

Performance Evaluation Fact Sheet

NEW FUNDING, OFFICE OF PUBLIC DEFENDER

ISSUE STATEMENT

Upon recommendation by the Governor, the 2011 Legislature added \$1.5 million general fund each year of the biennium for the Office of Public Defender to address caseloads. Additionally, \$900,000 general fund for the biennium was added for death penalty cases. Death penalty funding was designated as one-time-only, restricted, and biennial. The Legislative Finance Committee requested an update on how these additional funds were utilized by the office.

HISTORY AND PURPOSE OF PROGRAM OR ITEM

The additional funding associated with this report was to address caseload growth and included funding for 8.00 FTE (see DP 103 in the Legislative Fiscal Report 2013 Biennium, page D-72). Figure 1 shows the budgeted details for DP 103. All FTE funded in the request were for staff attorneys to alleviate caseload impacts.

Figure 1 - DP 103 Fund Office of Public Defender Caseload Growth		
Category	FY 2012	FY 2103
FTE	8.00	8.00
Personal Services	\$540,663	\$539,391
Operating Expenses (Contract Attorneys)	<u>959,337</u>	<u>960,609</u>
Total	<u>\$1,500,000</u>	<u>\$1,500,000</u>

The personal services funding of DP 103 is being used to fund new attorneys in regions where attorney caseloads are high. Additionally, the office requested and has been approved by the Office of Budget and Program Planning to add 5.08 FTE in FY 2012 and 10.00 FTE in FY 2013. Funding for these modified FTE will come from the operating

Figure 2 - Office of Public FTE Additions With DP 103 Funding						
Region	FTE Type	Position Job Classification			FTE	
		Attorney	Administrative	Investigator	FY 2012	FY 2013
Helena	Base	0.00	0.00	1.00	1.00	1.00
Havre	Base	1.00	0.00	0.00	1.00	1.00
Lewistown	Base	1.00	0.00	0.00	1.00	1.00
Billings	Base	1.00	0.00	0.00	1.00	1.00
Glendive	Base	1.00	0.00	0.50	1.50	1.50
Miles City	Base	0.00	0.00	0.50	0.50	0.50
Major Crime Unit	Base	0.00	1.00	0.00	1.00	1.00
Appellate Defender	Base	<u>1.00</u>	<u>0.00</u>	<u>0.00</u>	<u>1.00</u>	<u>1.00</u>
Total base FTE		5.00	1.00	2.00	8.00	8.00
Vacant	Modified	1.00	0.00	0.00	0.50	1.00
Kalispell	Modified	1.00	1.00	0.00	1.00	2.00
Great Falls	Modified	1.00	0.00	0.00	0.50	1.00
Helena	Modified	1.00	0.00	0.00	0.50	1.00
Billings	Modified	3.00	1.00	0.00	2.08	4.00
Appellate Defender	Modified	<u>1.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.50</u>	<u>1.00</u>
Total modified FTE		8.00	2.00	0.00	5.08	10.00

expenses portion of DP 103 that was intended to fund additional contract attorneys. The office has experienced difficulties finding private attorneys willing to contract with the office in several regions of the state. As such, the office has elected to use modified FTE to address workload issues in these areas. Because modified FTE were used instead of contracted attorneys, the associated funding will have to be requested, as it will be removed from the base when developing the 2015 biennium budget. Figure 2 shows where the FTE were assigned with the DP 103 funding.

CASELOAD TARGETS

Nationally, desired caseloads limits for public defender attorneys are based on American Bar Association (ABA) standards. The ABA standards were established to allow each lawyer to give each client the time and effort necessary to ensure effective representation. The standards state that a full-time public defense attorney or assigned counsel should not exceed the following per attorney per year caseload equivalents: 150 felonies; or 400 misdemeanors (excluding traffic); or 200 juvenile offender cases; or 200 mental health act cases; or 25 appeals to appellate court hearing a case on the record and briefs. To address these standards, the Office of the State Public Defender has established a case weighting system that is used to track attorney caseload assignments against the equivalent of 150 felony cases and this is often referred to as the 150-case limit.

CURRENT STATUS

Funding for Caseloads

Through assignment of the additional base and modified FTE shown on Figure 2, the office has reduced most instances but not fully eliminated occurrences in all regions where attorneys exceeded the 150-case limit, under its current caseload.

An obstacle facing the agency during FY 2012 is the estimated 9% increase in new cases. In FY 2011, new cases were 27,664. Projections for FY 2012 that are based on actual case counts through the third quarter FY 2012 will see 30,167 new cases, or 2,503 more cases than FY 2011.

Funding for Death Penalty

As of May 30, \$309,642 of the funding for death penalty cases has been expended. Current expenditures equal 62% of the \$500,000 allocated for FY 2012 and 34.4% of 2013 biennium death penalty funding. Language in HB 2, at the request of the Governor, restricts funding for death penalty cases to this purpose until September 1, 2012, after which the unexpended funds are available to be used for any purpose consistent with the mission of the agency.

POTENTIAL OPTIONS OR DECISION POINTS

There are no specific decisions associated with this item as it is provided to inform the committee of how the additional funds are being used and how they impact caseloads of public defender staff. Legislative staff will continue to monitor Office of Public Defender caseloads in the Legislative Budget Analysis 2015 Biennium.