

OFFICE OF THE STATE PUBLIC DEFENDER



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REPORT TO THE PUBLIC DEFENDER COMMISSION

William F. Hooks, Chief Public Defender

February 15, 2013

Legislative Update.

Legislation introduced at the request of the Public Defender Commission has met with mixed success in the first few weeks of the 2013 session. Two proposed bills intended to alleviate some of our case assignment burdens have so far met with success. HB 92, which passed both the House and the Senate, will amend the statutes which define the make-up of the “teams” to be appointed in drug courts and in mental health treatment courts. Under these amendments, the term “public defender” would be deleted. In drug courts, a defense attorney still may be appointed, and in mental health treatment courts, a defense attorney must be appointed. Thus, the amendments will not diminish the level of representation to persons who appear in those courts. It is hoped that removal of the term “public defender” will result in courts appointing private attorneys, and the work load of OPD attorneys in those courts will be reduced.

HB 107 also has passed through the House and Senate. This bill would remove statutory provisions which authorize a court to order OPD to assign counsel to represent guardians *ad litem* in dependent/neglect cases, and make clear that any parent, guardian, or other person having legal custody of a child or youth in a proceeding pursuant to § 41-3-425, MCA be determined to be indigent.

HB 93, which would amend § 47-1-216, MCA so as to permit OPD to enter into “flat fee” contracts in treatment courts, and to permit OPD to contract with consortiums in dependent/neglect cases, subject to Commission oversight and approval, where such contracts make economic sense and would not harm or impair the level of service provided to our clients, passed through the House. Upon transmittal to the Senate, the Senate Business, Labor and Economic Affairs heard the proposal, and plans to take executive action on February 12.

A fourth bill, which could have significantly relieved work loads in courts of limited jurisdiction, was defeated. SB 53 would have amended several statutes defining misdemeanor offenses, by deleting the possibility of imposition of a jail term upon conviction for first offenses. The offenses were chosen in large part based on a 2010 report by legislative staff, which showed that jail time for these offenses was rarely imposed. SB 53 was introduced in the Senate, and sailed through without a single “no” vote. However, when it was heard in the House Judiciary Committee, SB 53 failed on a vote of 13-7. Legislative rules and protocols permit revival of a bill which did not receive approval of a committee, but it is unknown whether any such attempt might be made with regard to SB 53.

The House Judiciary Committee also voted down HB 103, which would have authorized the Conflict Coordinator to hire an attorney to represent persons in post-conviction cases, and to provide necessary back-up support to the Conflict Coordinator.

Finally, OPD is working on a proposal which would 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.

In addition to these bills, OPD is tracking all budget bills and any bills which might have a fiscal impact on our agency. During the session, we have to prepare fiscal notes on numerous bills. A fiscal note is required on any bill voted out of committee which would have an effect on the revenues, expenditures or fiscal liability of the state. Some legislation would have a material or significant fiscal impact on our agency, and we present information, in the form of a fiscal note, in which we detail that impact. Thus, SB 53, which would have reduced the number of misdemeanors for which an OPD attorney is assigned, would have resulted in a benefit or savings of about \$545,000 per fiscal year. A proposal which would increase the punishment potentially available for second or subsequent DUI convictions would, if passed, result in likely increased costs of about \$75,000 per year for OPD, and we submitted a fiscal note to that effect.

Other bills, such as one limiting the use of unmanned aerial vehicles, would not have a material fiscal impact on our agency, and we lack sufficient data to even assess the impact likely to be felt from other bills.

Budget Update

Our budget proposals were presented to the Subsection D Budget Committee on January 15 and 16. Sheila Newman, Region 11 Deputy Public Defender, and staff attorneys Courtney Nolan, Chris Abbott and Walt Hennessey appeared and testified, along with OPD management. We were invited to give a second presentation to the Committee on February 6, and Jenny Kaleczyc, Region 4 Deputy Public Defender, testified. The Committee is scheduled to take executive action on February 13, and we will present an updated status report to the Commission on February 15.

Other Issues of Note.

In January, John Putikka announced his resignation as Region 1 Deputy Public Defender. John has moved to Alaska and greener pastures, and we wish him and his family well. In OPD's early days, John took on a difficult situation in Kalispell, and performed ably and with dedicated focus. Three Region 1 attorneys expressed an interest in replacing John, and I met with each of the three to discuss their interest in the position. After this process, I asked Nick Aemisegger to take on the job, and Nick accepted my request. Nick has been with OPD for several years, and I look forward to working with Nick as part of the management team.