

Agency Biennium Comparison

The following table compares the 2019 biennium appropriated budget and the 2021 biennium budget request by type of expenditure and source of funding.

Agency Biennium Comparison				
Budget Item	Appropriated Budget 18-19	Requested Budget 20-21	Biennium Change	Biennium % Change
Personal Services	44,726,512	53,156,746	8,430,234	18.85 %
Operating Expenses	19,344,432	23,387,509	4,043,077	20.90 %
Total Expenditures	\$64,070,944	\$76,544,255	\$12,473,311	19.47 %
General Fund	64,070,944	76,544,255	12,473,311	19.47 %
Total Funds	\$64,070,944	\$76,544,255	\$12,473,311	19.47 %
Total Ongoing	\$63,045,944	\$75,544,255	\$12,498,311	19.82 %
Total OTO	\$1,025,000	\$1,000,000	(\$25,000)	(2.44)%

Mission Statement

The mission of the Office of the State Public Defender (OPD) is to provide effective professional legal services with equal access to quality client-centered representation.

For additional information, please refer to the Agency Profile. The profile may be viewed at: <https://leg.mt.gov/content/Publications/fiscal/BA-2021/Section-D/Agency-Profiles/6108-DEF.pdf>

Agency Highlights

Office of the Public Defender Major Budget Highlights
<ul style="list-style-type: none"> • The Office of the Public Defender requests \$7.3 million in supplemental appropriations for FY 2019 in HB 3 • The Office of the Public Defender 2021 biennium budget request is 19.5% or \$12.5 million higher than the 2019 biennium. Significant changes include: <ul style="list-style-type: none"> ◦ Proposal to add 30.50 FTE and an associated \$4.1 million in general fund personal services ◦ Requesting \$1.6 million in general fund to provide a 1.0% increase in the contract attorney fees ◦ Proposal for career ladders at \$2.8 million in general fund ◦ Requesting an additional \$1.2 million in general fund for an estimated 3.0% growth in caseload in the 2021 biennium
LFD Issues
<ul style="list-style-type: none"> • Averaging total caseload growth over the last five years does not capture recent declines in: <ul style="list-style-type: none"> ◦ Average case costs ◦ Certain case types such as lower court cases

Agency Actuals and Budget Comparison

The following table compares the 2019 biennium appropriated budget and the 2021 biennium budget request by type of expenditure and source of funding.

Agency Actuals and Budget Comparison					
Budget Item	Actuals Fiscal 2018	Approp. Fiscal 2018	Approp. Fiscal 2019	Request Fiscal 2020	Request Fiscal 2021
FTE	0.00	271.94	271.94	302.44	302.44
Personal Services	22,024,019	22,024,010	22,702,502	26,245,554	26,911,192
Operating Expenses	9,941,795	10,009,724	9,334,708	11,736,854	11,650,655
Total Expenditures	\$31,965,814	\$32,033,734	\$32,037,210	\$37,982,408	\$38,561,847
General Fund	31,965,814	32,033,734	32,037,210	37,982,408	38,561,847
Total Funds	\$31,965,814	\$32,033,734	\$32,037,210	\$37,982,408	\$38,561,847
Total Ongoing	\$31,465,814	\$31,508,734	\$31,537,210	\$37,482,408	\$38,061,847
Total OTO	\$500,000	\$525,000	\$500,000	\$500,000	\$500,000

Agency Discussion

FY 2018 Appropriations Compared to FY 2018 Actual Expenditures

While the table above reflects the original appropriation and corresponding expenditures provided by the legislature for FY 2018, OPD actually expended an additional \$3.2 million in FY 2018 including:

- \$3.0 million in fiscal year supplemental transfers for higher operating expenses. OPD transferred \$3.0 million in general fund from FY 2019 to FY 2018
- \$205,000 in personal service contingency funding received from the Office of Budget and Program Planning. While the funding was requested for higher than anticipated personal services costs, OPD transferred an equal amount of funding out of personal services of the Public Defender Division and into operating expenses of the Conflict Defender Division

Because fiscal year supplemental appropriations and personal services contingency funding are not included in the preceding table, neither the column for actual expenditures or appropriations in FY 2018 includes the additional \$3.2 million.

Cost Reductions Adopted By the 2017 Legislature

The 2017 Legislature adopted OPD's proposal to reduce contract attorney services in three of its divisions by hiring additional attorneys, reducing operating expenses by \$1.8 million, adding 11.50 FTE, and increasing personal services by \$1.1 million in both FY 2018 and FY 2019.

Cost Mitigation Efforts

To further address rising costs, OPD implemented reductions of about 10.0% to contract attorney rates late in FY 2018. The reason for the reduction was to mitigate costs associated with increasing workloads. OPD also hired an additional 20.50 FTE beyond the approved 11.50 FTE to replace contract attorneys, further reducing operating costs. The mitigation efforts are continued in FY 2019. As discussed, despite the mitigation efforts, FY 2018 ongoing appropriations of \$32.0 million in general fund were not sufficient to meet ongoing expenditures within two programs in OPD, the Public Defender Division and the Conflict Defender Division. OPD transferred \$3.0 million from FY 2019 to FY 2018 to address shortfalls in operating expenses due to:

- Growth in dependent and neglect cases that outpaced budget authority by \$0.8 million
- Unexpected leave payouts for staff exceeding budgeted authority by \$0.6 million

- OPD expending \$1.0 million in a death penalty case that was not anticipated in the budget
- Expenses related to court orders requiring a further \$0.5 million

FY 2018 Appropriations Compared to FY 2019 Appropriations

FY 2019 total appropriations are almost identical to FY 2018 appropriations in total, however personal services are increased by \$700,000 in FY 2019 and operating expenses are decreased by a similar amounts Differences include:

- Personal services appropriations are higher in FY 2019 mainly due to the November 2017 Special Session reducing contributions to employee health benefits by \$521,000 in FY 2018
- Operating expenses are lower in FY 2019 due to the 2017 Legislature anticipating that, by implementing changes in sentencing laws, the need for contract attorneys within OPD would decrease between FY 2018 and FY 2019

LFD COMMENT As noted, OPD transferred \$3.0 million of general fund authority from FY 2019 to FY 2018. OPD has requested an additional \$7.3 million in general fund in supplemental appropriation authority for FY 2019. This request is included in HB 3.

Comparison of FY 2019 Legislative Budget to FY 2019 Base

Figure 1 illustrates the beginning FY 2019 budget as adopted by the 2017 Legislature compared to the finalized 2019 Base Budget, which includes modifications done by the executive (as authorized in statute) during the interim. The 2019 Base Budget was agreed upon by the executive and legislative branches to be the point from which any changes would be recorded for the 2021 biennium budgeting process.

Figure 1

FY 2019 Legislative Appropriations				
	Legislative Action	Executive Modifications per Statutory Authority	Executive Base	% Change from Legislative Action
01 Public Defender Division				
61000 Personal Services	\$18,538,104	(\$479,281)	\$18,058,823	-2.6%
62000 Operating Expenses	1,811,620	18,554	1,830,174	1.0%
63000 Equipment & Intangible Assets	18,554	(18,554)	-	-100.0%
Program Total	20,368,278	(479,281)	19,888,997	-2.4%
02 Appellate Defender Division				
61000 Personal Services	1,463,890	-	1,463,890	0.0%
62000 Operating Expenses	444,043	-	444,043	0.0%
Program Total	1,907,933	-	1,907,933	0.0%
03 Conflict Defender Division				
61000 Personal Services	1,213,417	122,992	1,336,409	10.1%
62000 Operating Expenses	5,476,829	-	5,476,829	0.0%
Program Total	6,690,246	122,992	6,813,238	1.8%
04 Central Services Division				
61000 Personal Services	1,487,091	356,289	1,843,380	24.0%
62000 Operating Expenses	1,083,662	-	1,083,662	0.0%
Program Total	2,570,753	356,289	2,927,042	13.9%
Grand Total	\$31,537,210	\$0	\$31,537,210	0.0%

As reflected in Figure 1, in FY 2019 the Public Defender Division transferred 6.00 FTE and related personal services authority from the Public Defender Division to the Conflict Defender and Central Service Divisions. The Conflict Defender Division received 1.00 FTE attorney while the Central Service Division received 2.00 FTE eligibility technicians, 1.00 FTE attorney, 1.00 FTE accounting technician, and 1.00 FTE that was reclassified as an administrative services manager.

Executive Request

Caseload Growth

Caseloads drive costs in the Office of the Public Defender. Figure 2 shows the caseload trends from FY 2013 through FY 2018 and reflects the number of new cases assigned to OPD over this period. These cases are those in which the defendant was either indigent or met some other requirement under the Montana Public Defender Act or where the judge overseeing the case assigned OPD to provide counsel regardless of qualification. Figure 2 also provides the average cost per case for the same period.

Figure 2

Office of the Public Defender Caseload Statistics					
Case Type	FY 2014	FY 2015	FY 2016	FY 2017	FY 2018
Lower Courts	19,803	20,814	21,543	21,412	18,967
Dependent and Neglect	3,029	3,925	4,691	4,853	4,535
Juvenile	1,052	927	907	877	799
Involuntary Commitment	1,046	1,080	1,103	1,176	1,107
Guardianship	178	189	200	170	170
Criminal	6,597	6,699	7,904	8,619	8,850
Total	31,705	33,634	36,348	37,107	34,428
% Growth in Cases					
Lower Courts	-2.4%	5.1%	3.5%	-0.6%	-11.4%
Dependent and Neglect	-3.2%	29.6%	19.5%	3.5%	-6.6%
Juvenile	-11.8%	-11.9%	-2.2%	-3.3%	-8.9%
Involuntary Commitment	6.4%	3.3%	2.1%	6.6%	-5.9%
Guardianship	-30.2%	6.2%	5.8%	-15.0%	0.0%
Criminal	8.3%	1.5%	18.0%	9.0%	2.7%
Total	-0.8%	6.1%	8.1%	2.1%	-7.2%
Average Cost Per Case					
Lower Courts	\$440	\$441	\$428	\$408	\$365
Dependent and Neglect	1,519	1,294	1,363	1,793	1,970
Juvenile	1,023	1,084	1,169	1,129	995
Involuntary Commitment	347	445	446	273	253
Guardianship	908	876	648	574	528
Criminal	1,914	2,143	2,032	1,891	1,752
% Change in Average Costs					
Lower Courts		0.2%	-2.9%	-4.7%	-10.5%
Dependent and Neglect		-14.8%	5.3%	31.5%	9.9%
Juvenile		6.0%	7.8%	-3.4%	-11.9%
Involuntary Commitment		28.2%	0.2%	-38.8%	-7.3%
Guardianship		-3.5%	-26.0%	-11.4%	-8.0%
Criminal		12.0%	-5.2%	-6.9%	-7.4%

HB 133 revised misdemeanor laws, reducing the number of cases requiring OPD to provide legal representation in lower court cases. In FY 2018 OPD had 2,446 fewer lower court cases or a decline of 11.4% when compared to FY 2017. This reduction in case workload was offset by:

- An increase in district court cases including a potential death penalty case
- A large backlog of cases from previous years that required resources in FY 2018

LFD COMMENT HB 133 revised the number of misdemeanor laws requiring the Office of the Public Defender to represent defendants in court. The city of Billings has adopted local ordinances that reverse the statutes put in place by the legislature addressing which offenses may result in jail or prison if the defendant is found guilty and thus require representation by a public defender. The work load of OPD and associated costs for lower court cases may be increased in the 2021 biennium as a result.

As shown juvenile cases have been steadily declining each year. As reflected in Figure 2, increases in new cases do not necessarily correspond to an increase in the average cost per case. For example, criminal cases increased 18.0% between FY 2015 and FY 2016 while the average cost per criminal case declined by 5.2%. Average case costs have declined for at least two consecutive years for all but dependent and neglect cases.

LFD COMMENT Dependent and neglect cases make up a significant portion of the number of cases and related costs in both the Public Defender and Conflict Defender Divisions and have been steadily increasing in both number and average costs per case. Part of the impact of the increased costs is the length of time required to complete each case. According to the LFD Results First Report issued in September 2018, the "out-of-home-placement" of children who are victims of abuse or neglect has been increasing over the last decade. This is an outcome that most research indicates should be avoided whenever possible as it generally has long-term impacts on the child. Montana has a higher removal rate for "out-of-home-placements" than most other states.

Agency Wide Decision Packages

Caseload

The executive is requesting an additional \$3.1 million in general fund for caseload growth between the 2019 biennium and the 2021 biennium. The executive estimates that overall caseload will grow at 3.0% each year based on the previous five years, and has proposed additional funding based on the average growth.

LFD ISSUE Averaging total caseload growth over the last five years does not capture recent declines in average case costs or certain case types such as lower court cases

As reflected in Figure 2, the caseload has different components such as dependent and neglect or criminal cases, which are not changing at the same rate. In addition, the 2017 Legislature adopted HB 133 revising misdemeanor laws and reducing the number of cases that require OPD to provide legal representation. As a result, the lower court component of OPD's caseload declined by 11.4% in FY 2018 when compared to FY 2017. It should also be noted that the average costs per case vary and do not necessarily correspond to the changes in the number of cases. To further analyze caseload growth the LFD calculated caseload growth for each type of case since FY 2014 and the associated trends in average cost per case. Figure 3 includes actual cases and average cost per case for FY 2014 through FY 2018 and estimated costs for each caseload type based on historical trends and averages for FY 2019 through FY 2021.

Figure 3

Office of the Public Defender Cost and Caseload Projections						
Case Type	Actual FY 2016	Actual FY 2017	Actual FY 2018	Estimated FY 2019	Estimated FY 2020	Estimated FY 2021
Lower Courts	\$9,220,404	\$8,736,096	\$6,929,214	\$6,576,807	\$6,247,967	\$5,935,569
Dependent and Neglect	6,393,833	8,701,429	8,933,950	9,201,969	9,667,588	10,156,768
Juvenile	1,060,283	990,133	795,005	813,104	756,187	703,254
Involuntary Commitment	491,938	321,048	280,071	270,880	257,336	244,921
Guardianship	129,600	97,580	89,760	87,822	74,649	63,451
Criminal	16,060,928	16,298,529	15,505,200	17,578,313	18,000,812	18,743,383
Total Case Related Costs	\$33,356,986	\$35,144,815	\$32,533,200	\$34,528,895	\$35,004,538	\$35,847,346

Using the historical trends and averages captures changes in both caseload and changes in the average cost per case. For example, criminal case numbers are increasing by an average of 9.5% between FY 2016 and FY 2018 however, average case costs associated with criminal cases have declined by 6.5% in the same period. Based on the changes in the historical trends for caseload components and average case costs, costs associated with case caseloads in OPD would be \$363,000 less in FY 2020 and \$76,000 less in FY 2021 than anticipated by the executive.

Legislative options:

- Adopt funding for caseload growth based on historical trends and averages
- Adopt the executive proposal for caseload growth

Additional FTE

The executive is requesting a total of 30.50 FTE and \$5.9 million in general fund in the 2019 biennium for additional personal services funding. During FY 2018 OPD hired an additional 19.00 FTE in modified positions including:

- 17.00 FTE attorney positions
- 2.00 FTE support staff

The FTE offset the need for contract attorneys. The executive proposes to provide funding for these positions and establish an additional 10.50 FTE related to increasing case load.

Increases to Contract Attorney Rates

The executive proposes to provide a 1.0% increase in the hourly contract attorney rate with \$1.6 million in general fund appropriations for operating expenses. Contract attorneys are used when OPD does not have the capacity to take on additional cases or where there is a potential conflict of interest for OPD to represent the defendant. In April 2018, OPD reduced contract attorney rates from \$62.00 to \$56.00 an hour to mitigate expenditures that were above the FY 2018 budget.

LFD COMMENT

In May 2018 attorneys who contract with the Office of the Public Defender filed a lawsuit seeking damages for the reduction in hourly rates and a reinstatement of the hourly rates to the previous level of \$62.00 an hour. The attorneys argue that a U.S Supreme Court ruling says the government can't change the terms of a public contract just to save money.

LFD COMMENT

The executive is proposing increased appropriations for increasing the contract attorney rate as a present law adjustment. The increase in the rate could be considered a change in program services which is considered a new proposal according to statute.

Career Ladder Adjustments

To address staff retention issues within OPD the executive is proposing career ladders adjustments for attorneys. The proposal increases general fund for personal services by \$1.8 million over the 2021 biennium.

Legislative Audit Findings

LFD COMMENT The Legislative Audit Division conducted a financial compliance audit of the Office of the Public Defender. The audit found that there is a conflict in statute between Chapters 170 and 358, Laws of the 2017 Regular Session related to public defender fees. Section 46-8-113, MCA requires any amount collected for public defender fees be deposited into the general fund. However, 46-8-113, MCA states that all fees, including public defender fees, be in the state special revenue account for the Office of the Public Defender. In FY 2018 OPD deposited the public defender fees into the general fund.

The Legislative Auditor recommends the Office of the Public Defender seek legislation to resolve the conflict between the two statutes and clarify where the public defender fees should be deposited.

5.0% Plan

Statute requires that agencies submit plans to reduce general fund and certain state special revenue funds by 5.0%. A summary of the entire 2019 biennium 5.0% Plan submitted for this agency is in the appendix. OPD includes reductions of \$1.6 million in general fund. The proposal to reduce expenditures in OPD is to transfer responsibility for contract attorneys, expert witness fees, and mental health evaluations to the Attorney General.

LFD COMMENT While the proposal will reduce general fund expenditures in OPD it does not reduce general fund for the state, shifting the costs to another agency.

Agency Personal Services

In order to explain the factors influencing personal services changes, the proposed statewide personal services present law adjustment (DP 1) has been broken down into four categories, as follows:

1. Formula Based

Formula based changes are calculated independent of agency choices, such as: annualize personal services costs including FY 2019 statewide pay plan adjustments, changes to benefit rates, and longevity adjustments related to incumbents in each position at the time of the personal services snapshot, plus rate changes for workers' compensation and unemployment insurance.

A detailed illustration of this methodology is included in the Budget Analysis Appendix.

2. Personal Services Management Decisions

Any agency management decisions that adjusted employee pay or transferred personal services authority between programs. This includes raises or position changes that may increase or reduce a budget, such as hiring FTE at a lower rate to replace retired senior staff or moving FTE and funding between programs.

3. Proposed Reinstatement of Personal Services Base Budget Reductions

Most agencies requested reinstatement of personal services budget reductions taken last session. The single largest reinstatement is due to the lower vacancy savings rate requested by the executive. The FY 2019 personal services base included approximately 6.0% vacancy savings reduction as part of the funding adopted in HB 2. Generally, the executive requested a 2.0% vacancy savings reduction for 2021 biennium.

Agencies funded with general fund may have additional personal services reductions such as those reduced from the triggers in SB 261 from last session.

In some instances, the lower personal services budgets caused agencies to make management decisions that lowered the ongoing cost of personal services. When this occurred, the LFD reflected the lower reinstatement requested rather than the total of all personal services reductions made by the previous legislature.

4. Budget Modifications

This category includes modifications to the FY 2019 personal services budget such as transfer of personal services authority to operating expenses that occurred during the interim. These transfers may impact the overall size of the personal services present law adjustment (DP 1).

The Figure shows the analysis of the proposed changes.

Figure 4

Personal Services Present Law DP 1 - FY 2020						
Program	Formula Based	Management Decisions	Proposed Reinstatement of PS	Budget Modifications	DP1 SWPL	
01 OFFICE OF PUBLIC DEFENDER	\$174,392	(\$121,069)	\$0	\$0	\$53,323	
02 OFFICE OF APPELLATE DEFENDER	19,113	25,885	-	-	44,998	
03 CONFLICT COORDINATOR	23,151	(101,660)	-	-	(78,509)	
04 CHIEF ADMINISTRATOR'S OFFICE	31,590	(19,500)	-	-	12,090	
Agency Total	\$248,245	(\$216,343)	\$0	-	\$31,902	

As reflected in Figure 4, reductions in salaries and benefits, especially in the Public Defender and Conflict Coordinator Divisions, offset expected changes and proposed reinstatement of personal services. OPD had 6.3% of FTE vacant in FY 2017 and 3.9% vacant in FY 2018. In FY 2018 a number of higher salaried employees left employment and were replaced with employees with less experience earning a lower salary. As a result, 60.00 FTE have a lower salary and benefit level for the 2021 biennium when compared to the 2019 biennium.

Funding

The following table shows proposed agency funding by source of authority.

Total Office of State Public Defender Funding by Source of Authority 2021 Biennium Budget Request - Office of State Public Defender							
Funds	HB2 Ongoing	HB2 OTO	Non-Budgeted Proprietary	Statutory Appropriation	Total All Sources	% Total All Funds	
General Fund	75,544,255	1,000,000	0	0	76,544,255	100.00 %	
State Special Total	0	0	0	0	0	0.00 %	
Federal Special Total	0	0	0	0	0	0.00 %	
Proprietary Total	0	0	0	0	0	0.00 %	
Other Total	0	0	0	0	0	0.00 %	
Total All Funds	\$75,544,255	\$1,000,000	\$0	\$0	\$76,544,255		
Percent - Total All Sources	98.69 %	1.31 %	0.00 %	0.00 %			

OPD is solely funded with general fund.

Budget Summary by Category

The following table summarizes the total budget by base, present law adjustments, and new proposals. For a description of these categories, please see the glossary section of the Budget Analysis.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2020	Budget Fiscal 2021	Biennium Fiscal 20-21	Percent of Budget	Budget Fiscal 2020	Budget Fiscal 2021	Biennium Fiscal 20-21	Percent of Budget
2019 Base Budget	31,537,210	31,537,210	63,074,420	82.40 %	31,537,210	31,537,210	63,074,420	82.40 %
SWPL Adjustments	347,838	276,311	624,149	0.82 %	347,838	276,311	624,149	0.82 %
PL Adjustments	5,042,266	5,000,710	10,042,976	13.12 %	5,042,266	5,000,710	10,042,976	13.12 %
New Proposals	1,055,094	1,747,616	2,802,710	3.66 %	1,055,094	1,747,616	2,802,710	3.66 %
Total Budget	\$37,982,408	\$38,561,847	\$76,544,255		\$37,982,408	\$38,561,847	\$76,544,255	

Program Biennium Comparison

The following table compares the 2019 biennium appropriated budget and the 2021 biennium budget request by type of expenditure and source of funding.

Program Biennium Comparison				
Budget Item	Appropriated Budget 18-19	Requested Budget 20-21	Biennium Change	Biennium % Change
Personal Services	35,136,054	39,856,406	4,720,352	13.43 %
Operating Expenses	5,480,304	6,873,158	1,392,854	25.42 %
Total Expenditures	\$40,616,358	\$46,729,564	\$6,113,206	15.05 %
General Fund	40,616,358	46,729,564	6,113,206	15.05 %
Total Funds	\$40,616,358	\$46,729,564	\$6,113,206	15.05 %
Total Ongoing	\$39,616,358	\$45,729,564	\$6,113,206	15.43 %
Total OTO	\$1,000,000	\$1,000,000	\$0	0.00 %

Program Description

The Public Defender Division oversees services to qualifying clients by providing assistance of counsel to indigent criminal defendants and other persons in certain civil cases who are entitled by law to assistance of counsel.

Program Highlights

Public Defender Division Major Budget Highlights
<ul style="list-style-type: none"> • The Public Defender Division 2021 biennium budget request is \$6.1 million or 15.1% higher than the 2019 biennium. Significant changes include: <ul style="list-style-type: none"> ◦ Proposal to add 11.00 FTE and \$2.1 million in related general fund personal services authority. Of this 5.00 FTE are proposed for anticipated caseload growth of 3.0% ◦ Adjustments to operating expenses for contract attorney caseload growth of \$1.2 million in general fund ◦ Request for \$1.5 million in general fund for career ladder adjustments ◦ Proposal to establish a contingency appropriation of \$0.5 million in general fund each year for potential death penalty cases
LFD Issues
<ul style="list-style-type: none"> • Averaging total caseload growth over the last five years does not capture recent declines in: <ul style="list-style-type: none"> ◦ Average case costs ◦ Types of cases such as lower court cases

Program Actuals and Budget Comparison

The following table compares FY 2018 actual expenditures to the 2019 biennium appropriated budget and the 2021 biennium budget request by type of expenditure and source of funding.

Program Actuals and Budget Comparison					
Budget Item	Actuals Fiscal 2018	Approp. Fiscal 2018	Approp. Fiscal 2019	Request Fiscal 2020	Request Fiscal 2021
FTE	0.00	219.94	219.94	230.94	230.94
Personal Services	17,077,238	17,077,231	18,058,823	19,635,180	20,221,226
Operating Expenses	3,150,144	3,150,130	2,330,174	3,444,080	3,429,078
Total Expenditures	\$20,227,382	\$20,227,361	\$20,388,997	\$23,079,260	\$23,650,304
General Fund	20,227,382	20,227,361	20,388,997	23,079,260	23,650,304
Total Funds	\$20,227,382	\$20,227,361	\$20,388,997	\$23,079,260	\$23,650,304
Total Ongoing	\$19,727,382	\$19,727,361	\$19,888,997	\$22,579,260	\$23,150,304
Total OTO	\$500,000	\$500,000	\$500,000	\$500,000	\$500,000

Program Discussion -

FY 2018 Appropriations Compared to FY 2018 Actual Expenditures

Expenditures for the Public Defender Division (PDD) were \$1.0 million higher than anticipated in the FY 2018 budget. PDD transferred \$1.0 million in general fund appropriations for operating expenses from FY 2019 to FY 2018 for costs that were higher than budgeted including contract attorney fees, mental health evaluations, and investigator fees. When compiling the budget, fiscal year supplemental transfers of appropriation authority between fiscal years are eliminated. Thus the Program Actuals and Budget Comparison table does not reflect the additional \$1.0 million in appropriations and expenditures in operating expenses in FY 2018.

FY 2018 Appropriations Compared to FY 2019 Appropriations

Notwithstanding the transfer, overall there is less than 0.1% difference between FY 2018 and FY 2019 appropriations. FY 2019 personal services appropriations are \$1.0 million higher than FY 2018 appropriations. Personal services in FY 2018 were reduced due to:

- Temporary suspension of \$0.4 million in employer contributions to employee health benefits made by the November 2017 Special Session
- Transfer of \$0.2 million from personal services to operating expenses to provide for higher than budgeted operating expenses
- Transfer of \$0.2 million in personal services to the Conflict Defender Division

In addition, the legislature approved a 1.0% pay plan increase and provided \$0.1 million in general fund in FY 2019.

Operating expenses appropriations are \$820,000 lower in FY 2019 than in FY 2018. As discussed in the Agency Summary, the 2017 Legislature anticipated that, by implementing changes in sentencing laws, the need for contract attorneys within OPD would decrease between FY 2018 and FY 2019.

As noted above, the preceding table does not reflect the reduction of \$1.0 million in general fund operating expenses that were transferred to FY 2018. PDD anticipates requiring a supplemental appropriation in FY 2019 for operating expenses.

Executive Request

The executive is proposing:

- An additional 11.00 FTE and \$2.2 million in general fund supporting personal services. In the 2019 biennium PDD had 6.00 FTE in modified positions to reduce operating expenses associated with the costs of using contract attorneys. The remaining 5.00 FTE are proposed to address an estimated 3.0% growth in caseload. See LFD Issue in the Agency Discussion

- Career ladder adjustments for attorneys at a cost of \$1.5 million general fund
- To provide a 1.0% increase in contract attorney rates with \$0.9 million in general fund
- One-time-only general fund of \$0.5 million for death penalty cases
- Additional operating expenses of \$1.2 million in general fund for projected 3.0% in caseload growth. See LFD Issue in the Agency Discussion

LFD COMMENT A change in the reimbursement for travel associated with contract attorneys was made in the 2019 biennium. The policy allows contract attorneys to be reimbursed for travel related to a case at \$45 an hour. Previously contract attorney's travel reimbursements were at the state milage rate established in statute.

Program Personal Services

Personal services in the PDD increase by 13.4% or \$4.7 million when compared to the 2019 biennium. Proposals that drive the increase include:

- Make 6.00 modified FTE permanent at a cost of \$1.3 million in general fund
- Provide for an additional 5.00 FTE and \$953,000 in personal services to address a projected 3.0% increase in caseload
- Fund career ladder adjustments for attorneys with \$1.5 million in general fund personal services

Funding

The following table shows proposed program funding by source of authority.

Office of State Public Defender, 01-Public Defender Division Funding by Source of Authority							
Funds	HB2 Ongoing	HB2 OTO	Non-Budgeted Proprietary	Statutory Appropriation	Total All Sources	% Total All Funds	
01100 General Fund	45,729,564	1,000,000	0	0	46,729,564	100.00 %	
State Special Total	\$0	\$0	\$0	\$0	\$0	0.00 %	
03778 OPD Chemical Dependency MOU	0	0	0	0	0	0.00 %	
Federal Special Total	\$0	\$0	\$0	\$0	\$0	0.00 %	
Proprietary Total	\$0	\$0	\$0	\$0	\$0	0.00 %	
Total All Funds	\$45,729,564	\$1,000,000	\$0	\$0	\$46,729,564		

The Public Defender Division is funded solely with general fund.

Program Budget Summary by Category

The following table summarizes the total budget by base, present law adjustments, and new proposals. For a description of these categories, please see the glossary section of the Budget Analysis.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2020	Budget Fiscal 2021	Biennium Fiscal 20-21	Percent of Budget	Budget Fiscal 2020	Budget Fiscal 2021	Biennium Fiscal 20-21	Percent of Budget
2019 Base Budget	19,888,997	19,888,997	39,777,994	85.12 %	19,888,997	19,888,997	39,777,994	85.12 %
SWPL Adjustments	60,399	44,635	105,034	0.22 %	60,399	44,635	105,034	0.22 %
PL Adjustments	2,179,534	2,163,615	4,343,149	9.29 %	2,179,534	2,163,615	4,343,149	9.29 %
New Proposals	950,330	1,553,057	2,503,387	5.36 %	950,330	1,553,057	2,503,387	5.36 %
Total Budget	\$23,079,260	\$23,650,304	\$46,729,564		\$23,079,260	\$23,650,304	\$46,729,564	

Present Law Adjustments

The "Present Law Adjustments" table shows the changes from the FY 2019 base appropriation to the budget proposed by the executive. "Statewide Present Law" adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies.

	-----Fiscal 2020-----					-----Fiscal 2021-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
DP 1 - Personal Services	0.00	53,323	0	0	53,323	0.00	35,854	0	0	35,854
DP 3 - Inflation Deflation	0.00	7,076	0	0	7,076	0.00	8,781	0	0	8,781
DP 4 - Current Level of Caseload	6.00	1,093,263	0	0	1,093,263	6.00	1,096,517	0	0	1,096,517
DP 6 - Contractor Caseload Growth	0.00	600,000	0	0	600,000	0.00	600,000	0	0	600,000
DP 7 - Attorney Caseload Growth	5.00	486,271	0	0	486,271	5.00	467,098	0	0	467,098
Grand Total All Present Law Adjustments	11.00	\$2,239,933	\$0	\$0	\$2,239,933	11.00	\$2,208,250	\$0	\$0	\$2,208,250

**"Total Funds" amount includes funding from sources other than General Fund, State Special, or Federal Special (i.e. Proprietary).

DP 1 - Personal Services -

The executive requests adjustments to the present law personal services budget. This request has been broken into the following categories, and further detail is shown in the agency summary:

- Formula based changes
- Personal services management decisions
- Reinstatement of personal services previously reduced
- Modifications made to the personal services budget in the 2019 biennium

DP 3 - Inflation Deflation -

The executive requests adjustments to reflect budgetary changes generated from the application of inflation and deflation factors to specific expenditures accounts. Affected accounts include food, postage, gasoline, and others.

DP 4 - Current Level of Caseload -

The Public Defender Division is requesting that 6.00 FTE modified positions be made permanent to support the current workload. The positions include 4.00 FTE attorney positions, two 0.50 FTE attorney positions, and 1.00 FTE criminal investigator position. The positions were established during FY 2018 and FY 2019 to handle caseload increases that did not subside in the current biennium. The executive also requests an additional \$465,830 for FY 2020 and \$468,623 for FY 2021 in operating expenses to provide a .91% increase of the contract attorney rates in FY 2020 and a 1.83% in FY 2021.

LFD COMMENT This proposal outlines an increase in rates which could be considered changes to program services. This request is more appropriately categorized as a new proposal and should be evaluated by the legislature as they would consider a new proposal.

LFD COMMENT This decision package requests additional funding for caseload growth. Besides caseload growth, OPD is impacted by ongoing caseloads that are not addressed within a fiscal year or even a biennium.

DP 6 - Contractor Caseload Growth -

The Public Defender Division is requesting general fund due to a 3.0% anticipated caseload growth. This request would fund contract attorney services, holistic defense services, mental health evaluations, and chemical dependency evaluations.

LFD COMMENT See LFD Issue in the Agency Discussion on caseload growth estimates.

DP 7 - Attorney Caseload Growth -

The Public Defender Division is requesting 5.00 FTE to address its future caseload growth based on a 5-year average caseload and projected potential workload impacts. The positions include 3.00 FTE attorneys and 2.00 FTE legal secretaries.

LFD COMMENT See the LFD Issue in the Agency Summary on caseload growth estimates.

New Proposals

The "New Proposals" table shows new changes to spending.

New Proposals	-----Fiscal 2020-----					-----Fiscal 2021-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
DP 5 - Attorney Pay Ladder Adjustments	0.00	450,330	0	0	450,330	0.00	1,053,057	0	0	1,053,057
DP 8 - Death Penalty Cases	0.00	500,000	0	0	500,000	0.00	500,000	0	0	500,000
Total	0.00	\$950,330	\$0	\$0	\$950,330	0.00	\$1,553,057	\$0	\$0	\$1,553,057

**Total Funds" amount includes funding from sources other than General Fund, State Special, or Federal Special (i.e. Proprietary).

DP 5 - Attorney Pay Ladder Adjustments -

The Public Defender Division is requesting general fund authority to fund the attorney career ladder based on the 2014 market and the union contract.

LFD COMMENT The 2018 biennial market salary survey establishes market rates for positions within the Executive Branch for the 2021 biennium and should be used to establish appropriations for changes such as career ladder adjustments. The market survey is updated in the July preceding the legislative session to capture fluctuations in the market. Salaries for positions vary between market surveys. Skills, knowledge, and abilities required to perform the job responsibilities are included as part of the determination of job classifications and pay bands for positions and are used to establish the positions surveyed. For example, an entry level position has different requirements than someone required to manage staff and workload. The market rates for attorneys for the three levels established in the 2018 market salary survey are:

- \$39.56 an hour for entry level attorneys in pay band 6
- \$51.10 an hour for attorneys classified in pay band 7
- \$68.00 an hour for attorneys classified in pay band 8 such as managing attorneys

In the FY 2014 market salary survey the market rate for attorneys for the three levels established were:

- \$31.82 an hour for entry level attorneys in pay band 6
- \$46.13 an hour for entry level attorneys in pay band 7
- \$61.22 an hour for entry level attorneys in pay band 8

In the 2021 biennium budget PDD proposes personal services appropriations for 125.00 FTE attorneys

DP 8 - Death Penalty Cases -

The Public Defender Division experiences extensive fees when a death penalty case occurs. PDD proposes \$500,000 in one-time-only general fund for each fiscal year for death penalty cases. PDD is proposing to restrict the use of the funding to death penalty cases.

LFD COMMENT While the narrative submitted by the executive discusses restricting the use of the funds to death penalty cases, the funding is included as part of the ongoing base and is not restricted. The legislature may wish to consider designating the funding as a restricted appropriation should it decide to approve the request.

Program Biennium Comparison

The following table compares the 2019 biennium appropriated budget and the 2021 biennium budget request by type of expenditure and source of funding.

Program Biennium Comparison				
Budget Item	Appropriated Budget 18-19	Requested Budget 20-21	Biennium Change	Biennium % Change
Personal Services	2,800,843	3,406,931	606,088	21.64 %
Operating Expenses	1,064,590	1,846,248	781,658	73.42 %
Total Expenditures	\$3,865,433	\$5,253,179	\$1,387,746	35.90 %
General Fund	3,865,433	5,253,179	1,387,746	35.90 %
Total Funds	\$3,865,433	\$5,253,179	\$1,387,746	35.90 %
Total Ongoing	\$3,865,433	\$5,253,179	\$1,387,746	35.90 %
Total OTO	\$0	\$0	\$0	0.00 %

Program Description

The Appellate Defender Division 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 Highlights

<p>Appellate Defender Division Major Budget Highlights</p>
<ul style="list-style-type: none"> • The Appellate Defender Division 2021 biennium budget request is 35.9% or \$1.4 million higher than the 2019 biennium budget. Significant changes include: <ul style="list-style-type: none"> ◦ Proposal to increase operating expenses by \$0.9 million to increase the contract attorney rates by 1.0% ◦ Request to add 1.50 FTE and \$0.3 million in general fund personal services for a 3.0% caseload growth ◦ Proposal to add general fund to support attorney career ladder adjustments at \$0.1 million in general fund
<p>LFD Issues</p>
<ul style="list-style-type: none"> • Averaging total caseload growth over the last five years does not capture recent declines in: <ul style="list-style-type: none"> ◦ Average case costs ◦ Types of cases such as lower court cases

Program Actuals and Budget Comparison

The following table compares FY 2018 actual expenditures to the 2019 biennium appropriated budget and the 2021 biennium budget request by type of expenditure and source of funding.

Program Actuals and Budget Comparison					
Budget Item	Actuals Fiscal 2018	Approp. Fiscal 2018	Approp. Fiscal 2019	Request Fiscal 2020	Request Fiscal 2021
FTE	0.00	16.00	16.00	17.50	17.50
Personal Services	1,336,954	1,336,953	1,463,890	1,689,895	1,717,036
Operating Expenses	620,548	620,547	444,043	924,873	921,375
Total Expenditures	\$1,957,502	\$1,957,500	\$1,907,933	\$2,614,768	\$2,638,411
General Fund	1,957,502	1,957,500	1,907,933	2,614,768	2,638,411
Total Funds	\$1,957,502	\$1,957,500	\$1,907,933	\$2,614,768	\$2,638,411
Total Ongoing	\$1,957,502	\$1,957,500	\$1,907,933	\$2,614,768	\$2,638,411
Total OTO	\$0	\$0	\$0	\$0	\$0

Program Discussion -

FY 2018 Appropriations Compared to FY 2018 Actual Expenditures

ADD expended all of its FY 2018 appropriations for personal services and operating expenses. To achieve this result, OPD transferred appropriation authority including:

- \$91,750 in operating expenses from the Central Service Division to ADD
- \$85,839 from personal services to operating expenses within ADD

FY 2018 Appropriations Compared to FY 2019 Appropriations

FY 2019 appropriations are 2.5% lower than FY 2018 appropriations in total. FY 2019 personal services appropriations are \$127,000 higher than FY 2018 appropriations. Personal services in FY 2018 were reduced due to:

- Temporary suspension in employer contributions to employee health benefits made by the November 2017 Special Session
- Transfer of authority from personal services to operating expenses to provide for higher than budgeted operating expenses

Operating expenses appropriations are \$177,000 lower in FY 2019 than in FY 2018. As discussed in the Agency Summary, the 2017 Legislature anticipated that, by implementing changes in sentencing laws, the need for contract attorneys within OPD would decrease between FY 2018 and FY 2019.

**LFD
COMMENT**

The caseload for the cases before the Supreme Court has expanded in recent years.

Executive Request

The executive is proposing:

- An additional 1.50 FTE and \$271,000 in general fund supporting personal services to address caseload growth anticipated in the 2021 biennium
- Career ladder adjustments for attorneys, proposed at \$143,000
- To provide a 1.0% increase in contract attorney fees

Program Personal Services

The Appellate Defender Division personal services request increases by 21.6% or \$606,000 when compared to the 2019 biennium. A proposal to add an additional 1.50 FTE and related personal services and a request for funding for career ladder adjustments make up the majority of the increases.

Funding

The following table shows proposed program funding by source of authority.

Office of State Public Defender, 02-Appellate Defender Division Funding by Source of Authority							
Funds	HB2 Ongoing	HB2 OTO	Non-Budgeted Proprietary	Statutory Appropriation	Total All Sources	% Total All Funds	
01100 General Fund	5,253,179	0	0	0	5,253,179	100.00 %	
State Special Total	\$0	\$0	\$0	\$0	\$0	0.00 %	
Federal Special Total	\$0	\$0	\$0	\$0	\$0	0.00 %	
Proprietary Total	\$0	\$0	\$0	\$0	\$0	0.00 %	
Total All Funds	\$5,253,179	\$0	\$0	\$0	\$5,253,179		

The Appellate Defender Division is funded solely from general fund.

Program Budget Summary by Category

The following table summarizes the total budget by base, present law adjustments, and new proposals. For a description of these categories, please see the glossary section of the Budget Analysis.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2020	Budget Fiscal 2021	Biennium Fiscal 20-21	Percent of Budget	Budget Fiscal 2020	Budget Fiscal 2021	Biennium Fiscal 20-21	Percent of Budget
2019 Base Budget	1,907,933	1,907,933	3,815,866	72.64 %	1,907,933	1,907,933	3,815,866	72.64 %
SWPL Adjustments	44,998	44,075	89,073	1.70 %	44,998	44,075	89,073	1.70 %
PL Adjustments	604,509	601,094	1,205,603	22.95 %	604,509	601,094	1,205,603	22.95 %
New Proposals	57,328	85,309	142,637	2.72 %	57,328	85,309	142,637	2.72 %
Total Budget	\$2,614,768	\$2,638,411	\$5,253,179		\$2,614,768	\$2,638,411	\$5,253,179	

Present Law Adjustments

The "Present Law Adjustments" table shows the changes from the FY 2019 base appropriation to the budget proposed by the executive. "Statewide Present Law" adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies.

	-----Fiscal 2020-----					-----Fiscal 2021-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
Present Law Adjustments										
DP 1 - Personal Services	0.00	44,998	0	0	44,998	0.00	44,075	0	0	44,075
DP 4 - Current Level of Caseload	0.00	465,830	0	0	465,830	0.00	468,622	0	0	468,622
DP 7 - Attorney Caseload Growth	1.50	138,679	0	0	138,679	1.50	132,472	0	0	132,472
Grand Total All Present Law Adjustments	1.50	\$649,507	\$0	\$0	\$649,507	1.50	\$645,169	\$0	\$0	\$645,169

*"Total Funds" amount includes funding from sources other than General Fund, State Special, or Federal Special (i.e. Proprietary).

DP 1 - Personal Services -

The executive requests adjustments to the present law personal services budget. This request has been broken into the following categories, and further detail is shown in the agency summary:

- Formula based changes
- Personal services management decisions
- Reinstatement of personal services previously reduced
- Modifications made to the personal services budget in the 2019 biennium

DP 4 - Current Level of Caseload -

The executive is proposing additional funding to increase the contract attorney rate by 1.0%

LFD COMMENT This proposal outlines an increase in rates which could be considered changes to program services. This request is more appropriately categorized as a new proposal and should be evaluated by the legislature as they would consider a new proposal.

DP 7 - Attorney Caseload Growth -

The Appellate Defender Division requests 0.50 FTE attorney and 1.00 FTE administrative assistant to address projected caseload growth of 3.0%.

LFD COMMENT See the LFD Issue in the Agency Summary on caseload growth estimates.

New Proposals

The "New Proposals" table shows new changes to spending.

New Proposals	-----Fiscal 2020-----					-----Fiscal 2021-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
DP 5 - Attorney Pay Ladder Adjustments	0.00	57,328	0	0	57,328	0.00	85,309	0	0	85,309
Total	0.00	\$57,328	\$0	\$0	\$57,328	0.00	\$85,309	\$0	\$0	\$85,309

**"Total Funds" amount includes funding from sources other than General Fund, State Special, or Federal Special (i.e. Proprietary).

DP 5 - Attorney Pay Ladder Adjustments -

The Appellate Defender Division is requesting general fund authority to fund the attorney career ladder based on the 2014 market and the union contract.

LFD COMMENT	In the 2021 biennium budget ADD proposes personal services funding supporting 12.00 FTE attorneys.
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Program Biennium Comparison

The following table compares the 2019 biennium appropriated budget and the 2021 biennium budget request by type of expenditure and source of funding.

Program Biennium Comparison				
Budget Item	Appropriated Budget 18-19	Requested Budget 20-21	Biennium Change	Biennium % Change
Personal Services	3,350,402	6,180,071	2,829,669	84.46 %
Operating Expenses	10,873,010	11,937,950	1,064,940	9.79 %
Total Expenditures	\$14,223,412	\$18,118,021	\$3,894,609	27.38 %
General Fund	14,223,412	18,118,021	3,894,609	27.38 %
Total Funds	\$14,223,412	\$18,118,021	\$3,894,609	27.38 %
Total Ongoing	\$14,223,412	\$18,118,021	\$3,894,609	27.38 %
Total OTO	\$0	\$0	\$0	0.00 %

Program Description

The Conflict Defender Division (CDD) 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 Highlights

<p>Conflict Defender Division Major Budget Highlights</p>
<ul style="list-style-type: none"> • The Conflict Defender Division 2021 biennium budget request is 27.4% or \$3.9 million higher than the 2019 biennium. Significant changes include: <ul style="list-style-type: none"> ◦ Proposal to add 14.00 FTE and \$1.9 million in general fund personal services ◦ Request for 4.00 FTE and \$0.7 million in general fund for an estimated 3.0% growth in caseload in the 2021 biennium ◦ Request for \$0.1 million in general fund for career ladder adjustments
<p>LFD Issues</p>
<ul style="list-style-type: none"> • Averaging total caseload growth over the last five years does not capture recent declines in: <ul style="list-style-type: none"> ◦ Average case costs ◦ Types of cases such as lower court cases

Program Actuals and Budget Comparison

The following table compares FY 2018 actual expenditures to the 2019 biennium appropriated budget and the 2021 biennium budget request by type of expenditure and source of funding.

Program Actuals and Budget Comparison					
Budget Item	Actuals Fiscal 2018	Approp. Fiscal 2018	Approp. Fiscal 2019	Request Fiscal 2020	Request Fiscal 2021
FTE	0.00	13.00	13.00	31.00	31.00
Personal Services	2,013,991	2,013,993	1,336,409	3,065,009	3,115,062
Operating Expenses	5,395,084	5,396,181	5,476,829	5,975,379	5,962,571
Total Expenditures	\$7,409,075	\$7,410,174	\$6,813,238	\$9,040,388	\$9,077,633
General Fund	7,409,075	7,410,174	6,813,238	9,040,388	9,077,633
Total Funds	\$7,409,075	\$7,410,174	\$6,813,238	\$9,040,388	\$9,077,633
Total Ongoing	\$7,409,075	\$7,410,174	\$6,813,238	\$9,040,388	\$9,077,633
Total OTO	\$0	\$0	\$0	\$0	\$0

Program Discussion -

FY 2018 Appropriations Compared to FY 2018 Actual Expenditures

Expenditures for the Conflict Defender Division were \$2.0 million higher than anticipated in the FY 2018 budget. CDD transferred \$2.0 million in general fund appropriations for operating expenses from FY 2019 to FY 2018 for contract attorney fees that were higher than budgeted. CDD expended all of its FY 2018 HB 2 appropriations for personal services and operating expenses. As part of the budgeting process, the fiscal year supplemental transfer of \$2.0 million in operating expenses is not included in the preceding table.

As discussed in the Agency Summary, contract attorney fees were reduced in April 2018 from \$62.00 per hour to \$56.00 per hour as part of a plan to mitigate the expenditures.

FY 2018 Appropriations Compared to FY 2019 Appropriations

Notwithstanding the transfer, FY 2019 appropriations are \$597,000 or 8.0% lower than FY 2018 appropriations in total. FY 2019 personal services appropriations are \$678,000 or 33.6% lower than FY 2018 appropriations. In FY 2018 personal services authority of \$648,228 was increased by transferring:

- \$146,665 from Central Services Division
- \$501,563 from operating expenses

LFD COMMENT

As part of its mitigation plan to reduce contract attorney fees the Conflict Defender Division was approved to hire 13.00 FTE in modified positions in FY 2018 including:

- 10.00 attorney positions
- 3.00 FTE administrative assistants

Salaries for the modified positions were \$479,000 in FY 2018. LFD estimates associated benefits for the positions at \$171,000. The modified positions are continued in FY 2019.

Executive Request

The executive is proposing:

- An additional 18.00 FTE and \$2.6 million in general fund supporting personal services. In the 2019 biennium CDD had 13.00 FTE in modified positions to reduce operating expenses associated with the costs of using contract attorneys. The remaining 4.00 FTE are proposed to address an estimated 3.0% growth in caseload. See LFD Issue in the Agency Discussion
- Career ladder adjustments for attorneys proposed at \$157,000
- To increase contract attorney fees by 1.0% for \$934,000 in general fund

Program Personal Services

Personal services in the Conflict Defender Division increase by 84.5% or \$2.8 million when compared to the 2019 biennium. Two proposals make up the majority of the increase including:

- Making 14.00 modified FTE positions permanent at a cost of \$2.7 million in general fund
- Adding an additional 4.00 FTE and \$694,000 in personal services to address a projected 3.0% growth in caseload

Funding

The following table shows proposed program funding by source of authority.

Office of State Public Defender, 03-Conflict Coordinator Division Funding by Source of Authority							
Funds	HB2 Ongoing	HB2 OTO	Non-Budgeted Proprietary	Statutory Appropriation	Total All Sources	% Total All Funds	
01100 General Fund	18,118,021	0	0	0	18,118,021	100.00 %	
State Special Total	\$0	\$0	\$0	\$0	\$0	0.00 %	
03778 OPD Chemical Dependency MOU	0	0	0	0	0	0.00 %	
Federal Special Total	\$0	\$0	\$0	\$0	\$0	0.00 %	
Proprietary Total	\$0	\$0	\$0	\$0	\$0	0.00 %	
Total All Funds	\$18,118,021	\$0	\$0	\$0	\$18,118,021		

The Conflict Defender Division is funded solely with general fund.

Program Budget Summary by Category

The following table summarizes the total budget by base, present law adjustments, and new proposals. For a description of these categories, please see the glossary section of the Budget Analysis.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2020	Budget Fiscal 2021	Biennium Fiscal 20-21	Percent of Budget	Budget Fiscal 2020	Budget Fiscal 2021	Biennium Fiscal 20-21	Percent of Budget
2019 Base Budget	6,813,238	6,813,238	13,626,476	75.21 %	6,813,238	6,813,238	13,626,476	75.21 %
SWPL Adjustments	(78,509)	(80,856)	(159,365)	(0.88)%	(78,509)	(80,856)	(159,365)	(0.88)%
PL Adjustments	2,258,223	2,236,001	4,494,224	24.81 %	2,258,223	2,236,001	4,494,224	24.81 %
New Proposals	47,436	109,250	156,686	0.86 %	47,436	109,250	156,686	0.86 %
Total Budget	\$9,040,388	\$9,077,633	\$18,118,021		\$9,040,388	\$9,077,633	\$18,118,021	

Present Law Adjustments

The “Present Law Adjustments” table shows the changes from the FY 2019 base appropriation to the budget proposed by the executive. “Statewide Present Law” adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies.

Present Law Adjustments										
-----Fiscal 2020-----						-----Fiscal 2021-----				
FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds	
DP 1 - Personal Services										
0.00	(78,509)	0	0	(78,509)	0.00	(80,856)	0	0	(80,856)	
DP 4 - Current Level of Caseload										
14.00	1,903,697	0	0	1,903,697	14.00	1,896,033	0	0	1,896,033	
DP 7 - Attorney Caseload Growth										
4.00	354,526	0	0	354,526	4.00	339,968	0	0	339,968	
Grand Total All Present Law Adjustments										
18.00	\$2,179,714	\$0	\$0	\$2,179,714	18.00	\$2,155,145	\$0	\$0	\$2,155,145	

*"Total Funds" amount includes funding from sources other than General Fund, State Special, or Federal Special (i.e. Proprietary).

DP 1 - Personal Services -

The executive requests adjustments to the present law personal services budget. This request has been broken into the following categories, and further detail is shown in the agency summary:

- Formula based changes
- Personal services management decisions
- Reinstatement of personal services previously reduced
- Modifications made to the personal services budget in the 2019 biennium

DP 4 - Current Level of Caseload -

The Conflict Defender Division is requesting that 14.00 FTE modified positions be made permanent to support its current workload. The positions include 11.00 attorney positions and 3.00 administrative assistants. The positions were established during FY 2018 and FY 2019 to handle caseload increases that did not subside in the current biennium. The CDD is also proposing to increase contract attorney rates by 1.0%.

LFD COMMENT	This proposal outlines an increase in rates which could be considered changes to program services. This request is more appropriately categorized as a new proposal and should be evaluated by the legislature as they would consider a new proposal.
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DP 7 - Attorney Caseload Growth -

The Conflict Defender Division requests 4.00 FTE including 2.00 FTE attorneys and 2.00 FTE legal secretaries to address projected caseload growth of 3.0%.

LFD COMMENT	See the LFD Issue in the Agency Summary on caseload growth estimates.
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New Proposals

The "New Proposals" table shows new changes to spending.

	-----Fiscal 2020-----					-----Fiscal 2021-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
DP 5 - Attorney Pay Ladder Adjustments	0.00	47,436	0	0	47,436	0.00	109,250	0	0	109,250
Total	0.00	\$47,436	\$0	\$0	\$47,436	0.00	\$109,250	\$0	\$0	\$109,250

*"Total Funds" amount includes funding from sources other than General Fund, State Special, or Federal Special (i.e. Proprietary).

DP 5 - Attorney Pay Ladder Adjustments -

The Conflict Defender Division is requesting general fund authority to fund the attorney career ladder based on the 2014 market and the union contract.

LFD COMMENT	In the 2021 biennium budget CDD proposes personal services funding supporting 23.00 FTE attorneys.
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Program Biennium Comparison

The following table compares the 2019 biennium appropriated budget and the 2021 biennium budget request by type of expenditure and source of funding.

Program Biennium Comparison				
Budget Item	Appropriated Budget 18-19	Requested Budget 20-21	Biennium Change	Biennium % Change
Personal Services	3,439,213	3,713,338	274,125	7.97 %
Operating Expenses	1,926,528	2,730,153	803,625	41.71 %
Total Expenditures	\$5,365,741	\$6,443,491	\$1,077,750	20.09 %
General Fund	5,365,741	6,443,491	1,077,750	20.09 %
Total Funds	\$5,365,741	\$6,443,491	\$1,077,750	20.09 %
Total Ongoing	\$5,340,741	\$6,443,491	\$1,102,750	20.65 %
Total OTO	\$25,000	\$0	(\$25,000)	(100.00)%

Program Description

The Central Services Division provides management of non-legal services such as 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 CSD.

Program Highlights

Central Services Division Major Budget Highlights
<ul style="list-style-type: none"> The Central Services Division 2021 biennium budget request is \$1.1 million or 20.1% higher than the 2019 biennium. Significant changes include a request for an additional \$445,000 in operating costs associated mainly with increased information technology services

Program Actuals and Budget Comparison

The following table compares FY 2018 actual expenditures to the 2019 biennium appropriated budget and the 2021 biennium budget request by type of expenditure and source of funding.

Program Actuals and Budget Comparison					
Budget Item	Actuals Fiscal 2018	Approp. Fiscal 2018	Approp. Fiscal 2019	Request Fiscal 2020	Request Fiscal 2021
FTE	0.00	23.00	23.00	23.00	23.00
Personal Services	1,595,836	1,595,833	1,843,380	1,855,470	1,857,868
Operating Expenses	776,019	842,866	1,083,662	1,392,522	1,337,631
Total Expenditures	\$2,371,855	\$2,438,699	\$2,927,042	\$3,247,992	\$3,195,499
General Fund	2,371,855	2,438,699	2,927,042	3,247,992	3,195,499
Total Funds	\$2,371,855	\$2,438,699	\$2,927,042	\$3,247,992	\$3,195,499
Total Ongoing	\$2,371,855	\$2,413,699	\$2,927,042	\$3,247,992	\$3,195,499
Total OTO	\$0	\$25,000	\$0	\$0	\$0

Program Discussion -*FY 2018 Appropriations Compared to FY 2018 Actual Expenditures*

CSD expended 97.3% of its FY2018 appropriations for personal services and operating expenses. In FY2018 CSD transferred \$298,000 in operating expenses from its budget to the other divisions within OPD. Costs that were lower than anticipated included other services such as information technology services, professional and consulting services, or printing costs, and supplies and materials. The Public Defender Division transferred \$153,000 in personal services and 4.00 FTE to CSD.

FY 2018 Appropriations Compared to FY 2019 Appropriations

The FY 2019 appropriations for CSD is \$488,000 or 20.0% higher than the FY 2018 appropriation. Personal services are \$248,000 higher than FY 2018. In FY 2019 the Public Defender Division transferred an additional \$205,000 in personal services above that transferred in FY 2018.

Budgeted operating expenses are \$241,000 higher in FY 2019 than in FY 2018 because FY 2019 does not include transfers of authority to other divisions.

Executive Request

The executive is proposing an additional \$563,000 in general fund for fixed costs including \$440,000 for state information technology services and \$61,000 in funding for legislative audits.

Program Personal Services

Personal services in the Central Services Division increases by 8.0% or \$274,000 when compared to the 2019 biennium. Reductions implemented by the November 2017 Special Session for FY 2018 that are not continued in either FY 2019 or the 2021 biennium are the main reason for the difference between biennia.

Funding

The following table shows proposed program funding by source of authority..

Office of State Public Defender, 04-Central Services Division Funding by Source of Authority							
Funds	HB2 Ongoing	HB2 OTO	Non-Budgeted Proprietary	Statutory Appropriation	Total All Sources	% Total All Funds	
01100 General Fund	6,443,491	0	0	0	6,443,491	100.00 %	
02250 OPD Collections	0	0	0	0	0	0.00 %	
State Special Total	\$0	\$0	\$0	\$0	\$0	0.00 %	
03777 OPD DN Training	0	0	0	0	0	0.00 %	
Federal Special Total	\$0	\$0	\$0	\$0	\$0	0.00 %	
Proprietary Total	\$0	\$0	\$0	\$0	\$0	0.00 %	
Total All Funds	\$6,443,491	\$0	\$0	\$0	\$6,443,491		

The Central Services Division is funded solely from general fund.

Program Budget Summary by Category

The following table summarizes the total budget by base, present law adjustments, and new proposals. For a description of these categories, please see the glossary section of the Budget Analysis.

Budget Summary by Category								
Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2020	Budget Fiscal 2021	Biennium Fiscal 20-21	Percent of Budget	Budget Fiscal 2020	Budget Fiscal 2021	Biennium Fiscal 20-21	Percent of Budget
2019 Base Budget	2,927,042	2,927,042	5,854,084	90.85 %	2,927,042	2,927,042	5,854,084	90.85 %
SWPL Adjustments	320,950	268,457	589,407	9.15 %	320,950	268,457	589,407	9.15 %
PL Adjustments	0	0	0	0.00 %	0	0	0	0.00 %
New Proposals	0	0	0	0.00 %	0	0	0	0.00 %
Total Budget	\$3,247,992	\$3,195,499	\$6,443,491		\$3,247,992	\$3,195,499	\$6,443,491	

Present Law Adjustments

The "Present Law Adjustments" table shows the changes from the FY 2019 base appropriation to the budget proposed by the executive. "Statewide Present Law" adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies.

Present Law Adjustments										
	-----Fiscal 2020-----					-----Fiscal 2021-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
DP 1 - Personal Services	0.00	12,090	0	0	12,090	0.00	14,488	0	0	14,488
DP 2 - Fixed Costs	0.00	308,860	0	0	308,860	0.00	253,969	0	0	253,969
Grand Total All Present Law Adjustments	0.00	\$320,950	\$0	\$0	\$320,950	0.00	\$268,457	\$0	\$0	\$268,457

**Total Funds" amount includes funding from sources other than General Fund, State Special, or Federal Special (i.e. Proprietary).

DP 1 - Personal Services -

The executive requests adjustments to the present law personal services budget. This request has been broken into the following categories, and further detail is shown in the agency summary:

- Formula based changes
- Personal services management decisions
- Reinstatement of personal services previously reduced
- Modifications made to the personal services budget in the 2019 biennium

DP 2 - Fixed Costs -

The executive requests adjustments to provide the funding required in the proposed budget to pay increases in fixed costs assessed by other agencies within state government for the services they provide. Examples include: warrant writer, motor pool, etc. The rates charged for these services are approved in the section of the budget that provides the services.