

PERFORMANCE AUDIT

Improving Statewide Consistency of Key Processes for the Office of the State Public Defender

MAY 2012

11P-03

REPORT SUMMARY

The Office of the State Public Defender should strengthen both its attorney contracting and indigency determination processes to improve the consistency of its activities and ensure compliance with statutory requirements.

**Context**

The Sixth Amendment to the United States Constitution and Article II, §24 of the Montana Constitution provide that a person accused of a crime has the right to assistance of counsel for his defense. The right extends to those individuals who cannot afford to provide their own counsel and so may be entitled to an attorney provided at the public's expense. The 2005 Legislature enacted Title 47 of the Montana Code Annotated, also known as the "Montana Public Defender Act," to create a statewide system to provide public defender services for eligible clients, beginning July 1, 2006.

The Public Defender Commission, composed of eleven members appointed by the governor, directs and oversees the statewide public defender system, which includes the Office of the State Public Defender (OPD). OPD, which is administratively attached to the Department of Administration, was appropriated approximately \$42 million for the 2013 biennium. In total, the agency has 199.5 FTE for fiscal year 2012. The agency's staff, along with contracted attorneys, is responsible for handling the more than 27,500 new cases to which the agency is appointed each year.

Our audit focused on two main topics: contracting for attorney services and determination of client eligibility.

In addition to staff, OPD uses contracted attorneys to provide public defender services. The agency has approximately 200 attorneys in its contract attorney pool. The number of available contractors varies by region and in two regions, contract attorneys handle nearly all cases that come to OPD. In some instances, contractors take cases in multiple counties. In fiscal year 2011, the agency assigned approximately 26 percent of its new cases to contract attorneys and paid contractors over \$5 million.

Per §§46-8-101 and 47-1-111, MCA, OPD is responsible for determining client eligibility for services upon appointment to a case by the court. OPD uses two methods, which are defined in statute, to determine if an individual is indigent, thus meeting the criteria to receive public defender services. The first method is an income test; the second method is a hardship test. Statute requires the process for determining client eligibility be fair and consistent statewide.

Our audit sought to determine if there are controls in place within the agency over contracting and determination of client indigence.

## Results

As a result of this audit, we determined the agency's management has not clearly defined agency-wide expectations for many of its activities related to contract management and determination of client indigency. For those expectations which have been formalized, the agency does not monitor regional compliance. This has led to inconsistencies within the public defender system.

During our review, we noted inconsistencies related to:

- ◆ Monitoring of contractor caseloads.
- ◆ Tracking of contractor compliance with continuing legal education requirements.
- ◆ Evaluation of contractor performance.
- ◆ Frequency and methods for verifying client-reported financial information.
- ◆ Determination of indigence of "repeat" clients.
- ◆ Agency oversight of the indigency determination process.

To address these concerns and others, we make nine recommendations to the agency to improve operations related to contract management and the determination of client eligibility for services.

Recommendation Concurrence	
Concur	7
Partially Concur	2
Do Not Concur	0
<b>Source: Agency audit response included in final report.</b>	

For a complete copy of the report (11P-03) or for further information, contact the Legislative Audit Division at 406-444-3122; e-mail to [lad@mt.gov](mailto:lad@mt.gov); or check the web site at <http://leg.mt.gov/audit>  
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