

Agency Legislative Budget

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

Agency Legislative Budget								
Budget Item	Base Budget Fiscal 2006	PL Base Adjustment Fiscal 2008	New Proposals Fiscal 2008	Total Leg. Budget Fiscal 2008	PL Base Adjustment Fiscal 2009	New Proposals Fiscal 2009	Total Leg. Budget Fiscal 2009	Total Leg. Budget Fiscal 08-09
FTE	90.25	102.25	0.00	192.50	102.25	0.00	192.50	192.50
Personal Services	320,686	10,569,442	315,264	11,205,392	10,582,421	760,318	11,663,425	22,868,817
Operating Expenses	332,105	7,912,739	291,600	8,536,444	7,803,259	291,600	8,426,964	16,963,408
Equipment	60,653	0	0	60,653	0	0	60,653	121,306
Total Costs	\$713,444	\$18,482,181	\$606,864	\$19,802,489	\$18,385,680	\$1,051,918	\$20,151,042	\$39,953,531
General Fund	713,444	18,482,181	531,864	19,727,489	18,385,680	976,918	20,076,042	39,803,531
State/Other Special	0	0	75,000	75,000	0	75,000	75,000	150,000
Total Funds	\$713,444	\$18,482,181	\$606,864	\$19,802,489	\$18,385,680	\$1,051,918	\$20,151,042	\$39,953,531

Agency Description

The Office of Public Defender (OPD) administers the statewide public defender system and delivers public defender services in all courts in Montana for criminal and certain civil cases for an individual who is determined to be indigent per statutory provisions and is accused of an offense that could result in the person’s loss of life or liberty if convicted. The statewide public defender system is supervised by the Public Defender Commission, an eleven member commission appointed by the Governor. The office is administratively attached to the Department of Administration with exception for some functions as provide in statute (2-15-1028, MCA). The statewide public defender system also includes appellate defender functions that were previously the responsibility of a separate state agency.

Agency Highlights

Office of State Public Defender Major Budget Highlights
<ul style="list-style-type: none"> ◆ The base budget for the agency was minimal because FY 2006 was a transition year. OPD began providing services July 1, 2006, and anticipates that FY 2008 will be the first year of full implementation of the new system ◆ A supplemental appropriation of about \$5.4 million was provided by the legislature for the 2007 biennium since the FY 2007 costs of the new system exceeded the level anticipated by the 2005 Legislature ◆ Funding for each year of the 2009 biennium (not including pay plan) is 102.25 FTE and about \$5.6 million greater than the legislative appropriation for FY 2007, which reflects implementation of the system as outlined in the strategic plan adopted by the Public Defender Commission and anticipated caseload increases ◆ Funding of \$9.5 million was removed from the judicial branch, District Court Operations Program to reflect the transfer of responsibility for public defender costs to the OPD

Summary of Legislative Action

The legislature provided a 2009 biennium budget (not including pay plan) that is 102.25 FTE and more than \$19.0 million per year greater than the FY 2006 base budget (which was minimal), including:

- o Statewide present law adjustments of about \$5.4 million (\$10.8 million for the biennium), which reflects in part the annualization of positions that were not filled for the entire base budget year
- o A present law decision package to annualize the cost of the new public defender system, \$10.6 million (\$21.3 million for the biennium)
- o A present law decision package to annualize the costs of the appellate defender function, \$375,000 (\$750,000 for the biennium)
- o Increased funding for anticipated increases in caseload, \$1.5 million (\$3.0 million for the biennium)
- o A restricted, biennial, one-time-only appropriation for caseload transition from the old to new systems, \$500,000 (\$1.0 million for the biennium)
- o Increased funding related to legislation passed during the 2007 regular session that is anticipated to increase caseload and costs within the public defender system, \$216,600 (\$433,200 for the biennium)

The legislature also appropriated \$75,000 state special revenue a year (\$150,000 for the biennium) from donations or payments for public defender costs in the event revenue is collected.

Funding

The following table summarizes funding for the agency, by program and source. Funding for each program is discussed in detail in the individual program narratives that follow.

Total Agency Funding 2009 Biennium Budget				
Agency Program	General Fund	State Spec.	Grand Total	Total %
01 Public Defender Office	\$ 38,606,783	\$ 150,000	\$ 38,756,783	97.00%
02 Appellate Defender Office	1,196,748	-	1,196,748	3.00%
Grand Total	<u>\$ 39,803,531</u>	<u>\$ 150,000</u>	<u>\$ 39,953,531</u>	100.00%

The public defender system is funded primarily with general fund. A small amount of state special revenue (\$75,000 per year) from donations or payments for public defender costs is anticipated in the 2009 biennium.

Executive Budget Comparison

The following table compares the legislative budget for the 2009 biennium to the budget requested by the Governor, by type of expenditure and source of funding.

Executive Budget Comparison								
Budget Item	Base Budget Fiscal 2006	Executive Budget Fiscal 2008	Legislative Budget Fiscal 2008	Leg - Exec. Difference Fiscal 2008	Executive Budget Fiscal 2009	Legislative Budget Fiscal 2009	Leg - Exec. Difference Fiscal 2009	Biennium Difference Fiscal 08-09
FTE	90.25	192.50	192.50	0.00	192.50	192.50	0.00	
Personal Services	320,686	10,890,128	11,205,392	315,264	10,903,107	11,663,425	760,318	1,075,582
Operating Expenses	332,105	8,319,844	8,536,444	216,600	8,210,364	8,426,964	216,600	433,200
Equipment	60,653	60,653	60,653	0	60,653	60,653	0	0
Total Costs	\$713,444	\$19,270,625	\$19,802,489	\$531,864	\$19,174,124	\$20,151,042	\$976,918	\$1,508,782
General Fund	713,444	19,195,625	19,727,489	531,864	19,099,124	20,076,042	976,918	1,508,782
State/Other Special	0	75,000	75,000	0	75,000	75,000	0	0
Total Funds	\$713,444	\$19,270,625	\$19,802,489	\$531,864	\$19,174,124	\$20,151,042	\$976,918	\$1,508,782

The legislature provided funding that is \$1.5 million general fund greater than the executive request due to funding for the 2009 biennium pay plan and that was provided to support anticipated caseload increases related to legislation that was passed during the 2007 regular session. Legislation that is anticipated to increase caseloads and the funding provided by the legislature were:

- \$45,600 a year for SB 547, which revises laws related to sexual offenders
- \$141,000 a year for SB 104, which extends the statute of limitation for certain sex crimes
- \$30,000 a year for HB 629, which allows for mediation in certain criminal proceedings

Other Legislation

Unless otherwise noted the legislation listed below is from the 2007 regular session.

House Bill 162 – This bill revises the requirement for appointment of counsel for a developmentally disabled individual. Rather than counsel being appointed at the request of the respondent, respondent’s parents or guardian, or the responsible person, the court is now directed to order the Office of Public Defender to assign counsel for the respondent.

House Bill 629 – This bill provides that mediation may be used in certain criminal proceedings as an alternative dispute resolution method. The Office of Public Defender received \$30,000 general fund a year to fund potential caseload increases related to this statutory change.

Senate Bill 85 – This bill revises the crime of endangering the welfare of a child to include methamphetamine related child endangerment. The Office of Public Defender anticipates that this may result in individuals receiving public defender services being charged with additional crimes. The agency did not receive additional funding to support workload changes that may result due to the passage of this legislation.

Senate Bill 104 – This bill extends the statute of limitations for certain sex offenses. The agency received general fund of \$141,000 a year to support potential caseload increases related to this statutory change.

Senate Bill 124 - This bill provides that the Office of Court Administrator or Office of Public Defender not be charged for the examination, care, custody, and treatment of a criminal defendant for which the legislature has made a general fund appropriation. For example, the Office of Public Defender will no longer be charged for examinations performed at Montana State Hospital because the hospital is supported by a general fund appropriation.

Senate Bill 164 – This bill clarifies the distinction between the powers and duties of assigned counsel and a guardian ad litem in proceedings to adjudicate incapacity and to protect property of minors and persons under disability. This legislation strikes language previously included in statute that states assigned counsel has the powers and duties of a guardian ad litem. Thus, OPD staff assigned as counsel will no longer have the powers and duties of a guardian ad litem, in addition to their duties as counsel for the individual.

Senate Bill 348 – This bill eliminates the requirement that an attorney be appointed for a guardian ad litem in a child abuse and neglect case. Thus, the OPD will no longer be required to appoint an attorney in each of these cases, but may appoint an attorney if directed to do so by the court.

Senate Bill 379 – This bill clarifies when a public defender may be appointed as counsel in post conviction proceedings. Among other changes, this bill clarifies that the petitioner or appellant must be eligible for the appointment of counsel. This legislation removes the potential that the OPD could be required to appoint an attorney in situations where the individual is not eligible for a public defender.

Senate Bill 547 – This bill revises laws on sentencing, registration and treatment of sexual offenders. This legislation is sometimes referred to as “Montana’s version of Jessica’s law”. Among the provisions of this bill is a mandatory minimum sentence of 25 years for individuals convicted of certain sexual offenses. The Office of Public Defender received \$45,600 a year of general fund to support potential caseload increases related to the provisions of this legislation.

Program Legislative Budget

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

Program Legislative Budget								
Budget Item	Base Budget Fiscal 2006	PL Base Adjustment Fiscal 2008	New Proposals Fiscal 2008	Total Leg. Budget Fiscal 2008	PL Base Adjustment Fiscal 2009	New Proposals Fiscal 2009	Total Leg. Budget Fiscal 2009	Total Leg. Budget Fiscal 08-09
FTE	87.25	97.25	0.00	184.50	97.25	0.00	184.50	184.50
Personal Services	320,686	10,092,071	301,518	10,714,275	10,104,513	727,170	11,152,369	21,866,644
Operating Expenses	332,105	7,815,710	291,600	8,439,415	7,705,713	291,600	8,329,418	16,768,833
Equipment	60,653	0	0	60,653	0	0	60,653	121,306
Total Costs	\$713,444	\$17,907,781	\$593,118	\$19,214,343	\$17,810,226	\$1,018,770	\$19,542,440	\$38,756,783
General Fund	713,444	17,907,781	518,118	19,139,343	17,810,226	943,770	19,467,440	38,606,783
State/Other Special	0	0	75,000	75,000	0	75,000	75,000	150,000
Total Funds	\$713,444	\$17,907,781	\$593,118	\$19,214,343	\$17,810,226	\$1,018,770	\$19,542,440	\$38,756,783

Program Description

The Public Defender Office is responsible for management and provision of public defender (legal) services for individuals who are indigent (as defined in statute). A statewide system for the provision of public defender services was created by passage of the Montana Public Defender Act (SB 146 of the 2005 session, contained in Title 47, MCA). System design and implementation functions began in FY 2006 with implementation and change to the new system for assignment of public defense counsel effective July 1, 2006 (FY 2007).

A Public Defender Commission (established in 2-15-1028, MCA) is responsible for supervision and direction of the system (47-1-105, MCA). The chief public defender, who is appointed by the commission, hires or contracts and supervises staff necessary to perform the functions of the office (47-1-201 and 47-1-202, MCA).

Program Highlights

Office of State Public Defender Public Defender Program Major Budget Highlights
<ul style="list-style-type: none"> ◆ Effective July 1, 2006 (FY 2007) the new Office of Public Defender became responsible for the provision of public defender services in district courts and courts of limited jurisdiction ◆ 2009 biennium funding (not included 2009 biennium pay plan) increases 97.25 FTE and \$5.6 million when compared to legislative appropriations for FY 2007 to reflect the implementation of the new system as outlined in the strategic plan adopted by the Public Defender Commission and anticipated increases in caseload ◆ The agency anticipates the FY 2008 will be the first year of full implementation of the new public defender system

Funding

The Public Defender Office is funded with general fund. The office may also access funds deposited to state special revenue accounts from: 1) gifts, grants or donations; and 2) payments for the costs of a public defender either ordered by the court according to 46-8-113, MCA, ordered according the Montana Youth Court Act, or made according to the Crime Victims Compensation Act of Montana and designated as payment for public defender cost. The agency has estimated state special revenue from these sources will be \$75,000 per year during the 2009 biennium. However, because this is a new function, no prior history of revenues exists to be used as a basis for projecting future revenues.

Program Funding Table Public Defender Office						
Program Funding	Base	% of Base	Budget	% of Budget	Budget	% of Budget
	FY 2006	FY 2006	FY 2008	FY 2008	FY 2009	FY 2009
01000 Total General Fund	\$ 713,444	100.0%	\$ 19,139,343	99.6%	\$ 19,467,440	99.6%
01100 General Fund	713,444	100.0%	19,139,343	99.6%	19,467,440	99.6%
02000 Total State Special Funds	-	-	75,000	0.4%	75,000	0.4%
02247 Crime Victims Compensation Act	-	-	25,000	0.1%	25,000	0.1%
02248 Gifts, Grants And Donations Opd	-	-	10,000	0.1%	10,000	0.1%
02250 Court Ordered Sentencing Costs	-	-	25,000	0.1%	25,000	0.1%
02251 Montana Youth Court Act	-	-	15,000	0.1%	15,000	0.1%
Grand Total	\$ 713,444	100.0%	\$ 19,214,343	100.0%	\$ 19,542,440	100.0%

Present Law Adjustments

The “Present Law Adjustments” table shows the primary changes to the adjusted base budget approved by the legislature. “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 2008-----					-----Fiscal 2009-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
Personal Services					5,119,378					5,126,319
Vacancy Savings					(217,597)					(217,883)
Inflation/Deflation					66,632					68,123
Fixed Costs					276,675					225,025
Total Statewide Present Law Adjustments					\$5,245,088					\$5,201,584
DP 101 - Office of Public Defender Funding Annualization	97.25	10,662,693	0	0	10,662,693	97.25	10,608,642	0	0	10,608,642
DP 102 - Adjustment for Increase in Caseload	0.00	1,500,000	0	0	1,500,000	0.00	1,500,000	0	0	1,500,000
DP 103 - Caseload Transition - Rst/Bien/OTO	0.00	500,000	0	0	500,000	0.00	500,000	0	0	500,000
Total Other Present Law Adjustments	97.25	\$12,662,693	\$0	\$0	\$12,662,693	97.25	\$12,608,642	\$0	\$0	\$12,608,642
Grand Total All Present Law Adjustments					\$17,907,781					\$17,810,226

DP 101 - Office of Public Defender Funding Annualization - The legislature provided \$21.3 million to annualize funding for the Public Defender's Office based upon the agency's estimate of on-going future costs of the system.

DP 102 - Adjustment for Increase in Caseload - The legislature provided \$3.0 million general fund for the biennium for caseload increases.

DP 103 - Caseload Transition - Rst/Bien/OTO - The legislature provided \$1 million general fund as a restricted, biennial, one-time-only appropriation to help the Office of Public Defender transition the remainder of its cases from the old system to the new system of service delivery.

New Proposals

New Proposals	-----Fiscal 2008-----					-----Fiscal 2009-----					
	Program	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
DP 105 - Misc. State Special Revenue Funding											
01	0.00	0	75,000	0	0	75,000	0.00	0	75,000	0	75,000
DP 702 - SB 547 -- Sexual Offender Caseload											
01	0.00	45,600	0	0	0	45,600	0.00	45,600	0	0	45,600
DP 703 - SB 104 Extd Stat Limit Certain Sex Crime Caseload											
01	0.00	141,000	0	0	0	141,000	0.00	141,000	0	0	141,000
DP 705 - HB 629 -- Mediation for Criminal Proceedings											
01	0.00	30,000	0	0	0	30,000	0.00	30,000	0	0	30,000
DP 6013 - 2009 Biennium Pay Plan - HB 13											
01	0.00	294,630	0	0	0	294,630	0.00	719,395	0	0	719,395
DP 6014 - Retirement Employer Contributions - HB 131											
01	0.00	6,888	0	0	0	6,888	0.00	7,775	0	0	7,775
Total	0.00	\$518,118	\$75,000	\$0	\$593,118	0.00	\$943,770	\$75,000	\$0	\$1,018,770	

DP 105 - Misc. State Special Revenue Funding - The legislature provided \$150,000 state special revenue for the biennium from the public defender account provided for in 47-1-110, MCA.

DP 702 - SB 547 -- Sexual Offender Caseload - The legislature provided \$45,600 general fund a year (\$91,200 for the biennium) for anticipated increases in costs and caseload due to the provisions of SB 547, which revises laws on sentencing, registration, and treatment of sexual offenders.

DP 703 - SB 104 Extd Stat Limit Certain Sex Crime Caseload - The legislature provided general fund of \$141,000 a year (\$282,000 for the biennium) to support an anticipated increase in caseload due to the provisions of SB 104, which extends the statute of limitation for certain sex crimes.

DP 705 - HB 629 -- Mediation for Criminal Proceedings - The legislature provided general fund of \$30,000 a year (\$60,000 for the biennium) to support a caseload increase anticipated due to the provisions of HB 629 allowing mediation in certain criminal proceedings.

DP 6013 - 2009 Biennium Pay Plan - HB 13 - The legislature passed a pay plan (HB 13 of the 2007 regular session) that provides an additional 3.0 percent in FY 2008 and FY 2009, a 0.5 percent increase in the 10-year longevity increment, an additional 0.6 percent discretionary allocation, as well as an additional \$33 per month in health insurance contribution in FY 2008 and an additional \$36 per month in FY 2009. These amounts represent this program's allocation of costs to fund this pay plan.

DP 6014 - Retirement Employer Contributions - HB 131 - The legislature adopted HB 63 and HB 131, which increases the employer contribution to retirement systems. The amounts shown represent this program's allocation of costs to fund this increased contribution.

Program Legislative Budget

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

Program Legislative Budget									
Budget Item	Base Budget Fiscal 2006	PL Base Adjustment Fiscal 2008	New Proposals Fiscal 2008	Total Leg. Budget Fiscal 2008	PL Base Adjustment Fiscal 2009	New Proposals Fiscal 2009	Total Leg. Budget Fiscal 2009	Total Leg. Budget Fiscal 08-09	
FTE	3.00	5.00	0.00	8.00	5.00	0.00	8.00	8.00	
Personal Services	0	477,371	13,746	491,117	477,908	33,148	511,056	1,002,173	
Operating Expenses	0	97,029	0	97,029	97,546	0	97,546	194,575	
Total Costs	\$0	\$574,400	\$13,746	\$588,146	\$575,454	\$33,148	\$608,602	\$1,196,748	
General Fund	0	574,400	13,746	588,146	575,454	33,148	608,602	1,196,748	
Total Funds	\$0	\$574,400	\$13,746	\$588,146	\$575,454	\$33,148	\$608,602	\$1,196,748	

Program Description

The Office of the Appellate Defender provides appellate representation to clients of the statewide public defender system. The office also provides appellate representation as time allows to clients represented by public defenders working under contract with the state Office of Public Defenders. The appellate section assists other offices in the system in the representation of indigent clients who qualify for an appointed attorney under state statutes governing post conviction relief.

The Public Defender Commission is responsible for supervision and direction of the statewide public defender system (47-1-105, MCA), which includes the appellate section. The chief public defender, who is appointed by the commission, hires and supervises the chief appellate defender, who manages and supervises the Appellate Defender Office.

Program Highlights

Office of State Public Defender Appellate Defender Program Major Budget Highlights	
◆	Effective July 1, 2006, (FY 2007) the appellate defender function became part of the new statewide public defender system; because of this change the base budget is shown as zero
◆	Staffing and expenditures for the appellate defender function increase by 5.00 FTE and about \$363,000 when compared to FY 2006 (prior to becoming part of the statewide public defender system) to reflect the implementation of the new system as outlined in the strategic plan adopted by the Public Defender Commission

Funding

The appellate defender function is funded entirely with general fund.

Program Funding Table Appellate Defender Office					
Program Funding		Budget FY 2008	% of Budget FY 2008	Budget FY 2009	% of Budget FY 2009
01000	Total General Fund	\$ 588,146	100.0%	\$ 608,602	100.0%
	01100 General Fund	588,146	100.0%	608,602	100.0%
Grand Total		\$ 588,146	100.0%	\$ 608,602	100.0%

Present Law Adjustments

The "Present Law Adjustments" table shows the primary changes to the adjusted base budget approved by the legislature. "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 2008-----					-----Fiscal 2009-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
Personal Services					207,857					208,094
Vacancy Savings					(8,314)					(8,324)
Total Statewide Present Law Adjustments					\$199,543					\$199,770
DP 101 - Appellate Defender Funding Annualization										
	5.00	374,857	0	0	374,857	5.00	375,684	0	0	375,684
Total Other Present Law Adjustments	5.00	\$374,857	\$0	\$0	\$374,857	5.00	\$375,684	\$0	\$0	\$375,684
Grand Total All Present Law Adjustments					\$574,400					\$575,454

DP 101 - Appellate Defender Funding Annualization - The legislature provided \$750,541 general fund and 5.00 FTE to annualize and implement the statewide office of public defender' operating plan for the Appellate Defender Office. The office became a part of the statewide public defender system effective July 1, 2006. Prior to that date the office was a separate state agency.

New Proposals

New Proposals	-----Fiscal 2008-----					-----Fiscal 2009-----					
	Program	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
DP 6013 - 2009 Biennium Pay Plan - HB 13											
02	0.00	13,499	0	0	13,499	0.00	32,886	0	0	32,886	
DP 6014 - Retirement Employer Contributions - HB 131											
02	0.00	247	0	0	247	0.00	262	0	0	262	
Total	0.00	\$13,746	\$0	\$0	\$13,746	0.00	\$33,148	\$0	\$0	\$33,148	

DP 6013 - 2009 Biennium Pay Plan - HB 13 - The legislature passed a pay plan (HB 13 of the 2007 regular session) that provides an additional 3.0 percent in FY 2008 and FY 2009, a 0.5 percent increase in the 10-year longevity increment, an additional 0.6 percent discretionary allocation, as well as an additional \$33 per month in health insurance contribution in FY 2008 and an additional \$36 per month in FY 2009. These amounts represent this program's allocation of costs to fund this pay plan.

DP 6014 - Retirement Employer Contributions - HB 131 - The legislature adopted HB 63 and HB 131, which increases the employer contribution to retirement systems. The amounts shown represent this program's allocation of costs to fund this increased contribution.