

OFFICE OF THE STATE PUBLIC DEFENDER



STEVE BULLOCK
GOVERNOR

STATE OF MONTANA

Phone: (406) 496-6080
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www.publicdefender.mt.gov

44 WEST PARK STREET
BUTTE, MONTANA 59701

October 15, 2014

Dan Villa, Budget Director
Office of Budget and Program Planning
P.O. Box 200802
Helena, MT 59620-0802

RE: Preparing for the Supplemental Appropriation Bill—HB 3

Dear Mr. Villa:

Enclosed with this letter are letters from each program manager under the Office of the State Public Defender. These letters provide a request for supplemental funding for the 2015 biennium and the reasons for the shortfalls that create the need for additional funding. The letters request the following amounts by program:

Program 1 requests \$3.2 million
Program 2 requests \$0.6 million
Program 3 requests \$2.5 million

Total OPD request \$6.3 million

Please feel free to contact me if you need additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "H. J. Freebourn".

Harry J. Freebourn
Administrative Director

cc: Richard E. Gillespie, Chair, Montana Public Defender Commission
Brent Doig, Office of Budget and Program Planning

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STEVE BULLOCK
GOVERNOR

WILLIAM F. HOOKS
CHIEF PUBLIC DEFENDER

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Dan Villa, Budget Director
Office of Budget and Program Planning
P.O. Box 200802
Helena, MT 59620-0802

RE: Preparing for the Supplemental Appropriation Bill—HB 3

Dear Mr. Villa:

Thank you for the opportunity to submit our request for a supplemental appropriation under HB 3 in the upcoming legislative session. During the 2015 biennium, the Public Defender Program (Program 1) of the Office of the State Public Defender (OPD) expects funding shortfalls in the amount of \$3.2 million. This supplemental request is due to conditions beyond our control.

Caseload growth is beyond our control

To address caseload growth the agency added 23 modified FTE and experienced a significant increase in contract attorney costs. Program 1 filed motions in Helena courts seeking relief from excessive caseloads, which were denied by the courts. Caseload growth represents about \$3.1 million of this supplement request. The average caseload growth during the past three fiscal years has been around 5%. Prior to fiscal 2012 the average new case inflow to the agency was around 28,000 per year. In fiscal 2012 new cases jumped to 31,000, and then to 32,000 in fiscal 2013 and 2014. It appears that we have developed a new plateau as case inflows are not decreasing.

District court cases, which tend to be the most expensive, grew from around 10,000 prior to fiscal 2012 to about 12,000 in fiscal 2012 and beyond. Dependent and neglect (DN) cases, a subset of district court cases, averaged around 2,200 cases per year prior to fiscal 2012 and then climbed to over 3,000 per year. The average duration for a DN case has grown from about one year to about one and a half years. In fact, the agency is still paying for some active DN cases that date from prior to agency inception in 2006. Most DN cases are handled by the Conflict Program; this is a major contributor to their need for supplemental funding as well.

Capital case costs

The agency expended about \$100,000 of its general appropriation for death penalty cases because the capital defense funding for the biennium was exhausted during fiscal 2014. However, capital case activity on existing cases ended as of May, 2014.

Mr. Dan Villa
October 15, 2014
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Turnover

As reported in a prior communication, Program 1 experienced significant turnover in FY 2012: 27% turnover in the attorney workforce (31 of 116 attorneys) and 36% turnover in the support staff workforce (25 of 69 individuals). Low pay and excessive workload were cited by most as their reasons for departure. Turnover during fiscal 2014 in the attorney ranks decreased to about 9% but turnover in the support staff workforce remains in the double digits. The low turnover in the attorney workforce eroded any vacancy savings.

Mitigation effort for all programs

The agency was able to mitigate some of the effects of caseload growth, capital case expenditures, and turnover during FY 2014, but still needed to access three other sources of funds to cover a \$2.6 million shortfall:

- (1) a fiscal transfer of \$1.6 million from fiscal 2015 to fiscal 2014;
- (2) SB 410 funds in the amount of \$625,000 to cover the payroll costs associated with the modified FTE; and
- (3) funds from the personal services contingency account in the amount of \$360,000 to help cover the lack of vacancy savings and to pay out leave balances due to turnover.

The conditions that contributed to this shortfall in fiscal 2014 are still prevalent in fiscal 2015.

Please feel free to contact me or Administrative Director Harry Freebourn if you need additional information.

Sincerely,



William F. Hooks
Chief Public Defender

cc: Richard E. Gillespie, Chair, Montana Public Defender Commission



Steve Bullock
Governor

APPELLATE DEFENDER OFFICE

Office of the State Public Defender
STATE OF MONTANA

Wade Zolynski
Chief Appellate Defender

October 15, 2014

Dan Villa, Budget Director
Office of Budget and Program Planning
P.O. Box 200802
Helena, MT 59620-0802

RE: Preparing for the Supplemental Appropriation Bill—HB 3

Dear Mr. Villa:

Thank you for the opportunity to submit our request for a supplemental appropriation under HB 3 in the upcoming legislative session. During the 2015 biennium, the Appellate Defender Program of the Office of the State Public Defender expects a funding shortfall of approximately \$600,000 due to conditions beyond our control.

Workload Increase.

The appellate program's workload has increased by 42% over the past three fiscal years. Due to the amount of time appellate cases remain active, increased workload in one fiscal year negatively impacts the agency for several years to come. For instance, although it is currently FY 2015, the appellate program is actively working on cases from FY 2012, FY 2013, and FY 2014. The significant workload increase, and the lack of resources needed to accommodate it, has delayed the Montana Supreme Court's appellate process. This delay caused Chief Justice McGrath to express in a letter to your office his "on going concern" regarding the appellate program's "staff shortages" and the "concomitant impacts these shortages have on [the Supreme Court's] responsibility to process cases in a timely fashion." Chief Justice McGrath continued stating, "I am satisfied these employees are hard-working, diligent employees, but they do not have adequate resources to conduct their duties in a timely fashion." To close out fiscal 2014, the program needed to transfer \$190,000 in authority from fiscal 2015. The increased workload also caused increased transcript costs. These costs cannot be avoided. Finally, to help cover some of the increased workload, the appellate program added a temporary position and assigned more cases to contract attorneys. Despite these actions, attorneys within the appellate program continue to experience workload levels well above national recommendations. The conditions that existed in the appellate program during FY 2014 are expected to continue in FY 2015. As of today's date, the appellate program has opened four more cases than it had this time last fiscal year. Additionally, the program expects the sharp increase of dependent and neglect cases to continue.

Excessive Turnover.

20% of the attorney staff and 33% of the support staff turned over in FY 2014. Two additional attorneys have resigned in FY 2015. Thus, the appellate program has experienced a 40% attorney turnover rate this biennium. As Chief Justice McGrath noted in his letter, "It is not unusual for an assistant appellate defender to take a new position in state government for a salary increase in excess of \$20,000. The staff is overworked and underpaid." As a result of excessive turnover, the appellate program had to increase its use of contract attorney services because remaining internal attorneys

could not handle their own workload on-top of the departing attorney workload. The conditions that existed in the appellate program during FY 2014 are expected to continue in FY 2015.

This supplemental funding will pay for temporary internal personnel, contract attorneys, and transcript costs.

Please feel free to contact me or Administrative Director Harry Freebourn if you need additional information.

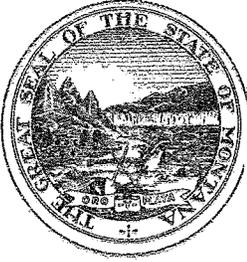
Sincerely,



Wade Zolynski
Chief Appellate Defender

cc: Richard E. Gillespie, Chair, Montana Public Defender Commission

OFFICE OF THE STATE PUBLIC DEFENDER



STEVE BULLOCK
GOVERNOR

KRISTINA NEAL
CONFLICT COORDINATOR

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RE: Preparing for the Supplemental Appropriation Bill—HB 3

Dear Mr. Villa:

Thank you for the opportunity to submit a request for a supplemental appropriation under HB 3 in the upcoming legislative session. During the 2015 biennium, the Conflict Program (Program 3) of the Office of the State Public Defender expects funding shortfalls in the amount of \$2.5 million. This supplemental request is due to conditions beyond our control.

The Conflict Program is a new program created near the end of fiscal 2014. This program receives cases from both Programs 1 and 2 (public defender and appellate programs, respectively) that are considered to be conflicts. Prior to the establishment of Program 3, I expended funds from the appropriations for Programs 1 and 2. Therefore, my reasons for the need for supplemental funding are the same as those expressed by those programs in their letters to you regarding uncontrollable caseloads. Contract costs represent the majority of Program 3's expenditures, with dependent and neglect cases being a significant factor.

Please feel free to contact me or Administrative Director Harry Freebourn if you need additional information.

Sincerely,

A handwritten signature in cursive script that reads "Kristina Neal".

Kristina Neal
Conflict Coordinator

cc: Richard E. Gillespie, Chair, Montana Public Defender Commission