

ALASKA STATE LEGISLATURE
SENATE JUDICIARY STANDING COMMITTEE

February 17, 2023

1:30 p.m.

MEMBERS PRESENT

Senator Matt Claman, Chair
Senator Jesse Kiehl, Vice Chair
Senator James Kaufman
Senator Cathy Giessel

MEMBERS ABSENT

Senator Löki Tobin

COMMITTEE CALENDAR

PRESENTATION: PUBLIC DEFENDER AGENCY OVERVIEW

- HEARD

PREVIOUS COMMITTEE ACTION

No previous action to record

WITNESS REGISTER

SAMANTHA CHEROT, Public Defender
Public Defender Agency
Department of Administration
Anchorage, Alaska

POSITION STATEMENT: Provided the Public Defender Agency Overview.

ACTION NARRATIVE

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CHAIR MATT CLAMAN called the Senate Judiciary Standing Committee meeting to order at 1:30 p.m. Present at the call to order were Senators Kaufman, Giessel, Kiehl and Chair Claman.

PRESENTATION: Public Defender Agency Overview

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CHAIR CLAMAN announced the consideration of the State of Alaska Department of Administration Public Defender Agency Overview.

SAMANTHA CHEROT, Public Defender, Public Defender Agency, Department of Administration, Anchorage, Alaska, provided testimony for the Public Defender Agency. She began with slide 2, "Public Defender Agency: Overview."

Mission: To provide constitutionally mandated legal representation to indigent clients appointed by the court.

- 83 percent -85 percent of all indigent appointments are handled by the Public Defender Agency

Criminal Litigation

- o Misdemeanors
- o Felonies
- o Petitions to revoke
- o probation & parole
- o Juvenile Delinquency
- o 5th Amendment

Civil Litigation

- o Child in Need of Aid
- o Commitment

Post-Conviction

- o Appeals
 - Merit, Bail, Sentence
 - Petitions for postconviction relief (PCR)

Administration

- o Management
 - Legislation
 - Operations
 - Budget & Accounting
 - Records
 - AmeriCorps/HDP

MS. CHEROT mentioned partnerships with the Alaska Mental Health Trust and Alaska Legal Services to address civil issues and non-legal barriers. The services address serious challenges such as food insecurity, housing and substance abuse treatment. These efforts help decrease recidivism. Funding from the Alaska Mental Health Trust contributes to one position in Bethel, one serving

Nome and Kotzebue and a future position for the Matsu valley. She mentioned the AmeriCorps Program, which is funded through a federal grant providing an additional 10 positions.

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MS. CHEROT moved to slide 3, "Public Defender Agency."

Office	Attorneys
Anchorage	57
Bethel	8
Dillingham	2
Fairbanks	16
Juneau	5
Kenai	9
Ketchikan	4
Kodiak	2
Kotzebue	2
Nome	3
Palmer	12
Sitka	1
Utqiagvik	0
Total	121

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MS. CHEROT continued with slide 4, "Public Defender Agency: Challenges."

Workload

- COVID-19 Backlog
- Average number of cases assigned to each attorney in FY23 with full staffing is projected to be 154 for all attorneys, 172 for trial attorneys
- New Caseload standards to be published this year, NAC set at 150 in the '70s
- Juvenile appointments are up 25 percent statewide
- Projected 18,000 new cases appointed to the Public Defender Agency in 2023
- 11,790 cases are open currently

CHAIR CLAMAN asked about increases in juvenile cases.

MS. CHEROT opined that the increases in juvenile cases was due to the Covid-19 pandemic. The juvenile filings decreased through the pandemic, so the recent increase may reflect a backlog.

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MS. CHEROT continued with slide 5, "Public Defender Agency: Challenges." She thanked the legislature and the administration for the impact of HB 226 on attorney retention. She recounted several recent applications from third-year law students. The newer attorneys require additional training and supervision. All of the department attorneys are facing backlogs, which increases case complexity.

Retention & Recruitment

- ↓ in highly skilled and experienced attorneys
 - ↑ training and supervision needs
 - ↑ backlog of misdemeanor & felony cases
 - ↑ backlog of serious felony trials
-
- 30 percent of trial attorneys have the necessary training and experience to handle most serious felonies - unclassified and A felonies
 - 40 percent of the agency attorneys have been with the agency for less than three years, mostly for one to two years
 - 15 attorney positions currently vacant out of 121 (12 percent).
 - 9 of these vacancies candidates have accepted positions and start with the agency March through September 2023
 - An additional 4-5 third year law student applicants are currently under consideration or have been offered positions
 - 7 vacant support staff positions out of 91 (8 percent)

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SENATOR KIEHL wondered about hiring attorneys without trial experience during the pandemic. He asked about the trial experience needed to "move up" in the department.

MS. CHEROT responded that various states provide data about private attorney advancement. She explained that three years of criminal defense work was required before an attorney had enough experience to try felonies.

SENATOR KIEHL asked about factors driving attorney promotions.

MS. CHEROT responded that the agency considers both the person and their experience level when considering promotions. An attorney might be eligible and interested in a promotion if they mastered a caseload and feel prepared for greater challenges.

Benefits of promotion include reduced caseloads and increased pay. The promotion criteria is objective.

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MS. CHEROT moved to slide 6, "Public Defender Agency: Bethel and Nome Unclassified and Class A Felonies."

- 2/13/23 PDA not accepting new appointments
 - Average of 225 cases per attorney opened in Nome in FY23 (with full staffing)
 - Average of 199 cases per attorney opened in Bethel in FY23 (with full staffing)
- Actions to reduce current caseloads
 - Redistribution of cases to other attorneys in the Agency
 - Increases travel costs
 - May impact retention
 - Contract cases to private attorneys
 - Increased costs
 - Increase retention of new attorneys so they will gain the experience to handle these case types
- New case appointments after notice issued:
 - Court may continue to appoint Public Defender Agency to cases
 - Court may appoint Office of Public Advocacy
 - Court may use Court Rule 12e to appoint private counsel

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CHAIR CLAMAN clarified the statement about contract and staff attorneys. He asked if the agency would offer cases or staff attorneys following the court assignment. He was unable to hear Ms. Cherot for a brief period of audio technical difficulty.

MS. CHEROT responded that the court assignments may be challenged if staff is unavailable.

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SENATOR KIEHL asked about the caseloads and staffing needs in Nome and Bethel. He wondered about the average trial attorney caseload.

MS. CHEROT replied that she continues to advocate for additional positions, but the challenge lies in filling vacancies. Nome had two attorneys in the office so the third position is new. Bethel

added two or three positions. Filling vacancies may require remote staffing, which is not ideal. She added that some Anchorage attorneys accept cases in Bethel and Nome because of staffing shortages.

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SENATOR GIESSEL asked about establishing a law school in Alaska to help address the attorney shortages.

MS. CHEROT replied that Seattle University had a law program with Alaskan connections. She agreed that a state law school would benefit recruitment efforts. She mentioned efforts to lower the bar exam pass score for state agency attorneys. The effort was approved by the Board of Governors and slated for a future Supreme Court ruling. A reduction in the pass score increases the state's competitive advantage.

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SENATOR GIESSEL appreciated learning about the reduced pass score incentive. She added that other professions in Alaska are also in short supply and advocating for national licensure.

MS. CHEROT opined that the suggestion of national licensure is advantageous for attorneys. She mentioned the Universal Bar Exam (UBE) that can be taken in various locations where scores apply nationally.

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SENATOR CLAMAN offered to speak more with Senator Giessel about the issue later.

SENATOR KIEHL asked about the Public Defender Agency's use of contract attorneys.

MS. CHEROT replied that contractors are much more expensive than staff attorneys. Internal staff attorneys receive mentorship from experienced staff. She noted that contract attorneys are difficult to hire, the pool is shrinking. Many agencies are contracting with private attorneys because of nationwide shortages. She mentioned efforts to notify private attorneys about agency work opportunities. She expected the situation to improve by summer or fall of 2023 when the newly hired attorneys are available.

SENATOR KIEHL asked how many cases are contracted out to private practice attorneys.

MS. CHEROT replied that the agency establishes contracts with private attorneys approximately 2 percent of the time. She pointed to early data from FY 23 where private contractors handled 16 unclassified A felonies, 27 B felonies, 56 D felonies and 160 misdemeanors. The agency requires expertise for the more serious cases. The private contracts are not lucrative, but many private attorneys accept cases to help the public defenders.

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CHAIR CLAMAN asked if the agency is bound by the Office of Public Advocacy hourly contract rates. He wondered how much contract attorneys are paid.

MS. CHEROT replied that contract rates were similar to those of the Office of Public Advocacy, but the agency is not bound by the same limitations. The agency increased rates significantly to remain competitive with the federal rate of \$164 per hour. The case cap was also increased; however, some attorneys prefer a flat rate.

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SENATOR KAUFMAN asked about a formally designed contracting plan. He asked if the plan allows for scalability of staff.

MS. CHEROT replied that the goal is to be fully staffed. She added that the agency did not have a budget for contracting. Contracting dollars are reserved for vacancies, but in light of the current staffing crisis, supplemental funding is designated for private attorneys.

CHAIR CLAMAN asked how the agency's hourly rate of \$150 dollars an hour compares with hourly earnings of private practice criminal defense attorneys in Alaska.

MS. CHEROT replied that compensation is based on experience. An experienced criminal defense attorney in the Anchorage community charges \$300 - \$500 per hour. A new attorney might start at \$250 per hour.

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SENATOR KIEHL spoke about the importance of mentoring new attorneys. He asked how the agency plans to train the newly hired legal staff.

MS. CHEROT responded that the upcoming supplemental funding will provide additional resources for travel and a training director. She remarked that the most experienced attorneys have the

highest caseloads while also possessing the necessary experience for mentoring. She pointed to the agency's new attorney training, broken into two segments. A thorough orientation followed by trial-skill workshops. She anticipated approval of the new training director position.

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There being no further business to come before the committee, Chair Claman adjourned the Senate Judiciary Standing Committee meeting at 2:13 PM.