

OFFICE OF THE STATE PUBLIC DEFENDER



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STATE OF MONTANA

REPORT TO THE PUBLIC DEFENDER COMMISSION

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Mitigation Plan Update

Implementation of the mitigation plan has been a major project in the past three months. Concerns about the duration of the mitigation plan and the lack of benchmarks for assessing the plan's impact on clients and the work force, were expressed by agency attorneys and staff during a December meeting of our joint Labor-Management Committee.

Traditionally, OPD has used private attorneys to handle non-conflict cases on an overflow basis, when we don't have an FTE presence in the area and it would be more efficient for local private counsel to take a case, and to take on cases for which a regional office has a conflict of interest. This protocol is in keeping with American Bar Association's Ten Principles of a Public Defender Delivery System, Principle 2: "Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar."

Following the October 3 Public Defender Commission meeting we developed data on the number of non-conflict/overflow cases that each region would have to keep in-house to mitigate the budget shortfall. Similar data were developed to identify conflict cases.

Keeping non-conflict cases in our offices created an overload of cases in almost every regional office. The number of additional cases offers a measure of the increased workload. The additional hours of work that these cases require helps define the increased workload more realistically.

The number of new cases filed in each region also impacts the increased workload on the regional offices. OPD tracks the numbers of new cases by case type, by court, and by region. This helps identify and allocate resource needs.

Attached to this Report are regional summaries with information about the Program 1 workforce as reported in the Governor's Report, the anticipated overload of non-conflict cases in terms of numbers of cases and additional hours of work, and unofficial raw data on the numbers of new felony, DN and misdemeanor cases opened in OPD from July 1 through December 30, 2016.

These considerations helped inform our approach in addressing the overload and in hiring applicants as modified attorneys. The job posting was announced both within the OPD work force as well as externally. As a result, staff attorneys already employed by OPD could apply along with the pool of private attorneys who contract with OPD.

The plan was premised in part on the numbers of permanent attorneys and staff in each region. Not all regions were at full-strength when the plan was implemented, however. A regional office with a vacant position, or with an attorney or staff person out of the office on an extended period, was disadvantaged in terms of capacity to address the overload of cases. As the plan rolled out, a few permanent staff attorneys moved within regions to fill modified or vacant positions. In some regions we hired experienced attorneys who have home-based offices or provide their own offices. Some regions did not receive applications, or the applicants did not meet the needs of the region.

To date, in Program 1 we hired a full-time attorney in Region 1/Kalispell. This position is based in Thompson Falls and will cover Sanders County. We hired two part-time attorneys in Region 2/Missoula. In Region 3/Great Falls a part-time attorney was hired in Conrad to cover cases in that area. In Region 4/Helena, two full-time and one three-quarter time attorneys were hired. However, this office had permanent position vacancies prior to adoption of the plan, and two full-time attorneys changed positions under the mitigation plan (one moved to another region, and the second moved from a permanent, full-time FTE to a modified, three-quarter time position). Region/5 Butte hired a modified position in Dillon. Region 8/Bozeman hired two full-time modified positions in the Bozeman office. In Region 9/Billings, a full-time modified attorney was hired in Red

Lodge, and two attorneys and a support person were hired to fill a critical area in Hardin. A part-time attorney was added to the Billings office.

In eastern Montana, the Glendive office (Region 10) added a part-time attorney, and before the mitigation plan was adopted we added a full-time permanent attorney to the Miles City office (Region 11) to help with cases in Miles City and Glendive.

We monitor each region individually to assess the impact. The key assessment tool is the monthly case weight value of new cases assigned to attorneys. In OPD, we use a case weighing system, in which case types have been given a specific value in terms of anticipated hours needed to resolve the case. This system is used to assign new cases in an office. The agency has determined that assigning no more than 125 hours' worth of new cases to an attorney in a month is the aspirational goal.

In the last three months case weights have increased throughout much of the agency, and some attorneys are laboring under case weights that are two to three times the 125-hour case weight/month benchmark set by the Commission. Some of our hard-hit regions, like the Helena office, were short-staffed, facing increased numbers of new cases, and called upon to absorb and keep in-house a substantial number of cases that otherwise would be assigned to contract attorneys. This pace is not sustainable. It raises ethical concerns for attorneys and supervisors. Unless we develop waiting lists for clients, we will have to alleviate the overload by considering contracting out cases in a limited basis.

We are considering a variety of additional steps to help cut costs. Representation in treatment courts is one area of focus. If we can use a staff attorney to provide representation in lieu of paying a contract attorney, we will realize a savings. This adds more work to the staff attorneys, however.

Strategic Relationship Development.

Goal 1.4 of the Strategic Plan directs us to develop strategic relationships with stakeholders. One performance measurement assesses our participation on commissions and committees. I continue to serve as a Governor's appointee on the Montana Board of Crime Control. I serve as a member of the Commission on Courts of Limited Jurisdiction, and attended meetings this quarter.

Goal 1.5 of the Plan directs us to develop social work and law internship and training programs in conjunction with colleges, universities and the law school. We have added social worker positions in our Missoula and Billings offices. We are working to develop internship programs through the universities in these cities, and it appears we will have a social worker intern join our Helena office in mid-January.

Client Services Programs.

It is our goal to be prudent stewards of the taxpayers' money, by ensuring that services are provided only to qualified clients. We have focused on collecting and developing the capacity to report on data regarding the eligibility process. These reports can be made available for review.

Client-Centered Practices.

We can work toward this goal by having regular strategic planning meetings with managers and supervisors. Regional deputy public defenders and managing attorneys met in Bozeman on October 12 during our annual training conference.

I have set up regular calls with regional deputies and managing attorneys via Skype.

Effective Representation.

Timely resolution of cases is an objective, and we assess outcomes in part by collecting and reporting on the number of open cases and the number of inactive cases. We generate reports on the number of cases, by region and by case types. For the period of July 1 through December 25, we had a total of 31,284 open cases in all regions. This is an increase of slightly more than 1,500 open cases over the number of open cases in October. In the same time period, we had 7,472 inactive cases, which is an increase of about 200 cases. These reports can be made available for review.

We recognize that case outcomes and dispositions are an important measurement of the delivery of public defense. We collect and report on dispositive motions, and we are working on enhancing our ability to report on outcomes in criminal and civil cases. Reports can be made available for review.

REGION 1, KALISPELL

Regional Facts

Regional Office: Kalispell
Branch Office: Polson
4 District Courts; 6 Courts of Limited Jurisdiction
Contract Attorneys: 48

Total FTE Positions in Program 1

Attorneys: 18.5
Support: 8
Investigators: 3

Workload Information – New Cases Assigned - Programs 1 and 3

	<i>FY 15</i>	<i>FY 16</i>	<i>FY 17 (July – Dec)</i>		
			<i>P1</i>	<i>P 3</i>	<i>Total</i>
<u>Dist. Ct. Cases</u>					
- Felonies	1,005	1,308	563	110	673
- DN Cases	462	530	94	160	254
<u>Limit. Juris. Cases</u>	3,191	3,500	1557	157	1714

Non-conflict cases to keep in-house 11/1/16 – 6/30/17

	<i>Total Cases</i>	<i>Total Hours</i>	<i>Ave. Hours/Month</i>
Felonies (DC)	179	2,685	335.6
Misdemeanors (LC)	592	2,960	370.0

REGION 2, MISSOULA

Regional Facts

Regional Office: Missoula
Branch Office: Hamilton
3 District Courts; 10 Courts of Limited Jurisdiction
Contract Attorneys: 66

Total FTE Positions in Program 1

Attorneys: 23.5
Support: 10
Investigators: 3

Workload Information – New Cases Assigned - Programs 1 and 3

	<i>FY 15</i>	<i>FY 16</i>	<i>FY 17 (July – Dec)</i>		
			<i>P1</i>	<i>P 3</i>	<i>Total</i>
<u>Dist. Ct. Cases</u>					
- Felonies	1,003	1,055	440	59	499
- DN Cases	493	698	93	213	306
<u>Limit. Juris. Cases</u>	4,331	4,529	1,994	281	2,275

Non-conflict cases to keep in-house 11/1/16 – 6/30/17

	<i>Total Cases</i>	<i>Total Hours</i>	<i>Ave. Hours/Month</i>
Felonies (DC)	11	165	20.6
Misdemeanors (LC)	109	545	68.1

REGION 3, GREAT FALLS

Regional Facts

Regional Office: Great Falls
5 District Courts; 16 Courts of Limited Jurisdiction
Contract Attorneys: 51

FTE Positions in Program 1

Attorneys: 12
Support: 7
Investigators: 2

Workload Information – New Cases Assigned - Programs 1 and 3

	<i>FY 15</i>	<i>FY 16</i>	<i>FY 17 (July – Dec)</i>		
			<i>P1</i>	<i>P 3</i>	<i>Total</i>
<u>Dist. Ct. Cases</u>					
- Felonies	898	990	380	111	491
- DN Cases	766	833	159	156	315
<u>Limit. Juris. Cases</u>	1,455	1,785	846	40	886

Non-conflict cases to keep in-house 11/1/16 – 6/30/17

	<i>Total Cases</i>	<i>Total Hours</i>	<i>Ave. Hours/Month</i>
Felonies (DC)	51	765	95.6
Misdemeanors (LC)	144	720	90.0

REGION 4, HELENA

Regional Facts

Regional Office: Helena
3 District Courts; 8 Courts of Limited Jurisdiction
Contract Attorneys: 49

FTE Positions in Program 1

Attorneys: 13
Support: 6
Investigators: 1

Workload Information – New Cases Assigned - Programs 1 and 3

	<i>FY 15</i>	<i>FY 16</i>	<i>FY 17 (July – Dec)</i>		
			<i>P1</i>	<i>P 3</i>	<i>Total</i>
<u>Dist. Ct. Cases</u>					
- Felonies	568	742	339	78	417
- DN Cases	340	341	60	140	200
<u>Limit. Juris. Cases</u>	2,086	1,977	846	104	950

Non-conflict cases to keep in-house 11/1/16 – 6/30/17

	<i>Total Cases</i>	<i>Total Hours</i>	<i>Ave. Hours/Month</i>
Felonies (DC)	64	960	120.0
Misdemeanors (LC)	517	2,585	323.0

REGION 5, BUTTE

Regional Facts

Regional Office: Butte
Branch Office: Anaconda
6 District Courts; 14 Courts of Limited Jurisdiction
Contract Attorneys: 56

Total FTE Positions in Program 1

Attorneys: 9
Support: 4
Investigators: 1

Workload Information – New Cases Assigned - Programs 1 and 3

	<i>FY 15</i>	<i>FY 16</i>	<i>FY 17 (July – Dec)</i>		
			<i>P1</i>	<i>P 3</i>	<i>Total</i>
<u>Dist. Ct. Cases</u>					
- Felonies	402	453	191	36	227
- DN Cases	284	256	51	104	155
<u>Limit. Juris. Cases</u>	1,307	1,331	637	130	767

Non-conflict cases to keep in-house 11/1/16 – 6/30/17

	<i>Total Cases</i>	<i>Total Hours</i>	<i>Ave. Hours/Month</i>
Misdemeanors (LC)	381	1,905	238.0

REGION 6, HAVRE

Regional Facts

Regional Office: Havre
Branch Office: Glasgow
6 District Courts; 16 Courts of Limited Jurisdiction
Contract Attorneys: 34

Total FTE Positions in Program 1

Attorneys: 4
Support: 2
Investigators: 1

Workload Information – New Cases Assigned - Programs 1 and 3

	<i>FY 15</i>	<i>FY 16</i>	<i>FY 17 (July – Dec)</i>		
			<i>P1</i>	<i>P 3</i>	<i>Total</i>
<u>Dist. Ct. Cases</u>					
- Felonies	327	400	121	39	160
- DN Cases	305	300	49	139	188
<u>Limit. Juris. Cases</u>	606	753	319	65	384

Non-conflict cases to keep in-house 11/1/16 – 6/30/17

	<i>Total Cases</i>	<i>Total Hours</i>	<i>Ave. Hours/Month</i>
Misdemeanors (LC)	11	55	6.8

REGION 7, LEWISTOWN

Regional Facts

Regional Office: Lewistown
7 District Courts; 17 Courts of Limited Jurisdiction
Contract Attorneys: 38

FTE Positions in Program 1

Attorneys: 1
Support: 1
Investigators: 1

Workload Information – New Cases Assigned - Programs 1 and 3

	<i>FY 15</i>	<i>FY 16</i>	<i>FY 17 (July – Dec)</i>		
			<i>P1</i>	<i>P 3</i>	<i>Total</i>
<u>Dist. Ct. Cases</u>					
- Felonies	148	153	60	25	85
- DN Cases	67	139	15	31	46
<u>Limit. Juris. Cases</u>	291	332	105	16	121

Non-conflict cases to keep in-house 11/1/16 – 6/30/17

	<i>Total Cases</i>	<i>Total Hours</i>	<i>Ave. Hours/Month</i>
Misdemeanors (LC)	83	415	51.9

REGION 8, BOZEMAN

Regional Facts

Regional Office: Bozeman
 3 District Courts; 10 Courts of Limited Jurisdiction
 Contract Attorneys: 31

FTE Positions in Program 1

Attorneys: 10
 Support: 6
 Investigators: 2

Workload Information – New Cases Assigned - Programs 1 and 3

	<i>FY 15</i>	<i>FY 16</i>	<i>FY 17 (July – Dec)</i>		
			<i>P1</i>	<i>P 3</i>	<i>Total</i>
<u>Dist. Ct. Cases</u>					
- Felonies	425	531	251	35	286
- DN Cases	129	165	34	52	86
<u>Limit. Juris. Cases</u>	1,922	2,016	1,040	121	1,161

Non-conflict cases to keep in-house 11/1/16 – 6/30/17

	<i>Total Cases</i>	<i>Total Hours</i>	<i>Ave. Hours/Month</i>
Misdemeanors (LC)	235	1,175	146.9

REGION 9, BILLINGS

Regional Facts

Regional Office: Billings
 4 District Courts; 13 Courts of Limited Jurisdiction
 Contract Attorneys: 61

FTE Positions in Program 1

Attorneys: 23
 Support: 10
 Investigators: 3

Workload Information – New Cases Assigned - Programs 1 and 3

	FY 15	FY 16	FY 17 (July – Dec)		
			P1	P 3	Total
<u>Dist. Ct. Cases</u>					
- Felonies	1,440	1,704	698	344	942
- DN Cases	756	1,213	261	309	570
<u>Limit. Juris. Cases</u>	4,851	4,462	1,794	281	2,075

Non-conflict cases to keep in-house 11/1/16 – 6/30/17

	Total Cases	Total Hours	Ave. Hours/Month
Felonies (DC)	333	4,995	624.4
Misdemeanors (LC)	475	2,375	296.9

REGION 10, GLENDIVE

Regional Facts

Regional Office: Glendive
8 District Courts; 19 Courts of Limited Jurisdiction
Contract Attorneys: 27

FTE Positions in Program 1

Attorneys: 3
Support: 1.25
Investigators: 1

Workload Information – New Cases Assigned - Programs 1 and 3

	<i>FY 15</i>	<i>FY 16</i>	<i>FY 17 (July – Dec)</i>		
			<i>P1</i>	<i>P 3</i>	<i>Total</i>
<u>Dist. Ct. Cases</u>					
- Felonies	327	374	162	9	171
- DN Cases	113	107	51	63	114
<u>Limit. Juris. Cases</u>	423	473	228	3	231

Non-conflict cases to keep in-house 11/1/16 – 6/30/17

	<i>Total Cases</i>	<i>Total Hours</i>	<i>Ave. Hours/Month</i>
Misdemeanors (LC)	248	1,240	155.0

REGION 11, MILES CITY

Regional Facts

Regional Office: Miles City
 7 District Courts; 16 Courts of Limited Jurisdiction
 Contract Attorneys: 32

FTE Positions in Program 1

Attorneys: 2
 Support: 1
 Investigators: 1

Workload Information – New Cases Assigned - Programs 1 and 3

	FY 15	FY 16	FY 17 (July – Dec)		
			P1	P 3	Total
<u>Dist. Ct. Cases</u>					
- Felonies	156	194	92	14	106
- DN Cases	110	109	31	55	86
<u>Limit. Juris. Cases</u>	282	351	156	21	177

Non-conflict cases to keep in-house 11/1/16 – 6/30/17

	Total Cases	Total Hours	Ave. Hours/Month
Misdemeanors (LC)	3	15	1.9