, and zealously advocate for parents whose children are the subject of actions under the Child Abuse and Neglect laws of Montana and afford them every legal opportunity to preserve their parental rights.

B. To serve the state interest of the client and be independent from the court and other participants in the litigation, including the client's parents or guardians, and be unprejudiced and uncompromised in representing the client. Attorneys representing parents shall comply with the general standards for public defenders as well as these specific standards.

1. TRAINING:

A. To be eligible for assignment to represent parents in these court proceedings, counsel shall receive a minimum of sixteen (16) hours of training in representing parents of which at least four (4) hours were devoted to the Indian Child Welfare Act.

B. Counsel shall be knowledgeable in the following areas:

a. Legislation and case law on abuse and neglect, termination of parental rights, and adoption of children with special needs;
b. The causes and available treatments of child abuse;
c. Child welfare and family preservation services available in the community and the problems they are designed to address;
d. Services the State will and won't routinely pay for;
e. The structure and functioning of Child and Family Services of the Department of Public Health and Human Services;
f. Local experts who can provide attorneys with consultation and testimony on the reasonableness and appropriateness of efforts to maintain or return the child to the home;
g. Local and state experts who can provide attorneys with consultation and testimony of the special needs of Indian children and cultural differences;
h. Child and adolescent development;
i. Brain development and the affect of trauma on brain development;
j. Substance abuse issues;
k. Mental health issues; and
l. Disability issues.

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the various health and social services that may be available to the parent in the community.

B. Counsel shall advise the parent of all available options, as well as the practical and legal consequences of those options.

C. If the client is a parent whose location is unknown, all standard means, such as telephone book, internet, and putative father registry, shall be used to locate the parent. Other parents who are available shall be consulted as to the location of the missing parent.

D. Counsel shall actively represent the client at all stages of the proceeding. When the public defender becomes aware of the assignment, the public defender shall meet with the client as soon as possible and sufficiently before any scheduled hearing or proceeding, including the show cause hearing, to permit effective preparation.

E. When meeting with the parent for the first time, counsel shall identify himself or herself by name and affiliation, if appropriate. If the first meeting takes place in a detention, mental health, or other healthcare facility, counsel shall make it clear to the minor that he or she is not a member of the facility staff. Counsel shall inform the parent that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve that attorney-client confidentiality. Counsel shall also inform the parent that he or she has a right to remain silent.

F. During the conference, counsel shall:

a. Explain the issues and possible dispositions;
b. Explain the court process, timelines, and the role of all the parties involved, such as judge, prosecutor, guardian ad-litem, and parent;
c. Inform the parent not to make statements to anyone concerning the case without prior consultation with counsel;
d. Obtain signed releases for medical and mental health records, employment records, and other necessary records. Counsel should advise the client of the potential use of this information and the privileges that attach to this information;
e. Obtain information from the client concerning the facts and whether there were any statements made, witnesses, and other relevant information.

G. If counsel is unable to communicate with the client because of language or disability, counsel shall use the experts necessary to ensure the ability to communicate with the client.

3. HANDLING THE CASE:

A. Counsel should seek the most expedient and timely resolution of the proceeding possible while providing effective and zealous advocacy for the client. Counsel should only seek the continuance of any phase of the proceedings if it is necessary to effectively advocate for the client.

B. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in such proceedings, such as reports from agency employees, as well as substantive law in these proceedings.

C. In preparation for any proceedings such as show cause, adjudicatory or termination, counsel should:

a. Review the petition and all other evidence;
b. Prepare the client for the proceeding, explain the issues involved, and the alternatives open to the judge;
c. If the child has already been removed from the home, determine the basis for the removal;
d. Determine the actions taken by the State to investigate other possible actions to protect the child without removal, such as locating a non-custodial parent or relative, identifying services to address the needs of the parent and child, including intensive home-based services, and other services, such as disability support services.
e. Review all statements, documents, reports, and documentary evidence, including medical records, if any, and discuss these documents with the client;
f. Familiarize himself or herself with relevant law; and,
g. Interview all witnesses, favorable and adverse.

D. During any proceedings, counsel shall, where it benefits the client:

a. Examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence;
b. Offer evidence favorable to the client's case, if available; and,
c. Determine whether an expert is needed to assist in preparation of the parent's case.

E. During the show cause hearing, counsel shall examine witnesses as to:

a. Whether the agency has made all reasonable efforts to explore services that will allow the child to remain safely at home and avoid protective placement of the child;
b. Whether there are other responsible relatives or adults available who may be able to care for the child or provide additional supervision;
c. The accuracy of the facts contained in the petition or affidavit in support of intervention; and,

d. If the court grants the State's request and orders the child to be removed from the home, counsel shall challenge unnecessary supervision and restrictions on visitation.

F. In preparation for an adjudicatory hearing, counsel shall:

a. Determine what actions the client has taken since the preliminary proceeding, if there was one, to address the concerns of the state as to the safety of the child, and discuss with the client the treatment or other services to which the client would voluntarily agree;
b. Investigate whether the agency made reasonable efforts to prevent the need for placement and safely reunify the family, such as identifying services available to protect the child without removal, in-home baby sitters, intensive home-based services, and other services that address the needs of the parent and child, including disability support services, and whether the agency has taken prompt steps to evaluate relatives as possible caretakers.

G. At the adjudicatory hearing, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses, and challenge other non-testimonial evidence regarding:

a. The accuracy of the facts presented by the State to prove abuse or neglect of the child;
b. Factual basis of opinions presented by the State to prove abuse or neglect of the child;
c. Whether the agency failed to provide services that would have allowed the child to stay safely in the home;
d. If the court grants the State's request and orders the child to be removed from the home, counsel shall challenge unnecessary supervision and restrictions on visitation. In addition, after consultation with the client, counsel shall consider offering evidence to the court of treatment or services in which the client would voluntarily participate to obviate the need for a treatment plan or, if a treatment plan is ordered, to include in the treatment plan. Counsel shall challenge conditions in the treatment plan that are not justified or supported by the record.

H. Prior to making admissions or stipulations or agreeing to voluntarily place the child or relinquish any right to visitation with the child, counsel must:

a. Ensure that the client understands the consequences of such a decision;
b. Make it clear to the client that the ultimate decision to make the admission or voluntarily place the child has to be made by the client;
c. Investigate and candidly explain to the client the prospective strengths and weaknesses of the case, including the availability of the State's witnesses, concessions and benefits which are subject to negotiation, and the possible consequences of any adjudication;
d. Be satisfied that the admission is voluntary, that there is a factual basis for the admission, and that the client understands the right being waived; and,

e. Be aware of the effect the client's admission will have on any other court proceedings or related issues.

I. Counsel's recommendation on the advisability of an admission should be based on a review of the complete circumstances of the case and the client's situation.

J. Where counsel believes that the client's desires are not in the client's best interest, counsel may attempt to persuade the client to change his or her position. If the client remains unpersuaded, however, counsel should assure the client he or she will defend the client vigorously.

K. Notwithstanding the existence of ongoing negotiations with the State, counsel should continue to prepare and investigate the case in the same manner as if it were going to proceed to a hearing on the merits.

L. In preparation for a disposition hearing, counsel should:

a. Determine what actions the client has taken since the adjudicatory proceedings to address the concerns of the State as to the safety of the child;
b. Investigate what the agency has done to explore services that will allow the child to remain safely at home; and,
c. Determine what sort of disruption that the removal of the child has caused the child and the family.

M. In the disposition hearing, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

a. Whether, if the agency objects to placing the child with the parent, the agency sufficiently explored and provided services that would have allowed the child to reside safely in the parent's home;
b. Whether the agency appropriately considered the non-custodial parent or other family members as caretakers; and,
c. The factual basis of the agency's recommendations for placement outside of the home.

N. If the court grants the State's request and orders the child to be removed from the home, counsel shall challenge unnecessary supervision and restrictions on visitation.

O. In preparation for a permanency hearing,and, if parental rights have not been terminated, counsel should:

a. Keep in contact with the client and determine what actions the client has taken to address the concerns of the State as to the safety of the child;
b. Investigate what the agency has done to explore services that will allow the child to live safely with the parent; and,
c. Determine what sort of disruption the removal of the child has caused the child and the family.

P. In preparation for a parental rights termination proceeding, counsel should:

a. Determine what actions the client has taken to address the concerns of the State as to the safety of the child;
b. Investigate what the agency has done to explore services that will allow the child to remain safely in the home; and,
c. Determine what sort of disruption that the removal of the child has caused the child and the family.

Q. In a parental rights termination proceeding, counsel shall, where it benefits the client, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

a. Whether the statutory grounds for termination have been met;
b. Whether termination is in the best interest of the child;
c. Whether the agency made reasonable efforts to prevent the need for termination and safely reunify the family, such as identifying services available to protect the child without removal, in-home baby sitters, intensive home-based services, and other services that address the needs of the parent and child, including disability support services;
d. Whether the treatment plan, if one was required, was appropriate.

XVIII. REPRESENTATION OF A RESPONDENT IN A GUARDIANSHIP OR CONSERVATORSHIP PROCEEDING

GOALS:

A. To advocate zealously and professionally for the respondent who is the subject of a guardianship or conservatorship proceeding.

B. To abide by mandatory and specific standards of representation for public defenders as attorney for the respondent in a guardianship or conservatorship proceeding.

C. To serve the stated interests of the respondent, to be independent from the court and other participants in the litigation, including the respondent's guardian, if any, and to be unprejudiced and uncompromised in representing the respondent.

D. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the respondent.

E. Ensure that a guardianship, if ordered, encourages the development of maximum self-reliance and independence of the respondent, and is ordered only to the extent that the respondent's actual mental and/or physical limitations require.

1. TRAINING AND COMPETENCY:

A. A public defender assigned to represent respondents in a guardianship or conservatorship proceeding should have a thorough understanding of the law governing guardianship or conservatorship proceedings, as well as the social services, health care services, and other supports or legal arrangements, including powers of attorney, trusts, and advanced directives that, if employed, may obviate the need for guardianship or conservatorship.

B. To be eligible for assignment to represent respondents in guardianship or conservatorship proceedings, counsel shall receive a minimum of four (4) hours of training, or the equivalent thereof as certified by the Training Officer, completed the necessary hours for involuntary commitment in the duties, skills, and ethics of the representation of respondents. Counsel shall utilize training and support provided by the Office of the State Public Defender.

C. Counsel shall have basic knowledge of various mental and physical illnesses and disabilities, including mental illness and developmental disabilities, the features of those disabilities and illnesses, and the available treatments. Counsel should also have the ability to read and understand medical terminology related to these disabilities. Counsel should be aware of how a particular disability, illness or condition will affect the attorney-client communications and shall recognize communications may require additional efforts on the part of counsel. Counsel should also have familiarity with people with disabilities who function independently using alternative and less intrusive supports such as powers of attorney, trustees, and payees.

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers that understand the public defender's advocacy role to investigate the respondent's case and explore various social and health care services that may be available to the respondent in the community.

B. Counsel's role of advocate and advisor must be based on the knowledge of the range of services available to the respondent.

C. Counsel shall advise the respondent of all available options, as well as the practical and legal consequences of those options. If for any reason counsel believes that the respondent may have difficulty understanding or retaining information, counsel shall also provide this information in written format or any other alternative format that would assist the respondent to understand and retain the information and provide the same information to any advisor the ward authorizes to receive the information.

D. Counsel shall help the respondent determine his or her objectives by advising him or her about the probability of success in pursuing those options. If the respondent expresses a desire to seek social services or other support that would obviate the need for

guardianship or conservatorship, or would support the respondent to the extent that only limited guardianship or conservatorship would be warranted, counsel must give the respondent the necessary and appropriate advice and assistance to pursue those desires.

E. Counsel shall advocate the respondent's express wishes. The primary role of counsel is to represent the perspective of the respondent and not to substitute his or her judgment about what is in the best interests of the respondent. To the extent that a respondent is unable or unwilling to express personal wishes, counsel shall advocate the position that best safeguards and advances the respondent's interests in liberty.

F. Counsel shall meet with respondent as soon as possible after notification of his or her assignment to a guardianship or conservatorship proceeding case. This meeting shall be conducted in private and shall be held sufficiently before any scheduled hearings to permit effective preparation and allow pre-hearing assistance to the respondent, including but not limited to, allowing time to interview the respondent.

G. When meeting with the respondent for the first time, counsel shall identify himself or herself by name and by affiliation, if appropriate. If the first meeting takes place in a healthcare or residential facility, counsel shall make it clear to the respondent that he or she is not a member of the facility staff. Counsel shall inform the respondent that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve that attorney-client confidentiality. Counsel should inform the respondent that he or she has the right to remain silent prior to the commencement of and during any court ordered examination and that the respondent cannot be examined without the presence of counsel.

H. During the conference, counsel should obtain the respondent's version of the facts of the case, including:

a. The circumstances surrounding the filing of a guardianship or conservatorship petition;
b. The names, addresses, and telephone numbers of all persons with knowledge of the circumstances surrounding the guardianship or conservatorship petition;
c. Any information about past hospitalization and treatment;
d. Information about past guardianships, conservatorships, payeeships, valid or void durable powers of attorney, or other forms of substituted judgment to which the respondent may have been subject;
e. Information to aid the exploration of alternatives to guardianship or conservatorship;
f. Preferences for a guardian or conservator and any past conflicts or financial relationships between the person or persons seeking to be appointed guardian or conservator and the respondent;
g. The income and assets that the respondent is aware that he or she owns, any concerns that the respondent has about the management of those assets, any gifts or transfers in trust to the proposed guardian or conservator or others that the respondent has made at any time within the

last ten years, any provisions the respondent has made for the transfer by gift or inheritance of his or her assets to anyone, any obligation or desire the ward has to support others, any wishes the ward has for the priority in the use of his or her assets and any other information that may help counsel understand the ability of the ward to understand, identify, direct the management of and select the natural successors in interest to his or her assets. If the respondent has a deteriorating condition, counsel should consider tape recording or otherwise preserving this conversation in detail, including when, where, and with whom it occurred.

I. During the conference, counsel shall also:

a. Explain what is happening and why, including the basis on which the guardianship or conservatorship is sought, and offer a description of the court appointed physician's examination, the visitor's interview, and judicial hearing procedures;
b. Explain the respondent's rights in the process;
c. Explain that the respondent may retain his or her own counsel at his or her own expense rather than accept representation by the appointed public defender and the financial ramifications of each choice;
d. Explain the respondent's option to accept community services or supports as well as the legal options, including powers of attorney, use of payees, the formation of trusts, or the issuance of advance directives that may obviate the need for guardianship or conservatorship, the procedures of exercising these options and the legal consequences of these decisions;
e. Obtain his or her consent to enter into negotiations for settlement of the case with the petitioner if the respondent is willing and able to receive services or supports, or enter into other legal arrangements as an alternative to guardianship or conservatorship;
f. Discuss the desirability of a court hearing with the respondent; and,
g. Request the respondent's written or oral permission to obtain access to relevant records.

J. After being formally appointed, counsel shall, in preparation of any scheduled hearing, do the following:

a. Become thoroughly familiar with the statutory requirements governing guardianship and conservatorship in the jurisdiction as well as case law and court rules;
b. Thoroughly review the petition or other documents used to initiate the proceedings, the visitor's report, the court appointed physician's report, the medical records of the respondent, and any other document relevant to the proceedings;
c. Attempt to interview all persons who have knowledge of the circumstances surrounding the guardianship or conservatorship proceeding petition, including, but not limited to, the following:
    i. The petitioner(s);
    ii. The proposed guardian(s);

iii. The health care professionals or social workers, who have recently examined or treated the respondent;
iv. Previous treatment providers, if any;
v. The respondent's family, friends, partners, or acquaintances; and,
vi. Persons who may provide relevant information or who may be supporting or adverse witnesses at a hearing.

d. Obtain a medical examination of the respondent sufficiently thorough to rule out treatable health conditions that may be responsible for any cognitive impairments or behavioral deficits.

K. Counsel must ensure that a respondent's consent to voluntary services or supports, or to entering into legal arrangements as an alternative to guardianship or conservatorship, is known and not a result of coercion or undue influence. Counsel shall explain the benefits and privileges of each as part of counsel's efforts to make the respondent aware of all options available to him or her.

L. If the respondent indicates that he or she would consent to voluntary services or supports, or to entering into legal arrangements as an alternative to guardianship or conservatorship, counsel shall:

a. Ascertain whether the respondent was indeed aware of the consequences of electing to do so; and,
b. Make certain that this agreement was not the product of threats, unrealistic promises, or other forms of coercion.

M. If counsel has determined that the respondent's consent to voluntary services or supports, or to entering into legal arrangements, is not knowingly and uncoerced, counsel shall immediately take steps to arrange such services or draft such legal documents and to request dismissal of the guardianship or conservatorship proceeding.

N. When, due to the respondent's disability, the effect of medication, or other factors, counsel is unable to determine that the consent to voluntary services or supports, or to entering into legal arrangements, was made knowingly and voluntarily, he or she shall investigate the circumstances of the respondent's stated desire.

3. COURT PROCEEDINGS:

A. Counsel should seek the most expedient and timely resolution of the guardianship or conservatorship proceeding possible while providing effective and zealous advocacy for the respondent. Counsel should only seek the continuance of any phase of the proceeding if it is necessary to effectively advocate for the respondent.

B. Counsel should ensure that the respondent may exercise his or her right to a jury trial. Counsel shall inform the respondent of his or her right to a jury trial and explain the benefits and detriments of a jury trial, and a hearing in front of the judge alone. Counsel shall immediately notify the court if the respondent chooses a jury trial.

If the respondent waives his or her right to a jury trial, counsel shall establish that the waiver is knowing and voluntary.

C. Counsel shall ensure that a respondent actively participates in every stage of the guardianship or conservatorship proceeding. Counsel shall encourage the respondent to exercise his or her right to be present at all hearings.

D. Counsel shall avoid using his or her authority to waive the respondent's presence at the hearing except in the following extraordinary cases:

a. When the respondent unequivocally refuses to attend and cannot be encouraged to do so;
b. When attending would seriously jeopardize the respondent's mental or physical condition; or,
c. When the respondent's presence at the hearing would completely disrupt and prevent a meaningful proceeding.

E. If the respondent waives the right to be present, counsel shall make a record of his or her advice to the respondent regarding the right to be present and the choice to waive that right. In such circumstances, counsel shall make a record of the facts relevant to the respondent's absence from the hearing.

F. If at any time of the hearing a respondent is under the influence of prescribed medications, counsel should consider introducing evidence regarding the nature of the medication and its likely effects upon the respondent's demeanor.

G. Counsel should zealously and effectively engage in all aspects of trial advocacy.

H. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in guardianship or conservatorship proceedings, such as medical records, legal records arising in attorney-client conversations, wills, advance directives, durable powers of attorney, oral gifts, transfers in trust, and financial records, among others.

I. Counsel shall focus the court's attention on the legal issues to be decided, such as whether the criteria for incapacity of the ward have been met. Thus, counsel shall seek to bifurcate the determination of the ward's incapacity with the determination of the identity of the guardian or conservator.

J. During the guardianship or conservatorship hearing, counsel shall, where it benefits the respondent, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

a. Whether the case for guardianship or conservatorship is based on:
    i. The respondent's lack of sufficient understanding or capacity to make or communicate responsible decisions concerning the respondent's personal care including safe living arrangements;

ii. The impairment of the respondent's judgment so that the respondent is not capable of realizing and making rational decisions regarding medical or mental health treatment or handling day to day financial matters, or complex business or contract maters; or,

iii. The respondent's susceptibility to exploitation.

b. Whether there is any real factual basis for the petition;

c. How well the respondent is currently functioning and whether any indications of poor functioning are due to the respondent's social situation, income, or factors other than the prospective incapacity;

d. Whether possible alternatives have been explored, including community supports through Meals on Wheels, in-home care, personal care attendants, visiting nurses, durable powers of attorney, payeeship, and trusts, among others;

e. Whether a limited or temporary guardianship or conservatorship or protective order has been explored;

f. Whether health examinations were thorough;

g. Whether the respondent had recently been exhibiting abnormal or unusual behavior;

h. The factual basis of conclusory opinions about the respondent's incapacity;

i. Whether the proposed guardian or conservator is qualified to serve in that role;

j. Whether the respondent approves of the proposed guardian or conservator; and,

k. Whether the proposed guardian or conservator has a conflict of interest based on past gifts, transfers, disputes, financial or familial relationships, business dealings or partnerships, proposed inheritance, or otherwise.

K. Counsel shall offer evidence favorable to the respondent's case and present lay and expert witnesses. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the respondent's incapacity under the applicable legal standards.

L. After discussions with the respondent and with his or her consent, counsel shall present all evidence available regarding appropriate alternatives to full guardianship or conservatorship, including, but not limited to, voluntary community support and health care services and legal arrangements including powers of attorney, trusts, and advance directives.

M. Counsel shall offer all evidence available that is favorable to the respondent regarding the least restrictive guardianship, such as a limited guardianship, temporary guardianship, or protective order.

N. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of appointing a full guardian, the most restrictive guardianship available.

O. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of the limitation of any civil or political rights of the respondent, including, but not limited to, the right to make medical decisions, including end of life decisions, the right to privacy, including the right to make family decisions including marriage, parenting, and relationships, the right to association, the right of free speech and expression, the right to make or change a will, and the right to vote.

P. Counsel should consider the condition of the respondent in determining the degree to which the hearing procedures should conform strictly to the applicable rules, as some respondents may not be able to consent knowingly and voluntarily to the waiver of any procedural or evidentiary rights. Counsel should argue strict application for the burden of proof and the law and, at all times, endeavor to preserve the record for appeal. Counsel shall review all orders and seek the amendment of orders as necessary, including the deletion of provisions not supported by the record and the law.

Q. Counsel should provide continuity in representation for the respondent throughout the guardianship or conservatorship process. If the court orders a guardianship or conservatorship, counsel shall make every attempt to ensure that the order explicitly and narrowly defines the rights restricted by the guardianship and conservatorship.

R. Counsel shall also make every attempt to ensure that the guardianship or conservatorship order is fashioned to encourage the development of maximum self-reliance and independence of the respondent and is only as broad as is necessary given the respondent's actual mental and/or physical limitations.

S. Counsel shall seek to submit testimony or other evidence regarding the ward's preferred living situations, preferred treatment options, the sale or disposition of his or her home, cars, ranch, business or other assets of significant value. To the extent feasible, counsel should make the wishes of the ward clear to the court and the appointed guardian or conservator to provide direction in the future management of the ward or the ward's estate.

T. Counsel shall also request that the court calendar an immediate ninety (90) day inventory, annual accountings, guardian annual reports, and other matters, including court review and approval of any anticipated sale or dispersal of significant assets of the respondent, especially plans to "spend down" those assets to qualify the respondent for governmental benefits, to ensure that should a guardian or conservator be appointed, the guardian or conservator does not proceed without appropriate court supervision. In addition, counsel shall request that the court prohibit the guardian from receiving compensation from the ward or ward's estate unless the guardian has provided prior notice to the court and all interested parties of the rate of compensation, and for what services the compensation will be paid.

XIX. REPRESENTATION OF PERSONS IN A PROCEEDING TO DETERMINE PARENTAGE UNDER THE UNIFORM PARENTAGE ACT (§40-6-119, MCA)

GOALS:

A. To actively and effectively represent clients in proceedings to determine parentage under §40-6-119, MCA, in an effective and professional manner throughout all phases of the case.

B. To serve the interest of the client and to be independent from the court and other participants in the litigation and be unprejudiced and uncompromised in representing the client.

C. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf on the client.

1. TRAINING AND COMPETENCY:

A. Absent a knowing and intelligent waiver by the party represented, all attorneys who represent parties in proceedings under the Parentage Act must receive a minimum of two (2) hours of training specific to the representative of punitive parents under the Act.

B. All attorneys must have a working knowledge of the Uniform Parentage Act, statutes, and rules, as well as cases interpreting and applying them.

C. In addition to basic legal knowledge, the attorney must have and continue to develop basic trial skills, basic advocacy skills, relevant motion practice, and a sufficient understanding of writ and appellate practice to advise a client whether and how to seek such remedies and to protect the record in the District Court.

2. HANDLING THE CASE:

A. Counsel should accept the appointment with the full understanding of the issues and functions to be performed. If counsel considers parts of the appointment to be confusing or incompatible with his or her ethical duties, counsel should inform the court of the conflict and ask the court to clarify or change the terms of the appointment.

B. Immediately after being appointed, counsel should review the file and should inform other parties and other counsel of his or her appointment, and that as counsel of record he or she should receive copies of pleadings, discovery exchanges, and reasonable notification of hearings and major changes of circumstances in the case.

C. Immediately after being appointed, counsel should meet with the punitive parent, adapting all communications to the client's level of education, cognitive development, cultural background, and degree of language acquisition. Counsel should inform the client about the court system, the proceedings, and counsel's responsibilities. Counsel should illicit and assess a client's views and concerns of the case.

D. Counsel should develop a theory or strategy of the case to implement at hearings, including presentation of factual and legal issues.

E. Counsel should conduct thorough, continuing, and independent investigations, including reviewing the client's social service records, mental health records, drug and alcohol related records, medical records, law enforcement records, and other records relevant to the case.

F. Counsel should conduct exhaustive discovery including, where necessary, depositions, written interrogatories, production of documents, subpoena *duces tecum*, physical examinations, and requests for admissions.

G. In preparation for court hearings, counsel needs to complete exhaustive trial preparation, witness preparation of both lay and expert witnesses, preparation of trial briefs and stipulations, and all evidentiary considerations.

H. Counsel should stay apprised of other court proceedings affecting the client, the parties, and other household members.

I. Counsel should attend meetings involving issues within the scope of the case and take any necessary and appropriate action to expedite the proceedings.

J. Counsel should participate in and, when appropriate, initiate negotiations and settlement discussions. Counsel should also participate in all depositions, pre-trial conferences, and hearings.

K. Counsel should file or make petitions, motions, responses, or objections when necessary.

L. At any court proceedings, counsel should present and cross-examine witnesses and offer exhibits as necessary and, where appropriate, introduce evidence and make arguments on the client's behalf and ensure that a written order is made and conforms to the court's oral rulings and statutorily required findings and notices. Counsel should abide by the client's decisions about the representation with respect to each issue on which the client is competent to direct counsel. Counsel should pursue the client's expressed objectives, unless the client's objectives violate counsel's ethical duties or responsibilities as an officer of the Court.

M. After the initial disposition of the case, counsel should discuss the end of the legal representation with the client and discuss all avenues of appeal and other assistance in the future on behalf of the client.

N. When counsel's representation terminates, counsel shall cooperate with the client and any succeeding counsel in the transmission of the record, transcripts, file, and other pertinent information.

XX. REPRESENTATION OF PARENTS OR A GUARDIAN IN A PROCEEDING FOR THE INVOLUNTARY COMMITMENT OF A DEVELOPMENTALLY DISABLED PERSON

GOALS:

A. To actively and effectively represent the parents or guardian of a disabled person in a proceeding for the involuntary commitment of that person and to provide for the protection of their procedural rights pursuant to §53-20-112, MCA.

B. To serve the best interests of the parents or guardian and to be independent from the court and other participants in the litigation and be unprejudiced and uncompromised in representing them.

C. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the parents or guardian.

1. TRAINING AND COMPETENCY:

A. All attorneys representing parents or guardians of a disabled person who are the subject of a petition for involuntary commitment must have completed the minimum hours of training for involuntary commitment and developmentally disabled respondents, before being assigned the representation of such parents/or guardian.

B. Counsel should be familiar with all relevant statutes, rules, and case laws regarding and related to involuntary commitments in Montana.

C. In addition to basic legal knowledge, the attorneys must have and continue to develop basic trial skills, basic advocacy skills, relevant motion practice, and a sufficient understanding of writ and appellate practice to advise the parents or guardians whether and how to seek such remedies and to protect the record in the District Court.

D. Counsel should be familiar with the public defender standards for representation of a respondent in a proceeding for involuntary commitment.

2. HANDLING THE CASE:

A. Counsel should accept the appointment with the full understanding of the issues and functions to be performed. If counsel considers parts of the appointment to be

confusing or incompatible with his or her ethical duties, counsel should inform the court of the conflict and ask the court to clarify or change the terms of the appointment.

B. Immediately after being appointed, counsel should review the file and should inform other parties and other counsel of his or her appointment, and that as counsel of record he or she should receive copies of pleadings, discovery exchanges, and reasonable notification of hearings and major changes of circumstances in the case.

C. Immediately after being appointed, counsel should meet with the parents or guardian of the respondent, adapting all communications to their level of education, cognitive development, cultural background, and degree of language acquisition. Counsel should inform the parents or guardian about the court system, the proceedings, and counsel's responsibilities. Counsel should illicit and assess the parents or guardians views and concerns of the case.

D. Counsel should be aware of and protect all of the procedural rights guaranteed under §53-20-112, MCA, including:

a. The right to be present at any hearing held pursuant to §53-20-101;
b. Offer evidence and cross-examine witnesses at any hearing; and,
c. Have the respondent examined by a professional person of his or her choice.

E. Counsel should thoroughly explain to the parents or guardian the contents of the petition for commitment and discuss all practical and legal considerations that flow from the petition.

F. If the petition provides a medical report, counsel should ascertain whether the physician indicates on the report his or her qualifications and that those qualifications are appropriate to make the recommendation regarding capacity or incapacity contained in the report.

G. If counsel believes it to be appropriate, or the parents or guardian request it, counsel should seek to have a medical evaluation of the disabled person completed by a professional person of their choice, and preserve said examination for further use on behalf of the respondent.

H. Counsel should conduct thorough, continuing, and independent investigations, including reviewing the respondent's social service records, mental health records, if applicable, drug and alcohol related records, medical records, law enforcement records, and other records relevant to the case.

I. Counsel should determine whether or not the respondent has an existing trust or durable power of attorney which may be relevant.

J. Counsel should be knowledgeable about all other alternatives and types of medical treatment for the respondent's disability and of the type and duration of treatment requested by the petition.

K. In preparation for court hearings, counsel needs to complete exhaustive trial preparation, witness preparation of both lay and expert witnesses, preparation of trial briefs and stipulations, and all evidentiary considerations.

L. Counsel should stay apprised of any other court proceedings affecting the respondent, the parties, or other household members.

M. If the client is a parent whose location is unknown, all standard means, such as telephone book, internet, and punitive father registration, shall be used to locate the parent. Other parents or guardians who are available should be consulted as to the location of the missing parent. Counsel should use all due diligence in locating said missing parent.

N. At any court proceedings, counsel should present and cross-examine witnesses and offer exhibits as necessary, introduce evidence where appropriate, and make arguments on the parents' or guardian's behalf and ensure that a written order is made and conforms to the court's oral rulings and statutorily required findings and notices. Counsel should abide by the parents' or guardian's decisions about the representation with respect to each issue on which the parents or guardians are competent to direct counsel. Counsel should pursue the parents or guardians expressed objectives, unless their objectives violate counsel's ethical duties or responsibilities as an officer of the court.

O. Counsel should participate in and, when appropriate, initiate negotiations and settlement discussions. Counsel should also participate in all depositions, pre-trial conferences, and hearings.

P. Counsel should determine and advocate for, on behalf of the parents or guardians, whatever treatment alternatives meet the wishes of the parents or guardians. If counsel has reason to believe that the parents or guardians legitimate interests require investigation, counsel should request appropriate alternatives as may be allowed by the court.

Q. After the initial disposition of the case, counsel should discuss the end of the legal representation with the parents or guardians and discuss all avenues of appeal and other assistance in the future on their behalf.

a. When counsel's representation terminates, counsel shall cooperate with the parents or guardians and any succeeding counsel in the transmission of the record, transcripts, file, and other pertinent information.

XXI. REPRESENTATION OF A RESPONDENT IN A PROCEEDING FOR INVOLUNTARY COMMITMENT – ALCOHOLISM

GOALS:

A. To actively and professionally act as a zealous advocate for the respondent who is the subject of a proceeding for commitment as an individual with alcoholism under §53-24-301 and 302, MCA.

B. To abide by mandatory standards of representation for Public Defenders as attorney for the respondent in a referral or an involuntary commitment proceeding.

C. To serve the stated interests of the respondent, to be independent from the court and other participants in the litigation, including the respondent's guardian, if any, and to be unprejudiced and uncompromised in representing the respondent.

D. To exercise independent and professional judgment in carrying out the duties assigned by the court and to participate fully in the case on behalf of the respondent.

E. In the following standards, an involuntary commitment refers to both involuntary commitment and recommitment proceedings.

1. TRAINING AND COMPETENCY:

A. A public defender assigned to represent a respondent in an involuntary commitment proceeding shall have a thorough understanding of involuntary commitment law, as well as the specifics of §53-24-303 and 304, MCA, and of the chemical dependency and mental health systems.

B. To be eligible for assignment to represent respondents in involuntary commitment proceedings, counsel shall receive a minimum of eight (8) hours of training and complete supervised on-the-job training in the duties, skills, and ethics of representing involuntary commitment respondents. This training shall include visits to a variety of treatment facilities, including the Montana Chemical Dependency Center, community service providers, and sober living group homes within the area served by the public defender. Counsel shall utilize training and support provided by the Office of the State Public Defender.

C. Counsel shall have basic knowledge of alcoholism and chemical dependence and the ability to read and understand medical terminology related to chemical dependence, addiction, alcoholism, and the medical and recovery treatment models. Counsel shall be familiar with the medications used to treat alcoholism, addiction, and

chemical dependence. Counsel shall be familiar with the roles of intervention, treatment, voluntary abstinence, and support groups in long-term abstinence and recovery. Counsel shall be aware of how chemical dependence, addiction, or active alcoholism will affect attorney-client communications and shall recognize that effective communication may require special efforts on the part of counsel.

D. Counsel should be familiar with other resources for persons who are addicted to alcohol or other drugs available either within the area served by the public defender or reasonably accessible by respondents. Included in these resources are recovery programs, such as twelve step recovery programs, public and private medical and treatment facilities. Counsel should be familiar with the local recovery community and locate resources and supports for respondents.

2. CASE PREPARATION:

A. Counsel shall solicit the support of social workers, chemical dependency counselors, mental health professionals, and health care professional who understand the public defender's advocacy role to investigate the respondent's case and explore treatment, self-help, and support groups, as well as social services that may be available to the respondent in the community.

B. Counsel's role of advocate and advisor must be based on knowledge of the range of services available to respondent.

C. Counsel shall advise the respondent of all available options, as well as the practical and legal consequences of those options.

D. Counsel shall help the respondent determine the respondent's objectives by advising the respondent about the probability of success in pursuing those options. If the respondent expresses a desire to seek voluntary treatment or related social services, counsel must given the respondent the necessary and appropriate advice and assistance to pursue those desires.

E. Counsel shall advocate the respondent's express wishes. The primary role of counsel is to represent the perspective of the respondent alone, and not the perspective of the respondent's relatives, friends or guardians. In addition, counsel shall not substitute his or her judgment about what is in the best interests of the respondent. To the extent that a respondent is unable or unwilling to express personal wishes, counsel must presume that respondent does not wish to be involuntarily committed.

F. Counsel shall meet with respondent as soon as possible after notification of his or her assignment to an involuntary commitment case. This meeting shall be conducted in private and shall be held sufficiently before any scheduled hearing to permit effective preparation and allow pre-hearing assistance to the respondent.

G. When meeting with the respondent for the first time, counsel shall identify himself or herself by name and by affiliation if appropriate. If the first meeting takes place in a healthcare or a detention facility, counsel shall make it clear to the respondent that he or she is not a member of the facility staff. Counsel shall inform the respondent that their conversation is confidential and that the matters they discuss should not be revealed to facility staff or others in order to preserve that confidentiality. Counsel shall also inform the respondent that he or she has the right to remain silent prior to the commencement of any court-ordered examination and that the respondent cannot be examined without the presence of counsel.

H. During the conference, counsel shall obtain the respondent's version of the facts of the case, including:

a. The circumstances surrounding the filing of the involuntary commitment;
b. The names, addresses, and telephone numbers of all persons with knowledge of the circumstances surrounding the petition;
c. Information about past treatment at any public or private treatment facility, medical detoxification facility, or any past psychiatric hospitalization;
d. Information to aid the exploration of alternatives to commitment;
e. The name of a chemical dependency expert or addictions medicine specialist of respondent's choice to conduct an independent evaluation.

I. During the conference, counsel shall also:

a. Explain what is happening and why, including the basis on which the respondent's involuntary commitment is sought, and offer a description of the examination conducted by the physician and judicial hearing procedures;
b. Explain the respondent's rights in the commitment process, including the right to treatment, the right to refuse treatment, and the right to an examination by a licensed physician of the respondent's choice;
c. Explain that the respondent may retain his or her own counsel at his or her own expense rather than accept representation by the appointed public defender;
d. Explain the respondent's option to accept voluntary treatment, the procedures to exercise that option, and the legal consequences of voluntary admission to a treatment facility; discuss whether the respondent is willing to accept voluntary treatment in a treatment facility;
e. Obtain respondent's consent to enter into negotiations for settlement of the case with the county attorney and with chemical dependency professionals if the respondent is willing and able to give informed consent to voluntary care of related social services as an alternative to involuntary commitment;
f. Discuss the desirability of a court hearing with the respondent; and,
g. Request the respondent's written or oral permission to obtain access to relevant records, including any facility records and incident reports.

J. After being notified of appointment to the case, counsel shall, in preparation of any scheduled hearing, do the following:

a. Become thoroughly familiar with the statutory requirements governing involuntary commitment in the jurisdiction as well as case law and court rules;
b. Thoroughly review the petition or other documents used to initiate the commitment proceedings, any affidavits or statements in support thereof, the certificate of the examining physician, pre-hearing examination reports, the medical records of the respondent, the facility records of any facility in which the respondent has recently resided and any other document relevant to the proceedings.
c. Attempt to interview all persons who have knowledge of the circumstances surrounding the involuntary commitment petition:
    i. The petitioner(s);
    ii. The certifying physician, facility staff, social workers, mental health professionals, and other persons who have examined or treated the respondent during the current or any known previous involuntary commitment proceedings;
    iii. Previous service providers, if any;
    iv. The respondent's family, guardian or acquaintances;
    v. Any law enforcement, emergency response or intervention personnel who may have previously been involved with respondent;
    vi. Any persons who may provide relevant information or who may be supporting or adverse witnesses at a commitment hearing.
d. Facilitate the exercise of the respondent's right to be examined by a professional person of the respondent's choice.

K. Counsel must ensure that the respondents consent to voluntary treatment is knowing and not a result of coercion or undue influence. Counsel shall explain the benefits and privileges of voluntary treatment and care to all respondents as a part of counsel's efforts to make respondents aware of all options available to them.

L. If the respondent indicates that he or she would consent to voluntary treatment, counsel shall:

a. Ascertain whether the respondent was indeed aware that by electing to convert to voluntary status, he or she was agreeing to enter or remain in a health care facility; and,
b. Make certain that this agreement was not the product of threats, unrealistic promise, or other forms of coercion.

M. If counsel has determined that the respondents consent to voluntary treatment is knowing and uncoerced, counsel shall immediately take steps to secure the dismissal of the involuntary commitment proceedings.

N. When, due to the respondent's disability, the effect of medication, or other factors, counsel is unable to determine that the conversion to voluntary patient status was

made knowingly and voluntary, he or she shall investigate the circumstances of the respondent's stated desire to voluntarily receive treatment.

3. COURT PROCEEDINGS:

A. Counsel should seek the most expedient and timely resolution of the involuntary commitment proceeding possible while providing effective and zealous advocacy for the respondent. Counsel should only seek the continuance of any phase of the involuntary commitment proceeding if it is necessary to effectively advocate for the respondent.

B. Counsel should ensure that a respondent actively participates in every stage of the involuntary commitment proceeding. Counsel shall encourage the respondent to exercise his or her right to be present at all hearings. Counsel shall advise the respondent of the legal basis under which the court will order discharge, commitment, or recommitment, and the length of commitment.

C. Counsel shall avoid using his or her authority to waive respondent's presence at the hearing except in the following extraordinary cases:

a. When the respondent unequivocally refuses to attend and cannot be encouraged to do so;
b. When attending would seriously jeopardize the respondent's mental or physical condition; or,
c. When the respondent's presence at the hearing would completely disrupt and prevent a meaningful proceeding.

D. If the respondent waives the right to be present, counsel shall make a record of his or her advice to the respondent regarding the right to be present and the choice to waive that right. In such circumstances, counsel shall make a record of the facts relevant to the respondent's absence from the hearing.

E. If, at the time of hearing, a respondent is under the influence of prescribed medications, drugs of abuse of alcohol, counsel shall consider introducing evidence regarding the nature of the medication and its likely effects upon the respondent's demeanor.

F. Counsel shall zealously and effectively engage in all aspects of trial advocacy.

G. Counsel shall be familiar with the applicable court rules and local customs in practice regarding the admissibility of evidence commonly offered in involuntary commitment proceedings, such as hospital and medical records.

H. Counsel shall focus the court's attention on the legal issues to be decided, such as whether the criteria for commitment have been met. Counsel shall plan objections to the admissibility of evidence regarding previous commitment and pending

criminal charges, if any, so as to preclude their consideration at least until the adjudicative issue of whether commitment is warranted has been determined.

I. During the involuntary commitment hearing, counsel shall, where it benefits the respondent, examine and cross-examine adverse lay and expert witnesses and challenge other non-testimonial evidence regarding:

a. Whether there has been shown by clear and convincing evidence a real factual basis for determination that respondent is an alcoholic who habitually lacks self-control as to the use of alcoholic beverages;
b. Whether there has been shown by clear and convincing evidence real factual basis for determination that respondent has threatened, attempted, or inflicted physical harm on another and, unless committed, respondent is likely to inflict physical harm on another;
c. Whether there has been shown by clear and convincing evidence a real factual basis for the determination or is incapacitated by alcohol of imminent danger;
d. The factual basis of conclusory opinions about the respondent's suitability for commitment under the applicable legal standards; and,
e. Whether there has been shown by clear and convincing evidence a real factual basis to determine that the department is able to provide adequate and appropriate treatment for the respondent and that the treatment is likely to be beneficial.

J. Counsel shall offer evidence favorable to the respondent's case and present lay and expert witnesses, including an impartial, independent addictions medicine expert, physician or chemical dependency counselor who has examined the respondent, if possible.

K. After discussions with the respondent and with his or her consent, counsel shall present all evidence available that is favorable to the respondent regarding appropriate alternatives to involuntary commitment, including, but not limited to, the availability of private treatment resources, the respondent's history of successful placement in the community, the availability of community-based services or other mechanisms to support the respondent in the community.

a. Counsel shall offer evidence favorable to the respondent regarding the least restrictive placement for the commitment during the proceedings;
b. Counsel shall also thoroughly examine and cross-examine adverse lay and expert witnesses, particularly regarding the factual basis of conclusory opinions about the necessity of committing the respondent to the most restrictive setting available, such as the Montana Chemical Dependency Center or other approved public treatment facility. Counsel shall explore and consider offering evidence of the respondent's compliance with previous treatment, success in community treatment programs, and family and other support in the community.

L. Counsel shall consider the condition of the respondent in determining the degree to which the hearing procedures shall conform strictly to the applicable rules, as some respondents may not be able to consent knowingly and voluntarily to the waiver of any procedural or evidentiary rights. Counsel shall argue strict application for the burden of proof and the law and, at all times, endeavor to preserve the record for appeal. Counsel shall review all orders and seek the amendment of orders as necessary, including the deletion of provisions not supported by the record.

M. Counsel shall provide continuity in representation for the respondent throughout the involuntary commitment process.

N. Counsel who has represented a respondent preceding and during a court hearing shall make every effort to maintain responsibility for the respondent's legal representation so long as the respondent remains committed.

O. If counsel who represented the respondent during the commitment proceeding does not continue to represent the respondent after commitment is ordered, he or she shall make all reasonable efforts to ensure that the respondent is well represented in all matters that stem from the respondent's commitment. Specific objectives include:

a. A smooth transfer of responsibility to new counsel who assumes representation in post-hearing matters, including motions for amended findings, stays of the commitment order pending appeal, appeals, petitions for writs, periodic review hearings, recommitment proceedings, and other available legal actions to contest commitment; and
b. Monitoring of the treatment and services provided a committed respondent to ensure the quality of the treatment and services.

INDEX

§40-6-119, MCA, 101
§41-5-130, MCA, 63
§41-5-1602, MCA, 66
§41-5-206, MCA, 66
§46-14-311, MCA, 46
§46-14-312, MCA, 46
§46-8-103 MCA, 55
§53-20-112, MCA, 75, 103, 104
§53-21-111, MCA, 85
§53-21-112, MCA, 81, 87
§53-21-116, MCA, 67
§53-24-301, MCA, 106
§53-24-302, 106
§53-24-303, 106
§53-24-304, 106

Accounting and Billing System, 19
Adam Walsh Act, 36
Alford plea, 35
Ancillary Proceedings, 50
Anders v. California, 55
Appeal, 49
Appellate Advocacy Standards, 54
Application of standards, 6
Attorney-Client Communication, 16
Attorney-Client Relationship
  Conflicts of Interest, 8
  Duration of Representation, 8
  Initial Contact, 7
  Nature of Representation, 7

Budget, 52

Case, 22
Case Selection
  Nature of Case, 6
Caseloads
  Evaluation, 21
  Individual Public Defender, 21
Client Interview, 25
Commitment hearing, 79
Compensation, 52
Conditions of Release, 27
Conflict Cases, 15
Conflicts of Interest, 8
  Action after identifying, 13
  Another person might have committed the crime and the other person is a former client, 11
  Claim of ineffective assistance of counsel, 11
  Codefendants, 10
  Disclosure, 14
  Employee is a potential prosecution witness or alleged victim, 11
  Ethical wall, 14
  Examination, 10
  Former client is potential prosecution witness or alleged victim, 11
  Motion to withdraw, 14
  Organization, 9
  Policy and Guidance, 10
  Simultaneous representation of Defendant and potential prosecution witness or alleged victim, 11
  Waiver, 13
Contract Attorneys, 17
  Contract Oversight, 19
  Proficiency Determination, 20
Cross-examination, 41

Delivery of Services, 17
Dependent/Neglect Cases, 88
Direct examination, 42
Discovery, 31
Discrimination, 6
DNA testing, 57
Duties of Counsel
  Ancillary Proceedings, 50
  Challenging the Prosecution's Case, 41
  Client Interview, 25
  Closing Argument, 43

  Defendant's Right to an Appeal, 49
  Defendant's Right to Apply to the Sentence Review Panel, 50
  Discovery, 31
    General, 24
    Investigation, 30
    Jury Instructions, 45
    Motion for a New Trial, 49

Opening Statement, 39
Plea Negotiation, 33
Postconviction Relief, 50
Preliminary Hearing, 28
Presenting the Defendant's Case, 42
Pretrial Motions, 31
Pretrial Release, 24, 28
Sentencing Hearing, 45
Theory of the case, 31
Trial Preparation, 37

Eligibility of client, 5
Experts, 30

Facilities and Support Services, 52

Habeas Corpus, 72
Hobbs Act, 36

Indian Child Welfare Act, 88
Interviewing witnesses, 30
Investigation, 30
Involuntary Commitment
Alcoholism, 106
Mental Illness, 67
Parent or Guardian of a developmentally disabled person, 103
Serious Developmental Disability, 75

Jury Instructions, 45
Jury Selection, 38
Challenging for Cause, 39

Kids' Management Authorities (KMAs), 61

Minor who is voluntarily committed under §53-21-112, MCA, 81
Montana Youth Court Act, 61
Motion for a New Trial, 49
Motion to withdraw conflict of interest, 14

Nolo Contendere, 35
North Carolina v. Alford, 35

Opening Statement, 39
Organization and Conflict of Interest, 9
Organization of the State Public Defender System, 8

Performance Evaluations, 19
Physical evidence, 30
Plea Negotiation, 33
Police reports, 30
Postconviction Proceedings Standards, 56
Postconviction Relief, 50
Preliminary Hearing, 28
Pretrial Motions, 31
Pretrial Release, 24, 28
Proficiency Determination for Contract Attorneys, 20
Prospective Jurors, 39
Publicizing of Services, 6

Racketeering Influenced and Corrupt Organization (RICO), 36
Redirect, 43
Respondent in a Guardianship or Conservatorship Proceeding, 93

Sentence Review Panel, 50
Sentence Review Standards, 58
Sentencing, 46, 47, 48
Sentencing Guidelines, 36
Sentencing Hearing, 45
Standby Counsel, 51

Theory of the Case, 31

Uniform Parentage Act, 101

Voir Dire, 37, 38

Youth Court Standards, 59
Youth subject to the jurisdiction of the District Court, 66