EXHIBIT 10

Agency Proposed Budget

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

Agency Proposed Budget Budget Item	Base Budget Fiscal 2006	PL Base Adjustment Fiscal 2008	New Proposals Fiscal 2008	Total Exec. Budget Fiscal 2008	PL Base Adjustment Fiscal 2009	New Proposals Fiscal 2009	Total Exec. Budget Fiscal 2009	Total Exec. Budget Fiscal 08-09
FTE	90.25	102.25	0.00	192.50	102.25	0.00	192.50	192.50
Personal Services	320,686	10,569,442	0	10,890,128	10,582,421	0	10,903,107	21,793,235
Operating Expenses	332,105	7,712,739	275,000	8,319,844	7,603,259	275,000	8,210,364	16,530,208
Equipment	60,653	0	0	60,653	0	0	60,653	121,306
Total Costs	**$713,444**	**$18,282,181**	**$275,000**	**$19,270,625**	**$18,185,680**	**$275,000**	**$19,174,124**	**$38,444,749**
General Fund	713,444	18,282,181	200,000	19,195,625	18,185,680	200,000	19,099,124	38,294,749
State/Other Special	0	0	75,000	75,000	0	75,000	75,000	150,000
Total Funds	**$713,444**	**$18,282,181**	**$275,000**	**$19,270,625**	**$18,185,680**	**$275,000**	**$19,174,124**	**$38,444,749**

Agency Description

The Office of Public Defender (OPD) 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

Office of Public Defender
Major Budget Highlights

- A new statewide system for the provision of public defender services was implemented July 1, 2006
- The agency anticipates FY 2008 will be the first year of full implementation and staff for the new system
- 2009 biennium funding for the new system exceeds the full implementation costs anticipated by the Law and Justice Interim committee during its 2004 interim study
- The agency budget, based upon its strategic plan, generally provides for state employees (192.50 FTE when fully implemented) to provide services in populated geographic areas and contractors to provide services in less populated geographic areas of the state

Major LFD Issues

- The OPD estimates a supplemental appropriation need of about $3.3 million. However, legislative staff estimate, based upon three months of actual expenditure data, the supplemental funding need at $4.6 million
- Expenditures for contracted attorneys does not appear to be decreasing at this time, even though the number of state employees providing services has increased
- Contracting policies of the OPD may not meet legislative expectations for a competitive selection process
- Data collection is under way but accurate caseload data and data on the expenditure level related to cases in courts of limited jurisdiction were not

available at the time of this writing
- The legislature may wish to evaluate whether the public defender system as it is being implemented is consistent with the legislative vision of the system
- OPD staff indicates that expenditure estimates are based upon broad based data. Detailed, specific information supporting the 2009 biennium budget request was in general unavailable

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 legislature may wish to review the following:

- Goals, objectives and year-to-date outcomes from the 2007 biennium
- Goals and objectives and their correlation to the 2009 biennium budget request

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

LFD COMMENT

DP 101 Agency Implementation and Costs Annualization in the Public Defender Program includes a discussion of goals and objectives.

A New System

During the 2005 session, legislation was passed and approved that created a new statewide system for the provision of public defender services. The legislation creating the new system was requested by the Law and Justice Interim Committee (LJIC) after study of the existing system, related issues, and pending litigation. The legislature provided general fund appropriations totaling $14.7 million to support the new system for the 2007 biennium. Of this appropriation $14.1 million was for FY 2007, the first year the new system is in effect.

LFD ISSUE

Legislative Vision

The following paragraphs provide information about various facets of the new public defender system, particularly relating to variances in the system as implemented from legislative expectations, including:

- FY 2007 expenditures may exceed appropriations by $4.6 million or about 33 percent and a supplemental appropriation will likely be requested
- State employee staffing levels are anticipated at 192.50 FTE, or more than double the 90.25 FTE anticipated by the legislature in the FY 2007 appropriation
- Expenditures for contracted attorney services have not decreased although FTE levels are more than double the level anticipated by the legislature
- Statutorily required caseload and expenditure data requested by legislative staff was not provided due to inaccuracy of the available data or unavailability of the data at the time of this writing.

These variances from legislative vision and expectations raise the following questions and issues for legislative consideration.

- Does the public defender system as it is being implemented represent the legislature's vision of the system?
- What system changes does the legislature wish to see?
- Costs are significantly exceeding anticipated levels. Given the lack of detailed calculations and data supporting the strategic plan and 2009 biennium budget request, it is difficult to determine what factors are driving the increased costs

The legislature may wish to:

- Discuss the approach and philosophy used in development of the 2009 biennium budget request

LFD ISSUE (CONT.)

- Review the OPD goals, objectives, and performance measures to determine whether or not they are consistent with and represent the legislative vision of the public defender system
- Discuss with the Office of Public Defender what management philosophies and actions will be used to monitor:
  - Achievement of the legislative vision of the system
  - System expenditures and maintenance of expenditures within the level of funding provided by the legislature

Background

The Montana Public Defender Act (Senate Bill 146), passed and approved during the 2005 legislative session, created a statewide public defender system. This new statewide system became operational July 1, 2006 (FY 2007). The Montana Public Defender Act (act) was requested by the Law and Justice Interim Committee (LJIC) as a result of its research and study of public defender services in Montana. Under the previous system that existed through FY 2006, decisions about provision and funding of public defender services were determined by local governments. If local governments did not take action, the district court judge could appoint a private attorney to act as a public defender on an ad-hoc, case-by-case basis.

Counties and other entities submitted reimbursement requests for district court case costs to the Office of the Court Administrator (OCA) in the judicial branch. The OCA had little ability to control or deny reimbursement for bills that were submitted, although budgetary constraints (lack of funds) in some years resulted in the OCA not reimbursing counties and other entities for allowable costs. Under the act the new public defender system is a statewide centrally managed system with funding and oversight consolidated in one state entity.

Litigation

This legislation was influenced to some degree by pending litigation filed by the American Civil Liberties Union (ACLU) regarding public defender service provision in Montana. In February, 2004 the ACLU filed a lawsuit against the state and seven counties. Among the lawsuit allegations was that Montana had failed to provide constitutionally and statutorily adequate legal representation to indigent adults with criminal cases pending. The ACLU litigation questioned the adequacy of oversight and funding, and the quality of service provided. In May, 2004 the Attorney General and ACLU signed a stipulation placing this litigation on hold pending legislative action. During this time period the LJIC was in the process of studying the public defender system.

Also, in August, 2004 the National Legal Aid and Defender Association (NLADA) submitted an expert report assessing indigent defense services in Montana in the ACLU lawsuit case. The NLADA concluded that the provision of indigent defense services in Montana was unconstitutional in several respects. The NLADA report contained several statements (some of which are paraphrased below) including that:

- Montana failed to adequately fund indigent defense
- Montana's lack of funding means that public defenders are not afforded the same level of resources that are afforded the prosecution
-

New System

The new system is charged with providing public defender services in all courts in this state, is supervised by a commission consisting of 11 members that are appointed by the Governor, and is administered by the Office of the Statewide Public Defender (OPD). The OPD is an executive branch agency that is administratively attached to the Department of Administration.

In addition to the statewide system, the act also moved responsibility for reimbursement for public defender services from the Office of the Court Administrator in the judicial branch to the OPD in the executive branch. As a result of the act, responsibility for the bulk of the so-called variable costs paid as a part of the District Court Operations Program moved from the Judiciary to the OPD. The cost of the Appellate Defender Office also became a segment of the Public Defender System.

Cost and Funding

2007 Biennium Funding

The 2007 biennium funding for the Office of Public Defender was based upon the LJIC study and compilation of data from various sources including judiciary branch information regarding reimbursements for public defender services in district court criminal cases, local government (county and city) data regarding public defender costs for cases in courts of limited jurisdiction, and estimates of new costs that would be incurred with the implementation of a statewide system of public defender services. Additionally, the new system was charged with some duties, such as the representation of indigent parents in abuse and neglect proceedings, which were not previously included in public defender functions.

As illustrated in the figure on the right the legislature provided $14.7 million of funding for the 2007 biennium, compared to $14.1 million of costs that was estimated by the LJIC during its study. The LJIC estimated future funding needs for the system at $27.0 million per biennia. However, the 2009 biennium budget requests $38.4 million for the biennium.

Summary of Public Defender Funding

Item	2007 Biennium Legislative Approp.
Existing State Costs	$8,300,000
Previously Local Governemnt Spending	2,600,000
Subtotal	$10,900,000
New Spending	3,200,000
Subtotal	14,100,000
FY 2006 Start-up	600,000
Total	$14,700,000

The appropriation for FY 2006 was minimal since this was envisioned as a year of planning and start-up with service provision by the new system not beginning until FY 2007. The figure below summarizes the FY 2007 appropriation and estimates of actual costs. As illustrated in this figure, the legislature provided a FY 2007 appropriation of $14.1 million for the operation of the new system. The strategic plan developed and adopted by the Public Defender Office and Commission estimated FY 2007 costs at $17.2 million or about $3.1 million greater than appropriations. The OPD's current estimate of FY 2007 costs is $17.4 million with a $3.3 shortfall anticipated. Legislative Fiscal Division staff estimates, which are based upon actual expenditure data for August, September and October, of 2006 project the FY 2007 actual costs at about $18.8 million or $4.6 million more than was appropriated.

Public Defender Office
Comparison of FY 2007 Appropriation and Cost Estimates

Item	Legislative Appropriation	OPD Strategic Plan	Difference Leg. Approp Less OPD Plan	Leg. Fiscal Div. Estimate*	Difference Leg. Approp Less LFD Est.
FTE	87.25	167.75	(80.50)		
Personal Services	$3,130,311	$9,475,149	($6,344,838)	$9,268,702	($6,138,391)
PD Office Costs	674,157	2,211,822	(1,537,665)	4,039	670,118
Appointed & Contract Attorneys	5,741,434	3,574,080	2,167,354	5,789,795	(48,361)
Operating Costs - All Other	3,726,898	1,526,313	2,200,585	3,151,041	575,857
Subtotal Operating/Other	10,142,489	7,312,215	2,830,274	8,944,875	1,197,614
Total Public Defender	$13,272,800	$16,787,364	($3,514,564)	$18,213,577	($4,940,777)
Appellate Defender					-
FTE	3.00	8.00	(5.00)		
Personal Services	$159,276	$474,645	($315,369)	$382,272	($222,996)
Operating	702,041	132,116	569,925	158,023	544,018
Total Appellate Defender	$861,317	$606,761	$254,556	$540,295	$321,022
			-		-
FTE	90.25	175.75	(85.50)		
Personal Services	$3,289,587	$9,949,794	($6,660,207)	$9,650,974	($6,361,387)
Operating	10,844,530	7,444,331	3,400,199	9,102,898	1,741,632
Total Public Defender System	$14,134,117	$17,394,125	($3,260,008)	$18,753,872	($4,619,755)

*Notes:
Based upon annualization of actual expenditures for August, September and October.

Supplemental

The OPD anticipates requesting a supplemental appropriation of about $3.3 million for the 2007 biennium. OPD staff characterizes the cost over run and supplemental request as being attributable to the following factors in roughly equivalent proportions:

- The OPD strategy to open public defender offices and add state employees to provide more of the services within the state
- One-time costs to purchase computers, furniture, and telephone systems, and design and implementation of a case management system
- The expectation that there will be a need to pay contract attorneys in some areas of the state as the transition is made from a contract attorney based system to a state employee based system

In addition to a supplemental appropriation request from the OPD, a supplemental appropriation request related to public defender services will be made by the Judiciary. The judicial branch intends to request a supplemental appropriation of $2.5 million (related to FY 2006 costs) for the 2007 biennium. This supplemental is related to variable costs in district court operations which include costs of public defender services, criminal and civil juries, transcripts, contracted court reporters, guardian ad litem, court appointed special advocates, evaluations, witnesses, and private investigators. A portion ($636,300) of the cost over run in district court variable costs was offset by savings in other portions of the district court operations program and the judicial branch.

LFD Estimates of Costs

Based upon three months of actual expenditure data, Legislative Fiscal Division staff estimates FY 2007 expenditures at $18.8 million or $4.6 more than appropriated and $1.3 million greater than the OPD estimate (see the figure on the previous page). However, it is possible that the average costs per month may decrease in future months, if the early months of FY 2007 include significant one-time start up or transition costs.

LFD COMMENT Given that the OPD has not updated its FY 2007 cost estimate or supplemental request since the summer of 2006 and legislative staff estimates are based upon only three months of expenditure data, the legislature may wish to request updated estimates of FY 2007 costs for the public defender system and the amount of supplemental appropriation that will be requested.

2009 Biennium

The executive budget requests funding for the second and third years of implementation (FY 2008 and 2009) at $19.3 and $19.2 million, respectively. However, if legislative staff estimates of FY 2007 expenditures are realized it is likely that the executive budget request is understated and that future costs will exceed the requested level of funding. It is interesting to note at the currently estimated funding level, ongoing biennial funding for the system ($38.4 million) is requested at a level more than $10 million greater than the $27 million anticipated by the LJIC study. During the course of legislative consideration of the Montana Public Defender Act, the ACLU and NLADA estimated the annual cost of the public defender system they envisioned at $23.8 million with this estimate revised at a later date to $22.2 million (or $44.4 - $47.6 million for the biennium). If legislative staff estimates for FY 2007 are realized and expenditures increase 5 percent per year, 2009 biennium funding of about $40.4 million would be required. The lack of detail calculations and data, including case load data, means that it is not possible to determine with any level of confidence what factors are driving system costs or what actions may be necessary or desirable to mitigate these factors. For a further discussion, see the Public Defender Office Program narrative that follows.

Implementation

Use of FTE Rather Than Contractors

The public defender system funded by the legislature, while including some state employees, was largely viewed as a contract based system, where services would be provided by contractors rather than state employees. However, the system represented by the 2009 biennium budget request and outlined in the agency's strategic plan relies largely on state employees for the provision of services. The FY 2007 appropriation provided by the legislature assumed 90.25 FTE would be employed by the system. The 2009 biennium budget assumes 192.50 FTE will be employed by the system. In general, the budget and strategic plan provide services in the most populated geographic areas of the state through the use of state employees and services in the least populated geographic areas of the state through contractors.

LFD ISSUE

Contracted Attorney Costs Have not Decreased

While OPD staff indicated that funding would be shifted from contracted services to personal services to offset the cost of additional state employees, the bottom figure on page 313 shows legislative staff estimates of FY 2007 costs for appointed and contracted attorneys at $5.7 million or about the same level as was appropriated by the legislature when a largely contract based system was envisioned. It appears the addition of state employees has not reduced the level of contracted services that will be purchased. Although, lack of detail supporting estimates and caseload data make it difficult to know what future costs may be and whether or not FY 2007 costs may be greater than ongoing costs due to the transition that is occurring as the new system is implemented.

LFD ISSUE

Contractor Selection

Based upon review of the agency's policy and discussion at public defender commission meetings, legislative staff has concerns that the OPD contracting policy does not:

- Define what criteria are used to determine that counsel is qualified to become part of the pool (based upon review of "Attorney's Summary of Education and Experience") that may be assigned cases under a contractual agreement
- Define criteria to be used by regional public defenders in determining assignment of cases to attorneys in the pool (how they determine whether or not a pool attorney is qualified to handle a particular case, and if there is more than one qualified attorney in the pool how do they choose among/between those qualified)
- Meet legislative expectations of a competitive contracting policy as specified in statute

The legislature may wish to discuss the contracting policy with public defender staff to ascertain whether the policy:

- Reflects the legislature's expectations of a competitive selection process
- Provides assurances that contractors are being selected in a fair and consistent manner
- Assures that costs incurred by the state are controlled in a manner that allows the system to maintain expenditures within legislative appropriations

Caseload and Other Data

The need for and availability of financial and caseload data was considered when legislation establishing the new statewide public defender system was enacted. Section 47-1-105(7), MCA requires the commission to establish policies and procedures to ensure that detailed expenditure and caseload data is collected, recorded and reported to support strategic planning efforts for the system and, 47-1-105(9), MCA requires the submission of a biennial report to all three branches of state government. The report is to be submitted each interim, cover the preceding biennium, and include caseload, staffing, expenditure and other data as specified in statute.

It is legislative staff understanding that a needs analysis and other work related to selection and implementation of a case management system will be completed during FY 2007 and a system wide solution implemented on or before July, 2007 to collect data beginning in FY 2008. In the interim, the OPD is planning to utilize features of the state accounting system to collect, record, and report the required caseload and expenditure data. While draft caseload data has been prepared, OPD staff indicate the data is inaccurate and that they hope to resolve issues related to collection of accurate caseload data during the month of November, 2006. However, as of this writing legislative staff has not received requested caseload data.

LFD ISSUE

Data Collection

The collection of accurate caseload and expenditure data has been a historical problem and contributes to the difficulty in defining the system and the level of funding needed for an adequate public defender system. Legislative staff requested expenditure data related to cases in courts of limited jurisdiction. It was legislative staff intent to utilize preliminary FY 2007 data for comparative purposes in an attempt determine, if possible, the extent to which expenditures related to cases in courts of limited jurisdiction were exceeding 2007 biennium funding expectations. OPD staff indicated that this information is a part of their biennial report but was not yet available at the time of this writing. Given that the OPD was unable to provide accurate caseload data and expenditure data related to courts of limited jurisdiction requested by LFD staff, the legislature may wish to:

- Request that the OPD provide caseload and expenditure data that it is required by statute to collect
- Request that the OPD provide information regarding potential issues of accuracy with the data
- Make appropriation for all or part of the system contingent upon gathering and reporting accurate caseload and financial data during the interim to the Legislative Finance Committee

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
2009 Biennium Executive Budget

Agency Program	General Fund	State Spec.	Grand Total	Total %
01 Public Defender Office	$ 37,144,895	$ 150,000	$ 37,294,895	97.01%
02 Appellate Defender Office	1,149,854	-	1,149,854	2.99%
Grand Total	$ 38,294,749	$ 150,000	$ 38,444,749	100.00%

The public defender system is funded primarily with general fund. A small amount of state special revenue ($75,000 per year) from donations or payments for public defender costs is anticipated in the 2009 biennium.

Biennium Budget Comparison

The following table compares the executive budget request in the 2009 biennium with the 2007 biennium by type of expenditure and source of funding. The 2007 biennium consists of actual FY 2006 expenditures and FY 2007 appropriations.

Biennium Budget Comparison

Budget Item	Present Law Fiscal 2008	New Proposals Fiscal 2008	Total Exec. Budget Fiscal 2008	Present Law Fiscal 2009	New Proposals Fiscal 2009	Total Exec. Budget Fiscal 2009	Total Biennium Fiscal 06-07	Total Exec. Budget Fiscal 08-09
FTE	192.50	0.00	192.50	192.50	0.00	192.50	90.25	192.50
Personal Services	10,890,128	0	10,890,128	10,903,107	0	10,903,107	5,088,783	21,793,235
Operating Expenses	8,044,844	275,000	8,319,844	7,935,364	275,000	8,210,364	9,512,198	16,530,208
Equipment	60,653	0	60,653	60,653	0	60,653	60,653	121,306
Total Costs	**$18,995,625**	**$275,000**	**$19,270,625**	**$18,899,124**	**$275,000**	**$19,174,124**	**$14,661,634**	**$38,444,749**
General Fund	18,995,625	200,000	19,195,625	18,899,124	200,000	19,099,124	14,661,634	38,294,749
State/Other Special	0	75,000	75,000	0	75,000	75,000	0	150,000
Total Funds	**$18,995,625**	**$275,000**	**$19,270,625**	**$18,899,124**	**$275,000**	**$19,174,124**	**$14,661,634**	**$38,444,749**

Supplemental Appropriation

Please refer to the agency discussion above for information regarding the supplemental appropriation request for the OPD.

New Proposals

The "New Proposals" table summarizes all new proposals requested by the executive. Descriptions and LFD discussion of each new proposal are included in the individual program narratives.

New Proposals	Fiscal 2008					Fiscal 2009				
Program	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
DP 104 - Fitness to Proceed and Related Costs										
01	0.00	200,000	0	0	200,000	0.00	200,000	0	0	200,000
DP 105 - Misc. State Special Revenue Funding										
01	0.00	0	75,000	0	75,000	0.00	0	75,000	0	75,000
Total	**0.00**	**$200,000**	**$75,000**	**$0**	**$275,000**	**0.00**	**$200,000**	**$75,000**	**$0**	**$275,000**

Program Proposed Budget

The following table summarizes the total executive budget proposal for this program by year, type of expenditure, and source of funding.

Program Proposed Budget Budget Item	Base Budget Fiscal 2006	PL Base Adjustment Fiscal 2008	New Proposals Fiscal 2008	Total Exec. Budget Fiscal 2008	PL Base Adjustment Fiscal 2009	New Proposals Fiscal 2009	Total Exec. Budget Fiscal 2009	Total Exec. Budget Fiscal 08-09
FTE	87.25	97.25	0.00	184.50	97.25	0.00	184.50	184.50
Personal Services	320,686	10,092,071	0	10,412,757	10,104,513	0	10,425,199	20,837,956
Operating Expenses	332,105	7,615,710	275,000	8,222,815	7,505,713	275,000	8,112,818	16,335,633
Equipment	60,653	0	0	60,653	0	0	60,653	121,306
Total Costs	**$713,444**	**$17,707,781**	**$275,000**	**$18,696,225**	**$17,610,226**	**$275,000**	**$18,598,670**	**$37,294,895**
General Fund	713,444	17,707,781	200,000	18,621,225	17,610,226	200,000	18,523,670	37,144,895
State/Other Special	0	0	75,000	75,000	0	75,000	75,000	150,000
Total Funds	**$713,444**	**$17,707,781**	**$275,000**	**$18,696,225**	**$17,610,226**	**$275,000**	**$18,598,670**	**$37,294,895**

Program Description

The Public Defender Office is responsible for management and provision of public defender (legal) services for individuals who are indigent (as defined in statute). A statewide system for the provision of public defender services was created by passage of the Montana Public Defender Act (SB 146 of the 2005 session, contained in Title 47, MCA). System design and implementation functions began in FY 2006 with implementation and change to the new system for assignment of public defense counsel effective July 1, 2006 (FY 2007).

A Public Defender Commission (established in 2-15-1028, MCA) is responsible for supervision and direction of the system (47-1-105, MCA). The chief public defender, who is appointed by the commission, hires or contracts and supervises staff necessary to perform the functions of the office (47-1-201 and 47-1-202, MCA).

Program Highlights

Public Defender Office
Major Budget Highlights

- FY 2006 costs are limited to certain organizational and start-up costs, FY 2007 is the first year of implementation for the new system
- The 2009 biennium budget request is based upon the departments strategic plan
- The requested budget, consistent with the agency's strategic plan, proposes the provision of services primarily through the use of state employees rather than the use of contracted services
- Employees are used primarily in the more populated areas of the state, while contracted services are generally utilized in less populated portions of the state
- Funding for the program increases $5.1 million when the FY 2008 request is compared to the FY 2007 legislative budget

Major LFD Issues

- OPD staff expressed concern that budgeted salary levels may not be adequate to recruit and retain attorneys
- Funding for some items included in the department's strategic plan are not included or are included in the budget request at a reduced level
- In general, the 2009 biennium budget request is based upon the department's strategic plan and board based estimates and lacks supporting detail

Funding

The following table shows program funding, by source, for the base year and for the 2009 biennium as recommended by the Governor.

Program Funding Table
Public Defender Office

Program Funding	Base FY 2006	% of Base FY 2006	Budget FY 2008	% of Budget FY 2008	Budget FY 2009	% of Budget FY 2009
01000 Total General Fund	$ 713,444	100.0%	$ 18,621,225	99.6%	$ 18,523,670	99.6%
01100 General Fund	713,444	100.0%	18,621,225	99.6%	18,523,670	99.6%
02000 Total State Special Funds	-	-	75,000	0.4%	75,000	0.4%
02247 Crime Victims Compensation Act	-	-	25,000	0.1%	25,000	0.1%
02248 Gifts, Grants And Donations Opd	-	-	10,000	0.1%	10,000	0.1%
02250 Court Ordered Sentencing Costs	-	-	25,000	0.1%	25,000	0.1%
02251 Montana Youth Court Act	-	-	15,000.00	0.1%	15,000.00	0.1%
Grand Total	$ 713,444	100.0%	$ 18,696,225	100.0%	$ 18,598,670	100.0%

The public defender office is funded with general fund. The office may also access funds deposited to state special revenue accounts from: 1) gifts, grants or donations; and 2) payments for the costs of a public defender either ordered by the court according to 46-8-113, MCA, ordered according the Montana Youth Court Act, or made according to the Crime Victims Compensation Act of Montana and designated as payment for public defender cost. The agency has estimated state special revenue from these sources will be $75,000 per year during the 2009 biennium. However, because this is a new function no prior history of revenues exists to be used as a basis for projecting future revenues.

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 2008					Fiscal 2009				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
Personal Services					5,119,378					5,126,319
Vacancy Savings					(217,597)					(217,883)
Inflation/Deflation					66,632					68,123
Fixed Costs					276,675					225,025
Total Statewide Present Law Adjustments					**$5,245,088**					**$5,201,584**
DP 101 - Office of Public Defender Funding Annualization	97.25	10,712,693	0	0	10,712,693	97.25	10,658,642	0	0	10,658,642
DP 102 - Adjustment for Increase in Caseload	0.00	1,750,000	0	0	1,750,000	0.00	1,750,000	0	0	1,750,000
Total Other Present Law Adjustments	**97.25**	**$12,462,693**	**$0**	**$0**	**$12,462,693**	**97.25**	**$12,408,642**	**$0**	**$0**	**$12,408,642**
Grand Total All Present Law Adjustments					**$17,707,781**					**$17,610,226**

LFD COMMENT

Statewide present law adjustments include full funding for all positions included in FY 2006, the base budget year. Implementation of the new statewide public defender system began during FY 2006 with many positions being filled toward the end of the fiscal year in anticipation of the July 1, 2006 implementation date. Most of the 87.25 FTE included in the base budget were vacant for the majority of the fiscal year, accounting for the large increase.

LFD ISSUE Adequacy of Budgeted Salary Levels

Office of Public Defender staff indicated the agency has some concern about the adequacy of budgeted funding levels for positions (particularly attorneys) that were unfilled at the time of personal services budget development. Vacant positions were budgeted utilizing the entry level salary for the position. The Office of Public Defender has implemented a broadband pay plan for non exempt staff and has established entry level salaries at 80 percent of the market salary for the pay range or band. However, legislative staff review and comparison of budgeted salary levels to actual salary levels indicates that the potential shortfall created by this situation for positions filled as of October 28, 2006 is about $58,000 or less than one-half of one percent of the FY 2008 requested funding level.

The figure below compares the budgeted and actual average salary per position in each pay band of the public defender office. Most positions requiring an attorney are classified in pay band six, seven or eight. As the figure illustrates, of the 178 employees, on average, 115 are paid less than the budgeted amount and 63 more than budgeted bands. This difference has the largest potential impact in pay band seven, which currently includes 62 employees. The $1,592 difference in average annual salary multiplies to a potential funding short fall of about $99,000 when the number of employees in the pay band is considered.

The figure also indicates that in some pay bands, and in the pay matrix and band that includes exempt employees (pay matrix 61, band 01), the budgeted average annual salary exceeds the current actual average annual salary. The actual average annual salary in the exempt employee matrix seems to be significantly influenced by the inclusion of two lower level positions (a short term worker and an intern). When these two positions are removed from the calculation the actual average annual salary rises to $74,975 but remains lower than the budgeted average annual salary.

Office of Public Defender

Comparison of Average Cost Per Position - Budgeted and Actual (as of 10/28/06)

	FY 2008 Budget			Actual*			
Pay Matrix & Grade	FTE	Salary*	Ave. Per FTE	Average Salary	Number employees*	Budget less Actual Ave.	Per Grade Difference*
20-02	4.00	$81,323	$20,331	$19,828	5	$503	$2,514
20-03	15.00	378,596	25,240	24,248	20	992	19,835
20-04	35.50	949,174	26,737	28,433	28	(1,696)	(47,480)
20-05	7.00	247,455	35,351	32,703	14	2,648	37,068
20-06*	60.00	2,633,026	43,884	45,476	62	(1,592)	(98,718)
20-07*	45.00	2,444,869	54,330	54,708	25	(378)	(9,439)
20-08*	9.75	610,823	62,649	62,280	6	369	2,211
61-01	16.25	1,267,302	77,988	69,544	18	8,444	151,989
Total	192.50	$8,612,568	$44,741	$42,982	178		$57,979

*Not including benefits

FY 2009 FTE and total salary dollars are the same as FY 2008

Actual average salary is calculated based upon query data complied on October 28, 2006 of public defender employees as of that date.

Most attorneys (other than Deputy Public Defenders, Chief Public Defender, Training Officer, and Contract Manager) are included in pay matrix 20, grades 6, 7 and 8.

For the purposes of this analysis all current employees were treated as though they were 1.00 FTE.

Per grade difference is equal the difference between the budgeted average salary and the actual average salary multiplied by the number of employees currently included in the grade.

DP 101 - Agency Implementation and Cost Annualization – This decision package requests $21.5 million general fund for the biennium to annualize the estimated costs of the new public defender system into the 2009 biennium budget. Transition to the new statewide public defender system began in FY 2006 with the establishment of some central office functions. Effective July 1, 2006 the agency began providing public defender services statewide. FY 2006 and FY 2007 are transition years with the agency anticipating that full staffing and operations will be achieved in FY 2008.

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

Justification: This funding is needed to implement the provisions of Senate Bill 146 (from the 2005 session), the Statewide Public Defender System. This implementation began on July 1, 2005 (FY 2006) and continues into FY 2007. During FY 2006 there were several key events including: (a) the appointment by the Governor of the Montana Public Defender Commission; (b) hiring of key management positions; (c) opening and establishing the central office; and (d) as of July 1, 2006 the development and staffing of eleven regional offices and acquisition of all state, county, and city public defender operations and activities. FY 2007 is another transition year that has many staff coming on board and offices opening at various times. This year contains estimates for one-time purchases for furniture, computers, communication systems, and case management software. This year also contains high level estimates for contracted attorney and other outside services. FY 2008 and 2009 assume that all planned FTE are hired, all offices are open and fully operational, and that one-time costs are removed.

Goal: To fully implement Senate Bill 146 from the 2005 session.

Performance Criteria: Progress will be measured by measuring the effectiveness of assistance of counsel provided to those that qualify for public defender services at state expense under Senate Bill 146.

Milestones: Key activities will be completed during FY 2008 and 2009.

Work to be completed by: The 192.75 FTE's estimated in the plan.

Funding: General fund.

Obstacles: Not finding an adequate pool of qualified FTE to fill positions, not enough funding, and rapid increases in caseload.

Risk: Shut down of state funded public defender services, services transferred to counties and cities, and potential law suits by outside organizations such as the American Civil Liberties Union (ACLU), etc.

LFD COMMENT

While the agency has specified that the goal of this proposal is to fully implement the Montana Public Defender Act (SB 146 of the 2005 session), the agency has not provided the specific goals of this legislation or the agency. Additionally, the agency has not specified how the effectiveness of assistance of counsel will be measured or the steps and time table necessary to achieve the goal of implementing the Montana Public Defender Act.

The legislature may wish to request that the agency:

- Discuss the agency's perspective on the goals of the Montana Public Defender Act and the agency's goals in implementing the act
- Provide the criteria and methodology that will be used to determine the effectiveness of counsel
- Provide a listing and time line of implementation activities that are planned for FY 2008 and 2009
- Discuss options and actions that the agency may take if the anticipated obstacles are realized
- Discuss options and actions that the agency may take if it appears some of the anticipated risk may be realized

LFD COMMENT

Please refer to the agency discussion for additional information about the public defender system and issues for legislative consideration.

LFD ISSUE

2009 Biennium Budget Request Lacks Supporting Detail

During the course of analysis of the 2009 biennium budget request, legislative staff submitted requests to the OPD for additional information and specific detail related to the level of funding requested. In general, detailed information supporting the funding request for the 2009 biennium was not available. OPD staff indicated that the agency had little actual operating experience and expenditure data and that the strategic plan, and budget request was developed using a number of sources and were broad based estimates. Because the budgeting process for personal services is built based upon current employees and anticipated positions it is possible to look at specific detail supporting the personal services budget, which composes about 57 percent of the budget request. However, a similar level of detail was not available for operating costs categories. For example, the 2009 biennium budget request includes $1.0 million for data network services from the Department of Administration. However, the fixed cost schedule prepared by the Governor's Office of Budget and Program Planning estimates these costs at $380,265 for the biennium. When additional information was requested regarding what other costs were included in the category, the OPD provided a list of items to be funded but provided cost estimates for only some of these items. The OPD provided detail that illustrates how $540,651 or about half of the requested funding will be expended.

Given the lack of detailed information or specific calculations supporting the funding requested it is difficult to evaluate:

- Whether the funding requested is adequate, overstated, or understated
- The specific items included in the budget request for legislative consideration

Additionally, in the future it will be difficult to evaluate whether or not funding was expended consistent with legislative expectations and directions.

DP 102 - Adjustment for Increase in Caseload - This decision package requests $3.5 million general fund for the biennium for caseload increases.

LFD ISSUE

Rationale for Caseload Increase

Caseload statistics have not been provided to demonstrate the rate at which caseload actually is increasing or is estimated to increase. The 2009 biennium budget request submission indicated that the rationale for this increase is based in part upon:

- The fact that the Judiciary plans to request a supplemental appropriation ($2.5 million) for the 2007 biennium (FY 2006 primarily) for district court variable cost overrun, which is comprised largely of public defender costs
- 2007 biennium appropriations for the OPD were based largely upon FY 2004 data (the most current available at the time of legislative action) that was not inflated for costs or caseload increases

The 2007 biennium appropriation for the OPD was in part based upon an assumption that it would incur $8.1 million for public defender costs previously paid by the Judiciary as part of district court variable costs. The Judiciary has estimated public defender costs paid in FY 2006 that became the responsibility of the OPD at $9.5 million or about $1.4 million greater than the portion of the FY 2007 appropriation designated as related to a shift in costs from the Judiciary to the OPD. Given that the new public defender system is responsible for a broader base of expenditures than the Judiciary previously was and the anticipated level of expenditures for the OPD exceeds legislative expectations, it is difficult to determine what if any correlation exist between the costs incurred by the Judiciary and those estimated by the OPD. It is also unclear whether or not the cost overruns experienced by the Judiciary have been included in OPD broad based cost estimates.

If the legislature increases funding for the OPD based upon the assumption that Judiciary cost over runs were not included in OPD costs estimates, the legislature may wish to restrict this portion of the appropriation and allow it to be utilized only after the OPD demonstrates that based upon the same definition the number of district court criminal cases utilizing public defender services exceeds the level experienced by the judicial branch in FY 2006.

LFD ISSUE

Executive Budget Variances from Strategic Plan

The figure below compares the 2009 executive budget request to funding estimates in the OPD strategic plan. In general, the executive budget for the 2009 biennium is consistent with the OPD strategic plan. However, some items included in the strategic plan are excluded from the executive budget or included at a reduced level. For example, the strategic plan included $2 million per year for caseload increases while the executive budget includes $1,750,000 per year for this purpose. Other items such as funding for increased contract attorney rates are included in the strategic plan but not in the executive budget. The legislature may wish to discuss with the department how differences between the executive budget request and the OPD strategic plan may impact the system.

Office of Public Defender
Comparison of Strategic Plan Funding and Executive Budget Reqeust

	Strategic Plan		Executive Budget	
Item	FY 2008	FY 2009	FY 2008	FY 2009
Current Level Operations	$16,282,859	$15,979,495	-	-
FY 2006 Base Budget			$713,444	$713,444
Statewide Present Law Adjustments			5,444,631	5,401,354
Implementation & Cost Annualization	see above	see above	10,423,240	10,124,462
Implementation & Cost Annualization Appellate Division	see above	see above	374,857	375,684
Subtotal	16,282,859	15,979,495	16,956,172	16,614,944
Increase in Caseload	2,000,000	2,000,000	1,750,000	1,750,000
Increase in Contracted Attorney Fees*	1,157,813	1,068,359		
Serious Crime Unit	394,437	367,737	0	0
Native American Case Workers (federal funds)	200,000	300,000	0	0
Fitness to Proceed Related Costs	1,000,000	1,000,000	200,000	200,000
State Special Revenue Funding	0	0	75,000	75,000
Total	$21,035,109	$20,715,591	$18,981,172	$18,639,944
Funding:				
General Fund	$ 20,835,109	$ 20,415,591	$ 18,906,172	$ 18,564,944
State Special Revenue			75,000	75,000
Federal Funds	200,000	300,000	0	0
Total	$21,035,109	$20,715,591	$18,981,172	$18,639,944

*Notes:
The OPD has discussed raising the hourly rate for contract attorneys from $60 to $80.

New Proposals

New Proposals	Fiscal 2008					Fiscal 2009				
Program	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
DP 104 - Fitness to Proceed and Related Costs										
01	0.00	200,000	0	0	200,000	0.00	200,000	0	0	200,000
DP 105 - Misc. State Special Revenue Funding										
01	0.00	0	75,000	0	75,000	0.00	0	75,000	0	75,000
Total	**0.00**	**$200,000**	**$75,000**	**$0**	**$275,000**	**0.00**	**$200,000**	**$75,000**	**$0**	**$275,000**

DP 104 - Fitness to Proceed and Related Costs - This decision package requests $400,000 general fund for the biennium to fund evaluations of individuals to assure the court that the individual is 'fit to proceed' in the process. If a public defender requests the evaluation, the public defender system is responsible for the cost.

LFD ISSUE

Predictability of Costs

These costs tend to be difficult to predict and recent statutory changes make which agency bears fiscal responsibility dependent upon the circumstances of the case. Recent statutory changes also clarify that associated costs of transportation and medical care are included in the agency's fiscal responsibility, not just the cost of the evaluation. The agency cost estimates for fitness to proceed examinations included in their strategic plan estimated these costs at $2 million per year. However, the executive budget requests $200,000 per year. The legislature may wish to:

- Request information from the OPD about the level of costs for this item experienced to date in FY 2007 and based upon that information consider what level of funding should be provided for this item
- Provide funding as a restricted appropriation so that unexpended funds revert to the general fund

DP 105 - Misc. State Special Revenue Funding - This decision package requests $150,000 state special revenue for the biennium from the public defender account provided for in 47-1-110, MCA.

LFD COMMENT

Please refer the funding section of this narrative for additional information on the sources of state special revenues supporting the public defender system.

Program Proposed Budget

The following table summarizes the total executive budget proposal for this program by year, type of expenditure, and source of funding.

Program Proposed Budget Budget Item	Base Budget Fiscal 2006	PL Base Adjustment Fiscal 2008	New Proposals Fiscal 2008	Total Exec. Budget Fiscal 2008	PL Base Adjustment Fiscal 2009	New Proposals Fiscal 2009	Total Exec. Budget Fiscal 2009	Total Exec. Budget Fiscal 08-09
FTE	3.00	5.00	0.00	8.00	5.00	0.00	8.00	8.00
Personal Services	0	477,371	0	477,371	477,908	0	477,908	955,279
Operating Expenses	0	97,029	0	97,029	97,546	0	97,546	194,575
Total Costs	**$0**	**$574,400**	**$0**	**$574,400**	**$575,454**	**$0**	**$575,454**	**$1,149,854**
General Fund	0	574,400	0	574,400	575,454	0	575,454	1,149,854
Total Funds	**$0**	**$574,400**	**$0**	**$574,400**	**$575,454**	**$0**	**$575,454**	**$1,149,854**

Program Description

The Office of the Appellate Defender provides appellate representation to clients of the statewide public defender system. The office also provides appellate representation as time allows to clients represented by public defenders working under contract with the state office of public defenders. The appellate section assists other offices in the system in the representation of indigent clients who qualify for an appointed attorney under state statutes governing post conviction relief.

The Public Defender Commission is responsible for supervision and direction of the statewide public defender system (47-1-105, MCA), which includes the appellate section. The chief public defender, who is appointed by the commission, hires and supervises the chief appellate defender, who manages and supervises the appellate defender office.

Program Highlights

Office of Public Defender
Appellate Defender Office
Major Budget Highlights

- Effective July 1, 2006 the Appellate Defender function became part of the new statewide public defender system; because of this change the base budget for the function is shown as zero
- Staffing and expenditures for the appellate defender function were 3.00 FTE and $211,428 in FY 2006 (prior to becoming part of the public defender system) and increases to 5.00 FTE and $574,400 in FY 2008, to address the appellate defender caseload

Funding

The following table shows program funding, by source, for the base year and for the 2009 biennium as recommended by the Governor.

Program Funding Table
Appellate Defender Offic

Program Funding		Budget FY 2008	% of Budget FY 2008	Budget FY 2009	% of Budget FY 2009
01000	Total General Fund	$ 574,400	100.0%	$ 575,454	100.0%
	01100 General Fund	574,400	100.0%	575,454	100.0%
Grand Total		$ 574,400	100.0%	$ 575,454	100.0%

The appellate defender function is funded entirely with general fund.

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 2008					Fiscal 2009				
	FTE	General Fund	State Special	Federal Special	Total Funds	FTE	General Fund	State Special	Federal Special	Total Funds
Personal Services					207,857					208,094
Vacancy Savings					(8,314)					(8,324)
Total Statewide Present Law Adjustments					**$199,543**					**$199,770**
DP 101 - Appellate Defender Funding Annualization	5.00	374,857	0	0	374,857	5.00	375,684	0	0	375,684
Total Other Present Law Adjustments	**5.00**	**$374,857**	**$0**	**$0**	**$374,857**	**5.00**	**$375,684**	**$0**	**$0**	**$375,684**
Grand Total All Present Law Adjustments					**$574,400**					**$575,454**

DP 101 - Appellate Defender Funding Annualization - This decision package requests $750,541 general fund and 5.00 FTE to annualize and implement the statewide office of public defender operating plan for the appellate defender office. The office became a part of the statewide public defender system effective July 1, 2006. Prior to that date the office was a separate state agency.

LFD COMMENT

Please refer to the agency summary for a discussion of the statewide public defender system and its funding.