



A REPORT  
TO THE  
MONTANA  
LEGISLATURE

FINANCIAL-COMPLIANCE AUDIT

# *Office of the State Public Defender*

*For the Two Fiscal Years Ended  
June 30, 2012*

OCTOBER 2012

LEGISLATIVE AUDIT  
DIVISION

12-28

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Financial-compliance audits are conducted by the Legislative Audit Division to determine whether an agency's financial operations are properly conducted, the financial reports are presented fairly, and the agency has complied with applicable laws and regulations. In performing the audit work, the audit staff uses standards set forth by the American Institute of Certified Public Accountants and the United States Government Accountability Office. Financial-compliance audit staff members hold degrees with an emphasis in accounting. Most staff members hold Certified Public Accountant (CPA) certificates.

Government Auditing Standards, the Single Audit Act Amendments of 1996 and OMB Circular A-133 require the auditor to issue certain financial, internal control, and compliance reports. This individual agency audit report is not intended to comply with these reporting requirements and is therefore not intended for distribution to federal grantor agencies. The Legislative Audit Division issues a statewide biennial Single Audit Report which complies with the above reporting requirements. The Single Audit Report for the two fiscal years ended June 30, 2011, was issued March 29, 2012. The Single Audit Report for the two fiscal years ended June 30, 2013, will be issued by March 31, 2014. Copies of the Single Audit Report can be obtained by contacting:

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Helena, MT 59620-0802

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# LEGISLATIVE AUDIT DIVISION

Tori Hunthausen, Legislative Auditor  
Deborah F. Butler, Legal Counsel



Deputy Legislative Auditors  
Cindy Jorgenson  
Angie Grove

October 2012

The Legislative Audit Committee  
of the Montana State Legislature:

This is our financial-compliance audit report on the Office of the State Public Defender (office) for the two fiscal years ended June 30, 2012. This report includes the audited financial schedules and related notes, our independent auditor's report expressing our opinion on the financial schedules, findings and recommendations, and the office's response. In the report we recommend the office implement internal controls over financial reporting and securing payments by mail. We also make recommendations related to documentation of the basis for pay rate decisions and related to public defender fee accounts receivables.

We thank the Chief Public Defender, Chief Appellate Defender, and office staff for their assistance and cooperation during the audit.

Respectfully submitted,

*/s/ Tori Hunthausen*

Tori Hunthausen, CPA  
Legislative Auditor



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## APPOINTED AND ADMINISTRATIVE OFFICIALS

### **Public Defender Commission** Richard “Fritz” Gillespie, Chair

Kenneth R. Olson, Vice-Chair

Christopher Daem

Caroline Fleming

Brian Gallik

Margaret Novak

Charles Petaja

Majel Russell

Ann Sherwood

William F. Snell Jr.

The Commission had one vacant position as of August 2012 for a public representative nominated by the Senate President.

### **Office of the State Public Defender**

William F. Hooks, Chief Public Defender (effective March, 2012)

Dave Stenerson, Interim Chief Public Defender (October, 2011 through February, 2012)

Randi Hood, Chief Public Defender (through October, 2011)

Wade Zolynski, Chief Appellate Defender (effective May, 2012)

Joslyn Hunt, Chief Appellate Defender (through May, 2012)

Kristina Neal, Conflict Coordinator and Interim Chief Appellate Defender (May, 2012)

Harry Freebourn, Administrative Director

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Harry Freebourn

Administrative Director

Office of the State Public Defender

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Butte, MT 59701

(406) 496-6080

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# MONTANA LEGISLATIVE AUDIT DIVISION

## FINANCIAL-COMPLIANCE AUDIT

### Office of the State Public Defender

#### For the Two Fiscal Years Ended June 30, 2012

OCTOBER 2012

12-28

REPORT SUMMARY

The Office of the State Public Defender (office) is the state's newest executive branch agency, created in 2005. The agency provides criminal defense services to low income Montanans, employing over 100 attorneys and contracting with about 200 Montana attorneys.

### Context

The office is organized into two programs: the Office of the State Public Defender and the Office of the State Appellate Defender. The Office of the State Public Defender provides criminal defense services as well as representation on child abuse or neglect and involuntary commitment proceedings. It is organized into 11 regions with a regional deputy public defender supervising each region. The Office of the State Appellate Defender is located in Helena and represents indigent clients during requests for appeals and post-conviction relief.

The office receives its funding almost entirely through the General Fund. In both fiscal years 2011-12, and 2010-11, over 99 percent of expenditures were General Fund expenditures. Increased demand for services in the audited period drove up costs, reflected by an 8.5 percent increase in personal and contracted services expenditures in fiscal year 2011-12. In addition, the office implemented changes in operations including a requirement that the Chief Appellate Defender report directly to the Public Defender Commission rather than the Chief Public Defender and revised procedures for collection of court assessed fees. During the audited period, the Public

Defender Commission appointed a new Chief Public Defender and Chief Appellate Defender.

### Results

This report contains the audited financial schedules for the two fiscal years ended June 30, 2012. We identified an error in the June 30, 2011, General Fund, fund balance of a material amount. The report contains four recommendations to implement internal controls over financial reporting and safeguard office assets as well as to comply with state policies.

Recommendation Concurrence	
Concur	4
Partially Concur	0
Do Not Concur	0
<b>Source: Agency audit response included in final report.</b>	

For a complete copy of the report (12-28) or for further information, contact the Legislative Audit Division at 406-444-3122; e-mail to [lad@mt.gov](mailto:lad@mt.gov); or check the web site at <http://leg.mt.gov/audit>  
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# Chapter I – Introduction

## **Introduction**

We performed a financial-compliance audit of the Office of the State Public Defender (office) for the two fiscal years ended June 30, 2012. The objectives of the audit were:

1. To obtain an understanding of the office's control structures to the extent necessary to support the audit of its financial schedules and, where necessary, make recommendations for improvement in the office's management and internal controls.
2. To determine the office's compliance with selected state laws and regulations during the two fiscal years ending June 30, 2012.
3. To determine whether the office's financial schedules present fairly its financial position and results of operations as of, and for each, of the fiscal years ended June 30, 2012, and June 30, 2011.

This report contains four recommendations to the office. In accordance with §5-13-307, MCA, we analyzed and disclosed, if significant, the costs of implementing the recommendations made in this report.

Auditing standards require us to communicate, in writing, deficiencies in internal control we identified as a result of audit objective #1 above and considered to be significant or material. A deficiency in internal control exists when the design or operation of a control does not allow management or employees to prevent or detect and correct misstatements on a timely basis. A material weakness is one or more deficiencies in internal control such that there is a reasonable possibility that a material misstatement of the entity's financial schedules will not be prevented or detected and corrected on a timely basis. A significant deficiency is one or more deficiencies in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Table 1 below outlines the status of significant deficiencies and material weaknesses we identified during this audit.

Table 1 <b><u>Summary of Deficiencies in Internal Control</u></b>		
Subject	Type of Deficiency	Page
Untimely Reviews over Recorded Liabilities	Material Weakness	3
Inadequate Controls over Payments Received by Mail	Significant Deficiency	4

## **Background**

The statewide public defender system was created in 2005 by the Montana Public Defender Act. The system unifies the state's public defense services in order to provide more effective assistance of counsel to qualifying citizens of Montana. Oversight of the system comes from the Public Defender Commission. The commission is comprised of 11 members who are appointed by the Governor and serve three-year staggered terms. The commission appoints a Chief Public Defender and a Chief Appellate Defender to administer the system. The Chief Public and Appellate Defenders hire staff to carry out the functions of the office.

Changes occurred in upper management during the two fiscal years audited. Additionally, the 62nd Legislature enacted revisions to general laws governing organization and operations including requiring that the Chief Appellate Defender report directly to the Public Defender Commission instead of reporting to the Chief Public Defender. Other operational changes included the method of fee collection and eligible fee rates to be applied by courts. Further, the 62nd Legislature responded to the increase in demand for the public defender services by increasing the office's appropriation authority in fiscal years 2011–12 and 2012–13.

The Statewide Public Defender System is comprised of two programs with current full-time equivalent (FTE) positions as presented below.

**Public Defender Program (199.5 authorized FTE)**–The program is organized into 11 regions with a regional deputy public defender supervising each region. The central office in Butte supports the regional offices and the Appellate Defender Program. The regional offices employ and contract with attorneys to provide legal representation to qualifying individuals including criminal defense, child abuse or neglect, and involuntary commitment. The program employs over 100 attorneys and contracts with about 200 attorneys. The regional offices are located in Kalispell, Missoula, Great Falls, Helena, Butte, Havre, Lewistown, Bozeman, Billings, Glendive, and Miles City. The budgeted FTE in fiscal year 2011-12 of 199.5 FTE was an increase of 8 FTE from fiscal year 2010-11.

**Appellate Defender Program (9 authorized FTE)**–The program provides appellate representation to clients of the statewide public defender system and is located in Helena. The appellate program assists in the representation of indigent clients who qualify for an appointed attorney under state statutes governing appeals and post-conviction relief.

## Chapter II–Findings and Recommendations

### Untimely Reviews over Recorded Liabilities

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**The Office of the State Public Defender (office) did not review its recorded liabilities in time to prevent a material misstatement of its financial schedules.**

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The office collects and aggregates information from its regional offices in order to record its liabilities at fiscal year-end on the accounting records. Liabilities include obligations for goods and services received but not paid at June 30. The office overestimated its fiscal years 2006 through 2009 accrued liabilities in the General Fund by \$262,827. The overestimate remained on the financial records without adjustment for two complete years. Because the amounts are partially estimated, it is reasonable to have some difference between the estimated liability and the actual liability. The office identified and made appropriate adjustments to the excess liabilities in fiscal year 2012. However, the office did not clean-up the prior year liabilities as directed in state accounting policy before the close of fiscal year 2010-11, resulting in a material error in the accounting records.

The office stated they used a year-end checklist with a step to review previously established liabilities, but they did not make the necessary adjustments to the accounting records. State agencies are required by state accounting policy to implement internal control procedures to ensure all transactions necessary for compliance with generally accepted accounting principles are recorded in the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) before fiscal year-end. Therefore, the office should follow its established internal controls to ensure they annually review all liabilities, including those established in prior years, to determine whether they continue to be valid obligations and make necessary adjustments before fiscal year-end.

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#### **RECOMMENDATION #1**

*We recommend the office follow its established internal controls to ensure only valid obligations are recorded on the accounting records.*

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## **Inadequate Controls over Payments Received by Mail**

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### **The office does not have adequate internal controls to secure payments received by mail until deposited.**

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The office received approximately \$250,000 in payments by mail for fiscal years 2011-12 and 2010-11 combined. All payments received by mail are directed to the central administrative office in Butte. The majority of payments received are for public defender fee assessments required by state law to be deposited into the State Special Revenue Fund; expectation for collection on these accounts is low. We found deficiencies in the office's procedures for securing these payments.

State accounting policy requires that agencies develop appropriate internal control procedures based upon their business processes. It states that collections should be appropriately secured until deposited. The office's existing procedures do not require strict control, such as utilization of a locked box and fixed responsibility for access to such a locked box, when mail is delivered to the central administrative office location. A number of employees have access to the mail which may contain payments. The central administrative office shares the location with the Butte regional office. Office personnel said the regional office sometimes receives the mail first to remove the region's mail, then delivers the remaining mail to the central office administrative staff.

Additionally, the office's policies designate one employee to open mail and post the payment on a daily receipts log. The office does not send statements to clients that would allow external validation that payments are properly applied to accounts. Given the office's business process for not sending statements of account to clients, we believe having one individual opening mail and logging payments is insufficient to ensure all payments delivered by mail are logged. State accounting policy advises agencies with a large volume of coin and currency received in the mail to assign more than one person to the mail opening and receipt process. This policy describes one way that the office can strengthen its internal controls over the security of payments received by mail.

The office's current practice increases the exposure of payments to loss or theft, placing employees in a precarious position. Office personnel indicated they do not have sufficient resources to have two employees open mail, and they have confidence in the current controls in place because they spent considerable time ensuring roles within the collection process were segregated. We agree that the office's segregation of duties controls are adequately designed after payments are posted on the daily receipts log. However, without security controls from the time of mail delivery to the time payments are logged, the office cannot ensure all payments received by mail are secured and deposited into the office's account.

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**RECOMMENDATION #2**

*We recommend the office comply with state accounting policy by implementing internal controls to ensure all payments received by mail are secured until deposited.*

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## **Public Defender Fee Accounts Receivable**

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**The office does not have policies in place over the transfer of uncollectible public defender fee accounts receivable.**

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The 62nd Legislature added language to §47-1-102, MCA, “to ensure that clients of the statewide public defender system pay reasonable costs for services provided by the system based on the clients’ financial ability to pay.” State law provides that courts are responsible for assessing public defender fees to clients.

Effective in fiscal year 2011-12, the clerks of court collect public defender fee assessments and transfer the money to the state, but they do not collect on pre-existing accounts. As of June 30, 2012, the office was responsible for the direct collection of approximately 3,800 accounts, totaling \$938,066.

State accounting policy states, “Agencies should have policies in place to ensure timely billing of receivables to help lower the number of uncollectible receivables recorded on the accounting system... When an agency has made all reasonable attempts and cannot collect a valid accounts receivable, it must transfer the account to the Department of Revenue or an outside collection agency.” The policy indicates receivable accounts should not sit permanently idle on the state’s accounting records.

Currently, the office tracks public defender fee assessments by collecting judgments and lower court tickets that show public defender fee assessments, but it does not have policies or procedures in place as prescribed in state accounting policy to pursue collection and transfer of bad debts to the Department of Revenue. Office management explained they do not pursue collection of assessments due to specific legal obstacles which complicate the process. Section 46-18-251, MCA, sets the order in which payments received by office clients are to be paid; and the office does not know whether its clients have satisfied higher priority restitution and assessments set out in the court’s judgment. Office management expressed that pursuing collection conflicts with its ability to represent clients, another purpose of the system expressed in §47-1-102, MCA.

We agree that the office has valid concerns. However, for all outstanding and overdue accounts, the office can obtain information from courts on an annual basis in order to determine when the client has satisfied all claims of higher priority. After the office identifies these accounts, the office can demonstrate it has taken all reasonable efforts to collect on the account, and therefore, transfer the account to the Department of Revenue or an outside collection agency for further collection efforts. We believe this process avoids potential conflict of interest between the office and its ability to represent their clients.

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**RECOMMENDATION #3**

*We recommend the office:*

- A. *Determine whether clients have satisfied higher priority restitution and assessment requirements; and*
  - B. *Transfer the accounts to the Department of Revenue or an outside collection agency in accordance with state policy.*
- 

## **Documentation of Pay Decisions**

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**The office did not fully comply with documentation requirements of the statewide pay plan policy.**

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During the audit, we identified that the office's employee personnel records had incomplete documentation of pay decisions for staff attorneys. The office bases pay decisions on its consideration of union agreement requirements. The union agreement for staff attorneys identifies pay rates based on the consideration of complexity of casework, level of expertise, and years of service. The files contained certain information to support pay decisions such as the employee's years of service. However, they did not include documentation of the employee's complexity of casework and level of expertise. The pay plan policy requires state agencies to document and maintain all pay decisions in the employee's permanent personnel record. In the case of staff attorneys, this would include documentation of the consideration of items listed in the union agreement. Office personnel believed that the years of service records and the rates in SABHRS provide enough documentation to meet pay policy requirements. Although we did not identify pay-rate errors specifically, the potential exists for personnel to be paid at incorrect rates, compared to employee's complexity of cases and level of expertise without adequate documentation of payroll decisions.



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**RECOMMENDATION #4**

*We recommend the office comply with state policy by documenting the basis for pay decisions.*

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# **Independent Auditor's Report and Office Financial Schedules**



## LEGISLATIVE AUDIT DIVISION

Tori Hunthausen, Legislative Auditor  
Deborah F. Butler, Legal Counsel



Deputy Legislative Auditors  
Cindy Jorgenson  
Angie Grove

INDEPENDENT AUDITOR'S REPORT

The Legislative Audit Committee  
of the Montana State Legislature:

We have audited the accompanying Schedule of Changes in Fund Balances, Schedule of Total Revenues, and Schedule of Total Expenditures of the Office of the State Public Defender (office) for the fiscal year ended June 30, 2012, and the Schedule of Changes in Fund Balances, Schedule of Total Revenues & Transfers-In, and Schedule of Total Expenditures of the office for the fiscal year ended June 30, 2011. The information contained in these financial schedules is the responsibility of the office's management. Our responsibility is to express opinions on these financial schedules based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial schedules are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial schedules. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial schedule presentation. We believe that our audit provides a reasonable basis for our opinions.

As described in note 1, these financial schedules are prepared on the basis of Montana state accounting policy, which is a comprehensive basis of accounting other than accounting principles generally accepted in the United States of America. The schedules are not intended to be a complete presentation and disclosure of the office's assets and liabilities.

The office did not adjust accrued liabilities, established in prior years to reflect the true value of outstanding obligations at June 30, 2010, and 2011. As a result, the General Fund's Fund Balance is understated by \$262,827 at July 1, 2010, June 30, 2011, and July 1, 2011, on the Schedules of Changes in Fund Balances.

In our opinion, except for the effect of the error discussed in the preceding paragraph, the financial schedules referred to above present fairly, in all material respects, the results of operations and changes in fund balances of the Office of the State Public Defender for each of the fiscal years ended June 30, 2012, and 2011, in conformity with the basis of accounting described in note 1.

Respectfully submitted,

*/s/ Cindy Jorgenson*

Cindy Jorgenson, CPA  
Deputy Legislative Auditor

August 15, 2012



PUBLIC DEFENDER  
SCHEDULE OF CHANGES IN FUND BALANCES  
FOR THE FISCAL YEAR ENDED JUNE 30, 2012

	General Fund	State Special Revenue Fund
FUND BALANCE: July 1, 2011	\$ <u>(1,495,204)</u>	\$ <u>1,819</u>
ADDITIONS		
Budgeted Revenues	73	192,481
Nonbudgeted Revenues		31,662
Direct Entries to Fund Balance	<u>23,093,156</u>	
Total Additions	<u>23,093,229</u>	<u>224,143</u>
REDUCTIONS		
Budgeted Expenditures	23,284,948	99,958
Nonbudgeted Expenditures		31,658
Prior Year Expenditures Adjustments	<u>(7,100)</u>	
Total Reductions	<u>23,277,848</u>	<u>131,616</u>
FUND BALANCE: June 30, 2012	\$ <u><u>(1,679,823)</u></u>	\$ <u><u>94,346</u></u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-9.

PUBLIC DEFENDER  
SCHEDULE OF CHANGES IN FUND BALANCES  
FOR THE FISCAL YEAR ENDED JUNE 30, 2011

	General Fund	State Special Revenue Fund	Federal Special Revenue Fund
FUND BALANCE: July 1, 2010	\$ <u>(1,438,115)</u>	\$ <u>20,587</u>	\$ <u>19,474</u>
ADDITIONS			
Budgeted Revenues & Transfers-In	103	123,994	36,175
Nonbudgeted Revenues & Transfers-In	11,791		
Prior Year Revenues & Transfers-In Adjustments	11,337		(19,474)
Direct Entries to Fund Balance	<u>21,197,060</u>		
Total Additions	<u>21,220,291</u>	<u>123,994</u>	<u>16,701</u>
REDUCTIONS			
Budgeted Expenditures	21,260,758	142,762	36,175
Nonbudgeted Expenditures	6,915		
Prior Year Expenditures Adjustments	<u>9,707</u>		
Total Reductions	<u>21,277,380</u>	<u>142,762</u>	<u>36,175</u>
FUND BALANCE: June 30, 2011	\$ <u><u>(1,495,204)</u></u>	\$ <u><u>1,819</u></u>	\$ <u><u>0</u></u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-9.



PUBLIC DEFENDER  
SCHEDULE OF TOTAL REVENUES  
FOR THE FISCAL YEAR ENDED JUNE 30, 2012

	General Fund	State Special Revenue Fund	Total
<b>TOTAL REVENUES BY CLASS</b>			
Charges for Services		\$ 191,890	\$ 191,890
Investment Earnings		52	52
Grants, Contracts, and Donations		32,201	32,201
Miscellaneous	\$ 73		73
Total Revenues	73	224,143	224,216
Less: Nonbudgeted Revenues		31,662	31,662
Actual Budgeted Revenues	73	192,481	192,554
Estimated Revenues	567	135,691	136,258
Budgeted Revenues Over (Under) Estimated	\$ (494)	\$ 56,790	\$ 56,296
<b>BUDGETED REVENUES OVER (UNDER) ESTIMATED BY CLASS</b>			
Taxes	\$ (417)		\$ (417)
Charges for Services		91,890	91,890
Investment Earnings		(2)	(2)
Grants, Contracts, and Donations		(35,098)	(35,098)
Miscellaneous	(77)		(77)
Budgeted Revenues Over (Under) Estimated	\$ (494)	\$ 56,790	\$ 56,296

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-9.

PUBLIC DEFENDER  
SCHEDULE OF TOTAL REVENUES & TRANSFERS-IN  
FOR THE FISCAL YEAR ENDED JUNE 30, 2011

**TOTAL REVENUES & TRANSFERS-IN BY CLASS**

	General Fund	State Special Revenue Fund	Federal Special Revenue Fund	Total
Taxes	\$ 2,566			\$ 2,566
Charges for Services		\$ 123,994		123,994
Transfers-in			16,701	16,701
Inception of Lease/Installment Contract	20,562			20,562
Miscellaneous	103			103
Total Revenues & Transfers-In	23,231	123,994	16,701	163,926
Less: Nonbudgeted Revenues & Transfers-In	11,791			11,791
Prior Year Revenues & Transfers-In Adjustments	11,337		(19,474)	(8,137)
Actual Budgeted Revenues & Transfers-In	103	123,994	36,175	160,272
Estimated Revenues & Transfers-In	617	121,759	36,265	158,641
Budgeted Revenues & Transfers-In Over (Under) Estimated	<u>(514)</u>	<u>2,235</u>	<u>(90)</u>	<u>1,631</u>

**BUDGETED REVENUES & TRANSFERS-IN OVER (UNDER) ESTIMATED BY CLASS**

Taxes	\$ (417)		\$ (417)
Charges for Services		\$ 2,235	2,235
Transfers-in			(90)
Miscellaneous	(97)		(97)
Budgeted Revenues & Transfers-In Over (Under) Estimated	<u>(514)</u>	<u>2,235</u>	<u>1,631</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-9.

PUBLIC DEFENDER  
SCHEDULE OF TOTAL EXPENDITURES  
FOR THE FISCAL YEAR ENDED JUNE 30, 2012

	<u>Office of Appellate Defender</u>	<u>Office of Public Defender</u>	<u>Total</u>
PROGRAM (ORG) EXPENDITURES			
Personal Services			
Salaries	\$ 537,604	\$ 9,878,495	\$ 10,416,099
Employee Benefits	182,166	3,228,823	3,410,989
Total	<u>719,770</u>	<u>13,107,318</u>	<u>13,827,088</u>
Operating Expenses			
Other Services	328,876	6,836,505	7,165,381
Supplies & Materials	6,934	316,606	323,540
Communications	21,710	557,866	579,576
Travel	323	148,855	149,178
Rent	61,939	1,102,631	1,164,570
Utilities		1,015	1,015
Repair & Maintenance	1,697	96,903	98,600
Other Expenses		55,262	55,262
Total	<u>421,479</u>	<u>9,115,643</u>	<u>9,537,122</u>
Equipment & Intangible Assets			
Equipment		45,254	45,254
Total		<u>45,254</u>	<u>45,254</u>
Total Expenditures	<u>\$ 1,141,249</u>	<u>\$ 22,268,215</u>	<u>\$ 23,409,464</u>
EXPENDITURES BY FUND			
General Fund	\$ 1,141,249	\$ 22,136,599	\$ 23,277,848
State Special Revenue Fund		131,616	131,616
Total Expenditures	<u>1,141,249</u>	<u>22,268,215</u>	<u>23,409,464</u>
Less: Nonbudgeted Expenditures		31,658	31,658
Prior Year Expenditures Adjustments		(7,100)	(7,100)
Actual Budgeted Expenditures	<u>1,141,249</u>	<u>22,243,657</u>	<u>23,384,906</u>
Budget Authority	1,141,250	22,452,134	23,593,384
Unspent Budget Authority	<u>\$ 1</u>	<u>\$ 208,477</u>	<u>\$ 208,478</u>
UNSPENT BUDGET AUTHORITY BY FUND			
General Fund	\$ 1	\$ 173,394	\$ 173,395
State Special Revenue Fund		35,083	35,083
Unspent Budget Authority	<u>\$ 1</u>	<u>\$ 208,477</u>	<u>\$ 208,478</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-9.

PUBLIC DEFENDER  
SCHEDULE OF TOTAL EXPENDITURES  
FOR THE FISCAL YEAR ENDED JUNE 30, 2011

	<u>Office of Appellate Defender</u>	<u>Office of Public Defender</u>	<u>Total</u>
PROGRAM (ORG) EXPENDITURES			
Personal Services			
Salaries	\$ 483,876	\$ 9,074,254	\$ 9,558,130
Hourly Wages		1,710	1,710
Employee Benefits	167,114	3,228,645	3,395,759
Total	<u>650,990</u>	<u>12,304,609</u>	<u>12,955,599</u>
Operating Expenses			
Other Services	278,974	6,124,893	6,403,867
Supplies & Materials	6,405	279,796	286,201
Communications	21,241	390,110	411,351
Travel	829	127,325	128,154
Rent	51,697	1,004,068	1,055,765
Utilities		1,116	1,116
Repair & Maintenance	1,204	94,152	95,356
Other Expenses		65,621	65,621
Total	<u>360,350</u>	<u>8,087,081</u>	<u>8,447,431</u>
Equipment & Intangible Assets			
Equipment	9,225	36,792	46,017
Total	<u>9,225</u>	<u>36,792</u>	<u>46,017</u>
Debt Service			
Capital Leases	1,660	5,610	7,270
Total	<u>1,660</u>	<u>5,610</u>	<u>7,270</u>
Total Expenditures	<u>\$ 1,022,225</u>	<u>\$ 20,434,092</u>	<u>\$ 21,456,317</u>
EXPENDITURES BY FUND			
General Fund	\$ 1,022,225	\$ 20,255,155	\$ 21,277,380
State Special Revenue Fund		142,762	142,762
Federal Special Revenue Fund		36,175	36,175
Total Expenditures	<u>1,022,225</u>	<u>20,434,092</u>	<u>21,456,317</u>
Less: Nonbudgeted Expenditures	9,225	(2,310)	6,915
Prior Year Expenditures Adjustments		9,707	9,707
Actual Budgeted Expenditures	<u>1,013,000</u>	<u>20,426,695</u>	<u>21,439,695</u>
Budget Authority	<u>1,013,122</u>	<u>20,483,927</u>	<u>21,497,049</u>
Unspent Budget Authority	<u>\$ 122</u>	<u>\$ 57,232</u>	<u>\$ 57,354</u>
UNSPENT BUDGET AUTHORITY BY FUND			
General Fund	\$ 122	\$ 47,998	\$ 48,120
State Special Revenue Fund		1,694	1,694
Federal Special Revenue Fund		7,540	7,540
Unspent Budget Authority	<u>\$ 122</u>	<u>\$ 57,232</u>	<u>\$ 57,354</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-9.

# Office of the State Public Defender

## Notes to the Financial Schedules

### For the Two Fiscal Years Ended June 30, 2012

## 1. Summary of Significant Accounting Policies

### **Basis of Accounting**

The office uses the modified accrual basis of accounting, as defined by state accounting policy, for its Governmental fund category (General, State Special Revenue, and Federal Special Revenue). In applying the modified accrual basis, the office records:

- ♦ Revenues when it receives cash or when receipts are realizable, measurable, earned, and available to pay current period liabilities.
- ♦ Expenditures for valid obligations when the office incurs the related liability and it is measurable, with the exception of the cost of employees' annual and sick leave. State accounting policy requires the office to record the cost of employees' annual and sick leave when used or paid.

Expenditures and expenses may include: entire budgeted service contracts even though the office receives the services in a subsequent fiscal year; goods ordered with a purchase order before fiscal year-end, but not received as of fiscal year-end; and equipment ordered with a purchase order before fiscal year-end.

### **Basis of Presentation**

The financial schedule format was adopted by the Legislative Audit Committee. The financial schedules are prepared from the transactions posted to the state's accounting system without adjustment.

The office uses the following funds:

### **Governmental Fund Category**

- ♦ **General Fund** – to account for all financial resources except those required to be accounted for in another fund. The substantial portion of the office's financial activity are included in the General Fund.
- ♦ **State Special Revenue Fund** – to account for proceeds of specific revenue sources that are legally restricted to expenditures for specific state program purposes. The office State Special Revenue Fund includes collections for legal services provided pursuant to §47-1-110, MCA. Additionally, the office received a grant from Missoula County to staff one social worker position in the Missoula Regional office that the office accounts for in its State Special Revenue Fund.

- ♦ **Federal Special Revenue Fund** – to account for activities funded from federal revenue sources. The office Federal Special Revenue Fund includes money subgranted from the Montana Board of Crime Control. The fiscal year 2010-11 subgrant includes American Recovery and Reinvestment Act funds. The grant ended in fiscal year 2010-11.

## **2. General Fund Balance**

The negative fund balance in the General Fund does not indicate overspent appropriation authority. The office has authority to pay obligations from the statewide General Fund within its appropriation limits. The office expends cash or other assets from the statewide fund when it pays General Fund obligations. The office's outstanding liabilities exceed the assets it has placed in the fund, resulting in negative ending General Fund balances for each of the fiscal years ended June 30, 2012, and June 30, 2011.

## **3. Direct Entries to Fund Balance**

Direct entries to fund balance in the General Fund include entries generated by SABHRS to reflect the flow of resources within individual funds shared by separate agencies.

OFFICE OF THE STATE  
PUBLIC DEFENDER

OFFICE RESPONSE





## OFFICE OF THE STATE PUBLIC DEFENDER



BRIAN SCHWEITZER  
GOVERNOR

## STATE OF MONTANA

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www.publicdefender.mt.gov

44 WEST PARK STREET  
BUTTE, MONTANA 59701

RECEIVED

OCT 05 2012

LEGISLATIVE AUDIT DIV.

October 5, 2012

Tori Hunthausen, CPA  
Legislative Auditor  
Legislative Audit Division  
P.O. Box 201705  
Helena, MT 59620-1705

Re: Response to Legislative Audit Recommendations

Dear Ms. Hunthausen:

Thank you for the opportunity to respond to the financial audit report for the Office of the State Public Defender. We have reviewed the recommendations in the report and our responses are as follows:

**Recommendation #1:**

*We recommend the office follow its established internal controls to ensure only valid obligations are recorded on the accounting records.*

**Response:** We concur. The agency fixed this item before the close of fiscal 2012. To assure compliance in the future, the agency will strengthen an existing internal control. This control requires the review of all liabilities before the close of a fiscal year to assess their validity.

**Recommendation #2:**

*We recommend the office comply with state accounting policy by implementing internal controls to ensure all payments received by mail are secured until deposited.*

**Response:** We concur. The agency will develop and institute a temporary process that ensures all payments received by mail are secure until deposited by adopting the method of using two individuals to open mail, although the agency does not currently have the resources to keep this process in place over the long term.

However, the agency believes that a statement process would be a much stronger internal control than having two people open mail. As noted in the audit, the agency does not provide a statement to those assessed with a fee that shows the amount assessed, payments made, and the balance due. By providing statements to those assessed fees, they can inform us about any errors or omissions. To institute this level of control the agency has submitted a decision package for the 2015 biennium that requests resources to establish a revenue function that includes the following: revenue management, accounting, cash collection and reporting, and collections. Our ability to institute this control is dependent on the approval and funding of this budget item.

**Recommendation #3:**

*We recommend the office:*

- A. *Determine whether clients have satisfied higher priority restitution and assessment requirements; and*
- B. *Transfer the accounts to the Department of Revenue or an outside collection agency in accordance with state policy.*

**Response:** Part A: We concur. The agency will develop and institute a process to determine whether clients have satisfied higher priority restitution and assessment requirements.

As noted in the audit, the agency does not have policies and procedures in place to pursue collection of fees. To institute this level of control the agency has submitted a decision package for the 2015 biennium that requests resources to establish a revenue function that includes the following: revenue management, accounting, cash collection and reporting, and collections. Our ability to institute this control is dependent on the approval and funding of this budget item.

Part B: We concur. We will work with Department of Revenue (DOR) personnel to develop a plan to comply with state law. The agency's planned revenue function will make all reasonable attempts to collect the debt before they send the account to DOR in accordance with their rules. The agency will also determine whether an account receivable created by a court order requires the approval of the court before it can be written off as a bad debt.

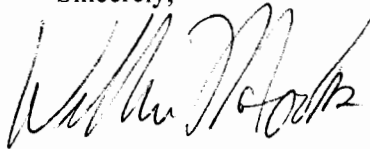
**Recommendation #4:**

*We recommend the office comply with state policy by documenting the basis for pay decisions.*

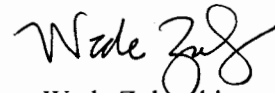
**Response:** We concur. We will institute internal controls to assure that adequate documentation exists on all pay adjustments.

We appreciate the legislative staff time devoted to this audit and appreciate them for acting in a helpful, cooperative and professional manner. We look forward to working with your office in the future.

Sincerely,



William F. Hooks  
Chief Public Defender



Wade Zolynski  
Chief Appellate Defender

cc: Cindy Jorgenson, Deputy Legislative Auditor  
Zac Yates, Legislative Auditor  
Jeane Carstensen-Garrett, Legislative Auditor  
Richard "Fritz" Gillespie, Chair, Montana Public Defender Commission