1-23-09

Office of the State Public Defender

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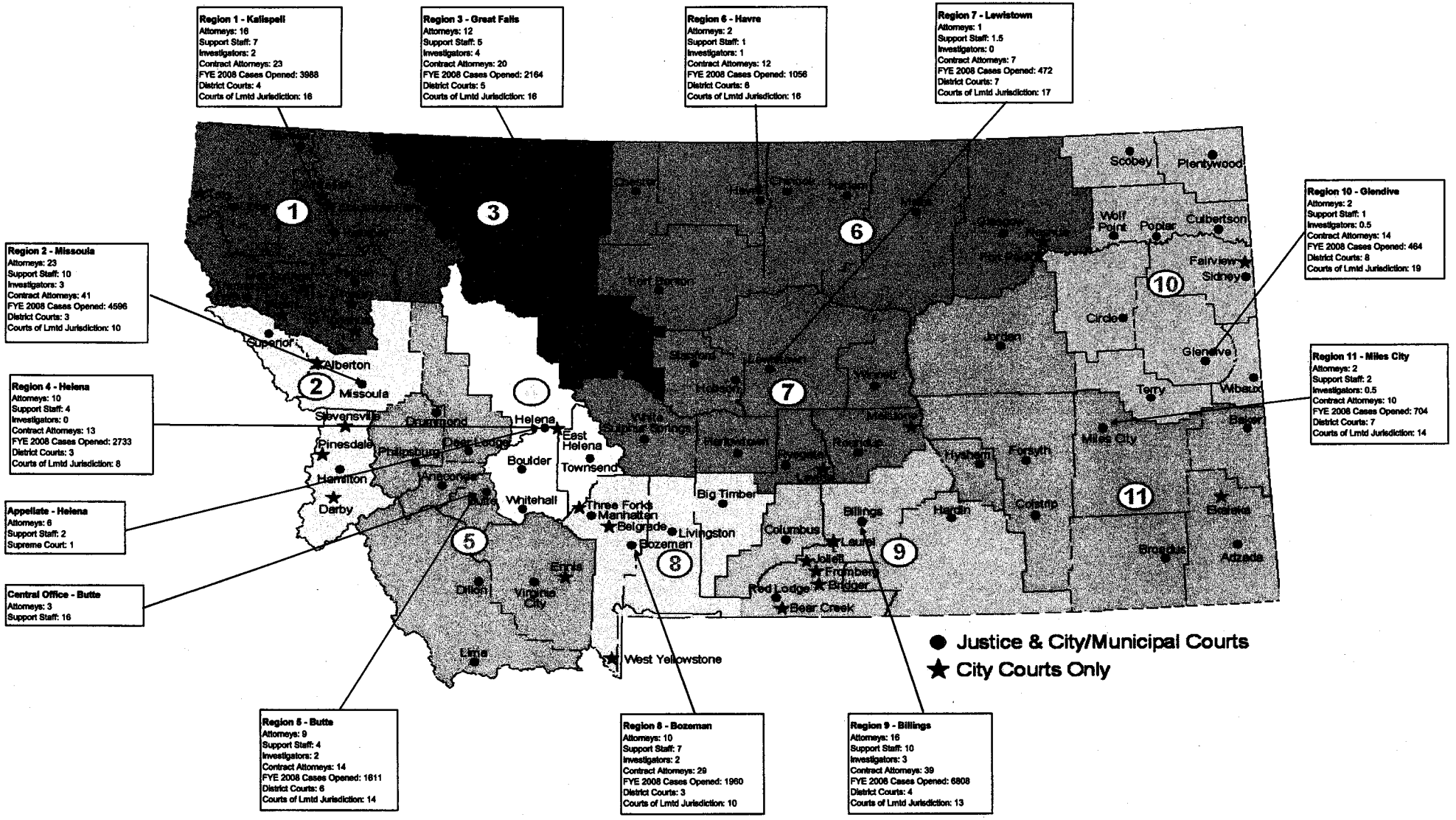
EXHIBIT 2
DATE 1-23-09
HB

Office of the State Public Defender



WHAT DOES A PUBLIC DEFENDER DO?

Criminal Cases

The Office of the State Public Defender (OPD) represents indigent persons accused of a variety of criminal offenses. Any indigent person accused of a crime carrying a penalty that could potentially involve jail time qualifies for the services of a public defender. These cases range from driving without insurance to deliberate homicide.

In Fiscal Year 2008, the agency defended 22,285 criminal cases.

Juvenile Cases

The agency represents youths in Youth Court. These youths may have committed a crime, or they may require supervision due to being incorrigible. While youths have the same rights as adults in criminal courts, rehabilitation is a priority. Youths often deserve a second chance and are in need of an advocate in the court system to fight for their rights as a citizen and ensure the possibility of having a future chance in society.

In Fiscal Year 2008, the agency defended 1,099 juvenile cases.

Dependent Neglect Cases

The agency also represents both parents and children in cases in which the State is alleging abuse or neglect and the children may be removed from their home. These cases require considerable amounts of time because the attorney is challenged with advocating the position of the client whether it is the parents or the children. The parents' attorney must represent the client in proceedings that may last more than a year while the parent is trying to maintain or regain custody of the children. At all stages both the children and the parents deserve to have their voice heard when the State is attempting to intervene in a matter of custodial rights.

In Fiscal Year 2008, the agency participated in 2,198 cases in which the State alleged abuse or neglect.

Commitment of the Mentally Ill Cases

The agency represents all persons who are facing a State mandated commitment to the State mental hospital or a facility for the developmentally disabled. In such cases, the public defender works with the client and professional persons involved in the case to ensure the rights of the client are upheld and their placement is necessary and appropriate.

In Fiscal Year 2008, the agency defended 725 cases in which a person was facing involuntary commitment.

Incapacitated Persons Cases

In incapacitated person cases, a public defender is assigned to represent a person for whom a guardian or conservator is sought because the person is no longer able to care for themselves and/or their estate. In these cases, it is the public defender's role to uphold the rights of the respondent and ensure no one is attempting to capitalize on their deficiencies.

The agency represented 249 alleged incapacitated persons in Fiscal Year 2008.

Appeals

Any indigent defendant who has been convicted of a crime is entitled to appeal the conviction to the Montana Supreme Court. This same right is attached to all other clients we represent. Appellate cases often clarify current law, enforce constitutional guarantees, and establish practices for parties involved in all facets of law. These cases include post-conviction relief as well. Nearly all appeal cases last for more than one year.

The Appellate program opened 201 *new* appeals to the Supreme Court in Fiscal Year 2008.

Sentence Review

If a defendant has been sentenced to a detention facility for a period of one year or more, the defendant is eligible to have his sentence reviewed. Sentence review cases involve appealing the sentence of a defendant to a board of three judges who uphold, decrease, or increase the sentence of the defendant.

Training Coordinator Eric Olson is responsible for sentence review cases.

The agency represented 95 sentence review cases in Fiscal Year 2008.

WHAT DID OPD STAFF DO THIS WEEK?

Central Office

- Contracts Manager Lawrence Murphy approved over one hundred bills from contract attorneys, and made court appearances on behalf of clients in both Broadwater and Jefferson counties.

- Training Manager Eric Olson visited inmates in the Crossroads Correctional Center in Shelby to prepare for sentence review, prepared for satellite training on mediation tactics, and prepared for "boot camp" training for rookie public defenders to be held next month.

- Chief Public Defender Randi Hood prepared for a legislative budget hearing, continued to prepare for an upcoming negligent homicide trial in Lewis and Clark County, conducted performance appraisals for some of her staff attorneys, held several intra-agency meetings on the OPD budget, and visited one of her clients in the Yellowstone County Detention facility.

- Four interns from Montana Tech logged hours in the Central Office in Butte—two working in the accounting department and two more working on records management.

- Investigator Supervisors Mori Woods and Dan Kohm spent the week in Yellowstone County, investigating one of Ms. Hood's cases—a triple homicide scheduled for trial in January 2010.

Around the State

- Bobbi Zenker, an attorney in the Appellate Defender's Office, submitted a brief to the Supreme Court that questioned a ruling made by the district court that possibly interfered, without due process of law, with the client's right to parent his children.

- Christopher Lindsey, an assistant public defender in the Helena office, went to court with three clients who were facing involuntary commitments to Montana State Hospital. Two cases were dismissed following professional evaluations that found that the clients could safely remain in the community.

- Mary Kramer, the managing attorney in Bozeman, won a motion in a dependent neglect case in which she represented the child. The child's father was awarded the right to adopt the child while the Department of Health and Human Services was seeking to place the child in foster care.

- Frank Piocos, an assistant public defender in Billings, tried a case in district court in which his client was acquitted of assault with a weapon, a serious felony.

- Attorneys in all 11 regions, as well as the three attorneys in the Central Office, prepare for trials on a weekly basis. Trials require a great deal of preparation, but a case is always taken to trial if it is done at the request of the client and all negotiations on a plea offer have been rejected by the client.

WHO DO WE REPRESENT?

The Office of the State Public Defender represents indigent clients in criminal, dependent neglect, and appeal cases. Further, the agency represents all clients involved in juvenile cases, the commitment of the mentally ill, and the representation of incapacitated persons.

Determining Indigency

According to Montana statute 47-1-111, a potential client is indigent if the applicant's gross income is less than 133% of the poverty level. Also, if the income and assets of the applicant's household are insufficient to retain competent private counsel without undue hardship to the applicant or the members of the applicant's household, the applicant would also qualify.

What sort of income would qualify?

Number of Persons in Household	Gross Income Guideline
1	$13,832
2	$18,620
3	$23,408
4	$32,984
Each Additional Member Add:	$4,788

What is "undue hardship?"

If a defendant does not immediately qualify according to the guidelines above, they may qualify if hiring private counsel would cause undue hardship. For example, if the crime is of a severe enough nature, the cost of retaining counsel would be beyond their combined possible income and assets. Other examples are when the defendant or family members have significant medical costs, or, if retaining counsel on a serious matter would endanger the ability to provide for their family on a daily basis.

This protocol is most often applied to serious felonies such as deliberate homicide, when attorney costs alone for a private attorney would likely exceed $100,000.

WHO DO WE EMPLOY?

The agency employs attorneys, support staff, investigators, and other staff, which includes IT support, Central Office employees, student interns, and short term workers.

Currently, we employ 96 attorneys. The number breaks down statistically as follows:

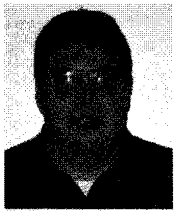
- 52 attorneys, or 54% of the total, are male.
- 44 attorneys, or 46% of the total, are female.
- 7 attorneys, or 7.29% of the total, are minorities. This compares to a state average of 3.42% minority representation.

Meet Some of Our Attorneys

John Putikka

Regional Deputy Public Defender, Region One (Kalispell)

- B.S. and B.A., Bemidji State University - 1991
- J.D., University of Minnesota – 1994
- Enrolled member, Brothertown Indian Nation – Woodruff, WI



"I am a public defender because having grown up dirt poor on an Indian reservation I understand that too many people not only cannot afford private counsel but also lack even a basic understanding of their legal rights. I think the creation of a statewide public defender office is the best thing that ever happened to Montana's criminal justice system and that the current system provides more equity to the accused and provides better public defender services across the state."

Christopher Abbott

Assistant Public Defender, Region Four (Helena)

- B.S., Magna Cum Laude, University of Puget Sound – 2003
- J.D., with High Honors, University of Washington – 2006
- Clerkship for U.S. 9th Circuit Court of Appeals, 2006-2007

"Working for the Office of the State Public Defender is extremely rewarding. It gives me an opportunity to be a voice for people who otherwise would not have an advocate, to ensure their rights are protected, to hold the State to its burden of proving guilt beyond a reasonable doubt."

Jordan Kilby

Assistant Public Defender and Briefing Attorney, Region Two (Missoula)

- B.A., James Madison University - 2003
- J.D., University of Montana - 2007
- Volunteer and Internship, Office of the State Public Defender – 2006-2008

"I often think about what the client would feel like if he did not have representation. If I am just a lawyer on the case and I feel like everyone is against me, imagine what someone with little-to-no education/money/power would feel. I like letting people know that not the whole world is out to get them...no matter what their charge."

Michael Shin

Assistant Public Defender, Region Nine (Billings)

- B.S., Cum Laude, Yale University – 1998
- J.D., U.C. Berkeley – 2003
- Clerkship for State of Massachusetts District Court
- Assistant Attorney General, State of Massachusetts, 2007-2008

"Since law school, I have been enamored by the role of the public defender to protect the rights of the indigent within the criminal justice system. But what drew me to the job more than any practical considerations was the substance of the job itself. I have found being an assistant public defender to be a truly rewarding, albeit challenging, job. Being able to help guide my clients through a criminal process that they might otherwise get trampled by makes me feel as though I am making a positive direct impact on people's lives."

Joslyn Hunt

Assistant Appellate Defender, Appellate Office (Helena)

- B.S., High Honors, Montana Tech – 2000
- J.D., High Honors, University of Montana – 2003
- Law Clerk, Montana Supreme Court – 2003-2004

"I came to work for the Appellate Defender Office after having represented the State in the same capacity. After researching the mission of the Office of the State Public Defender and the fact that the mission would be led by Randi Hood, I could not pass by the opportunity to be part of something so groundbreaking. I have learned to listen. I have learned compassion for other people's situations. And, I have learned not to judge people by what has happened in their lives. It might come as a surprise to some people, but in fact, some of the most respectful people I have met have been my clients--you know, the ones some in society want to forget. I am thankful to be a part of it."

Olivia Norlin

Regional Deputy Public Defender, Region Ten (Glendive)

- A.A., Dawson Community College - 1998
- B.A., Black Hills State University - 2001
- J.D., University of South Dakota - 2004
- Attorney, Dawson County Domestic Violence Organization – 2007

"I really like my job and living in Glendive. I enjoy the fact that in this position, as a public defender, I get to network with attorneys throughout the state when there are not a whole lot of lawyers in Eastern Montana. More importantly, I can help individuals who cannot afford to retain legal assistance by helping them through the criminal process and making a difference in their lives long beyond the time that the criminal proceedings have concluded."

HOW ARE EMPLOYEES TRAINED?

Per Montana statute 47-1-210, OPD is required to hire a training coordinator to ensure that public defender services are provided consistently throughout the state. Eric Olson, our training coordinator, has created, planned and presented the following training events:

Annual Statewide Training Conference
Investigator Training, Phase I and II
Juvenile Defense
Boot Camp Trial Skills Workshop (for new attorneys)
DUI Defense
Ethical Issues in Dependency and Neglect Practice
Joint State and Federal Defender Training
Principles of Leadership and Management
Mental Health Issues
Death Penalty Defense
Communication and Bias
Forensic Psychology Workshop
Lower Court Practices
Understanding Polygraphs
Preventing Sexual Harassment
Support Staff Training

In Fiscal Year 2008, seven expert speakers from out-of-state were invited to provide the best possible training for our attorneys, investigators, and staff.

Some training sessions are conducted in person and some by videoconference. Many training events have been recorded and are available on DVD.

Over the course of all our training sessions, we have offered our employees approximately 226.25 CLE credits, along with 24 ethics credits.

WHAT IS OUR FUTURE?

As the agency proceeds forward, we expect to see a continual increase in caseloads. From Fiscal Year 2007 to Fiscal Year 2008, we saw a case increase of 4%. We are anticipating an increase of *at least* 4% for Fiscal Year 2009.

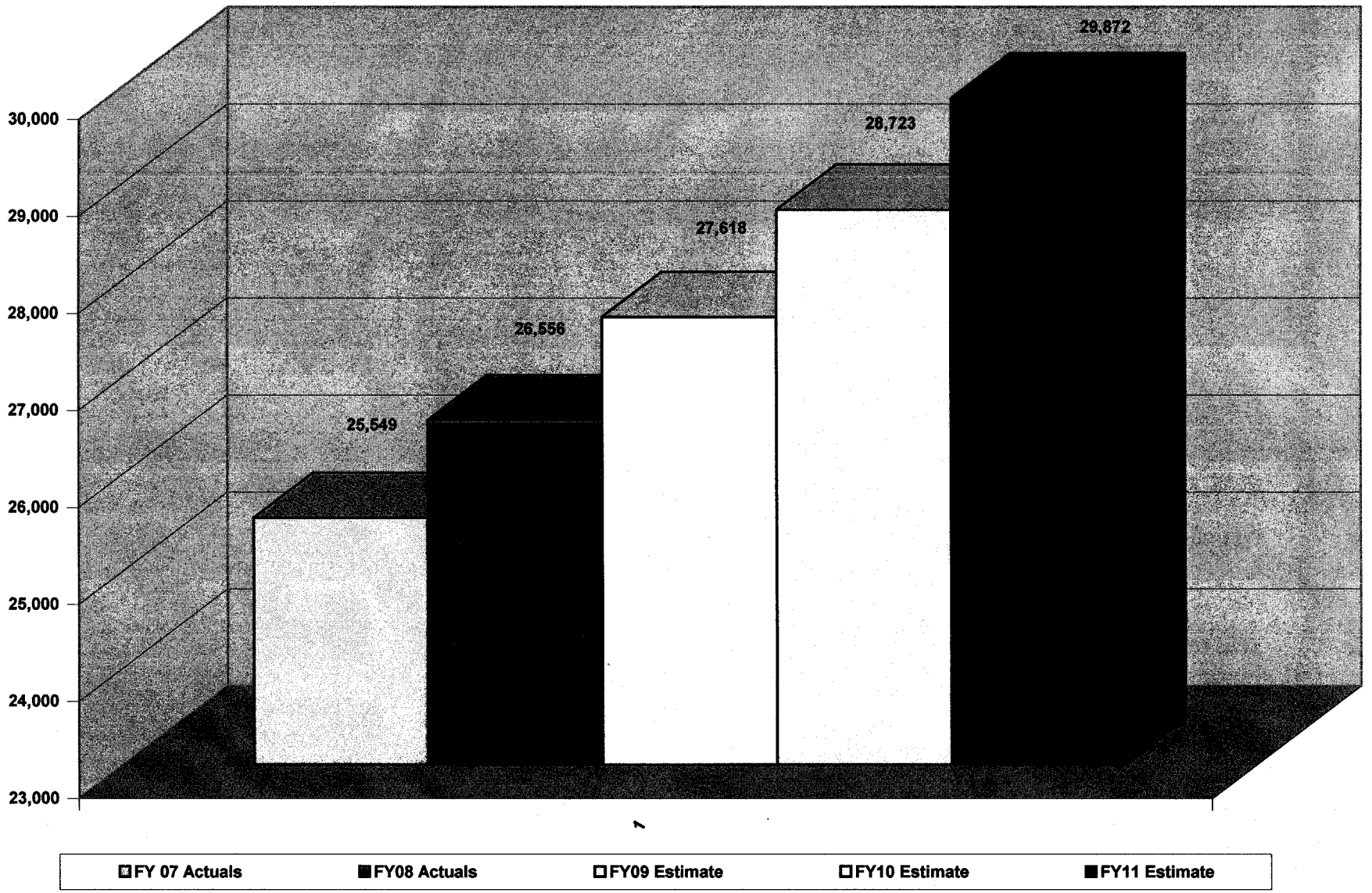
The agency believes that the current outlook for Fiscal Year 2009 shows that our increase may actually be greater than 4%. Several factors would contribute to an increase in caseload for our attorneys, among them:

- A weakened economy featuring lost jobs and foreclosed homes will likely increase the number of those who qualify for public defender services.
- Such an economic climate will also create more crimes such as theft, bad checks, or burglary.
- Population growth causes increases to public defender caseloads.

In summation, we believe that the caseload for our agency will continue to increase at a greater rate than we recently experienced.

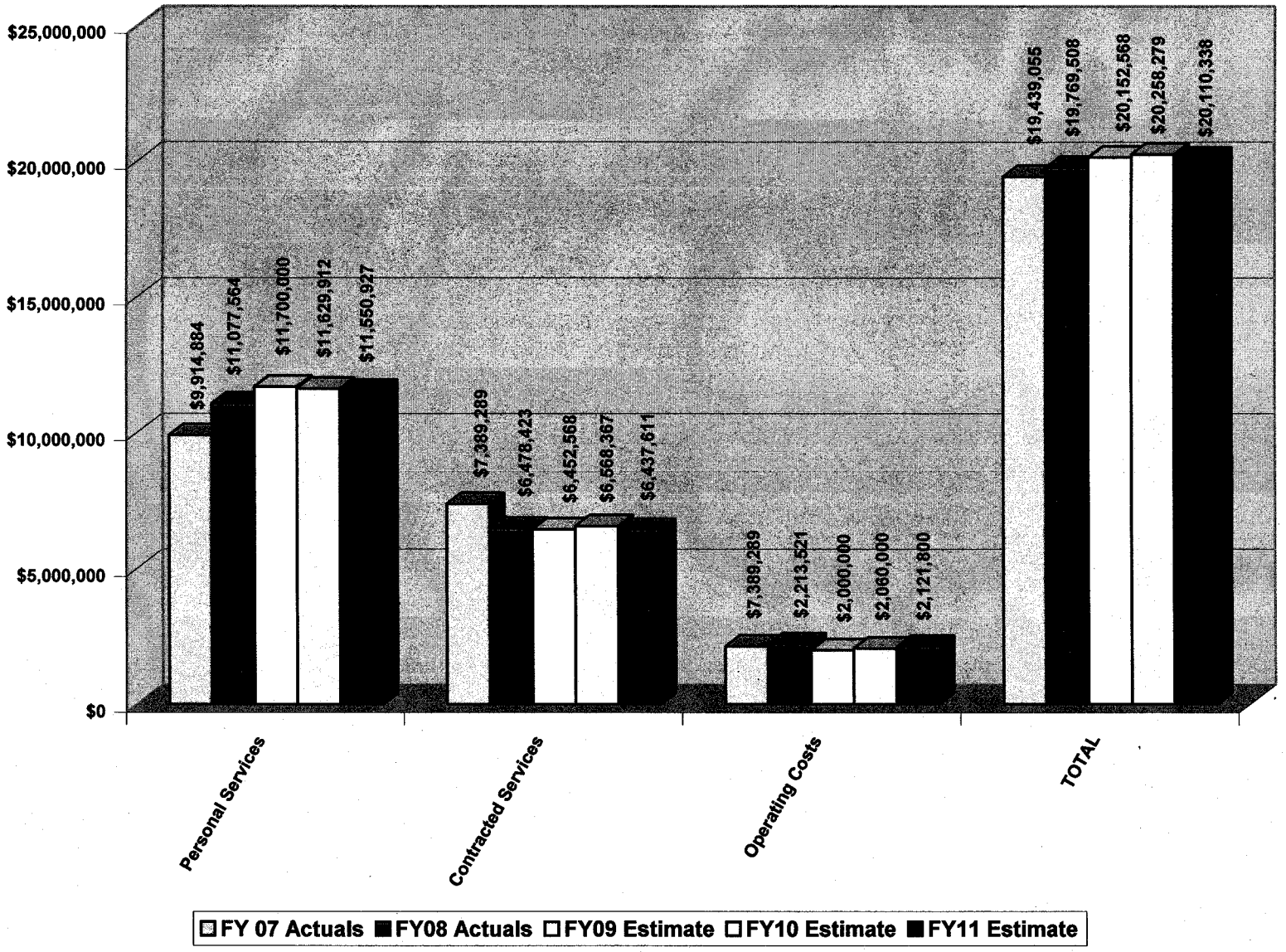
Office of the State Public Defender

OPD Total Cases



Office of the State Public Defender

OPD Total Costs



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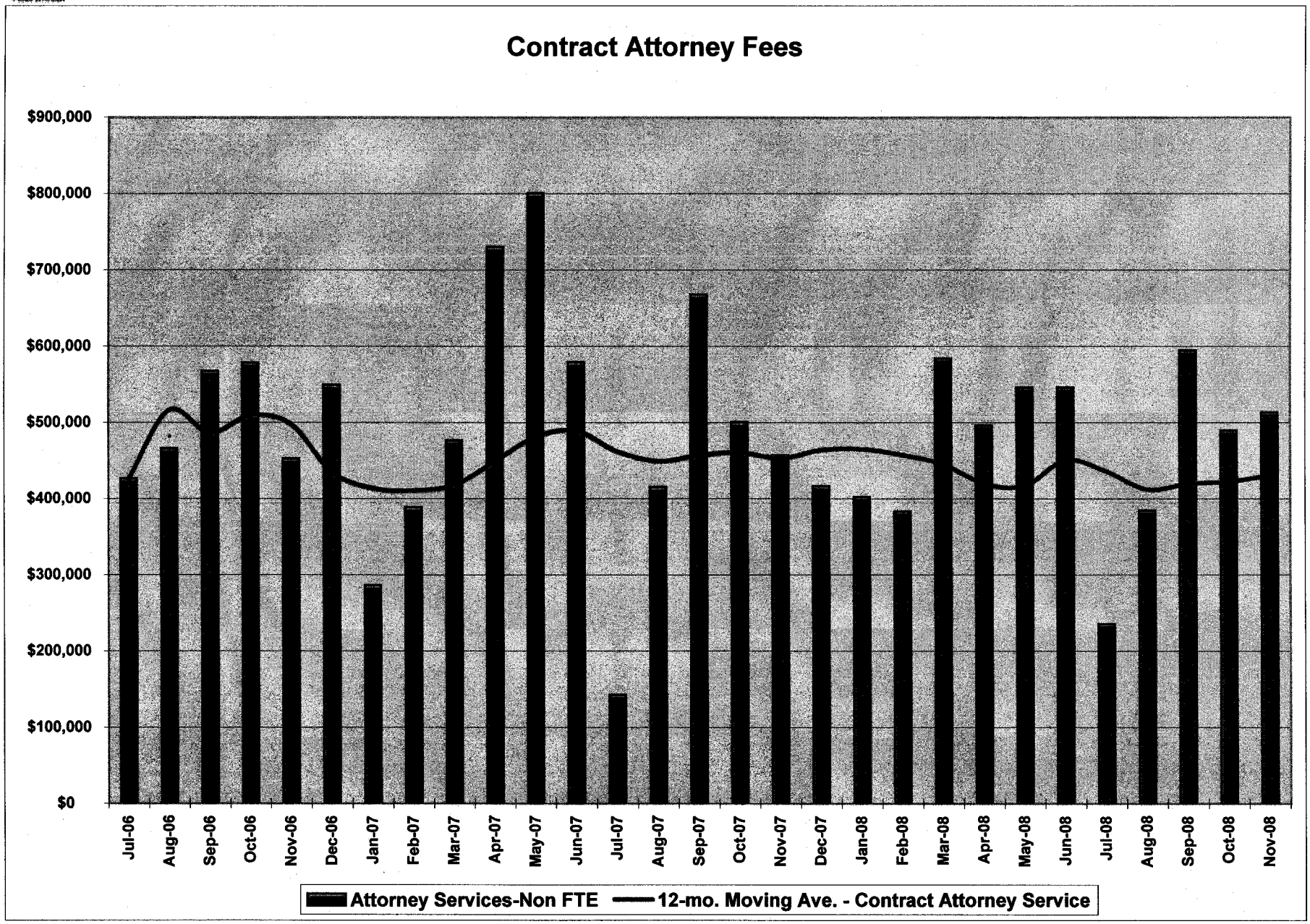

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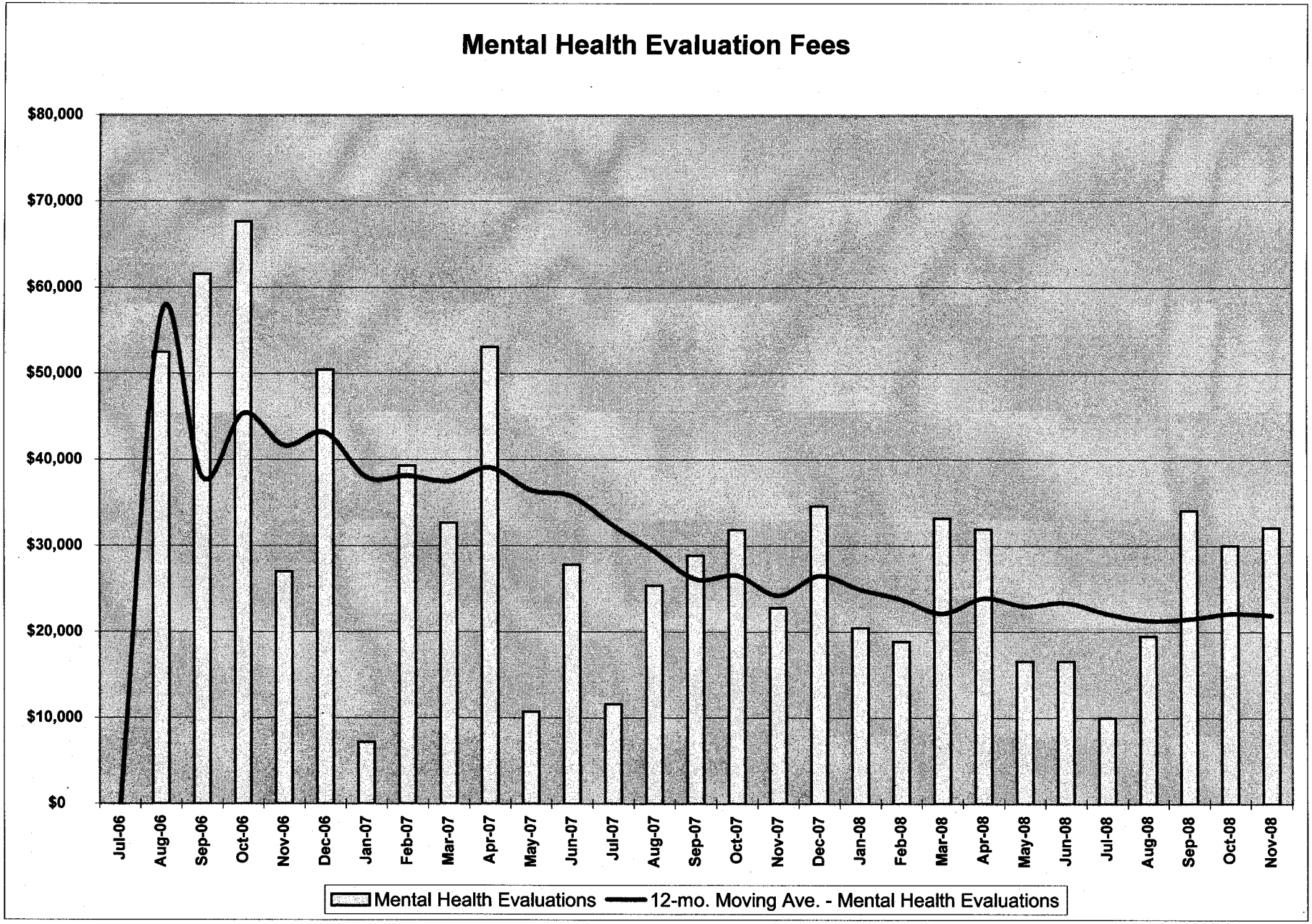

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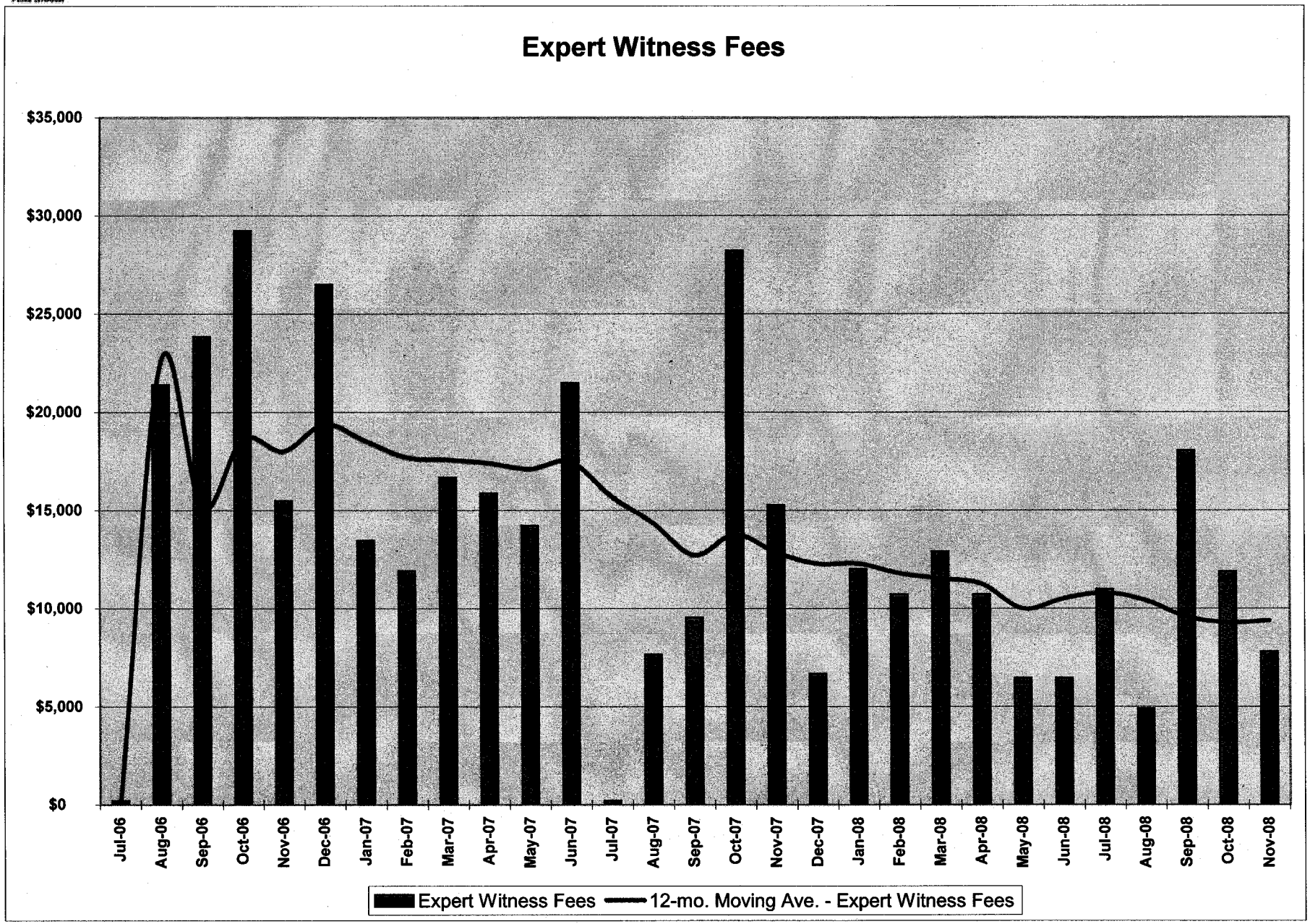

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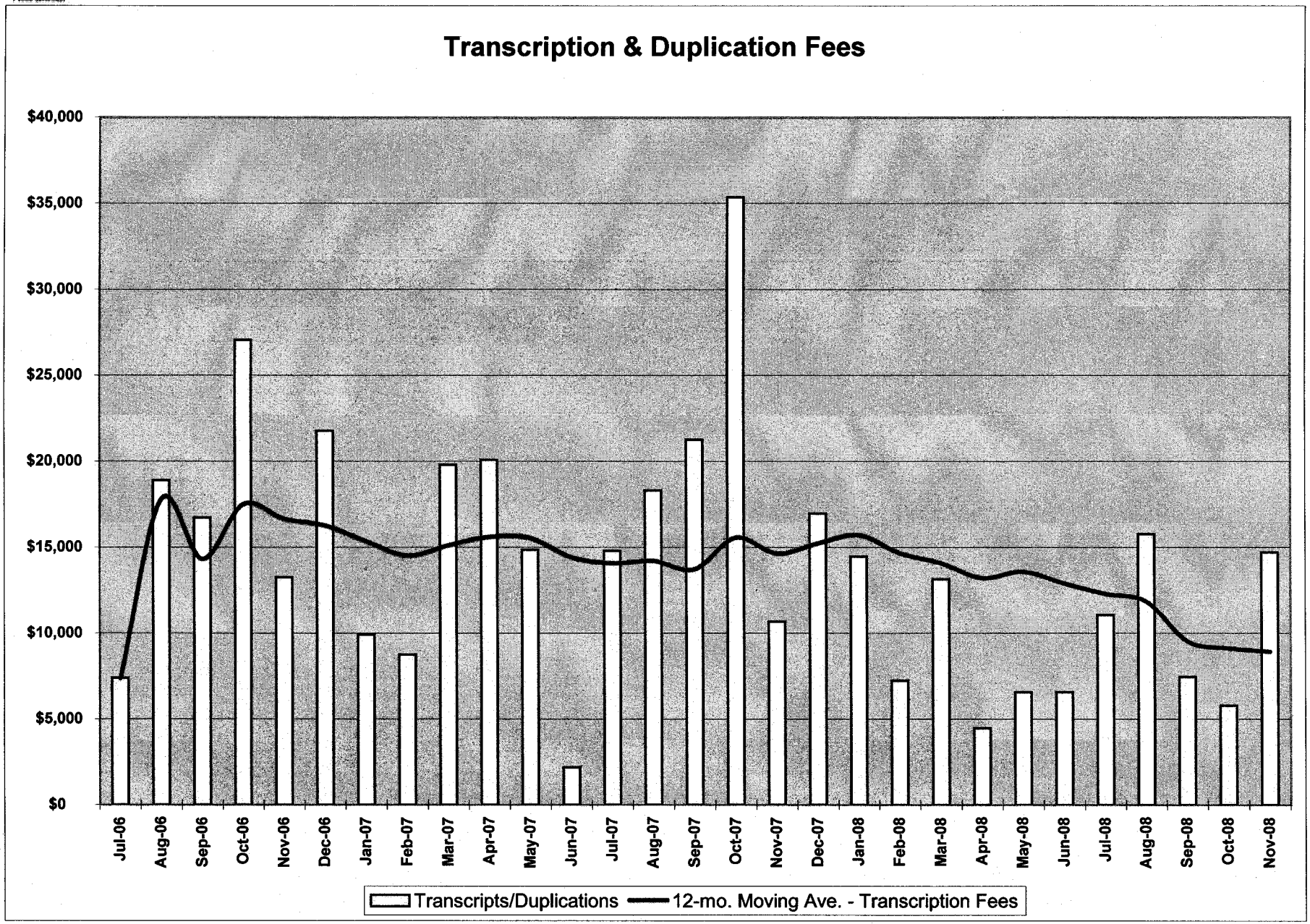
Transcription & Duplication Fees



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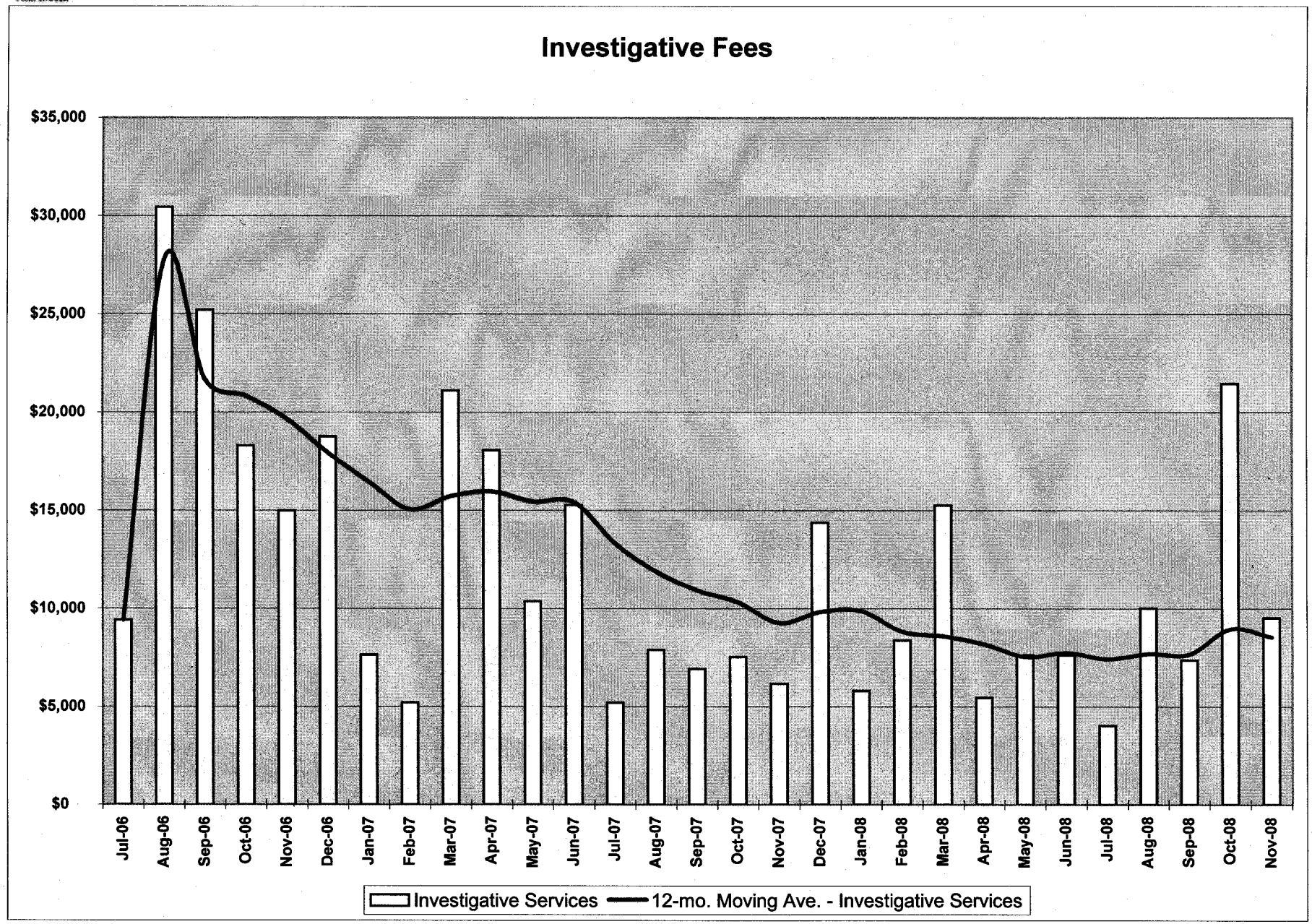


STATE OF MONTANA

OFFICE OF THE STATE PUBLIC DEFENDER

STRATEGIC PLAN

GOALS, OBJECTIVES, AND ACTION ITEMS

GOAL 1: Maintain and improve a statewide public defender system to provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public expense.

GOAL 2: Ensure that the system is free from undue political interference and conflicts of interest.

GOAL 3: Monitor that the public defender services are delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state.

GOAL 4: Assure that the system utilizes state employees, contracted services, or other methods of providing services in a manner that is responsive to and respective of regional and community needs and interests.

GOAL 5: Advocate for adequate funding of the statewide public defender system.

GOAL 1: Maintain and improve a statewide public defender system to provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public expense.

OBJECTIVE: Monitor the existing public defender system to assure that it provides high quality services at a reasonable cost.

ACTION ITEM: Periodically adjust the balance of state employees and contract services to achieve the best result.

ACTION ITEM: Periodically update the agency's plan for providing public defender services for presentation to the Montana Public Defender Commission and other interested parties.

GOAL 2: Ensure that the system is free from undue political interference and conflicts of interest.

OBJECTIVE: Assist the criminal justice system to treat people without bias and to provide fair treatment to all.

ACTION ITEM: Monitor the agency's uniform procedure for identifying conflicts of interest.

ACTION ITEM: Identify attorneys who are available to handle conflict cases.

GOAL 3: Monitor that public defender services are delivered by qualified and competent counsel in a manner that is fair and consistent throughout the state.

OBJECTIVE: Staff and support the agency's training function.

ACTION ITEM: The training coordinator, in consultation with the Chief Public Defender and the Public Defender Commission, will design annual training programs that best achieve the goals of the agency.

ACTION ITEM: The training coordinator will provide training to all members of the system including state employees and contract service providers.

ACTION ITEM: The training coordinator will provide training for attorneys representing those with physical or mental disabilities.

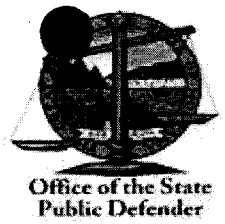
GOAL 4: Assure that the system utilizes state employees, contracted services, or other methods of providing services in a manner that is responsive to and respective of regional and community needs and interests.

OBJECTIVE: Assure that the main focus of the Office of the State Public Defender is to provide the best client service. Assure that service is being provided by monitoring the performance of state employees and contracts with private attorneys.

ACTION ITEM: Continually identify attorneys willing to contract for public defender services.

GOAL 5: Advocate for adequate funding of the statewide public defender system.

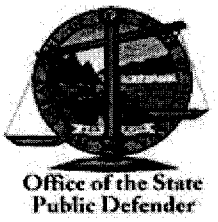
OBJECTIVE: The agency will communicate to the Montana Public Defender Commission, all branches of state government, and other interested parties information related to the caseloads and costs of the public defender system.



OFFICE OF THE STATE PUBLIC DEFENDER

	FY 07 Actuals	FY08 Actuals	FY09 Estimates	FY10 Estimates	FY11 Estimates
FTE	192.50	192.50	192.50	200.50	200.50
Personal Services	$ 9,914,884	$ 11,077,564	$ 11,663,426	$ 11,629,912	$ 11,550,927
Contracted Services					
- Contract Attorneys	6,257,056	5,638,958			
- Chemical Dep Evals.	11,865	15,633			
- Transcripts	178,212	174,521			
- Expert Witness Fees	241,125	141,518			
- Investigator Fees	192,680	130,813			
- Mental Health Evals	470,133	334,068			
- Other	38,218	42,912			
Total Contracted Services	7,389,289	6,478,423	6,452,568	6,568,367	6,437,611
Operating Costs	2,134,882	2,213,521	2,036,574	2,060,000	2,121,800
TOTAL EXPENDITURES	$ 19,439,055	$ 19,769,508	$ 20,152,568	$ 20,258,279	$ 20,110,338
HB2 Appropriation	$ 19,439,055	$ 19,269,508	$ 19,652,568	$ 19,269,508	$ 19,269,508
Special Revenue				43,456	43,456
Caseload Transition One Time Approp		500,000	500,000	-	-
Support of Increase in Caseload				579,948	575,140
Support of Increase in Caseload				200,000	200,000
Pers Serv Inc. Net Vac Sav & Work Comp				(27,600)	(101,777)
ITSD Fixed Cost PL Adjustment				32,972	32,972
Fuel Inflation Reduction				(945)	(1,085)
Fixed Costs				154,203	86,283
Fixed Costs Worker Comp				6,737	5,841
TOTAL APPROPRIATION	$ 19,439,055	$ 19,769,508	$ 20,152,568	$ 20,258,279	$ 20,110,338

OFFICE OF THE STATE PUBLIC DEFENDER



DESCRIPTION	FY 2008	FY 2009	FY 2010	FY 2011
FTE	192.50	192.50	200.50	200.50
PERSONAL SERVICES	$ 11,077,564	$ 11,663,426	$ 11,077,564	$ 11,077,564
ADDITIONAL APPROPRIATIONS				
PERSONAL SERVICE PAY INCREASE			804,100	724,363
SUPPORT OF INCREASE IN CASELOAD			579,948	575,140
FIXED COST WORKERS COMP MGT PRGM			6,737	5,841
TOTAL ADDITIONAL APPROPRIATIONS	-	-	**1,390,785**	**1,305,344**
REDUCTIONS IN APPROPRIATIONS				
PERSONAL SERVICE VACANCY SAVINGS			(831,700)	(826,140)
FIXED COST WORKERS COMP MGT PRGM			(6,737)	(5,841)
TOTAL REDUCTIONS IN APPROPRIATIONS	-	-	**(838,437)**	**(831,981)**
TOTAL NET EFFECT TO PAYROLL	$ 11,077,564	$ 11,663,426	$ 11,629,912	$ 11,550,927

OPERATING EXPENSES & EQUIPMENT	$ 8,191,944	$ 8,454,568	$ 8,191,944	$ 8,191,944
ADDITIONAL APPROPRIATIONS				
INFLATION/DEFLATION FACTORING			35,046	41,753
FIXED COSTS			162,613	87,986
ITSD FIXED COST ADJUSTMENT			32,972	32,972
SUPPORT OF INCREASE IN CASELOAD			200,000	200,000
TOTAL ADDITIONAL APPROPRIATIONS	-	-	**430,631**	**362,711**
REDUCTIONS IN APPROPRIATIONS				
CASELOAD TRANSITION ONE TIME APPROP			(500,000)	(500,000)
FUEL INFLATION REDUCTION			(945)	(1,085)
FIXED COSTS			(162,613)	(87,986)
ITSD FIXED COST ADJUSTMENT			(32,972)	(32,972)
TOTAL REDUCTIONS IN APPROPRIATIONS	-	-	**(696,530)**	**(622,043)**
TOTAL NET EFFECT TO OPERATING &CAPTL EXP	$ 8,191,944	$ 8,454,568	$ 7,926,045	$ 7,932,612

STATE OF MONTANA

OFFICE OF THE STATE PUBLIC DEFENDER

STRATEGIC PLAN

GOALS, OBJECTIVES, AND ACTION ITEMS

GOAL 1: Maintain and improve a statewide appellate defender system to provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to appeals at public expense.

GOAL 2: Ensure that the system is free from undue political interference and conflicts of interest.

GOAL 3: Monitor that appellate defender services are delivered by qualified and competent counsel.

GOAL 4: Assure that the system utilizes state employees and contracted services to avoid conflicts of interest and to process appeals in a timely manner.

GOAL 5: Advocate for adequate funding of the statewide appellate defender system.

GOAL 1: Maintain and improve a statewide appellate defender system to provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to appeals at public expense.

OBJECTIVE: Monitor the existing appellate defender office to assure that it provides high quality services at a reasonable cost.

ACTION ITEM: Periodically adjust the balance of state employees and contract services to achieve the best result.

ACTION ITEM: Periodically update the agency's plan for providing appellate services for presentation to the Montana Public Defender Commission and other interested parties.

GOAL 2: Ensure that the system is free from undue political interference and conflicts of interest.

OBJECTIVE: Assist the criminal justice system to treat people without bias and to provide fair treatment to all.

ACTION ITEM: Monitor the agency's uniform procedure for identifying conflicts of interest.

ACTION ITEM: Identify attorneys who are available to handle post-conviction relief petitions.

GOAL 3: Monitor that appellate defender services are delivered by qualified and competent counsel.

OBJECTIVE: Staff and support the agency's training function.

ACTION ITEM: The training coordinator, in consultation with the Chief Public Defender and the Public Defender Commission, will design annual training programs that best achieve the goals of the agency, including goals of the appellate office.

ACTION ITEM: Provide for out-of-state specialized appellate training for one appellate attorney each year.

ACTION ITEM: The training coordinator will include appellate attorneys in trainings to further the understanding of appellate issues for all public defenders.

GOAL 4: Assure that the system utilizes state employees and contracted services to avoid conflicts of interest and to process appeals in a timely manner.

OBJECTIVE: Assure that the main focus of the Appellate Office of the Office of the State Public Defender is to provide the best appellate service. Assure that service is being provided by monitoring the performance of appellate attorneys.

ACTION ITEM: Continually identify attorneys willing to contract for appellate services.

GOAL 5: Advocate for adequate funding of the statewide appellate defender system.

OBJECTIVE: The agency will communicate to the Montana Public Defender Commission, all branches of state government, and other interested parties information related to the caseloads and costs of the appellate defender system.