

Glenda Wiles

From: Sheryl Wood <swood@mtcounties.org>
Sent: Thursday, March 14, 2019 9:05 AM
To: Sheryl Wood
Subject: Update on OPD & Entitlement Share
Attachments: HB 2 Supplemental - Reduce Entitlement Share - OPD.pdf; OPD and Entitlement Share Fact Sheet.pdf

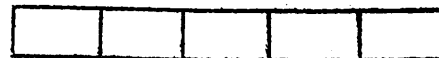
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Importance: High

MAR 15 2019

Ravalli County Commissioners

Commissioners and County Attorneys:



UPDATE:

The Legislature continues to evaluate options to fund the increasing costs of the Office of Public Defender and local government entitlement share reductions are in the mix. The justification for taking local government resources and redirecting them to the OPD system was that local governments were passing ordinances or enforcing local ordinances in an attempt to undermine criminal justice reform passed last session. The attached document is a fact sheet on local ordinances and the representation required from the Office of Public Defender for those local ordinances. Local ordinances are not driving OPD workload. Misdemeanor cases are at a 5 year low in terms of representation in the OPD system. Feel free to distribute as you see fit. The information contained in the fact sheet comes from the Legislative Fiscal Division report and the pages are generally cited in the document.

More to come!

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Amendments to House Bill No. 2
Committee Study Bill Copy

Requested by Representative Llew Jones

For the House Appropriations Committee

Prepared by Kris Wilkinson
March 11, 2019 (9:42am)

1. Page D-2, line 34: Office of State Public Defender.

Strike: "22,315,993" [General Fund FY 21]

Insert: "21,556,707" [General Fund FY 21]

Following: line 34

Insert: "a. Local Government Contribution"

Insert: "759,286"[General Fund FY 20 FY 21]

- END -

Explanation - This amendment creates a line item for counties, cities, and consolidated governments contribution to the costs of the Office of the Public Defender (OPD). The amount of the general fund contributed by the local governments is reduced from the entitlement share payments based on population and OPD workload statistics. The reduction to the entitlement share payment is included in a HB 2 companion bill.



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OPD and Entitlement Share Fact Sheet

Part D Subcommittee heard testimony from OPD that lower court misdemeanor offenses implemented by local government have eroded the projected caseload reductions estimated in HB 133 from 2017. LFD 2021 Biennium Report tracked "lower court" caseload statistics from FY 14 to FY 18 (page D-115) and found the following:

Case Type	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Lower Courts	19,803	20,814	21,543	21,412	18,967
Dependent/Neglect	3,029	3,925	4,691	4,853	4,535
Juvenile	1,052	927	907	877	799
Involuntary	1,046	1,080	1,103	1,176	1,107
Guardianship	178	189	200	170	170
Criminal	6,597	6,699	7,904	8,619	8,850
Total	31,705	33,634	36,348	37,107	34,428

Lower court case numbers decreased from FY 17 to FY 18. All are below FY 2016 high of 21,543. Criminal cases increased by 231 from FY 17 to FY 18; total cases decreased by 2,679 from FY 17 to FY 18, but OPD over-expended its appropriations each year, including the supplemental request for FY 19 of \$7.3 million.

There is NO EVIDENCE in the report that increased misdemeanor ordinance violations are the driver of OPD costs.

SB 315 was introduced by Senate President Sales this session. The bill requires local governments to provide their own public defender to represent indigent defendants on ordinance only charges when the prosecutor is seeking jail time. We supported the bill because we knew the impacts were negligible and we were hoping the fiscal note would show them all that the OPD justification was factually incorrect.

The fiscal note for SB 315 was intended to show the increased workload that OPD *suffers* because of local ordinance violation representation. While OPD reported a number of cases (383 matters) of "ordinance representation" in 2018, that number also included criminal citations thus the OPD would be required to handle the case regardless. Projected impact if OPD was no longer required to represent ordinance violations? ZERO. The fiscal note also confirms that OPD couldn't say if a matter was a person (383 different cases) or 10 people with 38 ordinance violations per person. In short, their testimony prior to introduction of SB 315, that local ordinances are driving OPD workloads and thus costs, was erroneous.

Their testimony AFTER SB 315, however, is not a mistake. When the head of the agency testified on Friday in Appropriations that local ordinances were driving their costs, that testimony was not in error. It is factually incorrect, and their own contribution to the fiscal note confirmed that.

The following statement can be found in the LFD report as a comment note (D-116):

HB 133 revised the number of misdemeanor laws requiring the Office of the Public Defender to represent defendants in court. The city of Billings has adopted local ordinances that reverses the statutes put in place by the legislature addressing which offenses may result in jail or prison if the defendant is found guilty and thus require representation by a public defender. The work load of the OPD and associated costs for lower court cases may be increased in the 2021 biennium as a result.

Billings City Attorney's Office refuted this statement in the Part D Subcommittee hearing and stated, "This statement is categorically false." According to the city attorney's office testimony, the Billings Open Container ordinance has been in effect in Billings "for decades." Cities are not adopting new ordinances to undermine HB 133. Public Defender costs are not increasing because of local ordinances. Misdemeanor cases have declined since 2016 and are at an all-time low per the LDF report (2014 – 2018). Yet OPD projects a 3% increase and the Appropriations Committee has already assigned the cost escalation to local governments. That is incorrect. Criminal cases are increasing; misdemeanor cases they represent are decreasing.

OPD appropriations have gone from \$18.6 million in 2007 to almost \$40 million in 2018 . This isn't because of misdemeanor ordinance violations. This isn't because of over-zealous prosecutors.

I've requested the total amount in revenues generated from the OPD system in representing 34,449 cases in fiscal year 2018. I haven't received that number yet, but I assume it is negligible. Prosecutors, including the Billings City Attorney's Office, testified that when Billings Municipal Court tries to impose the \$250 fee the OPD regularly requests the fee be waived for their clients. That is likely a standard practice in lower courts across Montana.

The 383 ordinance matters reported by OPD when they were required to calculate ordinance representation in the fiscal note for SB 315 don't add up to the \$2.7 million "true up" number used by LFD, nor the current \$750,000 reduction in entitlement payments on the amendment to HB2 that flew out of Appropriations.

Current law dictates that a defendant able to pay for representation could be charged \$250 for misdemeanor charges and \$800 for a felony case. (Note LDF report shows on D-115 Figure 2 shows the actual cost for misdemeanor representation at \$365 and a felony at \$1,752). If 10% of the misdemeanor defendants paid \$250 you would generate \$474,000. If 10% of the felony defendants per year paid the \$800 it would generate \$708,000. If only 10% of defendants paid you would generate \$1,182,000 annually. AT LEAST ONE of the drivers of OPD costs are the defendants assigned counsel.



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