

# COMPARISON OF GENERAL FUND, ENTITLEMENT SHARE PAYMENTS, AND THE COSTS TO OPERATE THE OFFICE OF THE PUBLIC DEFENDER

A Report Prepared for the  
Legislative Finance Committee  
Law and Justice Interim Committee  
Montana Supreme Court  
Governor Steve Bullock

By  
**Kris Wilkinson**  
**Lead Fiscal Analyst**

December 3, 2018





## INTRODUCTION

The 2005 Legislature created the statewide public defender system by enacting [Senate Bill 146](#). In addition to consolidating the public defender functions previously performed and funded on the county-level, the bill required various reports and specific data be collected.

One of the requirements includes the Legislative Fiscal Analyst (LFA) reporting on a comparison of general fund revenue, statutory entitlement share payments to local governments, and actual costs to operate the statewide public defender system. The report must be provided to the Governor, the Legislative Finance Committee, the Law and Justice Interim Committee, and the Montana Supreme Court.

Although the bill was enacted in 2005, the first report was to be issued in 2011 and continue at 5-year increments thereafter. Unlike most ongoing reports that the legislature requires, this particular subsection of SB 146 was not codified, meaning it wasn't assigned a specific statute number for future reference. (Codified sections are those printed with statute numbers in the Montana Code Annotated books.) However, because the report is in session law (Ch. 449, section 72, Laws of 2005), it is still a required duty of the LFA.

SB 146 included a statement of legislative intent that the funding of the public defender system would be shared by state and local government. Further, the legislature intended that the counties, consolidated governments, and cities would pay their share of costs for the system through a reduction in the base entitlement share. One of the main purposes of this report is to analyze the costs for the Office of the Public Defender and compare the funding for the system provided by the state compared to that provided by local governments.

Report requirements outlined in SB 146 included providing information on a comparison between general fund revenue, statutory entitlement share payments to local governments, and actual costs to operate the Office of the Public Defender (OPD).

## RELATIONSHIP OF ENTITLEMENT SHARE PAYMENTS TO OPD

The 2003 Law and Justice Interim Committee (LJIC) unanimously recommended that the legislature enact SB 146 to establish a statewide public defender system. Until passage and implementation of SB 146, the responsibility to provide counsel to indigent defendants rested with the counties or the courts. In certain district court cases the state paid public defender costs through the Office of the Court Administrator in the Judicial Branch.

The final report for LJIC outlined the LJIC's perception of the funding obligations for the state system including:

- Funding should be shared by the state, counties, and cities proportionate to current funding obligations and spending levels.
- Of the total biennial budget for the public defender system the:
  - State should be responsible for 77.7%, including federal funds
  - Counties 15.6%
  - Cities 6.7%
- Costs should be allocated to counties based on a three-factor formula using county's taxable value of property, population, and crime rate
- A caseload factor would replace the crime rate factor when accurate data becomes available
- For cities, costs should be allocated according to a two-factor formula using the city's taxable value and population. Caseload would be added when accurate data becomes available

SB 146 did not include these requirements, but did provide for reductions in the entitlement share to compensate the state for the local governments share of the costs of the public defender system. SB 146 Section 72, Implementation, included legislative intent that the funding responsibilities for the public defender services be shared by state and local government, and the counties, consolidated governments, or cities would pay their share of costs through a reduction in their base entitlement shares.

Due to a lack of reliable data on the costs of public defender services incurred by local governments, the 2005 Legislature required that a legislative audit be conducted of the actual costs for public defender services between FY 1999 and FY 2004 in Cascade, Flathead, Gallatin, Lewis and Clark, Missoula, and Yellowstone Counties. Based on audit findings, SB 169 was enacted by the 2007 Legislature, which revised the entitlement share of these counties by \$109,965 in FY 2007. Figure 1 shows the HB 2 funding for the Office of the Public Defender (OPD) in FY 2007, the first full year of operation for OPD, and the entitlement share reductions that were made.

*Figure 1*

Funding of the Office of the Public Defender FY 2007		
Funding Source	Funding	Percentage
Entitlement Share Reduction		
Counties and Consolidated Governments	\$1,523,909	11.1%
City Governments	786,100	5.7%
State Contribution - HB 2	11,440,881	83.2%
Office of the Public Defender	\$13,750,890	100.0%

In FY 2007, the total costs to operate OPD exceeded the budget provided in HB 2 by \$5.4 million. Higher costs included:

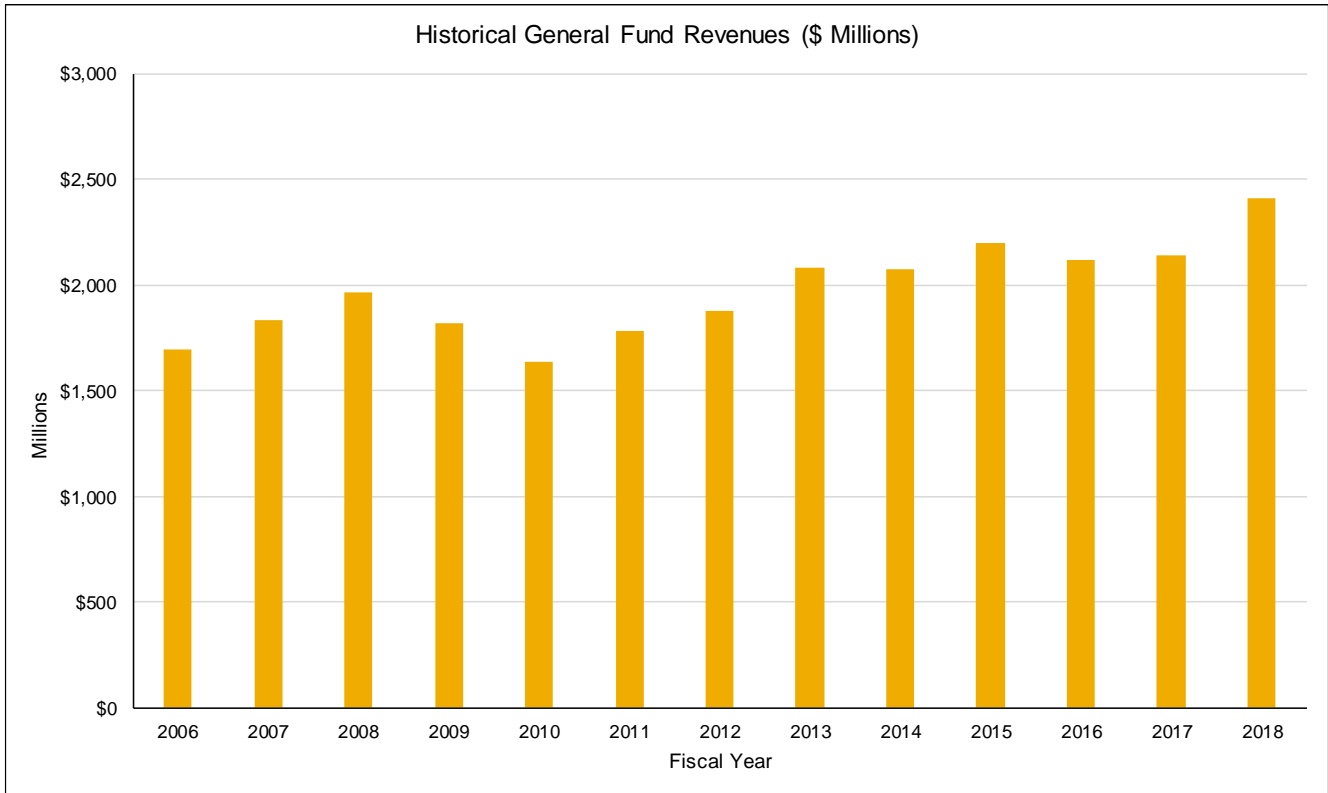
- Opening public defender offices and adding state employees above those contemplated by the legislature
- One-time costs for computers, furniture, and telephone systems, and design and implementation of a case management system
- Contract attorney fees for cases in areas of the state that did not have public defenders available

The additional costs were not anticipated at the time the budget was adopted for the Office of the Public Defender. The entire supplemental appropriation was paid from the state's general fund.

## **COMPARISON OF GENERAL FUND REVENUES, ENTITLEMENT SHARE PAYMENTS, AND COSTS OF OPD**

SB 146 required a comparison of general fund revenue, entitlement share payments to local governments, and the costs of operating the Office of the Public Defender. Figure 2 presents general fund revenues between FY 2006 and FY 2018, the most recently completed fiscal year.

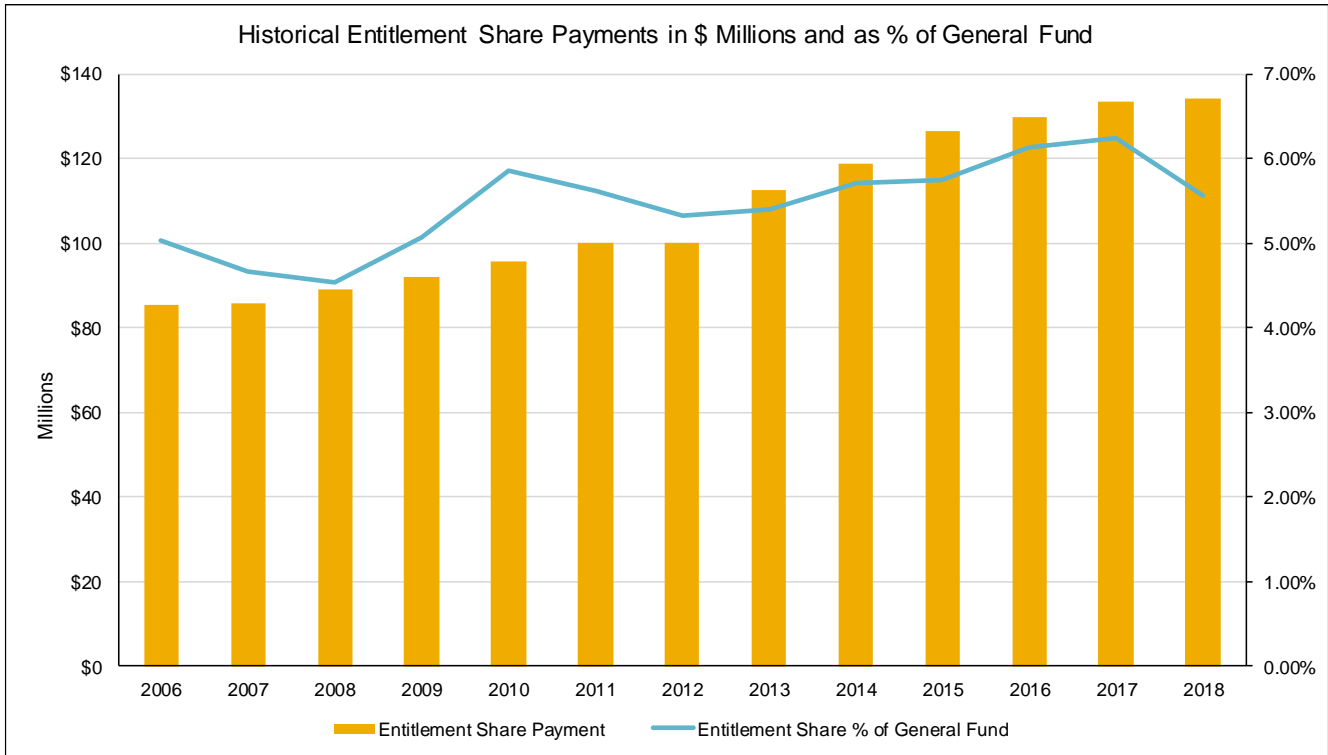
Figure 2



Impacts of the great recession are reflected beginning in FY 2008 with recovery in general fund revenues not realized until FY 2013. Overall between FY 2006 and FY 2018 the general fund grew at 2.9% annually.

Figure 3 shows entitlement share payments to local governments, counties, consolidated governments, and cities in dollar amounts and as a percent of general fund revenues.

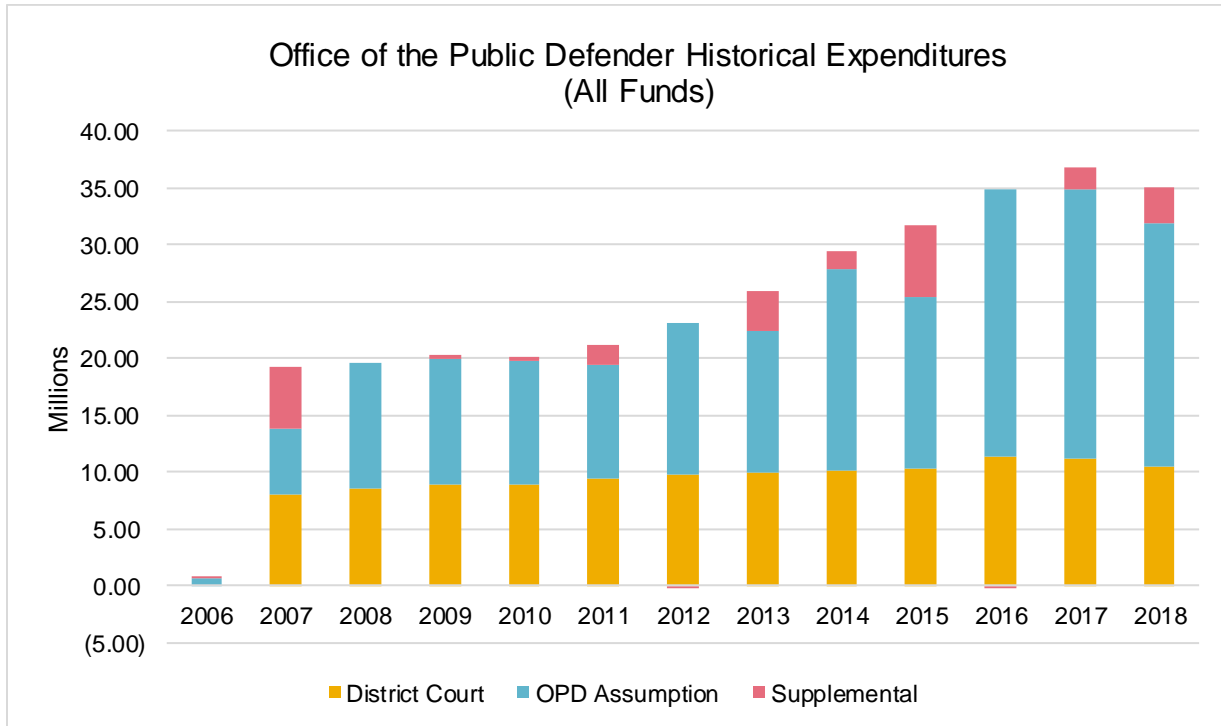
Figure 3



During the same period entitlement share grew 2.6% annually. It should be noted that the calculation of the entitlement share changed in FY 2011. Between FY 2007 and FY 2010, the rate was calculated based on the last four years' average annual growth rates for Montana gross state product and Montana personal income. The 2011 Legislature adopted [HB 495](#) which established a new growth rate. Under HB 495, the entitlement share growth rate is calculated using two ratios. The first is derived from the past three years' revenues for vehicle, gambling, and alcohol taxes and the second is derived from the past three years' revenues for individual income and corporation income taxes. These ratios are then used to calculate a growth rate based on a weighted formula. The growth rate is capped however. It cannot exceed 3.0% for counties, 3.5% for cities, or 3.25% for consolidated city/county governments.

Figure 4 reflects the costs of operating the Office of the Public Defender between FY 2006 and FY 2018. Prior to the establishment of the Office of the Public Defender, the Judicial Branch reimbursed local governments for public defender services in district court criminal cases. These costs were estimated to be \$8.0 million in FY 2007. In addition, state government included an Appellate Defender Commission with appropriations of \$200,602 in FY 2006. The costs for the Appellate Defender Commission alone were not readily available so an estimated amount was calculated by inflating the Appellate Defender costs at the growth rate for OPD. These costs have been eliminated from the figure below.

Figure 4



Costs are segregated to show:

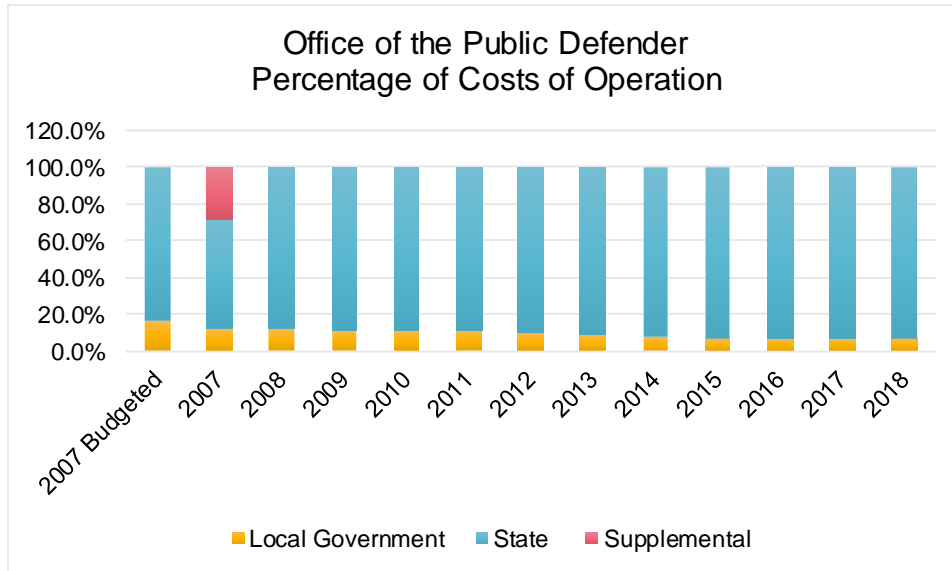
- Expenditures associated with public defender services that would be been paid by the state for district court criminal cases
- Expenditures associated with the state assumption of the Office of the Public Defender
- Supplemental appropriation costs above those anticipated by the legislature in HB 2

In FY 2006 OPD was just beginning operations and was funded for half a fiscal year. For this reason, the growth in annual expenditures is measured from FY 2007 at 5.6% a year compared to general fund growth of 2.5% a year and entitlement share growth of 2.8% during the same period.

Since FY 2007 entitlement share to counties, consolidated governments, and cities has not been reduced to reflect the growth in costs of OPD as intended by the legislature. As shown in Figure 1, in FY 2007 the local government share of public defender costs in HB 2 was 16.8% when the budget was established by the legislature. Due to the need for a supplemental appropriation, the percentage shared by local governments shrank in FY 2007 to 12.0%. By FY 2018 the share of public defender costs borne by local governments was 6.6%.

Figure 5 shows the percentage share of the public defender costs paid by local governments and the state between FY 2007 and FY 2018.

Figure 5



## CONCLUSION

In conclusion, between FY 2007 and FY 2018, the 5.6% annual growth in the costs for operating the Office of the Public Defender has exceeded both the 2.5% annual growth in the general fund revenue and 2.8% annual growth in entitlement share. During the same period the share of costs of the Office of the Public Defender borne by local governments has decreased, from 16.8% contemplated in FY 2007 to 6.6% in FY 2018. In FY 2018, if local governments would have contributed 16.8% of the costs of OPD the state general fund expense would have been \$2.7 million lower.