



# OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

Steve Bullock  
Governor

## MEMORANDUM

TO: The Montana Public Defender Commission

FROM: Harry Freebourn

DATE: March 16, 2015 – Updated March 20, 2015

RE: HB 3 and HB 2 Funding Summary

This memorandum provides in question format a summary of the financial issues related to the agency request for supplemental funding (HB 3) and its request for funding for the next biennium (HB 2).

### HB 3 – SUPPLEMENTAL FUNDING BILL

What is supplemental funding, what is the approval process, and why does the agency need it?

Supplemental funding is necessary when an agency expects to expend more than its authorized funding for conditions beyond its control. Please note the underlined words as they are key for getting this funding. As noted below, the agency expects to expend \$6.32 million more this fiscal year than it has in authorized funding. However, the agency has been able to secure other sources of funds to cover all but \$1.7 million. The sources are also explained below.

The process is as follows to apply for and receive supplemental funding. First, the agency sends a written request to the Office of Budget and Program Planning (OBPP) no later than October 15, 2014 explaining conditions beyond its control and the related dollar amount. The agency has complied with step one and alerted the Commission to this filing at its October 31, 2014 commission meeting via agenda item 5.F. Second, OBPP meets with the agency to understand the request to determine if it is both valid and supported by documentation. Third, if approved by OBPP, they place the approved amount in House Bill 3, the Supplemental Funding Bill. Fourth, the bill is introduced in the House and referred to House Appropriations. If it passes through this committee it goes to the House Floor for a vote. Fifth, if the bill clears the House, it moves over to the Senate and goes through the same process. Finally, if the bill passes both chambers it goes to the Governor for signature. Please note that the bill can fail or be amended in any step along the way. Currently, the bill has been introduced and has had a hearing in House Appropriations. That is where it currently sits.

What were the conditions beyond its control that caused the agency to need supplemental funding? During fiscal 2012 and into 2013, the agency experienced significant new case growth in all programs. New case inflows leveled during fiscal 2014 for the Public Defender Program but not for the Appellate Defender Program. During the current fiscal year, referred to as fiscal 2015, all programs' new case inflows are growing again. The Legislative Fiscal Division Budget Analysis to the 2015 Legislature notes on page D-104 that Public Defender case inflows grew nearly 15% between fiscal 2010 and 2014 or by over 4,000 new cases. This means that the law firm that once handled about 27,600 new cases per year now needs to handle about 31,700 new cases per year. In the current fiscal year the program has now moved above the 32,000 mark. The report also notes that dependent and neglect case grew by 37% from fiscal 2011 through 2014. Although this growth is part of the overall growth, these cases are more expensive and last longer than most other types of cases. The report also noted that the agency carried over between 20,000 and 25,000 cases during the same time period as noted on page D-106. This means that the law firm works on between 47,000 and 57,000 cases (new and carry over) per fiscal year. The report also speaks to new case growth in the Appellate Program as being 17%, 15% and 5% during fiscal 2012, 2013, and 2014, respectively.

Please note that the Conflict Coordinator Program is not mentioned in the numbers noted above. This is because they are part of the same pool of cases. The only difference is that the Public Defender and Appellate Programs do the non-conflict work while the Conflict Coordinator gets those deemed to be conflicts. They are the same pool of cases.

New case growth is a condition beyond the agency's control as OPD does not seek work but is issued work by the courts. The agency needed to increase the size of its law firm to handle this increased level of cases. It did so by hiring modified (temporary) FTEs and by sending more cases to contract attorneys. The agency also needed to pay for more expert witnesses, buy more transcripts and mental evaluations, and pay for all of the other costs necessary to support this growth.

*What was the FY 14 official legislative funding for OPD?* \$27 million

*What did OPD spend in FY 14?* \$29.8 million or \$2.8 million more than our funding.

*How did OPD finance the \$2.8 million shortfall?* We transferred \$1.85 million from FY 15 to FY 14, received \$625,000 from SB 410 funds, and accessed the personal services contingency for \$340,000.

*What was the FY 15 official legislative funding for OPD?* \$27.5 million.

*Since OPD transferred \$1.85 million from FY 15 to FY 14 – what is OPD's FY 15 remaining funding?* \$25.65 million.

*What does OPD expect to spend in FY 15?* \$32 million

*How does OPD propose to finance the \$6.32 million shortfall?* OPD already received \$4.5 million from SB 410 funds, filed for \$1.7 million supplemental funding in HB 3, and expects to access the personal services contingency for the remainder or \$120,000.

*What will OPD do if it does not received funding?* See the March 5, 2015 letters from Chair Fritz Gillespie and from Wendy Johnson and Kristina Neal to various parties, and the memo from Bill Hooks to you regarding contingency plans.

## HB 2 – STATE BUDGET BILL – 2017 BIENNIUM

*Regarding funding for the 2017 biennium – where is OPD today?* OPD received \$29.9 million for FY 16 and \$29.8 million for FY 17, or \$59.7 million for the biennium through step two of the legislative funding process (Joint Subcommittee and House Appropriations).

*What did OPD request in the Governor’s budget to the legislature?* \$34 million for FY 16 and \$34.3 million for FY 17 or \$68.3 million for the biennium.

*What was the dollar and percentage increase over the base expenditures?* The request was for \$68.3 million and the base was \$53.4 million. The difference is an increase of \$14.9 million and 28%.

*How does OPD’s 28% increase compare to the average increase for the entire state?* The state’s average increase was about 5%. OPD received the largest percentage increase in the Governor’s budget to the legislature.

*What is the current funding shortfall from what was in the Governor’s budget vs. what is funded to date?* \$4.1 million short for FY 16 and \$4.4 million short for FY 17 or \$8.5 million short for the biennium.

*What percentage of the Governor’s budget is currently funded?* 88%

*What major items are in the remaining \$8.5 million or 12%?*

- OPD will be forced to lay off 9 FTEs for vacancy savings and 23.5 temporary employees brought on board to meet increased caseload demands. That is a shortfall of \$572,000 for FY 16 and a little over \$570,000 for FY 17 for vacancy savings and \$1,849,000 for FY 16 and \$1,825,000 for FY 17 for the temporary FTEs.
- OPD continues to feel the stress of caseloads that will only grow. A little above and then a little below \$1.0 million for FY 16 and FY 17 is sought for 14 FTEs needed in addition to the 32.5 above to meet anticipated caseload demands. There isn’t enough money in the budget to absorb the caseload demand with contract attorneys despite the perception that services can be delivered by contractors more cheaply than with FTEs.
- About a \$600,000 increase over the biennium is sought for contract services that is not funded – another \$300,000 for contract services for relieving stress on the appellate office is not funded either.
- \$955,000 is sought for the attorney career ladder for recruitment and retention of attorneys to stabilize the workforce.

*What will OPD do if it does not received funding?* See the March 5, 2015 letters from Chair Fritz Gillespie and from Wendy Johnson and Kristina Neal to various parties, and the memo from Bill Hooks to you regarding contingency plans.