

# STATE PUBLIC DEFENDER

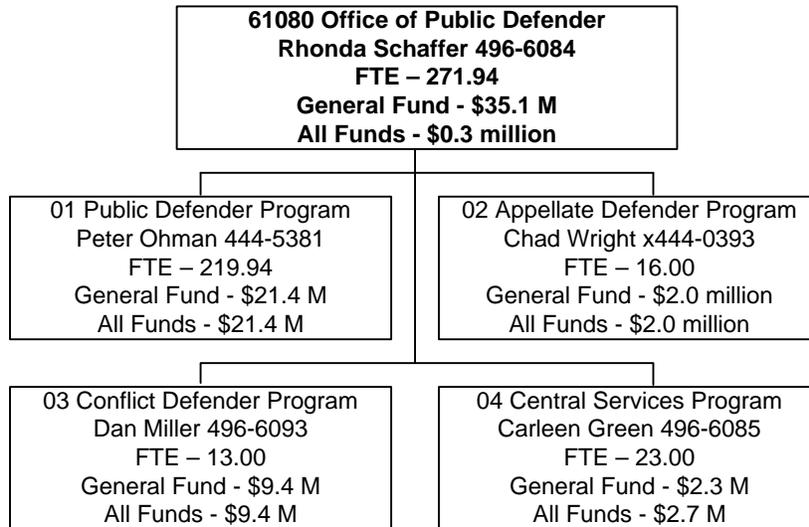
An Agency Profile Prepared by the  
Legislative Fiscal Division

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# INTRODUCTION

The primary mission of the statewide public defender system is to provide effective counsel to indigent persons accused of crime and other persons in civil cases who are entitled by law to the assistance of counsel at public expense.

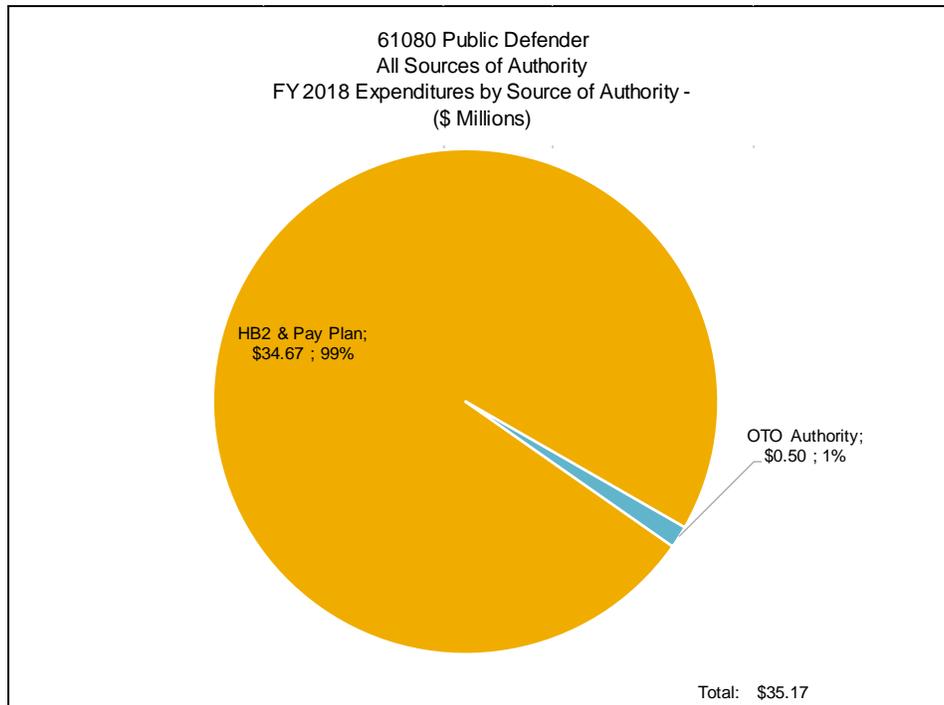


## HOW SERVICES ARE PROVIDED

Services are provided by a combination of state employees and attorneys contracting with the state. In general, state employees provide services in populated geographic areas where the majority of the cases occur and contracted attorneys are used in less populated geographic areas. Contract attorneys may also be utilized in situations that create a conflict of interest for attorneys on staff. State employees include attorneys, criminal investigators, and legal secretaries. Services are broken among 11 regions along with an office for major cases and an appellate office. In addition, a conflict office manages cases where conflicts exist between represented parties in the same legal action.

## SOURCES OF SPENDING AUTHORITY

The following chart shows expenditures by the source of authority for the Office of State Public Defender in FY 2018.

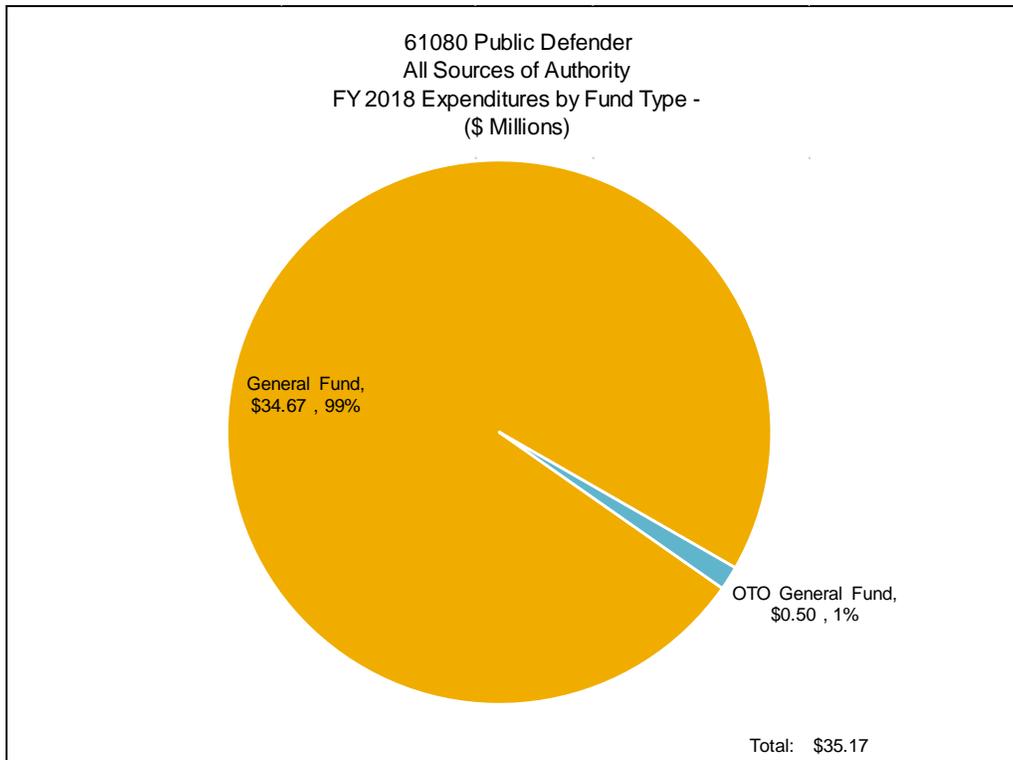


The Office of the Public Defender transferred \$3.0 million in general fund appropriation authority from FY 2019 to FY 2018 for expenditures within the Public Defender and the Conflict Defender Divisions. The HB 2 and pay plan expenditures reflect the additional spending.

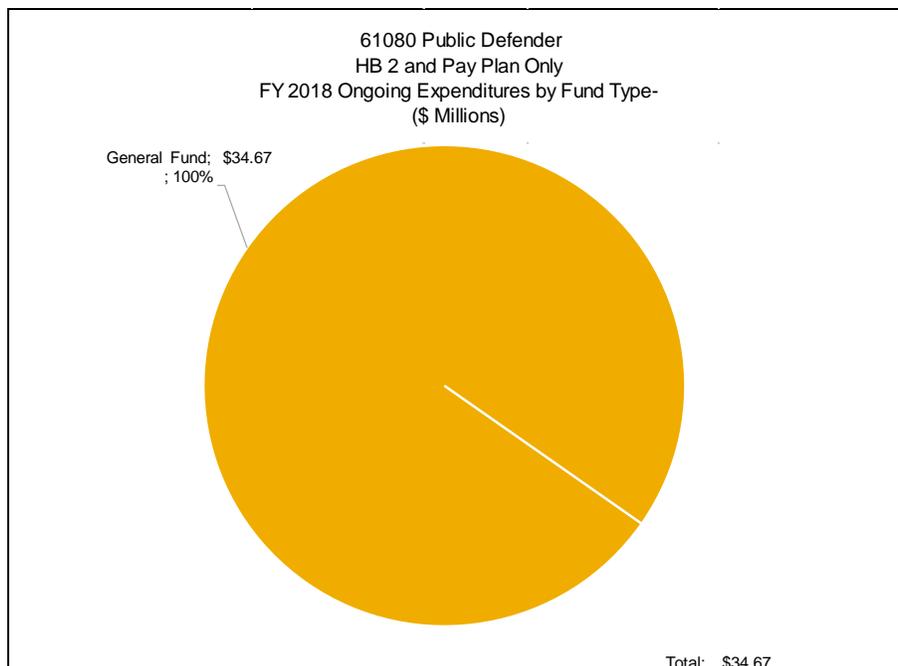
One-time-only expenditures of \$0.5 million were associated with contingency funding established by the legislature. A requirement attached to the funding was that the budget director certify that OPD had implemented a consistent and measurable statewide eligibility determination methodology before the funding would be available.

## FUNDING

The Office of State Public Defender is funded primarily with general fund. The following chart shows the funding sources for agency's FY 2018 expenditures.

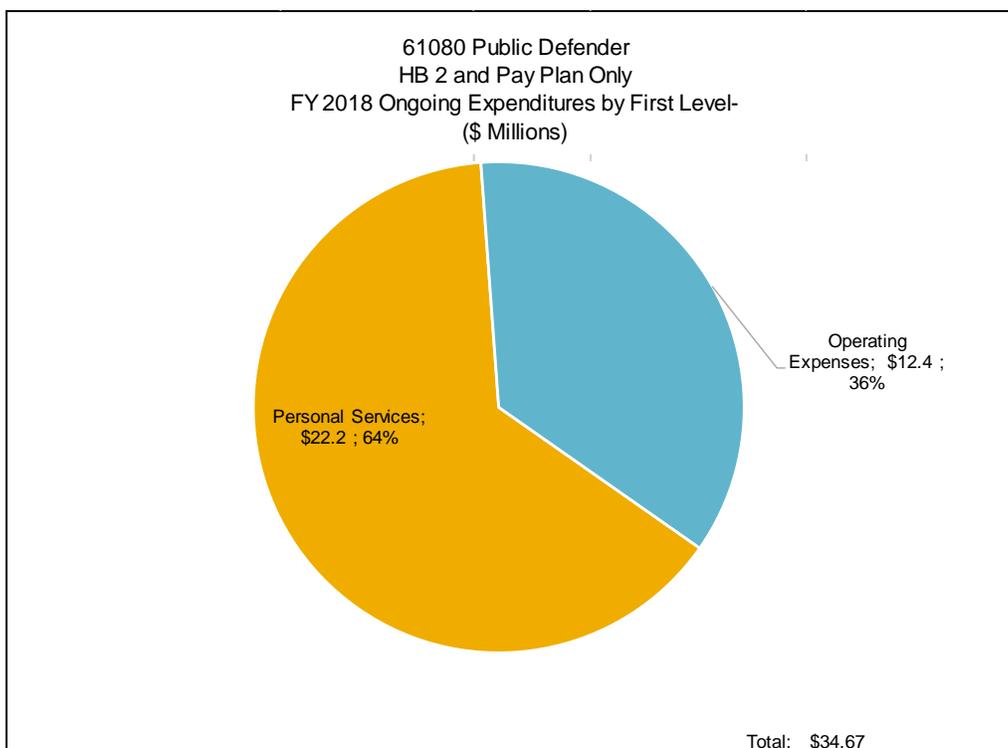


As reflected below, the Office of the Public Defender is supported by general fund. In FY 2018 OPD expended \$0.5 million in one-time-only appropriations.



## EXPENDITURES

The next chart explains how the HB2 and pay plan authority was spent in FY 2018.



HB 2 personal services includes the salaries and benefits for staff within OPD. The staff includes lawyers, legal secretaries, and crime investigators. The majority of the operating expenses were for contract attorneys. Other operating expenses expenditures included information technology costs, expert witness fees, mental health evaluations, and court transcript costs.

## HOW THE 2017 LEGISLATURE CAN EFFECT CHANGE

In order to change expenditure levels and/or agency activity, the legislature must address one or more of the following basic elements that drive costs.

The legislature may impact the function of the statewide public defender system by:

- Assigning responsibility for funding and provision of services
- Changing the statutory framework that defines the public defender system
- Changing statutory provisions of criminal law
- Changing statutory provisions related to certain civil proceedings

The largest categories of costs for the agency are personal services and contracted attorney services; actions that impact these items are likely to impact the system.

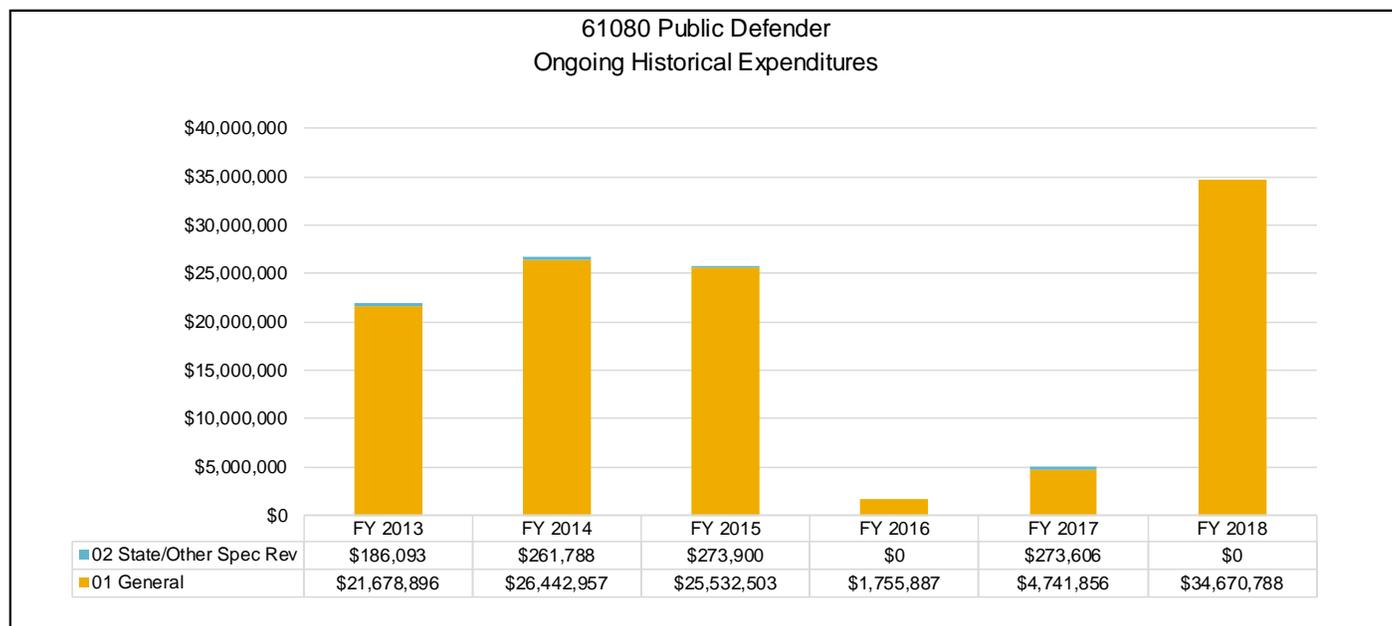
## MAJOR COST DRIVERS

The major drivers of cost for the Office of State Public Defender are caseloads. The following table shows trends in the various types of cases of the office:

Driver	FY 2008	FY 2018	Significance of Data
Abuse and Neglect	2,181	4,560	Impact on workload
Criminal	5,523	8,755	Impact on workload
Guardianship	248	211	Impact on workload
Involuntary Commitment	735	1,141	Impact on workload
Juvenile	959	826	Impact on workload
Lower Court	16,910	18,966	Impact on workload
Total All Case Types	26,556	34,459	Impact on workload
Division 2 (Appellate) opened 317 new cases in FY 2018			

## FUNDING/EXPENDITURE HISTORY, AUTHORITY USED TO ESTABLISH THE BUDGET BASE

The following table shows historical changes in the agency's base budget authority.



The 2015 Legislature designated the FY 2016 and FY 2017 budgets as one-time-only with a few exceptions.

## MAJOR LEGISLATIVE CHANGES IN THE LAST TEN YEARS

Major legislative changes adopted by the 2017 Legislature included:

- HB 133 eliminated the possibility of jail time on several misdemeanor offenses and instituted mandatory minimums for sex offenses against children aged 12 or younger. These changes affect expenditures for the Office of the Public Defender by reducing caseload
- HB 59 removed court requirements for putative fathers in most cases and reducing the number of dependent and neglect cases where the Office of Public Defender (OPD) is appointed for representation
- HB 77 reorganized the Office of Public Defender. The bill:
  - Allowed for a Director position that will be hired by the Department of Administration
  - Created an Advisory Commission attached to the Office of State Public Defender
  - Removed the allocation of the former commission to the Department of Administration

- Established a quarterly meeting expectation and allowed for special meetings to be called when required
- Allowed the Director position to be named in place of a Chief Public Defender and Chief Appellate Defender for certain duties
- Established definitions related to the Office of the Public Defender
- Clarified certain duties for the Division Administrator and the Advisory Commission
- Mandated any unencumbered state special revenue be transferred to the general fund by August 1 of each year
- Created further direction for eligibility determination of indigence
- Outlined the duties of an administrator position
- Provided transition instruction to the Advisory Commission and the Department of Administration

2015 Legislature made the following changes:

- HB 2 designed the appropriations for OPD, including the base budget, as one-time-only. As such the budget for the 2019 biennium was built from a zero base.
- HB 627 provided for a study of the operations of OPD to develop a long-term plan to allow OPD to provide effective assistance of counsel to those that qualify
- HB 143 suspended a defendant's obligation to make payments for costs of assigned counsel during the period a defendant is incarcerated
- SB 244 created a study for sentencing practices and policies

2011 Legislature included the following changes:

- HB 96 allowed OPD to recover the costs of representation in probate and involuntary commitment cases if the respondent was determined to have financial ability to pay for a public defender and the judge ordered the respondent to pay
- SB 15 created a misdemeanor crime of aggregated driving under the influence, increasing the number of cases requiring OPD to provide representation
- SB 187 modified several provisions of the Montana Public Defender Act by:
  - Eliminating the requirement that the Chief Public Defender carry a caseload
  - Prohibiting the contract manager from carrying a caseload
  - Providing for separate staff for the Public Defender Commission (commission) to be added when sufficient state special revenue was collected to support the positions
  - Modifying per case charges for the cost of the counsel
  - Specifying that the commission establish and oversee a Conflicts Office with a Conflicts Manager
  - Requiring that applicants for services submit notarized affidavits of indigence

For more information please visit the agency website here: <http://www.publicdefender.mt.gov/>.