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April 14, 2016

TO: Members of the Task Force on State Public Defender Operations
 FROM: Dave Bohyer
 RE: Other states' public defender salary *and* benefits compensation

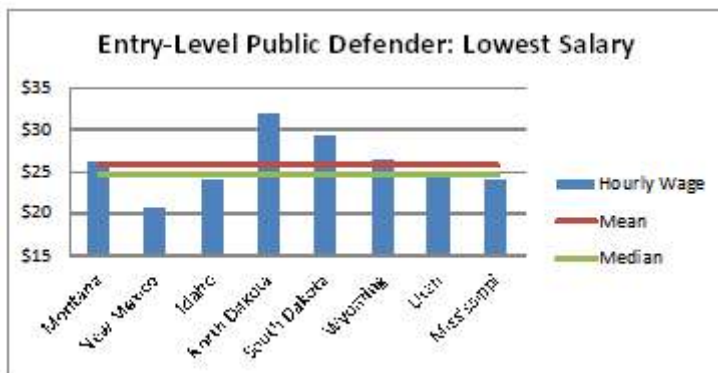
At the February 1, 2016 meeting of the Task Force, Rep. Brodehl requested staff to report on the total compensation -- salary and benefits -- paid in other states to attorneys employed as public defenders. This memorandum responds to the request.

In responding to the request, I contacted Rep. Brodehl seeking direction as to which states' public defenders were of particular interest to him. He stated that he'd like to see comparative information for Montana, New Mexico, Idaho, North Dakota, South Dakota, Wyoming, Utah, and Mississippi.¹ Utah and Mississippi are new to the comparisons since the data on salary only was presented at the February 1 meeting. The spreadsheets included as Appendix A show base salary and benefit data for entry-level public defenders in the several states examined.

Salary Only

In short, entry-level base pay for the Montana OPD's attorney employees, at \$26.27 per hour, is higher than reported entry-level base pay for four of the comparison states and lower than three. Montana OPD entry is 1.6% higher than the 7-state mean average (\$25.85) and 6.5% higher than the median (\$24.67).²

Figure 1: Interstate Comparison of Entry-Level Public Defender Pay (salary only)

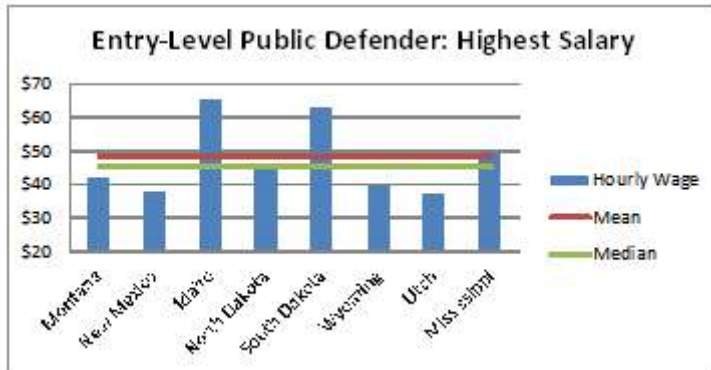


¹ Idaho, South Dakota, Utah, and Mississippi each provide or until recently provided indigent defense services through a county administered structure. Idaho, Utah, and Mississippi are each defending their respective systems in federal court.

² For the purposes of this memo, "entry-level" and "low" pay are defined/used to mean the lowest dollar amount found for a public defender within the salary range for the entry-level PD position in the state. A given jurisdiction may have flexibility to pay a starting salary that is higher than the "entry" or "low" salary listed, but the lowest amount found was used for consistency and comparability. Additionally, some states allow for "bonus" or "performance" pay, but \$0 bonus pay was included in the base pay in those states that allow bonus pay.

The story remains different at the other end of Montana's pay scale where entry-level OPD-employee attorneys' base pay tops out at \$41.87 per hour, higher than PD base pay in three of the comparison states but lower than the other four. Montana's top-end base pay for entry-level attorneys is 13.2% lower than the 7-state mean hourly pay (\$48.26) and 7.5% lower than the 7-state median (\$45.29).

Figure 2: Interstate Comparison of Entry-Level Public Defender Pay (salary only)



Benefits Only

"Benefits" paid to OPD-employed attorneys vary among the states, much like base pay varies for the comparative attorneys. For the purposes of this analysis, the "benefits" included for comparison are comprised of the employer's share of the following benefits:

- health insurance premiums for the "employee only";³
- FICA taxes (Social Security and Medicare)
- public employee retirement;
- vacation and sick leaves and personal days; and
- holidays.

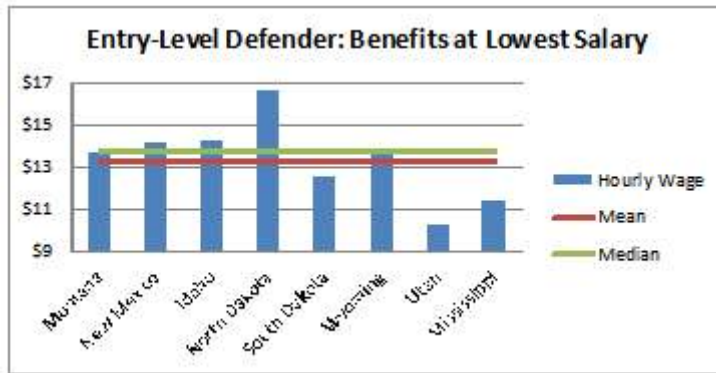
Because there are different ways that benefits manifest as employer costs, the value of benefits is translated into "dollars per hour" so they can be compared among the states. FICA taxes are the same in each state; i.e., 7.65% of an employee's pay, because they are levied at the federal level. The other benefits are all determined at the state level and vary among the states.

In an effort to not get too far into the weeds, I've focused here on the combined value of all benefits rather than distinguishing between the separate values of health insurance, retirement contributions, or sick leave. However, I have included the individual benefit components for each state in Appendix A accompanying this memo.

³ In at least three of the comparison states, South Dakota, Mississippi, and Wyoming, the employer contribution is increasingly greater for "employee/spouse", "employee/child(ren)", and "employee/family". New Mexico may follow a similar plan, but it is unclear from available information. Notably, the premium listed for the employer share in NM is based on, "family coverage in conjunction with family dental, vision, life and disability coverage." The employer share for "family" coverage in the states that vary employer contributions based on number/relationship coverage is, for family coverage, typically more than double the employer share for "employee only" coverage. For example, in Mississippi, employer share is \$356/month for "employee only" and \$949 for "family" coverage; in SD (Minnehaha County), employer share is \$196/month for employee only and \$549/month for family; in WY, employer share for employee only coverage is \$753/month compared to \$1,715/month for family coverage. In SD, the employer may also contribute \$300 annually to an employee's HSA (Health Savings Account).

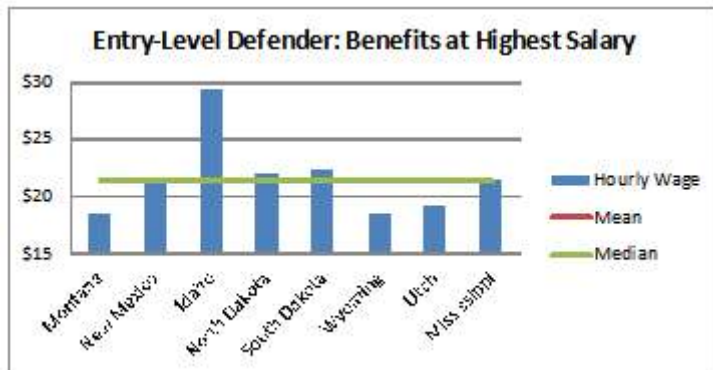
The story for Montana OPD attorneys' benefits is parallel to the story for base pay: competitive at the low end of the pay scale, but lagging at the high end. For an entry-level Montana OPD attorney, benefits equate to \$13.63 per hour. That amount is 2.7% higher than the 7-state mean average benefit value of \$13.27/hour at the lowest salary and 1.1% lower than the 7-state median of \$13.78/hour.

Figure 3: Interstate Comparison of Entry-Level Public Defender Pay (benefits only)



In contrast, at the high end of the pay scale for entry-level public defenders, Montana OPD attorneys' benefits are valued at \$18.38/hour. The 7-state mean average benefit value for comparable public defenders is \$21.95/hour and the 7-state median is \$21.38/hour. In percentage terms, the benefits value for Montana public defenders at the high end of the pay scale for entry-level attorneys is 16.3% below the 7-state average and 14% below the 7-state median.

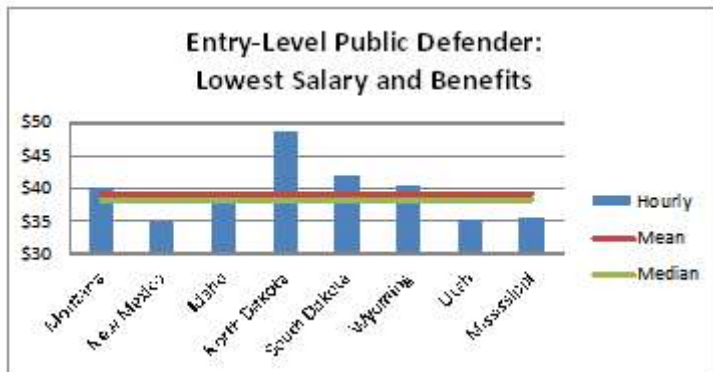
Figure 4: Interstate Comparison of Entry-Level Public Defender Pay (benefits only)



Salary and Benefits Combined

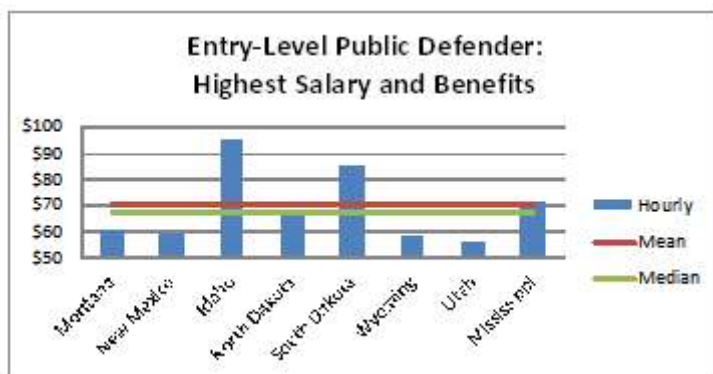
When salary and benefits are combined, the same patterns emerge: competitive at the low end and lagging at the high end of the pay scale. Combined salary and benefits for an entry-level Montana OPD attorney are \$39.90/hour at the lowest pay level, higher than four comparison states and lower than three. The mean average of the seven states is \$39.12/hour and a median at \$38.24/hour. Doing the math, Montana's combined low-end salary and benefits are 2% higher than the mean and 4.3% higher than the median. (Figure 5.)

Figure 5: Interstate Comparison of Entry-Level Public Defender **Salary and Benefits**



At the top end of the entry-level pay scale, combined salary and benefits in Montana sum to \$60.25/hour. Montana's amount compares to the 7-state mean of \$70.21/hour and 7-state median of \$67.31/hour, which is 14.2% below the mean and 10.5% below the median.

Figure 6: Interstate Comparison of Entry-Level Public Defender **Salary and Benefits**

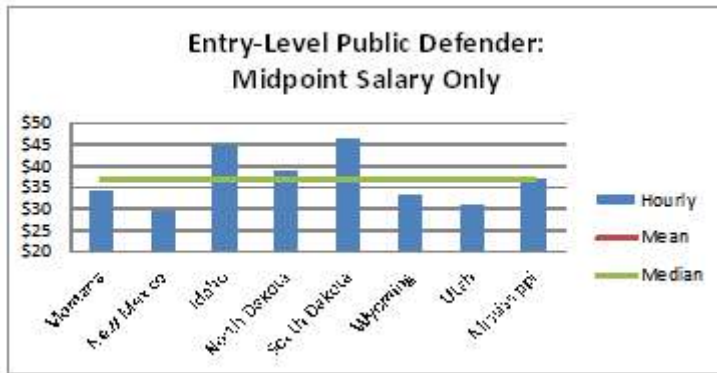


Entry-level Public Defender Salary at the Midpoint of the Salary Range

The data and information discussed to this point is based on only the lowest paid and highest paid entry-level OPD attorneys in the jurisdictions examined. However, there are likely to be relatively few employees who are at the very lowest pay level and even fewer at the very highest in the entry-level OPD attorney position. Consequently, it may be marginally more useful to assume that the entry-level public defenders' salaries cluster around the mean average salary for the position, conforming to the "bell-shaped curve" one commonly finds when looking at larger populations. Based on that speculation, I calculated the midpoint salary, i.e., the average of the low and high salary, for each of the states and compared the salaries and benefits as indicated by the midpoints.

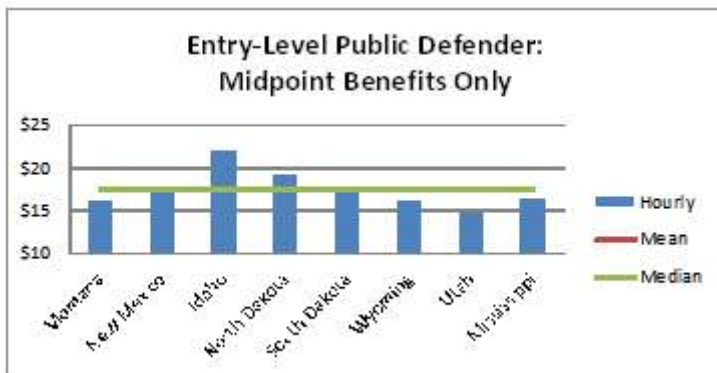
The midpoint salary for the entry-level public defender position in Montana is \$34.07 per hour. That rate compares to the 7-state mean of the other states' midpoint salaries of \$37.06/hour and median of \$36.92/hour. In percentage terms, Montana's midpoint is 8% below the 7-state mean and 7.7% below the 7-state median. Montana's midpoint is higher than three states' and lower than four states' midpoints. (See Figure 7.)

Figure 7: Interstate Comparison of Entry-Level Public Defender **Midpoint Salary**



The value of benefits based on the midpoint salary for the entry-level public defender position in Montana is \$16.00 per hour. The 7-state mean value of benefits based on the respective states' midpoint salaries is \$17.57/hour and the median is \$17.38/hour. Those figures translate to Montana benefits being 8.9% below the 7-state mean and 7.9% below the 7-state median. The Montana midpoint for benefits is lower than all but one of the other seven states.

Figure 8: Interstate Comparison of Entry-Level Public Defender **Midpoint Benefits**



Adding the Montana midpoint salary (\$34.07) and benefits (\$16.00) for the lowest paid OPD entry-level attorneys sums to \$50.07 per hour, compared to the 7-state mean combined salary and benefits of \$54.63/hour and median of \$53.29/hour. At \$50.07/hour, Montana's midpoint salary is higher than three states and lower than four states. Percentage-wise, Montana's combined midpoint salary and benefits for OPD entry-level attorneys is 8.3% below the mean and 6% below the median.

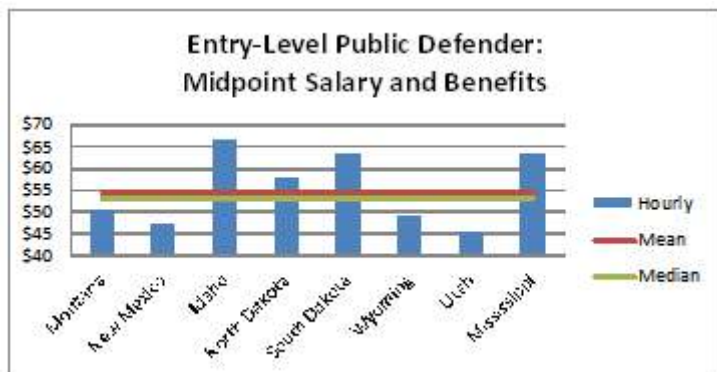


Figure 9: Interstate Comparison of Entry-Level Public Defender **Midpoint Salary and Benefits**

Summary

Based on salary and benefit data gathered on entry-level public defenders in Montana and seven different states, the pay and benefits package available to Montana's lowest paid entry-level OPD attorneys is competitive with other states. However, the competitiveness of the salary and benefits package for Montana's attorneys begins to lag some other states' compensation packages at the middle of the salary range for entry-level public defenders. At the top of the entry-level salary range, Montana's compensation package is competitive to some states but lags considerably when compared to others.

Post Script

Utah and Mississippi are new to the comparisons made in the Task Force's examination of OPD attorney pay, i.e., "new" with respect to the comparisons requested at the December 10 meeting and presented at the February 1 meeting. The addition of the two states does not change the basic findings presented in February that Montana's low-end, entry-level, OPD attorney compensation is competitive with the low-end entry-level pay in the comparison states' or that compensation at the top end of the pay range for Montana's entry-level OPD attorneys lags the other states' pay for the same level of OPD attorneys.

Potentially worth noting as well is that when the Task Force discussed the topic of OPD attorney pay at the December meeting, staff were cautioned to avoid comparing states that were being sued over alleged constitutional violations of indigent defendants' right to counsel. Among the states examined, Utah and Mississippi join South Dakota and Idaho in providing indigent defense services through a county administered model somewhat similar to Montana's model prior the creation of the Montana Office of State Public Defender in 2005.

Utah has recently been sued for alleged 6th Amendment violations⁴ even though its legislature passed and the governor signed legislation (SB 155) in March 2016 to address some of the alleged constitutional deficiencies.⁵ Similarly, Scott County, Mississippi is also engaged in a lawsuit alleging an unconstitutional indigent defense system.⁶ Neither the Utah nor Mississippi case has been decided. Idaho was similarly sued in 2015 on virtually the same grounds and the state prevailed at the District Court. Idaho's case is on appeal to the Idaho Supreme Court.

Respectfully submitted.

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⁴ "State of Utah, Washington County sued over their public defender system", by Jessica Miller, *The Salt Lake Tribune* online, Jan 22, 2016, updated Jan 23, 2016. See *Cox, et al v. State of Utah, et al.*, Case 2:16-CV-53.

⁵ Senate Bill No. 155 (2016), Sen. Weiler, Rep. McCay, reported in *The Salt Lake Tribune* online. SB 155 passed the Legislature on March 9 and was signed by the governor on March 22, 2016. See <http://le.utah.gov/asp/billtrack/track.asp?addbill=SB0155&latest=true&agendsort=true> (Utah Legislature's website, SB 155 status.)

⁶ *Burks, et al., v. Scott County, Mississippi*, Case No. 3:14-CV-745, U.S. District Court, South District of Mississippi.