

OFFICE OF THE STATE PUBLIC DEFENDER



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DATE: March 16, 2015
TO: Public Defender Commission
FROM: Bill Hooks, Chief Public Defender
RE: Contingency Plans

Statement of the Issue:

The Office of the State Public Defender (OPD) fulfills Montana's constitutional and statutory guarantees of effective legal representation to persons in a wide variety of criminal and civil proceedings, in each of Montana's 207 courts. The full-time staff and approximately 220 contract attorneys who work with OPD handled 31,705 trial-court level cases combined in Fiscal Year (FY) 2014. Of these cases, over 19,000 were misdemeanors filed in the courts of limited jurisdiction. These cases make up 62.6 % of our total cases. Between Fiscal Years 2010 and 2014, the number of lower court cases assigned to OPD increased 11.9%. We project that these cases will increase by about 3.5% by June 30, 2015.

As the numbers of new cases increase, OPD's financial obligations increase as well. These obligations have caused OPD to request a supplemental appropriation of \$1.7 million to get the agency through to June 30, 2015. \$1.6 million of the requested supplemental appropriation is due to expenditures made to private attorneys for OPD cases, in excess of the amount appropriated. Our request for additional funding is included with other agencies' requests in House Bill (HB) 3. This bill is pending in the House Appropriations Committee.

On February 12, OPD appeared for a committee hearing on HB 3. As of March 16, the Appropriations Committee has not set a date on which to take executive action on the bill. Passage of HB 3 and the supplemental appropriation OPD requested remain in doubt. This uncertainty places OPD in an untenable position. If HB 3 is tabled by the Committee or OPD's request is denied at some future date, OPD will face a very real and immediate crisis. We would not have sufficient funds to pay claims from contractors and to keep our offices open through June 30, the end of the fiscal year. This in turn would trigger an obligation imposed by Title 17 of the Montana Code to reduce nonmandated expenditures and thereby reduce costs in excess of our appropriation.

Proposal:

Staff salaries/benefits and contract attorney costs are two of OPD's largest annual expenditures and provide opportunities for savings. However, we do not have sufficient numbers of attorneys, support staff and investigators to meet our current needs, and any reduction in full-time

employees will severely impact OPD's ability to provide representation to our clients and fulfill our responsibilities. For a number of reasons, lay-offs or furloughs are not the preferable option.

Reducing contract attorney expenditures presents the best option for reducing expenditures in the time period available. Therefore, the proposal if the HB 3 supplemental funding is not approved is as follows:

1. Seek authorization from the Public Defender Commission to decline all orders to assign counsel in misdemeanor cases in which jail time is not mandatory upon conviction, from a specific date to be determined, to June 30, 2015. This will enable OPD to reduce expenditures by not assigning lower court cases to contract attorneys. Further, by declining lower court cases in our regional offices, OPD staff attorneys could shift their focus and assist in handling felony and civil cases. This in turn would help us keep more of these cases in our offices and thereby reduce the expenditures we otherwise would incur by assigning these cases to contract attorneys.
2. OPD staff attorneys will continue to work on all current and active cases during this time period.
3. OPD will resume accepting orders of appointment in new cases in courts of limited jurisdiction on July 1, 2015.
4. OPD will not take back from contractors any cases that are current and open as of the date on which the agency will decline new case assignments. It is important that OPD clients have continuity of representation when possible. Further, taking cases back would add burdens to OPD's already overloaded staff attorneys, and result in delays in cases.
5. OPD also will continue to explore other ways for reducing expenditures in excess of appropriations, including withdrawing or terminating representation in treatment courts.
6. If these actions do not reduce expenditures to the level necessary to meet the anticipated shortfall caused by an adverse decision on HB 3, OPD may be forced to implement a plan to temporarily furlough full-time employees, beginning on or after May 15.

If the supplemental funding is approved, the contingency plan will not be implemented on this timetable. However, it may be revisited depending on the final appropriation in HB 2.