

**Program Budget Comparison**

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

| Program Budget Comparison |                    |                     |                    |                    |                       |                       |                  |                   |
|---------------------------|--------------------|---------------------|--------------------|--------------------|-----------------------|-----------------------|------------------|-------------------|
| Budget Item               | Base Fiscal 2012   | Approp. Fiscal 2013 | Budget Fiscal 2014 | Budget Fiscal 2015 | Biennium Fiscal 12-13 | Biennium Fiscal 14-15 | Biennium Change  | Biennium % Change |
| FTE                       | 10.00              | 10.00               | 13.50              | 13.50              | 10.00                 | 13.50                 | 3.50             | 35.00%            |
| Personal Services         | 719,771            | 659,110             | 1,019,820          | 1,040,112          | 1,378,881             | 2,059,932             | 681,051          | 49.39%            |
| Operating Expenses        | 421,494            | 364,270             | 439,066            | 430,495            | 785,764               | 869,561               | 83,797           | 10.66%            |
| <b>Total Costs</b>        | <b>\$1,141,265</b> | <b>\$1,023,380</b>  | <b>\$1,458,886</b> | <b>\$1,470,607</b> | <b>\$2,164,645</b>    | <b>\$2,929,493</b>    | <b>\$764,848</b> | <b>35.33%</b>     |
| General Fund              | 1,141,265          | 1,023,380           | 1,458,886          | 1,470,607          | 2,164,645             | 2,929,493             | 764,848          | 35.33%            |
| <b>Total Funds</b>        | <b>\$1,141,265</b> | <b>\$1,023,380</b>  | <b>\$1,458,886</b> | <b>\$1,470,607</b> | <b>\$2,164,645</b>    | <b>\$2,929,493</b>    | <b>\$764,848</b> | <b>35.33%</b>     |

**Program Description**

The Appellate Defender Program provides appeal services for indigent citizens.

**Program Highlights**

| <b>Office of Appellate Defender Program<br/>Major Budget Highlights</b>  |
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| <ul style="list-style-type: none"> <li>◆ Major factors contributing to the proposed funding increases are requests to:                             <ul style="list-style-type: none"> <li>● Add 3.50 FTE</li> <li>● Fund career ladders</li> <li>● Provide a 2% increase in rates paid to contract attorneys</li> </ul> </li> <li>◆ The Governor proposes adding FTE for the following purposes:                             <ul style="list-style-type: none"> <li>● Make permanent 1.00 FTE modified position funded in the 2013 biennium with funds to address caseload growth seen during the 2011 Legislative Session</li> <li>● Add 2.00 FTE to address recent caseload growth</li> <li>● Add 0.50 FTE to shift caseloads from the chief appellate defender to free up time for management duties</li> </ul> </li> </ul> |
| <b>Major LFD Issues</b>  |
| <ul style="list-style-type: none"> <li>◆ A portion of the funding to add FTE is one-time-only</li> </ul>   |

**Program Narrative**

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 Summary section of this agency’s narrative discusses the challenges and the executive’s proposed response in total.

**Funding**

The following table shows program funding, by source for the 2015 biennium as recommended by the Governor.

| Total Office Of The Public Defender Funding by Source of Authority<br>2015 Biennium Budget - Office Of Appellate Defender |             |                          |                         |                   |                   |               |                    |
|---|-------------|--------------------------|-------------------------|-------------------|-------------------|---------------|--------------------|
| Funds   | HB 2        | Non-Budgeted Proprietary | Statutory Appropriation | Total All Sources | % Total All Funds | MCA Reference | Statutory Category |
| <b>General Fund</b>   | \$2,929,493 | \$0                      | \$0                     | \$2,929,493       | 100.0%            |               |                    |
| <b>Total All Funds</b>  | \$2,929,493 | \$0                      | \$0                     | \$2,929,493       | 100.0%            |               |                    |
| <b>Percent - Total All Sources</b>  | 100.0%      | 0.0%                     | 0.0%                    |                   |                   |               |                    |

The Appellate Defender Program is supported entirely by the general fund.

**Budget Summary by Category**

The following summarizes the total budget by base, present law adjustments, and new proposals.

| Budget Item              | -----General Fund----- |                    |                       |                   | -----Total Funds----- |                    |                       |                   |
|--------------------------|------------------------|--------------------|-----------------------|-------------------|-----------------------|--------------------|-----------------------|-------------------|
|                          | Budget Fiscal 2014     | Budget Fiscal 2015 | Biennium Fiscal 14-15 | Percent of Budget | Budget Fiscal 2014    | Budget Fiscal 2015 | Biennium Fiscal 14-15 | Percent of Budget |
| Base Budget              | 1,141,265              | 1,141,265          | 2,282,530             | 77.92%            | 1,141,265             | 1,141,265          | 2,282,530             | 77.92%            |
| Statewide PL Adjustments | (39,799)               | (39,998)           | (79,797)              | (2.72%)           | (39,799)              | (39,998)           | (79,797)              | (2.72%)           |
| Other PL Adjustments     | 355,097                | 364,694            | 719,791               | 24.57%            | 355,097               | 364,694            | 719,791               | 24.57%            |
| New Proposals            | 2,323                  | 4,646              | 6,969                 | 0.24%             | 2,323                 | 4,646              | 6,969                 | 0.24%             |
| <b>Total Budget</b>      | <b>\$1,458,886</b>     | <b>\$1,470,607</b> | <b>\$2,929,493</b>    |                   | <b>\$1,458,886</b>    | <b>\$1,470,607</b> | <b>\$2,929,493</b>    |                   |

**Present Law Adjustments**

The “Present Law Adjustments” table shows the changes to the adjusted base budget proposed by the executive. “Statewide Present Law” adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies. The other numbered adjustments in the table correspond to the narrative descriptions.

| Present Law Adjustments                        | -----Fiscal 2014----- |                   |               |                 |                   | -----Fiscal 2015----- |                   |               |                 |                   |
|--|-----------------------|-------------------|---------------|-----------------|-------------------|-----------------------|-------------------|---------------|-----------------|-------------------|
|  | FTE                   | General Fund      | State Special | Federal Special | Total Funds       | FTE                   | General Fund      | State Special | Federal Special | Total Funds       |
| Personal Services                              |                       |                   |               |                 | (11,637)          |                       |                   |               |                 | (11,982)          |
| Vacancy Savings                                |                       |                   |               |                 | (28,326)          |                       |                   |               |                 | (28,311)          |
| Inflation/Deflation                            |                       |                   |               |                 | 164               |                       |                   |               |                 | 295               |
| <b>Total Statewide Present Law Adjustments</b> |                       | <b>(\$39,799)</b> | <b>\$0</b>    | <b>\$0</b>      | <b>(\$39,799)</b> |                       | <b>(\$39,998)</b> | <b>\$0</b>    | <b>\$0</b>      | <b>(\$39,998)</b> |
| DP 3 - Support Workload                        | 2.00                  | 132,778           | 0             | 0               | 132,778           | 2.00                  | 125,246           | 0             | 0               | 125,246           |
| DP 11 - Managers' Caseloads                    | 0.50                  | 56,005            | 0             | 0               | 56,005            | 0.50                  | 52,197            | 0             | 0               | 52,197            |
| DP 17 - Fund Career Ladder                     | 0.00                  | 79,198            | 0             | 0               | 79,198            | 0.00                  | 100,268           | 0             | 0               | 100,268           |
| DP 18 - Support Workload - Modified FTE        | 1.00                  | 87,116            | 0             | 0               | 87,116            | 1.00                  | 86,983            | 0             | 0               | 86,983            |
| <b>Total Other Present Law Adjustments</b>     | <b>3.50</b>           | <b>\$355,097</b>  | <b>\$0</b>    | <b>\$0</b>      | <b>\$355,097</b>  | <b>3.50</b>           | <b>\$364,694</b>  | <b>\$0</b>    | <b>\$0</b>      | <b>\$364,694</b>  |
| <b>Grand Total All Present Law Adjustments</b> | <b>3.50</b>           | <b>\$315,298</b>  | <b>\$0</b>    | <b>\$0</b>      | <b>\$315,298</b>  | <b>3.50</b>           | <b>\$324,696</b>  | <b>\$0</b>    | <b>\$0</b>      | <b>\$324,696</b>  |

DP 3 - Support Workload - The executive requests general fund to fund operating costs and personal services for the addition of 2.00 FTE to address increased caseloads. Funding would add 1.00 FTE attorney and 1.00 FTE legal secretary.

LFD  
ISSUE

Appeals Caseload Increase

During FY 2012, the office experienced a 17% increase in direct appeals over previous years and the office does not expect this trend to go down in the future. The following table shows the number of new appeals cases and the yearend balance of open appeals cases in the Office of Appellate Defender from FY 2007 through FY 2012. The table shows that not only has the number of new cases increased most years, but the cumulative number of cases the office has open at yearend has grown each year. Although some of the open cases may have little activity, they are still unresolved and impact workload whenever they become active.

| Appellate Defender New Appeal Cases and Yearend Open Appeal Cases |         |         |         |         |         |         |
|---|---------|---------|---------|---------|---------|---------|
| Item  | FY 2007 | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 |
| New Appeal Cases  | 185     | 187     | 197     | 170     | 186     | 218     |
| Yearend Appeal Open Cases   | 45      | 47      | 58      | 161     | 250     | 354     |

The agency attributes the abnormal growth in new cases from FY 2011 to FY 2012 to a direct fallout of the double digit growth in cases the Office of Public Defender is experiencing and a maturing agency where, through experience, attorneys are more aware of issues to be raised on appeal that may not have been raised in the past. Although the yearend appeal open case numbers were provided by the office, the recently hired chief appellate defender is questioning the validity of the open case numbers and has initiated a review of open cases. No explanation can be given for the growth shown on the figure.

*Legislative Options*

The legislature may want to discuss with the chief appellate defender how cases are tracked and monitored. Further, the legislature may want to discuss how the funding requests associated with new FTE would address caseloads and case monitoring.

LFD  
ISSUE

Staff Outfitting Costs are One Time

FY 2014 funding includes \$7,350 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.

DP 11 - Managers' Caseloads - The executive requests general fund to fund operating costs and personal services for the addition of 0.50 FTE attorney to work a portion of the cases currently being done by the chief appellate defender to free up time for administrative and managerial duties.

LFD  
COMMENT

The request would allow the chief appellate defender to dedicate half of his or her time to administration and managerial duties and bring the chief appellate defender into parity with the a regional manager in Public Defender's Office. Unlike for the Public Defender's Office the commission has not established a policy to limit the caseload of the chief appellate defender.

LFD  
ISSUE

Staff Outfitting Costs are One Time

FY 2014 funding includes \$3,675 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.

DP 17 - Fund Career Ladder - The executive requests general fund to fund a career ladder for non-unionized attorneys. The career ladder provides incremental competency pay adjustments under a pay schedule for employees as they achieve certain educational and experiential milestones. The adjustment is based on a 2012 market survey and adjusts the midpoint of the career ladder to the survey midpoint less 5%.

**LFD COMMENT** For further information on the career ladder see the narrative in the agency discussion of the agency summary.

DP 18 - Support Workload - Modified FTE - The executive requests general fund to fund operating costs and personal services for the addition of 1.00 FTE to address caseload growth.

**LFD COMMENT** Base Funding and Interim Monitoring  
*2013 Biennium Funding*  
 This position is part of the \$3.0 million appropriated by the 2011 Legislature for the 2013 biennium to: 1) fund the addition of 8.00 FTE attorneys to address caseload growth being experienced by the agency; and 2) fund costs to hire contract attorneys to assist in addressing the caseload growth. During the interim, the agency experienced difficulties finding private attorneys willing to contract with them in several regions of the state. To address the caseload growth the agency sought and obtained approval from the Governor to hire modified FTE in place of contract attorneys. A 1.00 FTE modified position was funded in the Office of Appellate Defender. This request is to fund the modify FTE on an ongoing basis.  
*Interim Monitoring*  
 The Legislative Finance Committee monitored the use of the \$3.0 million during the interim. Reports presented to the committee identified the difficulty the agency was having hiring contract attorneys and the use of modified FTE to address caseload demands. The committee made no recommendations in association with its monitoring of these funds. For further information and to view the report presented to the committee see the June 2012 committee meeting reports at: <http://leg.mt.gov/css/fiscal/reports/2011-2012-interim-reports.asp#june2012>.

**New Proposals**

| Program                                  | FTE         | Fiscal 2014    |               |                 |                | Fiscal 2015 |                |               |                 |                |
|--|-------------|----------------|---------------|-----------------|----------------|-------------|----------------|---------------|-----------------|----------------|
|  |             | General Fund   | State Special | Federal Special | Total Funds    | FTE         | General Fund   | State Special | Federal Special | Total Funds    |
| DP 10 - Increase Contract Attorney Rates |             |                |               |                 |                |             |                |               |                 |                |
| 02                                       | 0.00        | 2,323          | 0             | 0               | 2,323          | 0.00        | 4,646          | 0             | 0               | 4,646          |
| <b>Total</b>                             | <b>0.00</b> | <b>\$2,323</b> | <b>\$0</b>    | <b>\$0</b>      | <b>\$2,323</b> | <b>0.00</b> | <b>\$4,646</b> | <b>\$0</b>    | <b>\$0</b>      | <b>\$4,646</b> |

DP 10 - Increase Contract Attorney Rates - The executive requests general fund to fund an increase in the hourly rate paid to contracted attorneys by 2% in FY 2014 and an additional 2% in FY 2015. The funding would increase the hourly rate from \$60.00 to \$61.20 in FY 2014 and \$62.42 in FY 2015.

**LFD ISSUE** Little Impact on Rate Paid to Contract Attorneys  
 For further information on contract attorney rates see the narrative in the agency discussion of the agency summary.