

# **PUBLIC DEFENDER SYSTEM**

A Report Prepared for the  
**Legislative Finance Committee**

By  
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**Legislative Fiscal Division**



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## **PURPOSE**

This report provides the Legislative Finance Committee a summary of historical and current appropriations, expenditures, and caseload for the Office of Public Defender (including the Appellate Defender). This report also provides limited information summarizing recommendations included in a report completed by American University. This information illustrates that many challenges face the system, commission, and legislature including containment of costs, availability of meaningful management data, opportunities for management improvement, and litigation related to the representation of clients in conflict of interest cases. Given the financial challenges faced by this agency, including the likelihood of a supplemental appropriation request, the Office of Budget and Program Planning (OBPP) has recommended minimal (less than \$7,500) spending reductions for this agency in conjunction with implementation of the provisions of 17-7-140, MCA.

The goals of this report are to:

- Provide information regarding the financial condition of the system, the potential for a supplemental appropriations request, and how system costs might be impacted
- Provide information about data availability for decision making purposes
- Increase legislative awareness of the challenges and issues facing the Public Defender System
- Highlight areas related to the Public Defender System that may be topics in future legislative sessions so that the legislature may prepare itself to make decisions
- Determine if the LFC would like additional information or research on particular topics or issues related to the Public Defender System

## **BACKGROUND**

In February, 2004 the American Civil Liberties Union (ACLU) filed a class action lawsuit in district court alleging that Montana had failed to provide constitutionally and statutorily adequate legal representation to indigent adults. At the time of this litigation public defense services were provided by local governments. In May 2004, the Attorney General and ACLU signed a stipulation placing the ACLU litigation on hold pending legislative action.

Prior to these actions occurring (in October 2003), the Law and Justice Interim Committee (LJIC) voted to make the issue of public defense services its top priority and began studying the issues and policy options. At the conclusion of its study the LJIC recommended that the legislature enact a bill establishing a statewide public defender system. This bill (SB 146, sponsored by Senator McGee) was passed by the 2005 Legislature and codified into law as Title 47 of the Montana Code Annotated (MCA). The new statewide system for the provision of public defender services began operations on July 1, 2006 (fiscal year 2007). Additionally, as part of this legislation appellate defense services became a part of this new system.

Statute provides for the appointment of a commission to supervise and direct the system. The commission is also assigned a number of duties (47-1-105, MCA) including establishment of various policies and procedures, review and approval of the system strategic plan, review and approval of budget proposals, and establishing policies and procedures to ensure that detailed expenditure and caseload data is collected. Commission members were appointed and began work on implementation of the system created by this legislation shortly after the 2005 legislative session.

Statute (47-1-104, MCA) outlines those instances in which an individual is entitled to defense counsel at public expense. In most situations the individual must be determined to be indigent, which for the purposes of the public defense system is defined in 47-1-111, MCA as: a) an applicant whose gross household income is at or less than 133% of the federal poverty level; or b) whose disposable income and assets (of the applicant and the members of the applicant's household) are insufficient to retain competent private counsel without substantial hardship to the applicant or the members of the applicant's household.

## FUNDING

The agency estimates that in the current year (FY 2010) expenditures will exceed the appropriation level by about \$1 million and it is likely that FY 2011 will have a similar deficit resulting in 2011 biennium expenditures exceeding appropriations by about \$2 million. The table below summarizes expenditures and appropriated general fund support for the agency for FY 07 through FY 11.

Office of Public Defender					
Summary of General Fund Expenditures and Appropriations					
Fiscal Year	Actual/Proj Expenditures	Appropriations HB 2 and HB 13	Approp/Transfers Supplemental/Other	Total Funding	Approp Less Expenditures
FY 2007	\$19,441,376	\$14,134,117	\$5,363,042	\$19,497,159	\$55,783
FY 2008	19,723,374	19,727,489		19,727,489	4,115
FY 2009	20,489,456	20,076,042	424,880	20,500,922	11,466
FY 2010	\$20,978,970	19,979,036		\$19,979,036	(\$999,934)
FY 2011	na	\$19,968,599		\$19,968,599	

Appropriations HB 2 and HB 13 are per the Legislative Fiscal Report  
 FY 2008 and 2009 include expenditures of one-time-only (OTO) funds for case transition.  
 FY 2010 projected expenditures are per the OPD.

The agency has received supplemental appropriations twice. In FY 2007 (the first year of operation) a supplemental appropriation of almost \$5.4 million was provided and in FY 2009 a supplemental appropriation of \$292,000 was provided for the Appellate Defender Program. Additionally, in FY 2009 the agency utilized \$132,880 of funds from the personal services contingency fund appropriated to the Governor's Office.

Given that the agency projects that 2011 biennium expenditures will exceed appropriations levels, the legislature may wish to consider how system costs could be impacted. Since the agency has already implemented a number of mitigation and cost control measures, it is likely that in order to further impact costs the volume of cases or workload must be impacted.

## SUMMARY OF NEW CASES AND CASE COST

The following table is constructed in three parts:

- Information regarding the number of new cases by case type assigned to the public defender system
- Information summarizing the case cost by case type
- A calculated cost per case type based upon the data in the top and middle portion of the table

Each portion of the table is discussed briefly in the following paragraphs.

Office of Public Defender								
Summary of New Cases								
Type of Case	FY 2007*	% of Total	FY 2008	% of Total	FY 2009	% of Total	Percent Increase	
							FY 07 -08	FY 08 - 09
Criminal	8,929	29.3%	5,523	20.8%	6,124	21.6%	-38.1%	10.9%
Guardianship	235	0.8%	248	0.9%	244	0.9%	5.5%	-1.6%
Involuntary Commitment	907	3.0%	735	2.8%	807	2.8%	-19.0%	9.8%
Juvenile	1,674	5.5%	959	3.6%	1,060	3.7%	-42.7%	10.5%
Abuse and Neglect	2,897	9.5%	2,181	8.2%	2,073	7.3%	-24.7%	-5.0%
Courts of Limited Jurisdiction	15,879	52.0%	16,910	63.7%	18,109	63.7%	6.5%	7.1%
<b>Total</b>	<b>30,521</b>	<b>100.0%</b>	<b>26,556</b>	<b>100.0%</b>	<b>28,417</b>	<b>100.0%</b>	<b>-13.0%</b>	<b>7.0%</b>
New cases only (no transfer in)	25,549		26,556		28,417		3.9%	7.0%
Net Caseload - all open	30,521		16,866		15,543		-44.7%	-7.8%
Net Caseload - open & active					12,428			
*New cases includes all cases transferred into the system as well as newly opened cases.								
Summary of Case Cost								
Type of Case	FY 2007*	% of Total	FY 2008	% of Total	FY 2009	% of Total	Percent Increase	
							FY 07 -08	FY 08 - 09
Criminal	\$9,465,430	51.0%	\$8,917,465	47.1%	\$8,447,300	43.0%	-5.8%	-5.3%
Guardianship	102,430	0.6%	142,306	0.8%	165,349	0.8%	38.9%	16.2%
Involuntary Commitment	410,915	2.2%	479,119	2.5%	517,990	2.6%	16.6%	8.1%
Juvenile	881,956	4.8%	872,732	4.6%	996,815	5.1%	-1.0%	14.2%
Abuse and Neglect	2,654,945	14.3%	2,225,668	11.8%	2,565,223	13.1%	-16.2%	15.3%
Courts of Limited Jurisdiction	5,037,785	27.2%	6,298,728	33.3%	6,930,902	35.3%	25.0%	10.0%
<b>Total</b>	<b>\$18,553,461</b>	<b>100.0%</b>	<b>\$18,936,018</b>	<b>100.0%</b>	<b>\$19,623,579</b>	<b>100.0%</b>	<b>2.1%</b>	<b>3.6%</b>
Summary - Calculated Cost Per New Case								
Type of Case	FY 2007	FY 2008	FY 2009	Percent Increase				
				FY 07 -08	FY 08 - 09			
Criminal	1,060	1,615	1,379	52.3%	-14.6%			
Guardianship	436	574	678	31.6%	18.1%			
Involuntary Commitment	453	652	642	43.9%	-1.5%			
Juvenile	527	910	940	72.7%	3.3%			
Abuse and Neglect	916	1,020	1,237	11.4%	21.3%			
Courts of Limited Jurisdiction	317	372	383	17.4%	2.8%			
<b>Total</b>	<b>\$608</b>	<b>\$713</b>	<b>\$691</b>	<b>17.3%</b>	<b>-3.2%</b>			

## Summary of New Cases

The agency has chosen to track the number of new cases assigned each year as an indication of system caseload and it is important to remember this data represents only cases new to the system, not all cases assigned to the system. As illustrated in the table, the number of new cases (not including cases transferred to the new system in FY 2007) has increased from 25,549 to 26,556 to 28,417 between FY 2007, 2008 and 2009. This represents a percentage increase of about 4 percent between FY 2007 and 2008 and about 7 percent between FY 2008 and 2009. Data for FY 2007 is somewhat impacted by the system startup with the number of new cases shown as 25,549 with the total number of cases including cases transferred being 30,521. This data contrasts with the total (or net) caseload data discussed later in this report.

This data shows that cases in courts of limited jurisdiction represent about 64 percent of the new cases assigned to the system in FY 2008 and 2009. Criminal cases represent about 21 percent of the new cases assigned to the system in these two years, with all other case types (guardianship, involuntary commitment, juvenile, abuse and neglect) comprising the remaining 15 percent of the new cases assigned to the system. It is interesting to note that new cases in courts of limited jurisdiction are the only case type that consistently increased in this time period while abuse and neglect cases is the only case type that consistently decreased over the same time period.

Given the consistent increase in new cases in courts of limited jurisdiction and that these cases combined with criminal cases comprise 85 percent of the new cases assigned to the system. Focus on these two case types would more likely impact the volume of work assigned to the system and thus system costs.

## **Expenditures by Case Type**

The middle portion of the table summarizes agency cost by case type. The criminal case type consumes the largest share of the resources with annual costs ranging from \$8.4 to \$9.5 million or between 43 and 51 percent of the total costs. The next largest cost by case type is for cases in courts of limited jurisdiction which is also the area of the second largest growth in costs. Abuse and neglect cases consume the third largest number of dollars. Costs for the remaining three case types are small in comparison totaling about \$1.5 million when FY 2009 cost for these case types are combined.

Given the annual increase in costs for cases in courts of limited jurisdiction and that these cases combined with criminal cases comprise 78 percent of the case cost for the system, focusing on costs for these case types is likely to have more impact on system costs than focusing on other case types. Although, it is noteworthy that abuse and neglect cases are the second most costly cases and consume the third largest amount by case type.

## **Calculated Average Cost per New Case**

The lower portion of the table provides a calculated cost per new case by case type based upon the data contained in the previous two tables. The overall cost per new case is about \$700 with the FY 2009 costs being slightly lower than FY 2008 but higher than FY 2007. The cases in courts of limited jurisdiction are the least costly cases with a FY 2009 average cost of \$383. The most costly cases are criminal cases with an average cost of \$1,379 in FY 2009 and abuse and neglect cases with an average cost of \$1,237.

Four case types (guardianship, juvenile, abuse and neglect, and courts of limited jurisdiction) have experienced an average cost per case that has increased each year. The remaining case types (criminal and involuntary commitment) had an increase in average cost between FY 2007 and 2008 and a decrease between FY 2008 and 2009.

## **Required Reports**

Legislative concerns about the gathering of data related to caseload and the collection of payment for services resulted in the inclusion of specific requirements for data collection and submission to the Legislative Finance Committee in HB 676, which was codified at 47-1-201 (9)(a)(b) MCA. As specified in statute the report for FY 2009 was due and submitted by January 1, 2010. Copies of the agency's reports are attached to this report in Appendix A. The data submitted in these required reports is summarized in the table below.

OPD Summary of Data Per HB 676 Reports for FY 2009 Reports Received 12/31/09						
Caseload Data						
Category	FY 2008 Ending Bal	FY 2009 Opened	FY 2009 Closed	FY 2009 End Balance		Total
Employees	8,096	18,924	17,553	Inactive 1,937	Active 7,550	9,487
Contractors	8,770	9,144	11,858	1,178	4,878	6,056
Total	16,866	28,068	29,411	3,115	12,428	15,543
				change change	number percent	(1,323) -7.8%
FY 2009 Average Numbers of Days Open by Case Type						
Case Type	Days	Months*	% of Year			
Criminal	240	8.0	65.8%			
Guardianship	256	8.5	70.1%			
Involuntary Commitment	100	3.3	27.4%			
Juvenile	239	8.0	65.5%			
Dependent and Neglect	411	13.7	112.6%			
Courts of Limited Jurisdiction	164	5.5	44.9%			
*Estimated - equals days divided by 30						
Judgments and Assessments						
Item	FY 2007	FY 2008	FY 2009			
Accounts Receivable Balance	\$27,557	\$114,124	\$235,791			
No. of Clients with Balance	56	278	643			
Calculated Ave. Balance	\$492	\$411	\$367			

## Change in Caseload

The table above illustrates that the net caseload, or the number of cases remaining open at the end of the fiscal year, decreased by 1,323 cases or almost 8 percent between FY 2008 and 2009. This reflects a different picture of the system caseload and workload than the data regarding new cases. While the number of new cases to the system increased 7 percent between FY 2008 and 2009, the number of cases remaining open decreased almost 8 percent.

This data illustrates that the answer to the question of if and how much the system is growing may vary depending upon what data is used to answer the question. The number of new cases the system is receiving suggest that caseload and workload is growing. However, the decrease in the number of cases remaining open at the end of the year contradicts this suggestion and suggests the reverse is true.

The agency was not required by statute to track and currently does not have available, this net caseload information by case type. Thus, it is not possible to determine whether the decrease in cases open mask an increase in workload that might be created by factors such as a change in the mix of types of cases remaining open.

## Average number of days open

The middle section of the table illustrates the average number of days and months that various case types remain open. Cases for courts of limited jurisdiction, which compose the majority (%) of the new cases for the system, remain open on average 164 days or less than 6 months. Meanwhile, criminal cases remain open an average of 240 days or 8 months. On average a criminal case takes only 2.5 months (or 76 days) longer to conclude than cases in courts of limited jurisdiction.

The cases with the longest time to closure are dependent and neglect cases, which on average are open 411 days or about 14 months. Involuntary commitment cases are concluded in the least amount of time, which is likely to reflect the statutory requirements and priority for resolution of these cases.

## Collection Data

The lower portion of the table summarizes the amounts due (accounts receivable) from recipients of public defender services, the number of clients with a balance, and the calculated average balance per client. The table illustrates that the amounts due in total have increased as have the number of clients with a balance. However, the calculated average balance per client has decreased by \$125 or 25 percent.

## IMPACTING CASELOAD AND COST

The caseload data presented above suggest that two or three case types represent the bulk of the system work. Thus, in order to impact cost targeting these two or three case types (courts of limited jurisdiction, criminal, abuse and neglect) is most likely to yield the greatest benefit.

Options for impacting caseload and thus cost that the agency could consider without legislature action include:

- Review of eligibility criteria - Are there changes that could be made to department rules regarding determination of indigence that could impact the number of individuals receiving services and thus, the costs of service provision? Agency policy does not currently require verification of financial information that is provided by clients. Should agency policy be modified to require verification of the financial information provided by applicants for services? Additionally, agency policy does not currently contain guidelines for determining indigence under the second statutory provision regarding an inability or hardship in ability to hire private counsel. Should written guidelines be included in agency policy? (It should be noted that the determination of indigence and eligibility for services may be reviewed and over turned by the court.)
- Is the agency providing services that it is not constitutionally or statutorily required to provide? Items that might fit into this category are things such as participation in drug and other treatment courts.

**LFC ACTION ITEM A:** The LFC may wish to discuss these options with the agency and encourage the agency to pursue those options that interest the LFC.

**LFC ACTION ITEM B:** In addition to the items above that the agency could consider, items that the legislature could review and consider include:

1. Changes to the statutory definition of indigence (including increased statutory guidance on the criteria to be used to determine that someone does not have sufficient resources to hire a private attorney).
2. Changes to those individuals that the agency is statutorily mandated to serve. For example, should the agency continue to represent parents and guardians in child removal and placement proceedings or should representation be provided only when termination of parental rights is sought?
3. Agency staff and the Public Defender Commission have also expressed some interest in reviewing statutory penalties for some offenses where incarceration is possible but rarely ordered. In these cases, the potential for incarceration (loss of liberty) drives the need for a public defender to represent eligible individuals. If incarceration was not included in statute as a potential penalty, a public defender would not be required.
4. Potential changes included in commission chairman Sherwood's correspondence dated January 29, 2010 to "the front-line troops". This correspondence is attached to this report as Appendix C.

**LFC ACTION ITEM C:** The LFC may wish to:

- Discuss the options listed above
- Provide guidance to the agency on areas of interest to the committee
- Determine if the committee would like additional research or future reports on any of the options for impacting system cost

## AMERICAN UNIVERSITY REPORT

At the request of the Public Defender Commission, a study of the public defender system in Montana and report containing results of the study were completed. The report Assessment of the Initial Period of Operations of the

Montana Statewide Public Defender System was prepared by the Criminal Courts Technical Assistance Project and supported by a federal Bureau of Justice Assistance (BJA) grant. The study team's review of the system occurred between August 2008 and June 2009 and the final report is dated October 2009. This report is commonly referred to as the "American University" (AU) report.

The report provides 32 recommendations for improvements in the system. These 32 recommendations, grouped by topic area (per the AU report) are listed in the table in appendix B. The table in appendix B also includes a Legislative Fiscal Division (LFD) category assignment and in some cases an LFD comment related to the recommendation. For the purposes of this report, only a few of these recommendations are discussed. Many of the findings in this report support legislative concerns regarding data collection and budgeting. The report also identified other areas for system improvement including some management functions. It is likely that some of these data, budgetary, and management issues will be considered by the next legislature when considering future appropriations and public policy. Four of these recommendations are discussed below.

**LFC ACTION ITEM D:** The LFC may wish to:

- Review the OPD action plan and receive updates on system changes implemented in response to this report
- Provide input to the agency on those issues it considers most critical
- Determine if the committee would like additional information and research on specific items

## **Recommendation 1**

Recommendation 1 – "The OPD needs to provide detailed information to adequately describe the Agency's caseloads, dispositional processes, attorney workload, and related data that describes the agency's operations and services being performed."

The AU report points out that both the enabling legislation and Public Defender Commission standards and policy require this data to be collected and provided to various parties. However, the report indicates that this data in sufficient detail is not available and as a result no substantive data driven oversight is possible. The report also indicates there is evidence that some lawyers may have too many cases and that many of the commission standards are not followed.

The AU report finding is partially related to data availability issues raised by legislative staff in the analysis of the 2011 biennium budget submission. The AU report also indicates that "the study has consistently found that the agency has not adequately documented its budget submission by informing the legislature of the nature of its caseload and accomplishments".<sup>1</sup>

## **Recommendation 2**

Recommendation 2 – "The case weighting system should be refined to provide a meaningful reflection of the work entailed in handling different types of criminal cases."

For the purposes of monitoring attorney workloads the agency in conjunction with labor unions has developed a tool that assigns a "weight" to each type of case in an effort to measure the relative workload that each case type represents. For example, a felony case is assigned a case weight of 1.00 units while a misdemeanor case is assigned a case weight of 0.50 units, indicating that the felony case theoretically takes twice as much work time as a misdemeanor case.

While this second recommendation is somewhat different than recommendation one, it is very similar in that the availability of data for management purposes is limited. From an LFD staff perspective, there are two primary issues with the case weighting system adopted by the agency in conjunction with labor unions representing staff

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<sup>1</sup> Assessment of the Initial Period of Operations of the Montana Statewide Public Defender System, BJA Criminal Courts Technical Assistance Project, American University, October 2009, excerpt from second paragraph on page 20.

including: 1) the system weights only newly assigned cases and does not provide a weight to ongoing open cases; and, 2) the system assigns the same weight to all felony cases regardless of complexity.

## **Recommendation 5**

Recommendation 5 – “The “minimal” caseload statutory requirement for the Chief Defender, Contract Manager, and Regional Deputy Defenders should be reduced or eliminated.”

Statute states that the chief public defender shall: maintain a minimum client caseload as determined by the commission (47-1-202, MCA) and that each regional deputy public defender shall: maintain a minimum client caseload as determined by the chief public defender (47-1-215, MCA).

The statute as it currently exist provides leeway within the system management and oversight structure to determine the definition of a minimum client caseload. The commission has determined that the minimum caseload for the chief public defender is five cases per year. The AU report indicates that large and or complex caseloads are contributing to failure of staff within the system to undertake, implement, and complete management functions within the system. It appears that completion of casework has been ranked as a higher priority for managers than completion of management functions.

**LFC ACTION ITEM E:** The legislature could impact this issue by:

- a. Removing this requirement from statute as recommended by the AU report. However, it should be noted that removal of this requirement from statute may not change the practice within the system with regard to volume or complexity of casework completed by individuals in these positions.
- b. Amending statute to define the term minimum client caseload. The legislature may also wish to go a step further and define the maximum client caseload of these management positions. Client caseload could be defined in terms of number and type or complexity of cases assigned to managers.
- c. Providing comments, suggestions, and recommendations regarding management functions that should be achieved and client caseload limits for managers. Suggestions or recommendations by the legislature that are not included in statute are not binding upon the agency and may or may not result in changes.
- d. Do nothing – The legislature could chose to take no action on this issue at this time.

## **Recommendation 7**

Recommendation 7 – “A separate conflicts office should be maintained for all trial and appellate cases with the director reporting to the commission, not the chief defender.”

The AU report raises concerns with the organizational structure and its relationship to representation of clients in cases where individuals within the system may have a conflict of interest. Currently, either an attorney in another regional office or an attorney in private practice under contract may represent cases where there is a potential conflict of interest (such as multiple defendants in the case that are assigned public defenders). The AU report recommends that a separate office (organizational structure) reporting directly to the commission be implemented to resolve this concern. This would result in attorneys representing “conflict” cases reporting through a chain of command to the commission rather than the Chief Public Defender. Fact based cost estimates of this change have not yet been prepared. But informal speculation regarding the cost of this additional management structure suggest that the cost might be in the \$400,000 to \$500,000 per year range.

Litigation related to this issue is currently pending before the Montana Supreme Court (State of Montana vs. St. Dennis). The ACLU has submitted an amicus brief in this case and the Appellate Defender Program will submit a brief in this litigation as well. It would seem likely that litigation in this case may be concluded before the legislature convenes in 2011. At that time, it may be desirable or necessary for the legislature to amend statutory provision related to representation in conflict cases.

## CONCLUSION

The Public Defender System in Montana is currently in its fourth year of operation. As the system moves through development stages toward stabilization, it and the legislature face many challenges. Those challenges include budget, data collection, management, and litigation issues. Given the challenges related to the Public Defender System the LFC may wish to:

- Review the section of this report titled Impacting Caseload and Cost and determine which if any of the options presented in that section the LFC would like to pursue (LFC Action Items A, B and C)
- Review the three bullet points under the section titled American University Report to determine if the committee wishes to pursue any of the three items listed (LFC Action Item D)
- Review the options provided regarding AU recommendation 5 and determine if the committee wishes to pursue any of the four options listed (LFC Action Item E)
- Determine what if any items should be the topic of future reports to the committee

# OFFICE OF THE STATE PUBLIC DEFENDER



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### RECEIVED

DEC 31 2009

LEGISLATIVE  
FISCAL ANALYST

December 30, 2009

Legislative Finance Committee  
C/O Representative Llew Jones, Chairman  
P.O. Box 201711  
Helena, MT 59620-1711

APPENDIX A

Dear Chairman Jones and Members of the Legislative Finance Committee:

Enclosed with this letter are three reports that are due from the Office of the State Public Defender to the Legislative Finance Committee by January 1, 2010 as per Title 47-1-201 (9) (a) and (b).

The first report provides for FY 2009 the number of cases opened, the number of cases closed, the number of cases that remain open and active, and the number of cases that remain open but are inactive. This is as per Title 47-1-201 (9) (a).

The second report provides for FY 2009 the average number of days between case openings and closings for each case type. This is as per Title 47-1-201 (9) (a).

The third report provides for FY 2009 the amount of funds collected as reimbursements for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid. This is as per Title 47-1-201 (9) (b).

Please contact me if you need any clarification of this information at 406-496-6084.

Sincerely,

A handwritten signature in cursive script that reads "Harry J. Freebourn".

Harry J. Freebourn  
Administrative Director

cc: Amy Carlson, Legislative Fiscal Analyst  
Pat Gervais, Legislative Fiscal Division  
Brent Doig, Office of Budget and Program Planning  
Randi Hood, Chief Public Defender

OFFICE OF THE STATE PUBLIC DEFENDER  
 CASES OPENED/CLOSED AND THOSE OPEN - INACTIVE VS ACTIVE  
 AGENCY STAFF ATTORNEYS  
 TITLE 47-1-201 (9) (A)

<u>Attorney No.</u>	<u>END BAL</u> <u>FY 2008</u>	<u>OPENED</u> <u>FY 2009</u>	<u>CLOSED</u> <u>FY 2009</u>	<u>STILL OPEN</u>	
				<u>INACTIVE</u>	<u>ACTIVE</u>
1	106	224	226	12	92
2	201	170	281	33	57
3	33	-	32	-	1
4	-	2	-	-	2
5	75	26	65	32	4
6	50	180	170	1	59
7	73	126	128	19	52
8	137	101	188	13	37
9	50	105	104	-	51
10	1	17	-	-	18
11	38	99	71	13	53
12	64	126	143	8	39
13	151	151	203	40	59
14	49	221	154	12	104
15	62	88	109	11	30
16	40	109	122	-	27
17	88	102	127	21	42
18	66	26	51	30	11
19	1	108	11	1	97
20	87	110	110	19	68
21	12	2	14	-	-
22	133	160	148	27	118
23	127	186	153	59	101
24	5	415	287	40	93
25	73	101	108	16	50
26	84	180	136	25	103
27	135	279	256	48	110
28	1	-	1	-	-
29	15	29	6	-	38
30	-	2	-	-	2
31	23	-	2	12	9
32	100	376	326	44	106
33	18	153	68	9	94
34	139	62	178	12	11
35	93	121	187	-	27
36	83	161	131	28	85
37	77	171	127	15	106
38	114	125	144	30	65
39	6	2	8	-	-
40	168	431	384	79	136
41	139	213	252	41	59
42	129	146	148	28	99
43	66	179	137	5	103
44	151	271	289	55	78
45	6	6	11	1	-
46	1	76	14	-	63
47	-	93	57	10	26

**OFFICE OF THE STATE PUBLIC DEFENDER  
CASES OPENED/CLOSED AND THOSE OPEN - INACTIVE VS ACTIVE  
AGENCY STAFF ATTORNEYS  
TITLE 47-1-201 (9) (A)**

<u>Attorney No.</u>	<u>END BAL FY 2008</u>	<u>OPENED FY 2009</u>	<u>CLOSED FY 2009</u>	<u>STILL OPEN</u>	
				<u>INACTIVE</u>	<u>ACTIVE</u>
48	34	34	54	1	13
49	49	125	84	-	90
50	128	213	200	62	79
51	13	1	-	11	3
52	2	120	58	-	64
53	8	222	113	20	97
54	111	482	421	16	156
55	93	159	175	10	67
56	87	195	220	2	60
57	231	348	336	94	149
58	86	104	108	-	82
59	66	134	123	14	63
60	118	205	191	-	132
61	-	17	-	1	16
62	40	75	55	20	40
63	149	416	526	9	30
64	172	318	415	26	49
65	-	23	14	7	2
66	125	255	233	61	86
67	6	-	-	6	-
68	95	109	108	31	65
69	83	2	52	8	25
70	50	27	51	-	26
71	-	343	249	22	72
72	1	-	1	-	-
73	7	-	2	5	-
74	-	1	-	-	1
75	37	102	79	10	50
76	51	87	74	3	61
77	86	108	138	8	48
78	-	65	12	-	53
79	4	69	63	3	7
80	21	53	51	2	21
81	-	68	-	3	65
82	42	463	394	-	111
83	-	151	81	-	70
84	30	130	91	-	69
85	126	147	165	28	80
86	179	259	294	38	106
87	48	128	138	-	38
88	99	209	242	5	61
89	(31)	148	66	16	35
90	74	100	143	-	31
91	161	167	264	51	13
92	8	254	198	11	53
93	28	-	11	17	-
94	86	510	311	26	259

OFFICE OF THE STATE PUBLIC DEFENDER  
 CASES OPENED/CLOSED AND THOSE OPEN - INACTIVE VS ACTIVE  
 AGENCY STAFF ATTORNEYS  
 TITLE 47-1-201 (9) (A)

<u>Attorney No.</u>	<u>END BAL FY 2008</u>	<u>OPENED FY 2009</u>	<u>CLOSED FY 2009</u>	<u>STILL OPEN</u>	
				<u>INACTIVE</u>	<u>ACTIVE</u>
95	6	289	155	13	127
96	94	77	142	10	19
97	10	396	276	35	95
98	2	146	36	2	110
99	32	79	62	7	42
100	-	10	2	-	8
101	3	343	195	8	143
102	140	56	146	13	37
103	11	33	12	6	26
104	11	42	37	3	13
105	160	325	302	56	127
106	2	105	40	15	52
107	169	478	483	25	139
108	56	291	221	9	117
109	28	269	253	3	41
110	167	201	158	26	184
111	83	336	334	23	62
112	57	33	70	14	6
113	59	146	159	-	46
114	34	76	80	9	21
115	82	166	146	30	72
116	-	1	-	-	1
117	135	194	228	5	96
118	157	124	230	48	3
119	96	136	164	5	63
120	147	260	279	30	98
121	-	2	-	-	2
122	55	106	81	-	80
123	-	7	-	-	7
124	18	-	-	18	-
125	50	186	139	14	83
126	73	233	160	10	136
127	86	601	472	4	211
<b>Totals</b>	<b>8,096</b>	<b>18,924</b>	<b>17,533</b>	<b>1,937</b>	<b>7,550</b>

**OFFICE OF THE STATE PUBLIC DEFENDER  
CASES OPENED/CLOSED AND THOSE OPEN - INACTIVE VS ACTIVE  
AGENCY CONTRACT ATTORNEYS  
TITLE 47-1-201 (9) (A)**

<u>Attorney No.</u>	<u>END BAL</u>	<u>OPENED</u>	<u>CLOSED</u>	<u>STILL OPEN</u>	
	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2009</u>	<u>INACTIVE</u>	<u>ACTIVE</u>
1	52	64	56	10	50
2	197	76	127	1	145
3	22	5	23	2	2
4	98	101	160	3	36
5	36	12	46	-	2
6	34	22	33	6	17
7	96	125	135	1	85
8	24	19	39	-	4
9	72	22	57	-	37
10	6	7	12	-	1
11	17	38	36	13	6
12	25	15	31	5	4
13	141	182	163	77	83
14	14	-	12	-	2
15	14	11	20	-	5
16	39	11	16	-	34
17	76	68	78	3	63
18	-	8	3	-	5
19	3	1	2	-	2
20	-	7	6	-	1
21	45	27	24	-	48
22	14	6	19	1	-
23	6	2	7	-	1
24	83	21	60	6	38
25	1	3	3	-	1
26	69	44	40	-	73
27	103	142	116	22	107
28	75	70	109	8	28
29	23	2	25	-	-
30	6	30	22	-	14
31	35	45	53	-	27
32	6	-	5	-	1
33	-	11	4	-	7
34	15	-	1	-	14
35	1	-	1	-	-
36	7	2	7	-	2
37	-	2	1	-	1
38	15	17	20	-	12
39	5	-	3	-	2
40	13	6	16	1	2
41	32	-	18	1	13
42	7	15	18	2	2
43	116	137	157	22	74
44	37	46	62	1	20
45	79	41	68	8	44
46	9	26	28	4	3
47	-	5	3	-	2

OFFICE OF THE STATE PUBLIC DEFENDER  
 CASES OPENED/CLOSED AND THOSE OPEN - INACTIVE VS ACTIVE  
 AGENCY CONTRACT ATTORNEYS  
 TITLE 47-1-201 (9) (A)

<u>Attorney No.</u>	<u>END BAL FY 2008</u>	<u>OPENED FY 2009</u>	<u>CLOSED FY 2009</u>	<u>STILL OPEN</u>	
				<u>INACTIVE</u>	<u>ACTIVE</u>
48	124	147	198	20	53
49	12	103	36	-	79
50	13	13	14	-	12
51	113	169	218	-	64
52	98	118	175	6	35
53	4	-	4	-	-
54	12	7	15	-	4
55	34	11	38	2	5
56	-	4	-	-	4
57	1	-	1	-	-
58	8	-	-	-	8
59	-	6	-	1	5
60	-	6	3	-	3
61	32	93	85	-	40
62	39	12	37	-	14
63	41	50	70	6	15
64	-	6	1	-	5
65	43	38	57	3	21
66	3	-	3	-	-
67	-	3	2	-	1
68	40	15	48	1	6
69	13	3	6	-	10
70	108	88	149	14	33
71	61	65	100	7	19
72	87	59	96	20	30
73	88	58	135	-	11
74	120	83	181	6	16
75	1	-	1	-	-
76	11	31	10	1	31
77	49	36	61	9	15
78	1	-	1	-	-
79	9	-	6	-	3
80	130	225	283	6	66
81	69	164	195	13	25
82	7	3	9	-	1
83	48	35	69	2	12
84	5	1	4	-	2
85	98	86	136	33	15
86	16	2	16	-	2
87	7	-	7	-	-
88	92	60	101	2	49
89	98	85	132	3	48
90	5	2	4	-	3
91	6	1	2	2	3
92	33	13	36	-	10
93	8	3	7	-	4
94	2	33	22	-	13

OFFICE OF THE STATE PUBLIC DEFENDER  
 CASES OPENED/CLOSED AND THOSE OPEN - INACTIVE VS ACTIVE  
 AGENCY CONTRACT ATTORNEYS  
 TITLE 47-1-201 (9) (A)

<u>Attorney No.</u>	<u>END BAL</u>	<u>OPENED</u>	<u>CLOSED</u>	<u>STILL OPEN</u>	
	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2009</u>	<u>INACTIVE</u>	<u>ACTIVE</u>
95	3	1	-	-	4
96	151	105	220	5	31
97	-	24	19	-	5
98	4	7	6	1	4
99	4	-	2	-	2
100	12	5	15	-	2
101	2	-	-	-	2
102	16	6	12	1	9
103	6	-	2	-	4
104	41	28	42	8	19
105	4	-	2	-	2
106	56	25	75	1	5
107	16	12	17	6	5
108	8	9	8	2	7
109	3	-	3	-	-
110	1	-	-	-	1
111	4	-	3	1	-
112	145	99	212	1	31
113	62	21	15	-	68
114	12	5	15	-	2
115	9	1	9	-	1
116	15	-	10	-	5
117	1	-	-	-	1
118	1	-	1	-	-
119	1	-	-	-	1
120	4	-	-	-	4
121	80	43	87	2	34
122	27	1	28	-	-
123	44	64	68	18	22
124	40	18	44	1	13
125	78	163	155	8	78
126	62	100	115	11	36
127	7	-	4	-	3
128	28	15	40	3	-
129	6	20	14	1	11
130	-	2	-	-	2
131	54	86	91	9	40
132	2	3	5	-	-
133	58	31	82	-	7
134	1	-	-	-	1
135	51	106	107	4	46
136	46	27	40	2	31
137	76	296	196	43	133
138	2	4	4	-	2
139	1	-	1	-	-
140	82	82	99	23	42
141	8	-	8	-	-

OFFICE OF THE STATE PUBLIC DEFENDER  
 CASES OPENED/CLOSED AND THOSE OPEN - INACTIVE VS ACTIVE  
 AGENCY CONTRACT ATTORNEYS  
 TITLE 47-1-201 (9) (A)

<u>Attorney No.</u>	<u>END BAL</u> <u>FY 2008</u>	<u>OPENED</u> <u>FY 2009</u>	<u>CLOSED</u> <u>FY 2009</u>	<u>STILL OPEN</u>	
				<u>INACTIVE</u>	<u>ACTIVE</u>
142	8	16	11	-	13
143	25	9	32	-	2
144	-	1	1	-	-
145	33	19	40	-	12
146	111	213	165	64	95
147	8	4	12	-	-
148	184	176	313	1	46
149	1	-	1	-	-
150	64	110	67	37	70
151	12	1	12	1	-
152	72	97	102	12	55
153	2	-	-	-	2
154	16	1	15	-	2
155	18	-	-	18	-
156	17	22	30	2	7
157	5	-	5	-	-
158	94	25	82	-	37
159	51	20	65	-	6
160	51	70	76	1	44
161	27	-	25	-	2
162	-	3	3	-	-
163	23	38	33	3	25
164	27	52	42	-	37
165	1	1	-	-	2
166	1	-	-	-	1
167	17	123	76	13	51
168	2	-	-	-	2
169	93	105	136	7	55
170	11	64	62	5	8
171	6	1	7	-	-
172	76	77	105	3	45
173	42	3	45	-	-
174	3	79	32	1	49
175	110	150	200	11	49
176	-	1	-	-	1
177	12	16	17	-	11
178	162	171	276	9	48
179	3	-	-	1	2
180	27	12	9	4	26
181	-	1	-	-	1
182	13	-	8	-	5
183	2	1	3	-	-
184	1	16	9	-	8
185	29	9	36	1	1
186	15	17	19	4	9
187	-	2	1	-	1
188	6	-	2	-	4

OFFICE OF THE STATE PUBLIC DEFENDER  
 CASES OPENED/CLOSED AND THOSE OPEN - INACTIVE VS ACTIVE  
 AGENCY CONTRACT ATTORNEYS  
 TITLE 47-1-201 (9) (A)

<u>Attorney No.</u>	<u>END BAL</u>	<u>OPENED</u>	<u>CLOSED</u>	<u>STILL OPEN</u>	
	<u>FY 2008</u>	<u>FY 2009</u>	<u>FY 2009</u>	<u>INACTIVE</u>	<u>ACTIVE</u>
189	31	16	35	-	12
190	53	92	120	13	12
191	29	8	28	1	8
192	24	27	38	-	13
193	12	-	12	-	-
194	34	8	31	-	11
195	55	62	55	-	62
196	42	42	71	-	13
197	172	88	155	2	103
198	127	243	254	24	92
199	1	-	1	-	-
200	1	-	-	-	1
201	-	7	-	-	7
202	21	8	14	-	15
203	1	-	1	-	-
204	3	-	-	-	3
205	7	14	14	-	7
206	48	334	224	16	142
207	48	53	52	-	49
208	98	89	144	-	43
209	2	-	-	-	2
210	109	32	58	69	14
211	39	13	36	-	16
212	12	29	22	-	19
213	118	68	33	70	83
214	4	7	10	1	-
215	7	3	4	-	6
216	-	28	13	-	15
217	103	40	32	-	111
218	1	1	1	-	1
219	2	2	2	-	2
220	17	2	7	4	8
221	60	63	98	6	19
222	432	697	766	197	166
223	79	14	69	13	11
224	92	125	175	6	36
225	66	2	45	-	23
226	72	48	40	38	42
227	195	99	178	4	112
228	71	93	125	3	36
229	60	82	59	8	75
230	1	11	4	-	8
231	5	-	5	-	-
232	3	23	18	-	8
233	36	-	33	-	3
234	5	5	6	-	4
Totals	8,770	9,144	11,858	1,178	4,878

**OFFICE OF THE STATE PUBLIC DEFENDER  
AVERAGE NUMBER OF DAYS OPEN BY CASE TYPE  
CASES CLOSED DURING FY 2009  
TITLE 47-1-201 (9) (a)**

<u>Case Type Name</u>	<u>Code</u>	<u>Avg Days Open</u>
Criminal	DC	240
Guardianship	DG	256
Involuntary Commitment	DI	100
Juvenile	DJ	239
Dependent and Neglect	DN	411
Courts of Limited Jurisdiction	LC	164

Office of the State Public Defender  
Judgments, Assessments Collections of Legal Fees  
Title 47-1-201(9)(b)

	FY 2007	FY 2008	FY 2009
<b>PRE SB 263 JUDGMENTS AND OPD ASSESSMENTS</b>			
Balance of A/R @ Beg of Year	\$ -	\$ 27,557	\$ 114,124
Assessments by Year (Receivables)	35,575	121,385	154,248
Total Collections by Year	(8,018)	(34,818)	(32,581)
# of Clients represented by Collections Total	18	79	224
Total Balance of A/R @ End of Year **	\$ 27,557	\$ 114,124	\$ 235,791
Total # of Clients with open A/R @ Beg of Year	-	56	278
# of Clients Assessments by Year	62	257	419
Total # of Clients paid in full during fiscal year	(6)	(35)	(54)
Total # of Clients with open A/R @ End of Year	56	278	643
<b>POST SENATE BILL 263</b>			
Balance of A/R @ Beg of Year	\$ -	\$ -	\$ -
Assessments by Year	-	-	-
Total Collections by Year	-	-	-
# of Clients represented by Collections Total	-	-	-
Total Balance of A/R @ End of Year	\$ -	\$ -	\$ -
Total # of Clients with open A/R @ Beg of Year	-	-	-
# of Clients Assessments by Year	-	-	-
Total # of Clients paid in full during fiscal year	-	-	-
Total # of Clients with open A/R @ End of Year	-	-	-
<b>TOTAL JUDGMENTS AND ASSESSMENTS INCLUDING SENATE BILL 263</b>			
Balance of A/R @ Beg of Year	\$ -	\$ 27,557	\$ 114,124
Assessments by Year	35,575	121,385	154,248
Total Collections by Year ##	(8,018)	(34,818)	(32,581)
# of Clients represented by Collections Total	18	79	224
Total Balance of A/R @ End of Year	\$ 27,557	\$ 114,124	\$ 235,791
Total # of Clients with open A/R @ Beg of Year	-	56	278
# of Clients Assessments by Year	62	257	419
Total # of Clients paid in full during fiscal year	(6)	(35)	(54)
Total # of Clients with open A/R @ End of Year	56	278	643

Topic Area	Recommendation	LFD Category	LFD Comments
Management and Administration	<b>1. The OPD needs to provide detailed information to adequately describe the Agency's caseloads, dispositional processes, attorney workload, and related data that describes the agency's operations and services being performed.</b>	Data Budget	Issue raised in analysis of 2011 biennium budget. HB 676 required reports to Legislative Finance Committee - Ongoing issues regarding availability of data representing caseload, workload, and sufficient to analyze agency operations.
Management and Administration	<b>2. The case weighting system should be refined to provide a meaningful reflection of the work entailed in handling different types of criminal cases.</b>	Data Budget	All felonies receive the same case weight. The system only weights newly assigned cases and does not include in weighting open or ongoing cases.
Management and Administration	3. A meaningful system should be developed for evaluating the work of the lawyers	Management Performance Measurement Project	Evaluations/performance reviews of attorneys have not occurred in a timely manner. This is one way to review the goal of the system related to assuring that effective assistance of counsel is provided to clients.
Management and Administration	4. At a minimum budget submissions should be supported by documentation describing the agency's accomplishments presented in concrete terms	Data Budget	HB 676 requires the agency to report to the LFC on caseload – all open/active cases not just new cases. Case disposition information not currently available
Management and Administration	<b>5. The “minimal” caseload statutory requirement for the Chief Defender, Contract Manager, and Regional Deputy Defenders should be reduced or eliminated.</b>	Statutory Management	Legislature may wish to change statute.
Management and Administration	6. The commission must become more aggressive in demanding comprehensive, reliable reports of agency activity.	Management	None

APPENDIX B

Conflict of Interest Cases	<b>7. A separate conflicts office should be maintained for trial and appellate case with the director reporting to the commission, not the chief defender</b>	Budget	Litigation pending before the Montana Supreme Court
Training and Continuing Education	8. The training director should regularly survey staff and contract lawyers to determine what training they believe is needed.	Management	None
Training and Continuing Education	9. Each training program should have systematic feedback and evaluations from attendees.	Management	None
Training and Continuing Education	10. At the very least the following activities should be a part of the training function: a. the training officer should prepare and distribute a separate trial book applicable to each category of case b. the training director should be responsible for developing and implementing through public defender managers two introductory programs (an orientation for new staff and initial skills program for attorneys) c. the training director and the appellate division are developing a brief bank. That activity should continue and periodically be upgraded. d. Every continuing education training program should continue to be recorded and the recordings made available to lawyers. e. A monthly newsletter summarizing recent noteworthy decisions from higher courts and of any changes in agency policy and procedures should also be prepared and distributed.	Management	None

Evaluations of Lawyers	11. An evaluation procedure for lawyers needs to be developed which is timely, is based primarily on objective data, and promotes the lawyer's professional development over the next year.	Management Performance measurement Project	See recommendation 3 and 12
Evaluations of Lawyers	12. Special procedures should be developed for evaluating contract lawyers, relying primarily on the information provided in the periodically filed fee petitions and the proposed closing documents.	Management Performance Measurement Project	See recommendation 3 and 11
Evaluations of Lawyers	13. A contract lawyer should be prohibited from having an assigned client become a fee client in the originally assigned cases.	Management	
Implementing Early Case Entry	14. An emergency lawyer should be available 24 hours, seven days a week to ensure immediate provision of counsel in compliance with the commission standards	Budget Management	Need for quality assurance program/process to assure that standards and policies are being followed.
Planning for Case overloads, budgeting and other resource needs	15. Management staff should develop a plan for situations in which case overloads occur, particularly when they coexist with budget shortfalls.	Budget Management	
Planning for Case overloads, budgeting and other resource needs	16. When caseloads of staff lawyers are at maximum levels for assuring effective levels of service and contract lawyer resources are exhausted the defender agency must refuse to accept more cases.	Budget Management	

Planning for Case overloads, budgeting and other resource needs	17. Budgeting for the 2012 – 2013 biennial legislative session should begin immediately.	Management	Executive typically requires agency submission for executive planning process (EPP) in May of the year prior to session
Planning for Case overloads, budgeting and other resource needs	18. There should be a separate fund category for emergency situations. Some examples where contingency reserve funds are essential are the high profile cases, instances of extreme community disorder, and other catastrophic events.	Budget	
Improved communication between the chief defender, deputy defenders and staff	19. The chief defender should communicate with staff regularly regarding the application of policies and procedures to OPD office operations, staff compensation, evaluation, etc. as well as any proposed changes in these policies.	Management	
Improved communication between the chief defender, deputy defenders and staff	20. The rationale for distribution of resources to regions must be published, explained and supported by facts.	Management Budget	
Improved communication between the chief defender, deputy defenders and staff	21. Special effort should be made to remove the fear of retaliation from management for publicly noting agency problems.	Management	
Reaffirming the commission's authority	22. The commission must demand accountability from staff for implementing its promulgated standards and policies and for providing competent, efficient representation.	Management	
Reaffirming the commission's authority	23. The commission must become considerably more assertive in demanding relevant information from staff.	Management	

Reaffirming the commission's authority	24. The commission should also raise challenging questions and provoke management into considering new options.	Management	
Reaffirming the commission's authority	25. The commission should consider selecting a secretary from its own ranks or hiring a person for that job and not rely upon the chief defender to act as secretary to the commission.	Statutory	Would require statutory change. Office does have clerical staff that records minutes and performs other functions related to the commission
Reaffirming the commission's authority	26. The commission should insist that definitive lines of authority be established, published and be included in job descriptions and be communicated to all staff.	Management	
Reaffirming the commission's authority	27. The commission should consider imposing its own limitations upon the private practice of law by a defender staff member at all levels of authority within the defender agency.	Management	
Reaffirming the commission's authority	28. The commission should require a strategic plan for each region that among other things, results in measurable improvement in supervision, management, retrieval of information, and evaluations of staff.	Management	
Reaffirming the commission's authority	29. The commission itself should evaluate and assess what statutory provisions have been adequately satisfied and where it has fallen short.	Management	

Miscellaneous	30. Commission members and the agency management should be active in proclaiming the value of the agency throughout the state and should speak to civic organizations, schools, and other community groups regarding the role which the agency plays in the community	Management Budget	
Miscellaneous	31. Investigative resources should be provided for misdemeanors as well as felonies.	Management Budget	OPD policy does not prohibit, may be priority issue within available resources
Miscellaneous	32. All lawyers should have authority to use automated legal research engines when necessary.	Budget	OPD does provide to some contract attorneys at state cost

APPENDIX C

Date: January 29, 2010

From: M. J. Sherwood

To: The front-line troops

Re: Information and a request for input

First, as you may have heard, there is now a concern that Montana's budget will soon be operating in a deficit. We have not been asked to make any cuts. We will resist any mandates to do so. We have been asked, however, to suggest possible ways of reducing our costs or increasing our revenue. I am writing you to solicit:

1. suggestions on how we could cut costs;
2. your reaction to potential legislative changes and your opinions regarding other legislative changes that would cut costs; and
3. the names of any clients who might serve as valuable witnesses before the legislature.

Please respond to this letter by channeling information through your respective liaisons. I would then ask each liaison to summarize the responses and forward them to me.

Specifically, I'd like your reaction to my suspicion that we would be able to lower our operating costs or increase revenue if the following legislative changes were made:

1. Eliminate the possibility of incarceration for some misdemeanor offenses. e.g. driving without insurance. If a defendant does not risk incarceration, we need not defend him or her.
2. Separate partner and family member assault into two different statutes. One of those statutes would parrot the wording in 18 U.S.C. §921 which defines a crime of domestic violence which results in a federally mandated life-time loss of one's right to bear arms. The other statute would criminalize other aspects of domestic violence. These cases take an inordinate amount of time because the defendant is often looking at

caseload and increase our funding. Please be good enough to take the time to put something together in writing and forward it to a liaison so that it can be accumulated and forwarded to me. Together with the central OPD and the commission, we will make sure that your input is forwarded to the governor's office.

Second, at the PDC December meeting, a member of the public suggested we consider presenting clients whom we have served well as witnesses at the next legislative session. If you have any suggestions, please advise Commissioner Jennifer Hensley by sending her an e-mail via the central OPD or to [jen\\_hensley@msn.com](mailto:jen_hensley@msn.com).

Thank you for your attention to this memo. We are all in this together.

Mike