

# OFFICE OF THE STATE PUBLIC DEFENDER



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### REPORT TO THE PUBLIC DEFENDER COMMISSION

William F. Hooks, Chief Public Defender

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#### Legislative Update.

OPD has six bills which we hope to have introduced in the upcoming Legislative session. We are in the process of discussing our proposals with prospective legislative sponsors.

One bill will change the process by which OPD obtains sentencing information and accounts for collections of public defender fees assessed by courts. A key component of this bill will relieve a client of the obligation to make payments of public defender fees during periods of incarceration. A second bill would authorize the Conflict Coordinator to hire an attorney to represent persons in post-conviction cases, and to provide vital support to the Conflict Coordinator.

Three bills relate to efforts to alleviate some of our case assignment burdens. We are seeking to remove statutory provisions which authorize a court to order OPD to assign counsel to represent guardians *ad litem* in dependent/neglect cases; to order OPD to assign counsel to represent persons who appear in diversionary treatment courts; and provisions which provide for imposition of a jail sentence upon conviction for certain misdemeanors.

Lastly, we will seek a statutory amendment, so as to permit OPD to enter into "flat fee" contracts in certain civil case contexts, where such contracts make economic sense and would not harm or impair the level of service provided to our clients.

In addition to these bills, OPD will be tracking all budget bills and any bills which might have a fiscal impact on our agency. We also have begun to track legislative proposals which might have an impact on the services we provide. For example, a draft bill would revise the statutes relating to involuntary commitment proceedings, and a second proposal would provide for abolition of the death penalty.

We will monitor this information regularly during the 2013 session, and will provide updated information to the Commission members. We will accommodate any requests by the Commission for additional information regarding legislation as well.

### **Pay Issues.**

*Job Survey.* As noted previously, we have retained Communication and Management Services, LLC (CMS), a Helena company, to conduct a comprehensive study of position classifications and compensation. CMS developed a questionnaire and submitted it to agency employees. Initially, CMS received only a limited number of responses from our employees, so we decided to encourage our staff to respond and provided additional time. Sufficient responses have been received, and CMS is in the process of collating the data and preparing written recommendations and a report. We recently met with CMS, and expect to have the results of the study and the report within the next few days.

### **Other Issues of Note.**

*Limitation on Representation in Ancillary Proceeding.* Standard VI.32 authorizes assigned counsel to represent indigent clients only in limited instances. Strict compliance with this standard may have the unintended consequence of preventing OPD counsel or contract counsel from providing thorough representation, or from productive involvement in an early stage in a case. I recommend that the Standards Committee be assigned the task of reviewing the Standards and considering whether modifications would be appropriate.

For example, in matters involving juveniles, OPD counsel occasionally are approached by a youth court official or probation officer, with a request that counsel meet with a youth and his or her parent or guardian. This request comes before any petition is filed with the Youth Court. The purpose of the meeting is to permit the youth and a responsible adult to learn more about the nature of the proceedings, to have questions answered, and to make informed decisions. Counsel's involvement may result in a matter being resolved informally, without the necessity of more formal court proceedings.

Similarly, in certain dependent/neglect cases or in parental determination proceedings, particularly those which also involve other issues like custody and support, counsel may be faced with a dilemma: help the client by representing him or her in matters outside the strict parameters of the case to which counsel was assigned, and get the OPD case resolved more quickly; or decline to take any extraneous acts because those acts are not within the parameters of the case, and likely see the case drag on, unresolved, for a longer period.

These situations show that some of the standards, while lofty and aspirational, might be modified to better help us serve persons in need.

*Conditions of Incarceration.* Montana American Civil Liberties Union recently challenged the conditions of the Custer County detention facility, and in response county officials agreed that inmates could not be housed long-term in that facility. County officials entered into a contract with Valley County to house Custer County inmates in the jail in Glasgow. This development benefitted those OPD clients who are subject to incarceration during the pendency of their cases, as they are now housed in habitable, appropriate facilities. However, movement of our clients to Glasgow placed them 200 miles away from our office in Miles City, and put them over 400 miles away from contract attorneys in Billings. Our ability to provide appropriate legal representation is jeopardized.

Sheila Newman, Region 11 Deputy Public Defender, and I have been working with representatives of ACLU to coordinate our responses to this problem. Ms. Newman and I met with Judge Day, Judge-elect Huss, and Custer County Attorney Glade on November 20, and were able to begin a dialogue toward addressing the burdens these developments placed on our clients' rights to the effective assistance of counsel, and the right to be present. I am hopeful we will be able to continue this discussion in the months and years ahead, until a new jail facility is constructed in Custer County.