

Agency Budget Comparison

The following table summarizes the total budget requested by the Governor for the agency by year, type of expenditure, and source of funding.

Agency Budget Comparison								
Budget Item	Base Fiscal 2008	Approp. Fiscal 2009	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 08-09	Biennium Fiscal 10-11	Biennium Change	Biennium % Change
FTE	192.50	192.50	200.50	200.50	192.50	200.50	8.00	4.16%
Personal Services	11,077,564	11,663,426	12,127,469	12,140,359	22,740,990	24,267,828	1,526,838	6.71%
Operating Expenses	8,068,574	7,928,489	8,565,942	8,557,126	15,997,063	17,123,068	1,126,005	7.04%
Equipment & Intangible Assets	123,370	60,653	123,370	123,370	184,023	246,740	62,717	34.08%
Total Costs	\$19,269,508	\$19,652,568	\$20,816,781	\$20,820,855	\$38,922,076	\$41,637,636	\$2,715,560	6.98%
General Fund	19,226,052	19,577,568	20,773,325	20,777,399	38,803,620	41,550,724	2,747,104	7.08%
State Special	43,456	75,000	43,456	43,456	118,456	86,912	(31,544)	(26.63%)
Total Funds	\$19,269,508	\$19,652,568	\$20,816,781	\$20,820,855	\$38,922,076	\$41,637,636	\$2,715,560	6.98%

Agency Description

Mission Statement - The mission of the Office of the State Public Defender is to ensure equal access to justice for the state's indigent. The statewide public defender system, created by passage of the Montana Public Defender Act contained in Title 47, Montana Code Annotated, requires the new system to be operational by July 1, 2006. The Public Defender Commission is responsible for the design, direction, and supervision of the new system. The commission appoints the chief public defender, approves the strategic plan for the delivery of services, approves statewide standards for qualifications and training of public defenders and approves the overall design of the new statewide system.

The Office of State Public Defender administers the statewide public defender system and delivers public defender services in all courts in Montana for criminal and certain civil cases for an individual who is determined to be indigent per statutory provisions and is accused of an offense that could result in the person's loss of life or liberty if convicted. The statewide public defender system is supervised by the Public Defender Commission, an eleven member commission appointed by the Governor. The office is administratively attached to the Department of Administration with exception for some functions as provided in statute (2-15-1028, MCA). The statewide public defender system also includes appellate defender functions that were previously the responsibility of a separate state agency.

Agency Highlights

Department of State Public Defender Major Budget Highlights
<ul style="list-style-type: none"> ◆ Funding for the program increases 7 percent (\$2.7 million) when the 2007 and 2009 biennia are compared ◆ Funding increases due to statewide present law adjustments, requests for increases due to caseload growth, and new proposals totaling \$569,000 ◆ Removal of a one-time-only appropriation for caseload transition reduces the adjusted base budget by about \$500,000 when compared to total FY 2008 expenditures
Major LFD Issues
<ul style="list-style-type: none"> ◆ Goals and objectives statements included with the agency budget submission are identical to the purposes of the system as set forth in statute ◆ No goals and measurable objectives specific to the Appellate Defender Program were provided ◆ Data regarding total caseload is estimated rather than actual ◆ The agency is not in compliance with statutory reporting requirements

Agency Discussion

Goals and Objectives:

State law requires agency and program goals and objectives to be specific and quantifiable to enable the legislature to establish appropriations policy. As part of its appropriations deliberations the Legislative Fiscal Division recommends that the legislature review the following:

- Goals, objectives and year-to-date outcomes from the 2009 biennium
- Goals and objectives and their correlation to the 2011 biennium budget request

Any issues related to goals and objectives raised by LFD staff are located in the program section.

2009 Biennium Major Goals

No agency wide goals were monitored in the 2009 biennium.

2011 Biennium Major Goals

The following provides an overview of major goals for the 2011 interim.

The goals provided by the agency are taken directly from 47-1-102, MCA, the purpose section of the Montana Public Defender Act. These goals are related to Public Defender Program, while 2011 biennium goals specific to the Appellate Defender program were not provided. Please refer to the program narrative for further discussion of goals and measurable objectives.

Personal Services

The following information is provided so that the legislature can consider various personal services issues when examining the agency budget. It was submitted by the agency and edited for brevity by the LFD.

- **Agency Market** - Employees are hired based upon the successful applicant's qualifications and per the union contract that has been negotiated with the American Federation of State County and Municipal Employees (AFSCME) bargaining units (which include public defenders, administrative support staff, and criminal defense investigators) ensuring internal equity with other employees who are in the same classification and pay band. Managing attorneys, office managers, employees of central office, and the Appellate Defender Program are not covered under the collective bargaining agreements and their salaries are determined by the successful applicant's qualifications and internal equity within the Public Defender System. The agency market ratio on June 30, 2008 relative to the 2006 market survey was 82 percent. The agency estimates that this will decrease to 79 percent when compared to the 2008 market survey. The agency indicates that attorneys are at a much lower percent of the market survey (Department of Administration) than the overall agency.
- **Obstacles** - A lack of funding
- **Goal** - The goal of the Office of State Public Defender (OPD) is to provide competitive pay ranges based on market factors and to progress employees through the market pay range contingent on approval of funding. OPD has requested additional funding for lawyers in a decision package. It is the agency's wish that OPD employees be paid at the market rate of their classification and pay band once they have achieved five years of relevant experience.
- **Exceptions** - Lawyers who are designated as rovers (whose responsibilities are to handle cases in different regions as a condition of their employment) receive a \$3,500 annual stipend in addition to their base pay. The salary of the Chief Public Defender is determined by the Montana Public Defender Commission. The salaries for other exempt personnel are set by the Chief Public Defender.
- **Use of 0.6 percent discretionary funds** - OPD pooled the 0.6 percent discretionary funds available October 1, 2007 and applied it equally among lawyers employed on April 1, 2008 as a lump sum payment of approximately \$261. On July 1, 2008 the agency increased the hourly base pay of each attorney in the bargaining unit by approximately \$0.125 per hour, investigators in the bargaining unit by \$0.08 per hour, and certain qualifying

administrative staff in the bargaining unit by \$0.05 to \$0.10 per hour. Classified non-attorney staff received a one-time \$250.00 payment. Exempt staff did not receive this payment.

**LFD
ISSUE**
Caseload Data and Statutory Reporting Requirements

Data such as the total caseload and workload of the Public Defender Program is not available. The lack of total caseload and workload data makes it difficult to evaluate the agency's resource level in comparison to the work that must be accomplished. The agency did provide information on the number of new cases assigned and anticipated increases in the number of new cases assigned, and that it is developing an attorney workload measurement tool based upon new cases assigned. However, without data on the number of case closures and active cases that are open, the net increase or decrease in caseload is unknown. While the agency knows that it receives around 25,000 - 26,000 cases per year, only an estimate of the number of active cases was provided. The number of active cases at any time is estimated to be 14,000 – 16,000 or about half of the cases assigned. The legislature's ability to correlate funding with the level of cases or work that must currently be accomplished is compromised by the lack of data on net increase or decrease in the total caseload and workload.

The second issue related to the lack of total caseload and workload data is a failure to comply with statutory reporting requirements. Statutory requirements for information the agency is required to report are included in 47-1-105(9), MCA. Within the statutory provisions of this section is a requirement that the agency provide "the annual caseload and workload of each public defender, identified by region, court, and case type". The availability of data regarding new cases does not appear to fulfill the requirements for reporting of the annual caseload and workload because data regarding total caseload and workload (included active cases that are not new) is not available.

Additional discussion of these issues is included in the narrative for the Public Defender Program.

Funding

The following table summarizes funding for the agency, by program and source, as recommended by the Governor. Funding for each program is discussed in detail in the individual program narratives that follow.

Total Agency Funding 2011 Biennium Budget				
Agency Program	General Fund	State Spec.	Grand Total	Total %
01 Office Of Public Defender	\$ 39,774,714	\$ 86,912	\$ 39,861,626	95.73%
02 Office Of Appellate Defender	<u>1,776,010</u>	-	<u>1,776,010</u>	<u>4.27%</u>
Grand Total	<u>\$ 41,550,724</u>	<u>\$ 86,912</u>	<u>\$ 41,637,636</u>	<u>100.00%</u>

The agency is funded almost exclusively by the general fund. A small amount of state special revenue (less than one-quarter percent of the agency's funding) from court ordered payments also supports the program.

Statutory Appropriations

There are no statutory appropriations related to this agency.

Budget Summary by Category

The following summarizes the total budget by base, present law adjustments, and new proposals.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget
Base Budget	19,226,052	19,226,052	38,452,104	92.54%	19,269,508	19,269,508	38,539,016	92.56%
Statewide PL Adjustments	526,502	382,022	908,524	2.19%	526,502	382,022	908,524	2.18%
Other PL Adjustments	812,920	808,112	1,621,032	3.90%	812,920	808,112	1,621,032	3.89%
New Proposals	207,851	361,213	569,064	1.37%	207,851	361,213	569,064	1.37%
Total Budget	\$20,773,325	\$20,777,399	\$41,550,724		\$20,816,781	\$20,820,855	\$41,637,636	

Program Budget Comparison

The following table summarizes the total budget requested by the Governor for the agency by year, type of expenditure, and source of funding.

Program Budget Comparison								
Budget Item	Base Fiscal 2008	Approp. Fiscal 2009	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 08-09	Biennium Fiscal 10-11	Biennium Change	Biennium % Change
FTE	184.50	184.50	191.50	191.50	184.50	191.50	7.00	3.79%
Personal Services	10,575,678	11,152,369	11,543,874	11,560,641	21,728,047	23,104,515	1,376,468	6.33%
Operating Expenses	7,762,333	7,830,943	8,259,595	8,250,776	15,593,276	16,510,371	917,095	5.88%
Equipment & Intangible Assets	123,370	60,653	123,370	123,370	184,023	246,740	62,717	34.08%
Total Costs	\$18,461,381	\$19,043,965	\$19,926,839	\$19,934,787	\$37,505,346	\$39,861,626	\$2,356,280	6.28%
General Fund	18,417,925	18,968,965	19,883,383	19,891,331	37,386,890	39,774,714	2,387,824	6.39%
State Special	43,456	75,000	43,456	43,456	118,456	86,912	(31,544)	(26.63%)
Total Funds	\$18,461,381	\$19,043,965	\$19,926,839	\$19,934,787	\$37,505,346	\$39,861,626	\$2,356,280	6.28%

Program Description

The Office of Public Defender (OPD) administers the statewide public defender system delivering public defender services in all courts in Montana. The OPD provides representation in criminal and certain civil cases for individuals determined to be financially unable to retain private counsel and who are accused of an offense that could result in the person's loss of life or liberty if convicted. The statewide public defender system is supervised by the Public Defender Commission. The office is administratively attached to the Department of Administration but has authority in law to provide administrative functions as determined by the commission.

The Public Defender Commission is responsible for the design, direction, and supervision of the system. The commission appoints the Chief Public Defender, approves the strategic plan for the delivery of services, approves statewide standards for qualifications and training of public defenders, and approves the overall design of the statewide system.

Program Highlights

Public Defender Program Major Budget Highlights
<ul style="list-style-type: none"> ◆ Funding for the program increases 6.3 percent (\$2.4 million) between the 2009 and 2011 biennia ◆ Funding increase is primarily due to statewide present law adjustments and a requests for an additional 7.00 FTE related to an anticipated increase in caseload ◆ Goals and objectives statements included with the agency budget submission are identical to the purposes of the system as set forth in statute
Major LFD Issues
<ul style="list-style-type: none"> ◆ An estimate of total active cases was provided rather than actual number of active cases ◆ The agency is not in compliance with statutory reporting requirements ◆ One goal is unachievable

Program Narrative

Goals and Objectives:

State law requires agency and program goals and objectives to be specific and quantifiable to enable the legislature to establish appropriations policy. As part of its appropriations deliberations the Legislative Fiscal Division recommends that the legislature review the following:

- Goals, objectives and year-to-date outcomes from the 2009 biennium
- Goals and objectives and their correlation to the 2011 biennium budget request

2009 Biennium Major Goals

The following provides an update on the major goals monitored during the current interim.

Goal 1 – Provide that public defender services are delivered by qualified and competent counsel in a manner that is fair and consistent through out the state.

- Successes
 - As of September 2008, 36 employee attorney performance appraisals had been completed and all but 3 received a satisfactory rating
 - As of September 2008, 52 contract attorney proficiency reviews had been completed and all but 5 received a satisfactory rating
- Challenges
 - As of September 2008, only about 40 percent of employee attorneys performance appraisals had been completed, putting the program on a timeframe of more that two years to complete performance appraisals of all employee attorneys
 - As of September 2008, only about 24 percent of contract attorney proficiency reviews had been completed, placing the program on a timeframe of more than four years to complete proficiency reviews of all contract attorneys

Goal 2 – Establish a statewide public defender system to provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public expense

- Successes
 - Based upon data collected, OPD estimates it provides indigent legal services for 76 percent of all felony cases filed in the state
 - Between July 2007 and August 2008, 829 applications for services were determined not to meet the eligibility criteria, 18 of those denials were later overturned by a court
 - Cost containment measures such as contract attorney expenditure pre-approval processes, mental health protocols, and detailed budgeting with extensive expenditure review were implemented
- Challenges
 - An attempt to complete a customer satisfaction survey was unsuccessful due to a low response rate

2011 Biennium Major Goals

The following provides an overview of major goals for the 2011 interim.

Goal 1 – Establish a statewide public defender system to provide effective assistance of counsel to indigent criminal defendants and other persons in civil cases who are entitled by law to assistance of counsel at public expense.

- Objective – Design, develop, and implement an integrated public defender system that provides high quality services at a reasonable cost.

LFD ISSUE Goal Related to Implementation

This goal and objective are stated in terms of implementation of the system. Given that the new state public defender system has largely been implemented, the 2011 biennium goals should focus on maintenance and improvement of the system. Additionally, the objective gives no indication of how or when progress will be measured during the next biennium, leaving the reader to wonder what constitutes “effective assistance”.

LFD ISSUE Goal Statement Recites Statute

This goal is taken directly from 47-1-102, MCA, the purpose section of the Montana Public Defender Act. Rather than citing purposes as stated in statute it might be more beneficial for the agency to develop goal statements and measurable objectives that provide information about how the purposes of the statute will be achieved.

Goal 2 – Ensure that adequate public defender funding of the statewide public defender system is provided and managed in a fiscally responsible manner.

- o Objective – Communicate to the Public Defender Commission, all branches of state government, and other interested parties information related to the caseload and case cost managed by the public defender system.

LFD ISSUE Unachievable Goal

The goal as stated above is not achievable because the program cannot ensure adequate funding is available. Authority to fund and provide appropriations for state government operations is reserved for the legislature and is not within the ability of the program to determine. The program could make this goal achievable by exchanging the words “ensure that” for words such as “advocate for”.

The objective related to this goal does not indicate how or when progress toward achievement will be measured or provide information for the reader to determine how “fiscally responsible” is defined. Additionally, it is difficult to envision how communication of information results in fiscally responsible management. Fiscally responsible management brings to mind things such as error free bill paying, and controlling what is purchased and for how much it is purchased.

The legislature may wish to discuss with the program how to restate this goal in achievable terms and to develop measurable objectives that may be used by the legislature to determine progress toward achievement of the goal.

Funding

The following table shows program funding, by source, for the base year and for the 2011 biennium as recommended by the Governor.

Program Funding	Base FY 2008	% of Base FY 2008	Budget FY 2010	% of Budget FY 2010	Budget FY 2011	% of Budget FY 2011
01000 Total General Fund	\$ 18,417,925	99.8%	\$ 19,883,383	99.8%	\$ 19,891,331	99.8%
01100 General Fund	18,417,925	99.8%	19,883,383	99.8%	19,891,331	99.8%
02000 Total State Special Funds	43,456	0.2%	43,456	0.2%	43,456	0.2%
02250 Court Ordered Sentencing Costs	<u>43,456</u>	<u>0.2%</u>	<u>43,456</u>	<u>0.2%</u>	<u>43,456</u>	<u>0.2%</u>
Grand Total	<u>\$18,461,381.00</u>	100.0%	<u>\$19,926,839.00</u>	100.0%	<u>\$19,934,787.00</u>	100.0%

The public defender program is supported almost exclusively by the general fund. A small amount of state special revenue (less than one quarter of a percent) from court ordered payment of costs also provides funding for the program.

Budget Summary by Category

The following summarizes the total budget by base, present law adjustments, and new proposals.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget
Base Budget	18,417,925	18,417,925	36,835,850	92.61%	18,461,381	18,461,381	36,922,762	92.63%
Statewide PL Adjustments	517,345	375,991	893,336	2.25%	517,345	375,991	893,336	2.24%
Other PL Adjustments	740,262	736,202	1,476,464	3.71%	740,262	736,202	1,476,464	3.70%
New Proposals	207,851	361,213	569,064	1.43%	207,851	361,213	569,064	1.43%
Total Budget	\$19,883,383	\$19,891,331	\$39,774,714		\$19,926,839	\$19,934,787	\$39,861,626	

Present Law Adjustments

The "Present Law Adjustments" table shows the primary changes to the adjusted base budget proposed by the Governor. "Statewide Present Law" adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies. The other numbered adjustments in the table correspond to the narrative descriptions.

Present Law Adjustments	-----Fiscal 2010-----				-----Fiscal 2011-----					
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
Personal Services					773,761					697,282
Vacancy Savings					(453,969)					(450,921)
Inflation/Deflation					34,940					41,644
Fixed Costs					162,613					87,986
Total Statewide Present Law Adjustments					\$517,345					\$375,991
DP 1 - Support of Increased Caseload	7.00	707,290	0	0	707,290	7.00	703,230	0	0	703,230
DP 9 - ITSD Fixed Cost PL Adjust	0.00	32,972	0	0	32,972	0.00	32,972	0	0	32,972
Total Other Present Law Adjustments	7.00	\$740,262	\$0	\$0	\$740,262	7.00	\$736,202	\$0	\$0	\$736,202
Grand Total All Present Law Adjustments					\$1,257,607					\$1,112,193

Program Personal Services Narrative

The following information is provided so that the legislature can consider various personal services issues when examining the agency budget. It was submitted by the agency and edited for brevity by the LFD.

- **Market Rate** – The program lacks funding to follow agency policy for target market ratio and progression to market. The program market ratio at the end of FY 2008 was 82 percent of the 2006 market survey. The program anticipates this will increase to 86 percent when compared to the 2008 market survey.
- **Vacancy** - The agency typically has vacancies in administrative support and lawyer positions. These positions are difficult to recruit and retain due to outside market competition factors, job factors, and high wage/high cost towns. Individuals have the ability to change positions with less stress, higher salaries, and comparable benefit packages.

The agency has submitted a budget request for the 2011 biennium to address funding levels for lawyers. If approved, criteria would be established so that lawyers move through the pay range based on their education, experience, and the complexity of their cases. This would define what salary adjustments lawyers could expect in addition to any statutory across-the-board pay raises. The Public Defender Collective Bargaining Agreement allows OPD the ability to pay dues for the Montana bar for agency lawyers. This has been a very positive benefit provided to the lawyers.

Vacancies in administrative support positions create increases in overtime and accrual of non exempt compensatory time, cause additional stress, and increase workload for other support staff. The needs of the attorneys and clients are also impacted. Attorney position vacancies cause individual case loads to increase, which has a direct impact on client representation. In some cases contract services are employed to cover for FTE vacancies.

- **Legislatively applied vacancy savings** - The agency priced positions net of vacancy savings. The agency moved some funding into operating expenses to pay additional contract attorneys to cover cases due to vacancies in attorney FTE positions
- **Pay Changes** – The agency provided pay changes for employees that successfully completed training assignments, internal equity adjustments needed due to difference between county pay levels at the time this became a state funded system, attorneys who successfully passed the Montana bar exam, 14 exempt staff who received a 3 percent increase in October 2007, positions that were reclassified, attorneys who are assigned responsibilities in multiple regions, and employees who transferred from a lower paid to higher paid position. The agency used vacancy savings, when available.
- **Retirements** - Two employees have indicated that they will be retiring sometime during the 2011 biennium. Precise dollar amounts are not known at this time but the two individuals currently have significant accumulated leave balances. No employees have retired during the 2009 biennium.

**LFD
ISSUE**
Impact on Base Budget

During FY 2008 this program moved \$127,654 from personal services to operating expenses to cover vacancies. The agency did not reduce contracted services to account for this shift. Movement of funding from personal services increases the base budget of the agency for the next biennium because the base budget for operations is developed using actual expenditures in the base year. However, personal service costs for the next biennium's budget are based upon position attributes and assumes full funding of all authorized positions. The legislature has two options:

- Adopt a motion to remove \$127,654 per year from the programs budget to removed funding that was transferred from personal services into the operations budget
- Take no action, which means that the funding moved from personal services to the operating budget would remain in the program's 2011 biennium budget

DP 1 - Support of Increased Caseload - This decision package requests \$1.4 million general fund (including 7.00 FTE and \$400,000 for contract attorneys) for anticipated workload issues expected due to an increase in caseload.

**LFD
ISSUE**
Lack of Data Regarding Total Caseload

In order to understand the complete picture of an agency's operation it is necessary to know how many cases are active and being worked at regular points in time, such as monthly. With information on total caseload, combined with information on intake and closure of cases, analysis may be done to estimate the impact of various changes on the program. However, the Office of Public Defender did not provide information regarding the total number of cases the agency has active. Rather, the department only provided the number of new cases opened and an estimate of the number of active cases. The department indicates new cases increased from 25,549 in FY 2007 to 26,556 in FY 2008 or by 3.9 percent (1,007 cases). However, this includes only new cases open and does not provide information about the number of case closures or the number of cases that remain open and active. The department estimates that at any date the active cases number between 14,000 and 16,000, or about half of the number of new cases assigned each year.

The department indicated that it was not able to provide accurate total caseload numbers because cases, particularly those assigned to contract attorneys, are not closed or changed to inactive status in a timely manner. This leaves the legislature without adequate information to determine whether or not additional staff and or contract resources are necessary because of increases in caseload. There is no way to know whether or not the number of cases closed or inactivated during the year exceeded the number of new cases resulting in a net caseload reduction, or whether the reverse is true.

**LFD
ISSUE
(Cont.)**

If the legislature approves additional funding due to anticipated caseload increases it may wish to condition expenditure of the appropriation on the submission of data regarding the number of new cases assigned, the number of cases closed, and the average length of time between case opening and case closure for each case type (felony, misdemeanor, etc) data. The legislature may wish to adopt language related to this appropriation such as:

Funding in OPD Caseload Increase for FY 2010 and 2011 may be expended only after the department has provided to the Office of Budget and Program Planning and published on its website month by month data for the previous fiscal year indicating the number of new cases, the number of cases closed, and the average length of time between case opening and case closure for each case type.

**LFD
ISSUE**

Failure to Comply with Statutory Requirements for Reporting

The OPD appears to be out of compliance with statutory reporting requirements. Statute (47-1-105, (9), MCA) provides that the Public Defender Commission submit a biennial report to the Governor, supreme court, and the legislature, as provided in 5-11-210, MCA. 47-1-105, (9), MCA specifies that this include a number of items, including:

- The number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type
- The total number of persons represented by the office, identified by region, court, and case type
- The annual caseload and workload of each public defender, identified by region, court, and case type

The office appears not to have collected and made available all of the data required (such as total caseload and workload data). The department provided information on new cases and an estimate of ongoing cases but indicated the number of ongoing cases were in question due to concerns about accuracy and timeliness of case closure or change to inactive status. Without information about the ongoing cases, the department cannot comply with the requirement to provide the annual caseload and workload of each public defender.

The program is developing a caseload management tool to assist in monitoring attorney workload. (The department tested this tool from March through August 2008, reported to the commission on the results of the test in October 2008, and plan to recommend some changes to the tool.) This tool assigns weights to cases based upon case type and tracks the weight of cases assigned to each attorney each month. Because this workload tool tracks only newly assigned cases and not cases that remain open from month to month it provides no incentive to staff to leave cases open. However, it also provides no numerical recognition for those cases that continue to be active from month to month. Instead this tool requires that management take an attorney's ongoing caseload into consideration when assigning new cases. As a result data for an attorney may show no units assigned for a particular month when in fact the attorney had several on going cases but was not assigned any new cases.

The legislature may wish to discuss compliance with statutory requirements for reporting with the agency. Actions that the legislature could consider include:

- Instruct that the agency develop goals and measurable objectives (including time frames for completion) to achieve compliance with statutory requirements regarding reporting and recommend that progress toward achievement of this goal and measurable objectives be monitored during the interim
- Send correspondence to the Public Defender Commission indicating that the committee believes the agency is out of compliance with statutory reporting requirements and request that the commission direct the agency to come into compliance by June 2010
- Not approve funding for the agency beyond the amount included in the base budget and statewide present law adjustments

DP 9 - ITSD Fixed Cost PL Adjust - The executive requests \$32,972 general fund each year of the biennium to support the agency's portion of Information and Technology Services Division, Department of Administration fixed cost allocation that falls outside the adjusted base budget. This adjustment includes funding for local server replacements, Justware Database and Fileshare disks, and Collaboration Service Level Agreement (SLA) Sharepoint.

New Proposals

Program	-----Fiscal 2010-----					-----Fiscal 2011-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
DP 3 - Increase in Contract Rates-Restricted										
01	0.00	60,000	0	0	60,000	0.00	120,000	0	0	120,000
DP 5 - Union Career Ladder Pay Increases										
01	0.00	141,114	0	0	141,114	0.00	235,372	0	0	235,372
DP 6101 - Fixed Cost Workers Comp Management Program Alloc										
01	0.00	6,737	0	0	6,737	0.00	5,841	0	0	5,841
Total	0.00	\$207,851	\$0	\$0	\$207,851	0.00	\$361,213	\$0	\$0	\$361,213

DP 3 - Increase in Contract Rates-Restricted - This decision package requests general fund support of \$60,000 in FY 2010 and \$120,000 in FY 2011 for a 1 percent per year increase in the contract attorney rate. The Office of the Public Defender is currently paying \$60 per hour for attorneys providing public defender services under contract.

The following information is provided so that the legislature can consider various performance measurement principles when examining this proposal. It is submitted by the agency, with editing by LFD staff as necessary for brevity and/or clarity.

Justification: The agency uses a combination of state-hired and contract attorneys to provide legal services to its clientele. The agency must compete for contract services in the private marketplace. The rate that the agency currently pays for contract attorney services is \$60 per hour. The Montana Public Defender Commission adopted the \$60 per hour rate effective in FY 2007 when the agency began serving clients and has not increased it since that date. It is the agency's understanding that the \$60 per hour rate was in place for many years before the state began providing public defender services. The basis for this rate increase includes:

- Current market prices for contract attorney services have put the agency at a competitive disadvantage. The agency is hampered in its ability to recruit and retain enough quality contract attorneys. Private attorneys have communicated to agency management that they are paid \$125 and above for private practice cases and must take those cases first
- Federal public defenders are paid \$100 per hour for the same service in Montana
- Other state agencies are paying \$115 to \$165 per hour for contract attorney services for civil defense of the state
- The rate paid for internal attorneys from the agency legal services pool is \$90 per hour

Project Outcomes: The agency believes that a rate increase will improve the ability to compete for contract attorney services with the private market place.

Performance Criteria: Increase the number of contractors willing to provide public defender services, and improve retention of existing contractors.

Milestones: The contractor rate would be increased on July 1, 2009 and again on July 2, 2010.

FTE: None.

Funding: General Fund

Obstacles: None

Risks: The agency is not able to purchase enough contract attorney services to adequately serve its clients.

LFD ISSUE	<p>Lack of Measurable Outcomes</p> <p>The agency has not provided any measurable outcomes so that the legislature can determine if and how provision of funding for this item results in a desirable result or progress toward a goal. The legislature may wish to discuss with the agency what measures can be used to determine the impact of any increase in the contract attorney rate.</p>
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LFD COMMENT	<p>The agency expended about \$5.6 million in FY 2008 for contracted public defender services. Of this amount about \$5.1 million is included in the base budget for the 2011 biennium. The balance was funded with a one-time-only appropriation and thus is not included in the base budget.</p> <p>The 2011 biennium budget request approved by the Public Defender Commission on April 18, 2008 included an increase in contract attorney rates from \$60 to \$75 per hour in FY 2010 and an increase of about 2.7 percent between FY 2010 and 2011. The estimated cost of this proposal was \$2,990,602 for the biennium.</p>
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DP 5 - Union Career Ladder Pay Increases - This decision package requests general fund of \$141,114 in FY 2010 and \$235,372 in FY 2011 to implement a progression pay increase for unionized attorneys. A pay study was conducted as specified in the collective bargaining agreement and identified a market rate for attorneys (for the 2009 biennium) of \$58,762, with an entry level of pay of \$47,010 and maximum pay level of \$70,514. Additionally, pay increments for movement from entry to the market level of pay and from market level to the maximum pay level were developed. The provisions included in the collective bargaining agreement advance attorneys in good standing from entry level to market for their positions over a five year time period. Advancement from market to the maximum pay for the position would be based upon years of experience and complexity of cases assigned to the attorneys. Attorneys with complex cases and 10 or more years of relevant experience would be paid at the maximum pay rate for the position. The collective bargaining agreement also specifies that the agency will develop a budget proposal for submission to the 2009 Legislature and that parties will work in good faith to seek the necessary funding.

DP 6101 - Fixed Cost Workers Comp Management Program Alloc - The Workers' Compensation Management program at the Department of Administration was funded by the 2007 Legislature with a one-time-only general fund appropriation. For the 2011 biennium and beyond, the executive proposes the program be funded via a fixed cost allocation. The allocation is based upon the average number of payroll warrants issued per pay period. Because the program was approved as an OTO for the current biennium, it must be presented as a new proposal for the next biennium. Therefore, the allocation cannot be included as part of the standard present law fixed cost process.

Program Budget Comparison

The following table summarizes the total budget requested by the Governor for the agency by year, type of expenditure, and source of funding.

Program Budget Comparison								
Budget Item	Base Fiscal 2008	Approp. Fiscal 2009	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 08-09	Biennium Fiscal 10-11	Biennium Change	Biennium % Change
FTE	8.00	8.00	9.00	9.00	8.00	9.00	1.00	12.50%
Personal Services	501,886	511,057	583,595	579,718	1,012,943	1,163,313	150,370	14.84%
Operating Expenses	306,241	97,546	306,347	306,350	403,787	612,697	208,910	51.74%
Total Costs	\$808,127	\$608,603	\$889,942	\$886,068	\$1,416,730	\$1,776,010	\$359,280	25.36%
General Fund	808,127	608,603	889,942	886,068	1,416,730	1,776,010	359,280	25.36%
Total Funds	\$808,127	\$608,603	\$889,942	\$886,068	\$1,416,730	\$1,776,010	\$359,280	25.36%

Program Description

The Appellate Defender Program provides appeal services for indigent citizens.

Program Highlights

Appellate Defender Program Major Budget Highlights
<ul style="list-style-type: none"> ◆ Funding for the program increases 25.4 percent (\$359,000) when the 2009 and 2011 biennia are compared ◆ Funding increases are due to a program transfer that occurred in FY 2008 and request to support an anticipated increase in caseload
Major LFD Issues
<ul style="list-style-type: none"> ◆ A program transfer increased this program's base budget by \$220,000 ◆ No goals or objectives specific to this program were provided

Program Discussion

Goals and Objectives:

State law requires agency and program goals and objectives to be specific and quantifiable to enable the legislature to establish appropriations policy. As part of its appropriations deliberations the Legislative Fiscal Division recommends that the legislature review the following:

- Goals, objectives and year-to-date outcomes from the 2009 biennium
- Goals and objectives and their correlation to the 2011 biennium budget request

2009 Biennium Major Goals

The following provides an update on the major goals monitored during the current interim.

Goal 1 – Reorganization of the appellate defender function so that effective assistance of counsel is provided upon appeal and in a timely manner – generally within 30 days and without continuance in dependent and neglect cases

- Successes
 - As of September 2008, 76 percent of the cases of the Appellate Defender were assigned to employee attorneys and 24 percent of the cases were assigned to external (contract) attorneys

2011 Biennium Major Goals

No program specific goals and objectives were provided.

LFD
ISSUE

No Goals and Measurable Objectives Provided

The legislature may wish to discuss with the agency goals and measurable objectives for the Appellate Defender Program. Goals and measurable objectives will assist the legislature in determining what outcomes or results are being purchased through the expenditure of state funds.

Base Budget Increase Through Program Transfer

FY 2008 funding for the Appellate Defender program increased by \$245,000 or 42.7 percent (from \$587,899 to \$832,899) due to program transfers from the Public Defender Program. (Of this amount \$25,000 was originally appropriated to the Public Defender Program as a one-time-only appropriation for caseload increases and so is not included in the adjusted base budget.) While within the total funding appropriated for the agency, this program transfer represents a significant funding increase for the Appellate Defender Program that occurred without legislative action. This program funding increase carries forward into the 2011 biennium budget in the executive budget.

The upper portion of Figure 1 illustrates the number of cases (briefs) prepared and costs for the appellate defender program. The agency anticipates the program caseload will grow at 2.6 percent per year, the same amount the caseload grew between FY 2007 and 2008. Costs per case have increased from \$1,007 in FY 2006 to \$1,630 in FY 2008, with the 2011 biennium budget request reflecting an estimated cost per case consistent with FY 2008.

Figure 1
Caseload and Costs

Year	Cases	Perc. Incr.	Expended		Cost Per
			Requested*	Perc. Incr.	Case
FY 2006	210		\$211,428		\$1,007
FY 2007	498	137.1%	782,606	270.2%	1,571
FY 2008	511	2.6%	833,124	6.5%	1,630
FY 2009	524	2.6%	608,602	-26.9%	1,161
FY 2010	538	2.6%	889,942	46.2%	1,654
FY 2011	552	2.6%	886,068	-0.4%	1,605

*FY 2009 amount is the appropriation level.

Figure 2
Appellate Defender
Caseload and Costs - Removing Effect of Transfer

Year	Cases	Perc. Incr.	Expended		Cost Per
			Requested*	Perc. Incr.	Case
FY 2006	210		\$211,428		\$1,007
FY 2007	498	137.1%	782,606	270.2%	1,571
FY 2008	511	2.6%	833,124	6.5%	1,630
FY 2009	524	2.6%	608,602	-26.9%	1,161
FY 2010	538	2.6%	669,942	10.1%	1,245
FY 2011	552	2.6%	666,068	-0.6%	1,207

*FY 2009 amount is the appropriation level.
**FY 2010 and 2011 expenditure level is reduced by the \$220,000 transferred during the base year.

The middle portion of Figure 2 illustrates the estimated costs and cost per case for the 2011 biennium if the \$220,000 that was transferred to the program during the base year is removed. Assuming a 2.6 percent per year caseload growth, the cost per case decreases to \$1,245 and \$1,207 for FY 2010 and 2011, respectively.

Finally, the third portion of Figure 3 illustrates the impact of inclusion of the \$220,000 transfer made during the base year and

Figure 3
Appellate Defender
Caseload and Costs - Removing Requested FTE

Year	Cases	Perc. Incr.	Expended		Cost Per
			Requested*	Perc. Incr.	Case
FY 2006	210		\$211,428		\$1,007
FY 2007	498	137.1%	782,606	270.2%	1,571
FY 2008	511	2.6%	833,124	6.5%	1,630
FY 2009	524	2.6%	608,602	-26.9%	1,161
FY 2010	538	2.6%	817,284	34.3%	1,519
FY 2011	552	2.6%	814,158	-0.4%	1,475

*FY 2009 amount is the appropriation level.
**FY 2010 and 2011 expenditure level includes the \$220,000 transferred during the base year and excludes a present law adjustment requesting funding for 1.00 FTE.

excluding a new proposal requesting an additional 1.00 FTE to support caseload growth. In this scenario, the 2011 biennium cost per case decreases when compared to FY 2008.

A decision package requesting an additional 1.00 FTE is included in the budget request for legislative action. However, there is no decision package related to the \$220,000 that was transferred during the base year. The legislature may wish to:

- o Adopt a motion reducing funding for the appellate defender program by \$220,000 per year to reflect the removal of the program transfer impact on the 2011 biennium budget
- o Take no action, which means that the \$220,000 transferred from the Public Defender Program to the Appellate Defender Program during FY 2008 remains in the 2011 biennium budget for the Appellate Defender Program

Funding

The following table shows program funding, by source, for the base year and for the 2011 biennium as recommended by the Governor.

Program Funding Table Office Of Appellate Defender						
Program Funding	Base FY 2008	% of Base FY 2008	Budget FY 2010	% of Budget FY 2010	Budget FY 2011	% of Budget FY 2011
01000 Total General Fund	\$ 808,127	100.0%	\$ 889,942	100.0%	\$ 886,068	100.0%
01100 General Fund	<u>808,127</u>	<u>100.0%</u>	<u>889,942</u>	<u>100.0%</u>	<u>886,068</u>	<u>100.0%</u>
Grand Total	<u>\$ 808,127.00</u>	100.0%	<u>\$ 889,942.00</u>	100.0%	<u>\$ 886,068.00</u>	100.0%

The appellate defender function is funded entirely with general fund.

Budget Summary by Category

The following summarizes the total budget by base, present law adjustments, and new proposals.

Budget Item	-----General Fund-----				-----Total Funds-----			
	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget	Budget Fiscal 2010	Budget Fiscal 2011	Biennium Fiscal 10-11	Percent of Budget
Base Budget	808,127	808,127	1,616,254	91.00%	808,127	808,127	1,616,254	91.00%
Statewide PL Adjustments	9,157	6,031	15,188	0.86%	9,157	6,031	15,188	0.86%
Other PL Adjustments	72,658	71,910	144,568	8.14%	72,658	71,910	144,568	8.14%
New Proposals	0	0	0	0.00%	0	0	0	0.00%
Total Budget	\$889,942	\$886,068	\$1,776,010		\$889,942	\$886,068	\$1,776,010	

Present Law Adjustments

The “Present Law Adjustments” table shows the primary changes to the adjusted base budget proposed by the Governor. “Statewide Present Law” adjustments are standard categories of adjustments made to all agencies. Decisions on these items were applied globally to all agencies. The other numbered adjustments in the table correspond to the narrative descriptions.

Present Law Adjustments	-----Fiscal 2010-----					-----Fiscal 2011-----				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
Personal Services					30,339					27,081
Vacancy Savings					(21,288)					(21,159)
Inflation/Deflation					106					109
Total Statewide Present Law Adjustments					\$9,157					\$6,031
DP 2 - Support Increase in Caseload-Appellate	1.00	72,658	0	0	72,658	1.00	71,910	0	0	71,910
Total Other Present Law Adjustments	1.00	\$72,658	\$0	\$0	\$72,658	1.00	\$71,910	\$0	\$0	\$71,910
Grand Total All Present Law Adjustments					\$81,815					\$77,941

Program Personal Services Narrative

The following information is provided so that the legislature can consider various personal services issues when examining the agency budget. It was submitted by the agency and edited for brevity by the LFD.

- **Market Rate** - The approximate market ratio for the program on June 30, 2008, relative to the 2006 market survey was 82 percent. The program estimates that after implementation of pay plan increases in October 2008, this will decrease to 80 percent compared to the 2008 market survey.
- **Vacancy** – The agency response for both programs was essentially the same. Please refer to the personal services discussion for the Public Defender Program for additional information on this item.
- **Legislatively applied vacancy savings** - The agency priced positions net of vacancy savings. The agency moved some funding into operating expenses to pay additional contract attorneys to cover cases due to vacancies in attorney FTE positions.
- **Pay Changes** - The agency used vacancy savings, when available.
- **Retirements** - Two employees have indicated that they will be retiring sometime during the 2011 biennium. Precise dollar amounts are not known at this time but the two individuals currently have significant accumulated leave balances. No employees have retired during the 2009 biennium. An individual has recently been assigned additional duties and responsibilities to receive on the job training in the management responsibilities of this program

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Impact on Base Budget

Movement of funding from personal services increases the base budget of the agency for the next biennium because the base budget for operations is developed using actual expenditures in the base year. However, personal service costs for the next biennium's budget are based upon position attributes and assumes full funding of all authorized positions. During FY 2008 this program moved \$20,000 from personal services to operations. The legislature has two options:

- Adopt a motion to remove \$20,000 per year from the program's budget to negate the impact of this transfer on the base budget
- Take no action, which means that the base budget increase created by this transfer would remain in the program's 2011 biennium budget

DP 2 - Support Increase in Caseload-Appellate - This decision package requests 1.00 FTE and \$144,568 general fund for the biennium for anticipated increases in caseload.