



County of Ottawa

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Indigent Defense (HB 5804) Analysis Executive Summary

Ottawa County, and its Circuit Court judges, both support the goal of ensuring that all indigent defendants are provided high quality representation (meeting constitutional requirements). However, they also believe that indigent defense should be provided in the most cost-effective manner.

Ottawa County's Indigent Defense is One of the Best Managed and Most Cost-Effective in the Country

- Ottawa County ranks high nationally when measuring against objective factors such as client satisfaction levels (including # grievances to Attorney Grievance Commission); Prison Commitment rates; and Cost per case.
- Ottawa County provides effective indigent criminal defense services for approximately \$5.58 per capita.

Legislation Would Increase Cost to the State & Counties and Result in a Headlee Violation

- The legislation would establish a spending floor for Ottawa County equal to the "statewide average" that is being spent on indigent defense. It has been estimated that the statewide average is \$7.25 per capita (this figure was included in the first draft of the bill). This would result in an unfunded mandate that would increase Ottawa County's cost by \$1.67 per capita (\$441,455 per year).
- Projected cost estimates to implement this legislation vary between \$70 million - \$120 million. Yet, no detailed analysis has been conducted by the House or Senate Fiscal Agencies to determine the precise budgetary impacts to the State and each county or how the new requirements will be funded.
- Declining crime rates could result in counties legitimately spending less for indigent defense services. If under Section 13, Subsection 7 this triggered the automatic state withholding of funds it is not clear if the State would withhold the entire minimum spending level or the difference between what is being spent and the State's minimum required spending amount. If it is the entire amount, this would create serious questions regarding the State's ability to budget for and administer existing contracts with local attorneys as well as other expenditures associated with indigent defense operations.
- The withdrawal of local funds would also create havoc with local budgets. This type of situation occurred recently with LEIN and created several unintended consequences. The State was mining data from LEIN, which was populated with County data, and then reselling it to private vendors and the public. The revenues were being placed into the State's General fund and not being returned to 911. The State continued to require counties to pay into the LEIN Fund. When counties objected and quit paying, the State began withholding funds from the counties from a variety of different revenue sources. This created serious administrative issues for Counties since these withheld funds were already committed to existing programs and operational expenses.

Legislation Would Fail to Improve Outcomes in Well-Managed Counties, and May Actually Hurt Them

- There is speculation that *The Eleven Principles of a Public Defense Delivery System* will be used as the basis for the standards that will be developed in accordance with the legislative mandates. If the *Eleven Principles are used*, Ottawa County will meet most of the standards, but not all of them according to our judges and defense attorneys. Therefore, even though Ottawa County can demonstrate it has one of the

very best public defender programs in the Country, it will be forced to modify its successful and proven approach to indigent defense.

Formulas to Determine Amounts that Should be Spent on Indigent Defense Services are Arbitrary and Would Increase Cost Whether it is Needed or Not

- Two separate counties could spend the same on indigent defense, but, if one has a large population, their relative per capita spending will be low. The county with a small population will have a relatively high per capita funding rate. Therefore, a per capita rate would result in erroneous conclusions being drawn because it does not adequately reflect the amount being spent per defendant who is indigent.
- Crime rates are on a downward trend across the nation. If crime rates continue to drop, this legislation would require counties to 'maintain not less than the current level being spent or the statewide average whichever is greater'. Even if a county's crime rate decreases with a resulting decrease in demand for indigent services, the legislation would require the same or more funding to be spent.

PREFERRED SOLUTION

The following provisions would provide a solution that avoids arbitrary standards and unfunded mandates:

- A. Define the minimum standards, requirements, rules, procedures, and metrics for measurement prior to passing the legislation.
- B. Provide an opportunity for counties and courts to give input regarding the adequacy, fairness, and cost of any proposed minimum standards and metrics.
- C. Conduct detailed analyses (House and Senate Fiscal Agencies) of the proposed legislation to determine the precise budgetary impacts to the State and each county and ensure that the House and Senate Appropriations Committees are in agreement since there will be financial implications to the State.
- E. Allow out of compliance counties to propose and implement procedural, policy, and administrative improvements in an attempt to meet the minimum standards, requirements, rules, procedures, and metrics. If the minimum standards can still not be achieved, the State should pay for all mandates that are required to achieve the State's minimum standards to avoid a Headlee Amendment violation. To accomplish this objective, it would necessitate the removal of language in Section 13, Subsection 7 since this language requires the State Treasurer to withhold funding from locals when they do not comply with the State's standards and are not maintaining minimum spending levels.
- F. The state's spending levels should be tied to 'per capita funding levels of defendants who are indigent' to ensure there are fair and comparable spending levels regardless of the size of a county's population. And 'uniform crime rates' should also be used to ensure tax dollars are not being wasted by having to maintain state mandated funding levels when there are declining crime rates.
- G. In conclusion, provide exemption to counties like Ottawa that are doing an exceptional job of managing indigent defense cases from having to meet the more arbitrary state standards, requirements, rules, and procedures (and the minimum state maintenance funding levels). One or more of the following objective areas of performance could be used to determine if an exemption is granted: Reversals on appeal for ineffective assistance of counsel; Client Satisfaction levels (including # grievances to Attorney Grievance Commission); Prison Commitment rates; Cost per case.