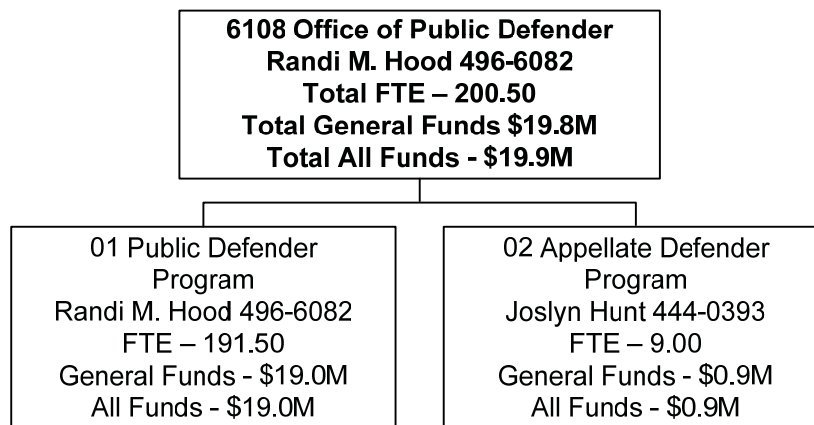


**Agency Budget Comparison**

The following table summarizes the total executive budget for the agency by year, type of expenditure, and source of funding.

Agency Budget Comparison								
Budget Item	Base Fiscal 2010	Approp. Fiscal 2011	Budget Fiscal 2012	Budget Fiscal 2013	Biennium Fiscal 10-11	Biennium Fiscal 12-13	Biennium Change	Biennium % Change
FTE	200.50	200.50	216.50	216.50	200.50	216.50	16.00	7.98%
Personal Services	11,912,040	11,553,705	13,499,779	13,485,337	23,465,745	26,985,116	3,519,371	15.00%
Operating Expenses	7,959,536	7,938,224	8,265,055	8,212,813	15,897,760	16,477,868	580,108	3.65%
Equipment & Intangible Assets	21,118	123,370	80,396	72,895	144,488	153,291	8,803	6.09%
<b>Total Costs</b>	<b>\$19,892,694</b>	<b>\$19,615,299</b>	<b>\$21,845,230</b>	<b>\$21,771,045</b>	<b>\$39,507,993</b>	<b>\$43,616,275</b>	<b>\$4,108,282</b>	<b>10.40%</b>
General Fund	19,849,276	19,571,843	21,707,345	21,661,333	39,421,119	43,368,678	3,947,559	10.01%
State Special	43,418	43,456	137,885	109,712	86,874	247,597	160,723	185.01%
Federal Special	0	0	0	0	0	0	0	n/a
<b>Total Funds</b>	<b>\$19,892,694</b>	<b>\$19,615,299</b>	<b>\$21,845,230</b>	<b>\$21,771,045</b>	<b>\$39,507,993</b>	<b>\$43,616,275</b>	<b>\$4,108,282</b>	<b>10.40%</b>

The following is the agency organizational chart, with contact information. The chart has been modified by the LFD to include the FY 2010 base budget FTE, general fund, and total funds for each program. As applicable, total agency proprietary funds and statutory appropriations, along with associated FTE, are also shown.



**Agency Description**

Mission Statement - The mission of the Office of the State Public Defender (OPD) is to ensure equal access to justice for the state's indigent. The statewide public defender system, created by passage of the Montana Public Defender Act contained in Title 47, MCA, required the new system to be operational by July 1, 2006. The Public Defender Commission is responsible for the design, direction, and supervision of the new system. The commission appoints the chief public defender, approves the strategic plan for the delivery of services, approves statewide standards for qualifications and training of public defenders, and approves the overall design of the statewide system.

The Office of State Public Defender administers the statewide public defender system and delivers public defender services in all courts in Montana for criminal and certain civil cases for an individual who is determined to be indigent per statutory provisions and is accused of an offense that could result in the person's loss of life or liberty if convicted. The statewide public defender system is supervised by the Public Defender Commission, an eleven member commission appointed by the Governor. The office is administratively attached to the Department of Administration with the exception of some functions as provided in statute (2-15-1028, MCA). The statewide public defender system also includes appellate defender functions.

## Agency Highlights

<b>Office of State Public Defender Major Budget Highlights</b>
<ul style="list-style-type: none"> <li>◆ The general fund biennial increase for the agency is 10.0% or \$3.9 million. When the executive request for the 2013 biennium is compared to the 2011 biennium appropriation level, the increase is 7.8% or \$3.4 million, as the agency transferred funding from FY 2011 to FY 2010 and these funds were removed from actual FY 2010 expenditures in the main table. <ul style="list-style-type: none"> <li>• The general fund increase is split among statewide present law adjustments (\$1.4 million), present law adjustments (\$1.6 million and 10.00 FTE) and new proposals (\$0.6 million and 5.00 FTE)</li> </ul> </li> <li>◆ The agency requests 15.00 FTE supported by general fund for current caseloads, to reduce manager's caseloads, and for records management; and 1.00 FTE, accounts receivable technician funded from state special revenue</li> </ul>
<b>Legislative Action Issues</b>
<ul style="list-style-type: none"> <li>◆ Major LFD Issues <ul style="list-style-type: none"> <li>• FY 2009 and FY 2010 caseload data were extracted using two different methodologies. Due to these data inconsistencies, it cannot be used for trend analysis</li> <li>• The agency plans to request a supplemental appropriation of \$850,000 general fund</li> <li>• The public defender program's case weighting system, while consistent with nationally recommended standards, is not based upon objective analysis of statistical data</li> <li>• Agency data supporting the request for 4.00 FTE to reduce manager's caseload does not clearly indicate the relationship between current caseloads, the request, and agency policy</li> </ul> </li> <li>◆ Interim Committee Recommendations <ul style="list-style-type: none"> <li>• The Legislative Finance Committee recommends that the budget starting point be the adjusted base minus 5%</li> </ul> </li> </ul>

## Agency Discussion

### *Goals and Objectives:*

State law requires agency and program goals and objectives to be specific and quantifiable to enable the legislature to establish appropriations policy. As part of its appropriations deliberations, the legislature may wish to review the following:

- o Goals, objectives, and year-to-date outcomes from the 2011 biennium.
- o Critical agency goals, objectives, and anticipated outcomes and their correlation to the executive's budget request for the 2013 biennium.

The goals and objectives monitored during the 2011 biennium were specific to the public defender program and are discussed in the program level narrative portion of this analysis.

### *Agency Overview*

This agency is responsible for the provision of public defense services statewide for individuals determined to be indigent (except certain cases where statute specifies that services are to be provided without determination of

indigence). This agency and the statewide system of public defense were created by legislation in the 2005 session. Implementation planning began in FY 2006 with the first full year of agency operations occurring in FY 2007. Representation of clients is provided in felony, misdemeanor, and certain civil cases.

Since its inception the agency has struggled to limit expenditures to the appropriations level and during the past interim faced the potential of additional costs due to litigation challenging certain agency policies. The agency also struggles to provide management data supporting its budget request and for legislative decision making. The executive has taken and/or proposed actions in this budget that illustrate some of these challenges:

- o Spending reductions ordered by the Governor in April 2010 in accordance with 17-7-140, MCA for this agency were about \$7,500 and less than 1% of the agency budget
- o A supplemental funding request will be presented to the legislature
- o The 2013 biennium budget request exempts this agency from the 4% general fund reduction in personal services (but not the 4% vacancy savings)
- o The executive proposes to add 16.00 FTE, primarily to reduce staff caseloads

In addition, the Legislative Finance Committee (LFC) and OPD have identified certain statutory changes for legislative consideration that have the potential to reduce workloads and office costs.

Various portions of this analysis provide the reader information about:

- o The agency financial position, supplemental appropriation, and budget requests
- o Caseload data necessary for use by management and to support budgetary requests
- o A study by American University that made a number of observations and recommendations on the operations of OPD
- o Litigation recently decided by the Supreme Court
- o Proposed legislation by the LFC to address the types of cases requiring OPD representation

The figure below summarizes the historical expenditures, proposed 2013 biennium funding, and FTE levels for the agency from FY 2007 through FY 2013.

Office of Public Defender Summary of General Fund Expenditures and Appropriations						
Fiscal Year	Authorized/ Requested FTE	Actual/Proj/ Requested Expenditures	% Change	Appropriations HB 2 and HB 13	Approp/Transfers Supplemental/Other	Total Funding
FY 2007	90.25	\$19,441,376		\$14,134,117	\$5,363,042	\$19,497,159
FY 2008	192.50	19,723,374	1.45%	19,727,489		19,727,489
FY 2009	192.50	20,489,456	3.88%	20,076,042	424,880	20,500,922
FY 2010	200.50	20,313,903	-0.86%	20,368,236		20,368,236
FY 2011	200.50	20,426,000	0.55%	19,579,399	850,000	20,429,399
FY 2012	216.50	21,707,345	6.27%			
FY 2013	216.50	21,661,333	-0.21%			

Appropriations HB 2 and HB 13 are per the Legislative Fiscal Report.  
 FY 2008 and 2009 include expenditures of one-time-only (OTO) funds for case transition.  
 FY 2009 includes a supplemental appropriation of \$292,000 and a transfer of \$132,880 from the personal services contingency fund.  
 FY 2010 and 2011 appropriation levels are adjusted to reflect the fiscal year supplemental transfer of \$389,200 from FY 2011 to FY 2010.

As illustrated, the agency has received or requested supplemental appropriations for each of the three biennia since its inception. A large supplemental appropriation (\$5.4 million) was provided for the 2007 biennium and the agency's first year of operations. For this biennium, the agency's current estimate of its supplemental appropriation need is \$850,000.

The actual and projected expenditure levels for FY 2009 through FY 2011 are fairly constant at about \$20.4 million per year. The executive request for the 2013 biennium is almost \$1.4 million per year greater than FY 2010 actual expenditures. When the 2013 biennium executive request is compared to the 2011 biennium appropriation levels (as shown in the figure), general fund increases 8.6% or about \$3.4 million. This is less than the increase shown in the main table because funding that was transferred from FY 2011 to FY 2010 is removed from both the FY 2011 appropriation level and the FY 2010 base budget. When the 2013 biennium request is compared to anticipated 2011 biennium expenditures including the requested supplemental appropriation, general fund increases \$3.1 million or about 7.7% between the two biennia.

Office of State Public Defender General Fund								
Item	FY 2010	FY 2011	FY 2012	FY 2013	Biennial Total		Difference	% Incr.
					2011	2013		
Appropriated/Requested	\$19,979,036	\$19,968,599	\$21,707,345	\$21,661,333	\$39,947,635	\$43,368,678	\$3,421,043	8.6%
Misc Base Adjustments	(130,445)	(7,556)			(138,001)	-		
Fiscal Year Transfer	389,200	(389,200)			-	-		
Transfer Expended	(388,515)	-	-	-	(388,515)	-		
Net Main Table	\$19,849,276	\$19,571,843	\$21,707,345	\$21,661,333	\$39,421,119	\$43,368,678	\$3,947,559	10.0%
Supplemental	389,200	460,800	-	-	850,000	-		
Total Expended/Request	<u>\$20,238,476</u>	<u>\$20,032,643</u>	<u>\$21,707,345</u>	<u>\$21,661,333</u>	<u>\$40,271,119</u>	<u>\$43,368,678</u>	<u>\$3,097,559</u>	7.7%
% Increase From Prior Year		-1.0%	7.7%	-0.2%				

The agency submitted budget request included general fund support that was \$5.4 million greater than the level included in the executive request. The executive budget does not include agency requests for:

- o A rate increase for contract attorneys from \$60 to \$75 per hour (\$2.5 million)
- o Attorney career ladder pay adjustments (\$1.9 million)
- o Death penalty cases (\$1.0 million)

The executive did approve the agency's request to be exempt from the application of the 4% general fund reduction in personal services but did not exempt the agency from the 4% vacancy savings requirement.

#### Caseload Determination

Caseload and workload data are commonly used to evaluate the level of resources needed by an agency or function to complete the tasks assigned. Use of caseload or work load data to determine the resource level needed increases the objectivity of distribution of resources and lessens the need for subjective justifications for the allocation of resources among functions. Additionally, since caseload is often a critical issue nationwide in litigation regarding the adequacy of public defense services and Montana's statewide system is largely the result of potential litigation, caseload data could be key to defending the state against any potential litigation regarding the adequacy of its system of providing public defense. For these reasons availability of consistent, applicable, caseload and workload data can be critical.

The agency has chosen to measure caseload by the number of new cases opened during the year. This statistic does not provide an indication of total system caseload because it measures only the inflow to the system and does not measure outflow (closed cases). Therefore, it is not possible to tell workload or changes in workload over time. The 2009 Legislature adopted a new statutory requirement that both inflow and outflow be reported to the Legislative Finance Committee during the interim. The agency complied with this reporting requirement but did not compile the FY 2009 and FY 2010 data using the same methodology for both years. As a result the information provided is inconsistent and cannot be used to determine what trend in caseload may be occurring. Of particular concern is that the FY 2010 data includes some level of duplication of case count because cases that were assigned to more than one attorney were counted for each attorney assigned rather than just once. Please refer to the narrative for the public defender program for additional details about caseload.

17-7-140, MCA Reductions

For this agency, the reductions ordered by the Governor in accordance with 17-7-140, MCA total \$7,479 for FY 2011. The reductions equate to less than 1% of the agency budget and include reductions in travel for the commission and fixed costs. Because this reduction is made in FY 2011, it does not permanently reduce the base budget of the agency.

American University Report

At the request of the Public Defender Commission, a study of the public defender system in Montana was completed. The report of the study, Assessment of the Initial Period of Operations of the Montana Statewide Public Defender System, was prepared by the Criminal Courts Technical Assistance Project and supported by a federal Bureau of Justice Assistance (BJA) grant. The study team's review of the system occurred between August 2008 and June 2009 and the final report is dated October 2009. This report is commonly referred to as the "American University" (AU) report.

The report provides 32 recommendations for improvements in the system. Many of the findings in this report are consistent with legislative concerns regarding data collection and budgeting. The report also identified other areas for system improvement, including some management functions. Four of these recommendations are discussed below. More information about the study may be found in a report titled Public Defender System dated February 24, 2010 that was prepared for the Legislative Finance Committee and is available online at: <http://leg.mt.gov/css/fiscal/reports/2009-2010-interim-reports.asp#mar2010>

The complete American University report can be found on the OPD website at: <http://publicdefender.mt.gov/AUeval.asp>

AU Recommendations

Recommendation 1 – "The OPD needs to provide detailed information to adequately describe the agency's caseloads, dispositional processes, attorney workload, and related data that describes the agency's operations and services being performed."

The AU report points out that both the enabling legislation and Public Defender Commission standards and policy require this data to be collected and provided to various parties. However, the report indicates that this data in sufficient detail is not available and as a result no substantive data driven oversight is possible. The report also indicates there is evidence that some lawyers may have too many cases and that many of the commission standards are not followed. This AU report finding is partially related to data availability issues raised by legislative staff in the analysis of the 2011 biennium budget submission. The AU report also indicates that "the study has consistently found that the agency has not adequately documented its budget submission by informing the legislature of the nature of its caseload and accomplishments".

<b>LFD ISSUE</b>	<u>Ongoing Issue</u> The narrative for the Public Defender Programs includes information about statutorily required reports that were provided to the Legislative Finance Committee and the inconsistency in the data provided. Please refer to that narrative for more information on this topic.
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Recommendation 2 – "The case weighting system should be refined to provide a meaningful reflection of the work entailed in handling different types of criminal cases."

Case weighting is a way to determine the relative workload of attorney staff by assigning a "weight" to represent the relative workload that each type of case represents. For example, a felony case is assigned a case weight of 1.00 units while a misdemeanor case is assigned a case weight of 0.50 units, indicating that the felony case theoretically takes twice as much work time as a misdemeanor case. The original case weighting system was designed by the agency in conjunction with labor unions. From an LFD staff perspective, there were two primary issues with the original case weighting system adopted by the agency, including: 1) the system weighted only newly assigned cases and did not

provide a weight to ongoing open cases; and 2) the system assigned the same weight to all felony cases regardless of complexity.

**LFD COMMENT** The agency recently modified this case weighting system to differentiate between the workload presented by various types of cases. The revised case weighting system provides different weights for various types of felony and misdemeanor offenses and provides for increased case weight when the case goes to trial, has over a specified number of charges, requires travel outside the assigned region, etc. These changes address the second staff issue that the same case weight was assigned to felony cases regardless of complexity. However, the first staff issue, that the system weights only new cases, is still applicable to the case weight system used by the agency.

The case weighting system was created through the labor negotiation process between agency management and the union representing attorneys as an effort to assess resource allocation and caseload limits. These case weights and caseloads are key factors in determining the level of human and financial resources needed for the system to adequately perform its mission. Additionally, since attorney workload is often a critical issue nationwide in litigation regarding the adequacy of public defense services and Montana's statewide system is largely the result of potential litigation, the use of a valid case load measurement may be key to defending the state against litigation regarding its system of providing public defense.

The caseload limits adopted by the agency through labor management negotiations are consistent with standards recommended by the National Advisory Commission on Criminal Justice Standards and Goals issued in 1973. These standards state that the annual caseload for a public defender should not exceed:

- o 150 felonies
- o 400 misdemeanors
- o 200 juvenile court
- o 200 mental health
- o 25 appeals

Because the national standards were adopted many years ago (1973) they do not include standards for dependency and neglect cases, death penalty cases, changes in practice since the standard was adopted, or local jurisdictional operating procedures. Additionally, as of this writing legislative staff was unable to determine whether or not the national standards were based upon statistical analysis or developed through some other process.

While the labor management group discussion and negotiation process is an attempt to adapt national standards to Montana's system this adaptation is based upon subjective considerations rather than objective analysis of data about how attorney's complete their work, the court processes that impact how that work is completed, and the amount of time it takes on average for an attorney to complete a particular function, type of work, or task. Thus, this adaptation of the case weight may or may not represent the work of attorneys in Montana's system as it currently exists. Lack of a statistical basis to support the assigned case weights means that the case weights may or may not be a valid representation of attorney workload. Since the case weighting system can be used to assign and assess workload of individual attorneys and the system as a whole; and, drive the allocation of resources, use of data that may not be valid could lead to erroneous assumptions about the level of resources needed.

**LFD  
ISSUE**Not Based Upon Statistical Analysis

Because various types of cases (for example, a murder charge verse a misdemeanor driving under the influence charge) require different levels of resources case weighting is used to determine what constitutes the amount of work one employee working fulltime can complete. Therefore, it is instrumental in determining staff needs. There are two components of this determination:

- 1) How much work the various types of cases represent when compared against each other or the “weight” of that type of case; and
- 2) How many work hours each unit of weight equals so that a determination can be made of how much “weight” each full time attorney can complete

The case weighting system adopted by the public defender program is the result of negotiations between the collective bargaining unit and agency management. It is not the result of completion of time studies and statistical analysis and so may not accurately reflect the time and effort (or workload) that the “typical” case within that category takes. Additionally, 12.5 units per month (i.e. 8 felony driving under the influence or dangerous drug cases with one of these cases including three or four charges) is the standard measurement of a full caseload for 1.00 FTE, while consistent with national standards, there is no data to support that the assignment of 12.5 units per month based upon assignment of new cases (or case transfers) does in fact equate to a “full” case load for a 1.00 FTE position.

Thus, it appears that this determination of case weight and that a 1.00 FTE equivalent caseload is equal to 12.5 units is based upon subjective data rather than objective analysis of time study or other statistical data about how public defenders in Montana complete their work. Therefore, in order to have case weighting that is supported by objective, statistical data the legislature may wish to provide a means for an objective study to be done. There are essentially two options:

- 1) Have the agency hire a consultant, which would require the provision of funds by the legislature; and/or
- 2) Encourage the agency to actively search and compete for federal grant or earmarked funds for such a project. Given that the federal Department of Justice, Bureau of Justice Assistance funded the American University study, that federal funds were obtained by the Judicial Branch to study and develop such statistics for court workloads, and the uniqueness of Montana’s statewide system of public defense, funding such a project may be appealing to federal agencies involved in the justice system.

Options

- o Provide the agency with funding to hire a consultant with relevant experience to design an objective case weighting system based upon statistical data
- o Encourage the agency to actively search and compete for a federal grants or earmarked funds for this project

Recommendation 5 – “The “minimal” caseload statutory requirement for the chief defender, contract manager, and regional deputy defenders should be reduced or eliminated.”

Statute states that the chief public defender shall maintain a minimum client caseload as determined by the commission (47-1-202, MCA) and that each regional deputy public defender shall maintain a minimum client caseload as determined by the chief public defender (47-1-215, MCA). The statute as it currently exists provides leeway within the system management and oversight structure to determine the definition of a minimum client caseload. Definition of minimum caseload in terms of number of cases may be misleading since a misdemeanor case would generally take much less time and have less impact on completion of management duties than a felony murder case. Minimum caseload standards are of concern because the AU report indicates that large and or complex caseloads are contributing to failure of staff within the system to undertake, implement, and complete management functions within the system.

The commission has determined the minimum caseload for the chief public defender and since publication of the AU report the agency has adopted a policy defining managerial caseloads. Agency policy currently defines suggested

maximum caseloads for the regional public defenders in terms of the maximum hours of case work for each manager. The suggested maximum number of hours for case work for each varies between 600 and 1,400 hours per year.

<b>LFD ISSUE</b>	<p><u>Request for FTE</u></p> <p>The executive budget includes a request for 4.00 FTE attorneys so that manager caseloads can be reduced. The agency indicates that the request is made in order to address the AU recommendation. Please refer to the program level discussion of the decision package for a discussion of issues relates to this request.</p>
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Recommendation 7 – “A separate conflicts office should be maintained for all trial and appellate cases with the director reporting to the commission, not the chief defender.”

The AU report raises concerns with the organizational structure and its relationship to representation of clients in cases where individuals within the system may have a conflict of interest. Currently, either an attorney in another regional office or an attorney in private practice under contract may represent cases where there is a potential conflict of interest (such as multiple defendants in the case that are assigned public defenders). The AU report recommends that a separate office (organizational structure) reporting directly to the commission be implemented to resolve this concern. This would result in attorneys representing “conflict” cases reporting through a chain of command to the commission rather than the Chief Public Defender.

The Montana Supreme Court recently issued an opinion in litigation related to this issue (State of Montana vs. St. Dennis). The litigation alleged that a per se conflict of interest existed in a case where individuals were represented by attorneys working for different OPD regional offices. The majority opinion of the court did not find a per se conflict of interest existed but indicated that evaluation of conflict of interest must be done on a case by case basis. The court also referenced the strong precautions and safeguards in place at OPD that prevent the conflicts of interest from occurring, but stated that it was imperative that each OPD attorney adhere rigorously to the rules.

<b>LFD COMMENT</b>	<p>The legislature may wish to discuss with agency management what types of quality control measures have been implemented to provide assurance that there is adherence to policies, rules, and safeguards related to the conflict cases.</p>
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Additionally, the agency has requested legislation (LC 381) to amend statute so that the Chief Appellate Defender reports directly to the Public Defender Commission rather than the Chief Public Defender. If adopted, this statutory change would have minimal impact on the operations of the system, but it would potentially lessen the appearance that the Chief Public Defender has direct control over handling of cases upon appeal, particularly those cases alleging ineffective assistance of counsel by public defender program staff.

### Committee Bill

The Legislative Finance Committee has proposed a committee bill (LC 182) that would remove the possibility of incarceration as a penalty for certain misdemeanors. Removal of the possibility of incarceration from certain offenses eliminates the need for a public defender to represent indigent individuals charged with these offenses and is one way that the legislature may be able to influence the caseload and costs of the system.

### **Budget Risks**

As shown in the previous discussion there are a number of risk and pressures associated with this agency’s budget for the 2013 biennium. These risks include:

- o The agency has historically had difficulty maintaining expenditures within the appropriations level. Given that the executive request is lower than the agency submission and does not request funding for items such as equalizing attorney pay within the agency, it is likely that the agency will continue to be challenged to control expenditures to the appropriations level provided.



- o The net caseload data provided by the agency is not consistent between the two years resulting in an inability for trend analysis to be used in estimating caseload changes and how resource allocations should be changed to coordinate with caseload changes. It is not possible to use this data to determine whether the agency budgetary request is adequate or inadequate.
- o The case weighting system used internally for management of attorney workloads has not been statistically validated and shown to be representative of public defender work in Montana, increasing the risk that it does not appropriately represent the workload an attorney can complete and the number of attorneys needed.
- o Requests for staffing to decrease management caseloads are based upon management staff's assessment but are not specifically tied to agency policy for the maximum hours of casework for a manager. Additionally, the agency has not clearly stated what management tasks will be completed if these resources are provided. Failure to achieve management tasks increases the risk that there may be systemic issues that remain unresolved.
- o Statutory changes that create or remove the need for a public defender may impact agency caseload and need for financial resources.
- o The nature of this function and its past history in Montana and nationally increase the likelihood that litigation of some type may impact the system.

### 5% Reduction Plan

Statute requires that agencies submit plans to reduce general fund and certain state special revenue funds by 5%. The following summarizes the plan submitted for this program.

Total 5% Reduction Plan Identified by Agencies, By Division Included and Not Included in Executive Budget 2013 Biennium					
Program/DP Number/Description	FTE	General Fund	% Of Total	State Special Revenue	% Of Total
<u>Office of Public Defender</u>					
<i>Not Included in Executive Budget</i>					
Computer Hardware				\$2,171	100.0%
4% Personal Services Reduction	unknown	\$501,301	50.6%	0	0.0%
Contract Attorney Services		<u>489,322</u>	49.4%	<u>0</u>	0.0%
Subtotal Not Included in Executive Budget		<u>\$990,623</u>	100.0%	<u>\$2,171</u>	100.0%
Total Office of Public Defender		\$990,623	100.0%	\$2,171	100.0%
<u>Total Reduction Plan</u>					
Included in Executive Budget		\$0	0.0%	\$0	0.0%
Not Included in Executive Budget		<u>990,623</u>	100.0%	<u>2,171</u>	100.0%
Total Agency Reduction Plan	0.00	<u>\$990,623</u>	100.0%	<u>\$2,171</u>	100.0%

The 5% reduction plan for this agency includes reductions to the Public Defender Program and no reductions to the Appellate Defender Program. The plan reduces general fund support for personal services by 4% (\$501,301) and contracted attorney services by \$489,322. The plan also includes a \$2,171 reduction in state special revenue for computers.

The increase in staff (15.00 FTE) included in the executive budget would be partially offset by the reduction included in the 5% plan. The plan does not specify that any FTE would be reduced, but either FTE or contracted services would be impacted by this reduction. Assuming caseload did not decrease, the impact of the reduction would be an increase in the caseload for the remaining employees. Increased caseload could lead to delays in resolution of cases (and an increase in claims alleging a violation of the right to a speedy trial) and longer stays in jail for individuals waiting for trial. The agency indicates that it would reduce the number of cases and related expenditures for contract attorneys and shift this workload to internal attorneys to the extent possible or vice versa if personal services are reduced rather than contract

services. When internal attorney capacity reached its limit and funding is not available for contract attorneys, the agency would delay intake of new cases.

### Agency Personal Services Narrative

The following information is provided so that the legislature can consider various personal services issues when examining the agency budget. It was submitted by the agency and edited by LFD staff as necessary for brevity and/or clarity.

- o **Labor Market Experience** - The agency has an on-going recruitment effort to establish an applicant pool for use as openings occur statewide. Over the last year an increase in applicants for entry level positions has been seen. However, difficulty in recruiting for experienced criminal defense attorneys and appellate attorneys continues. Over the last biennium the agency filled approximately 59 attorney positions or 56% of the total FTE for attorneys (104.75 FTE). Of these, 41 were new hires to the agency, with 24 hired at the entry salary who met the minimum qualifications but had no experience as attorneys. 18 positions were filled by individuals working for the agency in another city who desired a different location. Factors contributing to attorney turnover include: salaries are not at market or competitive rates, many attorneys view defender positions as temporary jobs in their career, there is high stress and caseloads, many attorneys find working with indigent clients difficult, turnover in offices where staff were previously employed by counties, pay freezes, and increases in insurance benefit costs. In the last year, the agency made job offers to two candidates who rejected the job offer because they were offered other opportunities substantially above. Due to the economy in Montana the agency has seen an increase in applicant pools for staff support positions (legal assistants, information technology support, and investigators) with many exceeding the qualification being sought.
- o **Pay Philosophy** - 148 positions or 74% of the agency is represented by collective bargaining agreements. Under these agreements the agency can place individuals into a pay range dependent upon relevant experience levels. Under the terms and conditions of the collective bargaining agreement the agency has established pay adjustments based upon relevant experience of incumbents. The agency will continue to work with the American Federation of State County and Municipal Employee (AFSCME) to fine tune the career ladder and recognition of relevant experience in the ability to recruit and retain a qualified workforce. The agency recently conducted a salary survey of cities and counties (where the agency has public defender offices) and state agency attorneys and would like to establish new market pay rates. The agency will also be eligible to participate in the John R. Justice Loan Forgiveness Program to assist employees who have outstanding student loans.
- o **Obstacles** – The agency believes that once individuals get experience the likeliness of them being marketable to other employment opportunities leaves the agency in a position of being a training ground for attorneys. Through the efforts of the collective bargaining process the agency adjusted salaries for attorneys, investigators, and support staff. The agency has not made any adjustments to any group not represented by a collective bargaining agreement. However, to be competitive the agency states it must be proactive in compensating non bargaining unit employees appropriately. Currently the agency has 15 attorneys designated as exempt personal staff. One of these individuals has not had a salary increase since November 2006 and 14 have not received a salary increase since September 2008. In addition, the agency appellate attorneys and managing attorneys are not represented by the collective bargaining agreement. These 15 individuals will also need to be addressed proactively to ensure internal equity with all attorney staff.

## Funding

The following table summarizes funding for the agency, by program and source, as recommended by the Governor. Funding for each program is discussed in detail in the individual program narratives that follow.

Total Agency Funding 2013 Biennium Budget				
Agency Program	General Fund	State Spec.	Grand Total	Total %
01 Office Of Public Defender	\$ 41,171,415	\$ 247,597	\$ 41,419,012	94.96%
02 Office Of Appellate Defender	2,197,263	-	2,197,263	5.04%
Grand Total	<u>\$ 43,368,678</u>	<u>\$ 247,597</u>	<u>\$ 43,616,275</u>	<u>100.00%</u>

The agency is funded primarily by the general fund. A small amount of state special revenue from reimbursements for services provided is also available to the agency.

## Budget Summary by Category

The following summarizes the total budget by base, present law adjustments, and new proposals.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2012	Budget Fiscal 2013	Biennium Fiscal 12-13	Percent of Budget	Budget Fiscal 2012	Budget Fiscal 2013	Biennium Fiscal 12-13	Percent of Budget
Base Budget	19,849,276	19,849,276	39,698,552	91.54%	19,892,694	19,892,694	39,785,388	91.22%
Statewide PL Adjustments	725,713	685,037	1,410,750	3.25%	782,295	716,619	1,498,914	3.44%
Other PL Adjustments	800,494	811,391	1,611,885	3.72%	838,379	846,103	1,684,482	3.86%
New Proposals	331,862	315,629	647,491	1.49%	331,862	315,629	647,491	1.48%
<b>Total Budget</b>	<b>\$21,707,345</b>	<b>\$21,661,333</b>	<b>\$43,368,678</b>		<b>\$21,845,230</b>	<b>\$21,771,045</b>	<b>\$43,616,275</b>	

## Supplemental Appropriation

The executive will seek a supplemental appropriation of \$850,000 (about \$669,000 for the public defender and \$181,000 for the appellate defender). The agency cites the increase in the vacancy savings rate from 4% to 7% and application of a 2% across the board reduction in funding for the 2011 biennium as factors that reduced funding for the agency to a level that was not adequate to support the amount of work required of the agency. In June 2010 the agency moved a total of \$499,200 general fund from FY 2011 to FY 2010 to fund cost overruns in the base year. Of this amount, \$400,000 was for the Public Defender Program and \$99,200 for the Appellate Defender Program. The Appellate Defender Program expended the entire \$99,200. However, the Public Defender Program expended only \$290,000 of the \$400,000 transferred. The Office of Budget and Program Planning later retransferred the unexpended \$110,000 to FY 2011.

In the fall of 2009 the department estimated that the potential deficit for FY 2010 was about \$1 million. Assuming a similar deficit in FY 2011 the biennial cost overrun was estimated at about \$2 million. The agency identified and implemented four expenditure mitigation strategies, including: 1) increasing funding sources; 2) reduction of expenditures; 3) increasing productivity; and, 4) reducing services. Examples of items that fall into these categories are: obtaining federal grant funds for a records management project, reorganization of central office functions and creation of a major crime unit, utilizing more internal resources and fewer contract resources; and exploration of ways to limit or minimize involvement in certain types of cases. The end result of the agency efforts to mitigate cost overruns is a decrease in the estimated supplemental appropriation from about \$2 million to \$850,000, or more than 50%.

## Executive Recommended Legislation

The Public Defender Commission has requested several bill drafts that may have some impact on system caseload and costs. Commission requested legislation with potential fiscal impacts include:

- o Allow recovery of public defender costs in certain cases – The agency proposes that statute allow for the recovery of costs in guardianship and commitment cases where the respondent has available financial resources
- o Allow for flat fee public defender contracts in certain situations – The agency proposes that statute allow for flat fee contracts for specialty courts and consortiums if approved by the Public Defender Commission

### Program Budget Comparison

The following table summarizes the total executive budget for the program by year, type of expenditure, and source of funding.

Program Budget Comparison								
Budget Item	Base Fiscal 2010	Approp. Fiscal 2011	Budget Fiscal 2012	Budget Fiscal 2013	Biennium Fiscal 10-11	Biennium Fiscal 12-13	Biennium Change	Biennium % Change
FTE	191.50	191.50	205.50	205.50	191.50	205.50	14.00	7.31%
Personal Services	11,399,342	10,980,333	12,768,098	12,754,484	22,379,675	25,522,582	3,142,907	14.04%
Operating Expenses	7,595,524	7,726,874	7,894,595	7,848,544	15,322,398	15,743,139	420,741	2.75%
Equipment & Intangible Assets	21,118	123,370	80,396	72,895	144,488	153,291	8,803	6.09%
<b>Total Costs</b>	<b>\$19,015,984</b>	<b>\$18,830,577</b>	<b>\$20,743,089</b>	<b>\$20,675,923</b>	<b>\$37,846,561</b>	<b>\$41,419,012</b>	<b>\$3,572,451</b>	<b>9.44%</b>
General Fund	18,972,566	18,787,121	20,605,204	20,566,211	37,759,687	41,171,415	3,411,728	9.04%
State Special	43,418	43,456	137,885	109,712	86,874	247,597	160,723	185.01%
Federal Special	0	0	0	0	0	0	0	n/a
<b>Total Funds</b>	<b>\$19,015,984</b>	<b>\$18,830,577</b>	<b>\$20,743,089</b>	<b>\$20,675,923</b>	<b>\$37,846,561</b>	<b>\$41,419,012</b>	<b>\$3,572,451</b>	<b>9.44%</b>

### Program Description

The Office of State Public Defender administers the statewide public defender system that delivers public defender services in all courts in Montana for criminal and certain civil cases for an individual who is determined to be financially unable to retain private counsel and who is accused of an offense that could result in the person's loss of life or liberty if convicted. The office administers the statewide public defender system that is supervised by the Public Defender Commission. The office is administratively attached to the Department of Administration but has authority in law to provide administrative functions as determined by the commission.

The Public Defender Commission is responsible for the design, direction, and supervision of the system. The commission appoints the chief public defender, approves the strategic plan for the delivery of services, and approves statewide standards for qualifications and training of public defenders.

### Program Highlights

<b>Office of Public Defender Program</b>	
<b>Major Budget Highlights</b>	
<ul style="list-style-type: none"> <li>◆ When compared to the 2011 biennium appropriation level, the biennial increase in funding is 7.8% (\$3 million) The biennial comparison in the main table does not reflect actual expenditures, as it removes FY 2011 appropriations that were expended in FY 2010</li> <li>◆ General fund support for the program increases due to statewide present law adjustments and requests for staffing increases (13.00 FTE)</li> </ul>	
<b>Major LFD Issues</b>	
<ul style="list-style-type: none"> <li>◆ The agency plans to request a supplemental appropriation of about \$669,000 general fund for this program</li> <li>◆ FY 2009 and FY 2010 caseload data were extracted using two different methodologies. Due to these data inconsistencies it cannot be used for trend analysis</li> <li>◆ The agency has not provided statistical data to support its request for 4.00 FTE attorneys so that manager caseloads may be reduced</li> </ul>	

### **Program Narrative**

The agency plans to request a supplemental appropriation of about \$669,000 for the 2011 biennium. FY 2010 general fund expenditures were about \$19.3 million and exceeded the appropriation level by about \$290,000. This amount of funding was transferred from FY 2011 appropriations to FY 2010 appropriations. The program expects FY 2011 expenditures to exceed the amount of appropriation that remains, resulting in a further supplemental appropriation. The agency cites the application of a 2% across the board reduction in funding and increase in vacancy savings from 4% to 7% as factors resulting in the need for a supplemental appropriation. Additional discussion of the supplemental appropriation request is included in the agency narrative.

The program budget comparison table shows general fund for the program increasing 9% or \$3.4 million between the two biennia. When the 2013 biennium executive budget is compared to the 2011 biennium appropriation level the increase between the two biennia is 7.8% or (\$3.0 million). The increase between the two biennia is lower when compared to the 2011 biennium appropriation level because the comparison above removes funding (\$290,000) that was transferred from FY 2011 to FY 2010 from both the FY 2011 appropriation and the FY 2010 base budget.

### *Goals and Objectives*

State law requires agency and program goals and objectives to be specific and quantifiable to enable the legislature to establish appropriations policy.

### 2011 Biennium Goals

The following provides an update of the goals monitored by the LFC during the 2011 biennium.

Goal 1 – Provide that public defender services are delivered by qualified and competent counsel.

- o Successes
  - The agency revised the process and target completion dates for employee attorney appraisals and contract attorney proficiency exams
- o Challenges
  - Completion of performance appraisals and proficiency exams within target completion dates

Goal 2 – Caseload and collection data reporting per 47-1-201(9)(a), MCA

- o Successes
  - Reports were submitted to the Legislative Finance Committee by the statutory deadline

### **5% Reduction Plan**

Statute requires that agencies submit plans to reduce general fund and certain state special revenue funds by 5%. The following summarizes the plan submitted for this program.

The 5% reduction plan for this agency includes only reductions to this program. The plan reduces general fund support for personal services by 4% (\$501,301) and contracted attorney services by \$489,322. The plan also includes a \$2,171 reduction in state special revenue for computers.

Assuming caseload did not decrease, the impact of the reduction would be an increase in the caseload for the remaining employees. Increased caseload could lead to delays in resolution of cases and longer stays in jail while waiting for trial. The agency indicates that it would reduce the number of cases and related expenditures for contract attorneys and shift this workload to internal attorneys to the extent possible or vice versa if personal services are reduced rather than contract services. When internal attorney capacity reached its limit and funding is not available for contract attorneys the agency would delay intake of new cases.

### *Caseload*

Caseload and workload data are commonly used to evaluate the level of resources needed by an agency or function to complete the tasks assigned. Use of caseload or work load data to determine the resource level needed increases the

objectivity of distribution of resources and lessons the need for subjective justifications for the allocation of resources among functions. For these reasons availability of consistent, applicable, caseload and workload data can be critical. The public defender office has chosen to use the number of new cases to the system as a measure to determine resource need. However, the number of new cases entering the system may not be representative of the total caseload including case closures and the ongoing resource needs to complete cases that remain open. Legislative concerns about the available caseload data and statistics about total caseload (as opposed to new cases) led to inclusion of specific caseload reporting requirements and timelines in HB 676 from the 2009 session. The provisions of this statute are codified in 47-1-201(9)(a), MCA, and requires that the agency report:

- o data for both employee and contract attorneys
- o the number of new cases opened
- o the number of cases closed
- o the number of cases that remain open and active
- o the number of cases that remain open but are inactive
- o the average number of days between case opening and closure for each case type
- o the amount of funds collected as reimbursement for services rendered, including:
  - the number of cases for which a collection is made
  - the number of cases for which an amount is owed
  - the amount collected
  - the amount remaining unpaid

The information contained in the reports submitted in accordance with this statutory requirement is summarized in the figure below.

OPD Summary of Data Required Reports Per 47-1-201(9)(a)						
Caseload Data						
Category	FY 2008 Ending Bal	FY 2009 Opened	FY 2009 Closed	FY 2009 End Balance		
				Inactive	Active	Total
Employees	8,096	18,924	17,553	1,937	7,550	9,487
Contractors	8,770	9,144	11,858	1,178	4,878	6,056
<b>Total</b>	<b>16,866</b>	<b>28,068</b>	<b>29,411</b>	<b>3,115</b>	<b>12,428</b>	<b>15,543</b>
				change change	number percent	(1,323) -7.8%
Category	FY 2009 Ending Bal	FY 2010 Opened	FY 2010 Closed	FY 2010 End Balance		
				Inactive	Active	Total
Employees	10,532	21,072	18,196	3,065	10,343	13,408
Contractors	6,689	6,931	6,508	1,394	5,718	7,112
<b>Total</b>	<b>17,221</b>	<b>28,003</b>	<b>24,704</b>	<b>4,459</b>	<b>16,061</b>	<b>20,520</b>
				change change	number percent	3,299 19.2%
Note: FY 2009 ending and FY 2010 beginning caseloads are different. The OPD used different criteria to prepare FY 2010 report than was used for the FY 2009 report. FY 2010 is a duplicated count, a case may have been counted multiple times if more than one attorney was assigned to the case.						
FY 2009 Average Numbers of Days Open by Case Type						
Case Type	FY 2009			FY 2010		
	Days	Months*	% of Year	Days	Months*	% of Year
Criminal	240	8.0	65.8%	242	8.1	66.3%
Guardianship	256	8.5	70.1%	220	7.3	60.3%
Involuntary Commitment	100	3.3	27.4%	89	3.0	24.4%
Juvenile	239	8.0	65.5%	250	8.3	68.5%
Dependent and Neglect	411	13.7	112.6%	445	14.8	121.9%
Courts of Limited Jurisdiction	164	5.5	44.9%	154	5.1	42.2%
*Estimated - equals days divided by 30						
Judgments and Assessments						
Item	FY 2007	FY 2008	FY 2009	FY 2010		
Accounts Receivable Balance	\$27,557	\$114,124	\$235,791	\$481,939		
No. of Clients with Balance	56	278	643	1,433		
Calculated Ave. Balance	\$492	\$411	\$367	\$336		

**LFD  
ISSUE**Consistency of Data

The top portion of Figure 3 shows the caseload data for FY 2009 and FY 2010, including the caseload at the beginning of the year, and the number of cases opened, closed, and remaining at year end. The data prepared by the agency indicates that the ending FY 2009 caseload was 15,543 and that the caseload at the beginning of FY 2010 was 17,221, a difference of 1,678 cases for the same point in time. As of this writing OPD staff has identified two reasons for this difference: 1) a different database field was used to extract the FY 2010 data than the FY 2009 data; and, 2) FY 2010 data is duplicated because if multiple attorneys were assigned to the same case the case is counted multiple times, but the FY 2009 data included a case only once regardless of the number of attorneys assigned to the case.

**LFD  
ISSUE CONT.**

Because the data extraction between the two years is inconsistent and FY 2010 data includes a duplicated count of cases, conclusions about the overall or net caseload of the OPD cannot be made based upon this data.

For agency purposes the OPD measures caseload by the number of new cases entering the system each year. The data included in Figure 3 indicates that 28,068 cases were opened in FY 2009 and 28,003 in FY 2010. This is a decrease of 65 cases or about one quarter of 1%. The actual decrease in new cases is probably larger than this when the impact of the duplication of case counts included in the FY 2010 data is considered.

The legislature may wish to consider legislation to:

- o Specify that the data submitted include an unduplicated count of cases
- o Modify the dates specified in statute for reporting to the Legislative Finance Committee because the dates in statute are specific to the 2011 biennium

The center portion of Figure 3 contains data about the average number of days and months between case opening and case closure by type of case. This data provides some information about the frequency of turnover for cases. Significant changes may be an indicator of the existence of systemic problems. This data may also be an indicator of system efficiency or inefficiency. Generally, the number of days open by case type did not vary greatly between the two years. Average number of days open for guardianship, involuntary commitment, and courts of limited jurisdiction cases decreased while increases were seen in this statistic for criminal, juvenile, and dependent and neglect cases.

The lower portion of Figure 3 contains data about judgments and assessments. The dollar value of accounts receivable and number of clients with a balance has increased while the calculated average balance per client has decreased. The average balance per client has decreased from \$492 in FY 2007 to \$336 in FY 2010.

**Funding**

The following table summarizes funding for the agency, by program and source, as recommended by the Governor. Funding for each program is discussed in detail in the individual program narratives that follow.

Program Funding	Base FY 2010	% of Base FY 2010	Budget FY 2012	% of Budget FY 2012	Budget FY 2013	% of Budget FY 2013
01000 Total General Fund	\$ 18,972,566	99.8%	\$ 20,605,204	99.3%	\$ 20,566,211	99.5%
01100 General Fund	18,972,566	99.8%	20,605,204	99.3%	20,566,211	99.5%
02000 Total State Special Funds	43,418	0.2%	137,885	0.7%	109,712	0.5%
02250 Court Ordered Sentencing Costs	<u>43,418</u>	<u>0.2%</u>	<u>137,885</u>	<u>0.7%</u>	<u>109,712</u>	<u>0.5%</u>
Grand Total	<u>\$ 19,015,984</u>	<u>100.0%</u>	<u>\$ 20,743,089</u>	<u>100.0%</u>	<u>\$ 20,675,923</u>	<u>100.0%</u>

The Office of the Public Defender is funded primarily from the general fund. A small amount of state special revenue from collection of reimbursement for services also supports the program.

### Budget Summary by Category

The following summarizes the total budget by base, present law adjustments, and new proposals.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2012	Budget Fiscal 2013	Biennium Fiscal 12-13	Percent of Budget	Budget Fiscal 2012	Budget Fiscal 2013	Biennium Fiscal 12-13	Percent of Budget
Base Budget	18,972,566	18,972,566	37,945,132	92.16%	19,015,984	19,015,984	38,031,968	91.82%
Statewide PL Adjustments	637,782	597,607	1,235,389	3.00%	694,364	629,189	1,323,553	3.20%
Other PL Adjustments	662,994	680,409	1,343,403	3.26%	700,879	715,121	1,416,000	3.42%
New Proposals	331,862	315,629	647,491	1.57%	331,862	315,629	647,491	1.56%
<b>Total Budget</b>	<b>\$20,605,204</b>	<b>\$20,566,211</b>	<b>\$41,171,415</b>		<b>\$20,743,089</b>	<b>\$20,675,923</b>	<b>\$41,419,012</b>	

### Present Law Adjustments

The "Present Law Adjustments" table shows the changes to the adjusted base budget proposed by the executive. "Statewide Present Law" adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies. The other numbered adjustments in the table correspond to the narrative descriptions.

Present Law Adjustments	-----Fiscal 2012-----					-----Fiscal 2013-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
Personal Services					1,030,081					1,017,890
Vacancy Savings					(497,193)					(496,690)
Inflation/Deflation					(28,678)					(27,073)
Fixed Costs					190,154					135,062
<b>Total Statewide Present Law Adjustments</b>		<b>\$637,782</b>	<b>\$56,582</b>	<b>\$0</b>	<b>\$694,364</b>		<b>\$597,607</b>	<b>\$31,582</b>	<b>\$0</b>	<b>\$629,189</b>
DP 4 - Additional FTE to Support Caseload - Public Defend	8.00	509,521	0	0	509,521	8.00	483,601	0	0	483,601
DP 9 - Accounts Receivable Technician	1.00	0	37,885	0	37,885	1.00	0	34,712	0	34,712
DP 10 - Computers/Servers/Printers	0.00	153,473	0	0	153,473	0.00	196,808	0	0	196,808
<b>Total Other Present Law Adjustments</b>	<b>9.00</b>	<b>\$662,994</b>	<b>\$37,885</b>	<b>\$0</b>	<b>\$700,879</b>	<b>9.00</b>	<b>\$680,409</b>	<b>\$34,712</b>	<b>\$0</b>	<b>\$715,121</b>
<b>Grand Total All Present Law Adjustments</b>	<b>9.00</b>	<b>\$1,300,776</b>	<b>\$94,467</b>	<b>\$0</b>	<b>\$1,395,243</b>	<b>9.00</b>	<b>\$1,278,016</b>	<b>\$66,294</b>	<b>\$0</b>	<b>\$1,344,310</b>

### Program Personal Services Narrative

The following information is provided so that the legislature can consider various personal services issues when examining the agency budget. It was submitted by the agency and edited by LFD staff as necessary for brevity and/or clarity.

- o **Pay Plan Exceptions** – not applicable
- o **Program Specific Obstacles** – There is high turnover, particularly in attorney positions. Salaries are not at market or competitive within state government (although the agency's career ladder is ameliorating that issue), many attorneys view defender positions as temporary jobs in their career, high stress and caseloads likely contribute to the problem, many attorneys and staff find working with indigent clients difficult, the creation of a statewide public defender system in July 2006 has created additional turnover in offices that were previously employed by counties, pay freezes for the last two years, and increases in insurance benefit costs.
- o **Vacancy** - The agency has high turnover of attorneys, which increases caseload of remaining staff and creates additional stress to get work done in a timely manner under very stringent requirements.
- o **Legislatively Applied Vacancy Savings** – A 7% vacancy savings rate was applied but not achieved. The vacancy rate for the program was less than half of 1%.



- o **Pay/Position Changes** - Criminal Defense Investigators were reclassified to a pay band six in July 2009 with agreement by the employees and union that the pay adjustments be delayed until June 2011. A review is being conducted of support staff at this time to determine if any reclassifications should occur based upon the duties and responsibilities that have changed since creation of the office.
- o **Retirements** - The number of employees eligible for retirement is unknown at this time. The agency was established in July 2006 and employees who have been with the agency since then may have other city, county, or state employment unknown to the agency. Thus, the agency is not able to determine how many employees are eligible for retirement benefits. None that would impact program operations are anticipated. Vacancies that may occur can be addressed through the normal recruitment and selection processes.

DP 4 - Additional FTE to Support Caseload - Public Defend - This decision package requests funding for 8.00 FTE and related costs to support the program’s workload. The positions requested include 3.00 FTE attorneys, 1.00 FTE investigator, and 4.00 FTE administrative support.

<b>LFD ISSUE</b>	<p><u>Inconsistent Caseload Statistics</u></p> <p>Please refer to the program narrative for a discussion of caseload statistics. The lack of consistent caseload data prevents the analysis of caseload or workload trends that may be occurring in the system. Without this data it is difficult to objectively evaluate the level of resources needed to accomplish the agency task.</p>
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DP 9 - Accounts Receivable Technician - This decision package requests state special revenue funding to support 1.00 FTE accounts receivable technician to account for the assessments and receipt of payments from clients for services provided.

DP 10 - Computers/Servers/Printers - This decision package requests funding to replace the agency’s printers, servers, and computers.

<b>LFD COMMENT</b>	<p>The agency proposes replacement of 64 computers, 4 copiers, and 2 servers in FY 2012 and 97 computers, 3 copiers, and 2 servers in FY 2013. The request for computer replacement is based upon a five year replacement cycle.</p>
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**New Proposals**

The “New Proposals” table summarizes all new proposals requested by the Governor. Descriptions and LFD discussion of each new proposal are included in the individual program narratives.

Program	FTE	Fiscal 2012				Fiscal 2013				
		General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
DP 3 - Records Management Function										
01	1.00	46,229	0	0	46,229	1.00	43,031	0	0	43,031
DP 6 - Reduce Caseload for Managers										
01	4.00	285,633	0	0	285,633	4.00	272,598	0	0	272,598
<b>Total</b>	<b>5.00</b>	<b>\$331,862</b>	<b>\$0</b>	<b>\$0</b>	<b>\$331,862</b>	<b>5.00</b>	<b>\$315,629</b>	<b>\$0</b>	<b>\$0</b>	<b>\$315,629</b>

DP 3 - Records Management Function - This decision package request 1.00 FTE for records management. The agency received one time federal funds to do the initial inventory and file setup. The agency must store and retain files that contain attorney client notes and confidential communications in accordance with state record retention schedules. The agency indicates that tens of thousands of records must be maintained.

DP 6 - Reduce Caseload for Managers - This decision package requests 4.00 FTE for attorneys to provide a reduction in caseloads for attorneys that manage the work of other attorneys.

**LFD ISSUE** Request Not Supported by Statistical Data

This request for additional attorneys to reduce manager caseload is based upon management’s evaluation of the cases assigned to each of the managing attorneys. The documentation provided to legislative staff does not provide an indication of the hours of work or case weight assigned to manager caseload. It is unclear how or if the number of cases assigned to each manager was converted to hours of work for comparison to agency policy that recommends limitation of manager caseloads to a certain number of hours per year. Without data such as this it is difficult to determine how manager caseloads compare to agency policy and the level of staffing needed to maintain manager caseloads at the hours established in policy. Additionally, the decision package narrative does not include information about the management functions that would be accomplished if additional staffing is provided. The figure summarizes by caseload limit and region the caseload of Regional Deputy Public Defenders and indicates which regions would receive additional staff if this proposal is approved.

The legislature may wish to:

- o Require that the agency provide goals, objectives, and outcomes that would be achieved if this proposal is adopted and recommend that the Legislative Finance Committee monitor agency accomplishment during the 2013 interim
- o Require that the agency provide periodic reports to an appropriate interim committee comparing the caseload of managers in hours to the limit recommended in agency policy

Summary of Manager Caseloads Regional Deputy Public Defenders (RDPD) Grouped by Policy Limit for Maximum Caseload Hours			
RDPD Caseload			
Region	City	as of 1/31/10	New FTE
<i>Caseload limited to 600 hours</i>			
	1 Kalispell	27	1.00
	2 Missoula	19	
	9 Billings	8	
<i>Caseload limited to 1000 hours</i>			
	3 Great Falls	24	
	4 Helena	72	1.00
	5 Butte	23	
	8 Bozeman	67	1.00
<i>Caseload limited to 1400 hours</i>			
	6 Havre	55	
	7 Lewistown	76	
	10 Glendive	88	
	11 Miles City	54	

Note: The fourth FTE would be used to reduce the caseload of a managing attorney in region 9

### Program Budget Comparison

The following table summarizes the total executive budget for the program by year, type of expenditure, and source of funding.

Program Budget Comparison								
Budget Item	Base Fiscal 2010	Approp. Fiscal 2011	Budget Fiscal 2012	Budget Fiscal 2013	Biennium Fiscal 10-11	Biennium Fiscal 12-13	Biennium Change	Biennium % Change
FTE	9.00	9.00	11.00	11.00	9.00	11.00	2.00	22.22%
Personal Services	512,698	573,372	731,681	730,853	1,086,070	1,462,534	376,464	34.66%
Operating Expenses	364,012	211,350	370,460	364,269	575,362	734,729	159,367	27.70%
<b>Total Costs</b>	<b>\$876,710</b>	<b>\$784,722</b>	<b>\$1,102,141</b>	<b>\$1,095,122</b>	<b>\$1,661,432</b>	<b>\$2,197,263</b>	<b>\$535,831</b>	<b>32.25%</b>
General Fund	876,710	784,722	1,102,141	1,095,122	1,661,432	2,197,263	535,831	32.25%
<b>Total Funds</b>	<b>\$876,710</b>	<b>\$784,722</b>	<b>\$1,102,141</b>	<b>\$1,095,122</b>	<b>\$1,661,432</b>	<b>\$2,197,263</b>	<b>\$535,831</b>	<b>32.25%</b>

### Program Description

The Appellate Defender Program provides appeal services for indigent citizens.

### Program Highlights

<b>Office of Appellate Defender Major Budget Highlights</b>
<ul style="list-style-type: none"> <li>◆ When compared to the 2011 biennium appropriation level, the biennial increase in funding is 24.7% (\$435,465). The biennial comparison in the main table removes FY 2011 appropriations that were expended in FY 2010, showing a greater increase than a comparison of actual and requested expenditures in the 2011 biennium.</li> <li>◆ General fund support for the program increases due to request for an additional 2.00 FTE.</li> </ul>
<b>Major LFD Issues</b>
<ul style="list-style-type: none"> <li>◆ The agency plans to request a supplemental appropriation of about \$181,000 for this program.</li> </ul>

### Program Narrative

The biennial comparison table shows funding for the program increasing 32.3% or \$536,000 between the two biennia. However, this comparison results in a larger increase than when comparing the 2013 biennium to 2011 biennium appropriation levels because funding (\$99,200) that was transferred from FY 2011 to FY 2010 decreased both the FY 2011 appropriation level and the FY 2010 base.

The figure below shows the number of cases by year for the Office of Appellate Defender, the expended or requested funding, and a calculated cost per case. Since FY 2007 when the appellate defender function became part of the new statewide public defender system the number of cases has decreased from 258 in FY 2007 to 183 in FY 2010, while the total cost and cost per case has increased. Figure 5 shows actual case activity for FY 2009 and FY 2010 and estimated case activity for FY 2011, including cases carried forward from the prior year, cases opened, cases closed, and cases remaining open at the end of the year. The case activity report illustrates that the number of cases carried forward increased between FY 2009 and FY 2010 and is expected to increase between FY 2010 and FY 2011. Program staff indicate that the following factors have or are influencing the cost and workload of the program:

- o Staff turnover and the increased time needed by inexperienced staff to complete work
- o An increase in the number of cases in which oral arguments must be presented to the Supreme Court
- o Prior to the statewide system the appellate defender program represented only felony cases and did not have responsibility for misdemeanor cases

Appellate Defender Caseload and Costs									
Year	Cases Opened				% Incr.	Expended		Cost Per	
	Appeals	PCR*	Writs	Total		Requested	% Incr.	Case	% Incr.
FY 2006						\$211,428		na	
FY 2007	230	18	10	258		782,606	270.2%	3,033	na
FY 2008	187	11	17	215	-16.7%	833,124	6.5%	3,875	27.7%
FY 2009	197	17	18	232	7.9%	899,382	8.0%	3,877	0.0%
FY 2010	170	4	9	183	-21.1%	974,538	8.4%	5,325	37.4%
FY 2011				183	0.0%	1,067,068	9.5%	5,831	9.5%
FY 2012				183	0.0%	1,102,141	3.3%	6,023	3.3%
FY 2013				183	0.0%	1,095,122	-0.6%	5,984	-0.6%

FY 2010 Includes a fiscal year transfer (supplemental appropriation) of \$99,200.  
 FY 2011 amount is the appropriation level (per the Fiscal Report) plus requested supplemental appropriation of \$181,000  
 \*PCR is post conviction relief

Year	Beginning	Opened	Closed	Ending
FY 2009	56	232	215	73
FY 2010	73	183	77	179
FY 2011	179	53	27	205

The personal services narrative for this program indicates that attorneys in the Appellate Defender Program are paid less than those employed in the Public Defender Program and other state agencies and that only three staff members have been with the office for more than one year. Also, because this unit is not represented by a collective bargaining agreement the career ladder pay changes available to staff in the Public Defender Program were not available for appellate defender staff until recently. The executive budget does not include a request for funding to equalize attorney pay between the two programs in the agency. However, an additional 2.00 FTE are requested to support the current caseload.

The agency plans to request a supplemental appropriation for this program of about \$181,000 for the 2011 biennium. FY 2010 expenditures were about \$975,000 and exceeded the appropriation level by about \$99,200. This amount of funding was transferred from FY 2011 appropriations to FY 2010 appropriations. The program expects FY 2011 expenditures to exceed the amount of the appropriation that remains, resulting in the need to request a supplemental appropriation. The agency cites the application of a 2% across the board reduction in funding and increase in vacancy savings from 4% to 7% as factors resulting in the need for a supplemental appropriation. Additional discussion of the supplemental appropriation request is included in the agency narrative.

## Funding

The following table summarizes funding for the agency, by program and source, as recommended by the Governor. Funding for each program is discussed in detail in the individual program narratives that follow.

Program Funding	Base FY 2010	% of Base FY 2010	Budget FY 2012	% of Budget FY 2012	Budget FY 2013	% of Budget FY 2013
01000 Total General Fund	\$ 876,710	100.0%	\$ 1,102,141	100.0%	\$ 1,095,122	100.0%
01100 General Fund	876,710	100.0%	1,102,141	100.0%	1,095,122	100.0%
Grand Total	<u>\$ 876,710</u>	<u>100.0%</u>	<u>\$ 1,102,141</u>	<u>100.0%</u>	<u>\$ 1,095,122</u>	<u>100.0%</u>

The Appellate Defender Program is supported entirely by the general fund.

## Budget Summary by Category

The following summarizes the total budget by base, present law adjustments, and new proposals.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2012	Budget Fiscal 2013	Biennium Fiscal 12-13	Percent of Budget	Budget Fiscal 2012	Budget Fiscal 2013	Biennium Fiscal 12-13	Percent of Budget
Base Budget	876,710	876,710	1,753,420	79.80%	876,710	876,710	1,753,420	79.80%
Statewide PL Adjustments	87,931	87,430	175,361	7.98%	87,931	87,430	175,361	7.98%
Other PL Adjustments	137,500	130,982	268,482	12.22%	137,500	130,982	268,482	12.22%
New Proposals	0	0	0	0.00%	0	0	0	0.00%
<b>Total Budget</b>	<b>\$1,102,141</b>	<b>\$1,095,122</b>	<b>\$2,197,263</b>		<b>\$1,102,141</b>	<b>\$1,095,122</b>	<b>\$2,197,263</b>	

## Present Law Adjustments

The "Present Law Adjustments" table shows the changes to the adjusted base budget proposed by the executive. "Statewide Present Law" adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies. The other numbered adjustments in the table correspond to the narrative descriptions.

	-----Fiscal 2012-----				-----Fiscal 2013-----					
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
Personal Services					112,698					112,168
Vacancy Savings					(25,015)					(24,995)
Inflation/Deflation					248					257
<b>Total Statewide Present Law Adjustments</b>		<b>\$87,931</b>	<b>\$0</b>	<b>\$0</b>	<b>\$87,931</b>		<b>\$87,430</b>	<b>\$0</b>	<b>\$0</b>	<b>\$87,430</b>
DP 11 - Additional FTE to Support Caseload - Appellate	2.00	137,500	0	0	137,500	2.00	130,982	0	0	130,982
<b>Total Other Present Law Adjustments</b>	<b>2.00</b>	<b>\$137,500</b>	<b>\$0</b>	<b>\$0</b>	<b>\$137,500</b>	<b>2.00</b>	<b>\$130,982</b>	<b>\$0</b>	<b>\$0</b>	<b>\$130,982</b>
<b>Grand Total All Present Law Adjustments</b>	<b>2.00</b>	<b>\$225,431</b>	<b>\$0</b>	<b>\$0</b>	<b>\$225,431</b>	<b>2.00</b>	<b>\$218,412</b>	<b>\$0</b>	<b>\$0</b>	<b>\$218,412</b>

### Program Personal Services Narrative

The following information is provided so that the legislature can consider various personal services issues when examining the agency budget. It was submitted by the agency and edited by LFD staff as necessary for brevity and/or clarity.

- o **Pay Plan Exceptions** - No
- o **Program Specific Obstacles** – The Appellate Public Defender Program has difficulty attracting and retaining qualified workers due to disparity in resources and the volume of work they handle compared to other attorney positions posted. For example, the Appellate Public Defender Program access to the district court record is more restricted than is access for attorneys working for the Department of Justice. Consequently, attorneys leave for positions where they can make more money, have more resources, and perform less taxing work. The program also faces difficulty due to the pay freeze and not being under a collective bargaining unit. There is also an internal inequity within the agency.
- o **Vacancy** - The Appellate Public Defender Program in the last biennium had five individuals leave or approximately 62 percent of attorney staff. One attorney retired. Other attorneys have left because they have found higher paying jobs. In fact, all other state agencies pay their attorneys more than the appellate public defender attorneys are receiving. Since the Office of the Appellate Defender is located in Helena, it competes with other state agencies (including its own agency, the Office of the State Public Defender) in maintaining staff. The turnover has affected the productivity of the program. The high turnover in staff requires recruitment of new attorneys, which takes several months, and once attorneys are hired they are often inexperienced and cannot begin immediately with the larger complex cases. There are only three attorneys who have been employed for longer than one year. Since the Chief Appellate Defender focuses on management of the program her caseload is substantially reduced leaving the remaining two attorneys who have been with the program longer than one year with the larger cases. Newer attorneys take longer to complete case work on less complicated cases due to their inexperience. This results in fewer cases being closed each month.
- o **Legislatively Applied Vacancy Savings** - The program was unable to create a 7% vacancy savings because of the need to fulfill the mission of the program.
- o **Pay/Position Changes** - The appellate public defenders have not received position or pay changes.
- o **Retirements** - No employees in the Appellate Public Defender Program will be eligible for retirement in the 2013 biennium.

Statewide present law adjustments increase primarily due to the removal of one time only funding from the base budget and increases in health insurance costs.

DP 11 - Additional FTE to Support Caseload - Appellate - This decision package requests 2.00 FTE (1.00 FTE attorney and 1.00 FTE administrative support) to support current workload.

#### LFD COMMENT

Please refer to the program narrative for a discussion of factors impacting program caseload and workload.