



Steve Bullock
Governor

OFFICE OF THE STATE PUBLIC DEFENDER STATE OF MONTANA

MEMORANDUM

TO: Public Defender Commission

FROM: Scott Cruse, Chief Administrator

DATE: September 22, 2016

RE: Mitigation Plan to Address Anticipated Shortfall

On August 22, I presented a supplemental request of approximately \$3.5 million to the Office of Budget and Program Planning (OBPP) to address a forecasted shortfall in OPD's operating budget for FY 2017. By statute (17-8-103 M.C.A.), boards, commissions and managerial staff are required to keep expenditures within the legislative appropriation. We are obligated to develop a mitigation plan to address the anticipated deficit and find a way to control costs and remain within our appropriation. The following mitigation strategies are proposed for your consideration.

Permanent policy changes to control costs:

1. Establish firm controls regarding the use of third party vendors.
2. Enter into MOUs with a broader range of expert witnesses to control costs.
3. Abolish the Major Crimes Unit (MCU) and reallocate those resources.
4. Replace FTE with contract IT support.
5. Hire full or part-time modified FTE attorneys to work the expected misdemeanor backlog.

Other proposals to meet the anticipated shortfall and balance OPD's budget before the end of the current fiscal year, some of which would be temporary:

6. Place a moratorium on any capital improvements and the acquisition of any new office space.
7. Institute a hiring freeze, leaving vacant positions unfilled, including five modified FTE.
8. Establish restrictions limiting overtime.
9. Revert the Commission's remaining discretionary funds toward alleviating the shortfall. The unobligated fund balance is \$209,300.
10. Immediately discontinue the assignment of FTE and contract attorneys to post conviction treatment courts.
11. Significantly reduce the use of contract investigators and restrict the use of all investigators to felony cases. Give authority for all investigator assignments, both FTE and contract, to the Chief Investigator, who would review and pre-approve all investigator requests and expenditures.

12. Set caps on the number of hours that a contractor can bill by case type to provide cost certainty.
13. Immediately discontinue representation of putative or unknown parents in DN cases.
14. Alternatively, discontinue all adult representation in DN cases, representing children only.
15. Immediately discontinue using contract attorneys for misdemeanor work in all regions. Although it is anticipated that this action would create a significant backlog, Regional Deputies could help control the growth of the backlog by working closely with the lower courts to waive incarceration as a sentencing option (46-8-101(3) MCA), reducing the number of cases in which OPD is required to provide representation.
16. Modify duties to accommodate the resulting increased caseloads:
 - a. Eliminate time tracking for cases in the courts of limited jurisdiction
 - b. Eliminate disposition information from the case closing form
 - c. Revise the eligibility determination procedure to reduce support staff workload
17. Alternatively, immediately suspend assignment of **all** misdemeanor cases, including FTE.
18. Immediately discontinue using contract attorneys for District Court cases in the five regions with the highest number of FTE attorneys (Regions 1, 2, 3, 4 and 9). Assign cases in those regions only to FTEs, except for conflict cases.
19. Implement rolling furloughs of full-time employees, beginning with executive management. This would impact courts, jails, and innumerable other facets of the criminal justice system in addition to OPD and its clients; such impacts would be both fiscal and operational.

To have the full benefit of the expected savings, these measures will need to be implemented by October 1. Furloughs would be the last possible option to address any remaining shortfall as the end of the fiscal year nears.