



DRAFT

**MONTANA PUBLIC DEFENDER COMMISSION
2013 BIENNIUM
EXECUTIVE PLANNING PROCESS**

1

June 2010 (1st Revision)

2013 BIENNIUM EXECUTIVE PLANNING PROCESS

Commission Duties: Title 47-1-105 (3)

- Review and approve the strategic plan and the budget proposals submitted by the Chief Public Defender and the Administrative Director.

2013 BIENNIUM EXECUTIVE PLANNING PROCESS

Key Dates:

April 2010 - The Agency submits draft budget proposals to the Montana Public Defender Commission.

May 2010 – Agency submits draft budget proposals as a placeholder to Office of Budget and Program Planning (OBPP).

By August 2010 – The Commission approves final budget proposals and they are submitted to OBPP.

Between September – November: The Agency and Commission have discussions with OBPP about the final budget proposals and OPBB sets a final budget.

November/December: Governor submits a budget to the 2011 Legislature.

January – April 2011: The Legislature conducts hearings and approves an appropriation.

FUNDING HISTORY – 2007 BIENNIUM

- Agency began operations on July 1, 2006 (FY 2007)
- During FY 2006 the Commission & Agency formed
- 2005 Legislature provided first funding:
 - FY 2006 \$0.6 million
 - FY 2007 \$13.8 million and 90.25 FTE
- This funding was based on: current costs that entities paid for public defense prior to the establishment of the system + the establishment of central office oversight.

ACTUAL EXPENDITURES – 2007 BIENNIUM

- FY 2006 - the agency expended about \$800,000 or \$200,000 more than funded.
- FY 2007 – the agency expended about \$19.4 million or about \$5.6 million more than funded.
- During FY 2007 the agency was approved to bring on 192.5 FTE or 102.25 more than the original 90.25 to support its strategic plan.
- The agency reported 25,549 new cases entering the system – there was no accurate information for the number of cases worked by the prior entities.

THE 2009 BIENNIUM

- The agency received its entire funding request from the executive and legislative branches of:
- \$19.8 million for FY 2008 with 192.50 FTE, and
- \$20.1 million for FY 2009
- This funding was based on the information in the “Agency Strategic Plan” as approved by the Commission.

ACTUAL EXPENDITURES – 2009 BIENNIUM

- FY 2008 - the agency expended all of its \$19.8 appropriation.
- The agency reported 26,556 new cases entering the system which is a 4% increase from FY 2007
- FY 2009 – the agency expended about \$20.5 million or about \$400,000 more than funded.
- The agency reported 28,417 new cases entering the system which is a 7% increase from FY 2008
- During the biennium the agency was approved to have 192.50 FTE. Near the end of the biennium the agency was approved to use 8.00 “modified or temporary FTE’s” to handle the case load growth.

THE 2011 BIENNIUM

- The Commission submitted to the Executive:
- \$24.4 million for FY 2010 and 217.50 FTE, and
- \$24.5 million for FY 2011 and 217.50 FTE.

- This was an increase of about \$4.7 million and 25.00 new FTE over the FY 2008 base budget.

- The agency experienced a 4% increase in new cases between FY 2007 and FY 2008 and expected a similar increase in FY 2009. The actual increase was 7%.

THE 2011 BIENNIUM

- The Executive approved:
- \$20.4 million for FY 2010 and 200.50 FTE, and
- \$20.4 million for FY 2011 and 200.50 FTE.

- This was an increase of about \$600,000 and 8.00 new FTE over the FY 2008 base budget. It also included an additional 3% vacancy savings that cost the agency about \$400,000 per fiscal year.
- However, it was \$4 million less than requested.

THE 2011 BIENNIUM

- The Legislature Cut the Executive approved budget to:
- \$20.0 million for FY 2010 and 200.50 FTE, and
- \$20.0 million for FY 2011 and 200.50 FTE.

- This was an increase of about \$200,000 and 8.00 new FTE over the FY 2008 base budget BUT about \$500,000 less that was expended in the most current fiscal year (FY 2009).

- It was also \$4.4 million less than the agency proposed budget.

THE 2011 BIENNIUM

- During FY 2010 and FY 2011 the agency needed to fund past promised pay increases to its employees, pay increased amounts to other state agencies for services, make the modified employees permanent, and pay for the Executive approved Attorney Union pay ladder.
- In May 2009 the agency estimated that it was at least \$1.2 million short for FY 2010.
- The agency presented a plan to mitigate the shortfall to the Commission in July 2009 and at every meeting thereafter.

THE 2011 BIENNIUM

- Currently the agency believes that it has mitigated all but \$600,000 of the shortfall.
- In April, the agency requested from both the Executive and the Legislature that it be allowed to borrow \$600,000 from FY 2011 to cover the shortfall in FY 2010.
- **The agency will request that its next appropriation be “biennial” to provide flexibility between fiscal years.**
- The agency will continue to mitigate this shortfall, however, we may need to seek supplemental funding for the 2011 Biennium from the 2011 Legislature.

FINANCIAL AND FTE TRENDS

	FY07	FY08	FY09	FY10
Payroll	\$9.9	\$11.1	\$11.7	\$12.3
Contract Atty	6.2	5.6	5.8	5.1
Contract Other	1.2	0.9	0.9	0.9
Other	2.1	2.2	2.2	2.2
Totals	\$19.4	\$19.8	\$20.5	\$20.5
Central Office	\$1.7	\$2.0	\$1.9	\$1.6
Regions	16.9	17.0	17.7	17.9
Appellate	0.8	0.8	0.9	1.0
FTE	192.5	192.5	192.5	200.5

CASE LOAD TRENDS

	FY07	FY08	FY09	FY10
District Court	10,819	9,646	10,308	10,308
Lower Court	14,730	16,910	18,109	18,109
Totals	25,549	26,556	28,417	28,417
Number Increase		1,007	1,861	0
Percent Increase		4%	7%	0%
Four year total cases		109,000		
Four year avg #		27,250		
Four year avg % inc		2.75%		

2013 BIENNIUM – EXECUTIVE PLANNING PROCESS “THE BUDGET PROPOSALS”

	FY 2012	FY 2013
Amounts (Millions)		
Base Budget	\$20.5	\$20.5
Other Items	TBD	TBD
Agency DPs	1.5	1.8
American University	2.7	2.7
Governor's Adjustment	(0.5)	(0.5)
Total	\$ 24.2	\$24.5
FTE (0.00)		
Base Budget	200.5	200.5
Agency	8.0	10.0
American University	<u>17.0</u>	<u>17.0</u>
Total	225.5	227.5

2013 BIENNIUM – EXECUTIVE PLANNING PROCESS “THE BUDGET PROPOSALS”

STEP 1: THE BASE BUDGET

- The agency will request that its base budget be funded. It is expected to be about \$20.5 million & is the amount that we expend during this fiscal year (FY 2010)
- The Commission is tasked to approve this amount for submission to the Executive.

2013 BIENNIUM – EXECUTIVE PLANNING PROCESS “THE BUDGET PROPOSALS”

STEP 2: OTHER EPP ITEMS

- Will there be increases/decreases requested by other agencies that provide services to the agency and will the agency be funded for these increases?
- Will there be pay increases for our employees?
- Will the agency receive inflation/deflation adjustments for certain purchases?
- These amounts are added by the Executive during the budget process.

2013 BIENNIUM – EXECUTIVE PLANNING PROCESS “THE BUDGET PROPOSALS”

STEP 3: DECISION PACKAGES

- These are separate budget request that are developed by the agency under the direction of the Commission and submitted to the Executive.
- The Executive can approve them as is, adjust them, or disapprove them.
- We need to have them in final form by mid-August 2010.

2013 BIENNIUM – EXECUTIVE PLANNING PROCESS “THE BUDGET PROPOSALS”

STEP 4: FUNDING

- The agency determines what kind of funding is needed to support the entire budget submission.
- The agency currently uses:
 - General Fund (Mostly personal & property taxes)
 - State Special Revenue (Fees from clients)
 - Federal Funds (Usually special projects/training)

2013 BIENNIUM – EXECUTIVE PLANNING PROCESS “THE BUDGET PROPOSALS”

STEP 5: EXECUTIVE SETS TARGETS

- The Executive estimates the amount of revenue available during the biennium for its use and sets allocations or targets for each agency.
- The Budget Office meets with Agency Directors to communicate the target and speak about operational challenges.
- The Budget Office welcomes members of the Commission to offer feedback regarding the target (in person or in writing).

2013 BIENNIUM – EXECUTIVE PLANNING PROCESS “THE BUDGET PROPOSALS”

**STEP 6: EXECUTIVE SENDS A BUDGET FOR
THE BIENNIUM TO THE LEGISLATURE**

2013 BIENNIUM – EXECUTIVE PLANNING PROCESS “THE BUDGET PROPOSALS”

STEP 7: THE LEGISLATURE MEETS TO REVIEW AND APPROVE OR ADJUST THE EXECUTIVE’S BUDGET

- The Legislature forms Appropriation and Budget Committees to hear testimony.
- Testimony is heard from many sources including: the Executive, Commissioners, Boards, Elected Officials, Agency Directors and other employees, Vendors, Contractors, and the General Public.

2013 BIENNIUM – EXECUTIVE PLANNING PROCESS “THE BUDGET PROPOSALS”

**STEP 8: THE LEGISLATURE ALSO APPROVES
SUPPLEMENTAL FUNDING FOR THE PRIOR
BIENNIUM**

2013 BIENNIUM – EXECUTIVE PLANNING PROCESS “THE BUDGET PROPOSALS”

THE DECISION PACKAGES

PRESENT LAW
VS
NEW PROPOSALS

2013 BIENNIUM – DECISION PACKAGES

PACKAGE NO 1: INCREASED CASELOAD – TO SERVE PRESENT LAW

Sample: 9.00 New FTE Attorney Positions (7.00 in FY 12 and an additional 2.00 in FY 13)

The estimate is \$528,000 for FY 12 and \$700,000 for FY 13

- This is to make permanent any temporary positions that the agency uses to provide services to its clients as per present law requirements and to allow for future growth.
- If caseloads grow by about 1000 per year we will need 2.00 new positions in FY 2012 and another 2.00 new positions in FY 2013.
- **APPROVED BY THE PDC**

2013 BIENNIUM – DECISION PACKAGES

PACKAGE NO 2: ADJUST CAREER LADDER FOR ATTORNEYS TO SERVE PRESENT LAW

- The agency requests \$250,000 for FY 2012 and \$400,000 for FY 2013 to cover both (a) market adjustments to the career ladder and (b) attorney movement within the ladder.
- This amount will be based on a study prepared by a team comprised of agency management and representatives from the attorneys' union.
- The study looks at salaries for similar positions held by attorneys employed by various county attorney offices throughout the state. This will keep OPD's attorney salaries in line with the prosecution.
- **APPROVED BY THE PDC – this amount is for both Programs 1 and 2.**

2013 BIENNIUM – DECISION PACKAGES

PACKAGE NO 3: DEATH PENALTY DEFENSE FUND TO SERVE PRESENT LAW

- The state of Montana has a death penalty. These cases are very expensive and would decimate the agency's base funding.
- This fund would be used only for cases whereby the prosecution is seeking the death penalty and costs actually occur.
- The request is for \$500,000 for each fiscal year.
- **APPROVED BY THE PDC**

2013 BIENNIUM – DECISION PACKAGES

PACKAGE NO 4: RECORDS MANAGEMENT FUNCTION TO SERVE PRESENT LAW

- The agency is required by state law to maintain files as per rules set by the Secretary of State.
- The agency has over 28,000 new client cases per year coming into the system and maintains records for 3 to 10 years or more.
- The agency has federal funds to do the initial set up of the records management system and begin a paperless project.
- The agency requests 1.00 FTE position and \$43,000 per fiscal year to oversee and manage this requirement. The salary includes benefits and insurance.
- The agency will need to develop a requests for ongoing operating funds.
- **APPROVED BY THE PDC**

2013 BIENNIUM – DECISION PACKAGES

PACKAGE NO 5: COMPUTERS AND SERVERS TO SERVE PRESENT LAW

- The agency was on a 4 year replacement cycle for computers but dropped this program during FY 2010 due to funding issues.
- The agency estimates it needs 50 computers and \$75,000 for each fiscal year.
- The agency's servers were purchased in its 1st year of operation and are out of their warranty period and out of storage space.
- The agency needs 8 servers at \$15,000 per server or ½ in each fiscal year or \$60,000 per year.
- **APPROVED BY THE PDC**

2013 BIENNIUM – DECISION PACKAGES

PACKAGE NO 6: OPERATIONS MANAGER TO SERVE PRESENT LAW

- The Commission requests that the Chief Public Defender hire an Operations Manager to oversee and report on the legal operations of the system.
- The salary with insurance and benefits is estimated to be about \$100,000 per fiscal year and 1.00 FTE slot.
- **NOT APPROVED BY THE PDC AS A SEPARATE PACKAGE BUT MAYBE INCLUDED IT AS PART OF DP 9 - BY A VOTE OF 6 yes to 1.**

2013 BIENNIUM – DECISION PACKAGES

PACKAGE NO 7: 4% PERSONAL SERVICES REDUCTION

- The Executive requests that the Agency reduce its general fund payroll by 4% or \$(475,257)
 - Public Defender \$(453,969)
 - Appellate Defender \$(21,288)
- We can cut entire positions or just parts. Our average cost per position is about \$59,300 which equates to 8.00 FTE positions.
- We also expect to have a vacancy savings (4 or 7%)
- We may be able to cut contract attorney dollars to get to the same reduction or part of payroll and contract.
- **NOT A PDC ACTION ITEM – Executive directed.**

2013 BIENNIUM – DECISION PACKAGES

The next set of decision packages are to fund activities necessary to adopt the recommendations in the American University Report.

2013 BIENNIUM – DECISION PACKAGES TO ADDRESS THE AMERICAN UNIVERSITY REPORT

PACKAGE NO 8: INCREASE CONTRACT ATTORNEY RATE HOURLY RATE

- The American University Report requests that the State of Montana pay contract attorneys at the same level of the Federal Defenders.
- The Federal rate is \$125 per hour.
- Each \$1 increase is about \$100,000 per year.
- The current rate is \$60/hour.
- The increase is \$65/hour or \$6.5 million per year.
- Please note that the current GANTT chart shows \$5 million or \$110/hour, however, the new Federal rate is \$125/hour.
- **PDC APPROVED THIS AFTER MOVING THE ANNUAL RATE TO \$75/hr FOR 2012 AND INFLATE THEREAFTER BY SOME INFLATOR.**
- The amount is estimated at about \$1.5 million for each FY.

2013 BIENNIUM – DECISION PACKAGES TO ADDRESS THE AMERICAN UNIVERSITY REPORT

PACKAGE NO 9: ELIMINATE ALL CASELOADS FOR AGENCY MANAGERS

- The American University report recommends that the agency reduce caseloads for attorneys that manage.
- If the agency were to reduce the caseloads to zero, then it would need to hire 16.00 FTE positions and provide office space, furniture, computer, and communication equipment, training, travel, etc.
- The costs of 16.00 attorney positions with benefits, insurance, and office set up is estimated to be \$1,130,000 per year.
- This amount does not include funding and positions for additional support staff.
- If the Commission decides to move the requirement above zero this amount would be reduced.
- **PDC APPROVED WITH INSTRUCTIONS AS FOLLOWS: update the costs using current caseloads as the managers are lowering them now and proceed as per Chief's caseload limit policy.**
- The amount is estimated at \$1.1 million for each FY.

2013 BIENNIUM – DECISION PACKAGES TO ADDRESS THE AMERICAN UNIVERSITY REPORT

PACKAGE NO 10: PROVIDE FOR EMERGENCY ON CALL ATTORNEYS 24x7

- The American University Report recommends that the agency provide 24x7 on-call attorney services throughout the state.
- If the agency were to provide this service for the entire state, current estimates would require the need to hire 6.00 FTE positions and provide office space, furniture, computer, and communication equipment, training, travel, etc.
- The costs of 6.00 attorney positions with benefits, insurance, and office set up is estimated to be \$423,750 per year.
- This amount does not include funding and positions for additional support staff.
- **PDC DID NOT APPROVE: move this to the 2015 biennium**

2013 BIENNIUM – DECISION PACKAGES TO ADDRESS THE AMERICAN UNIVERSITY REPORT

PACKAGE NO 11: ESTABLISH SEPARATE CONFLICT OFFICE

- The American University Report recommends that the agency establish a separate conflict office.
- If the state were to provide this service the current estimates would require the need to hire 12.00 FTE positions, provide office space, furniture, computer, and communication equipment, training, travel, etc.
- The costs of 12.00 positions with benefits, insurance, and office set up is estimated to be \$330,313 per year.
- The total is reduced by about \$300,000 that is currently expended on contractor costs.
- **PDC DID NOT APPROVE:** delete this as its not a PDC issue but a legislative issue if the courts decide that a conflict exists. Laws will need to change and a fiscal impact computed.

2013 BIENNIUM – DECISION PACKAGES TO ADDRESS THE AMERICAN UNIVERSITY REPORT

PACKAGE NO 12: SEPARATE THE APPELLATE OFFICE FROM THE PUBLIC DEFENDER

- The American University Report recommends that the State of Montana separate the Appellate Office from the Office of the State Public Defender.
- Current estimates would require funding in the amount of \$350,000 per year.
- **PDC DID NOT APPROVE; delete this as its not a PDC issue but a legislative issue if the courts decide that a conflict exists. Laws will need to change and a fiscal impact computed.**

2013 BIENNIUM – DECISION PACKAGES TO ADDRESS THE AMERICAN UNIVERSITY REPORT

PACKAGE NO 13: ESTABLISH AND STAFF AN APPELLATE BRIEF BANK

- The American University Report recommends that the Appellate Office establish a brief bank.
- The current estimate is 2.00 FTE and \$98,125 per fiscal year in payroll and operating costs.
- This cost does not include the costs associated with purchasing software or hardware (server space).
- **NOT APPROVED BY THE PDC: Either work this into current operations or move it to 2015 biennium.**

2013 BIENNIUM – DECISION PACKAGES TO ADDRESS THE AMERICAN UNIVERSITY REPORT

PACKAGE NO 14: ADJUST ATTORNEY PAY LEVELS TO THAT OF OTHER ATTORNEYS WORKING IN STATE GOVERNMENT

- There is no current estimate for this decision package as it appears to be in conflict with decision package No 2 “Adjust Career Ladder for Attorneys to Serve Present Law.”
- Package No 2 aligns OPD attorneys with the prosecution while Package No 14 aligns them with other state attorneys.
- **PDC DID NOT APPROVE: keep DP 2 and delete this item.**

2013 BIENNIUM – DECISION PACKAGES TO ADDRESS THE AMERICAN UNIVERSITY REPORT

PACKAGE NO 15: SECRETARY TO THE COMMISSION

- The American University Report recommends that the Commission hire its own full time secretary.
- This item would need 1.00 FTE and payroll in the amount of about \$43,000 for each FY.
- This estimate does not include operating costs.
- **PDC APPROVED THIS ITEM**

2013 BIENNIUM – DECISION PACKAGES TO ADDRESS THE AMERICAN UNIVERSITY REPORT

PACKAGE NO 16: PROVIDE LEXIS TO ALL CONTRACT ATTORNEYS

- This decision package would provide LEXIS to all contract attorneys that do not have access to it.
- Currently the agency provides a license to all FTE Attorneys and to 50 Contract Attorneys.
- We would need to pay LEXIS an additional \$12,000 per fiscal year to bring on the next block of 50 licenses; however, we only have 12 attorneys on a waiting list.
- **PDC DID NOT APPROVE THIS ITEM: delete the DP and fit within current operations as necessary**

2013 BIENNIUM – DECISION PACKAGES

Any other decision packages? PDC DID NOT IDENTIFY ANY OTHER ITEMS.

Any changes to those listed? SEE EACH DP

Other direction from the Commission? NONE

Do you want to prioritize your budget items? NOT AT THIS TIME

Please remember that if you recommend that something be funded now (FY 2010 or 2011) it is not a decision package but a potential part of a supplemental request for this biennium.

2013 BIENNIUM – PRIORITY OF DP'S

Please set your priority by decision package?