



# MONTANA LEGISLATIVE BRANCH

## Legislative Fiscal Division

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DATE: June 4, 2004  
TO: Legislative Finance Committee  
FROM: Harry Freebourn  
RE: Public Defender Project

### PURPOSE

The purpose of this report is to provide the Legislative Finance Committee (LFC) with an update on the Public Defender Project. This project may result in legislation to establish a statewide public defender system, which could have a significant fiscal impact on the state's finances.

### BACKGROUND

In March of 2004, the Law and Justice Committee formed a subcommittee and instructed that its members develop legislation to establish a statewide public defender system. This subcommittee is to bring legislation to the full committee for its consideration. This legislation is partially in response to a lawsuit filed in district court by the ACLU against the State of Montana and Missoula County. The ACLU alleges that defendants are not being provided public defender services in a fair and consistent manner among jurisdictions. Also, the ACLU argues that the current system creates a conflict of interest when the judge appoints a public defender for a case that is being adjudicated by that judge. The subcommittee is currently considering whether to provide public defender services using state employed FTE's, contracts with attorneys in private practice, or some combination of both.

### COST INFORMATION

Currently, the state pays for a significant portion of the costs to provide public defender services in the state of Montana through the Judiciary's District Court Assumption Program. Please refer to the attached worksheet entitled "Public Defender Costs By Account And Case Type." These costs include payments for certain services provided by the six-county managed public defender offices, services provided by private attorneys, medical evaluations for individuals accused of a crime, transcripts, private investigator services, and witness fees and expenses. Expenditures for public defender activities, which represent nearly 82 percent of the total variable costs captured under the District Court Assumption Program, are estimated to be \$7.8 million during fiscal 2004.

If the committee decides to move forward with a statewide public defender system, the state will most likely incur significant costs over and above the \$7.8 million noted above. Estimates for most of these costs are currently being gathered via a survey that was sent to each county. Some examples of the additional costs include: (1) costs for a state-level chief public defender with office support, (2) information technology costs for case and office management, (3) rent, office space, utilities and facility maintenance, (4) personnel training, and (5) the liability for the vacation and sick leave balances of employees in county managed public defender offices.

## **ADDITIONAL INFORMATION AND FUTURE UPDATES**

There are detailed presentations, analyses, and research related to this subject prepared by the staff of the Legislative Fiscal and Services Divisions found at the Law and Justice committee's web site: [http://leg.mt.gov/css/committees/interim/2003\\_2004/law\\_justice/full\\_schedule.asp](http://leg.mt.gov/css/committees/interim/2003_2004/law_justice/full_schedule.asp).

Staff from the Legislative Fiscal Division are working with staff from the Legislative Services Division committee on fiscal issues associated with this study and will provide updates to the LFC as that committee's work progresses.

PUBLIC DEFENDER COSTS BY ACCOUNT AND CASE TYPE

| Account Number                              | Account Description                     | Actual Expenditures<br>July 03 - Dec 03 | % of<br>Total  | Actual Expenditures<br>July 03 - March 04 | % of<br>Total  | Est. Expenditures<br>July 03 - June 04 | % of<br>Total  |
|---|---|---|----------------|---|----------------|--|----------------|
| <b>CRIMINAL CASES</b>                       |   |   |                |   |                |  |                |
| 62108                                       | P. D. Office - Legal Fees & Court Costs | \$ 33,808                               | 1.29%          | \$ 67,796                                 | 1.44%          | \$ 111,894                             | 1.44%          |
| 62109A                                      | Public Defender Office                  | 551,459                                 | 21.06%         | 1,090,013                                 | 23.08%         | 1,799,031                              | 23.08%         |
| 62109G                                      | Public Defender Contracts               | 183,895                                 | 7.02%          | 298,190                                   | 6.31%          | 492,153                                | 6.31%          |
| 62109M                                      | Public Defender Appointed               | 1,103,016                               | 42.12%         | 1,944,841                                 | 41.18%         | 3,209,897                              | 41.18%         |
| 62109S                                      | Private Investigator                    | 62,673                                  | 2.39%          | 126,586                                   | 2.68%          | 208,926                                | 2.68%          |
| 62113                                       | Warrant Writing Service                 | -                                       | 0.00%          | 1,920                                     | 0.04%          | 3,169                                  | 0.04%          |
| 62116                                       | Medical Services - Evaluations          | 140,208                                 | 5.35%          | 236,802                                   | 5.01%          | 390,834                                | 5.01%          |
| 62135                                       | Consulting & Prof. Service - Training   | 100                                     | 0.00%          | 100                                       | 0.00%          | 165                                    | 0.00%          |
| 62162                                       | Witness Fees                            | 35,277                                  | 1.35%          | 84,284                                    | 1.78%          | 139,108                                | 1.78%          |
| 62304                                       | Postage and Mailing                     | 10                                      | 0.00%          | 10  | 0.00%          | 16                                     | 0.00%          |
| 62320                                       | Two-way Video                           | 100                                     | 0.00%          | 100                                       | 0.00%          | 165                                    | 0.00%          |
| 62401                                       | In State Personal Auto Mileage          | 3                                       | 0.00%          | 3   | 0.00%          | 5                                      | 0.00%          |
| 62496                                       | Witness Travel                          | 8,265                                   | 0.32%          | 1,424                                     | 0.03%          | 2,349                                  | 0.03%          |
| <b>TOTAL CRIMINAL CASES</b>                 |   | <b>\$ 2,118,814</b>                     | <b>80.91%</b>  | <b>\$ 3,852,067</b>                       | <b>81.56%</b>  | <b>\$ 6,357,712</b>                    | <b>81.56%</b>  |
| <b>INVOLUNTARY COMMITMENT CASES</b>         |   |   |                |   |                |  |                |
| 62108I                                      | Court Reporter - Transcripts            | \$ 1,222                                | 0.05%          | \$ 1,222                                  | 0.03%          | \$ 2,016                               | 0.03%          |
| 62109F                                      | Public Defender Office                  | 11,860                                  | 0.45%          | 20,715                                    | 0.44%          | 34,189                                 | 0.44%          |
| 62109L                                      | Public Defender Contracts               | 29,010                                  | 1.11%          | 47,031                                    | 1.00%          | 77,623                                 | 1.00%          |
| 62109R                                      | Public Defender Appointed               | 35,867                                  | 1.37%          | 52,293                                    | 1.11%          | 86,309                                 | 1.11%          |
| 62109V                                      | Private Investigator                    | -                                       | 0.00%          | 105                                       | 0.00%          | 173                                    | 0.00%          |
| <b>TOTAL INVOLUNTARY COMMITMENT CASES</b>   |   | <b>\$ 77,959</b>                        | <b>2.98%</b>   | <b>\$ 121,366</b>                         | <b>2.57%</b>   | <b>\$ 200,310</b>                      | <b>2.57%</b>   |
| <b>JUVENILE CASES</b>                       |   |   |                |   |                |  |                |
| 62108J                                      | Transcripts                             | \$ 5,134                                | 0.20%          | \$ -                                      | 0.00%          | \$ -                                   | 0.00%          |
| 62109D                                      | Public Defender Office                  | 64,799                                  | 2.47%          | 125,703                                   | 2.66%          | 207,468                                | 2.66%          |
| 62109J                                      | Public Defender Contracts               | 45,562                                  | 1.74%          | 91,237                                    | 1.93%          | 150,583                                | 1.93%          |
| 62109P                                      | Public Defender Appointed               | 95,702                                  | 3.65%          | 154,174                                   | 3.26%          | 254,459                                | 3.26%          |
| 62109U                                      | Private Investigator                    | -                                       | 0.00%          | 228                                       | 0.00%          | 375                                    | 0.00%          |
| 62116J                                      | Evaluations                             | 14,215                                  | 0.54%          | -   | 0.00%          | -                                      | 0.00%          |
| 62118                                       | Medical Services                        | 34,200                                  | 1.31%          | 34,200                                    | 0.72%          | 56,446                                 | 0.72%          |
| 62162J                                      | Witness Fees                            | -                                       | 0.00%          | 2,332                                     | 0.05%          | 3,849                                  | 0.05%          |
| <b>TOTAL JUVENILE CASES</b>                 |   | <b>\$ 259,612</b>                       | <b>9.91%</b>   | <b>\$ 407,873</b>                         | <b>8.64%</b>   | <b>\$ 673,181</b>                      | <b>8.64%</b>   |
| <b>ABUSE AND NEGLECT (YINC) CASES</b>       |   |   |                |   |                |  |                |
| 62109I                                      | Public Defender Contracts               | \$ 3,182                                | 0.12%          | \$ 8,248                                  | 0.17%          | \$ 13,612                              | 0.17%          |
| 62108N                                      | Transcripts                             | 5,212                                   | 0.20%          | -   | 0.00%          | -                                      | 0.00%          |
| 62109O                                      | Public Defender Appointed               | 97,015                                  | 3.70%          | 246,053                                   | 5.21%          | 406,102                                | 5.21%          |
| 62116N                                      | Evaluations                             | 11,749                                  | 0.45%          | -   | 0.00%          | -                                      | 0.00%          |
| 62162N                                      | Witness Fees                            | -                                       | 0.00%          | 10,872                                    | 0.23%          | 17,944                                 | 0.23%          |
| 62109C                                      | Public Defender Office                  | 44,744                                  | 1.71%          | 76,766                                    | 1.63%          | 126,700                                | 1.63%          |
| 62109T                                      | Private Investigator                    | 395                                     | 0.02%          | -   | 0.00%          | -                                      | 0.00%          |
| <b>TOTAL ABUSE AND NEGLECT (YINC) CASES</b> |   | <b>\$ 162,297</b>                       | <b>6.20%</b>   | <b>\$ 341,939</b>                         | <b>7.24%</b>   | <b>\$ 564,359</b>                      | <b>7.24%</b>   |
| <b>GRAND TOTAL</b>                          |   | <b>\$ 2,618,682</b>                     | <b>100.00%</b> | <b>\$ 4,723,245</b>                       | <b>100.00%</b> | <b>\$ 7,795,563</b>                    | <b>100.00%</b> |