Agency Biennium Comparison

The following table compares the 2017 biennium appropriated budget to the 2019 biennium requested budget by type of expenditure and source of funding.

Agency Budget Comparison

Budget Item	Appropriated Budget 16-17	Requested Budget 18-19	Biennium Change	Biennium % Change
Personal Services	40,377,781	46,933,167	6,555,386	16.24 %
Operating Expenses	27,490,595	20,891,106	(6,599,489)	(24.01)%
Equipment & Intangible Assets	46,649	37,108	(9,541)	(20.45)%
Total Expenditures	**$67,915,025**	**$67,861,381**	**($53,644)**	**(0.08)%**
General Fund	67,641,099	67,313,530	(327,569)	(0.48)%
State/Other Special Rev. Funds	273,926	547,851	273,925	100.00 %
Total Funds	**$67,915,025**	**$67,861,381**	**($53,644)**	**(0.08)%**
Total Ongoing	**$4,852,613**	**$67,836,381**	**$62,983,768**	**1,297.94 %**
Total OTO	**$63,062,412**	**$25,000**	**($63,037,412)**	**(99.96)%**

Mission Statement

The mission of the Office of the State Public Defender is to ensure equal access to justice for the state's indigent and to provide appellate representation to indigent clients.

There is additional, more detailed information about the department in the agency profile. The profile may be viewed at:

http://leg.mt.gov/content/Publications/fiscal/Budget-Books/2019/Budget-Analysis/section_d/6108-00agency-profile.pdf

Agency Highlights

Office of State Public Defender
Major Budget Highlights

- The budget starts with a base of just over $2.8 million derived from pay plan and personal services contingency base allocations
- The staff and funding appropriated as one time only are requested to be restored
- Additional funding for the addition of 37.50 FTE for the following purposes:
  - Resource advocates, 5.00 FTE
  - A policy decision to replace funding for contracted attorneys to staff FTE attorneys, 11.50 FTE
  - Restoration of contingency base FTE, 10 FTE more than were allocated to the agency
  - Remove caseloads from managers, 9.00 FTE
  - Restoration of staff FTE attorneys funded with OTO commission discretionary funding, 2.00 FTE

Legislative Action Issues

- Funding requests are not linked to a strategic plan
- Requests to restore a portion of the FTE that were funded with contingency base funding are overstated
- The approach taken to construct the budget masks the purposes for many of the adjustments

Agency Actuals and Budget Comparison

The following table compares the 2017 biennium appropriated budget to the 2019 biennium requested budget by type of expenditure and source of funding.

Agency Actuals and Budget Comparison

Budget Item	Actuals Fiscal 2016	Approp. Fiscal 2016	Approp. Fiscal 2017	Request Fiscal 2018	Request Fiscal 2019
FTE	0.00	0.00	0.00	281.44	281.44
Personal Services	18,044,697	18,044,687	22,333,094	23,444,315	23,488,852
Operating Expenses	14,885,416	14,885,416	12,605,179	10,813,266	10,077,840
Equipment & Intangible Assets	28,095	28,095	18,554	18,554	18,554
Total Expenditures	**$32,958,208**	**$32,958,198**	**$34,956,827**	**$34,276,135**	**$33,585,246**
General Fund	32,958,208	32,958,198	34,682,901	34,002,210	33,311,320
State/Other Special Rev. Funds	0	0	273,926	273,925	273,926
Total Funds	**$32,958,208**	**$32,958,198**	**$34,956,827**	**$34,276,135**	**$33,585,246**
Total Ongoing	**$2,038,973**	**$2,038,973**	**$2,813,640**	**$34,251,135**	**$33,585,246**
Total OTO	**$30,919,235**	**$30,919,225**	**$32,143,187**	**$25,000**	**$0**

Agency Discussion

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 5% plan includes reductions totaling $1.75 million general fund and $13,700 state special revenue.

Background

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 counsel 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 Task Force

In funding the Office of State Public Defender for the 2017 biennium, the 2015 Legislature designated all funding as one time only (OTO) in order to have the budget for the 2019 biennium explained fully. The legislature wanted the 2019 biennium budget linked to a long-term strategic plan that would address the long-term fiscal stability of the office. In addition to the OTO designation of the 2017 biennium budget, a study bill was enacted that established a task force on state public defender operations. The task force was created under HB 627 and directed to study the operations of the office and develop a long-term organizational plan that would allow it to provide effective assistance of counsel to those who qualify.

Among other things, the task force was required to take into consideration:

- The constitutional and statutory duties of the office
- The ethics and professional responsibilities of attorneys employed at the office
- How other states provide assistance of counsel to those who qualify for assistance
- The effects of compensation and workloads on the recruitment and retention of attorneys and administrative and support staff
- Measures and resources that could be implemented or assigned to improve staff and attorney recruitment and retention issue
- The possibility, costs, and benefits of restructuring the office

After an interim of study, the task force provided recommendations through the following legislation requests:

- Provide an overall agency director appointed by the governor, convert the public defender commission to an advisory provide that the commission shall nominate three candidates for director, provide that the governor shall select a director from the list of nominees, and provide that the director would be a hired position, not a politically appointed position, so that the director could only be removed with cause
- Eliminate the statutory requirement for the chief appellate defender to confer with the chief public defender on the Office of the Appellate Defend budget
- Transfer determination of eligibility for public defender services to the Department of Public Health and Human Services
- Provide that the Montana Department of Revenue is responsible for collecting any fees for public defender services imposed by a judge pursuant to 46-8-113, MCA
- Establish a holistic defense pilot program in up to four public defender office locations across the state

- Require the Office of the State Public Defender to contract for a workload assessment
- Revise the appointment of a public defender to a putative father in a dependent neglect case
- Revise the appointment of a public defender to an absent parent ina dependent neglect case

No Linkage to a Long-Term Strategic Plan

The budget for OPD was designated OTO because the legislature was concerned the operations of the office were not being managed to a viable long-range strategic plan that addressed the continued budget growth and the associated operating and fiscal pressures facing the office. When requesting funding to reestablish the present law funding for the office no linkage is made to a long-term strategic plan. The apparent lack of a long-term strategic plan for OPD was a concern to the 2015 Legislature. Instead, the executive is simply requesting the same funding and staffing structure that was designated as one time only by the 2015 Legislature. Furthermore, the taskforce that studied the office during the 2017 interim provided no insight on a long-term plan for OPD other than providing legislation to restructure top level management of the office and the role of the Public Defender Commission.

Base is not Fully Zero

As stated above, the 2015 Legislature made all funding for the office OTO in order to evaluate the entire 2019 biennium budget, rather than just the growth in spending. However, the legislature also appropriated contingency funding in the Governor's Office to address budget pressures the Governor determined most significant to address during the 2017 biennium. Portions of the contingency funding were designated in HB 2 to be a part of the base for building the 2019 biennium budgets of those agencies to which the Governor allocated the funding. Additionally, up to 10 FTE statewide were designated to be established as permanent positions and used to develop the personal services funding for the 2019 biennium. The office was allocated base funding and 4.00 FTE from these appropriations. Because of these base funding allocations, instead of starting with a base of zero the office starts with a base of $2,813,640, established by the following base allocations from the Governor's appropriations:

- $600,000 from the contingency base funding appropriation
- $1,358,264 from the personal services contingency base funding and 4.00 FTE
- $855,376 from the personal services contingency funding

The executive request includes decision packages to reestablish these funds and FTE far in excess of the 4.00 FTE allocated to the office. Requesting, in a present law decision package, to reestablish FTE in excess of the amount allocated would erroneously overstate the request and imply that the FTE were previously established by the legislature.

Figure 1 illustrates how the executive approached the process of moving from the base to a position that would, in essence, return the office to the funding level equivalent to what the ongoing funding would have been had the 2017 biennium budget not been designated as OTO and also taking into consideration the allocation of the Governor's base contingency funding. The intent would be to return the budget to a level somewhat equivalent to the FY 2017 funding level prior to requesting new funds and staffing. Figure 2 shows an alternative approach to getting to the same intended budget prior to 2019 biennium adjustments to add funding and staff for additional needs anticipated during the 2019 biennium. Note that the executive approach reduces funding by just under $3.3 million for the biennium while stating it is intended to reestablish the present law and contingency base funding.

Legislative Options

The legislature has, among others, three basic options for establishing some sort of present law starting point prior to addressing other requests that incrementally adjust the budget for various standalone reasons:

- Deliberate on the executive budget as presented in Figure 1
- Deliberate by following the alternative approach in Figure 2
- Direct the agency to come back with a plan that uses smaller increments that are tied to a strategic plan

Executive Budget as Requested - Figure 1

If the legislature decides to deliberate on the executive budget as presented, it should know that the executive is requesting $1.6 million per year less than what the funding would have been were the FY 2017 budget not OTO and the allocations of the Governor's personal services contingency base funding were included. Also, the legislature should know that the executive is requesting 10.00 FTE more than was authorized in HB 2 for the personal services contingency base funding. For the remainder of agencies, SWPL-1 adjusts personal services to address funding needs of positions in light of delayed implementation the known previous legislative actions. For OPD, SWPL-1 just removes base funding.

Figure 1

Executive Budget Request to to Establishing a Present Law Starting Point
Total Funds

Program/ Item	FY 2017 Base	FY 2018 Adjustment	FY 2018 Cum Total	FY 2019 Adjustment	FY 2019 Cum Total
01-Office of Public Defender					
Base	$2,143,632		$2,143,632		$2,143,632
SWPL 1 - Personal Services		(2,143,632)	-	(2,143,632)	-
SWPL 3 - Inflation		(146)	(146)	1,580	1,580
PL 19 - Restore OPD Present Law Services		20,947,732	20,947,586	20,986,116	20,987,696
PL 20 - Restore Personal Services Base Contingency		524,234	21,471,820	524,598	21,512,294
01-Office of Public Defender Total			$21,471,820		$21,512,294
02-Office of Appellate Defender					
Base	43,447		43,447		43,447
SWPL 1 - Personal Services		(43,447)	-	(43,447)	-
SWPL 3 - Inflation		(212)	(212)	(196)	(196)
PL 19 - Restore OPD Present Law Services		1,795,428	1,795,216	1,798,491	1,798,295
02-Office of Appellate Defender Total			$1,795,216		$1,798,295
03-Conflict Coordinator					
Base	626,561		626,561		626,561
SWPL 1 - Personal Services		(626,561)	-	(626,561)	-
PL 19 - Restore OPD Present Law Services		6,932,475	6,932,475	6,332,687	6,332,687
PL 20 - Restore Personal Services Base Contingency		652,123	7,584,598	652,618	6,985,305
03-Conflict Coordinator Total			$7,584,598		$6,985,305
04-Chief Administrator					
Base	-		-		-
SWPL 2 - Fixed Costs		252,529	252,529	196,350	196,350
PL 19 - Restore OPD Present Law Services		2,382,773	2,635,302	2,383,853	2,580,203
04-Chief Administrator Total			$2,635,302		$2,580,203
Office of State Public Defender Total			$33,486,936		$32,876,097

Alternative Approach – Figure 2

If the legislature chose to take the alternative approach shown in Figure 2 it would start at the base as established in HB 2 of the 2015 Legislature and adjust accordingly. Under this alternative approach the legislature would evaluate the adjustment the executive proposes that reduces the budgets by $1.6 million a year separately, rather than in the combination with all other adjustments.

Figure 2

Alternate Approach to Establishing a Present Law Starting Point
Total Funds

Program/ Item	FY 2017 Base	FY 2018 Adjustment	FY 2018 Cum Total	FY 2019 Adjustment	FY 2019 Cum Total
01-Office of Public Defender					
Base	$2,143,632		$2,143,632		$2,143,632
SWPL 3 - Inflation		(146)	2,143,486	1,580	2,145,212
PL 19 - Restore OPD Present Law Services		20,947,732	23,091,218	20,986,116	23,131,328
NP 901 - Personal Services Base Contingency FTE			-		-
NP 900 - Adjust Funding to the Executive Request			(1,619,398)		(1,619,034)
01-Office of Public Defender Total			$21,471,820		$21,512,294
02-Office of Appellate Defender					
Base	43,447		43,447		43,447
SWPL 3 - Inflation		(212)	43,235	(196)	43,251
PL 19 - Restore OPD Present Law Services		1,795,428	1,838,663	1,798,491	1,841,742
NP 900 - Adjust Funding to the Executive Request			(43,447)		(43,447)
02-Office of Appellate Defender Total			$1,795,216		$1,798,295
03-Conflict Coordinator					
Base	626,561		626,561		626,561
PL 19 - Restore OPD Present Law Services		6,932,475	7,559,036	6,332,687	6,959,248
NP 900 - Adjust Funding to the Executive Request			25,562		26,057
03-Conflict Coordinator Total			$7,584,598		$6,985,305
04-Chief Administrator					
Base	-		-		-
SWPL 2 - Fixed Costs		252,529	252,529	196,350	196,350
PL 19 - Restore OPD Present Law Services		2,382,773	2,635,302	2,383,853	2,580,203
04-Chief Administrator Total			$2,635,302		$2,580,203
Office of State Public Defender Total			$33,486,936		$32,876,097
NP 900 - Adjust Funding to the Executive Request Total			($1,637,283)		($1,636,424)

Start Over

The legislature could reject the executive request in its entirety and direct the executive and agency to present a new budget comprised of smaller decision packages that are specific to implementing various aspects of the agency's strategic plan. The legislature may want to direct that the new budget include separate decisions that link FTE and contracted resourses to specific caseload assumptions and that are presented separately for each type of case and resource. The legislatue may want the decision presented separately for contracted resources that are in support of cases, such as expert witnesses, and for contracted attorneys that augment FTE. The legislatue may want the caseloads linked to the data presented in the Fiscal Year 2016 Report to the Governor, Supreme Court and Legislature and to the agency's strategic plan.

Caseload Growth

Caseloads drive costs of the office. Figure 3 shows the case trends from FY 2012 through FY 2016 and 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. Figure 3 shows that except for from FY 2013 to FY 2014 the office saw a positive growth in cases. The type of cases showing the largest growth in: 1) case type as a percentage of all cases; 2) annual case growth in volume; and 3) annual cost of case type as a percentage of all case costs of the office are predominantly abuse and neglect and criminal cases. Abuse and neglect cases have experienced 20% and 30% annual growth since FY 2014 and have grown to nearly 13% of all cases and 19% of case costs compared to 9.5% of case volume and 16.7% of case costs in FY 2014. Likewise, criminal cases have grown in volume and have increased as a portion of case costs and caseloads.

Figure 3

Office of Public Defender
Case Trends FY 2012 to FY 2016

Case Types	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
Number of New Cases Opened					
Abuse and Neglect	3,061	3,129	3,029	3,925	4,691
Criminal	5,988	6,090	6,597	6,699	7,904
Guardianship	268	255	178	189	200
Involuntary Commitment	1,058	983	1,046	1,080	1,103
Juvenile	1,081	1,193	1,052	927	907
Lower Court	19,456	20,330	19,803	20,814	21,543
Total All Case Types	30,912	31,980	31,705	33,634	36,348
Annual Change		3.5%	-0.9%	6.1%	8.1%
Case Type as a Percent of Sum of All Case Types					
Abuse and Neglect	9.90	9.78	9.55	11.67	12.91
Criminal	19.37	19.04	20.81	19.92	21.75
Guardianship	0.87	0.80	0.56	0.56	0.55
Involuntary Commitment	3.42	3.07	3.30	3.21	3.03
Juvenile	3.50	3.73	3.32	2.76	2.50
Lower Court	62.94	63.57	62.46	61.88	59.27
By Type Case Growth					
Abuse and Neglect		2%	-3%	30%	20%
Criminal		2%	8%	2%	18%
Guardianship		-5%	-30%	6%	6%
Involuntary Commitment		-7%	6%	3%	2%
Juvenile		10%	-12%	-12%	-2%
Lower Court		4%	-3%	5%	4%
Annual Cost of Case Type as a Percent of Sum of All Case Type Costs					
Abuse and Neglect	15.68	17.54	16.71	16.79	19.17
Criminal	46.30	43.97	45.85	47.44	48.16
Guardianship	0.94	0.76	0.59	0.49	0.39
Involuntary Commitment	1.38	1.41	1.32	1.62	1.47
Juvenile	4.45	4.49	3.91	3.32	3.18
Lower Court	31.25	31.82	31.63	30.34	27.63

Comparison of FY 2017 Legislative Budget to FY 2017 Base

Figure 4 demonstrates the beginning FY 2017 budget as adopted by the 2015 legislature, plus modifications done by the executive (and authorized in statute) during the interim, and the finalized 2017 Base Budget. The columns provide detail showing the changes that occurred over the course of the interim to reach the 2017 Base Budget. The 2017 Base Budget was agreed upon by the Legislative Finance Committee and the executive as a measuring point to start the 2019 biennium budgeting process.

Figure 4

FY 2017 Appropriation Transactions - Public Defender

	Leg Approp	Allocations	Program Transfers	2017 Base	% Change from Legislative Approp	% Change from Approp + Allocations
01 Office Of Public Defender						
Personal Services	$0	$2,758,632	($615,000)	$2,143,632	100.0%	-22.3%
Program Total	0	2,758,632	(615,000)	2,143,632	100.0%	-22.3%
02 Office Of Appellate Defender						
Personal Services		43,447		43,447	100.0%	0.0%
Program Total		43,447		43,447	100.0%	0.0%
03 Conflict Coordinator						
Personal Services	0	11,561	615,000	626,561	100.0%	100.0%
Program Total		11,561	615,000	626,561	100.0%	100.0%
Grand Total	$0	$2,813,640	$0	$2,813,640	100.0%	0.0%

Leg Approp = Legislative Appropriations
Allocations = include Contingency Base & Pay Plan
OP = Operting Plan Changes

Funding

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

Total Office of State Public Defender Funding by Source of Authority
2019 Biennium Budget Request - Office of State Public Defender

Funds	HB2 Ongoing	HB2 OTO	Non-Budgeted Proprietary	Statutory Appropriation	Total All Sources	% Total All Funds
General Fund	67,288,530	25,000	0	0	67,313,530	99.19 %
State Special Total	547,851	0	0	0	547,851	0.81 %
Federal Special Total	0	0	0	0	0	0.00 %
Proprietary Total	0	0	0	0	0	0.00 %
Other Total	0	0	0	0	0	0.00 %
Total All Funds	**$67,836,381**	**$25,000**	**$0**	**$0**	**$67,861,381**	
Percent - Total All Sources	**99.96 %**	**0.04 %**	**0.00 %**	**0.00 %**		

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

Budget Summary by Category

The following summarizes the total budget by base, present law adjustments, and new proposals. For a description of these categories, please see the glossary section of the Budget Analysis.

Budget Summary by Category

	General Fund				Total Funds			
Budget Item	Budget Fiscal 2018	Budget Fiscal 2019	Biennium Fiscal 18-19	Percent of Budget	Budget Fiscal 2018	Budget Fiscal 2019	Biennium Fiscal 18-19	Percent of Budget
2017 Base Budget	2,813,640	2,813,640	5,627,280	8.36 %	2,813,640	2,813,640	5,627,280	8.29 %
SWPL Adjustments	(2,561,469)	(2,615,906)	(5,177,375)	(7.69)%	(2,561,469)	(2,615,906)	(5,177,375)	(7.63)%
PL Adjustments	34,048,223	33,433,688	67,481,911	100.25 %	34,322,148	33,707,614	68,029,762	100.25 %
New Proposals	(298,184)	(320,102)	(618,286)	(0.92)%	(298,184)	(320,102)	(618,286)	(0.91)%
Total Budget	**$34,002,210**	**$33,311,320**	**$67,313,530**		**$34,276,135**	**$33,585,246**	**$67,861,381**	