

1st there are perceptions I hear about control of OPD's caseloads that need to be dismissed, so to be very clear:

OPD does not have and has never had any statutory ability to control its caseloads

Since operations began in 2006, courts have issued orders to OPD for the assignment of PDs without any regard for the ability of the agency to absorb another case [47-1-104(3) & 47-1-111(1)(a)]

Courts are compelled to issue those orders when prosecutors and law enforcement decide to charge someone claiming indigence with crimes punishable by jail time under laws enacted by the legislature and ordinances adopted by the governing body of counties and cities and towns or in OPD's civil cases such as abuse and neglect (DN) or juvenile cases by laws enacted by the legislature [41-3-425 & 41-5-1413]

An excellent example of the control dynamic comes from the new Ravalli County case where nine felony counts are charged including aggravated kidnapping, sexual intercourse without consent, aggravated assault, child criminal endangerment and numerous drug charges against OPD client Hall who was informed this week he could face the death penalty - the death penalty announcement may well change the case from a high resource demanding case to one putting a very, very high demand on the agency budget over which OPD has no control - a new protocol takes over

Indigence determination is the only hint of control OPD has over its caseload [47-1-111(1)(a)] and, even then, the law requires OPD to provide representation until that determination is made [47-1-111(1)(c)]

Saying again, OPD does not have the ability to control its caseloads because the authority to create the cases lies with law enforcement, prosecutors and the courts

OPD will be short over \$4.1 million for FY16 and short over \$4.4 million for FY17 given the portions of the Governor's budget proposal not approved by the subcommittee

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 FY16 and \$1,825,000 for FY 17 for the temp. FTEs

OPD continues to feel the stress of caseloads that will only grow without the 32.5

A little above and then a little below \$1.0 million for FY16 and FY17 is sought for 14 FTEs needed in addition to the 32.5 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 - Funding from last session for the career ladder reduced turnover from 27% to 9%

Without this funding for these resources OPD will not be capable of providing all of

the services the legislature mandated this agency to provide so the State of Montana can meet its constitutional obligations

OPD will be required to curtail services for those qualified, perhaps severely, depending on circumstances beyond its control, *e.g.*, more death penalty cases, a continuing increase in the number of expensive, time consuming DN cases, or just a jump in new cases

Hard to estimate when curtailing services might happen but estimates run from April 2017 back to perhaps as early as the end of 2016 depending too on services cuts

OPD is where it is at for these reasons:

OPD was created out of litigation over the inadequate delivery of legal representation

Little was known about what the caseloads would be or how much that would cost - Cost estimates ranged widely - \$13 million appropriated - 25,600 new cases came in - less than \$1 million appropriated for DN cases that cost over \$2 million - total supplemental \$5.3 million

from 2008 - 2011 new cases rose by a couple of thousand into the mid to high 27,000s - funding was at more than \$19 million - a little more than the 1st year actually cost

New cases jumped by 3,300 cases to 30,900 in 2012 with another jump of a thousand to 31,900 cases in 2013 - funding was in the \$21.4 million range for each year

New cases stabilized in 2014 but caseload demands required increases in the workforce to meet the demand for services so we received 410 money and are seeking a supplemental

From 2010 new cases for OPD jumped by 14.6%

The appellate office does not get to choose which cases to appeal either

Increase of appeals from 183 in 2010 to an estimated 290 in 2015 (58%)

Contractor costs increased 48% from \$133,400 to \$198,500

Transcripts cost increased 19% to \$153,000

Case assignments in the conflicts office continued to rise with a substantial part of that being DN cases that take a long, long time to resolve

In short, OPD does not have the statutory ability to control the caseload it takes - caseloads have grown by over 10,000 case/year - while the budget has grown it has grown due to demand - with what is on the table now OPD will not be able to fulfill the constitutional obligations of the State of Montana