

Program Budget Comparison

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

Program Budget Comparison								
Budget Item	Base Fiscal 2014	Approp. Fiscal 2015	Budget Fiscal 2016	Budget Fiscal 2017	Biennium Fiscal 14-15	Biennium Fiscal 16-17	Biennium Change	Biennium % Change
FTE	202.50	202.50	240.00	240.00	202.50	240.00	37.50	18.52 %
Personal Services	14,293,630	14,939,083	19,491,562	19,634,198	29,232,713	39,125,760	9,893,047	33.84 %
Operating Expenses	6,709,591	6,022,917	7,724,811	7,694,011	12,732,508	15,418,822	2,686,314	21.10 %
Equipment & Intangible Assets	0	18,554	10,000	0	18,554	10,000	(8,554)	(46.10)%
Total Costs	\$21,003,221	\$20,980,554	\$27,226,373	\$27,328,209	\$41,983,775	\$54,554,582	\$12,570,807	29.94 %
General Fund	20,741,431	20,706,628	26,964,583	27,066,419	41,448,059	54,031,002	12,582,943	30.36 %
State/Other Special Rev. Funds	261,790	273,926	261,790	261,790	535,716	523,580	(12,136)	(2.27)%
Total Funds	\$21,003,221	\$20,980,554	\$27,226,373	\$27,328,209	\$41,983,775	\$54,554,582	\$12,570,807	29.94 %

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

Office of Public Defender Major Budget Highlights
<ul style="list-style-type: none"> • Compared to the 2015 legislative budget, changes to the budget are for: <ul style="list-style-type: none"> ◦ Funding to annualize the 2013 legislative pay plan ◦ Funding to add 37.50 FTE to address caseloads ◦ Funding for increased contract attorney costs to address caseloads ◦ Funding to provide a 2% annual rate increase for contract attorneys • The Governor proposed funding to add 37.5 FTE for: <ul style="list-style-type: none"> ◦ 23.50 FTE to make permanent the modified FTE used in the 2015 biennium to address caseloads ◦ 10.00 FTE to address caseloads ◦ 4.00 FTE to provide dedicated staff to process eligibility applications and assist clients to access services they may be eligible to receive based on indigence situation
Major LFD Issues
<ul style="list-style-type: none"> • Funding for FTE funded in the 2015 biennium with SB 410 funds is more appropriately categorized as a new proposal • Outfitting costs for new FTE are not recurring expenses and the legislature may want to designate them as one-time-only

Program Discussion -

FY 2016 and FY 2017 contain any reductions in FTE made by the executive to implement the boilerplate language in HB 2. Though intended by the legislature, the FY 2014 and FY 2015 FTE levels do not reflect this language.

This program includes a number of proposed additions to address various challenges of the office. The proposals are discussed in detail in the following narrative, while the Agency Summary section of this agency's narrative discusses the challenges and the executive's proposed response in total.

Personal Services

In the FY 2015 legislative budget, personal services comprised 58.0% of the program budget. The Governor proposes 71.6 % in FY 2016 and 71.8% in FY 2017. The increases in costs are due to:

- Requests for funding to add 33.50 FTE to address workload issues
- A request for funding to add 4.00 FTE to evaluate indigence eligibility and assist clients to receive public services
- A request for funding for career ladders for attorneys and non-attorney staff
- Funding to annualize pay increases funded in the legislative pay plan of the 2013 Legislature
- Funding to annualize pay increases funded in HB 2 of the 2013 Legislature for the attorney pay ladder
- Funding to annualize pay increases provided at the discretion of the office and funded out of the office's operating budget

For this program, 137 pay adjustments were funded within the agency's budget during FY 2014 in addition to the increases funded in HB 13 or the funded career ladder. These additional increases averaged 14.1% and added an estimated \$1.07 million to funding requirements in subsequent years. Of these increases 3 were for market adjustments and 134 were for negotiated pay settlement adjustments.

Supplemental Appropriation

The executive transferred nearly \$672,000 of FY 2015 funding into FY 2014 to fund budget shortfalls related to caseloads, capital case shortfall, and low vacancy savings due to reduced turnover. The executive requests supplemental funding for \$100,000 projected shortfalls of FY 2015 budget. However, this funding is preliminary and subject to change as the office proceeds further into the fiscal year.

Funding

The following table shows proposed program funding by source from all sources of authority.

Office of the Public Defender, 01-Office of Public Defender Funding by Source of Authority						
Funds	HB2	Non-Budgeted Proprietary	Statutory Appropriation	Total All Sources	% Total All Funds	
01100 General Fund	54,031,002	0	0	54,031,002	99.04 %	
02249 Governor's Office Operations Fund	0	0	0	0	0.00 %	
02250 Court Ordered Sentencing Costs	523,580	0	0	523,580	100.00 %	
State Special Total	\$523,580	\$0	\$0	\$523,580	0.96 %	
Federal Special Total	\$0	\$0	\$0	\$0	0.00 %	
Proprietary Total	\$0	\$0	\$0	\$0	0.00 %	
Total All Funds	\$54,554,582	\$0	\$0	\$54,554,582		

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 utilizing the FY 2015 Legislative base, present law adjustments, and new proposals.

Budget Summary by Category								
Budget Item	-----General Fund-----				-----Total Funds-----			
	Leg. Budget Fiscal 2016	Leg. Budget Fiscal 2017	Leg. Biennium Fiscal 16-17	Percent of Budget	Leg. Budget Fiscal 2016	Leg. Budget Fiscal 2017	Leg. Biennium Fiscal 16-17	Percent of Budget
2015 Budget	25,755,222	25,755,222	51,510,444	95.34 %	25,942,164	25,942,164	51,884,328	95.11 %
PL Adjustments	45,693	91,567	137,260	0.25 %	120,541	166,415	286,956	0.53 %
New Proposals	1,163,668	1,219,630	2,383,298	4.41 %	1,163,668	1,219,630	2,383,298	4.37 %
Total Budget	\$26,964,583	\$27,066,419	\$54,031,002		\$27,226,373	\$27,328,209	\$54,554,582	

Program Reorganization -

The 2013 Legislature appropriated funding to the Office of State Public Defender with the function for conflict coordinator as a part of the budget for this program. During the 2015 biennium, the executive reorganized this function into this separate budget program. The reorganization transferred funding and 3.00 FTE from this program to a stand-alone Conflict Coordinator program.

Present Law Adjustments -

The "Present Law Adjustments" table shows the changes from FY 2015 legislative appropriation to the budget proposed by the executive. PSPL adjusts all personal services. LGPL provides for adjustments to other expenditures such as operating

expenses. Each is discussed in the narrative that follows. Total funds in the Present Law Adjustments table do not include proprietary funds budgeted in House Bill 2.

	-----Fiscal 2016-----					-----Fiscal 2017-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
DP 98 - LEG. Personal Services Present Law	0.00	3,406,531	74,848	0	3,481,379	0.00	3,551,190	74,848	0	3,626,038
DP 99 - LEG. Present Law	0.00	(3,360,838)	0	0	(3,360,838)	0.00	(3,459,623)	0	0	(3,459,623)
Grand Total All Present Law Adjustments	0.00	\$45,693	\$74,848	\$0	\$120,541	0.00	\$91,567	\$74,848	\$0	\$166,415

DP 98 - LEG. Personal Services Present Law -

The following table outlines various components of the changes included in the PS PL adjustments.

Personal Services Present Law Adjustments					
FY 2016					
CP 98 PSPL Item	FTE	General Fund	State Special	Federal Special	Total Funds
State Share Health Insurance	196.54	\$94,060	\$0	\$0	\$94,060
Executive Implementation of 2015 Pay Increase		263,202	-	-	263,202
Fully Fund 2015 Legislatively Authorized FTE		271,550	-	-	271,550
Other					
Annualize Current Positions to Support Workload	23.50	1,790,532	-	-	1,790,532
Non-Attorney Pay Ladder and Market Adjustment	0.00	500,000	-	-	500,000
Attorney Pay Ladder	0.00	400,000	-	-	400,000
Additional Staff to Support Caseloads	10.00	734,752	-	-	734,752
Reorganization	(3.00)	(236,026)	-	-	(236,026)
Remainder of Other	0.00	(411,540)	74,848	-	(336,692)
Total Other	30.50	2,777,718	74,848	-	2,852,566
Personal Services Present Law Adjustments	227.04	\$3,406,531	\$74,848	\$0	\$3,481,379
FY 2017					
CP 98 PSPL Item	FTE	General Fund	State Special	Federal Special	Total Funds
State Share Health Insurance	196.54	\$94,060	\$0	\$0	\$94,060
Executive Implementation of 2015 Pay Increase		263,202	-	-	263,202
Fully Fund 2015 Legislatively Authorized FTE		271,550	-	-	271,550
Other					
Annualize Current Positions to Support Caseloads	23.50	1,786,026	-	-	1,786,026
Non-Attorney Pay Ladder and Market Adjustment	0.00	500,000	-	-	500,000
Attorney Pay Ladder	0.00	500,000	-	-	500,000
Additional Staff to Support Caseloads	10.00	732,887	-	-	732,887
Reorganization	(3.00)	(236,026)	-	-	(236,026)
Remainder of Other	0.00	(360,510)	74,848	-	(285,662)
Total Other	30.50	2,922,377	74,848	-	2,997,225
Personal Services Present Law Adjustments	227.04	\$3,551,190	\$74,848	\$0	\$3,626,038

The executive has proposed to increase funding for personal services by 22.9% in FY 2016 and by 23.9% in FY 2017 compared to the FY 2015 legislative budget.

Annualize Current Positions to Support Caseloads - The executive requests funding to add 23.50 FTE to address caseload issues including 13.50 FTE lawyers, 6.50 FTE legal secretary, 2.00 FTE administrative assistant, 1.00 FTE human services specialist, and 0.50 FTE secretary.

**LFD
COMMENT**

Caseload Growth - Modified Staff in the 2015 Biennium

The program experienced a 17 percent increase in direct appeals for FY 2012, a 15% increase during FY 2013 and another 5% increase during FY 2014. During the 2015 biennium, the executive used modified FTE to address the workload impacts of this caseload growth.

The positions were funded in the 2015 biennium with the following funding sources but were not part of the base positions used to develop the 2015 or 2017 biennia funding:

- 21.50 FTE were funded with one-time-only funds from a transfer of SB 410 state special revenue from the appropriation made to the Governor's Office
- 2.00 FTE were funded as modified positions with FY 2014 and FY 2015 HB 2 operating funds

See the Agency Summary section for a discussion of how the caseload growth has impacted attorney workloads and how this would impact workloads as compared to the Public Defender Commission standards for managing staff caseloads.

**LFD
ISSUE**

More Appropriately Categorized as a New Proposal

The executive added 21.50 FTE in the 2015 biennium with one-time funding from SB 410. As the funding was one-time-only, these staff should be requested as a new proposal and not a present law request. The legislature may want to direct staff to designate the portion of the request associated with the 21.50 FTE and their associated operating costs as a new proposal.

Non-Attorney Pay Ladder - The executive requests funding for market adjustments and a career ladder for non-attorney staff to address staff turnover issues. The funding would move staff pay from the 2006 market rates to the 2014 market survey conducted by the Department of Administration.

Attorney Pay Ladder - The executive requests funding for the attorney career ladder for appellate attorneys. The career ladder provides incremental competency pay adjustments under a pay schedule for employees as they achieve certain educational and experiential milestones.

Non-Attorney Pay Ladder and Market Adjustment - The executive requests funding for market adjustments and a career ladder for non-attorney staff to address staff turnover issues. The funding would move staff pay from the 2006 market rates to the 2014 market survey conducted by the Department of Administration.

Additional Staff to Support Caseloads - The executive requests funding to add 10.00 FTE to address workload issues including 2.00 FTE Crime Investigator, 4.00 FTE Lawyer, and 4.00 FTE Paralegal Legal Assistant.

**LFD
COMMENT**

Caseload Growth – New Staff

The program experienced a 17% increase in direct appeals for FY 2012, a 15% increase during FY 2013, and another 5% increase during FY 2014. See the Agency Summary section for a discussion of how the caseload growth has impacted attorney caseloads and how this would impact caseloads as compared to the Public Defender Commission standards for managing staff caseloads.

Reorganization - The executive reorganized this agency to create a new program dedicated to administering conflict cases. Funding for 3.00 FTE was moved to the new program.

Remainder of Other - Changes that make up the remainder of the other adjustments include the following:

- Various program transfers and operating plan changes

The executive moved funding for personal services from this program to the Appellate Defender program to fund shortfalls in the funding for the attorney career ladder in that program. Additionally, state special revenue was moved from the Appellate Defender program to this program with a like amount of general fund transferred to the Appellate Defender program.

DP 99 - LEG. Present Law -

The following table outlines various components of the changes included in the LGPL adjustments.

Legislative Present Law Adjustments				
	FY 2016			
CP 99 Item	General Fund	State Special	Federal Special	Total Funds
Annualize Current Positions to Support Workload	58,530	-	-	58,530
Contract Attorney Caseload	350,000	-	-	350,000
Annualize Rental Agreements	217,840	-	-	217,840
Additional Staff to Support Caseloads	43,800	-	-	43,800
Reorganization	(4,038,298)	-	-	(4,038,298)
Other	7,290	-	-	7,290
Legislative Present Law Adjustments	(\$3,360,838)	\$0	\$0	(\$3,360,838)
	FY 2017			
CP 99 Item	General Fund	State Special	Federal Special	Total Funds
Annualize Current Positions to Support Caseloads	39,595	-	-	39,595
Contract Attorney Funding for Caseloads	350,000	-	-	350,000
Annualize Rental Agreements	217,840	-	-	217,840
Additional Staff to Support Caseloads	6,225	-	-	6,225
Reorganization	(4,038,298)	-	-	(4,038,298)
Other	(34,985)	-	-	(34,985)
Legislative Present Law Adjustments	(\$3,459,623)	\$0	\$0	(\$3,459,623)

The executive has proposed to reduce funding for all other expenditure categories excluding personal services by 31.3% in FY 2016 and by 32.2% in FY 2017 compared to the FY 2015 legislative budget. Changes that make up the other category include the following, while individually listed adjustments are described separately:

- The effects of various operating plan changes

The executive moved funding from personal services to operating expenses to fund shortages in operating costs.

Annualize Current Positions to Support Caseloads - Along with personal services funding for requests to add staff, the executive requests funding for operating costs to outfit offices and support the operations of the staff.

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Staff Outfitting Costs are One Time

FY 2016 funding includes \$8,350 in outfitting costs that are not ongoing to purchase computer equipment and software licenses, desks, and other office items for the new positions. The legislature may wish to designate this amount as one-time-only.

Contracted Attorney Funding for Caseloads - The executive requests funding for contract attorney costs to supplement agency staff to address caseload issues.

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COMMENT**

For further discussion of caseloads see the Agency Discussion in the Agency Summary section for this agency.

Annualize Rental Agreements - The executive requests funding for statewide office lease increases.

Additional Staff to Support Caseloads - Along with personal services funding for requests to add staff, the executive requests funding for operating costs to outfit offices and support the operations of the staff.

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ISSUE**

Staff Outfitting Costs are One Time

FY 2016 funding includes \$37,575 in outfitting costs that are not ongoing to purchase computer equipment and software licenses, desks, and other office items for the new positions. The legislature may wish to designate this amount as one-time-only.

Reorganization - The executive reorganized the agency to create a new program dedicated to coordination conflict cases. This reorganization moved operating costs for 3.00 FTE and funding for contracted attorneys to the new program.

New Proposals -

Total funds in the New Proposals table do not include proprietary funds budgeted in House Bill 2.

New Proposals	-----Fiscal 2016-----					-----Fiscal 2017-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
DP 100007 - Eligibility Techs. and Human Services Spec.	4.00	267,214	0	0	267,214	4.00	249,904	0	0	249,904
DP 100008 - Reverse Statewide 4% FTE Reduction - PG 1	8.96	571,770	0	0	571,770	8.96	570,357	0	0	570,357
DP 100009 - Contract Attorney Rate Adjustment - PG 1	0.00	74,684	0	0	74,684	0.00	149,369	0	0	149,369
DP 100010 - Public Defender Commission Discretionary Funding	0.00	250,000	0	0	250,000	0.00	250,000	0	0	250,000
Total	12.96	\$1,163,668	\$0	\$0	\$1,163,668	12.96	\$1,219,630	\$0	\$0	\$1,219,630

DP 100010 - Public Defender Commission Discretionary Funding -

The executive requests funding to be used at the discretion of the public defender commission to address criminal caseload growth, dependent and neglect caseload funding pressures, appellate caseload pressure, or any other unforeseen fiscal pressures the agency might experience. This funding would be distributed among the programs by the commission after needs are identified in a plan to the Office of Budget and Program Planning and approved by the budget director. The executive recommends that this funding be designated as biennial, restricted, and one-time-only.

DP 100007 - Eligibility Techs. and Human Services Spec. -

The executive requests funding to add 2.00 FTE eligibility technicians and 2.00 FTE human services specialists. The eligibility technicians would process indigence eligibility forms and make the initial determination of eligibility. The human services specialists would assist clients to access services they may be eligible to receive based on indigence situation.

LFD ISSUE	<p><u>Staff Outfitting Costs are One Time</u></p> <p>FY 2016 funding includes \$16,700 in outfitting costs that are not ongoing to purchase computer equipment and software licenses, desks, and other office items for the new positions. The legislature may wish to designate this amount as one-time-only.</p>
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DP 100009 - Contract Attorney Rate Adjustment - PG 1 -

The executive requests funding to increase the rate paid to contract attorneys by 2% in FY 2016 and by an additional 2% (4% total) in FY 2017.

DP 100008 - Reverse Statewide 4% FTE Reduction - PG 1 -

The executive requests funding for the addition of 8.96 FTE removed under the boilerplate language of HB 2 of the 2013 Legislature.