

# Michigan Senate Testimony

SENATE OVERSIGHT COMMITTEE

JANUARY 21, 2020

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## TESTIMONY ON UNFUNDED MANDATES

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OTTAWA COUNTY ADMINISTRATOR



**Ottawa County**

*Where You Belong<sup>®</sup>*

# American System of Government has Checks and Balances

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Rule of Law

Separation of Powers

Federalism



# Roles of Michigan County Government

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Grassroots deliverer of State services at the local level, most of those services are “mandated.”

Provide social safety net services per the Great Society legislation in concert with federal funding and state priorities/funding.

Provide discretionary services as desired and approved by county residents and the county board of commissioners.



# Mandated County Offices/Departments/Services

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Courts

Jail

Veteran's Affairs

Public Health

Clerk

Treasurer

Prosecutor

Sheriff

Drain Commissioner

Register of Deeds

Child Care

Community Mental Health

Equalization

Medical Examiner



# Headlee Amendment, Michigan Constitution, 1963

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The so called “second sentence” of the Headlee Amendment prohibits the State of Michigan from imposing “new” services not in existence as of state fiscal year 1978/79 (“Headlee Base Year”) or “increasing the level” of mandated services in existence in the Headlee Base Year without state payment.



The “second sentence” has been regularly violated by all three branches of state government.



# PA 101 of 1979

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- Implementing legislation for the Headlee Amendment
- State created a catalogue of state imposed mandates
  - Nothing more than a legislative listings of “shall” laws
  - No determination of cost was made at the time
  - Practically impossible to recreate that analysis now

Source: Dr. Eric Scorsone



# PA 101 of 1979, cont...

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For rules promulgated under a state law which requires a disbursement under this act, the state agency promulgating the rules shall prepare and submit a fiscal note.

The fiscal note shall include an estimate of the cost of the rule during the first 3 fiscal years of the rule's operation.

The legislature shall then appropriate the amount required in an appropriation bill introduced as a result of the request.





# Unfunded Mandate Burden

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A 2004 study revealed that only 59.4% of mandates are covered by revenue.

Circa 2012 the estimate of what the State has underfunded in regards to the Headlee commitment was \$2.2 Billion.





## REFORMING THE PROCESS FOR IDENTIFYING AND FUNDING SECTION 29 MANDATES ON LOCAL GOVERNMENTS, July 2009, Report 355, Citizens Research Council

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“Over the 30 years since adoption of the Headlee Amendment, the Section 29 obligation to fund state requirements has been both actively opposed and ignored by state officials.”

“Reform should touch on all branches of state government – Legislative, Judicial, and Executive.”



# Final report of the legislative commission on statutory mandates

## Proposed legislation and court rule amendments



Final Report  
of the  
Legislative Commission on  
Statutory Mandates

Submitted to the

Michigan Legislature and the Governor

Pursuant to MCL 4.1781 et seq., Public Act 98 of 2007 and Public Act 356 of 2008.

State of Michigan  
Robert J. Daddow, Co-Chair  
Amanda Van Dusen, Co-Chair  
Dennis R. Pollard, Commissioner  
Louis H. Schimmel, Commissioner  
J. Dallas Winegarden, Jr., Commissioner

### EXHIBIT D

#### PROPOSED LEGISLATION AND COURT RULE AMENDMENTS

1. Proposed legislation to replace Act 101, implementing Article 9, Section 29 of the Michigan Constitution of 1963, as amended.
2. Proposed amendments to the Revised Judicature Act, relating to the protocol and management of complaints filed to enforce the State's obligations under Article 9, Section 29, of the Michigan Constitution of 1963, as amended.
3. Proposed amendments to the Administrative Procedures Act, relating to the promulgation of regulations which constitute State mandates.
4. Proposed amendments to Court Rules relating to the filing and management of complaints filed to enforce the State's obligations under Article 9, Section 29, of the Michigan Constitution of 1963, as amended.



# Wayne County v. Michigan, Michigan Court of Appeals, 1993

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In a published opinion the Court of Appeals stated that counties have no damage remedy when the state increases a level of mandated service or even when it adds a new mandate.

A county's only right when faced with these illegal increases in levels of previously mandated services or new mandates is civil disobedience; namely, to refuse to impose the mandate.



"The specific course of action a claimant faced with an unfunded new activity or service should take is to refuse to fund the activity or service in question, while at the same time seeking a declaratory judgment on its obligation under the Headlee Amendment to fund those services, Durant v. Michigan (1997). "The state would then either have to fund the activity, remove the mandate, or obtain a stay from the judiciary."



This is untenable. It forces counties to disobey the law or lack any financial recourse.

A far better result is if the state calculates the cost of compliance when imposing the mandate.

In Wayne County, there were over 20 increases in mandate levels identified. Forcing civil disobedience was determined to be Wayne's only remedy, which is the opposite of good government based on best practices.



# Legislative Unfunded Mandate - Public Health Code

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The Public Health Code Requires the State to pay 50% of the cost of mandates to local governments.

In FY 2012-13, The State paid 32% of the cost of Public Health Code Mandates in Ottawa County.

This causes Ottawa County taxpayers to ante up over \$1 million per year to cover what the State is legally required to pay.

Partial relief was finally realized in 2019 when ELPHS (*Essential Local Public Health Services*) funding brought in \$130,000 and inclusion of Public Health as an *essential service* for the Personal Property Tax (PPT) distribution brought in another \$180,000. This is very much appreciated but still falls far short of the mandated funding level.



## Public Health Mandated Programs

<u>Program Name</u>	<u>Actual</u> 2012-2013			<u>Total</u>
	<u>State Funds</u>	<u>County Funds</u>	<u>Other Funds</u>	
Medical Examiner 10106480	800	261,101	36,670	298,571
Communicable Disease Control	165,993	276,893	0	442,886
STD	148,477	256,829	16,700	422,006
Immunizations VQA	451,578	636,320	408,800	1,496,698
Immunization Action Plan	129,408	7,669	0	137,077
Environmental - Food	131,186	182,759	441,209	755,154
Environmental - Drinking Water	105,985	3,003	251,165	360,153
Environmental-Onsite Sewage	180,462	2,633	356,235	539,330
Hearing & Vision Screenings	141,699	224,473	18,924	385,096
Children's Special Health Care	251,598	160,038	51,345	462,981
Emergency Preparedness	172,828	24,776	0	197,604
Health Officer & Medical Director Payroll & Fringe 60%	0	216,900	0	216,900
EPI & Communications Payroll & Fringe 60%	0	98,013	0	98,013
	1,880,014	2,351,407	1,581,048	5,812,469
	32%	40%	27%	100%

Other Funds includes Medicaid, Insurance, Donations, Fee for Service, Federal Funds, etc.





# Executive Unfunded Mandate – Department of Community Health

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DCH ended the long-term practice of allowing Community Mental Health departments and authorities to carry over fund balances for both Medicaid and State General Fund Revenue. This results in a reduction of \$4.5 to \$7.5 million in flexibility to meet service demands of our most fragile and at risk population.

The Medicaid per-capita distribution has been in place for over 10-years, due to a decision of DCH. Ottawa County has received the lowest per capita distribution of State General Funds since the formula was created. This is finally being corrected over a five-year period.



# Executive Unfunded Mandate – Department of Community Health, cont...

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CES, the federal Medicaid oversight agency for State government requires that Medicaid payments to CMH agencies be made in an actuarial sound manner. DHHS hired Milliman, a nationally known actuarial firm to determine rates just last year for implementation this year. For some reason, DHHS unilaterally decided to implement half of the rate increase this year and half next year. We believe this to not be a legal approach.

The cost to Ottawa County CMH due to the action is \$1.4 million in 2020.

\*Note these are Medicaid expenditures that those who qualify for are entitled to receive and that the federal government would reimburse the State for these expenditures.



# Executive Unfunded Mandate- DHHS/Child Care Fund

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2015-16 DHHS disallowed 50% reimbursement of technology costs by the State Child Care Fund Reimbursement Program

Cost to Ottawa \$132,000 per year.



# Judicial Unfunded Mandate – DHHS Reimbursement of Foster Parents for Time and Travel

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DHHS Boilerplate Language from FY 2014-2015 Budget

PA 252, Article X, Sect. 562

Sec. 562. The department shall provide time and travel reimbursements for foster parents who transport a foster child to parent-child visitations. As part of the foster care parent contract, the department shall provide written confirmation to foster parents that states that the foster parents have the right to request these reimbursements for all parent-child visitations. The department shall provide these reimbursements within 60 days of receiving a request for eligible reimbursements from a foster parent.

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Cost: Est. \$15,000 plus per year



# State of Michigan DHHS v. Children's Rights, Class Action Settlement (Modified settlement agreement “MSA”)

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Far reaching changes to foster care juvenile justice service provision in the state, counties not consulted before settlement.

Required all homes that child victims of abuse & neglect be in licensed homes, even homes of extended family, at county cost.

Cost impact to Ottawa County \$250,000 to \$500,000 estimated.

DHHS backed down on this following a court decision on the matter.



# Fiscal Notes

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Fiscal Notes Requiring a fiscal analysis and publishing fiscal notes with all legislation that potentially increases county government cost will aid the State in complying with the Headlee mandate and guide the counties on a course of action.

Legislation was passed a couple of years ago that begins this process of accountability.



# Working Together

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Michigan Indigent Defense Commission (MIDC)

Raise the Age



# CRC Report

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“It is understandable that state officials would be adverse to funding mandates that would create large costs in the state budget, but those officials are not given discretion in their oaths of office to enforce only those provisions of the State Constitution they find favorable. The Constitution expresses the will of the people and, until sections are amended or repealed, is expected to be enforced as written and interpreted by the courts.”







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