

Agency Biennium Comparison

The following table compares the 2021 biennium appropriated budget and the 2023 biennium budget request by type of expenditure and source of funding.

Agency Biennium Comparison				
Budget Item	Appropriated Budget 20-21	Requested Budget 22-23	Biennium Change	Biennium % Change
Personal Services	52,561,797	56,935,689	4,373,892	8.32 %
Operating Expenses	23,160,700	24,558,739	1,398,039	6.04 %
Total Expenditures	\$75,722,497	\$81,494,428	\$5,771,931	7.62 %
General Fund	75,722,497	81,494,428	5,771,931	7.62 %
Total Funds	\$75,722,497	\$81,494,428	\$5,771,931	7.62 %
Total Ongoing	\$75,256,949	\$81,494,428	\$6,237,479	8.29 %
Total OTO	\$465,548	\$0	(\$465,548)	(100.00)%

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.

Agency Highlights

Office of the Public Defender Major Budget Highlights
<p>The Office of the Public Defender's 2023 biennium budget request is 7.6% or \$5.8 million higher than the 2021 biennium. Significant changes include:</p> <ul style="list-style-type: none"> • Projected caseload growth increases the budget by \$2.4 million over the biennium • Statewide present law adjustments for personal services and operating costs result in a request for \$2.0 million • Lease increases of \$0.6 million • An increase of \$0.3 million for a new case management system

Agency Actuals and Budget Comparison

The following table compares the last full fiscal year actuals, previous biennium appropriations by year, and current annual biennium budget request by type of expenditure and source of funding.

Agency Actuals and Budget Comparison					
Budget Item	Actuals Fiscal 2020	Approp. Fiscal 2020	Approp. Fiscal 2021	Request Fiscal 2022	Request Fiscal 2023
FTE	0.00	302.44	302.44	302.44	302.44
Personal Services	24,519,642	25,029,308	27,532,489	28,421,137	28,514,552
Operating Expenses	11,806,709	12,346,330	10,814,370	12,283,050	12,275,689
Total Expenditures	\$36,326,351	\$37,375,638	\$38,346,859	\$40,704,187	\$40,790,241
General Fund	36,326,351	37,375,638	38,346,859	40,704,187	40,790,241
Total Funds	\$36,326,351	\$37,375,638	\$38,346,859	\$40,704,187	\$40,790,241
Total Ongoing	\$36,175,126	\$37,141,468	\$38,115,481	\$40,704,187	\$40,790,241
Total OTO	\$151,225	\$234,170	\$231,378	\$0	\$0

Agency Discussion

FY 2020 Appropriation Compared to FY 2020 Actual Expenditures

In FY 2020, the Office of Public Defender expended \$36.3 million or 97.2% of its HB 2 modified budget of \$37.4 million. Personal services were 98.0% spent at \$24.5 million and operating expenses were 95.6% expended at \$11.8 million. The Office of Public Defender (OPD) had a budget balance of approximately \$1.0 million. Of that amount, \$434,000 was in the Conflict Defender Division. This is due to costs of contract cases being less than what was budgeted in FY 2020. This is a biennial appropriation; therefore, unused authority can be used in FY 2021.

FY 2020 Appropriations Compared to FY 2021 Appropriations

FY 2020 appropriations for OPD are \$37.4 million. FY 2021 appropriations are \$38.3 million or 2.6% higher than FY 2020. The main difference between the fiscal years is an increase from FY 2020 to FY 2021 in the Public Defender Division for attorney pay ladder adjustments.

Comparison of FY 2021 Legislative Budget to FY 2021 Base

Figure 1 illustrates the beginning FY 2021 budget as adopted by the 2019 Legislature compared to the finalized FY 2021 base budget, which included modifications as approved by the executive during the interim. The FY 2021 base budget was agreed upon by the executive and legislative branches to be the point from which any changes would be recorded for the 2023 biennium budgeting process.

Figure 1

FY 2021 Legislative Appropriations - Office of Public Defender				
	Legislative Action	Executive Modifications per Statutory Authority	Executive Base	% Change from Legislative Action
01 PUBLIC DEFENDER DIVISION				
61000 Personal Services	20,705,222	-	20,705,222	0.0%
62000 Operating Expenses	2,710,235	-	2,710,235	0.0%
01 PUBLIC DEFENDER DIVISION Total	23,415,457	-	23,415,457	0.0%
02 APPELLATE DEFENDER DIVISION				
61000 Personal Services	1,751,148	-	1,751,148	0.0%
62000 Operating Expenses	687,064	-	687,064	0.0%
02 APPELLATE DEFENDER DIVISION Total	2,438,212	-	2,438,212	0.0%
03 CONFLICT DEFENDER DIVISION				
61000 Personal Services	3,174,162	-	3,174,162	0.0%
62000 Operating Expenses	5,845,694	-	5,845,694	0.0%
03 CONFLICT DEFENDER DIVISION Total	9,019,856	-	9,019,856	0.0%
04 CENTRAL SERVICES DIVISION				
61000 Personal Services	1,901,957	-	1,901,957	0.0%
62000 Operating Expenses	1,339,999	-	1,339,999	0.0%
04 CENTRAL SERVICES DIVISION Total	3,241,956	-	3,241,956	0.0%
61080 OFFICE OF STATE PUBLIC DEFENDER Total	38,115,481	-	38,115,481	0.0%

There were no executive budget modifications to the FY 2021 base.

Executive Request

Caseload Growth

The Office of the Public Defender requests \$2.4 million in present law adjustments over the biennium for caseload growth. Caseloads drive costs within the Office of Public Defender. Figure 2 shows historic case counts from FY 2007 to FY 2020.

Figure 2

Office of the Public Defender Caseload Statistics							
Fiscal Year	Criminal (DC)	Dependent & Neglect (DN)	Guardianship (DG)	Involuntary Commitment (DI)	Juvenile (DJ)	Limited Courts (LC)	Total Cases
2007	8,929	2,897	235	907	1,674	15,879	30,521
2008	5,523	2,181	248	735	959	16,910	26,556
2009	6,124	2,073	244	807	1,060	18,109	28,417
2010	5,708	2,258	212	844	917	17,721	27,660
2011	5,660	2,219	222	915	971	17,677	27,664
2012	5,988	3,061	268	1,058	1,081	19,456	30,912
2013	6,090	3,129	255	983	1,193	20,330	31,980
2014	6,597	3,029	178	1,046	1,052	19,803	31,705
2015	6,699	3,925	189	1,080	927	20,814	33,634
2016	7,904	4,691	200	1,103	907	21,543	36,348
2017	8,454	4,853	170	1,176	868	21,605	37,126
2018	8,850	4,535	170	1,107	799	18,967	34,428
2019	8,882	4,804	183	1,025	709	18,650	34,253
2020	8,959	4,222	209	976	659	17,890	33,199

Note: Total cases received by the agency in the fiscal year also include a small number of additional minor case types, which are not included in the cases per type in this table. Minor case types in a fiscal year include: sentence review cases, treatment court cases, developmentally delayed cases, non-division 2 appellate cases, and post-conviction relief cases.

*COVID-19 effected FY 2020 case counts.

Figure 3

Office of Public Defender Percentage Growth in Caseload							
Case Type	FY 2015	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020	
Criminal	1.6%	18.0%	7.0%	4.7%	0.4%	0.8%	
Dependent & Neglect	29.6%	19.5%	3.5%	-6.6%	5.9%	-12.1%	
Guardianship	6.2%	5.8%	-15.0%	0%	7.7%	14.2%	
Involuntary Commitment	3.3%	2.1%	6.6%	-5.9%	-7.4%	-4.8%	
Juvenile	-11.9%	-2.2%	-4.3%	-8.0%	-11.3%	-7.1%	
Limited Courts	5.1%	3.5%	0.3%	-12.2%	-1.7%	-4.1%	
Total Average Percentage Growth	6.1%	8.1%	2.1%	-7.3%	-0.5%	-3.1%	

Note: Total cases received by the agency in the fiscal year also include a small number of additional minor case types, which are not included in the cases per type in this table. Minor case types in a fiscal year include: sentence review cases, treatment court cases, developmentally delayed cases, non-division 2 appellate cases, and post-conviction relief cases.

*COVID-19 effected FY 2020 case counts.

Caseload Declining in Recent Years

Figure 2 shows the caseload growth by total number of cases and by case type. It should be noted that COVID-19 effected the FY 2020 case numbers. This will be discussed further under the "COVID-19 Budget Interaction" section. Figure 3 shows the percent change by total cases and by case type. While caseloads were increasing in FY 2015, FY 2016, and FY 2017, growth in caseloads shows a decline in FY 2018, FY 2019, and FY 2020. The six-year average of caseload growth across total cases is 0.9%.

LFD COMMENT	<p><u>Caseload Impacts on Overall Cost</u></p> <p>It is important to note that different case types cost different amounts with dependent and neglect cases and criminal cases being the costliest case type for the agency. In prior years, the Office of Public Defender reported average cost per case by type. However, in FY 2020, the agency changed its reporting methods. The agency felt that the methodology used to provide cost per case had various issues that did not provide an accurate assessment of the cost per case. The Legislative Audit Division also had similar concerns in reporting cost per case in a recent performance audit. The Legislative Audit Division provides details of the agency’s challenges in reporting and provides suggestions to improve reporting cases.</p> <p>The legislature may wish to work with the OPD to gain a better understanding of cost drivers and effective ways of measuring and projecting fiscal needs in order to make informed budget decisions.</p>
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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 2023 biennium 5.0% plan can be found on the [Section D subcommittee page](#) under ‘Tab D Materials.’ The Office of Public Defender’s 5.0% plan is a reduction in \$1.8 million in general fund per year. Reductions proposed would include transferring capital case expenditures of contract attorneys, expert witness fees and mental health evaluations to the Attorney General’s Office.

LFD COMMENT	<p>While the proposal in the agency’s 5.0% plan will reduce general fund expenditures in OPD it does not reduce general fund for the state. Instead, it is shifting costs to another agency.</p>
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COVID-19 Budget Interaction

As a result of the partial shutdown of the Montana court system and the governor’s shelter-in-place directives beginning March 27, 2020 until May 4, 2020, many cases were delayed during this time. COVID-19 effected caseloads in OPD, specifically dependent and neglect (DN) cases. As previously reported by DPHHS, COVID-19 has directly impacted the volume of abuse and neglect reports submitted. This directly corresponds to the reduction seen in DN cases as these cases are filed based on reports received by DPHHS. OPD expects this number to gain back the decrease seen in FY 2020 and likely rise further. A delay in services as a result of COVID-19 provides a partial explanation to unspent appropriations within OPD at the end of FY 2020. However, those services will still need to be provided as the court system works through the backlog of cases created by the shutdown. The majority of funding within OPD is biennial. Therefore, any unused funds in FY 2020 can be used in FY 2021.

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 three categories, as follows:

1. Expected Changes - This category includes those adjustments explicitly approved by the legislature, such as

expected changes to annualize personal services costs including FY 2021 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.

2. Personal Services Management Decisions - Any agency management decisions that adjusted employee pay. 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 between programs.
3. Modifications to the Personal Services Base Budget - Other modifications to the FY 2021 personal services base like operating plan transfers that occurred during the interim may impact the overall size of the personal services present law adjustment (DP 1)

The figure below shows the analysis of the executive budget for personal services compared to the expected personal services budget for each program.

Figure 3

Personal Services Present Law DP 1 - FY 2022				
Program	Expected Changes	Management Decisions	Budget Modifications	DP1 SWPL
01 PUBLIC DEFENDER DIVISION	199,197	533,464	50,984	783,645
02 APPELLATE DEFENDER DIVISION	19,576	(17,802)	-	1,774
03 CONFLICT DEFENDER DIVISION	11,882	(50,397)	-	(38,515)
04 CENTRAL SERVICES DIVISION	15,716	126,028	-	141,744
Agency Total	\$ 246,371	\$ 591,293	\$ 50,984	\$ 888,648

Personal services were \$27.5 million or 71.8% of the agency's fiscal year 2021 appropriation. The executive proposes an increase of \$0.9 million in FY 2022 as part of statewide present law adjustments. The agency made approximately \$51,000 in budget modifications within the Public Defender Division. This was a result of a transfer out of personal services into operating expenses due to unused FTE in capital case spending.

The Office of Public Defender had an approximately \$246,000 in expected changes, of which approximately \$134,000 was a result of pay plan increases and \$86,000 was a result of longevity increases for staff. In addition to the expected changes, DP 1 includes funding for management decision for broad band pay increases.

Management decisions included position reclassifications, hiring new employees at a lower rate, and career ladder adjustments. At the time of the snapshot, the Office of Public Defender had a 6.5% vacancy rate. In FY 2020, a number of higher salaried employees left employment and were replaced with employees with less experience earning a lower salary.

Funding

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

Total Office of State Public Defender Funding by Source of Authority 2023 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	81,494,428	0	0	0	81,494,428	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	\$81,494,428	\$0	\$0	\$0	\$81,494,428		
Percent - Total All Sources	100.00 %	0.00 %	0.00 %	0.00 %			

OPD is 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](#).

Budget Summary by Category								
Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2022	Budget Fiscal 2023	Biennium Fiscal 22-23	Percent of Budget	Budget Fiscal 2022	Budget Fiscal 2023	Biennium Fiscal 22-23	Percent of Budget
2021 Base Budget	38,115,481	38,115,481	76,230,962	93.54 %	38,115,481	38,115,481	76,230,962	93.54 %
SWPL Adjustments	992,397	1,017,435	2,009,832	2.47 %	992,397	1,017,435	2,009,832	2.47 %
PL Adjustments	1,596,309	1,657,325	3,253,634	3.99 %	1,596,309	1,657,325	3,253,634	3.99 %
New Proposals	0	0	0	0.00 %	0	0	0	0.00 %
Total Budget	\$40,704,187	\$40,790,241	\$81,494,428		\$40,704,187	\$40,790,241	\$81,494,428	

HB 2 Language

The executive is not proposing HB 2 language for the Office of Public Defender.