

Agency Budget Comparison

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

Agency 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	209.50	209.50	246.50	246.50	209.50	246.50	37.00	17.66%
Personal Services	13,643,678	12,439,402	16,921,661	17,175,465	26,083,080	34,097,126	8,014,046	30.73%
Operating Expenses	9,015,625	9,403,675	10,035,403	9,994,493	18,419,300	20,029,896	1,610,596	8.74%
Equipment & Intangible Assets	18,554	21,118	28,554	18,554	39,672	47,108	7,436	18.74%
Total Costs	\$22,677,857	\$21,864,195	\$26,985,618	\$27,188,512	\$44,542,052	\$54,174,130	\$9,632,078	21.62%
General Fund	22,577,899	21,678,051	26,705,884	26,913,053	44,255,950	53,618,937	9,362,987	21.16%
State Special	99,958	186,144	279,734	275,459	286,102	555,193	269,091	94.05%
Total Funds	\$22,677,857	\$21,864,195	\$26,985,618	\$27,188,512	\$44,542,052	\$54,174,130	\$9,632,078	21.62%

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.

For additional information, please refer to the agency profile.

Agency Highlights

Office of Public Defender Major Budget Highlights
<ul style="list-style-type: none"> ◆ The executive proposes several major initiatives in this agency to address workload and other issues: <ul style="list-style-type: none"> ● A significant increase in staffing levels (37.00 FTE) ● The funding of career ladders for state staff ● An increase of 2% in rates paid to contract attorneys, which is the same as other provider rate increases in other agencies ● Costs for death penalty cases ◆ The Governor proposes adding FTE for the following purposes: <ul style="list-style-type: none"> ● Make permanent 11.00 FTE modified positions funded in the 2013 biennium with funds to address caseload growth seen during the 2011 Legislature ● Add 17.00 FTE to address recent caseload growth ● Add 2.00 FTE crime investigators to address caseload growth ● Add 3.00 FTE to shift caseloads from managing attorneys to free up time for management duties ● Add 2.50 FTE to address caseload growth in conflict cases ● Add 0.50 FTE to shift caseloads from the chief appellate defender to free up time for management duties ● Add 1.00 FTE to account for court assessments on defendants for reimbursement for services

Legislative Action Issues
<ul style="list-style-type: none"> ◆ A portion of the funding to add FTE is one time only ◆ The provider rate increase would have little impact on the rate paid to contract attorneys ◆ The Governor’s request would further shift the office toward more reliance on state FTE ◆ The legislature may wish to identify goals and performance measures and monitor the impact of any funding initiatives adopted

Agency Discussion

The Office of 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:

- Caseload growth and growth in open cases
- Turnover in staff and difficulty in securing and maintaining contracted work, with resulting increased workload and potential impact on effectiveness of counsel

Caseload and Caseload Growth

The figure that shows the case trends from FY 2010 through FY 2012 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 2012 the office saw a nearly 12% growth in cases. This growth is nearly three times the growth seen in previous years. The office saw a nearly 10% growth in cases heard in city, municipal, and justice courts, which comprises 63% of all cases. Of note, abuse and neglect cases, which comprise nearly 10% of all cases, saw a growth of 38% from FY 2011 to FY 2012.

Office of Public Defender Case Trends FY 2010 to FY 2012					
Case Types	FY 2010	FY 2011	FY 2012	FY 2011 to FY 2012	Percent of All Types
Abuse and Neglect	2,259	2,218	3,061	38.01%	9.9%
Criminal	5,677	5,573	5,934	6.48%	19.2%
Guardianship	212	222	268	20.72%	0.9%
Involuntary Commitment	844	915	1,058	15.63%	3.4%
Juvenile	916	971	1,082	11.43%	3.5%
Lower Court	17,721	17,730	19,476	9.85%	63.0%
Voluntary Commitment	<u>31</u>	<u>35</u>	<u>33</u>	<u>-5.71%</u>	<u>0.1%</u>
Total All Case Types	27,660	27,664	30,912	11.74%	100.0%

The figure at right shows a breakdown by public defender region. From FY 2011 to FY 2012, significant growth is shown in abuse and neglect cases in the regions of Missoula, Great Falls, Helena, Havre, Lewistown, Glendive, and Miles City. The agency has been closely monitoring this trend and expects the number of cases to continue at or above the levels seen in FY 2012.

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 units 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 units are given for travel. The total units 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 150 units 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 in the appendix.

Office of Public Defender Abuse and Neglect Cases					
Region	FY 2010	FY 2011	FY 2012	FY 2011 to FY 2012	Percent of Total
1 - Kalispell	339	325	278	-14.5%	9.1%
2 - Missoula	264	135	369	173.3%	12.1%
3 - Great Falls	442	566	746	31.8%	24.4%
4 - Helena	152	129	229	77.5%	7.5%
5 - Butte	118	159	173	8.8%	5.7%
6 - Havre	106	57	269	371.9%	8.8%
7 - Lewistown	46	59	84	42.4%	2.7%
8 - Bozeman	131	149	145	-2.7%	4.7%
9 - Billings	413	458	527	15.1%	17.2%
10 - Glendive	115	82	111	35.4%	3.6%
11 - Miles City	<u>133</u>	<u>99</u>	<u>130</u>	<u>31.3%</u>	<u>4.2%</u>
Total	2,259	2,218	3,061	38.0%	100.0%

Turnover and Contract Difficulties

The office is able to recruit for vacant state positions, and consequently has a low vacancy saving rate. However, the office has a turnover rate of about 25% for attorneys in the Office of Public Defender program and 50% for attorneys in the Appellate Defender program. Attorneys in the agency comprise slightly over half of the workforce. Turnover at these levels generally means the office is less efficient because of continual recruitment and training. In addition, the office has had diminishing ability to secure contracts with private attorneys to provide counsel. The 2011 legislature provided funding for additional contracts to address caseload growth. The office ended up hiring additional staff on a modified basis when sufficient contracts could not be secured.

Among the reasons cited for turnover and contract weakness are:

- Workload
 - Caseloads in 9 of 11 public defender regions are 3,100 units over the case weighting system standard of 150 units per practicing attorney and the stress for the excess caseloads is a factor cited when employees leave the office for other employment opportunities
- Pay
 - State Staff - a combination of low experience and generally low salaries means that the average attorney in office is paid at 59.4% of the market salary for equivalent positions in surrounding states and the private sector
 - Contract Attorneys – Attorneys under contract are paid \$60.00 per hour compared to \$93.00 per hour that agencies pay the Department of Justice for contract attorneys and \$151-\$200 per hour that the State Bar of Montana determined in its 2011 members survey was charged by 35% of survey responders (the only range indicated in the survey results)

Executive Budget Proposal

The executive has recommended three primary actions to address the office's challenges:

- Add 37.00 FTE for various purposes
- Add funding for a career ladder
- Increase the contract rate by 2%

Additional FTE

The executive would add the following FTE:

- 11.00 FTE attorneys to make modified positions added during the interim using funds intended for paying contract attorneys to address caseload growth seen at the time of the 2011 Legislative Session (the office was unsuccessful in finding adequate numbers of contract attorneys to take cases)
- 11.00 FTE attorneys to address caseload growth experienced after the 2011 Legislative Session
- 6.00 FTE legal secretaries to assist attorneys with legal research and clerical matters
- 2.00 FTE crime investigators to address caseload growth
- 3.00 FTE to shift caseloads from managing attorneys to free up time for management duties
- 2.50 FTE to address caseload growth in conflict cases
- 0.50 FTE to shift caseloads from the chief appellate defender to free up time for management duties
- 1.00 FTE to account for court assessments on defendants for reimbursement for services

These requests provides staffing levels to address situations where attorney workloads have or are projected to exceed case weighting system levels of 150 units established to ensure effective assistance of counsel. Attorneys would be assigned as needed to address the regions with the largest occurrences where caseloads exceed the 150 unit threshold. Legal secretaries would support existing and new attorneys in offices with highest caseloads.

LFD COMMENT

Given the hiring history of the office, it would likely be able to fill the positions and consequently have some impact on workloads. The office continually advertises for attorney positions and maintains a pool of screened applicants. When an opening occurs the agency first seeks applicants from within the agency and if no interest is shown fills positions from the applicant pool. In spite of the high turnover rates, the office has been successful in maintaining a nearly full workforce as evidenced by the lack of vacancy savings experienced in FY 2012.

The individual decision packages that add the various FTE are discussed in further detail in the relevant program narratives.

Career Ladder

The executive proposes to fund a career ladder for attorneys to bring their pay more in line with those of their counterparts in county and city governments across the state.

LFD ISSUE

Turnover Not Specified

The career ladder proposed for attorneys would provide average increases over current salaries of 19.4% in FY 2014 and an additional 3.2% in FY 2015. The agency was unable to make an estimate of the turnover rate that would result from the combination of salary increases and caseload reductions.

The legislature may wish to discuss with the agency what the agency expects would be the turnover impact from increasing pay and reducing caseloads.

Increase Contract Rate

The executive proposes to increase contracts by 2% in FY 2014 and an additional 2% in FY 2015, which is the standard rate increase the executive recommends for provider contracts throughout state government, including the Department of Corrections and Department of Health and Human Services.

**LFD
ISSUE**Little Impact on Rate Paid to Contract Attorneys

As stated, contracts offered by the agency are significantly below the rates paid by agencies for contracted attorneys of the Department of Justice and members of the Montana Bar Association. A 2% rate adjustment would increase the current rate of \$60.00 per hour to \$61.20 for FY 2014 and \$62.40 for FY 2015. Therefore, it can be questioned whether this degree of increase will have any impact on OPD's ability to secure contracts to provide counsel.

**LFD
ISSUE**Further Shift to State Staff over Contracts

When the agency was first established, the legislature funded the agency at a ratio of 29% contracted attorneys to 71% state FTE. Over the subsequent biennia, the office has shifted to more state staff, including in the 2013 biennium when contracts could not be secured. The Governor now proposes to further shift to state staff through both the additional FTE requested and the proposed increase in contracts that would likely have little effect in increasing the ability of OPD to secure contracts. As requested, the balance in funding would change to 25.6% for contracted attorneys and 74.4% for state FTE.

Legislative Options

The legislature may wish to discuss what outcomes are being pursued with regard to desired impact on workload, turnover, ability to secure contracts, and the provision of effective counsel, and how performance might be measured. The legislature may then wish to have an interim committee monitor a number of factors to determine the impact of any action taken to address this office's challenges, including but not limited to:

- Was the agency able to hire staff?
- What impact was seen on turnover?
- Was the office able to increase movement toward market?
- Did the rate increase have any impact on ability to secure contracts?
- What is the change in workload?
- What impact was experienced on effectiveness of counsel?

Legislative Action Options

- Have the executive as part of its budget presentation identify intended outcomes of additional funding and how achievement of those outcomes might be measured for discussion with the legislature
- Request that an appropriate interim committee monitor impacts on the agency's operations and effectiveness and report to the 2015 Legislature

Personal Services

The personal services budget for the 2015 biennium would increase over the base primarily due to the following factors and biennium amounts:

- Requests to add 37.00 FTE, \$5.1 million
- Requests to fund career ladders, \$2.2 million
- Pay raises given as a result of an unfair labor practices case brought before the Montana Board of Personnel Appeals over correctional officer career ladder provisions in a similar labor contract to the one for lawyers in this agency, \$0.3 million
- Statewide present law adjustments for personal services that reduce base funding by \$1.2 million primarily because of:
 - Applied vacancy savings of 4% for the 2015 biennium
 - No vacancy savings experienced in the base year
 - Aggregate agency salaries for the 2015 biennium that are lower than for the 2013 biennium due to turnover

During the current biennium, the agency has been operating under pay plan rules that set salaries against a 2006 market survey. When compared to the 2012 market survey conducted by the Department of Administration, the aggregate midpoint salary is 63.6% of the market midpoint. Attorneys on average are furthest from market at 59.4%. Attorneys with supervisory duties fall even lower than the average for all attorneys at 53.3%. The current comparison to market is after the pay raises given to nearly half of its workforce during FY 2012 as a fallout from an unfair labor practices ruling by the Board Of Personnel Appeals of a case brought by union membership of the Department of Corrections with similar contract provisions to this agency. To address the pay issues and their impacts on recruitment and retention, the executive has included requests to fund career ladders.

About 21% of the agency's FTE is eligible for full or early retirement in the 2015 biennium. The agency has not requested funding to address payouts for any retirements that may occur.

Agency Wide Decision Packages

The agency has a number of requests that are common to all programs. The following table summarizes these requests.

Office of Public Defender					
Decision Packages Common to Both Programs					
Purpose	Type	Decision Package	Program	FTE	Biennium Amount
Increase Contract Attorney Rate	New Proposal	DP 12	Office of Public Defender	0.00	\$333,339
Increase Contract Attorney Rate	New Proposal	DP 10	Office of Appellate Defender	0.00	6,969
Totals - Increase Contract Attorney Rate				0.00	<u>\$340,308</u>
Reduce Manager Caseloads	Present Law	DP 5	Office of Public Defender	3.00	516,205
Reduce Manager Caseloads	Present Law	DP 11	Office of Appellate Defender	0.50	102,497
Totals - Reduce Manager Caseloads				3.50	<u>\$618,702</u>
Modified FTE in 2013 Biennium	Present Law	DP 15	Office of Public Defender	10.00	1,330,819
Modified FTE in 2013 Biennium	Present Law	DP 18	Office of Appellate Defender	1.00	172,069
Totals - Modified FTE in 2013 Biennium				11.00	<u>\$1,502,888</u>
Caseload Impacts	Present Law	DP 1	Office of Public Defender	15.00	2,093,406
Caseload Impacts	Present Law	DP 4	Office of Public Defender	2.50	341,096
Caseload Impacts	Present Law	DP 6	Office of Public Defender	2.00	265,897
Caseload Impacts	Present Law	DP 3	Office of Appellate Defender	2.00	246,614
Totals - Caseload Impacts				21.50	<u>\$2,947,013</u>
Fund Career Ladder	Present Law	DP 13	Office of Public Defender	0.00	2,701,800
Fund Career Ladder	Present Law	DP 17	Office of Appellate Defender	0.00	179,466
Totals - Fund Career Ladder				0.00	<u>\$2,881,266</u>

**LFD
ISSUE**One-Time-Only Funding in Requests for FTE

Several request for this agency include funding for the addition of FTE. The funding for FY 2014 for nearly all of these requests would pay for costs for outfitting the FTE with an office and computer setup and initial supplies. Since initial outfitting costs are not annually ongoing, the legislature may wish to consider designating the associated funding as one-time-only. Where these outfitting costs have been identified a LFD issue has been raised with the associated decision package. The figure summarizes, for each program, the decision packages with one-time outfitting costs.

Office of Public Defender FY 2014 One-time FTE Outfitting		
Decision Package	Program	FY 2014
DP 1 - Support Workload - FTE	Office of Public Defender	\$55,125
DP 4 - Conflict Coordinator	Office of Public Defender	7,350
DP 5 - Managers' Caseloads	Office of Public Defender	11,025
DP 6 - Investigative Staff to Support Workload	Office of Public Defender	7,350
DP 7 - Accounts Receivable Support	Office of Public Defender	4,175
Totals - Office of Public Defender		<u>\$85,025</u>
DP 3 - Support Workload	Office of Appellate Defender	7,350
DP11 - Managers' Caseloads	Office of Appellate Defender	3,675
Totals - Office of Appellate Defender		<u>\$11,025</u>

5% Reduction Plan

Statute requires that agencies submit plans to reduce general fund and certain state special revenue funds by 5%. A summary of the entire 2015 biennium 5% plan submitted for this agency is in the appendix. For this agency the biennium amounts for these reductions are \$1.1 million general fund and \$5,000 state special revenue.

IT Systems

State agencies have identified information technology (IT) systems that are critical to the state as a whole or to the agency. Further, state agencies have assessed the age of the systems to establish whether the system is:

- New
- Emerging
- Mature
- Declining
- Obsolete

The Legislative Finance Committee recommended that House Appropriations and Senate Finance and Claims Committee leadership direct the Long Range Planning Subcommittee to meet jointly with each of the appropriate joint appropriations subcommittees to discuss priorities related to critical IT systems, and that state agencies be prepared to discuss:

- Current plans to address obsolescence
- Costs to replace the system
- Costs of maintaining the current system
- Risks associated with both retaining the current system and replacing the system

LFD staff will be prepared to discuss issues related to those systems that have been determined to be either critical to the state as a whole or to the agency and either declining or obsolete. Issues include security, continuity of operations, and funding.

Agency Goals and Objectives

Goals and Objectives for the agency can be found in the appendix.

Funding

The following table shows agency funding by source of authority, as proposed by the executive. 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 2015 Biennium Budget						
Funds	HB 2	Non-Budgeted Proprietary	Statutory Appropriation	Total All Sources	% Total All Funds	
General Fund	\$53,618,937	\$0	\$0	\$53,618,937	99.0%	
State Special Total	555,193	-	-	555,193	1.0%	
Federal Special Total	-	-	-	-	0.0%	
Proprietary Total	-	-	-	-	0.0%	
Current Unrestricted	-	-	-	-	0.0%	
Other Total	-	-	-	-	0.0%	
Total All Funds	\$54,174,130	\$0	\$0	\$54,174,130		
Percent - Total All Sources	100.0%	0.0%	0.0%			

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.

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	22,577,899	22,577,899	45,155,798	84.22%	22,677,857	22,677,857	45,355,714	83.72%
Statewide PL Adjustments	(456,715)	(509,265)	(965,980)	(1.80%)	(456,715)	(509,265)	(965,980)	(1.78%)
Other PL Adjustments	4,464,497	4,610,780	9,075,277	16.93%	4,644,273	4,786,281	9,430,554	17.41%
New Proposals	120,203	233,639	353,842	0.66%	120,203	233,639	353,842	0.65%
Total Budget	\$26,705,884	\$26,913,053	\$53,618,937		\$26,985,618	\$27,188,512	\$54,174,130	

Supplemental Appropriation

The Governor’s supplemental bill request includes a total \$2.5 million general fund for the OPD (\$2.3 million for the public defender and \$0.2 million for the appellate defender). The request for supplemental funding is due primarily to the impacts on the agency from unanticipated double digit caseload growth that was heavily influenced by large growth in the number of dependent and neglect cases. The agency also experienced abnormally high turnover and termination payouts in FY 2012 of \$216,000 when the average for the previous four years was \$76,000.

The executive has included a number of initiatives to address workload and other issues. For a full discussion see the Agency Discussion section of this narrative.