Board of Judicial Policy and Administration

Supreme Court Building, Room 237
Cheyenne, Wyoming
December 11, 2017
9:00 a.m. – Noon
Video Conference

MINUTES

BJPA Members Present: Chief Justice Jim Burke (Chair), Justice Kate Fox, Justice Keith Kautz, Judge John Perry*, Judge John Fenn*, Judge Catherine Rogers, Judge Bob Castor*, Judge Wes Roberts*, Judge Curt Haws*

Others Present: Polly Scott, Communications & Deferred Compensation Plan Manager, Summer Wasson, Wyoming Retirement System Information Officer, Diane Lozano, State Public Defender, Ryan Roden, Deputy State Public Defender, Mark Gifford, State Bar Counsel, Justice Mike Davis, Judge Brian Christensen, Patty Bennett, Clerk of the Supreme Court, Julie Goyen, Chief Information Officer, Elisa Butler, Staff Attorney, Tricia Gasner, Business Applications Manager, Heather Kenworthy, Senior Business Analyst, Eydie Trautwein, Director of Legal Resources and Judicial Education, Kristi Racines, Chief Fiscal Officer, Becky Craig, Project Coordinator, Cierra Hipszky, Business Analyst, Ronda Munger, Deputy State Court Administrator and Lily Sharpe, State Court Administrator

**Appeared remotely via phone or video conference*

Agenda Items	
Welcome	Chief Justice Burke welcomed the Board members and guests.
Judicial Branch Retirement Account	1. <u>Retirement Account Update – Polly Scott, Wyoming Retirement System</u> Polly Scott, Wyoming Retirement System (WRS) Communications & Deferred Compensation Plan Manager, updated the Board on the Judicial Retirement account and shared a handout describing the state pension plans. (Appendix 1.) Ms. Scott explained that account plans need to quantify their assets and liabilities. WRS hires statisticians, or actuaries, to predict how plans will operate. As shown in the handout, the Judicial Plan is the best funded retirement plan. Recent changes to assumptions about the benefit security of the retirement plans are shown on page 3 of the handout. Based on a 2017 experience study, the Board made adjustments to assumptions used to generate contribution amounts. The Board changed the assumed investment

	return from 7.75 % to 7%. The change dropped the Judicial Plan's funded ratio to 100% for 2017 and to 99% for 2018. The actuaries estimate that to award a COLA, the funding needs to be at approximately 120%. Consequently, COLA's will not be given to judges in the near future. The last time WRS members were given a COLA was in 2008. In 2008, COLAs could be given without legislative action. Now, the criteria in Wyo. Stat. 9-3-454 must be met before a COLA can be made. A COLA cannot be awarded unless the plan remains funded at 100% after the award of the COLA. There is a handbook on the WRS site for each plan including the Judicial Plan. For judicial branch employees who are in the Public Employee Plan, the recommended contribution increase is projected to be ½%. It is anticipated the increase will be split between the employee and the employer. This would raise the contribution of judicial branch employees in the Big Plan from 2.68% to 2.93%.
Wyoming Public Defender's Office Update	1. <u>Resources and Funding – Diane Lozano, State Public Defender</u> Diane Lozano apprised the Board of the critical need for additional public defender staff and funding. She referred the Board to her November 2, 2017 letter to Chief Justice Burke highlighting the ethical issues which arise when public defenders bear excessive caseloads. (Appendix 2.) To address the needs of the office, Ms. Lozano will request funding for 8 new attorney positions. Given the fiscal environment, however, the Governor has only recommended funding 4 attorneys. Ms. Lozano stressed that inadequate staffing affects the clients' right to counsel. Consequently, if positions are not funded, the Public Defender's Office will not be able to take some of these cases. Moreover, if a judge appoints an attorney outside of the Public Defender's Office, the office will not have the funds to pay the attorney. Ms. Lozano suggested several areas in which judges can help ease the load of the Public Defender's Office: a. Use the attached affidavit to ensure that public defenders are only appointed when a client qualifies. (Appendix 3.) b. Monitor how cases are filed and encourage prosecutors to file related felonies and misdemeanors in the same case. The more number of cases filed, the more congested the defense attorney's court schedule becomes, requiring the attorney to spend substantial time going back and forth between courts. c. Require defendants to pay at least some of the attorney's fees.
Bar Counsel Update	1. <u>Update – Mark Gifford, Wyoming State Bar Counsel</u> Mr. Gifford stated the State Bar Association has received 161 grievances this

	year. In general, disciplinary action is taken in approximately 10% of the cases. The ethics hotline appears to have an impact on the types of grievances filed. Mr. Gifford receives between 5 to 10 calls per day. The largest areas of concern he receives involve questions about conflicts. Mr. Gifford reminded judges of their ethical obligation to report misconduct. He encouraged judges to bring misbehavior or the failure of a lawyer to function properly to his attention early. When a judge calls with a concern, Mr. Gifford will investigate immediately. The goal is to intervene before small problems escalate.
Joint Judiciary Committee	1. <u>Update – Justice Davis</u> A. Delineation of Responsibility for courtroom technology bill draft Justice Davis recounted conversations with Pete Obermueller and the Wyoming County Commissioners Association regarding responsibility for courtroom technology and the infrastructure necessary to support the technology. There was consensus the State would provide the IT equipment for the courtrooms, chambers and jury rooms, and the counties would provide the power, infrastructure and wiring necessary to support the equipment. The attached bill draft was presented to the Joint Judiciary Interim Committee. (Appendix 4.) The Committee voted to sponsor the bill during the upcoming legislative session. B. 2018 bills sponsored by Joint Judiciary Committee – Cierra Hipszky, Lily Sharpe and Ronda Munger Lily Sharpe reviewed several bills which will be sponsored by the Joint Judiciary Interim Committee during the 2018 Budget Session. (Appendix 5.) Cierra Hipszky explained the Child Support bill the Committee will sponsor and provided an accompanying summary from the Department of Family Services. (Appendix 6.) Federal regulations and State law require a review of child support every four years. A review committee conducted the required review in 2016 and requested the economist to prepare a report on allowing parenting time to be better reflected within the child support calculation. A bill to update the calculations failed during the 2017 Session. The concepts behind the current bill are to simplify support by eliminating abatements and to account for extra expense to raise a child in two separate households. The bill changes "joint presumptive" to "shared responsibility" and decreases the percentage for shared responsibility from 40% to 25% to reduce the "cliff effect" that currently happens once parenting time reaches that 40% threshold. Another change is a multiplier for cases that meet the 25% shared responsibility requirement. Wyoming is the only state that uses a time-share formula that does not use a multiplier. The multiplier helps account for the increased cost of raising a child or children in two households. The bill draft additionally eliminates the "no less than $50 ordered" provision and adds language for the "self-support reserve" to be considered if the payor's income

	is approximately the amount of self-support. For 2017, the amount is $1,155 per month. For example, if the obligor's net income is $1,300 per month, the tables might provide for support of $250. However, by subtracting the self-support reserve of $1,155 from the net income of $1,300, the support amount would be $145. Ronda Munger reviewed two additional Judiciary Committee bills. The first addresses speeding fine amendments. The bill simplifies the nine existing formulas used for calculating speeding violations to three. The bill also reduces all speeding fines by more than 20%. Based on the last fiscal year, this would result in an estimated reduction of $750,000 in revenue to the school districts. The second bill is a cleanup bill that allows the district court clerks to transfer adoption information to the State Registrar's Office electronically. The bill is supported by the State Registrar and the District Court Clerks' Association.
Judicial Education Committee Members: Justice Kautz (Chair), Chief Justice Burke, Judge Sullins, Judge Lavery, Judge Haws, and Judge Williams	1. <u>Update – Justice Kautz, Chairman and Eydie Trautwein</u> Justice Kautz advised judicial education will be offered to the new judges when they are sworn in. Eydie Trautwein added that the Committee has reviewed survey results from Judicial Council Meeting in September 2017 and is starting to identify topics and presenters for 2018. The Committee is also developing videos for the judges' library. Judge Waldrip assisted with videos on contempt and pro-se litigants. The recent videos will be ready for review in February. A series of webinars on Westlaw have been finished and advanced sessions will be held in 2018. Reminder: Please submit CJE hours (due February 1st).
Judicial Conference Reports District Conference president: Judge Tyler Circuit Conference President: Judge Christensen Judicial Council Chairman: Chief Justice Burke	1. <u>Circuit Court Conference Update – Judge Christensen</u> The Circuit Court judges met last week. Speaker Steve Harshman, Chairman Dan Kirkbride, Representative Jerry Obermueller and Senator Liisa Anselmi-Dalton met with the Conference. Discussions with the legislators were positive and beneficial. The legislators shared their concerns about the overall efficiencies of judicial and executive branch resources. One area which may portray inefficiencies in State government is the reduction by the Department of Corrections of drug and alcohol programs. The effect of reduced programs may result in increased costs because of recidivism. To avoid adverse consequences of budget reductions, collaboration in devising alternative solutions is critical. For example, courts could require defendants pay some of the cost to participate in drug and alcohol programs. Other areas in which the Judiciary could assist is ordering creative solutions to jail such as pretrial and post-sentence programs, scram bracelets, GPS tracking and 24/7 programs. The legislators encouraged the judges to help in the development of workable and cost-effective options.

	a. Salaries Chairman Kirkbride expressed interest in studying judicial salaries during the 2018 interim. b. Paper size and Rule 403 of the Uniform Rules for District Courts The circuit judges' main suggestion was that all filings should appear on one side of the page. c. Number of charges on a citation With respect to Wyo. R. Crim. P. 3(b)(3)(C), the Conference strongly recommends that there should be only one charge per citation at this point in time. The Conference would be happy to re-evaluate its recommendation once the technology exists that will address certain concerns, such as the ability to strip out one charge without dismissing the entire citation. It is not critical that the citation be available to the judge in the exact form that the defendant receives. It is important, however, that the information provided is accurate and in a font size that allows the judge to read the charges. 2. <u>District Court Conference Update</u> a. Salaries Judges Perry, Fenn and Rogers provided the updates. There is not a consensus among the judges as to a salary plan. Requesting updates to the salary statutes, however, is very important. Salaries need to be addressed to ensure judges are fairly compensated and to ensure that qualified candidates apply for future vacancies. b. Paper size and Rule 403 of the Uniform Rules for District Courts The district court judges agree that the most important requirement is that all documents should be on one side. c. Number of charges on a citation The Conference agreed that more than one charge should be allowed on a citation or information.
Judicial Branch Technology <u>Courtroom Technology Committee</u> Members: Justice Davis (Chair), Chief Justice Burke, Judge Tyler, Judge Sharpe, Judge Christensen, and Judge Prokos <u>Courtroom Automation Committee</u> Members: Justice Davis (Chair), Judge Fenn, Judge Skar, Judge Campbell, Judge Christensen, Judge Castano, Judge Haws	**IT DIVISION UPDATE** 1. <u>CitePay in Circuit Courts – Heather Kenworthy</u> CitePay is a new credit card payment system for circuit courts. The system is replacing Epay and ClerkPay. CitePay allows the courts to reduce risks associated with taking credit card payments and meet credit card industry standards. In addition, the system will improve the communication between the payment system and the case management system. This week marks the halfway point in the rollout of CitePay. Twelve circuit courts will have been rolled out by the end of the week and 12 courts will tentatively be rolled out by January 16th.

2. Jury Management System – Tricia Gasner

The pilot courts are Platte and Laramie District and Circuit Courts. The tentative go-live date for the pilot courts is mid-January 2018. All courts' jury lists will be created out of AgileJury in 2018.

COURTROOM TECHNOLOGY COMMITTEE UPDATES

1. Courtroom Technology – Julie Goyen

a. Jury Room: Minimum Technology Standard

Judge Roberts, seconded by Judge Fenn, moved to adopt the attached jury room standards. The motion was passed unanimously on a voice vote. (Appendix 7.)

b. Emergency IT Requests Status

Twenty-one emergency requests for courtroom upgrades have been received since February 2017. Except for two, all requests have been approved. The requests include:

- 5 To be installed, all scheduled except Weston County
- 13 New Audio Systems
- 3 Hearing Assist Fixes
- 1 Hub Integration
- 1 Microphone Fix
- 1 Phone Integration
- 2 Denied or Not Needed

The $300,000 appropriated by the Legislature in 2016 for courtroom technology upgrades has been expended. An additional $500,000 from the Court Automation Fund was earmarked for emergency requests. $162,000 remains.

c. Project Stratus (Phase I of Office 365/Network Upgrade/Hubs)

Eight judicial districts have been migrated to the upgraded network and Office 365. The last location (Laramie) will be migrated this week. The rollouts were rocky at first. Julie thanked all the districts for their patience and help throughout the project.

d. Phases II and III of Project Stratus

During Phase II, large systems will be moved to the Azure Cloud and the Supreme Court data center will be decommissioned. Additionally, the new case management and jury systems (FullCourt Enterprise and AgileJury) will be rolled out to all circuit and district courts. The new case management systems and the jury system will be placed directly onto Azure. Phase III is the Hardware and Operating System (OS) replacement for the Branch. During

rollout of Phase I, it was found that many computers in the Branch were having problems running the new O365 software or the new software would not install. Implementation was planned to begin in late 2018, but is being reevaluated.

COURTROOM AUTOMATION COMMITTEE UPDATES

1. Overview – Justice Davis, Chairman

One of the biggest issues that has arisen revolves around online public access to court records. Several district court clerks have expressed concern about making records readily available to the public and about the difficulty in assuring that confidential documents are not inadvertently released online. To ensure online public access to court records is consistent with legislative intent, members of the Court Automation Committee met with former and current legislators including Tom Lubnau, Tony Ross, Phil Nicholas, Leland Christensen, Dan Kirkbride, Tara Nethercott and Bob Nicholas. The former legislative members expressed that their intent was to make court records available to the public online and at no cost. The current legislators expressed understanding for the concerns of the clerks and emphasized the importance of carefully configuring the system and developing processes and procedures to prevent confidential information from being released online.

Justice Davis also noted that there was some concern among district court clerks about the juvenile cases in FullCourt Enterprise. The estimated cost to build a juvenile module similar to the WyUser juvenile module is $300,000. The cost was determined to be prohibitive. The Judiciary will work with Justice Systems Inc. (JSI) to configure FullCourt Enterprise to meet the needs of the clerks for juvenile cases.

2. Project Status – Elisa Butler

a. Circuit Court Automation Committee and F.C.E. Upgrade

Work is going forward on the upgrade to the circuit court case management system. The circuit courts will be upgrading FullCourt v5 to FullCourt Enterprise. The circuit court clerk committee continues to meet weekly to work through the system to help the IT staff with configurations and to determine if there are any gaps within the system.

b. District Court Automation Committee and F.C.E. Configuration

Work is also moving forward on the change in the district court case management system. As a reminder, the district courts will be moving away from WyUser as the case management system, to FullCourt Enterprise. Once the new case management systems are rolled out, the circuit and district courts will have a unified case management system. The district court clerk committee continues to meet weekly to work through the system. There will be a two-day meeting this week to work through some of the more challenging topics, such as accounting, juvenile cases, and paternity shell cases.

	The committee will continue to work with the clerk committees to determine if there are any additional customizations that need to be made to make the system work in the manner the clerks expect. The committee anticipates that within the next few months, it will need to finalize all the customizations to allow JSI to develop those before the systems are rolled out. c. aiSmartBench aiSmartBench is an application that provides judges' tools, and it will be rolled out in the district court judges' chambers. There has been a committee formed to work through aiSmartBench; however, the committee's work is expected to be much less involved for aiSmartBench than it is for FullCourt Enterprise. Most of the configuring will be done based on the preference of each judge. It is anticipated that committee work will ramp up once the CitePay rollout is completed, and the IT staff are able to free up some of their time. d. E-Filing A contract for E-Filing has not been entered into yet. Once there's a good idea of the rollout schedule for FullCourt Enterprise, planning for E-filing can begin. e. Public Access The committee will move forward with the original plan unless the legislature directs otherwise.
Redaction Committee Judicial Members: Justice Davis (Chair), Judge Castano	1. <u>Update – Justice Davis, Chairman, and Patty Bennett</u> a. Proposed rule changes The Redaction Committee proposed amending the rules to add addresses of victims and to clarify that redactions are handled by the court reporter, clerk and attorneys. The responsibility is placed largely with the attorneys of record. In criminal cases, the responsibility will be largely with the prosecutor. In civil cases, both attorneys will be responsible and will have to give the redaction directions to the court reporter as soon as the redactions are known. The notice to the court reporter, however, can also still be done at the end of the case. There is also a recommendation to add a Rule 10 to give the court more discretion to sanction attorneys who don't comply. The rules will likely be considered by the Supreme Court this week. Justice Davis observed that prosecutors have to provide the reporters a list of what needs to be redacted. The court reporters are the only ones that can do the redactions. Every court reporter has or can easily obtain affordable software to redact. This is a major improvement in the redaction rules. However, it will be necessary to educate attorneys about these redactions and how important they are.

Permanent Rules Advisory Committee (PRAC) Appellate Division Judicial Members: Justice Davis, Judge Fenn Civil Division Judicial Members: Justice Fox (Chair), Judge Castano, Judge Kricken, Judge Rumpke Criminal Division Judicial Members: Judge Edelman (Chair), Judge Arp Evidence Division Judicial Members: Judge Rumpke (Chair), Judge Nau, Judge Radda Juvenile Division Judicial Members: Judge Wilking (Chair), Justice Kautz, Judge Campbell, Judge Fenn	1. Appellate Rules Update – Justice Davis and Patty Bennett An update was finalized in September. The Supreme Court is currently considering a word count or page limit for briefs. 2. Civil Rules Update – Justice Fox and Patty Bennett The Committee is only considering slight changes at this time. 3. Criminal Rules Update – Judge Edelman and Patty Bennett A. Rule 43 Modifications The modifications are in the process of being reviewed and edited by staff. The Supreme Court will likely consider the rules in January 2018. 4. Rules of Evidence Update – Judge Rumpke and Patty Bennett The Rules of Evidence updates are attached. (Appendix 8.) 5. Juvenile Rules Update – Judge Wilking and Patty Bennett The Juvenile Rules Committee has finalized proposed rule changes and they were circulated to the committee members, as well as Jill Kucera and Eydie Trautwein, on November 14, 2017 for comment. Once those comments are received and considered, the Committee will submit the proposed changes to the Wyoming Supreme Court. The committee hopes to do that in early December.
Access to Justice Commission Judicial Members: Justice Fox (Chair), Chief Justice Burke, Judge Day, Judge Lavery, Judge Kricken, Judge Cundiff	1. Update – Justice Fox No update.
Branch Budget	1. Update – Kristi Racines The Judicial Branch presented to the Joint Appropriations Committee for approximately 5 hours last week. The Judicial Branch had no General Fund exception requests. Kristi thanked Judges Tyler and Christensen for attending and answering the Committees' questions. Mark-up of the Budget Bill will be the third week in January. It will be important to watch for statewide reductions which could substantially hurt the mission of the courts. Chief Justice Burke echoed Kristi's thanks to Judge Tyler and Judge Christensen.
Court Security Commission Judicial Members: Justice Kautz, Judge Tyler, Judge Roberts	1. Update – Ronda Munger The Commission won't meet until after the legislative session. The Commission, however, will work with JAC to hopefully receive funding this session to complete security upgrades suggested in the latest court security assessments.

Children's Justice Project	1. Update – Eydie Trautwein There will be an Advisory Council meeting on December 14th and the Council will discuss FFY17 data. The latest possible legislation effecting FY18-FY22 funding is the *Continuing of Useful Resources to States Act or COURTS Act* (HR 4461) which seeks to reauthorize and fully fund the three CIP grants at the current level of $30 million through FFY 2022.
Pretrial Release Issues	1. Court Ordered Financial Obligations – Judge Haws A. Working Group Progress The Group has developed several suggestions and will provide a written report once they have finalized them.
Audit of Circuit Courts	1. Evanston - Audit Letter August 23, 2017 (Appendix 9) 2. Sundance - Audit Letter August 24, 2017 (Appendix 10) 3. Worland - Audit Letter September 28, 2017 (Appendix 11) 4. Pinedale - Audit Letter October 31, 2017 (Appendix 12)
Equality Hall	1. Update – Eydie Trautwein The committee (Judge Young, Judge Denhardt, Judge Roberts, Judge McKee, Carolyn Orr, Jared Kail, Terry Rogers) has met once a month. The design for Equality Hall was finalized in November. Painting will occur the week of December 18th and installation of the exhibit will occur the week of December 25th. The Committee is planning a ceremony/dedication tentatively to be held on Law Day (May 1st). There will be a ceremony in Lander and hanging of Judge Kail's portrait in Cheyenne. Thank you to Judge Roberts for tracking down Ester Hobart's gavel (we think)!

Actions taken by the Board:

1. Approved the minimum technology standards for jury rooms.

Action Items:

1. Circuit and District Court Conference to discuss the impact of insufficient funding for public defenders and report to the Chief Justice as soon as possible.

Schedule of Future Events:	Legislative Breakfast (Jonah Business Center-Cheyenne) – Feb. 12, 2018 BJPA Meeting – March 19, 2018 District Court Judges' Conference (TBD) - April 26 - 27, 2018 Circuit Court Judges' Conference (Jackson) – April 2-4, 2018

Appendix 1: Retirement Update

Appendix 2: Letter from State Public Defender

Appendix 3: Affidavit of Indigency

Appendix 4: Court information technology equipment bill draft

Appendix 5: Joint Judiciary Interim Committee bill summaries

Appendix 6: Wyoming Child Support Guidelines

Appendix 7: Jury Room Minimum Technology Standards

Appendix 8: Update from Evidence Division of the Permanent Rules Advisory Committee

Appendix 9: Evanston - Audit Letter August 23, 2017

Appendix 10: Sundance - Audit Letter August 24, 2017

Appendix 11: Worland - Audit Letter September 28, 2017

Appendix 12: Pinedale - Audit Letter October 31, 2017

Approved on January 5, 2018

Attachments are highlighted

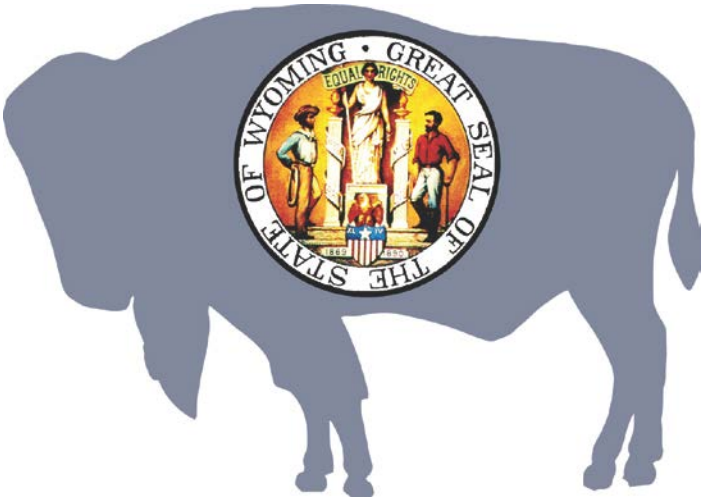
Wyoming RETIREMENT SYSTEM

PARTNERING TO BUILD FINANCIAL SECURITY FOR MEMBERS AND THEIR FAMILIES

Retirement Update

Judicial

December 11, 2017



APPENDIX 1

Members

WRS administers eight different pension plans. The majority of WRS' members are in the Public Employee Pension Plan. Smaller plans exist for judges or public safety professionals because those occupations necessitate a unique benefit structure. State law also establishes a pension plan for volunteer firefighters and volunteer emergency medical technicians.

Because so many employers in Wyoming participate in the pension plans, members have some pension portability. For example, a member could move from employment with a school district to a state agency without interrupting the accumulation of pension benefits.

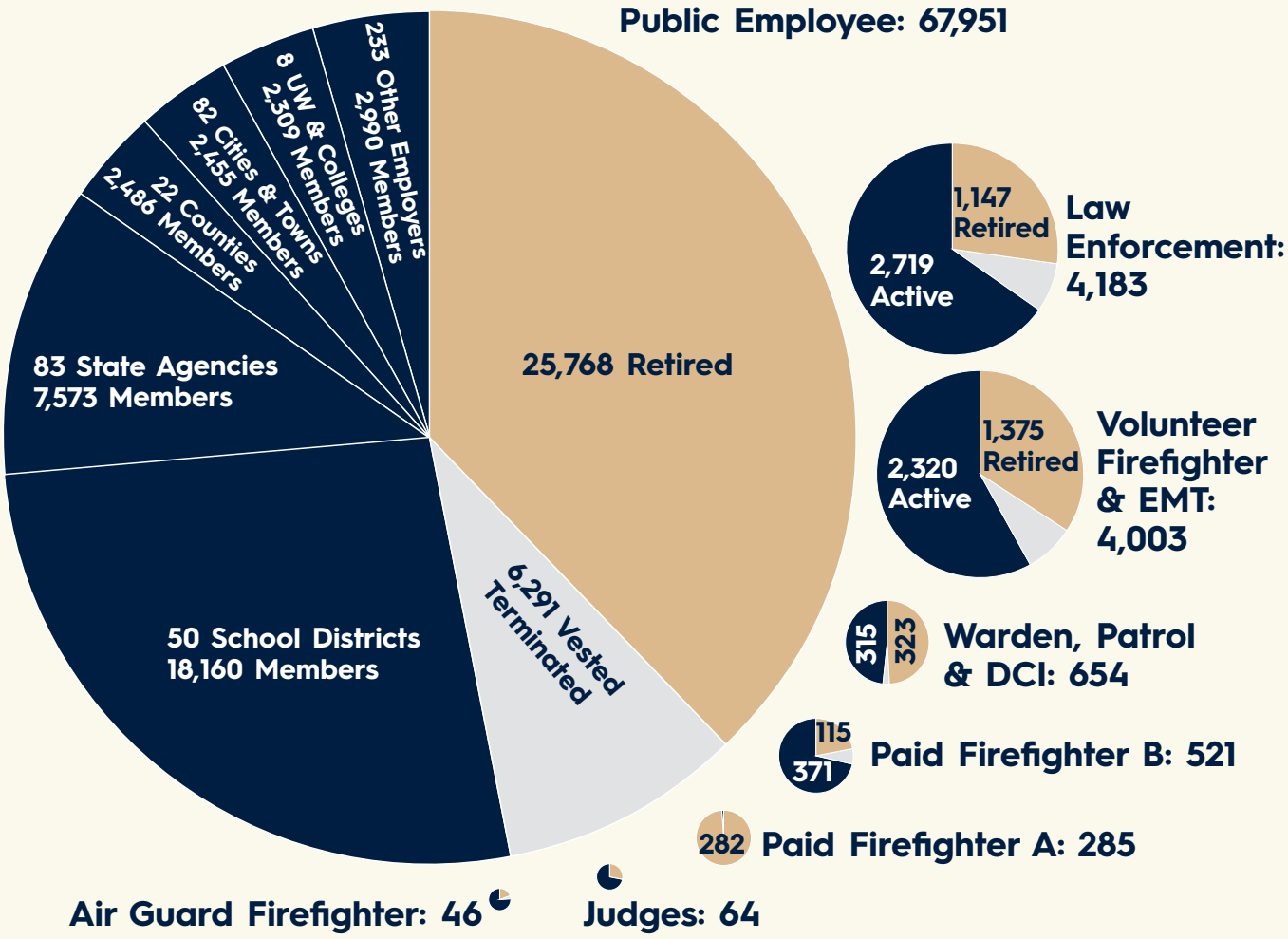
Employers

As of January 2017, WRS served about 42,000 current employees and their 700+ employers. The employers that participate in WRS range from small to large. Wyoming school districts are the largest category of employer, followed by state government agencies.

Retirement benefits are an important tool employers use to recruit and retain qualified workers. Research shows that a pension plan is a particular help to employers in this regard.[i] About 89 percent of actively employed WRS members surveyed in 2016 said the pension is "Mostly Important" or "Very Important" in keeping them in their current employment.

Retirement benefits are a part of total compensation determined by each employer. In addition to the required employer contribution, employers have the flexibility to pay for some of the contribution required for employees according to the employer's specific compensation arrangements. Disability and death benefits, also important for human resource management, are included within each pension plan.

[i] *Do Public Pensions Help Recruit and Retain High-Quality Workers? Center for Retirement Research at Boston College*



Public Employee Plan Total does not equal pie chart breakdown due to members who work for multiple employers.

Funding Status

The WRS Board closely monitors funding status and has an actuarial study, or valuation report, done for each plan every year. The valuation report estimates the long-term liabilities of the plan based on assumptions about investment returns, inflation, future salary increases, member life spans and other factors. An experience study, which examines these assumptions, is done every five years.

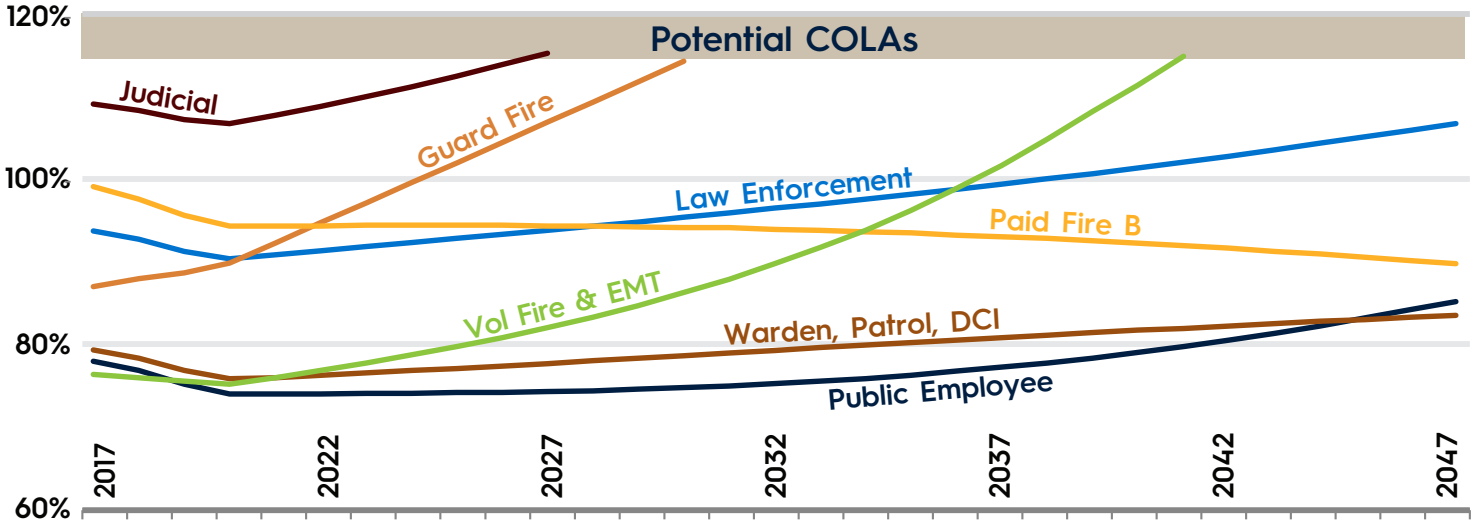
The funding ratio—assets of the plan divided by liabilities—is a key measure of a pension plan's health. The funding ratio is most meaningful when viewed in the context of additional factors such as the adequacy of incoming contributions, financial health of member employers, investment strategy, projected trend in funding status, and the realized accuracy of actuarial assumptions.

A current ratio below 100 percent does not necessarily indicate a funding problem as long as incoming contributions are adequate to meet projected future benefit payments. The Board is conducting an experience study in 2017 to assess plan assumptions, including contribution rates.

Over the past few years, changes were made to benefits and contributions to ensure the long-term health of several plans. The Paid Firefighter A Plan has been closed to new members and will require a legislative solution to address the long-term funding problem in that plan.

Careful management by the Board, as well as partnerships with the Legislature and other stakeholders has positioned all of WRS' open plans for sustainability.

Funding Ratio Projections



Excludes closed Paid Fire A Plan

Contribution Rate and Funding Ratio by Plan

Plan	Current Contribution Rate	1/1/2016 Funding Ratio	1/1/2017 Funding Ratio	30 Year Funding Ratio Projection
Public Employee	16.62%	78.2%	78.1%	85.4%
Warden, Patrol, & DCI	29.44%	78.2%	79.5%	83.7%
Law Enforcement	17.20%	93.3%	94.0%	107.1%
Judicial	23.72%	107.1%	109.5%	158.8%
Guard Fire	23.77%	90.2%	87.2%	163.0%
Paid Fire B	21.245%	98.9%	99.4%	90.0%
Paid Fire A	$0	63.9%	60.4%	NA (2027)
Volunteer Firefighter & EMT	$15/mo	74.4%	76.5%	144.1%

Recent Assumption Changes

The benefit security of a pension plan depends on using assumptions which reflect the underlying experience of the membership and the investments. In keeping with W.S. 9-3-410(a) and Board policies, the Board commissioned an experience study in 2017 and recently made adjustments to assumptions as a result. These assumptions are then used to generate the contribution amounts. The maintenance of the funded ratio depends on receipt of adequate contributions, which in turn depends on the actuarial assumptions.

Board Adopted Assumptions for Calculating Pension Liabilities

Assumptions	Old	New - Effective with 1/1/18 valuations
Investment Return/Discount Rate	7.75%	7.00%
Inflation	3.25%	2.25%
Real Rate of Return	4.50%	4.75%
Wage Inflation	4.25%	2.50%
Productivity	1.00%	0.25%
Payroll Growth	4.25%	2.50%
Amortization Period for ADC*	30 Year Open	30 Year Closed Layered
Actuarial Value of Assets	5 year smoothing, with immediate recognition of interest and dividends	5 year smoothing of entire return
Mortality	RP-2000	RP-2014
Mortality Projection	Scale BB	Scale MP-2016**
Retirement	Age-based	Age-based modified
Termination	Age-based	Age-based modified
Salary	Age-based	Service-based
Disability	Age-based	Age-based modified
Expense Growth Rate	6.50%	2.50%

*The Actuarially Determined Contribution
**MP-2017 if available

The funded ratios of each pension plan with the old and new assumptions are provided in chart format.

Changes in Funding Ratios Resulting from Assumption Changes

	Public Employee	Law Enforcement	Warden, Patrol & DCI	Judicial	Paid Firefighter A	Paid Firefighter B	Guard Fire	Volunteer Fire & EMT
Funded Ratio January 1, 2017								
Old Assumptions	78.18%	94.01%	79.53%	109.46%	60.42%	99.42%	87.21%	76.46%
New Assumptions	75.70%	86.90%	76.46%	100.21%	51.10%	93.03%	83.86%	72.71%
Projected Funded Ratio January 1, 2018	74.50%	85.80%	75.80%	98.80%	49.80%	91.30%	84.90%	72.20%
Current Contribution - Statutory	16.62%	17.20%	29.44%	23.72%	0.00%	21.25%	23.77%	$3,250,000*
Effective Funding Period Based on Old Assumptions (years)	40	20	69	0	Never	Never	7	19
Projected Contribution to reach 100% in	19.20%	19.05%	31.64%	23.72%*	$16,800,000	27.10%	23.77%*	$3,250,000*
Effective Funding Period Based on New Assumptions (years)	30	30	30	18	10	30	8	27

*Current contribution achieves 100% funding within 30 years

Executive Summary

Item	January 1, 2017 No COLA	January 1, 2016 No COLA
1. Contributions:		
a. Total normal cost	19.06%	19.07%
b. Employee contributions	(9.22%)	(9.22%)
c. Net employer normal cost	9.84%	9.85%
d. Amortization payment	(1.98%)	(1.40%)
e. Administrative expenses	0.35%	0.30%
f. Required contribution	8.21%	8.75%
g. Statutory	(14.50%)	(14.50%)
h. Shortfall/(surplus)	(6.29%)	(5.75%)
2. Funding Elements:		
a. Market value of assets (MVA)	$25,391,547	$23,202,291
b. Actuarial value of assets (AVA)	$26,773,208	$24,633,859
c. Actuarial accrued liability (AAL)	$24,459,333	$23,004,559
d. Unfunded/(overfunded) actuarial accrued liability (UAAL)	($2,313,875)	($1,629,300)
3. Contributions and Ratios:		
a. Annual required contribution	$543,468	$579,926
b. Actual contributions	N/A	925,971
i. Employer	*N/A*	*925,971*
ii. Other	*N/A*	-
c. Percentage contributed	N/A	159.67%
d. Funded ratio on an actuarial basis (AVA/AAL)	109.46%	107.08%
e. Funded ratio on a market basis (MVA/AAL)	103.81%	100.86%
f. Covered payroll	$6,625,476	$6,624,052

Calculation of Annual Required Contribution Rate

(Assumes No Future Cost-Of-Living Increases)

Item	January 1, 2017	January 1, 2016
1. Projected valuation payroll	$6,625,476	$6,624,052
2. Present value of future pay	$47,449,880	$50,909,264
3. Employer normal cost rate	9.84%	9.85%
4. Actuarial accrued liability for active members		
a. Present value of future benefits for active members	$24,238,459	$23,269,706
b. Less: present value of future employer normal costs	(4,264,021)	(4,617,193)
c. Less: present value of future employee contributions	(4,374,879)	(4,693,834)
d. Actuarial accrued liability	$15,599,559	$13,958,679
5. Total actuarial accrued liability for:		
a. Retirees and beneficiaries	$8,859,774	$9,045,880
b. Disabled members	-	-
c. Inactive members	-	-
d. Active members (Item 4d)	15,599,559	13,958,679
e. Total	$24,459,333	$23,004,559
6. Actuarial value of assets (Table 9)	$26,773,208	$24,633,859
7. Unfunded actuarial accrued liability (UAAL) (Item 5e - Item 6)	($2,313,875)	($1,629,300)
8. UAAL amortization period	30 years	30 years
9. Assumed payroll growth rate	3.75%	3.75%
10. Employer Contribution requirement		
a. UAAL amortization payment as % of pay	-1.98%	-1.40%
b. Employer normal cost	9.84%	9.85%
c. Administrative expense	0.35%	0.30%
d. Contribution requirement (a + b + c)	8.21%	8.75%

Demographic Statistics

	January 1		
	2017	**2016**	**Change**
Active Participants			
Number	46	46	0.0%
Vested	*36*	*32*	
Not vested	*10*	*14*	
Average age (years)	58.96	57.96	1.7%
Average service (years)	10.44	9.44	10.6%
Average entry age (years)	48.52	48.52	0.0%
Total payroll*	$6,625,476	$6,624,052	0.0%
Average payroll*	$144,032	$144,001	0.0%
Total employee contributions with interest	$7,018,765	$6,234,876	12.6%
Average employee contributions with interest	$152,582	$135,541	12.6%
Vested Former Participants			
Number	0	0	0.0%
Average age (years)	0.00	0.00	
Total employee contributions with interest	$0	$0	
Average employee contributions with interest	N/A	N/A	
Service Retirees			
Number	15	15	0.0%
Average age (years)	73.9	72.9	1.4%
Total annual benefits	$892,311	$892,311	0.0%
Average annual benefit	$59,487	$59,487	0.0%
Disability Retirees			
Number	0	0	0.0%
Average age (years)	0.0	0.0	
Total annual benefits	$0	$0	
Average annual benefit	N/A	N/A	
Beneficiaries			
Number	3	3	0.0%
Average age (years)	77.3	76.3	1.3%
Total annual benefits	$89,010	$89,010	0.0%
Average annual benefit	$29,670	$29,670	0.0%
Participants Due Refunds	0	0	0.0%

* Projected payroll for the upcoming valuation year

Wyoming Retirement System - Judicial Retirement System ("Judges")
Projection Results Based on January 1, 2017 Actuarial Valuation - Baseline

Discount Rate: 7.75%

Valuation as of January 1,	Market Return for FY Beginning on Valuation Date	Contribution Rate for Fiscal Year Following Valuation Date		Projected Payroll (in Thousands)	Employer Contributions (in Thousands)	Actuarial Accrued Liability (AAL, in Thousands)	Actuarial Value of Assets (AVA, in Thousands)	Unfunded Actuarial Accrued Liability (UAAL, in Thousands)	Funded Ratio	Funding Shortfall/ (Surplus)	30-Year Employer ARC	Employer Normal Cost (NC)	30-Year Amortization Payment	Assumed Expenses
		Employee	Employer											
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)
2017	7.75%	9.22%	14.50%	$6,625	$961	$24,459	$26,773	($2,314)	109.5%	-6.29%	8.21%	9.84%	-1.98%	0.35%
2018	7.75%	9.22%	14.50%	6,866	996	26,571	28,893	(2,322)	108.7%	-6.29%	8.21%	9.78%	-1.92%	0.35%
2019	7.75%	9.22%	14.50%	7,117	1,032	28,761	30,942	(2,181)	107.6%	-6.14%	8.36%	9.75%	-1.74%	0.35%
2020	7.75%	9.22%	14.50%	7,367	1,068	31,017	33,230	(2,212)	107.1%	-6.15%	8.35%	9.70%	-1.71%	0.35%
2021	7.75%	9.22%	14.50%	7,615	1,104	33,281	35,982	(2,701)	108.1%	-6.54%	7.96%	9.63%	-2.01%	0.35%
2022	7.75%	9.22%	14.50%	7,879	1,142	35,525	38,799	(3,274)	109.2%	-6.99%	7.51%	9.52%	-2.36%	0.35%
2023	7.75%	9.22%	14.50%	8,160	1,183	37,680	41,592	(3,912)	110.4%	-7.42%	7.08%	9.46%	-2.72%	0.35%
2024	7.75%	9.22%	14.50%	8,474	1,229	39,792	44,407	(4,615)	111.6%	-7.89%	6.61%	9.35%	-3.09%	0.35%
2025	7.75%	9.22%	14.50%	8,800	1,276	41,847	47,246	(5,399)	112.9%	-8.35%	6.15%	9.29%	-3.48%	0.35%
2026	7.75%	9.22%	14.50%	9,139	1,325	43,825	50,089	(6,263)	114.3%	-8.73%	5.77%	9.31%	-3.89%	0.35%
2027	7.75%	9.22%	14.50%	9,460	1,372	45,797	53,010	(7,213)	115.7%	-9.18%	5.32%	9.30%	-4.33%	0.35%
2028	7.75%	9.22%	14.50%	9,823	1,424	47,744	55,995	(8,251)	117.3%	-9.69%	4.81%	9.23%	-4.77%	0.35%
2029	7.75%	9.22%	14.50%	10,205	1,480	49,746	59,139	(9,393)	118.9%	-10.18%	4.32%	9.19%	-5.23%	0.35%
2030	7.75%	9.22%	14.50%	10,606	1,538	51,876	62,523	(10,647)	120.5%	-10.69%	3.81%	9.16%	-5.70%	0.35%
2031	7.75%	9.22%	14.50%	11,029	1,599	54,130	66,152	(12,022)	122.2%	-11.30%	3.20%	9.04%	-6.19%	0.35%
2032	7.75%	9.22%	14.50%	11,462	1,662	56,441	69,980	(13,539)	124.0%	-11.90%	2.60%	8.95%	-6.71%	0.35%
2033	7.75%	9.22%	14.50%	11,890	1,724	58,871	74,080	(15,208)	125.8%	-12.49%	2.01%	8.92%	-7.26%	0.35%
2034	7.75%	9.22%	14.50%	12,338	1,789	61,499	78,533	(17,034)	127.7%	-13.09%	1.41%	8.90%	-7.84%	0.35%
2035	7.75%	9.22%	14.50%	12,798	1,856	64,274	83,302	(19,028)	129.6%	-13.71%	0.79%	8.88%	-8.44%	0.35%
2036	7.75%	9.22%	14.50%	13,280	1,926	67,200	88,405	(21,205)	131.6%	-14.38%	0.12%	8.84%	-9.07%	0.35%
2037	7.75%	9.22%	14.50%	13,778	1,998	70,296	93,877	(23,582)	133.5%	-15.05%	-0.55%	8.81%	-9.72%	0.35%
2038	7.75%	9.22%	14.50%	14,291	2,072	73,473	99,648	(26,175)	135.6%	-15.74%	-1.24%	8.81%	-10.40%	0.35%
2039	7.75%	9.22%	14.50%	14,827	2,150	76,735	105,732	(28,998)	137.8%	-16.47%	-1.97%	8.78%	-11.10%	0.35%
2040	7.75%	9.22%	14.50%	15,387	2,231	80,141	112,213	(32,073)	140.0%	-17.21%	-2.71%	8.77%	-11.83%	0.35%
2041	7.75%	9.22%	14.50%	15,982	2,317	83,608	119,026	(35,417)	142.4%	-17.93%	-3.43%	8.80%	-12.58%	0.35%
2042	7.75%	9.22%	14.50%	16,585	2,405	87,099	126,150	(39,052)	144.8%	-18.71%	-4.21%	8.81%	-13.37%	0.35%
2043	7.75%	9.22%	14.50%	17,206	2,495	90,693	133,693	(43,000)	147.4%	-19.53%	-5.03%	8.80%	-14.19%	0.35%
2044	7.75%	9.22%	14.50%	17,842	2,587	94,403	141,693	(47,290)	150.1%	-20.36%	-5.86%	8.83%	-15.05%	0.35%
2045	7.75%	9.22%	14.50%	18,507	2,684	98,197	150,139	(51,942)	152.9%	-21.23%	-6.73%	8.86%	-15.94%	0.35%
2046	7.75%	9.22%	14.50%	19,207	2,785	102,111	159,098	(56,986)	155.8%	-22.13%	-7.63%	8.86%	-16.85%	0.35%
2047	7.75%	9.22%	14.50%	19,945	2,892	106,155	168,613	(62,458)	158.8%	-23.05%	-8.55%	8.88%	-17.78%	0.35%

Cost of Living Adjustments (COLA) Policy

1. The Board acknowledges that employees and retirees face an uncertain economic future due to the effects of inflation on their retirement income. In addition, employees and retirees must spend, save, and invest with a clear understanding that initial benefits will erode over time due to the effects of inflation and the employer sponsored defined benefit plan alone will not be sufficient to completely address the challenge of maintaining purchasing power into the member's retirement years.

2. The Board acknowledges only the legislature may approve benefit changes, including COLAs, and that no changes shall be recommended to the legislature by the Board unless the system's actuary provides an opinion that the actuarial funded ratio of the plan can reasonably be expected to remain at 100% plus an additional percentage the Board determines is reasonably necessary to withstand market fluctuations throughout the life of the benefit change.

3. The Board acknowledges that it is responsible for reviewing actuarial valuations, projection studies and other financial data and making recommendations to the legislature regarding benefit changes, including COLAs, for any of the plans administered by the Board provided statutory requirements are met. Pursuant to W.S. 9-3-454, the Board shall consider the following when analyzing potential benefit increases:

    a. The relationship of the current actuarial value to current market value of assets;

    b. The interest and principal payments toward the unfunded liability over the full applicable term of the benefit increase;

    c. Current and expected actuarial funded ratios with and without the increase;

    d. A review of assumptions made in determining funded ratios and a review of anticipated funded ratios with differing investment return assumptions and/or other assumptions deemed critical by the Board;

    e. The appropriate level of actuarial funding ratio above 100% needed to buffer the plan from adverse experience;

    f. Impact to the normal cost, accrued liability and the annual required contribution for the current year and for a projection period of the plan's amortization period;

    g. Risk factors that could contribute to the funding status of the plan declining after any benefits have been changed.

4. The Board supports providing COLAs and other postretirement benefit enhancements from plan assets, in an amount not to exceed applicable statutory limitations and not more than that which would allow for the retention of the COLA Margin over the estimated life of the benefit change, provided system funding, contribution and margin requirements are met. The

Board has adopted eligibility criteria for recommending a COLA in any plan administered by the Board:

a. The Board will consider whether the plan's Actuarially Determined Contribution (ADC) level is currently being met and whether it is likely to continue to be met. If not, a COLA should not be granted.

b. In order for the Board to consider recommending a COLA for a particular plan, the plan must be projected to continue to be 100% funded, plus a margin for adverse experience (COLA Margin), for each of the next 15 years following implementation of the adjustment. (15 years is deemed to be the life of the COLA). The COLA Margin is the additional funded ratio (the ratio of the actuarial value of assets to the accrued liability) necessary to keep the plan's funded ratio above 100%. The COLA Margin for each separate plan shall be calculated annually.

c. The Board can consider whether the current contribution level is predicted to pay the plan's normal cost rate plus the amortization of the unfunded actuarial accrued liability (after the granting of the COLA) as a level percentage of pay over the number of years specified in the most recent actuarial valuation.

5. The Board supports the legislature providing ad hoc COLAs (which are not funded through the relative contribution rate of a particular plan) as individual appropriations allow. Any ad hoc COLA award funded by the legislature must be fully paid for and result in no increase in a particular plan's unfunded liability.

Member Services:

1. To ensure members receive high quality service, including accurate and timely information from WRS staff.

   a. To enhance service to all members.

   b. To provide training programs to address the needs of members of all ages.

Communications:

1. To provide members with access to information about benefits administered by WRS in a cost effective and timely manner.

2. To ensure that members receive appropriate and timely updates on plan changes.

Administration:

1. To ensure that benefit recipients receive their payments in timely manner.

2. To ensure the security and accuracy of member records.

OFFICE *of the* WYOMING STATE PUBLIC DEFENDER

ROGERS BUILDING, 316 WEST 22nd STREET, CHEYENNE, WYOMING 82002
PHONE: (307) 777-7519 | FAX: (307) 777-8742 | WEB: wyodefender.state.wy.us

Matthew H. Mead
GOVERNOR

Diane M. Lozano
STATE PUBLIC DEFENDER

Ryan R. Roden
DEPUTY STATE PUBLIC DEFENDER

November 2, 2017

The Honorable Chief Justice Burke
Wyoming Supreme Court 301 Capitol Avenue
Cheyenne, WY 82002

Dear Chief Justice Burke:

I am writing to let you know that the Public Defender caseloads are at crisis levels, both trial and appellate. In order to guarantee the right to constitutionally effective assistance of counsel, each public defender attorney must have a manageable caseload. The ABA *Standards for Criminal Justice* state that "defense counsel should not carry a workload that, by reason of its excessive size, interferes with the rendering of quality representation, endangers the client's interest in the speedy disposition of charges, or may lead to the breach of professional obligations." Defense Function Standard 4-1.3(e). Whether or not a caseload is excessive depends not only on the number of cases but also on case complexity, availability of support systems and the lawyer's experience and ability. The Public Defender monitors caseloads that are recorded by an in-house case-weighted database system. The Public Defender utilizes the caseload maximum standard recommendations from the *National Advisory Commission on Criminal Justice Standards and Goals* (1973) (NAC). See also Formal Opinion 06-441, *Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere With Competent and Diligent Representation*, American Bar Association, Standing Committee On Ethics And Professional Responsibility. The OSPD has also reviewed and utilized *Securing Reasonable Caseloads: Ethics and Law in Public Defense,* Norman Lefsten, an American Bar Association, Standing Committee on Legal Aid and Indigent Defendants publication.

The Public Defender utilizes the caseload maximum recommendations by the *National Advisory Commission on Criminal Justice Standards and Goals* (1973) (NAC). These standards are based upon the total number of cases and types of cases assigned to an attorney each year. They are as follows: 150 felonies; 400 misdemeanors; 200 juvenile delinquencies. Most attorneys are assigned a combination of all three types of cases. "The standards are disjunctive, so if a public defender is assigned cases from more than one category, the percentage maximum caseload in each should be assessed and the combined total should not exceed 100%". *Securing Reasonable Caseloads: Ethics and Law in Public Defense,* Norman Lefsten, note 91 page 43. Each attorney's percentage of employment must also be factored into the caseload maximums. For each field office, total cases types should be divided by the "attorney percentage of caseload" of

APPENDIX 2

the field office and of the agency as a whole and percentages assessed for the average assigned to each attorney percentage of caseload. [1]

We have adopted similar appellate caseload standards that limit the number of appeals each full time attorney can handle to 22 per year. In terms of the appellate division, they are working above caseload maximums right now, so the court may already be seeing the effects of it in terms of requests for extensions for time, etc.

In FY17, the Public Defender provided representation in 15,975 cases. The agency was at 109.7% of caseload maximum and 8 of the 14 trial field offices were above caseload maximums. This is not merely a constitutional issue; it is an ethical one. An attorney who has too many cases cannot provide competent, diligent or conflict free counsel to his clients. When an attorney has an unmanageable caseload, he cannot spend adequate time communicating with his client, researching the law and litigating the necessary issues in the case, investigating or even reviewing the discovery in a trial case. Regardless of whether an attorney is a public defender or the client is an accused criminal, an attorney must abide by the Rules of Professional Conduct. Public Defender attorneys who work in each of the field offices who are above caseload maximum are on the verge of committing malpractice and each time I ask them to take another case, I am asking them to put their livelihood and licenses on the line. I have attached a letter I received from one of my attorneys who practices in one of my overworked offices; his is not the only voice of distress. When a client is assigned to an attorney whose caseload is above 100% of maximum, in all reality, he has no attorney. It is an ethical crisis for each of my attorneys and violation of the right to counsel for each of my clients. Because the public defender handled 98% of the cases in which a criminal defendant was represented in the state courts, it will become a crisis for the entire criminal justice system.

We have requested an attorney position in each field office that is over caseload maximum, including an attorney for the appellate division. We will ask for alternative 900 series monies to fund independent professional contracts. Without more attorneys, we will not be providing attorneys in the correlating number of cases in each field office that prevents ethical representation. Without additional resources (attorneys or monies to contract with attorneys) the Public Defender will not be able to provide representation in 4,191 cases, including 58 appeals during the 19/20 biennium.

---

[1] A. Calculation for Individual Attorney who was assigned 200 misdemeanors, 60 felonies and 3 juvenile cases and whose caseload % is 1:
[200/400(misdemeanor max.)]=.50 +[60/150(felony max.)]=.40 + [3/200(juvenile max.)]=.015 = **91.5% caseload maximum**

B. Calculation for Individual Attorney with 200 misdemeanors, 60 felonies, 3 juvenile cases and whose caseload percentage is **.75% CPA:**
400*.75 (misdemeanors)= 300; 150*75=122.50; 200*.75=150 (juveniles)
[200/300 (misdemeanor max)]=.67 + [60/112.50(felony max.)]=.53 + [3/150 (juvenile max.)]=.02=**122%**

C. Calculation for a field office with 200 misdemeanors, 74 felonies, and 10 juvenile cases with a ACP of 2.5:
200/2.5= 80 (misdemeanors) 74/2.5=29.6 (felonies) 10/2.5=4 (juveniles)
[80/400 (misdemeanor max)=.20] + [29.6/150 (felony max.)=.1973] + [4/200 (juvenile max.)=.02]=**41.73%**

D. Calculation for agency total with 2500 felonies, 7500 misdemeanors, 500 juveniles and 52 CPA:
7500/52=144.23 2500/52= 48.076 (felonies) 500/52=9.62
[144.23/400 (misdemeanor max.)=.36] + [48.76/150(felony max.)=.33] + [9.62/200(juvenile max.)=.05]=**74%**

To our end, I am hoping to meet with the prosecutors, law enforcement, circuit and district court judges to see if there is anything that can be done to alleviate caseloads. I will be asking each court to use the attached uniform affidavit of indigence so that public defender appointments are valid and consistent. I will ask each judge to carefully consider whether a client can hire private counsel and to not merely appoint the public defender as a default course of action. We will offer solutions to prosecutors on how cases are charged and when jail sentences should be sought. We will talk to law enforcement about how decisions are made about when to cite and when to arrest an individual. But as you know, there is only so much the Public Defender can do.

Many judges often ask us whether or not ordering more public defender fees will solve this issue. In essence, judges seem to misunderstand the constitutional limitations to requiring the indigent accused to fund the "attorney provided to them at the state's expense." Even if my clients could fund the $2 million needed, collected public defender fees are deposited into the general fund, not into the public defender budget. Collecting more money from convicted criminals is an unrealistic, if not ridiculous, solution.

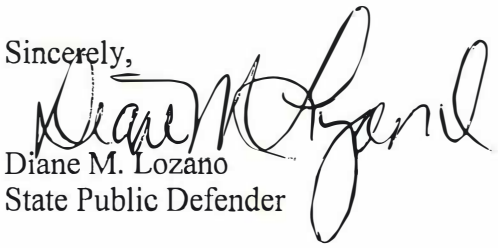
As you know, the Public Defender Act allows courts to appoint any attorney to handle a serious crime when a needy person requests an attorney pursuant to W.S. §7-6-109(a), which could be a solution to this crisis. However, W.S. §7-6-109(b) mandates that the appointed attorney be compensated by the public defender. If we had the funding to pay for private attorneys to handle these cases, we would not need to ask for more funding in the first place.

The following is a chart that lists each field office that is functioning above maximum levels and the funding it would take to enable the public defender to handle all cases to which it is appointed:

FIELD OFFICE	# OF CASES UNABLE TO HANDLE	POSITION COSTS	0900 CONTRACTS COSTS	ESTIMATED PRIVATE ATTORNEY COSTS
Hot Springs/Washakie	569	$ 232,891	$ 231,996	$ 390,418
Appellate	58	232,891	231,996	1,087,500
Campbell	1165	232,891	231,996	845,891
Converse/Goshen/Niobrara/Platte	419	232,891	231,996	351,274
Albany	448	232,891	231,996	284,883
Weston/Crook	119	232,891	231,996	81,201
Sweetwater	307	232,891	231,996	244,922
Laramie	723	232,891	231,996	496,478
Natrona	383	232,891	231,996	291,522
	4191	$ 2,096,019	$ 2,087,964	$ 4,074,089

This letter is obviously a "head's up" to you but it is also a request for any support that you can provide to us. I am open to any suggestions that you and the court may have and can meet with you at your convenience. I trust you know that we did not come to these conclusions recklessly nor these decisions lightly. As the State Public Defender for 10 years and as a public defender attorney for 23 years, I believe greatly in the purpose and quality of the Office of the State Public Defender. However, I can no longer allow my attorneys to risk their professional ethical standing, nor can I allow my clients to receive less than what the Federal and State Constitutions guarantee them. My hope is that the State of Wyoming will act to preserve the quality state public defender system that it deserves.

Sincerely,



Diane M. Lozano
State Public Defender

Enclosures

October 9, 2017

ETHICS OF A PUBLIC DEFENDER IN TRIAL OFFICE WITH CASELOADS GREATER THAN 100% OF CASELOAD MAXIMUM

As a Public Defender in a field office with caseloads above caseload maximums, I have to make difficult decisions because of the caseload that I am assigned. I have to prioritize cases and tasks within cases. This means that I am unable to do all of the things I need to do for each of the cases I am assigned. Clients do not get the attention they deserve because of the caseload.

In many cases I am unable to fully review discovery. I usually do not have time to watch dash or body cam videos for misdemeanor cases and sometimes even on felonies. Unless an affidavit brings up a red flag that there is a Constitutional issue or the client insists there is one; I will not know if I need to file a motion to suppress. This is only an example and there are many times other items of discovery that go unreviewed or under-reviewed. This also negatively affects the client because I do not have a full grasp of the facts during negotiations with the prosecutor.

Another area that suffers because of the caseload I am assigned is trial preparation. On misdemeanors I generally can only set aside an hour or two for preparation. I make felony preparation a greater priority but it is still not adequate. Almost always the preparation is within days of the trial. The negative affect of this is twofold: first, I may find an issue that should have been the subject of motion practice but it is too late to do anything about it, and second, there is simply not enough time to read and view everything in the discovery file.

Furthermore, I do not have time to read current case law. I should be reading case law that comes from both the US Supreme Court and the Wyoming Supreme Court that concern criminal law. I almost never do this because my time is spent trying to stay above water on all of my cases and there is always something that needs done today.

If I was in private practice and was in control of my caseload I would not allow this to happen, it would be unethical. However, as a public defender with no control over my caseload I do believe that I am an ethical attorney. I come in early almost every day, I often work during lunch and I work most Saturdays. I am not willing to take more time from my family and personal life. I do the best I can to triage the cases I am assigned and to try to meet the requirements of the Rules of Professional Responsibility. I feel that if I do the best I can for each client I am meeting my ethical obligations.

IN THE CIRCUIT/DISTRICT COURT, _____ JUDICIAL DISTRICT
_____ COUNTY, WYOMING

Judge: _____

THE STATE OF WYOMING,	)	
Plaintiff,	)	_____
	)	DOCKET NO(S) _____
vs.	)	and CHARGE(S) _____
	)	_____
_____,	)	_____
Defendant.	)	

AFFIDAVIT OF INDIGENCY AND
ORDER FOR COURT-APPOINTED COUNSEL

The following information is the truth, the whole truth, and nothing but the truth. I further authorize the court to verify all or any portion of the following information.

1. Address:

	Residential Address	Mailing Address (if different)
Street		
City		
Zip		

2. Telephone:

Home Number	
Cell Number	
Work Number	
Emergency Contact Number	

3. Income:

All income from any source must be included (employment, child support, social security, unemployment, workers compensation, family support, government assistant programs, disability, retirement, etc.).

Source	Frequency (weekly, monthly)	Amount

□I work Full Time □I work Part Time □I am Unemployed

□I am Retired □I am Disabled.

I am currently employed by _____
or I last worked at _____ and
became unemployed on _____.

4. Expenses:

Include all of your monthly bills (rent, mortgage, utilities, phone, food, etc.).

Bill or Expense	Amount

I have help paying my monthly expenses from _____.

5. Dependents:

List everyone that you claim as a dependent on your federal tax return.

Name	Relationship

6. Assets:

List all valuables that you own (automobiles, guns, jewelry, furniture, tools, bank accounts, land, etc.)

Item or Account	Value

7. Debts:

List all debts that you currently owe (credit cards, medical, court fines, etc.).

Entity Owed	Total Amount Owed	Monthly Payment

8. Capacity to Borrow:

I can borrow money to pay for my legal defense in the amount of _____.

9. Oath:

I understand that the court may order me to pay for all or a portion of the cost of court-appointed counsel.

I have read and understand Wyoming Statute § 6-5-301.

> (a) A person commits perjury if, while under a lawfully administered oath or affirmation, he knowingly testifies falsely or makes a false affidavit, certificate, declaration, deposition or statement, in a judicial, legislative or administrative proceeding in which an oath or affirmation may be required by law, touching a matter material to a point in question.
> (b) Perjury is a felony punishable by imprisonment for not more than five (5) years, a fine of not more than five thousand dollars ($5,000.00), or both.

I do solemnly swear or affirm, subject to the penalty of perjury, that the foregoing affidavit of financial status is true and correct.

Dated this _____ day of _____, 20___.

_____
Defendant

Subscribed and sworn to before me this _____ day of _____, 20___.

_____
Notary/Clerk/Judge

My commission expires:_____.

Order Appointing Counsel

It is hereby ordered that the above named Defendant qualifies for a court appointed attorney and the Office of the State Public Defender is hereby appointed.

Dated this _____ day of _____, 20___.

_____
Judge

File copied to Public Defender _____ / _____
(date) (initials)

DRAFT ONLY
NOT APPROVED FOR
INTRODUCTION

HOUSE BILL NO. [BILL NUMBER]

Court information technology equipment.

Sponsored by:

A BILL

for

AN ACT relating to courts and counties; delineating responsibility for court information technology equipment between the judicial branch and counties; providing definitions; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 5-2-120 and 18-2-103 are amended to read:

5-2-120. Judicial systems automation account created; purposes; court information technology equipment.

APPENDIX 4

(a) There is created an account entitled the "judicial systems automation account." No funds shall be expended from the account unless and until the legislature appropriates the funds. Funds within the account shall be used by the supreme court for the purchase, maintenance and operation of computer hardware, including court information technology equipment, and software to enhance the communication, records and management needs of the courts of the judicial branch of the state of Wyoming. Interest accruing to this account shall be retained therein and shall be expended for the purposes provided in this section, as appropriated by the legislature. Annually, the supreme court shall develop a plan for all trial and appellate courts within the state for the expenditure of funds from the account. Prior to implementation, the plan shall be annually submitted to the joint appropriations interim committee and joint judiciary interim committee for review and comment.

(b) Implementation of court information technology equipment that requires alteration of a county building pursuant to W.S. 18-2-103(b) shall be accomplished in

consultation with the board of county commissioners or the board's appointed designee.

(c) The supreme court shall install court information technology equipment in all state court facilities in a phased approach. Upon installation of court information technology equipment in a state court facility, the supreme court shall maintain and support the equipment installed by the supreme court.

(d) As used in this section:

(i) "Court information technology equipment" means hardware equipment located in state court facilities necessary to meet, but not exceed, court information technology equipment standards adopted by the board of judicial policy and administration;

(ii) "State court facility" includes circuit and district courtrooms, circuit and district court jury rooms, circuit and district court judges' chambers and the offices of circuit court clerks.

18-2-103. Buildings generally; infrastructure for court information technology.

(a) Each county shall provide and maintain a suitable courthouse, jail and other necessary county buildings.

(b) Each county shall provide and maintain infrastructure to ensure the proper function of court information technology equipment including, but not limited to, requisite power outlets, network drops, audio and visual drops and associated wiring for connectivity of all endpoints and peripherals associated with court information technology equipment.

(c) For purposes of this section, "court information technology equipment" means as defined in W.S. 5-2-120(d)(i).

1 **Section 2.** This act is effective immediately upon
2 completion of all acts necessary for a bill to become law
3 as provided by Article 4, Section 8 of the Wyoming
4 Constitution.
5
6 (END)

Major Joint Judiciary Committee Bills*

Domestic Violence & Stalking

1. Uniformity of domestic violence laws 18LSO-2

   - Raises penalties for:
     - Domestic Assault (1st –0 mos to 6 mos; 2nd – 6 mos. to 1 yr.
     - Domestic Battery (1 yr. if *ever* had a prior; 10 yrs. if *ever* have a prior)
     - Strangulation of a Family Member (5 to 10 yrs.)

       - Expands definition of violent felony

2. Stalking Revisions 18LSO-27

   - Increases penalty for stalking (6 mos. to 1 yr.)
   - Increases possible probation (up to 3 yrs.)
   - Expands definition of "harassment"

3. Order of Protection 18LSO-32

   - Creates a felony for stalking committed while a domestic violence protection order is in place.

Post-Conviction Relief

1. Post-conviction relief 18LSO-47

   - Would allow persons convicted of a felony to petition for exoneration based on newly discovered evidence.
   - Amends the state post-conviction relief statutes (7-14-103) to permit review if:
     - Appellate counsel provided constitutionally ineffective assistance, or
   - The defendant was represented by the same attorney at trial and on appeal.

APPENDIX 5

- This bill draft:
    - Product of AG, prosecutors, public defenders working together
    - Would likely still increase court load considerably – especially since there is no limit on the number of times a petition could be filed

Edible Marijuana

1. Possession of marijuana products 18LSO-31

    - Penalties for 3 oz. or less
        - 1st - 20 days & $200
        - 2nd - 6 mos. & $650
        - 3rd - 5 yrs. & $10,000

2. Possession of non-plant marijuana 18LSO-33

    - Penalties
        - Edibles over 3 oz. = felony
        - Drink – over 36 oz. = felony
        - Resin – over 3 grams = felony

Child Custody & Support

1. Custody in best interest of the children 18LSO-10

    - No form of custody may be favored of disfavored

2. Child Custody and Parental Responsibilities 18LSO-11

- Replaces current terminology in Title 20 dealing with "custody of a child" with new definitions that reflect a division of parental responsibilities.

3. Defacto Custodian Act 18LSO-104

- Creates a new chapter in Title 3 on Guardian & Wards

- Gives non-parent standing to
  - Petition for custody of a child
  - Move to intervene in custody proceeding

- Court must hold hearing

- Can grant custody to nonparent if there is
  - Clear and convincing evidence of lack of consistent participation by parents because
    - ✓ Non-parent was primary caretaker and financial support for 6 mos. if child is under 3 years or 1 year if child is 3 years or older

4. Child Support Amendments 18LSO-29 CIERRA

<u>Streamlined Bond Schedule</u>

1. Speeding Fines amendments 18LSO-29 RONDA
2. Adoptions

NOTE: THIS SUMMARY IS HAS NOT BEEN THOROUGHLY REVEIWED AND THE FILED BILL DRAFTS SHOULD BE CONSULTED.

Wyoming Child Support Guidelines:

Proposal to Simplify & Improve the Adjustment for Parenting Time

A state-appointed committee of diverse stakeholders recently reviewed the Wyoming child support guidelines and recommended that the current adjustment could be simplified and improved to better serve Wyoming families. (The committee also reviewed other guidelines issues and considered economic evidence on child-rearing costs, trends and approaches in other states, public input and other information.)

Wyoming's Current Provision and Practice Essentially Has Two (2) Components

	Problems
An abatement for extended visitation (child spends 15 or more consecutive days with obligated parent)	• abatement occurs *after* visitation expense occurs • cumbersome for the parent to complete and file abatement forms with court • can take several weeks to several months to process • can disrupt the monthly budget of the custodial-parent household depending on the timing of the abatement • takes more court resources than other approaches that achieve more appropriate outcomes • Used by only 3% of obligated parents in the State caseload[i] while more parents are probably eligible
A presumptive formulaic adjustment for when: o The child's timesharing arrangement consists of at least 40% with each parent, *and* o Each parent has substantial direct child-rearing expenses.	• The obligated parent often makes direct child-rearing expenses when the timesharing arrangement is less than 40% • For some case circumstances, the 40% threshold produces a 'cliff' (a precipitous decline in the guidelines-determined amount from 39% time-sharing to 40% time-sharing) and creates an economic incentive for the parents to disagree on the percentage of timesharing. • The existing formula in W.S. 20-2-304(c) does not recognize that there is not always a $1 for $1 transfer in child-rearing expenses from the primary custodial parent's home to the obligated parent's home. For example, heat must still be purchased for the child's room, and food that was purchased through volume discounts may be purchased in a smaller volume that is more expense.

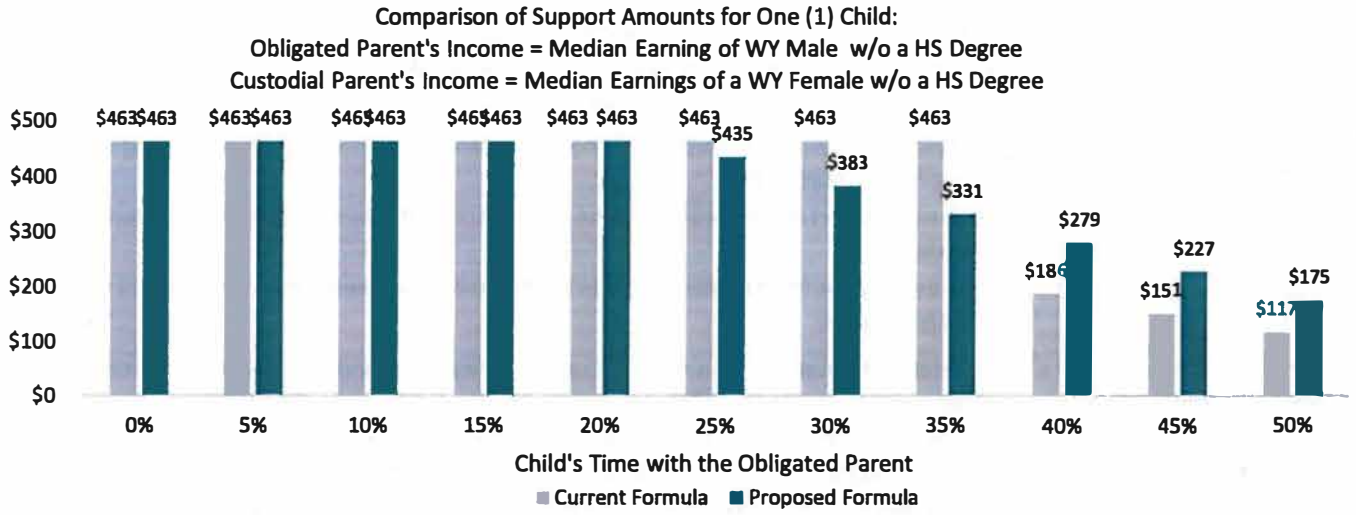
Proposed Changes

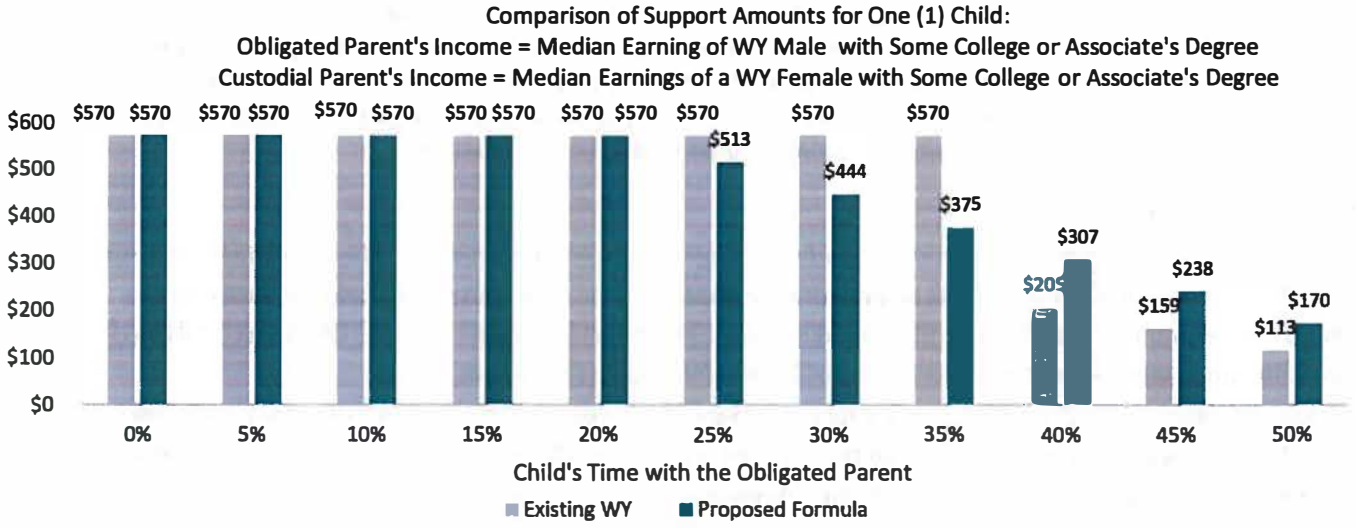
- *Collapse the two (2) formulas (abatement and presumptive formulaic adjustment).* This simplifies the adjustment for parenting time, eliminates the filing and paperwork burden on the obligated parent, and produces a more predictable amount of support for the custodial household's monthly budgeting. This will be accomplished by counting the extended visitation overnights in the total overnights over a year period.
- *Reduce the timesharing threshold.* Reducing the threshold from 40% to 25% will make the adjustment more available to obligated parents with shared custody and reduce the cliff effect. Most states (including those bordering Wyoming) have a lower timesharing threshold.[ii]
- *Add a "150% multiplier" to current time-sharing formula.* The multiplier is to account for it costing more to raise a child in two (2) households than one (1) household as parents must duplicate some child-rearing expenses (i.e. transportation and housing) and in conjunction with lowering the threshold, it will reduce the cliff effect. Wyoming is the only state using this time-sharing formula to not use a multiplier. The multiplier is used when the 25% threshold is met and adjusts the presumptive support order to account for additional expense of raising a child in two (2) homes.

APPENDIX 6

Impact

The charts show the impact of the change for case scenarios involving one (1) child. (National and state statistics find that the majority of orders are for one child.) The first case scenario considers parents whose incomes are equivalent to the median earnings of Wyoming male and female workers who did not finish high school: $2,242 and $1,113 net per month, respectively. The second scenario considers median earnings of Wyoming male and female workers who have some college or an associate's degree: $3,080 and $1,857 net per month, respectively. The male median is used for the obligated parent and the female median is used for the custodial parent. (Statistics show that the majority of obligated parents are male). The percentage of Wyoming male workers with less than a high school degree and some college is 27% and 28%, respectively. The comparable percentages of Wyoming female workers are 28% and 30%.





---

[i] Venohr, J. and Griffth, T. (August 2004). Wyoming Child Support Guidelines Review: Updated Tables and Case File Review. Report to the State of Wyoming Department of Family Services, Cheyenne, Wyoming. Prepared by Policy Studies Inc., Denver, CO.

[ii] Colorado's threshold is 25%, Idaho's threshold is 25%, Montana's is 110 days per year (30%), Nebraska has a two-tier threshold where the lower (109 days, which is 30%) provides for court discretion in application of the adjustment, South Dakota's threshold is 180 nights (49%), North Dakota's threshold is "equal residential responsibility" as ordered by the court, and Utah's is 30 percent.

Jury Room: Minimum Technology Standard

Date: 2017.09.05

- Hearing Assist
    - Infrared
    - 3 Rechargeable Units with Charging Base
- Suitable Microphones
- Video Monitor
    - Inputs
        - USB; or
        - Computer
- Mounted Equipment
- Proper Ventilation
- Surge Protection

APPENDIX 7

Craig, Becky

From: Judge Rumpke
Sent: Saturday, December 09, 2017 12:07 PM
To: Bennett, Patricia
Subject: Re: BJPA

Dear Patty:

The Committee met again on Friday, December 8, 2017, to discuss possible amendments to the Wyoming Rules of Evidence. As discussed in our last update, the Committee met in September to address some of the rules that may need stylistic, or other, updating.

Part of the Committee's focus was to make Wyoming's Rules consistent with Federal Rules wherever appropriate. This Committee has taken a different approach from the Civil Rules Committee. Unlike the Civil Rules where Wyoming's Rules often mirrored the Federal Rules and dealt with the same general topics, the Federal Rules of Evidence have recently been modified to address many issues involving electronically stored information (ESI). As these are new concepts, our Committee thought it would be better to look at individual rules to determine if the Federal approach is necessary in Wyoming. In addition, the Committee reviews the substantial amount of case law to see if the Federal Rules' approach is working. WIth that backdrop, the Committee addressed the following issues and will make the following recommendations early next year:

Rule 902 (self-authenticated documents) - The Federal Rules contain a procedure allowing authentication of public records by the custodian. The Committee is proposing that we add these provisions regarding domestic and foreign records. This will also necessitate a stylistic change to Rule 803(6) (hearsay exception regarding public records).

Rules 701, 702, 703, and 704 - Our case law mirrors Federal case law on expert and opinion testimony (Bunting adopted the Daubert standard). The Committee will be proposing some stylistic changes to these rules to make the structure mirror the Federal Rules' structure.

Federal Rules 412-414 - The Federal Rules have a much clearer procedure seeking the admission of sexual conduct evidence against a victim. Additionally, these rules apply in civil and criminal cases. In Wyoming, we have a rape-shield law enacted by the Legislature. It does not apply to civil cases. As such, the Committee identified a need to address this issue, but since the Legislature has spoken on this issue, the Committee determined not to propose amending the Rules of Evidence lest their be an issue regarding separation of powers and potential conflicts between civil and criminal cases.

Rule 1001 - the Committee will propose a definition for what constitutes an original for purposes of an electronic record.

The Committee hopes to have its recommendations completed and in final form by the ed of January, 2018. The Committee will then present those recommendations to the Chief Justice.

In addition, the Committee is studying a potential new hearsay exception. In the recent Schmidt case, two dissenting justices suggested that Wyoming should look at adopting a hearsay exception dealing with child statements made to officials in the context of sexual assault cases. Although some states have done this

APPENDIX 8

through legislation, Wyo. R. Evid. 802 states that the courts in Wyoming are responsible for defining hearsay and its exceptions. Therefore, the Committee did not perceive a separation of powers issue.

The Committee has identified all of the States have enacted rules whether legislatively or through court rules. The Committee is studying the states that have amended their evidence rules to see what approach, if any, would be most consistent with Wyoming's existing law. In addition, the Committee is researching how these new exceptions have been interpreted by courts in light of the obvious confrontation clause issues that can arise. When the Committee completes its study, it will determine whether an amendment to the hearsay rules is appropriate and then make its proposal.

If you need any additional information, please do not hesitate to call and/or write.

Sincerely,
Thomas W. Rumpke

From: Bennett, Patricia
Sent: Friday, December 8, 2017 2:54 PM
To: Judge Rumpke
Subject: BJPA

Judge Rumpke,

Do you have any update on your committee for the BJPA meeting on Monday?

Patricia L. Bennett
Clerk of the Supreme Court
Wyoming Supreme Court
2301 Capitol Avenue
Cheyenne, WY 82002
(307) 777-7316