

Glenda Wiles

From: MACO <MACO@mtcounties.org>
Sent: Monday, March 18, 2019 2:16 PM
To: MACO
Subject: URGENT!! Contact your Legislator - HB 2 - Entitlement Share Reduction for OPD
Attachments: HB 2 Supplemental - Reduce Entitlement Share - OPD.pdf; opd-entitlement-share-fact-sheet.pdf

RECEIVED

Importance: High

MAR 18 2019

Ravalli County Commissioners

Members,

We need you to contact your House Members immediately and urge them to resist any proposed Amendment to HB 2 to reduce County Entitlement Shares!!

Currently, an amendment has been proposed to HB 2 (attached) to reduce county entitlement shares by \$759,286 for this purpose. Acceptance of this amendment by the House will open a door for further amendments (reductions) to the Entitlement Share!

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.

Here is the membership of the House Appropriations Committee and their contact information.

Assignment	Member	Email
Chair	Nancy Ballance (R) HD 87	nancyballance@aol.com
Chair	Carl Glimm (R) HD 6	Carl.Glimm@mtleg.gov
Vice Chair	Dan Bartel (R) HD 29	Danbartel2@gmail.com
Vice Chair	Llew Jones (R) HD 18	Llew.Jones@mtleg.gov
Vice Chair	Ryan Lynch (D) HD 76	Ryan.Lynch@mtleg.gov
Member	David Bedey (R) HD 86	David.Bedey@mtleg.gov
Member	Tom Burnett (R) HD 67	Tom.Burnett@mtleg.gov
Member	Mary Caferro (D) HD 81	marycaferro@gmail.com
Member	Kimberly Dudik (D) HD 94	kimberly.dudik@gmail.com
Member	Jim Hamilton (D) HD 61	Jim.Hamilton@mtleg.gov
Member	Bradley Hamlett (D) HD 23	Bradley.Hamlett@mtleg.gov
Member	Kenneth L Holmlund (R) HD 38	Ken.Holmlund@mtleg.gov
Member	Mike Hopkins (R) HD 92	Mike.Hopkins@mtleg.gov
Member	Jim Keane (D) HD 73	N/A

Member	Bill Mercer (R) HD 46	Bill.Mercer@mtleg.gov
Member	Frederick (Eric) Moore (R) HD 37	Eric.Moore@mtleg.gov
Member	Rae Peppers (D) HD 41	Rae.Peppers@mtleg.gov
Member	Joe Read (R) HD 93	joeread2019mt@gmail.com
Member	Matt Regier (R) HD 4	Matt.Regier@mtleg.gov
Member	Marilyn Ryan (D) HD 99	Marilyn.Ryan@mtleg.gov
Member	Jonathan Windy Boy (D) HD 32	rep32jwb@gmail.com
Member	Tom Woods (D) HD 62	Tom.Woods@mtleg.gov

As always, thank you so much for your help and support!

Sheryl Wood

Associate Director
Montana Association of Counties
2715 Skyway Drive
Helena, MT 59602

(406) 449-4360 Office
(406) 442-5238 Fax
swood@mtcounties.org
www.mtcounties.org

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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.

Montana League of Cities and Towns
 700 W Custer Ave (59602)
 PO Box 7388
 Helena MT 59604-7388



Phone: (406) 442-8768
 FAX: (406) 442-9231
 Email: info@mtleague.net
mtleague.org

Montana Associations of Counties
 2715 Skyway Drive, Suite A
 Helena, MT 59602



Phone: (406) 449-4360
 Fax: (406) 442-5238
www.mtcounties.org

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OPD AND ENTITLEMENT SHARE FACT SHEET

The Joint Appropriations Part D Subcommittee (Judicial Branch, Law Enforcement, and Justice) heard testimony from OPD that lower court misdemeanor offenses implemented by municipalities have eroded the projected caseload reductions estimated in HB 133 from 2017. LFD 2021 Biennium Report tracked “lower court” caseload statistics from FY 2014 to FY 2018 (page D-115) and found the following:

<u>Case Type</u>	<u>FY 2014</u>	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>	<u>FY 2018</u>
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 2017 to FY 2018. All are below the FY 2016 high of 21,543. Criminal cases increased by 231 from FY 2017 to FY 2018; total cases decreased by 2,679 from FY 2017 to FY 2018, but OPD over-expended its appropriations each year, including the supplemental request for FY 2019 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 as amended 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 support the bill as amended, because we know the impacts are negligible, and we were hoping the fiscal note would show the committee that the OPD justification was factually incorrect.

The fiscal note for SB 315 provides OPD’s analysis of 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 state law criminal citations; therefore, 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 the introduction of SB 315—that local ordinances are driving OPD workloads and thus costs—was erroneous.

When presented with factual information on the decline in misdemeanor OPD cases, and the total count of assigned counsel cases for ordinances in SB 315 (383 matters), the OPD continued to testify in the Appropriations Committee that local ordinances were driving their costs. That is factually incorrect.

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 SB 315 hearing and stated, "This statement is categorically false." The City of Billings open container ordinance has been in effect in Billings since 1967. 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 LFD 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.

Criminal Justice costs have risen all throughout the State. Local governments are keenly aware of the increased costs of law enforcement, jails, courts, prosecutors, mental health, chemical dependency, and abuse and neglect cases, as local governments fund the majority of these costs with property tax revenues. A legislative attempt to reduce local government revenues and divert them to the State Public Defender System is unacceptable.



Eric Bryson
Executive Director
Montana Association of Counties



Tim Burton
Executive Director
Montana League of Cities & Towns