



Brian Schweitzer  
Governor

# OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

Chief Public Defender  
Randi Hood

## MEMORANDUM

TO: Randi Hood

FROM: Harry Freebourn

CC: Joslyn Hunt, Garry Bunke, Brian Smith

DATE: August 16, 2010

RE: Agency Information Improvement Team - American University Recommendations

### **Budget Committee**

Recommendation 4:

**Budget submission must show accomplishments**

- (a) Define "accomplishments" (other than case growth/dispositions)
- (b) Develop reporting
- (c) Brief Commission/OBPP/Legislative Staff

Update: The Agency Information Improvement Team request that the Budget Committee consider the following recommendation: In September, the agency will prepare and submit to the Budget Office (OBPP) a statement of major accomplishments of the agency for further submittal to the Legislative Staff for use in their budget analysis. This information would come from the regions and departments in the form of a written response to the Chief Public Defender delivered on or before August 31. Some examples may include: a reminder of how past public defender services were provided before the System was established and a comparison of how it is now: access by defenders to investigative staff, robust Appellate function, expert training, administrative support staff, etc.

Recommendation 17:

**Next biennium budget should begin immediately**

- Increase contract attorney rate to \$110 per hour**
- Staff attorneys salaries are in line w/state employees**
- Strike minimum case load requirement from current law**
- Set coalition with contract attorneys to facilitate effort (\*)**
- Set reporting for external parameters (\*)**

Update: The Agency Information Improvement Team believes that the Agency budget as submitted to the Commission for their approval addresses the contract attorney rate increase and the attorney's salaries. The Chief Public Defender has developed policy to limit caseloads by those that manage and submitted a request for legislation to the Governor's administration requesting the minimum caseload be removed from law.

## **Collective Bargaining Committee**

Recommendation 1:

**Information should describe (The Information Project)**

**Record and report on caseloads**

**Develop drop down boxes for dispositions**

**Record workload of attorneys (Case Weighting System)**

**Define other reports that help all manage (Info Project)**

**Write/deploy reports: caseloads/disposition/workload**

**Develop/institute information certification process (\*)**

**Record cultural data (\*)**

**Institute a short term training program**

**Institute long term training (Orientation/Annual Update)**

Update: Provide the "Agency Information Project PowerPoint." The Team's mission is to review all agency information to determine if it is useful and accurate and if not recommend fixes or decide to abandon the reporting. In addition the Team will ask all agency stakeholders about their informational needs and determine how to meet those needs.

The Team also recommends that the Commission develop a method to approve major information requests to determine if it's worth the time and expense. The Commission may consider appointing an audit committee with a separate budget to hire independent auditors with a directive to verify the accuracy of agency operational information. The Commission may consider defining standard reporting from agency which would allow the agency to plan and set work schedules.

Recommendation 2:

**Adjust case weighting system (Information Project)**

**Meet with LMC to design/adopt new weightings**

**Advise commission of LMC decisions**

**Develop Appellate CWS (\*)**

Update: The Labor Management Committee (LMC) that is comprised of members from the attorney bargaining unit and members from management has met several times to revamp the Agency's case weighting system. This is a LMC developed tool. Please see the attachment that illustrates the new rules for the CWS tool. During the June 17<sup>th</sup> Commission meeting the new CWS rules were handed out and discussed. The LMC met again on August 13<sup>th</sup> to adjust and finalize these new rules. The LMC expects to implement the new rules on September 1. The Appellate CWS is still under development.

## **Legislative Committee**

Recommendation 6:

**Commission aggressive in demanding reliable reports**

**Commission sets process to identify required info**

- Identify/design new reports
- Identify current reports that are not reliable
- Report on statutory mandates/standards issues (\*)

**Agency (PDC) explores info and produces reports (\*)**

**Commission reviews and approves/adjusts reports**

**Agency develops consequences for inaccurate reports (\*)**

Update: The Team recommends that the Commission appoint and audit committee.

## **Personnel Committee**

Recommendation 20:

**Explain why different resource distributions among regions**

**Write analysis for distribution to stakeholders**

**Include Commission in the Grievance process**

Update: The Team has developed the following options to be considered by the Committee: (1) The agency's regions and departments request budgets and the Chief and her staff allocate the appropriation to meet needs as best as possible and these allocations and the basis for them are placed in writing to the Commission. (2) The regions and departments report funding needs directly to the Commission and ask them allocate the funds. (3) Consider a hybrid where the Chief and her staff develop budgets with the regions and departments and they both meet with the Commission to discuss the agreed upon allocations.

## **Standards Committee**

Recommendation 23

**Commission must be assertive in demanding info from staff**

**Define the relevant information that is needed**

**Staff will design and deliver reporting**

Update: Develop standard operational reporting and put an audit committee in place to assure its accuracy.

## **IT Committee**

Recommendation 32:

**Give all attorney access to automated legal research engine**

**Staff Attorneys**

**Contract Attorneys- 1st lot of 50 licenses**

**Contract Attorneys - 2nd lot of 50 lic. (implement at 50)**

Update: The Commission has directed the agency to contact LEXIS to request pricing on smaller lots. The agency has done so and is awaiting a response on pricing for a smaller lot of licenses.

OFFICE OF THE STATE PUBLIC DEFENDER

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**AGENCY INFORMATION PROJECT**

**AS OF**

**August 2010**

# PURPOSE

To provide the agency with any information necessary to achieve its mission

- How? Identify stakeholders' information needs
- Process:
  - Review current reporting to assure that it is relevant and if it is not either fix it or dump it
  - Develop new reporting for stakeholders

# Team Members

- Harry Freebourn – Leader
- Brian Smith – Large region representative
- Joslyn Hunt – Appellate representative
- Garry Bunke – Small region representative

# Where is the data to produce reports?

Information is located everywhere:

- In Case Management
- SABRHS
- Other state agencies
- Other governments
- In the minds of our staff (not written)

# Stakeholders

- Executive Branch
  - Governor's Office
  - OBPP
  - Other Agencies
- Legislative Branch
  - During Session
  - Interim Committees (L and J and LFC)
- Montana Public Defender Commission

## Stakeholders Continues

- Chief Public Defender
- Other OPD Management
- Staff and Contract Attorneys
- Administrative Staff
- ACLU
- Judges
- General Public

## The Project Team Must:

- Assure that data is reliable
- Assure that data is timely
- Assure that data is comparable
  - All offices are counting the same way
  - All offices and gathering, entering, and reporting information in the same manner
  - Assure that data is consistent
- Produce reports that provide red flags when the above is not accurate

## Project Tasks

- Review and fix CWS Info and processes
- Review Case Counting info and processes
- Judgments/Dispositions
- Time Reporting
- Certification process - open/closed cases
- Training on system use and use of reports
- Monitor backlogs and allow for assistance
- Records retention

## Items Continues

- Training on tables in case management
- Business process coordination
- Define what is to be input at a minimum
- Define how to identify incorrect data
- Define operational info that clearly communicates agency's mission
- Review current operational and financial reports



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Chief Public Defender  
Randi Hood

## **CASELOAD MANAGEMENT TOOL RULES**

### **Including a Step by Step Process**

*as developed and approved by  
the Labor Management Committee*

Revised August 13, 2010

1. Every Regional Deputy Public Defender and Managing Attorney will receive this set of rules and instructions that explains how to use the caseload management tool and a form that will be used to track caseload. Every region will follow these rules and use this form.
2. 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.
3. Cases will be assigned daily and entered into the caseload management form. This information will be reported to the Central Office within 10 calendar days after the end of each month.
4. The 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.
5. 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).
6. This tool is monitoring case intake rather than open cases, therefore, there is no incentive for a staff attorney to keep cases open.
7. 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).

8. When a staff attorney's annual case units reaches 150 annual units, the Regional Deputy Public Defender or Managing Attorney must meet with the staff attorney to discuss the attorney's entire caseload.
9. 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.
10. The LMC agreed to value case units as follows:
  - A. Felonies are split into four groups:
    - i. Property crimes and offenses against public administration and order = 1.00
    - ii. Felony DUI or dangerous drugs = 1.50
    - iii. Crimes against persons (except homicide) = 2.00
    - iv. Homicide = 5.00

Trial Time: add 1.0 to the month when a trial occurs.

Units are assigned based upon the highest crime charged, and then additional units are added to the case as follows:

- v. Three or four charges, add 0.50
- vi. Five or more charges, add 1.00

**See Attachment A.**

- B. Misdemeanors are divided into two groups:
  - i. All city ordinance violations, disorderly conduct, obstructing, minor in possession and all traffic offenses except DUI/PerSe = 0.30
  - ii. DUI/PerSe and all crimes except disorderly conduct, obstructing and minor in possession = 0.70
  - iii. Cases comprised of five or more charges = 0.70

Trial Time: add 0.50 to the month when a trial occurs.

**See Attachment A.**

C. Petition to Revoke (PTR) = 0.50 units

D. Dependent and Neglect (DN) = 2.00 units (see note below)

*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.*

E. Guardianship (DG) = 0.50 units

F. Fugitive and out of county warrants = 0.25 units

G. Civil Commitments (DI) = 1.00 units

H. Juveniles

i. Felony = 1.00 units

ii. Misdemeanor or status offense = 0.50 units

I. Developmentally Disabled (DD) = 1.00 units

J. DUI Court (our involvement in these courts will terminate soon)  
Treatment Court (??)

K. Travel Time = (applies to any type of case: civil, misd, felony, etc)

i. Add 0.50 to the case units assigned if a case is assigned outside the home region.

ii. Add 2.00 to the monthly units assigned for those who practice in courts located outside of the city where their office is located.

(example, practice in Whitefish Municipal Court, and I work out of the Kalispell office, add 2.0 to my monthly total)

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

12. This is a “rolling month” process so the most recent actual information replaces the old information and the total is recalculated.

13. Special circumstances:

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

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.)

- B. 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 (because spreadsheet focuses primarily on current workload it doesn't make sense to go back to previous months and make adjustments).
- C. 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.
- D. New hires: Backfill 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.
- E. 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, unless more than 15 units are transferred in a given month. If more than 15 units are transferred in a given month, the transfer will be spread across the previous months until the total transfer is accounted for and the other preceding months reflect up to 15 units. Example: Step One: subtract the number of cases taken from that attorney (if any are taken away, an attorney might only receive cases)

*Example:*

Step One: attorney gives away 20 cases

Jan	Feb	Mar	Apr	May	Jun	
8	12	10	12	10	12	
				-8	-12	(subtract 20 cases)
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8	12	10	12	2	0	(total after cases subtracted)

Step Two: add the cases received (gets 30 cases)

Jan	Feb	Mar	Apr	May	Jun	
8	12	10	12	2	0	
			+2	+13	+15	(add 30 cases)
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8	12	10	14	15	15	(total after cases added)

F. This tool will be reviewed periodically and may be adjusted by the Labor Management Committee.

# ATTACHMENT A

Misdemeanor:

**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.)

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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:

**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 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

**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.)

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

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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)