



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2017 Biennium

**Bill #** HB0072

**Title:** Revising laws related to costs of assigned counsel

**Primary Sponsor:** Lynch, Ryan

**Status:** As Introduced

- |   |  |  |
|---|--|--|
| <input type="checkbox"/> Significant Local Gov Impact     | <input checked="" type="checkbox"/> Needs to be included in HB 2 | <input type="checkbox"/> Technical Concerns              |
| <input type="checkbox"/> Included in the Executive Budget | <input type="checkbox"/> Significant Long-Term Impacts           | <input type="checkbox"/> Dedicated Revenue Form Attached |

### FISCAL SUMMARY

	<b>FY 2016 Difference</b>	<b>FY 2017 Difference</b>	<b>FY 2018 Difference</b>	<b>FY 2019 Difference</b>
<b>Expenditures:</b>				
General Fund	\$261,790	\$261,790	\$261,790	\$261,790
State Special Revenue	(\$261,790)	(\$261,790)	(\$261,790)	(\$261,790)
<b>Revenue:</b>				
General Fund	\$261,790	\$261,790	\$261,790	\$261,790
State Special Revenue	(\$261,790)	(\$261,790)	(\$261,790)	(\$261,790)
<b>Net Impact-General Fund Balance:</b>	\$0	\$0	\$0	\$0

**Description of fiscal impact:**

HB 72 changes to deposit of fees paid by defendants for the cost of services provided by the Office of Public Defender from a state special revenue fund to the state general fund.

### FISCAL ANALYSIS

**Assumptions:**

- HB 72 revises statutes governing the Office of the State Public Defender and the Public Defender Commission concerning counsel costs which are paid by a defendant. The bill requires reimbursements of costs received from defendants to be deposited in the general fund instead of a state special revenue fund as current statute dictates.

**Department of Revenue**

- To comply with HB 72 the Department of Revenue (DOR) will need to change the county collection report coding to deposit the public defender fee in the general fund instead of the state special revenue fund. The Department's IT group will need to work with the Department of Administration to acquire the new coding.

These changes can be completed as part of routine maintenance. This work does not account for the detailed tracking of individual payers, but only collection of the monthly revenue as a whole.

**Office of Public Defender (OPD)**

3. The Executive Budget currently includes \$261,790 from the state special revenue. Since this bill redirects the revenue to the general fund, this fiscal note assumes that the expenditures currently funded from these revenues would be funded from the general fund.
1. Montana judges from both the district courts and courts of limited jurisdictions have the ability to assess those convicted of a crime to pay certain fees that include all or part of their public defender costs if they use this service. There are 207 courts in the state of Montana. If convicted of a felony a judge could assess this individual either the actual cost of the service or \$800. If convicted of a misdemeanor a judge could assess actual costs or \$250. The amount of the public defender fee and/or the time for payment is subject to change. By statute, the clerks of court collect the public defender fee assessments.
4. As per state law and policy, as interpreted by the Legislative Audit Division, the agency is to track by individual all assessments made by judges and cash collected by the clerks of court. The auditor has noted that the agency must also have a collection process to deal with those that do not pay.
5. During the past four legislative audits, the agency has received seven recommendations to adhere to state law or policy that were related to these fees. The agency has not been able to comply, because it does not have the resources to contact the 207 courts, account for new assessments and collections on all new and past assessments, report on activity as required by law, and have an active collection process to address those that do not pay.
6. The agency estimates that it receives about 2,000 new assessments per year. The agency also estimates that it has about 2,000 individual collections per year. To actively collect an account the agency would need reliable contact information and a social security number. The agency would also need to know if the value of an assessment has been changed by a judge and when other amounts assessed that have a greater priority in law than the public defender fee were collected.
7. The agency estimates that in order to adhere to state law and policy it would need to develop a revenue and collection function. The estimated cost of implementing such a collection infrastructure would take 6.00 FTE and approximately \$500,000 per year from the general fund, whether this infrastructure were established in the Office of the Public Defender or another state agency.
8. If after an attempt at collection has been made, bad debts can be sent to the Department of Revenue. If there is sufficient identifiable information for each individual (including social security number), the Office of Public Defender could enter into a memorandum of understanding with the Department of Revenue where the Department of Revenue would attempt to collect the bad debt for a percentage of the collections.

	<u>FY 2016 Difference</u>	<u>FY 2017 Difference</u>	<u>FY 2018 Difference</u>	<u>FY 2019 Difference</u>
<b><u>Fiscal Impact:</u></b>				
FTE	0.00	0.00	0.00	0.00
<b><u>Expenditures:</u></b>				
Operating Expenses	\$0	\$0	\$0	\$0
<b>TOTAL Expenditures</b>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$261,790	\$261,790	\$261,790	\$261,790
State Special Revenue (02)	(\$261,790)	(\$261,790)	(\$261,790)	(\$261,790)
<b>TOTAL Funding of Exp.</b>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<b><u>Revenues:</u></b>				
General Fund (01)	\$261,790	\$261,790	\$261,790	\$261,790
State Special Revenue (02)	(\$261,790)	(\$261,790)	(\$261,790)	(\$261,790)
<b>TOTAL Revenues</b>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	\$0	\$0	\$0	\$0
State Special Revenue (02)	\$0	\$0	\$0	\$0

Sponsor's Initials

Date

Budget Director's Initials

Date