

### Agency Budget Comparison

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

Agency 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	217.50	217.50	256.00	256.00	217.50	256.00	38.50	17.70 %
Personal Services	15,487,059	16,209,123	21,001,395	21,152,582	31,696,182	42,153,977	10,457,795	32.99 %
Operating Expenses	11,217,720	9,561,836	13,009,921	13,096,914	20,779,556	26,106,835	5,327,279	25.64 %
Equipment & Intangible Assets	0	18,554	10,000	0	18,554	10,000	(8,554)	(46.10)%
<b>Total Costs</b>	<b>\$26,704,779</b>	<b>\$25,789,513</b>	<b>\$34,021,316</b>	<b>\$34,249,496</b>	<b>\$52,494,292</b>	<b>\$68,270,812</b>	<b>\$15,776,520</b>	<b>30.05 %</b>
General Fund	26,442,989	25,515,587	33,759,526	33,987,706	51,958,576	67,747,232	15,788,656	30.39 %
State/Other Special Rev. Funds	261,790	273,926	261,790	261,790	535,716	523,580	(12,136)	(2.27)%
<b>Total Funds</b>	<b>\$26,704,779</b>	<b>\$25,789,513</b>	<b>\$34,021,316</b>	<b>\$34,249,496</b>	<b>\$52,494,292</b>	<b>\$68,270,812</b>	<b>\$15,776,520</b>	<b>30.05 %</b>

### Mission Statement

The primary mission of the statewide public defender system is to provide effective assistance of counsel to indigent persons accused of crime and other persons in civil cases who are entitled by law to the assistance of counsel at public expense.

There is additional, more detailed information about the department in the agency profile. The profile may be viewed at: <http://leg.mt.gov/css/fiscal/publications.asp>

### Agency Highlights

<b>Office of State Public Defender Major Budget Highlights</b>
<ul style="list-style-type: none"> <li>• Compared to the FY 2015 legislative budget, funding changes are for:               <ul style="list-style-type: none"> <li>◦ Funding to annualize the pay plan of the 2013 Legislature</li> <li>◦ Requests to increase funding to contract with private attorneys to address caseloads and handle conflict cases</li> <li>◦ Requests to fund career ladders for both attorneys and non-attorney staff</li> <li>◦ Requests to add 38.50 FTE to address caseload and other workload issues</li> <li>◦ Requests to fund a 2% per year incremental increase in the rate paid to contract attorneys</li> </ul> </li> <li>• The Governor proposed to add staff to:               <ul style="list-style-type: none"> <li>◦ Address excess caseloads of attorneys</li> <li>◦ Dedicate staff for indigence eligibility processing</li> <li>◦ Relieve attorneys of administrative work by adding support staff and human services specialists</li> </ul> </li> </ul>
<b>Legislative Action Issues</b>
<ul style="list-style-type: none"> <li>• Staff outfitting costs are not recurring and the legislature may want to designate funding for outfitting costs of new staff as one-time-only</li> <li>• Present law requests for staff funded in the 2015 with SB 410 funds are better categorized as new proposals</li> </ul>

### Agency 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.

The Office of State Public Defender provides defense for indigent persons accused of crime and other persons in civil cases who are entitled by law to the assistance of counsel at public expense, such as any party in an abuse and neglect petition regardless of financial ability to retain private counsel. If a defendant meets the financial test for indigence, he or she is entitled to counsel from the office. In addition, judges can order the office to provide counsel regardless of qualification.

Therefore, with the exception of the particulars of means and asset tests that determine a defendant's indigence, the office has little control over the number or complexity of cases it must work.

The office provides defense council via a combination of state employed staff and contracted private attorneys. Contracted private attorneys: 1) serve as an augmentation to state FTE when caseloads for state FTE are such that resources are insufficient to address the caseloads and still provide effective assistance of counsel; 2) provide services in areas of the state where no agency FTE are assigned; and 3) represent clients in cases where a conflict situation exists.

#### *Office of Public Defender Challenges*

The Office of the Public Defender faces two significant, interrelated challenges:

1. Caseload growth and growth in open cases; and
2. Turnover in staff with resulting increased workload and potential impact on effectiveness of counsel.

#### Caseload and Caseload Growth

Office of Public Defender Case Trends FY 2010 to FY 2014								
Case Types	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2010 to FY 2014 Case Growth		Percent of All Types
Abuse and Neglect	2,258	2,219	3,061	3,129	3,029	771	34.1%	9.6%
Criminal	5,708	5,660	5,988	6,026	6,565	857	15.0%	20.7%
Guardianship	212	222	268	255	178	(34)	-16.0%	0.6%
Involuntary Commitment	844	915	1,058	983	1,046	202	23.9%	3.3%
Juvenile	917	971	1,081	1,193	1,052	135	14.7%	3.3%
Lower Court	17,721	17,677	19,456	20,394	19,835	2,114	11.9%	62.6%
<b>Total All Case Types</b>	<b>27,660</b>	<b>27,664</b>	<b>30,912</b>	<b>31,980</b>	<b>31,705</b>	<b>4,045</b>	<b>14.6%</b>	<b>100.0%</b>
Annual Change		0.0%	11.7%	3.5%	-0.9%			

The figure that shows the case trends from FY 2010 through FY 2014 reflects the number of new cases assigned to the office over this period. These cases are those in which the defendant was either indigent or met some other requirement under the Montana Public Defender Act, or where the judge overseeing the case assigned the office to provide counsel regardless of qualification. The figure shows that from FY 2011 to FY 2014 the office saw a 14.6% growth in cases. The office saw an 11.9% growth in cases heard in city, municipal, and justice courts, which comprises 62.6% of all cases. Of note, abuse and neglect cases, which comprise nearly 9.6% of all cases, saw a growth of 34.1% from FY 2011 to FY 2014 while criminal cases grew by 20.7% over this same period. After the large growth from FY 2011 to FY 2013, the growth has stabilized in recent years.

The figure below shows a breakdown by public defender region. From FY 2011 to FY 2014, significant growth is shown in abuse and neglect cases in the regions of Missoula, and Helena. The number of cases in total has stabilized after a large growth from FY 2011 to FY 2013.

Office of Public Defender Abuse and Neglect Cases							
Region	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2011 to FY 2014	Percent of Total
1 - Kalispell	339	325	278	328	357	9.8%	11.8%
2 - Missoula	264	135	369	419	482	257.0%	15.9%
3 - Great Falls	442	566	746	682	672	18.7%	22.2%
4 - Helena	152	129	229	243	294	127.9%	9.7%
5 - Butte	118	159	173	222	205	28.9%	6.8%
6 - Havre	106	57	269	306	212	271.9%	7.0%
7 - Lewistown	46	59	84	72	58	-1.7%	1.9%
8 - Bozeman	131	149	145	107	137	-8.1%	4.5%
9 - Billings	413	458	527	584	445	-2.8%	14.7%
10 - Glendive	115	82	111	87	99	20.7%	3.3%
11 - Miles City	133	99	130	79	68	-31.3%	2.2%
<b>Total</b>	<b>2,259</b>	<b>2,218</b>	<b>3,061</b>	<b>3,129</b>	<b>3,029</b>	<b>36.6%</b>	<b>100.0%</b>

Case Weighting System - The Office of Public Defender is charged in statute with managing caseloads and assigning cases in a manner that ensures that public defenders are assigned cases according to experience, training, and manageable caseloads while taking into account case complexity, the severity of charges and potential punishments, and the legal skills required to provide effective assistance of counsel.

The office procedure involves assigning weighting hours to various aspects of a case depending upon the type, complexity, physical characteristics of the case environment, and other various aspects of a case. For example, if a case is in a court

that is remote from the regional office assigned hours are given for travel. The total hours of all cases assigned to a staff attorney are monitored so they do not exceed a level that would jeopardize the attorney’s ability to provide effective assistance of counsel. The office has established a level of 125 hours of case work per month (1,500 hours per year) based on its case weighting system as the level at which effective assistance of counsel could be in jeopardy if it is exceeded. A further discussion of the weighting system is available on the agency’s Internet site at:

<http://publicdefender.mt.gov/2013GovReport/CWS.pdf>.

Turnover

The office is able to recruit for vacant state positions, and consequently has a low vacancy saving rate. However, the office has experienced double digit turnover rates in staff since its inception. The figure below shows historical turnover statistics from FY 2012 through FY 2014. When employees have provided a reason for leaving during their exit process, low pay and workload issues are frequently stated. Attorney turnover in the office has shown a decline since the agency stated its intent to request and the legislature funded a career ladder for attorneys in the 2013 Legislature. When attorneys and investigators turnover, the office is less efficient because of continual recruitment and training. Turnover of central office staff was not tracked prior to FY 2014.

Office of State Public Defender Turnover by FTE									
Program	FY 2012			FY 2013			FY 2014		
	Total FTE	Left	%	Total FTE	Left	%	Total FTE	Left	%
01 - Office of Public Defender									
Central Office Staff	nt	nt	nt	nt	nt	nt	19	3	16%
Attorneys	115.58	31	27%	116.25	22.5	19%	119.37	10.75	9%
Investigators	19.5	4	21%	19	0	0%	19	3	16%
Support Staff	68.5	24.5	36%	54	13.5	25%	55.31	11.5	21%
02 - Office of Appellate Defender									
Attorneys	9	4	44%	9	2	22%	10	2	20%
Support Staff	2	0	0%	3	0	0%	3	1	33%

Workload Impacts on Case Closing

As stated, workload on staff has been a factor for turnover of staff. Not only is turnover an indication of workload pressures, case closing statistics reported to the Governor and legislature as required in state law show that the balance of open cases at the end of each fiscal year is growing. The figure on case closings illustrates the trend from FY 2011 through FY 2014. The figure shows that although the office is able to close over 90% of the cases open in a year, the balance of open cases at year’s end continues to grow.

Office of State Public Defender Case Closing History				
Category	FY 2011	FY 2012	FY 2013	FY 2014
Beginning caseload balance	18,051	20,617	21,422	22,998
Cases opened	27,664	30,912	31,980	31,705
Cases closed	25,098	30,107	30,404	29,110
Ending caseload balance	20,617	21,422	22,998	25,593
Change in ending balance		3.9%	7.4%	11.3%
Yearly case closing rate	90.7%	97.4%	95.1%	91.8%
Active cases at year end	17,303	17,810	19,002	20,907
Inactive cases at year end	3,314	3,612	3,996	4,686

As shown, the number of cases assigned to the office each year has grown by 14.6% since FY 2010 and the number of open cases and active cases continues to grow. Based on staff attorney workloads as measured in case weighted hours as of February 2014, the Office of Public defender has 41,810 more case weighted hours of work than the current level of attorneys working at the 1,500 hours per year standard for case work would be able to provide. The excess case work is equivalent to 27.87 FTE. This excess caseload forms the basis for the request for new attorneys in the Office of Public Defender program. The executive has included requests for 16.50 FTE attorneys in its proposal.

#### *Common Decision Points*

For the office, the executive proposes several decision points that are common across multiple programs and represent common policy decisions. The legislature may want to discuss and perhaps vote singularly for all requests of a common decision point:

- Contract attorney caseloads
- Attorney pay ladder
- Staffing to address caseloads
- Contract attorney rate adjustment

#### Contract Attorney Caseloads

The executive has requested funding in all three programs to hire more contract attorney support. Contract attorneys are used to augment state FTE and to represent clients when a conflict is present in the case were a state FTE is representing a client in a case.

#### Attorney Pay Ladder

The executive has requested funding for an attorney pay ladder in both the Office of Public Defender and the Office of Appellate Defender. The career ladder provides incremental competency pay adjustments under a pay schedule for employees as they achieve certain educational and experiential milestones.

#### Staffing To Address Caseloads

The executive has requested funding to add staff to address excess caseloads. Requests are made in both the Office of Public Defender and the Office of Appellate Defender.

#### Contract Attorney Rate Adjustment

The executive has requested funding in all three programs to provide a 2% increase in FY 2016 to the rate paid to contract attorneys. An additional 2% increment in the contract attorney rate is requested in FY 2017. The contract attorney rate adjustment is contained in the following new proposals requests:

- Contract Attorney Rate Adjustment (Office of Public Defender program)

- Contract Attorney Rate Adjustment (Office of Appellate Defender program)
- Contract Attorney Rate Adjustment (Conflict Coordinator program)

### 5% Plans

Statute requires that agencies submit plans to reduce general fund and certain state special revenue funds by 5%. A summary of the entire 2017 biennium 5% Plan submitted for this agency is in the appendix. For this agency the general fund impact of the 5% plan is \$1.1 million and state special revenue is not impacted.

### Agency Personal Services

Personal services comprises 58.6% of the FY 2015 legislative budget, while the Governor proposes 61.7% in FY 2016 and FY 2017. The increase in funding for personal services is due to:

- Funding to annualize the pay plan of the 2013 Legislature
- Requests to add 38.50 FTE
- Requests to fund career ladders for both attorney and non-attorney staff

In FY 2014, the agency experienced a 1.1% vacancy savings in hours expended to hours budgeted.

The funding provided by the 2013 Legislature for the attorney career ladder appears to have reduced turnover of attorney staff in the Public Defender program but attorney turnover in the Appellate Defender program continues to be high. The agency states that workloads in the office and higher pay in other state agencies are main factors for turnover of appellate attorneys. The office also is challenged by turnover of non-attorney staff and the office attributes both excess workload and low pay as the main reasons.

The agency states that 29.4% of its current workforce would be eligible for either early or full retirement in the 2017 biennium. The executive has requested no funding to address retirement payouts.

### Comparison of FY 2015 Legislative Base to FY 2015 Appropriation

The following highlights the differences between the FY 2015 appropriations as shown in the main table to the FY 2015 legislative appropriations used for purposes of the budget base, by program.

Program	FY 2015 Appropriation Transactions - Office of State Public Defender							
	Legislative Approp	Leg Applied OTO	Supplemental Appropriation	Consolidation of Biennial Approp	Op Plan	Program Transfers	Reorgs	Total Exec Implement
01 Public Defender	\$25,942,164	\$250,000	(\$672,156)	(\$250,000)	\$0	(\$15,130)	(\$4,274,324)	\$20,980,554
Personal Services	15,190,239				(86,984)	71,854	(236,026)	14,939,083
Operating Expenses	10,733,371	250,000	(672,156)	(250,000)	86,984	(86,984)	(4,038,298)	6,022,917
Equipment & Intangible Assets	18,554							18,554
02 Appellate Defender	1,447,349		(190,000)		-	15,130	(72,928)	1,199,551
Personal Services	1,018,884				86,984	(71,854)		1,034,014
Operating Expenses	428,465		(190,000)		(86,984)	86,984	(72,928)	165,537
03 Conflict Coordinator			(737,844)				4,347,252	3,609,408
Personal Services							236,026	236,026
Operating Expenses			(737,844)				4,111,226	3,373,382
<b>Total</b>	<b>\$27,389,513</b>	<b>\$250,000</b>	<b>(\$1,600,000)</b>	<b>(\$250,000)</b>	<b>-</b>	<b>-</b>	<b>-</b>	<b>\$25,789,513</b>

In FY 2014, the agency expended more funds than were appropriated for that year. The agency transferred \$1,850,000 in funding from FY 2015 to FY 2014. Of this funding, \$250,000 was associated with funding for capital case defense that was designated as one-time-only, restricted only for this purpose, and biennial. The remaining transferred funding was

done following the supplemental appropriation statutes where the agency was required to submit a plan for maintaining expenditures within biennium funding.

The office also transferred funding from the Office of Public Defender to the Office of Appellate Defender to address a shorting in funding for the Office of Appellate Defender career ladder.

The office was reorganized in FY 2014 to break out the Conflict Coordinator as a separate office for budgeting purposes. This reorganization moved 3.00 FTE from the Office of Public Defender and funding from both the Office of Public Defender and the Office of Appellate Defender to the new Conflict Coordinator program to fund conflict cases administered out of the new program.

**Funding**

The following table shows proposed agency funding by source of authority as proposed. Funding for each program is discussed in detail in the individual program narratives that follow.

Total Office of the Public Defender Funding by Source of Authority 2017 Biennium Budget - Office of the Public Defender						
Funds	HB2	Non-Budgeted Proprietary	Statutory Appropriation	Total All Sources	% Total All Funds	
General Fund	67,747,232	0	0	67,747,232	99.23 %	
State Special Total	523,580	0	0	523,580	0.77 %	
Federal Special Total	0	0	0	0	0.00 %	
Proprietary Total	0	0	0	0	0.00 %	
Other Total	0	0	0	0	0.00 %	
<b>Total All Funds</b>	<b>\$68,270,812</b>	<b>\$0</b>	<b>\$0</b>	<b>\$68,270,812</b>		
<b>Percent - Total All Sources</b>	<b>100.00 %</b>	<b>0.00 %</b>	<b>0.00 %</b>			

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

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	27,115,587	27,115,587	54,231,174	80.05 %	27,389,513	27,389,513	54,779,026	80.24 %
PL Adjustments	5,358,312	5,408,570	10,766,882	15.89 %	5,346,176	5,396,434	10,742,610	15.74 %
New Proposals	1,285,627	1,463,549	2,749,176	4.06 %	1,285,627	1,463,549	2,749,176	4.03 %
<b>Total Budget</b>	<b>\$33,759,526</b>	<b>\$33,987,706</b>	<b>\$67,747,232</b>		<b>\$34,021,316</b>	<b>\$34,249,496</b>	<b>\$68,270,812</b>	

**Supplemental Appropriations -**

The Governor's supplemental bill request includes a total \$1.7 million general fund for the OPD. The request for supplemental funding is due primarily to the stresses placed on the agency from increased accumulated caseloads. The office moved \$1.6 million of funding from FY 2015 that then reduced the funding in that year to operate the office for non-capital case operations.

As stated earlier, the executive has included a number of initiatives to address caseload pressures. For a full discussion see the Agency Discussion section of this narrative.

**Language and Statutory Authority -**

The executive recommends the following language be included in HB 2.

"All appropriations for the Office of the Public Defender are biennial."