

Montana's Public Defender System: Issues & Options #1

Prepared for the
Law and Justice Interim Committee

by Sheri S. Heffelfinger, LSD

March 20, 2004

Overview

 Preview of the options

 Review current structure

 Examine funding responsibilities

 Identify policy considerations, questions

Review of the options

- A. Keep the current system for now, gather more information
- B. Hybrid system: state standards/oversight, state contracting, but local administration of PD offices (no judicial appointments)
- C. New state agency (details decided in subsequent meetings)

Definition of public defender

- A. Court-appointed counsel, not just indigent defense
- B. Court-appointed counsel, not just public "defender"
- C. Guardians ad litem (GALs) and Court-Appointed Special Advocates (CASAs) are not public defenders

Counsel is appointed in ...

A. Criminal (DC)

B. Abuse and neglect (DN, YINC)

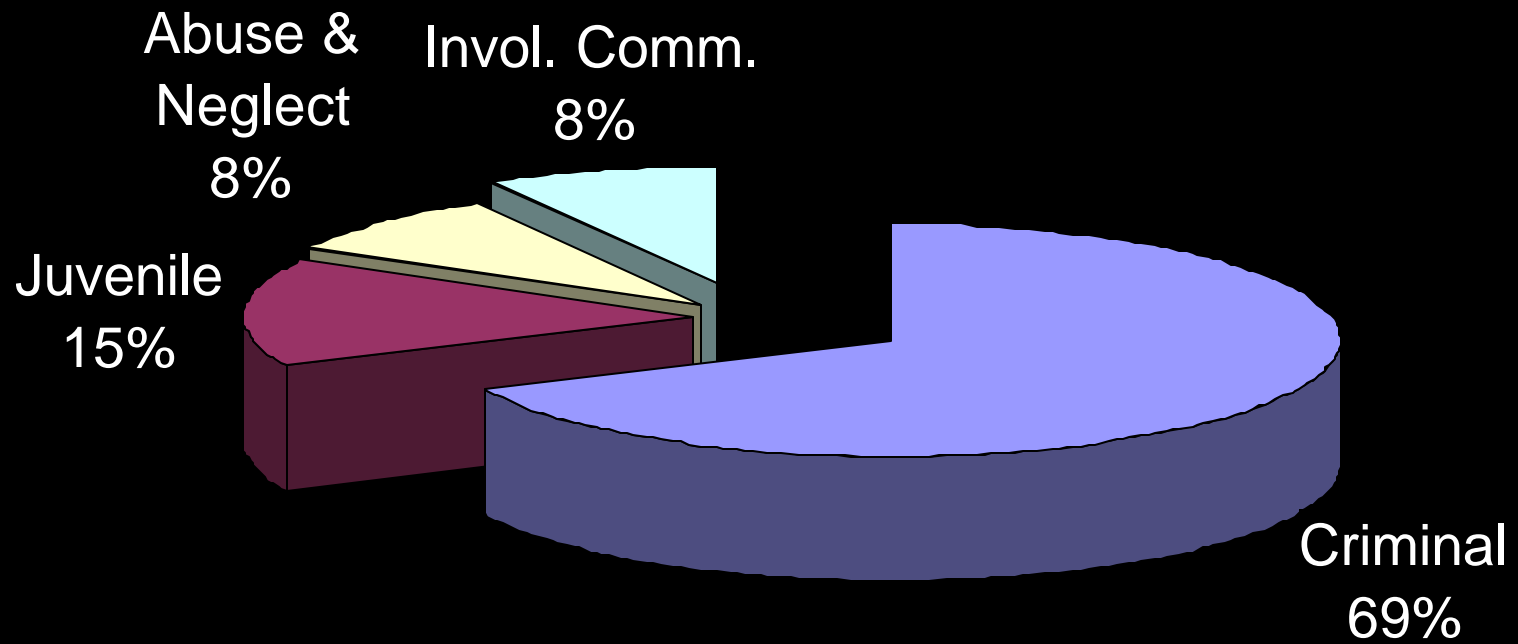
C. Juvenile (DJ)

D. Involuntary Commitment (DI – Mental Health, not DD right now)

Percentages of caseload?

- ✍ 31% of all district court cases
- ✍ 11,655 cases in 2003
- ✍ Assumption: 80% of those did involve court-appointed counsel = 9,324 cases

Case-Type Percentages



Service delivery

- ✍ 6 County PD offices

 - ✍ Cascade, Missoula, Lewis & Clark, Yellowstone, Gallatin, Anaconda-Deer Lodge

- ✍ About 16 counties contract (maybe?)

- ✍ Most (about 34 counties) rely on judge to appoint on a case-by-case basis

How many PDs do we have?

✍️ 35 attorneys in 6 County PD offices

✍️ More than 180 attorneys/firms paid statewide since July 1, 2003, for contract/court-appointed services

ABA Caseload Standards

 150 new felonies a year, *or*

 400 misdemeanors, *or*

 200 juvenile, *or*

 200 mental health, *or*

 25 appeals

Caseload to FTE comparison

- ✍ Applying ABA standards for FELONY cases:
 - ✍ Needed 62 FTE attorneys statewide in 2003
 - ✍ assumes only 80% of total caseload is PD
 - ✍ methods for caseload reporting vary by court

More research needed: SURVEY?

✍ County PD offices:

✍ expenditures: allowable vs. nonallowable

✍ total caseload and FTE?

✍ percentage of workload (FTE and expenditures) attributable to lower courts?

✍ Contracts vs. appointed: which counties, what fees, how much caseload?



Part II

Funding Responsibilities

Review

✍ Historically a county responsibility, state reimbursement to help with District Courts

✍ State Assumption completed July 1, 2003

State Responsibilities

- ✍ Direct payment to county contractors
- ✍ Direct payment to court-appointed
- ✍ Reimbursements to County PD offices

What are the costs?

- ✍ More from LFD report

- ✍ Challenging task to carve out from mixed District Court costs, those costs strictly associated with public defenders

State Responsibilities

- ✍ Direct payment to county contractors
- ✍ Direct payment to court-appointed
- ✍ Reimbursements to County PD offices

Cost drivers & causes of volatility

✍️ Number of cases

✍️ Hourly pay

✍️ Case complexity (death penalty,
complex felonies)

Controlling costs, stabilizing volatility

- ✍ Salaried positions

- ✍ Staffing to meet average caseload

- ✍ Strategic management

 - ✍ Need for data to identify costs by hours and case (this data not now collected)

Other strategies, other states

- ✍ Compensation rates based on:
 - ✍ in court vs. out of court work
 - ✍ weight or score of a case by complexity
 - ✍ geography and local economy
- ✍ Defining indigence, can party pay some?
- ✍ Some states have formulas in statute
 - ✍ LJIC to consider?

Current practice in Montana

- ✍ District Court Council/Supreme Court sets policies, allowable vs. nonallowable
- ✍ Max compensation is \$60 per hour (ceiling or floor?)
- ✍ Change in paradigm if state agency is established
 - ✍ salaries are fixed costs
 - ✍ all costs incurred are "allowable"



Part III

Policy Considerations

Policy questions: How will....

- ✍ compensation be set?
- ✍ caseload be managed?
- ✍ costs be controlled?
- ✍ standards be set, enforced?
- ✍ training, education be provided for?

How will...

✍ an even playing field be ensured?

✍ checks and balances be provided between:

- ✍ state and local government responsibilities
- ✍ exec and judicial responsibilities
- ✍ public and private interests

Loose ends to tie up in any option

✍ Getting data on caseloads and costs

✍ For this study, approval of a survey?

✍ Uniformity in reporting and accounting for expenses at the county level

✍ Statutory definition of indigence?

Loose ends continued...

- ✍ When counsel is appointed (CFHHS recommendations)
 - ✍ Parents in abuse and neglect cases
 - ✍ Juveniles in delinquency proceedings
- ✍ Right to counsel for developmentally disabled in involuntary commitment proceedings
- ✍ GAL/CASA system (CFHHS recommendations)

Loose ends continued...

 Clarify statutes/duties of:

 District Court Council

 Appellate Defender Commission

Questions?