



A REPORT
TO THE
MONTANA
LEGISLATURE

FINANCIAL-COMPLIANCE AUDIT

*Office of State Public
Defender*

*For the Two Fiscal Years Ended
June 30, 2020*

NOVEMBER 2020

LEGISLATIVE AUDIT
DIVISION

20-28

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FINANCIAL-COMPLIANCE AUDITS

Financial-compliance audits are conducted by the Legislative Audit Division to determine if an agency's financial operations are properly conducted, the financial reports are presented fairly, and the agency has complied with applicable laws and regulations. In performing the audit work, the audit staff uses standards set forth by the American Institute of Certified Public Accountants and the United States Government Accountability Office. Financial-compliance audit staff members hold degrees with an emphasis in accounting and many staff members hold Certified Public Accountant (CPA) certificates.

The Single Audit Act Amendments of 1996 and the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards require the auditor to issue certain financial, internal control, and compliance reports in addition to those reports required by *Government Auditing Standards*. This individual agency audit report is not intended to comply with these reporting requirements and is therefore not intended for distribution to federal grantor agencies. The Legislative Audit Division issues a statewide biennial Single Audit Report which complies with the above reporting requirements. The Single Audit Report for the two fiscal years ended June 30, 2019, was issued March 30, 2020. The Single Audit Report for the two fiscal years ended June 30, 2021, will be issued by March 31, 2022.

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LEGISLATIVE AUDIT DIVISION

Angus Maciver, Legislative Auditor
Deborah F. Butler, Legal Counsel



Deputy Legislative Auditors:
Cindy Jorgenson
William Soller

November 2020

The Legislative Audit Committee
of the Montana State Legislature:

This is our financial-compliance audit report on the Office of State Public Defender for the two fiscal years ended June 30, 2020. Included in this report is one recommendation to the office related to enhancing compliance with state law and policy related to rates paid for expert witness and employee lodging.

The office's written response to the audit recommendation is included in the audit report on page C-1. We thank the director and her staff for their cooperation and assistance throughout the audit.

Respectfully submitted,

/s/ Angus Maciver

Angus Maciver
Legislative Auditor

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APPOINTED AND ADMINISTRATIVE OFFICIALS

**Office of State Public
Defender**

Rhonda Lindquist, Director

Peter Ohman, Public Defender Division Administrator
(through September 2020)

Chad Wright, Appellate Defender Division Administrator

Dan Miller, Conflict Defender Division Administrator

Carleen Green, Central Services Division Administrator

Travis Tilleman, Human Resources Administrator

For additional information concerning the Office of State Public
Defender, contact:

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Office of State Public Defender

FOR THE TWO FISCAL YEARS ENDED JUNE 30, 2020

BACKGROUND

The services of the Office of State Public Defender are free to those individuals meeting certain indigency criteria. The office is tasked with ensuring public defender services are delivered by counsel who are both qualified and competent in a manner that is fair and consistent throughout the state. The courts have the authority to assess reasonable fees for services provided based on the clients' ability to pay.

The office's expenditures are funded primarily by General Fund appropriations. In fiscal year 2019, the office spent approximately \$36.5 million, of which 99.4 percent was spent from the General Fund. In fiscal year 2020, the office spent approximately \$37.4 million, of which 97 percent was spent from the General Fund.

The office is comprised of four divisions: Public Defender Division, Appellate Defender Division, Conflict Defender Division, and Central Services Division. The director oversees these divisions and hires the division administrators.

The Office of State Public Defender (office) received 34,523 new cases in fiscal year 2019, and 33,197 new cases in fiscal year 2020, representing 21,102 and 20,200 adults and children, respectively, in 179 courts. The office consists of 11 regions throughout the state including trial, conflict, and appellate divisions, and maintains offices in approximately 15 cities around Montana. There were 195 available contract attorneys in fiscal year 2019, with 163 receiving cases. In fiscal year 2020, there were 199 available contract attorneys with 151 receiving cases. Contractors received 19 percent and 21 percent of the cases assigned in fiscal year 2019 and fiscal year 2020, respectively. We had one recommendation for the office related to lodging expenditures for both witnesses and employees in which the office paid rates higher than what is allowable per state law and policy.

AUDITOR'S OPINION (PAGE A-1) : UNMODIFIED

We found that the office's financial schedules presented fairly the activity of the office in all material respects, and we have issued unmodified opinions on the regulatory basis of accounting under which the financial schedules are presented. This means a reader can rely on the information presented and the underlying financial records.

For the full context of the office's financial activity, see the financial schedules and notes beginning on page A-4.

RECOMMENDATIONS:

In this report, we issued the following recommendations:

To the office: 1

To the legislature: 0

In this report, we determined the implementation status of recommendations in the prior audit:

Fully Implemented: 2

Partially Implemented: 2

Not Implemented: 0

For the full report or more information, contact the Legislative Audit Division.

leg.mt.gov/lad

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RECOMMENDATION #1 (page 6):

State Compliance

The office should comply with state law and policy related to lodging expenditures by:

- A. Enhancing existing office policy to fully align with the provisions of state law and policy and by establishing procedures to enforce the revised policy.
- B. Providing training to employees on state and office travel policy.

Office response: **Concur**

REPORT ON INTERNAL CONTROL AND COMPLIANCE
(page B-1):

In this report, we identified the following:

Material Weaknesses in Internal Control: 0

Significant Deficiencies in Internal Control: 0

Material Non-Compliance: 0

Other Matters: 0

For the full context of this information, including the distinction between the types of items reported, see the report beginning on page B-1.

Chapter I – Introduction

Introduction

We performed a financial-compliance audit of the Office of State Public Defender (office) for the two fiscal years ended June 30, 2020. The objectives of the audit were to:

1. Obtain an understanding of the office’s internal controls to the extent necessary to support our audit of the financial schedules and, if appropriate, make recommendations for improvements in management and internal controls for the office.
2. Determine whether the office’s financial schedules present fairly the financial position and results of operations as of, and for each of the two fiscal years ended, June 30, 2020.
3. Determine the office’s compliance with selected state laws and regulations for the two fiscal years ended June 30, 2020.
4. Determine the implementation status of prior audit recommendations.

To accomplish the objectives, our audit work focused primarily on payments to contract attorneys, personal services, direct entries to fund equity, operating expenses, and budget authority. We evaluated the associated control systems throughout the audit and performed analytical procedures. We also performed procedures related to receipt of public defender fees and reviewed the overall reasonableness of the financial schedules and notes. Additionally, we evaluated compliance with selected laws and regulations.

Background

The Montana Public Defender Act created the statewide public defender system in 2005. The system unifies the state’s public defense services in order to provide more effective assistance of counsel to qualifying citizens of Montana.

The office was restructured in fiscal year 2018 as a result of changes made during the 2017 Regular Legislative Session. The office is comprised of four divisions: Public Defender Division, Appellate Defender Division, Conflict Defender Division, and Central Services Division. The director oversees these four divisions and hires the division administrators.

Public Defender Division (230.94 FTE): The division is organized into 11 regions, with a regional deputy public defender supervising each region. The regional offices are located in Kalispell, Missoula, Great Falls, Helena, Butte, Havre, Lewistown, Bozeman, Billings, Glendive, and Miles City. These regional offices provide legal

services to qualifying individuals through the attorneys employed in the division or by contracting with an outside attorney.

Appellate Defender Division (17.50 FTE): The division provides appellate representation to clients of the statewide public defender system. This division is located in Helena and employs or contracts with attorneys to provide legal representation of indigent clients who qualify for an appointed attorney under state statutes governing appeals and post-conviction relief.

Conflict Defender Division (31.00 FTE): The division provides appellate and non-appellate representation to indigent defendants in circumstances when, because an ethical conflict of interest exists, the Public or Appellate Defender Divisions are unable to provide representation.

Central Services Division (23.00 FTE): The division provides administrative and human resources support to the Public Defender, Appellate Defender, and Conflict Defender Divisions. The office is located in Butte and the human resources office is in Helena.

Public Defender Fee Collections

Chapters 170 and 358, Laws of the 2017 Regular Legislative Session, made changes to how public defender fees were collected. Section 46-8-113, MCA, was amended and required any amounts collected for public defender fees assessed by the courts to be recorded in the General Fund and to be collected directly by the Central Services Division in the Butte office. Section 47-1-110, MCA, stated that all fees, including those assessed under §46-8-113, MCA, should be recorded in the State Special Revenue Fund. These funds are collected by the counties and submitted to the Department of Revenue who then provides the cash collected to the office per §46-8-114, MCA. Additionally, §47-1-110, MCA, required that the office transfer any unencumbered fund balance in the State Special Revenue Fund to the General Fund by August 1. This was applicable to fiscal year 2019 collections.

Chapter 5, Laws of 2019, made changes to where the public defender fees are recorded effective for fiscal year 2020 collections. Under these changes, §47-1-110, MCA, was repealed and all public defender fees assessed by the courts are now deposited in the General Fund. The repeal of §47-1-110, MCA, has also removed the requirement to transfer any unencumbered fund balance in the State Special Revenue Fund to the General Fund.

Prior Audit Recommendations

The prior audit for the two fiscal years ended June 30, 2018, contained four recommendations to the office. The office has fully implemented two of the prior audit recommendations. The office sought legislation to resolve the conflicts in state law to clarify where public defender fees should be recorded and who should collect the fees and implemented internal controls to demonstrate compliance with internal policy regarding contracting with attorneys.

The recommendation related to complying with state law regarding conducting biennial contract attorney evaluations has been partially implemented. Consistency of contractor attorney evaluations is addressed in the Legislative Auditor's performance audit report on Public Defender Workforce Management (19P-04), issued in September 2020. The performance report addressed the evaluation process through February 2020 and made a recommendation related to enhancing the contractor evaluation process. Our work encompassed contract attorney evaluations completed through June 30, 2020. The office implemented a new policy for evaluating contracted attorneys in November 2019. Based on discussions with office staff and review of supporting documentation, the evaluation process is a two-step process and includes both the contractor and evaluator completing a questionnaire and then compiling a written summary of the evaluation results. Through review of supporting documentation, we determined that 76 out of 199 contract attorney questionnaires had been completed in fiscal year 2020. The office is currently in the process of compiling written summaries of the completed questionnaires and will continue to send questionnaires to the remaining contractors and their evaluators. Since the office has implemented a new policy and is working on completing the contracted attorney evaluations, we make no further recommendation at this time.

The recommendation related to recording revenue in accordance with state accounting policy is partially implemented. As noted in the prior audit report, in fiscal year 2018, office personnel did not record approximately \$271,000 of revenue in the State Special Revenue Fund. During fiscal year 2019, office personnel processed a journal entry to record this revenue as current-year activity. Under state accounting policy, the revenue should have been recorded as prior year activity. This creates a misclassification of revenues on the 2019 Schedule of Total Revenues and Transfers-In between budgeted revenues and prior year revenues. However, based on discussion with office personnel, there was no revenue estimate recorded for the activity in fiscal year 2018, and accordingly, the state's accounting system would not allow the activity to be recorded as a prior year adjustment. Because the revenue was recorded on the accounting records, we make no further recommendation to the office at this time.

Chapter II – Findings and Recommendation

Lodging Rates

The Office of State Public Defender (office) can improve adherence to state law and policy while paying for lodging for expert witnesses and employees.

The office pays for lodging costs of employees as well as those for expert witnesses when cases go to trial. During the audit, we reviewed office payments for employee and expert witness lodging. The following sections summarize issues identified during our audit.

Expert Witness Lodging

Lodging expenses are paid in accordance with the limitations in Title 2, Chapter 18, Part 5, per office policy. Provisions provided for in statute and allowable lodging rates are outlined in state policy. Section 46-15-116, MCA, directs the office to pay for witness travel expenses, which includes lodging. This law also provides for reimbursement at the witness' home state statutory rate if that rate is higher than Montana's rate. The office's policy does not address this provision.

The office incurred \$14,388 in expert witness lodging expenditures for fiscal years 2019 and 2020 combined. We examined 25 of the 53 journal entries related to expert witnesses for the same period, selecting payments that exceeded \$120. We selected this testing threshold to allow us to review payments in high cost areas. The 25 journal entries that we examined amount to approximately \$14,000. We noted 12 journal entries in which payments were made in excess of the limits established for Montana. The office may have paid a total of \$1,447 more than allowable per the state rate. Additional excess payments could exist. It was not clear from the documentation supporting the payments whether the expert witness' home state statutory rates were higher than Montana's.

Office personnel indicated the majority of expert witnesses make their own travel arrangements. The office receives the lodging invoices after travel has been completed. However, through review of supporting travel documentation, the office is paying accommodation expenditures that are greater than what is allowed and does not enforce state law or policy. The office should enhance its office policy to fully align with the provisions of state law and policy. Additionally, the office should establish procedures to ensure that the policy is enforced.

Employee Lodging

There were 264 journal entries to record lodging for employees in travel status in fiscal years 2019 and 2020 combined, totaling \$128,458. We examined 16 of the 264 journal entries for the same period, selecting from entries that exceeded \$125. We selected this testing threshold to allow us to review payments in high cost areas. The 16 journal entries that we examined amounted to approximately \$57,437. We identified 3 journal entries in which the office paid a total of \$205 more than what was allowable per state policy. Additional excess payments could exist.

Section 2-18-501, MCA, states that lodging is to be reimbursed at actual cost not to exceed the maximum federal rate per day for the location involved plus taxes on the allowable cost. State travel policy contains the allowable federal lodging rates obtained from the General Services Administration (GSA) website. State policy related to lodging contains limited exceptions, allowing agencies to pay for rates higher than the allowable federal rates obtained from the GSA website in certain circumstances. The office's records did not contain documentation to support the existence of these exceptions.

Office personnel stated that the employee lodging accommodations that were higher than the allowable state rate per state policy were due to human error. The office should provide training to their employees related to state and office travel policy.

RECOMMENDATION #1

We recommend the Office of State Public Defender comply with state law and policy related to lodging expenditures by:

- A. *Enhancing existing office policy to fully align with the provisions of state law and policy and by establishing procedures to enforce the revised policy.*
 - B. *Providing training to employees on state and office travel policy.*
-

Independent Auditor's Report and Office Financial Schedules

Angus Maciver, Legislative Auditor
Deborah F. Butler, Legal Counsel



Deputy Legislative Auditors:
Cindy Jorgenson
William Soller

INDEPENDENT AUDITOR'S REPORT

The Legislative Audit Committee
of the Montana State Legislature:

Introduction

We have audited the accompanying Schedules of Changes in Fund Equity, Schedules of Total Revenues & Transfers-In, and Schedules of Total Expenditures & Transfers-Out of the Office of State Public Defender (office) for each of the fiscal years ended June 30, 2020 and 2019, and the related notes to the financial schedules.

Management's Responsibility for the Financial Schedules

Management is responsible for the preparation and fair presentation of these financial schedules in accordance with the regulatory format prescribed by the Legislative Audit Committee, based on the transactions posted to the state's accounting system without adjustment; this responsibility includes recording transactions in accordance with state accounting policy; and designing, implementing, and maintaining internal controls relevant to the preparation and fair presentation of the financial schedules that are free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express opinions on these financial schedules based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial schedules are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial schedules. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial schedules, whether due to fraud or error. In making those risk assessments, the auditor considers internal controls relevant to the office's preparation and fair presentation of the financial schedules in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the office's internal control, and accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of

significant accounting estimates made by management, as well as the overall presentation of the financial schedules.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinions.

Basis for Adverse Opinions on U.S. Generally Accepted Accounting Principles

As described in Note 1, the financial schedules are prepared from the transactions posted to the state's primary accounting system without adjustment, in the regulatory format prescribed by the Legislative Audit Committee. This is a basis of accounting other than accounting principles generally accepted in the United States of America. The financial schedules are not intended to, and do not, report assets, liabilities, and deferred inflows of resources.

The effects on the financial schedules of the variances between the regulatory basis of accounting described in Note 1 and accounting principles generally accepted in the United States of America, although not reasonably determinable, are presumed to be material.

Adverse Opinions on U.S. Generally Accepted Accounting Principles

In our opinion, because of the significance of the matter discussed in the "Basis for Adverse Opinions on U.S. Generally Accepted Accounting Principles" paragraph, the financial schedules referred to above do not present fairly, in accordance with accounting principles generally accepted in the United States of America, the financial position of the office as of June 30, 2020, and June 30, 2019, or changes in financial position for the years then ended.

Unmodified Opinions on Regulatory Basis of Accounting

In our opinion, the Schedules of Changes in Fund Equity, Schedules of Total Revenues & Transfers-In, and Schedules of Total Expenditures & Transfers-Out, present fairly, in all material respects, the results of operations and changes in fund equity of the Office of State Public Defender for each of the fiscal years ended June 30, 2020, and 2019, in conformity with the basis of accounting described in Note 1.

Emphasis of Matter

As disclosed in Note 1 – Basis of Presentation, the financial schedule format was adopted by the Legislative Audit Committee. On June 16, 2020, the Committee approved a change in format to remove the presentation of revenue estimates from the Schedule of Total Revenues & Transfers-In. Our opinion is not modified with respect to this matter.

Other Reporting Required by Government Auditing Standards

In accordance with *Government Auditing Standards*, we have also issued our report dated October 7, 2020, on our consideration of the Office of State Public Defender's internal control over financial reporting and on our tests of its compliance with certain provisions of laws, regulations, contracts, and

grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the office's internal control over financial reporting and compliance.

Respectfully submitted,

/s/ Cindy Jorgenson

Cindy Jorgenson, CPA
Deputy Legislative Auditor
Helena, MT

October 7, 2020

PUBLIC DEFENDER
SCHEDULE OF CHANGES IN FUND EQUITY
FOR THE FISCAL YEAR ENDED JUNE 30, 2020

	<u>General Fund</u>	<u>Federal Special Revenue Fund</u>
FUND EQUITY: July 1, 2019	\$ <u>(2,824,746)</u>	\$ <u>74</u>
ADDITIONS		
Budgeted Revenues & Transfers-In	357,656	1,108,959
Direct Entries to Fund Equity	<u>36,182,579</u>	
Total Additions	<u>36,540,235</u>	<u>1,108,959</u>
REDUCTIONS		
Budgeted Expenditures & Transfers-Out	36,334,025	1,108,959
Nonbudgeted Expenditures & Transfers-Out	(21,596)	
Prior Year Expenditures & Transfers-Out Adjustments	<u>(1,963)</u>	
Total Reductions	<u>36,310,466</u>	<u>1,108,959</u>
FUND EQUITY: June 30, 2020	\$ <u><u>(2,594,977)</u></u>	\$ <u><u>74</u></u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-11.

PUBLIC DEFENDER
SCHEDULE OF CHANGES IN FUND EQUITY
FOR THE FISCAL YEAR ENDED JUNE 30, 2019

	<u>General Fund</u>	<u>State Special Revenue Fund</u>	<u>Federal Special Revenue Fund</u>
FUND EQUITY: July 1, 2018	\$ (2,485,071)	\$ (275,774)	\$ 74
ADDITIONS			
Budgeted Revenues & Transfers-In	141,470	474,398	6,000
Direct Entries to Fund Equity	<u>35,791,602</u>	<u>5,228</u>	<u>6,000</u>
Total Additions	<u>35,933,073</u>	<u>479,625</u>	<u>6,000</u>
REDUCTIONS			
Budgeted Expenditures & Transfers-Out	36,309,607		6,000
Nonbudgeted Expenditures & Transfers-Out	(36,659)	203,852	
Prior Year Expenditures & Transfers-Out Adjustments	<u>(201)</u>	<u>203,852</u>	<u>6,000</u>
Total Reductions	<u>36,272,748</u>	<u>203,852</u>	<u>6,000</u>
FUND EQUITY: June 30, 2019	<u>\$ (2,824,746)</u>	<u>\$ 0</u>	<u>\$ 74</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-11.

PUBLIC DEFENDER
SCHEDULE OF TOTAL REVENUES & TRANSFERS-IN
FOR THE FISCAL YEAR ENDED JUNE 30, 2020

	<u>General Fund</u>	<u>Federal Special Revenue Fund</u>	<u>Total</u>
TOTAL REVENUES & TRANSFERS-IN BY CLASS			
Charges for Services	\$ 357,582		\$ 357,582
Transfers-in		\$ 1,108,959	1,108,959
Miscellaneous	74		74
Total Revenues & Transfers-In	<u>357,656</u>	<u>1,108,959</u>	<u>1,466,615</u>
Less: Nonbudgeted Revenues & Transfers-In			0
Prior Year Revenues & Transfers-In Adjustments			0
Actual Budgeted Revenues & Transfers-In	<u>\$ 357,656</u>	<u>\$ 1,108,959</u>	<u>\$ 1,466,615</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-11.

PUBLIC DEFENDER
SCHEDULE OF TOTAL REVENUES & TRANSFERS-IN
FOR THE FISCAL YEAR ENDED JUNE 30, 2019

	<u>General Fund</u>	<u>State Special Revenue Fund</u>	<u>Federal Special Revenue Fund</u>	<u>Total</u>
TOTAL REVENUES & TRANSFERS-IN BY CLASS				
Charges for Services	\$ 141,448	\$ 474,335		\$ 615,782
Grants, Contracts, and Donations		63		63
Transfers-in			\$ 6,000	6,000
Miscellaneous	23			23
Total Revenues & Transfers-In	<u>141,470</u>	<u>474,398</u>	<u>6,000</u>	<u>621,868</u>
Less: Nonbudgeted Revenues & Transfers-In				0
Prior Year Revenues & Transfers-In Adjustments				0
Actual Budgeted Revenues & Transfers-In	<u>\$ 141,470</u>	<u>\$ 474,398</u>	<u>\$ 6,000</u>	<u>\$ 621,868</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-11.

PUBLIC DEFENDER
SCHEDULE OF TOTAL EXPENDITURES & TRANSFERS-OUT
FOR THE FISCAL YEAR ENDED JUNE 30, 2020

	Appellate Defender Division	Central Services Division	Conflict Defender Division	Public Defender Division	Total
PROGRAM (ORG) EXPENDITURES & TRANSFERS-OUT					
Personal Services					
Salaries	\$ 1,194,315	\$ 1,492,542	\$ 1,971,108	\$ 13,494,778	\$ 18,152,744
Employee Benefits	423,163	538,811	695,016	5,033,442	6,690,432
Total	<u>1,617,478</u>	<u>2,031,353</u>	<u>2,666,124</u>	<u>18,528,220</u>	<u>24,843,175</u>
Operating Expenses					
Other Services	532,639	327,205	5,639,526	2,986,624	9,485,995
Supplies & Materials	29,305	151,061	55,792	203,429	439,588
Communications	23,131	37,199	55,179	374,910	490,419
Travel	419	74,105	21,952	28,498	124,974
Rent	108,195	213,712	197,142	1,148,714	1,667,763
Utilities				1,019	1,019
Repair & Maintenance	2,848	171,516	4,224	31,184	209,772
Other Expenses	6,930	41,258	21,930	86,603	156,721
Total	<u>703,467</u>	<u>1,016,057</u>	<u>5,995,745</u>	<u>4,860,981</u>	<u>12,576,249</u>
Total Expenditures & Transfers-Out	<u>\$ 2,320,945</u>	<u>\$ 3,047,410</u>	<u>\$ 8,661,869</u>	<u>\$ 23,389,201</u>	<u>\$ 37,419,425</u>
EXPENDITURES & TRANSFERS-OUT BY FUND					
General Fund					
Federal Special Revenue Fund					
Total Expenditures & Transfers-Out	\$ 2,320,695	\$ 3,001,087	\$ 7,888,931	\$ 23,099,752	\$ 36,310,466
Less: Nonbudgeted Expenditures & Transfers-Out	250	46,323	772,938	289,448	1,108,959
Prior Year Expenditures & Transfers-Out Adjustments	<u>2,320,945</u>	<u>3,047,410</u>	<u>8,661,869</u>	<u>23,389,201</u>	<u>37,419,425</u>
Actual Budgeted Expenditures & Transfers-Out	(1,513)	2,561	(2,680)	(19,964)	(21,596)
Budget Authority	(1,142)			(820)	(1,963)
Unspent Budget Authority	<u>2,323,600</u>	<u>3,044,849</u>	<u>8,664,549</u>	<u>23,409,985</u>	<u>37,442,984</u>
	<u>2,393,228</u>	<u>3,313,209</u>	<u>9,102,319</u>	<u>23,689,022</u>	<u>38,497,778</u>
	<u>\$ 69,627</u>	<u>\$ 268,360</u>	<u>\$ 437,770</u>	<u>\$ 279,037</u>	<u>\$ 1,054,794</u>
UNSPENT BUDGET AUTHORITY BY FUND					
General Fund	\$ 69,627	\$ 268,360	\$ 437,770	\$ 279,037	\$ 1,054,794
Unspent Budget Authority	<u>\$ 69,627</u>	<u>\$ 268,360</u>	<u>\$ 437,770</u>	<u>\$ 279,037</u>	<u>\$ 1,054,794</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-11.

PUBLIC DEFENDER
 SCHEDULE OF TOTAL EXPENDITURES & TRANSFERS-OUT
 FOR THE FISCAL YEAR ENDED JUNE 30, 2019

PROGRAM (ORG) EXPENDITURES & TRANSFERS-OUT

	Appellate Defender Division	Central Services Division	Conflict Defender Division	Public Defender Division	Total
Personal Services					
Salaries	\$ 1,046,779	\$ 1,342,339	\$ 1,730,684	\$ 12,970,119	\$ 17,089,920
Employee Benefits	374,662	504,008	622,240	4,949,255	6,450,164
Total	<u>1,421,441</u>	<u>1,846,346</u>	<u>2,352,924</u>	<u>17,919,373</u>	<u>23,540,085</u>
Operating Expenses					
Other Services	553,935	298,552	5,996,797	2,819,638	9,668,922
Supplies & Materials	22,871	196,611	13,542	236,166	469,191
Communications	21,748	57,470	24,491	466,109	569,817
Travel	188	94,636	16,487	27,682	138,993
Rent	84,126	184,472	144,805	1,134,444	1,547,848
Utilities				993	993
Repair & Maintenance	2,509	173,093	700	25,387	201,690
Other Expenses	6,435	39,209	13,143	82,422	141,209
Total	<u>691,813</u>	<u>1,044,043</u>	<u>6,209,964</u>	<u>4,792,842</u>	<u>12,738,663</u>
Transfers-out					
Fund transfers		203,852			203,852
Total		<u>203,852</u>			<u>203,852</u>
Total Expenditures & Transfers-Out	\$ 2,113,254	\$ 3,094,241	\$ 8,562,888	\$ 22,712,216	\$ 36,482,600

EXPENDITURES & TRANSFERS-OUT BY FUND

General Fund	\$ 2,113,254	\$ 2,890,390	\$ 8,562,888	\$ 22,706,216	\$ 36,272,748
State Special Revenue Fund		203,852			203,852
Federal Special Revenue Fund				6,000	6,000
Total Expenditures & Transfers-Out	<u>2,113,254</u>	<u>3,094,241</u>	<u>8,562,888</u>	<u>22,712,216</u>	<u>36,482,600</u>
Less: Nonbudgeted Expenditures & Transfers-Out	(2,420)	203,870	(3,903)	(30,353)	167,193
Prior Year Expenditures & Transfers-Out Adjustments	(165)			(36)	(201)
Actual Budgeted Expenditures & Transfers-Out	<u>2,115,839</u>	<u>2,890,372</u>	<u>8,566,791</u>	<u>22,742,604</u>	<u>36,315,607</u>
Budget Authority	2,116,268	2,908,205	8,710,341	22,767,214	36,502,029
Unspent Budget Authority	<u>429</u>	<u>17,833</u>	<u>143,550</u>	<u>24,609</u>	<u>186,422</u>

UNSPENT BUDGET AUTHORITY BY FUND

General Fund	\$ 429	\$ 17,833	\$ 143,550	\$ 24,609	\$ 186,422
Unspent Budget Authority	<u>429</u>	<u>17,833</u>	<u>143,550</u>	<u>24,609</u>	<u>186,422</u>

This schedule is prepared from the Statewide Accounting, Budgeting, and Human Resources System (SABHRS) without adjustment. Additional information is provided in the notes to the financial schedules beginning on page A-11.

Office of State Public Defender
Notes to the Financial Schedules
For the Two Fiscal Years Ended June 30, 2020

1. Summary of Significant Accounting Policies

Basis of Accounting

The office uses the modified accrual basis of accounting, as defined by state accounting policy, for its Governmental fund categories General, State Special Revenue, and Federal Special Revenue. In applying the modified accrual basis, the office records:

- ◆ Revenues when it receives cash or when receipts are realizable, measurable, earned, and available to pay current period liabilities.
- ◆ Expenditures for valid obligations when the department incurs the related liability and it is measurable, except for the cost of employees' annual and sick leave. State accounting policy requires the office to record the cost of employees' annual and sick leave when used or paid.

Basis of Presentation

The financial schedule format was adopted by the Legislative Audit Committee. The Legislative Audit Committee voted to exclude revenue estimate activity from the Schedule of Total Revenues and Transfers-In effective for the 2020 audit cycle. The financial schedules are prepared from the transactions posted to the state's accounting system without adjustment.

The office uses the following funds:

Governmental Fund Category

- ◆ **General Fund** – to account for all financial resources except those required to be accounted for in another fund. The substantial portion of the office's financial activity is included in the General Fund. The General Fund also includes collections for legal services provided pursuant to MCA, 46-8-113 (2)(c).
- ◆ **State Special Revenue Fund** – to account for proceeds of specific revenue sources that are legally restricted to expenditures for specific state program purposes.

In fiscal 2019, the office's State Special Revenue Fund included a correction of revenue received in fiscal 2018 in the amount of \$270,545.99 but not recorded in fiscal 2018.

Pursuant to MCA, 47-1-110 (3) the unencumbered balance at the end of fiscal 2019 in the amount of \$203,851.80 was transferred to the General Fund.

The 2019 Legislature passed HB 89 amending MCA 46-8-114 by requiring public defender fee payments to be deposited directly in the general fund and repealing MCA 47-1-110.

- ♦ **Federal Special Revenue Fund** – to account for activities funded from federal revenue sources.

Federal Special Revenue Funds were received from the Office of Court Administrator in fiscal 2019 and fiscal 2020 in the amounts of \$6,000 and \$15,000, respectively. The funds were used to provide public defender services in the First Judicial District Family Treatment Court in Helena.

In fiscal 2020, funds were received from Department of Health and Human Services (DPHHS) in the amount of \$1,071,693.95 under Title IV-E of the Social Security Act. The funds were used to provide legal representation for children and parents in child abuse and neglect proceedings. It has been confirmed that the agency will receive these funds again in fiscal 2021.

In fiscal 2020 the office received \$22,265.05 through the Governor's Coronavirus Relief Fund provided by the federal government under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act). These funds reimbursed the office's necessary expenses incurred due to the public health emergency with respect to the Coronavirus Disease 2019 (COVID-19).

2. General Fund Equity Balance

The negative fund equity balance in the General Fund does not indicate overspent appropriation authority. The office has authority to pay obligations from the statewide General Fund within its appropriation limits. The office expends cash or other assets from the statewide fund when it pays General Fund obligations. The office's outstanding liabilities exceed the assets it has placed in the fund, resulting in negative ending General Fund equity balances for each of the fiscal years ended June 30, 2019 and June 30, 2020.

3. Direct Entries to Fund Equity

Direct entries to fund equity in the General Fund include entries generated by SABHRS to reflect the flow of resources within individual funds shared by separate agencies.

4. Agency:

The Office of State Public Defender consists of four divisions overseen by a Director as described below.

Much of the workforce is comprised of attorneys providing legal services to those that qualify by law; they are unionized except for the managing attorneys in the Public Defender and Conflict Defender divisions. The next largest part of the workforce is comprised of legal and administrative assistants and investigators, most of which

are unionized. Central Service division employees and Appellate Defender division employees are not unionized.

The 4 programs are comprised of:

- ◆ Program 1: Public Defender Division – Division Administrator oversees services to qualifying clients by providing effective assistance of counsel to indigent criminal defendants and other persons in certain civil cases who are entitled by law to assistance of counsel.
- ◆ Program 2: Appellate Defender Division – Division Administrator provides appellate services to qualifying clients and practices almost exclusively before the Montana Supreme Court. Most of the workforce is comprised of attorneys providing legal services. Legal assistants comprise the remaining portion of the workforce. Program 2 does not currently employ investigators.
- ◆ Program 3: Conflict Defender Division – Division Administrator oversees services to qualifying clients by providing effective assistance of counsel to indigent criminal defendants and other persons in certain civil cases. This division represents only those clients, in circumstances where, because of a conflict of interest the public defender division is unable to provide representation.
- ◆ Program 4: Central Services Division - Provides management of non-legal services, i.e., accounting, budgeting, IT, human resources, payroll, contracting, internal controls and training to all programs. The oversight of the eligibility determination process, including verification of all hardship cases, is also a responsibility of this division. This division also accounts for the collection of public defender fees as assessed by the courts.

Report on Internal Control and Compliance

LEGISLATIVE AUDIT DIVISION

B-1

Angus Maciver, Legislative Auditor
Deborah F. Butler, Legal Counsel



Deputy Legislative Auditors:
Cindy Jorgenson
William Soller

REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL SCHEDULES PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

The Legislative Audit Committee
of the Montana State Legislature:

We have audited, in accordance with the auditing standards generally accepted in the United States of America and the standards applicable to the financial audits contained in *Government Auditing Standards* issued by the Comptroller General of the United States, the Schedules of Changes in Fund Equity, Schedules of Total Revenues & Transfers-In, and Schedules of Total Expenditures & Transfers-Out of the Office of State Public Defender (office) for each of the fiscal years ended June 30, 2020, and 2019, and the related notes to the financial schedules, and have issued our report thereon dated October 7, 2020.

Internal Control Over Financial Reporting

In planning and performing our audit of the financial schedules, we considered the office's internal control over financial reporting to determine the audit procedures that are appropriate in the circumstances for the purpose of expressing our opinions on the financial schedules, but not for the purpose of expressing an opinion on the effectiveness of the office's internal control. Accordingly, we do not express an opinion on the effectiveness of the office's internal control.

A *deficiency in internal control* exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial schedules will not be prevented, or detected and corrected, on a timely basis. A *significant deficiency* is a deficiency, or a combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

Our consideration of internal controls was for the limited purpose described in the first paragraph of this section and was not designed to identify all deficiencies in internal control that might be material weaknesses or significant deficiencies. Given these limitations, during our audit we did not identify

any deficiencies in internal control that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the office's financial schedules are free from material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial schedule amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit, and accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*.

Purpose of this Report

The purpose of this report is solely to describe the scope of our testing of internal control and compliance and the results of that testing, and not to provide an opinion on the effectiveness of the office's internal control or on compliance. This report is an integral part of an audit performed in accordance with *Government Auditing Standards* in considering the office's internal control and compliance. Accordingly, this communication is not suitable for any other purpose.

Respectfully submitted,

/s/ Cindy Jorgenson

Cindy Jorgenson, CPA
Deputy Legislative Auditor
Helena, MT

October 7, 2020

OFFICE OF STATE PUBLIC
DEFENDER

OFFICE RESPONSE



**MONTANA STATE
PUBLIC DEFENDER**

C-1

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November 6, 2020

Angus Maciver
Legislative Auditor
P.O. Box 201705
Helena, MT 59620-1705

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LEGISLATIVE AUDIT DIV.

RE: Response to Legislative Audit Recommendation
For the Two Fiscal Years Ended June 30, 2020

Dear Mr. Maciver:

Thank you for the opportunity to respond to the financial audit report for the Office of the State Public Defender. We have reviewed the recommendations in the report and our response is as follows:

Recommendation #1:

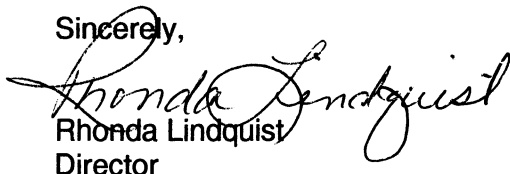
We recommend the Office of the State Public Defender comply with state law and policy related to lodging expenditures by:

- A. Enhancing existing office policy to fully align with the provisions of state law and policy by establishing procedures to enforce revised policy.*
- B. Providing training to employees on state and office policy.*

Response: We concur. OPD will implement a policy to specifically address lodging. The agency has already taken steps and provided resources to ensure employees and contractors apply the correct rates or provide appropriate documentation for exceptions.

We appreciate the work completed by the legislative staff assigned to this audit and thank them for their cooperation and professionalism during the audit. We look forward to working with your office in the future.

Sincerely,


Rhonda Lindquist
Director