

# OFFICE OF THE STATE PUBLIC DEFENDER



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### REPORT TO THE PUBLIC DEFENDER COMMISSION

William F. Hooks, Chief Public Defender

January 29, 2015

#### Legislative Update

The eight bills approved by the Commission were assigned to committees and presented for hearing. The House Bills were all heard in the House Judiciary Committee, and the Senate Bills were heard in the Senate Judiciary Committee.

House Bill (HB) 71 would amend the statute which addresses financial eligibility by inserting a definition for "household." This bill was tabled by the House Committee following vigorous debate.

HB 72 would replace our state special revenue account with general fund revenue. This would impact the collection of fees some clients are ordered by courts to pay as reimbursement for public defender costs. HB 72 was withdrawn by the agency and the bill's sponsor. The bill drew considerable attention and recognition of the dilemma OPD faces in attempting to collect these fees. The Governor's staff will facilitate meetings with OPD and others in a coordinated effort at solving the problem.

HB 133 would allow OPD to enter into "fixed fee" contracts with private attorneys who represent OPD clients in treatment courts and other specialized cases. The Committee tabled the bill, but subsequently agreed to reconsider the bill with minor amendments.

HB 139 would address an issue identified in a Legislative Audit Division report. This bill would permit regional deputy public defenders to be involved in the process by which we determine whether clients are financially eligible. During the hearing a technical amendment was discussed.

HB 143 would authorize the suspension of payments of public defender fees by incarcerated persons during the period of incarceration. This bill passed out of committee and was approved by the House. It will be transmitted to the Senate and heard by the Senate Judiciary Committee.

OPD presented three bills in the Senate Judiciary Committee on January 16. SB 59 would clarify the process to be used by courts in considering OPD motions to rescind orders of appointment. SB 61 would clarify contempt laws, by making clear that contempt provisions apply to cases in which a person was not assigned a public

defender because the offense charged did not include imposition of a jail term as a condition of punishment. SB 90 would remove jail time as a possible condition of punishment for eight misdemeanor offenses.

During the session we monitor the status of proposed legislation that may impact the agency and our clients. OPD is an executive branch agency, and we do not lobby for or against bills submitted by other agencies. We may appear in the role of an “informational witness” on bills that may have an impact on public defense and we will offer a position regarding that impact. A frequent way in which we provide information on a bill’s impact is by submitting a fiscal note. If we believe a bill might have a financial impact on our operations, for example by creating more work for us, we attempt to quantify the financial impact we believe we would sustain by passage of the bill. We use data developed from JustWare and other internal reports, and internal surveys, to determine the fiscal impact. This information is included with the legislation so legislators can consider the possible fiscal impact passage of a bill would create.

Sometimes we see a bill that warrants our opposition. One such bill was HB 218. This bill would have required all current and future OPD investigators to be licensed by the board that oversees private security entities. The sponsor recently withdrew his bill. It may yet be re-introduced, and OPD will monitor the situation and be prepared to oppose it if it reappears.

#### **Judge Substitution Rule Update**

Following the Commission’s approval in December of a policy for substitution of judges, Chairman Gillespie filed with the Montana Supreme Court a request for permission to submit the new policy and explanatory supplemental comments. The Montana Judges Association asked for permission to submit rebuttal supplementary comments as they deem necessary. I anticipate that the Court will issue a decision on the MJA request to change the rule.

#### **ACLU-MT Pilot Program Update**

ACLU-MT submitted a proposal for a pilot project. The project included a plan by which we would collect in our Helena office (Region 4) data related to cases and clients. We would collect, track and report this data for a period of one year. ACLU would help recruit experts to assist OPD in analyzing the data. I concluded it would not be feasible for us to undertake this project in Region 4 at this time. We can all agree that the collection and appropriate analysis of data regarding caseloads, resources and expenditures is vital. However, we do not currently have the staff and attorney resources available to carry out the proposed project in Region 4.