



A REPORT  
TO THE  
MONTANA  
LEGISLATURE

FINANCIAL-COMPLIANCE AUDIT

*Office of the State Public  
Defender*

*For the Two Fiscal Years Ended  
June 30, 2018*

OCTOBER 2018

LEGISLATIVE AUDIT  
DIVISION

18-28

## FINANCIAL-COMPLIANCE AUDITS

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§5-13-202(2), MCA

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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. Most 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, 2017, was issued March 23, 2018. The Single Audit Report for the two fiscal years ended June 30, 2019, will be issued by March 31, 2020.

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<http://leg.mt.gov/audit>

# LEGISLATIVE AUDIT DIVISION

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



Deputy Legislative Auditors  
Cindy Jorgenson  
Joe Murray

October 2018

The Legislative Audit Committee  
of the Montana State Legislature:

This is our financial-compliance audit report on the Office of the State Public Defender for the two fiscal years ended June 30, 2018. Included in this report are four recommendations to the office related to an understatement of public defender fees in fiscal year 2018, conflicts in state law related to how public defender fees should be collected and recorded, internal controls over the completeness of contract attorney files, and compliance with law regarding evaluations of contract attorneys.

The office's written response to the audit recommendations is included in the audit report at 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 the State Public Defender

Rhonda Schaffer, Director

Peter Ohman, Public Defender Division Administrator

Chad Wright, Appellate Defender Division Administrator

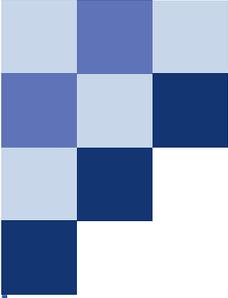
Dan Miller, Conflict Defender Division Administrator

Carleen Green, Central Services Division Administrator

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# MONTANA LEGISLATIVE AUDIT DIVISION

## FINANCIAL-COMPLIANCE AUDIT

### Office of the State Public Defender

For the Two Fiscal Years Ended June 30, 2018

OCTOBER 2018

18-28

REPORT SUMMARY

The Office of the State Public Defender collected \$322,000 related to public defender fees, but did not record revenue for approximately \$271,000 of those collections on the state's accounting records. As a result, revenue and fund equity are understated in fiscal year 2018. We issued a qualified opinion on both the Schedule of Total Revenues & Transfers-In and Schedule of Changes in Fund Equity for the fiscal year ended June 30, 2018, meaning the reader should use caution when using these two financial schedules. We issued unmodified opinions on the four remaining schedules, meaning the reader can rely on the information presented in those four schedules.

### Context

The 2017 Regular Legislative Session changed the Office of the State Public Defender's (office) operating structure. Previously, the office was comprised of four programs overseen by the Public Defender Commission. These programs included: Office of the Public Defender, Office of the Appellate Defender, Conflict Coordinator, and the Chief Administrator. The office is now comprised of four divisions: the Public Defender Division, Appellate Defender Division, Conflict Defender Division, and Central Services Division. The director, who was appointed by the director of the Department of Administration, oversees these four divisions and appoints the division administrators. The Public Defender Commission was eliminated. Our audit considered both operating structures.

The office's operations are funded primarily by General Fund appropriations. In fiscal year 2017, the office spent approximately \$37.3 million, of which 99.3 percent was spent from the General Fund. In fiscal year 2018, the office spent approximately \$35.5 million, of which 99 percent was spent from the General Fund.

While the office is primarily funded through General Fund appropriations, the courts assess public defender fees. The 2017 Regular Legislative Session changed how the public defender fees are collected. Fees assessed by courts prior to July 1, 2017, are collected by the counties and remitted monthly to the Department of Revenue, which provided these collections to the office. Effective July 1, 2017, the public defender fees assessed by the courts are now collected directly by the Central Services Division of the office. A total of approximately \$263,000 and \$322,000 were collected for these fees in fiscal years 2017 and 2018, respectively.

### Results

The report contains four recommendations to the office related to an understatement of public defender fee revenue in fiscal year 2018, conflicts in state law related to how public defender fee revenue should be collected and recorded, internal controls over the completeness of contract attorney files, and compliance with law regarding evaluations of contract attorneys.

*(continued on back)*

We also issued a qualified opinion on the fiscal year 2018 Schedule of Total Revenues & Transfers-In and Schedule of Changes in Fund Equity as a result of the understated public defender fee revenue. We issued unmodified opinions on the four remaining schedules, meaning the reader can rely on the information presented in those four schedules.

The prior audit contained four recommendations. The office fully implemented the two recommendations related to reviewing system access and notifying the attorney general and legislative auditor about identified or suspected theft. A recommendation to develop administrative rules for evaluating contract attorneys is no longer applicable because the law was changed, and administrative rules are no longer required. Finally, the recommendation to develop internal controls over third party revenue collections was partially implemented, and we make no further recommendation to the office.

Recommendation Concurrence	
Concur	4
Partially Concur	0
Do Not Concur	0
<b>Source: Agency audit response included in final report.</b>	

For a complete copy of the report (18-28) or for further information, contact the Legislative Audit Division at 406-444-3122; e-mail to [lad@mt.gov](mailto:lad@mt.gov); or check the web site at <http://leg.mt.gov/audit>  
Report Fraud, Waste, and Abuse to the Legislative Auditor's FRAUD HOTLINE  
Call toll-free 1-800-222-4446, or e-mail [lad@mt.gov](mailto:lad@mt.gov).

# Chapter I – Introduction

## **Introduction**

We performed a financial-compliance audit of the Office of the State Public Defender (office) for the two fiscal years ended June 30, 2018. 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 the office’s compliance with selected state laws and regulations for the two fiscal years ended June 30, 2018.
3. 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, 2018.
4. Determine the implementation status of prior audit recommendations.

To accomplish the objectives, our audit work included reviewing support for payments to contract attorneys, considering the reasonableness of personal service amounts, and performing work over payments received for public defender fees. We reviewed the overall reasonableness of the financial schedules and notes and we considered the control systems throughout the audit. This included considering both operating structures, and the related controls. We also followed up on reported hotline calls for the office. Additionally, we evaluated compliance with selected laws and regulations.

## **Background**

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

Chapter 358, Laws of the 2017 Regular Legislative Session, made changes to the office’s operating structure. Previously, the office was comprised of the Office of the Public Defender Program, Office of the Appellate Defender Program, Conflict Coordinator Program, and the Chief Administrator Program. These four programs were overseen by the Public Defender Commission.

As a result of the changes made during the 2017 Regular Legislative Session, the office is now comprised of four divisions: Public Defender Division, Appellate Defender Division, Conflict Defender Division, and Central Services Division. The director oversees these four divisions and appoints the division administrators. The Public Defender Commission was eliminated.

Chapter 170, Laws of the 2017 Regular Legislative Session, also made changes to how the public defender fee is collected. Fees assessed by courts prior to July 1, 2017, are collected by the clerks of courts and submitted to the state via the county collection reports at the Department of Revenue. The Department of Revenue then provides the cash collected to the office. The majority of the fees assessed prior to July 1, 2017, are considered uncollectible.

As a result of the changes in the 2017 Regular Legislative Session, the public defender fees assessed by the courts, effective July 1, 2017, are now collected directly by the Central Services Division in the Butte office. The accounts considered uncollectible are now turned over to collections at the Department of Revenue. Additionally, the office is now required to transfer any unencumbered fund balance in the state special revenue fund, where fees are deposited, to the General Fund by August 1 of each year.

**Public Defender Division (219.94 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 (16 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 (13 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 FTE):** The division provides administrative support to the Public Defender, Appellate Defender, and Conflict Defender Divisions. The office is located in Butte.

### **Prior Audit Recommendations**

The prior audit for the two fiscal years ended June 30, 2016, contained four recommendations to the office. The office fully implemented two of the four prior recommendations. The office developed and implemented review procedures for

system access for the Online Claims Processing System. The office also notified the attorney general and the legislative auditor in writing immediately upon discovery of actual or suspected theft involving state money or property under agency control for which the agency is responsible, as required by state law.

Of the other two recommendations, as summarized below, one was not implemented, but does not apply to the office any longer. The other recommendation was partially implemented, but we have no further recommendation:

- ◆ We recommended that the office implement administrative rules requiring evaluation of every contract attorney on a biennial basis by the chief contract manager based on written evaluation criteria, as required by state law. During the 2017 Regular Legislative Session, state law was changed and the office no longer is required to implement these administrative rules. However, the office is still required to perform evaluations of contract attorneys on a biennial basis, and has not done so. Recommendation # 4 in this report provides further detail on this issue.
- ◆ We also recommended that: the office develop and implement internal controls to ensure completeness and accuracy of revenues collected and deposited for public defender fees; and determine which courts are the source of differences in collections reported by the Judicial Branch and the Department of Revenue, and work directly with the clerks of the courts and the Department of Revenue to obtain information needed to reconcile the amounts reported. The office did work with the Judicial Branch and the Department of Revenue, but was unable to identify the source of these differences. In addition, controls were not developed and implemented over third party collections and deposits. The 2017 Regular Legislative Session changed how fees assessed after July 1, 2017, are collected. These fees are now collected directly by the office, and not by a third party, eliminating the need for internal controls over third party collections. While the office does continue to collect fees assessed prior to July 1, 2017, through a third party, the amount collected will decrease over time until all fees are collected by the office. For this reason, we make no further recommendation to the office at this time. However, this is considered a significant deficiency as described on page B-2.



## Chapter II – Findings and Recommendations

### **Public Defender Fees**

The services provided by the Office of the Public Defender (office) are free to those meeting the indigence criteria. However, the courts have the authority to assess fees if the clients are able to pay those fees. These fees are paid to the office, and recorded as revenue as they are received. These fees are shown as charges for services on the Schedules of Total Revenues & Transfers-In.

In fiscal year 2017, payments of approximately \$263,000 were collected, and in fiscal year 2018, payments of approximately \$322,000 were collected. This is the office's main source of revenue collections. However, the office is funded primarily by General Fund appropriations.

### **Conflict in State Law**

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**Chapters 170 and 358, Laws of the 2017 Regular Legislative Session, created conflicting statutory requirements regarding how to collect and record public defender fees.**

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Chapters 170 and 358, Laws of the 2017 Regular Legislative Session, made changes to the laws related to public defender fees. Section 46-8-113, MCA, was amended and requires any amounts collected for public defender fees be recorded in the General Fund. However, §47-1-110, MCA, states that all fees, including those assessed under §46-8-113, MCA, should be recorded in the State Special Revenue Fund. This created a conflict in law regarding how this fee should be recorded.

In fiscal year 2018, all collections for fees assessed prior to July 1, 2017, were deposited in the state special revenue fund, consistent with previous practice. All revenue collected for fees assessed after the change in the laws was recorded in the General Fund.

Chapters 170 and 358, Laws of the 2017 Regular Legislative Session, also created a conflict in law regarding how public defender fees should be collected. Section 46-8-113, MCA, indicates the office is responsible for ensuring the collection of public defender fees. However, §46-8-114, MCA, which was not changed during the 2017 Regular Legislative Session, requires that fees be paid directly to the clerks of courts.

These conflicts in law are isolated to fiscal year 2018, when the amendments became effective. However, the office will be unable to fully comply with the laws until the conflict in law is resolved through a legislative change. We currently have identified

the two conflicts in law described above. However, the potential exists that additional conflicts in law exist as a result of the significant changes made to the laws related to the office during the 2017 Regular Legislative Session.

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***RECOMMENDATION #1***

*We recommend that the Office of the State Public Defender seek legislation to resolve the conflicts in state law and clarify where public defender fees should be recorded and who should collect the fees.*

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## **Revenue Misstatement**

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**In fiscal year 2018, the office did not record fee revenue of approximately \$271,000 in the State Special Revenue Fund.**

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Public defender fees assessed prior to July 1, 2017, are collected by the clerks of court and provided to the office through the county collection report process at the Department of Revenue (department). The department then provides these collections to the office. These collections are recorded in a temporary account by the department monthly. At fiscal year-end, the office records these amounts in the Charges for Services revenue account in the State Special Revenue Fund.

Of the \$322,000 in public defender fees collected in fiscal year 2018, approximately \$271,000 was not recorded as revenue as required by state accounting policy. These fees were fully collected in fiscal year 2018.

According to office personnel they made an error in the entry to record the public defender fee revenue. We considered if this misstatement was due to a deficiency in internal control. Based on the work performed, we believe this misstatement is due to human error and is not the result of a deficiency in internal control.

As a result, Charges for Services is understated by approximately \$271,000 on the Schedule of Total Revenues & Transfers-In for fiscal year 2018. Budgeted Revenues & Transfers-In and the June 30, 2018, Fund Equity balance are also understated by approximately \$271,000 on the Schedule of Changes in Fund Equity. Due to the conflict in law, as described in Recommendation #1 above, we are unable to determine if these amounts should be recorded in the General Fund or State Special Revenue Fund.

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**RECOMMENDATION #2**

*We recommend the Office of the State Public Defender record revenue in accordance with state accounting policy.*

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## **Contract Attorneys**

The office provides public defender services to those individuals meeting the indigence criteria. When the office does not have staff attorneys available to handle a case, either due to workload or the location of the case, the office contracts with attorneys in that area to provide the public defender services. The office is responsible for ensuring these attorneys provide effective assistance of counsel.

The office paid \$10 million to 222 contracted attorneys in fiscal year 2017 and \$8.5 million to 194 contracted attorneys in fiscal year 2018.

## **Contract Documentation**

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**The office does not have internal controls to demonstrate compliance with internal policy regarding contracting with attorneys.**

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The office developed policies, as required by state law, outlining how to contract with attorneys. Per office policy, an interested attorney submits required information, including a resume and education and experience summary, to the office to be considered for a contract. Contract management staff in the Central Services Division review this information and determine whether the contract attorney has the qualifications necessary to work cases. Once the information has been reviewed and approved, contract management staff prepare a memo of understanding (MOU). The contract attorney is then put onto a list of available contract attorneys in the regions of the state in which they wish to work.

We identified noncompliance with the office's policies in 13 of 15 contract attorney files we examined. The table that follows summarizes the elements missing from each of the files we examined.

Approximately \$1.8 million and \$2.0 million were paid to these contractors in fiscal years 2017 and 2018, respectively.

Currently, the office does not have controls in place to ensure the completeness and accuracy of contract files as required by the office's internal policies. Controls could include, for example, periodic reviews of contract files or a checklist filled out for each file to ensure all required elements are present.

Without complete contract files the office cannot show they followed internal policy. The office may be contracting with attorneys that do not have the necessary qualifications or paying the attorneys without a contract in place. This is considered a significant deficiency as further described on page B-2.

Office staff indicate that these contractors have been working with the office for many years, and there has been turnover in the contract manager position over the years. As a result, not all the files were maintained consistently and completely. Office staff recognize the importance of maintaining consistent and complete contractor files and plan to implement a new system to ensure the consistency and completeness of contractor files.

Table 1  
**Elements Missing From Contract Attorney Files**

	Resume	Education and Experience Summary	MOU
Attorney A	Missing	Present	Present
Attorney B	Missing	Present	Present
Attorney C	Missing	Present	Present
Attorney D	Missing	Missing	Present
Attorney E	Missing	Present	Present
Attorney F	Present	Present	Missing
Attorney G	Missing	Missing	Present
Attorney H	Present	Present	Present
Attorney I	Missing	Present	Present
Attorney J	Missing	Present	Present
Attorney K	Missing	Present	Present
Attorney L	Present	Present	Present
Attorney M	Missing	Present	Present
Attorney N	Missing	Present	Present
Attorney O	Missing	Present	Present

**Source: Compiled by the Legislative Audit Division from office records.**

### **RECOMMENDATION #3**

*We recommend the Office of the State Public Defender implement internal controls to demonstrate compliance with internal policy regarding contracting with attorneys.*

## Contract Attorney Evaluations

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**The office does not evaluate contract attorneys on a biennial basis, as required by state law.**

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Section 47-1-121, MCA, requires that the office develop procedures to perform an evaluation of every contract attorney on a biennial basis. The office does have an internal policy requiring these evaluations be completed. However, evaluations of contract attorneys have not occurred since 2015. Without the evaluations of the attorneys, it is not possible for the office to ensure the quality of the services provided by the contracted attorneys.

According to office staff, these evaluations have not taken place as required due to turnover in staff. The office plans to resume these evaluations.

The office does have a complaint process in place to identify problems with contracted attorneys. However, performing the regularly required evaluation of contract attorneys allows the office to evaluate the quality of services provided in a uniform manner.

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**RECOMMENDATION #4**

*We recommend the Office of the State Public Defender comply with state law by conducting biennial contract attorney evaluations.*

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# **Independent Auditor's Report and Office Financial Schedules**



## LEGISLATIVE AUDIT DIVISION

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



Deputy Legislative Auditors  
Cindy Jorgenson  
Joe Murray

## 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 the State Public Defender for each of the fiscal years ended June 30, 2018, and 2017, 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, 2018, and June 30, 2017, or changes in financial position for the years then ended.

*Basis for Qualified Opinions on Regulatory Basis of Accounting*

For the fiscal year ended June 30, 2018, the office collected approximately \$322,000 in cash for the payment of public defender fees. However, approximately \$271,000 of these collections were not recorded as revenue. As a result, Charges for Services are understated by \$271,000 on the Schedule of Total Revenues & Transfers-In for the fiscal year ended June 30, 2018. On the Schedule of Changes in Fund Equity for the fiscal year ended June 30, 2018, Budgeted Revenues & Transfers-In and the June 30, 2018, ending Fund Equity balance are understated by \$271,000. Due to a conflict in state law, we are unable to determine if these should be recorded in the General Fund or State Special Revenue Fund.

*Qualified Opinions on Regulatory Basis of Accounting*

In our opinion, except for omission of the information described in the "Basis for Qualified Opinions on Regulatory Basis of Accounting" paragraph, the Schedule of Changes in Fund Equity and Schedule of Total Revenues & Transfers-In for the fiscal year ended June 30, 2018, present fairly, in all material respects, the results of operations and changes in fund equity of the office for the fiscal year ended June 30, 2018, in conformity with the basis of accounting described in Note 1.

*Unmodified Opinions on Regulatory Basis of Accounting*

In our opinion, the Schedule of Total Expenditures & Transfers-Out, for the fiscal year ended June 30, 2018, and the Schedule of Changes in Fund Equity, Schedule of Total Revenues & Transfers-In, and Schedule of Total Expenditures & Transfers-Out, for the fiscal year ended June 30, 2017, present

fairly, in all material respects, the results of operations and changes in fund equity of the office, in conformity with the basis of accounting described in Note 1.

*Emphasis of Matter*

As discussed in Note 4 to the financial schedules, the 2017 Regular Legislative Session made changes to the office's operating structure. As a result, the fiscal year 2018 financial schedules are not comparable or consistent with the fiscal year 2017 schedules. Significant differences include:

- ◆ Program names on the fiscal year 2018 Schedule of Expenditures & Transfers-Out reflect the new office structure.
- ◆ A portion of the public defender fee is now recorded as Charges for Services revenue in the General Fund on the Schedule of Total Revenues & Transfers-In.

Due to the changes in operating structure, described above, there were also changes in management decisions resulting in the following significant differences:

- ◆ The office received federal subgrants in fiscal year 2018 and has corresponding federal revenue and expenditures on the Schedule of Total Revenues & Transfers-In and Schedule of Total Expenditures & Transfers-Out.
- ◆ The revenue estimates on the fiscal year 2018 Schedule of Total Revenues & Transfers-In were updated at fiscal year-end to reflect actual activity.

Our opinion is not modified with respect to these matters.

*Other Reporting Required by Government Auditing Standards*

In accordance with *Government Auditing Standards*, we have also issued our report dated August 24, 2018, on our consideration of the office'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

August 24, 2018

PUBLIC DEFENDER  
SCHEDULE OF CHANGES IN FUND EQUITY  
FOR THE FISCAL YEAR ENDED JUNE 30, 2018

	<u>General Fund</u>	<u>State Special Revenue Fund</u>	<u>Federal Special Revenue Fund</u>
FUND EQUITY: July 1, 2017	\$ <u>(2,991,401)</u>	\$ <u>41,719</u>	\$ <u>0</u>
ADDITIONS			
Budgeted Revenues & Transfers-In	51,505		35,533
Direct Entries to Fund Equity	<u>35,593,139</u>		
Total Additions	<u>35,644,645</u>	<u>0</u>	<u>35,533</u>
REDUCTIONS			
Budgeted Expenditures & Transfers-Out	35,170,788		35,458
Nonbudgeted Expenditures & Transfers-Out	<u>(32,473)</u>	<u>317,493</u>	
Total Reductions	<u>35,138,315</u>	<u>317,493</u>	<u>35,458</u>
FUND EQUITY: June 30, 2018	\$ <u><u>(2,485,071)</u></u>	\$ <u><u>(275,774)</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, 2017

	<u>General Fund</u>	<u>State Special Revenue Fund</u>	<u>Federal Special Revenue Fund</u>
FUND EQUITY: July 1, 2016	\$ <u>(2,836,876)</u>	\$ <u>32,599</u>	\$ <u>0</u>
ADDITIONS			
Budgeted Revenues & Transfers-In	2,698	263,127	
Nonbudgeted Revenues & Transfers-In	3		
Direct Entries to Fund Equity	<u>36,832,417</u>	<u>19,599</u>	<u>3</u>
Total Additions	<u>36,835,118</u>	<u>282,726</u>	<u>3</u>
REDUCTIONS			
Budgeted Expenditures & Transfers-Out	37,010,161	273,606	
Nonbudgeted Expenditures & Transfers-Out	<u>(20,518)</u>		<u>3</u>
Total Reductions	<u>36,989,643</u>	<u>273,606</u>	<u>3</u>
FUND EQUITY: June 30, 2017	\$ <u>(2,991,401)</u>	\$ <u>41,719</u>	\$ <u>0</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, 2018

	General Fund	Federal Special Revenue Fund	Total
<b>TOTAL REVENUES &amp; TRANSFERS-IN BY CLASS</b>			
Charges for Services	\$ 51,463		\$ 51,463
Transfers-in		\$ 35,533	35,533
Miscellaneous	42		42
Total Revenues & Transfers-In	51,505	35,533	87,038
Less: Nonbudgeted Revenues & Transfers-In			0
Prior Year Revenues & Transfers-In Adjustments			0
Actual Budgeted Revenues & Transfers-In	51,505	35,533	87,038
Estimated Revenues & Transfers-In	51,505	35,533	87,038
Budgeted Revenues & Transfers-In Over (Under) Estimated	\$ 0	\$ 0	\$ 0
 <b>BUDGETED REVENUES &amp; TRANSFERS-IN OVER (UNDER) ESTIMATED BY CLASS</b>			
Budgeted Revenues & Transfers-In Over (Under) Estimated	\$ 0	\$ 0	\$ 0

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, 2017

	<u>General Fund</u>	<u>State Special Revenue Fund</u>	<u>Total</u>
<b>TOTAL REVENUES &amp; TRANSFERS-IN BY CLASS</b>			
Charges for Services	\$ 2,547	\$ 263,127	\$ 265,675
Transfers-in	3		3
Miscellaneous	151		151
Total Revenues & Transfers-In	<u>2,701</u>	<u>263,127</u>	<u>265,828</u>
Less: Nonbudgeted Revenues & Transfers-In	3		3
Prior Year Revenues & Transfers-In Adjustments			0
Actual Budgeted Revenues & Transfers-In	2,698	263,127	265,826
Estimated Revenues & Transfers-In	1,150	274,026	275,176
Budgeted Revenues & Transfers-In Over (Under) Estimated	<u>\$ 1,548</u>	<u>\$ (10,899)</u>	<u>\$ (9,350)</u>
<b>BUDGETED REVENUES &amp; TRANSFERS-IN OVER (UNDER) ESTIMATED BY CLASS</b>			
Charges for Services	\$ 1,547	\$ (10,799)	\$ (9,251)
Grants, Contracts, and Donations		(100)	(100)
Miscellaneous	1		1
Budgeted Revenues & Transfers-In Over (Under) Estimated	<u>\$ 1,548</u>	<u>\$ (10,899)</u>	<u>\$ (9,350)</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, 2018

PROGRAM (ORG) EXPENDITURES & TRANSFERS-OUT

	Appellate Defender Division	Central Services Division	Conflict Defender Division	Public Defender Division	Total
Personal Services					
Salaries	\$ 1,000,413	\$ 1,180,204	\$ 1,517,900	\$ 12,825,399	\$ 16,523,916
Employee Benefits	336,540	382,664	496,093	4,456,832	5,672,129
Total	<u>1,336,953</u>	<u>1,562,869</u>	<u>2,013,993</u>	<u>17,282,231</u>	<u>22,196,045</u>
Operating Expenses					
Other Services	487,739	264,733	7,236,672	2,287,308	10,276,453
Supplies & Materials	20,384	89,131	35,759	179,483	324,757
Communications	25,329	53,059	29,625	484,105	592,118
Travel	80,007	79,567	20,998	42,222	142,788
Rent		173,874	78,357	1,083,858	1,416,096
Utilities				1,012	1,012
Repair & Maintenance	1,629	106,405	600	26,695	135,328
Other Expenses	5,460	16,718	7,909	59,089	89,176
Total	<u>620,547</u>	<u>783,487</u>	<u>7,409,921</u>	<u>4,163,773</u>	<u>12,977,728</u>
Transfers-out					
Fund transfers	317,493				317,493
Total	<u>317,493</u>				<u>317,493</u>
Total Expenditures & Transfers-Out	<u>\$ 1,957,500</u>	<u>\$ 2,663,849</u>	<u>\$ 9,423,914</u>	<u>\$ 21,446,003</u>	<u>\$ 35,491,266</u>

EXPENDITURES & TRANSFERS-OUT BY FUND

General Fund	\$ 1,957,500	\$ 2,339,378	\$ 9,409,075	\$ 21,432,361	\$ 35,138,315
State Special Revenue Fund		317,493			317,493
Federal Special Revenue Fund		6,977	14,839	13,642	35,458
Total Expenditures & Transfers-Out	<u>1,957,500</u>	<u>2,663,849</u>	<u>9,423,914</u>	<u>21,446,003</u>	<u>35,491,266</u>
Less: Nonbudgeted Expenditures & Transfers-Out		285,020			285,020
Prior Year Expenditures & Transfers-Out Adjustments					
Actual Budgeted Expenditures & Transfers-Out	1,957,500	2,378,829	9,423,914	21,446,003	35,206,246
Budget Authority	1,959,013	2,448,526	9,427,055	21,489,189	35,323,783
Unspent Budget Authority	<u>1,513</u>	<u>69,697</u>	<u>3,142</u>	<u>43,186</u>	<u>117,537</u>

UNSPENT BUDGET AUTHORITY BY FUND

General Fund	\$ 1,513	\$ 68,774	\$ 3,051	\$ 21,757	\$ 95,095
Federal Special Revenue Fund		923	90	21,429	22,442
Unspent Budget Authority	<u>1,513</u>	<u>69,697</u>	<u>3,142</u>	<u>43,186</u>	<u>117,537</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, 2017**

**PROGRAM (ORG) EXPENDITURES & TRANSFERS-OUT**

	Office of Appellate Defender	Chief Administrator's Office	Conflict Coordinator	Office of Public Defender	Total
Personal Services					
Salaries	\$ 1,041,184	\$ 1,088,185	\$ 963,951	\$ 12,702,201	\$ 15,795,521
Employee Benefits	367,832	386,674	367,872	4,714,886	5,837,264
Total	<u>1,409,016</u>	<u>1,474,859</u>	<u>1,331,823</u>	<u>17,417,087</u>	<u>21,632,785</u>
Operating Expenses					
Other Services	411,907	226,111	7,951,811	4,009,945	12,599,773
Supplies & Materials	19,276	227,739	14,563	157,389	418,967
Communications	27,264	34,295	20,062	445,610	527,230
Travel	469	67,435	15,468	45,020	128,392
Rent	80,167	172,447	41,920	1,069,623	1,364,157
Utilities				952	952
Repair & Maintenance	2,625	482,841	3,679	34,145	523,290
Other Expenses	4,949	5,789	4,069	52,897	67,703
Total	<u>546,656</u>	<u>1,216,657</u>	<u>8,051,570</u>	<u>5,815,581</u>	<u>15,630,464</u>
Transfers-out					
Fund transfers				3	3
Total				<u>3</u>	<u>3</u>
Total Expenditures & Transfers-Out	\$ <u>1,955,672</u>	\$ <u>2,691,515</u>	\$ <u>9,383,394</u>	\$ <u>23,232,671</u>	\$ <u>37,263,252</u>

**EXPENDITURES & TRANSFERS-OUT BY FUND**

General Fund	\$ 1,955,672	\$ 2,417,909	\$ 9,383,394	\$ 23,232,668	\$ 36,989,643
State Special Revenue Fund		273,606			273,606
Federal Special Revenue Fund				3	3
Total Expenditures & Transfers-Out	<u>1,955,672</u>	<u>2,691,515</u>	<u>9,383,394</u>	<u>23,232,671</u>	<u>37,263,252</u>
Less: Nonbudgeted Expenditures & Transfers-Out		(20,518)		3	(20,515)
Prior Year Expenditures & Transfers-Out Adjustments		2,712,033	9,383,394	23,232,668	37,283,767
Actual Budgeted Expenditures & Transfers-Out	<u>1,955,672</u>	<u>2,714,426</u>	<u>9,384,075</u>	<u>23,258,314</u>	<u>37,314,344</u>
Budget Authority	<u>1,957,529</u>	<u>2,393</u>	<u>681</u>	<u>25,646</u>	<u>30,577</u>
Unspent Budget Authority	\$ <u>1,857</u>	\$ <u>2,393</u>	\$ <u>681</u>	\$ <u>25,646</u>	\$ <u>30,577</u>

**UNSPENT BUDGET AUTHORITY BY FUND**

General Fund	\$ 1,857	\$ 2,073	\$ 681	\$ 25,646	\$ 30,257
State Special Revenue Fund		320			320
Unspent Budget Authority	<u>1,857</u>	<u>2,393</u>	<u>681</u>	<u>25,646</u>	<u>30,577</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 the State Public Defender**  
**Notes to the Financial Schedules**  
**For the Two Fiscal Years Ended June 30, 2018**

## **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 category (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 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. The office's State Special Revenue Funds include collections for legal services provided pursuant to MCA, 47-1-110.

In fiscal 2018 the agency did not record revenue in the amount of \$270,545.99 for legal services provided which resulted in revenue and the fund balance being understated by that amount on the 2018 financial schedule. This error has been corrected in fiscal 2019 and controls have been put in place to ensure this error is not repeated in the future.

Pursuant to MCA, 47-1-110 (3) the unencumbered balance at the end of fiscal 2018 in the amount of \$317,492.89 was transferred to the General Fund.

- ◆ **Federal Special Revenue Fund** – to account for activities funded from federal revenue sources. Federal Special Revenue Funds include two subgrants from the Department of Health and Human Services (DPHHS) received in fiscal 2018. The funds were used to train OPD attorneys in dependent and neglect cases and to pay for chemical dependency evaluations for OPD clients.

## **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, 2017 and June 30, 2018.

## **3. Direct Entries to Fund Equity**

Direct entries to fund equity in the General, Special Revenue, and Federal Special Revenue funds include entries generated by SABHRS to reflect the flow of resources within individual funds shared by separate agencies.

## **4. Agency Reorganization**

The 2017 Legislature passed HB 77, restructuring the Office of the State Public Defender effective July 1, 2017. The actions repealed the public defender commission and added a director position to oversee the agency's four divisions. In addition, the chief public defender, appellate defender and conflict coordinator positions were eliminated, and the Director appointed Public Defender, Appellate Defender and Conflict Defender Division Administrators. The Director also hired a Central Services Division Administrator. The changes required the administrator positions to have responsibility over division budgets and resource allocation.

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 and the United States 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, payroll, contracting, quality and performance controls to all programs. The oversight of the eligibility determination process, including verification of all hardship cases, is also a responsibility of this division.



# 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  
Joe Murray

## 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 the State Public Defender for each of the fiscal years ended June 30, 2018, and 2017, and the related notes to the financial schedules, and have issued our report thereon dated August 24, 2018. Our report includes qualified opinions on the Schedule of Changes in Fund Equity and Schedule of Total Revenues & Transfers-In for the fiscal year ended June 30, 2018.

### *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 and therefore, material weaknesses or significant deficiencies may exist that were not identified. 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. We did identify certain deficiencies in internal control, described below, that we consider to be significant deficiencies.

- ◆ As described in the prior audit recommendation section, on page 2, the office does not have internal controls over public defender fee revenues collected and deposited by third parties. As a result, the amount of public defender fees could be understated, which is considered to be a significant deficiency.
- ◆ As described in Recommendation #3, on page 7, the office does not have internal controls over the completeness and accuracy of contract attorney files. As a result, the office may be contracting with attorneys that do not have the necessary qualifications or paying the attorneys without a contract in place, which is considered to be a significant deficiency.

### *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 instances of noncompliance or other matters that are required to be reported under *Government Auditing Standards*. The identified instances of noncompliance are described below:

- ◆ As described in Recommendation #1, on page 5, there are conflicts in state law regarding which fund the public defender fees should be recorded in, and how the fees should be collected.

### *Office of the State Public Defender's Response to Findings*

The office's response to the findings identified in our audit are described on page C-1 of this report. The office's response was not subjected to the auditing procedures applied in the audit of the financial schedules and, accordingly, we express no opinion on it.

### *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

August 24, 2018

OFFICE OF THE STATE  
PUBLIC DEFENDER

OFFICE RESPONSE





**MONTANA STATE  
PUBLIC DEFENDER**

C-1

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**RECEIVED**

OCT 29 2018

**LEGISLATIVE AUDIT DIV.**

October 26, 2018

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

RE: Response to Legislative Audit Recommendations  
For the Two Fiscal Years Ended June 30, 2018

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 responses are as follows:

**Recommendation #1:**

*We recommend that the Office of the State Public Defender seek legislation to resolve the conflicts in state law and clarify where public defender fees should be recorded and who should collect the fees.*

**Response:** We concur. A legislative proposal resolving these issues has been submitted for the 2019 session.

**Recommendation #2:**

*We recommend the Office of the State Public Defender record revenue in accordance with state accounting policy.*

**Response:** We concur. Entries have been completed in fiscal year 2019 to record revenue.

**Recommendation #3:**

*We recommend the Office of the State Public Defender implement internal controls to demonstrate compliance with internal policy regarding contracting with attorneys.*

**Response:** We concur. The agency was reorganized by the 2017 Legislature and a new Contracts/Quality Control Manager was hired to ensure compliance with policy and statute. The agency has implemented the State Procurement Bureau's eMacs system to maintain the agency's contract attorney files. Existing contractors are in the process of migrating over to the new system, any new contractors are being placed on the new system.

Page 2  
Angus Maciver  
October 26, 2018

**Recommendation #4:**

*We recommend the Office of the State Public Defender comply with state law by conducting biennial contract attorney evaluations.*

**Response:** We concur. Since the agency has implemented the State Procurement Bureau's eMacs system, the agency's Contract Manager will ensure compliance with state law by conducting biennial contract attorney evaluations beginning in January 2019.

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 Schaffer  
Director

xc: Carleen Green, Central Services Division Administrator  
Dan Miller, Conflict Defender Division Administrator  
Peter Ohman, Public Defender Division Administrator  
Chad Wright, Appellate Defender Division Administrator