

ANALYSIS OF THE NEW JERSEY
FISCAL YEAR 2002 - 2003 BUDGET



OFFICE OF THE PUBLIC DEFENDER
AND LEGAL SERVICES GRANTS

PREPARED BY

OFFICE OF LEGISLATIVE SERVICES

NEW JERSEY LEGISLATURE

APRIL 2002

NEW JERSEY STATE LEGISLATURE

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OFFICE OF THE PUBLIC DEFENDER AND LEGAL SERVICES GRANTS

Budget Pages..... C-19; D-502 to D-505; F-2

Fiscal Summary (\$000)

| | Expended FY 2001 | Adjusted. Appropriation FY 2002 | Recommended FY 2003 | Percent Change 2002-03 |
|----------------|---------------------|---------------------------------------|------------------------|------------------------------|
| State Budgeted | \$87,237 | \$90,960 | \$91,320 | 0.4% |
| Federal Funds | 1,469 | 1,451 | 1,451 | 0.0% |
| <u>Other</u> | <u>298</u> | <u>875</u> | <u>375</u> | <u>(57.1)%</u> |
| Grand Total | \$89,004 | \$93,286 | \$93,146 | (0.2)% |

Personnel Summary - Positions By Funding Source

| | Actual FY 2001 | Revised FY 2002 | Funded FY 2003 | Percent Change 2002-03 |
|-----------------|-------------------|--------------------|-------------------|------------------------------|
| State | 929 | 939 | 982 | 4.6% |
| Federal | 0 | 0 | 0 | — |
| <u>Other</u> | <u>2</u> | <u>2</u> | <u>2</u> | <u>0.0%</u> |
| Total Positions | 931 | 941 | 984 | 4.6% |

FY 2001 (as of December) and revised FY 2002 (as of September) personnel data reflect actual payroll counts. FY 2003 data reflect the number of positions funded.

Introduction

The data above summarize two functionally similar but distinct programs budgeted in the Department of the Treasury, the **Office of the Public Defender and Legal Services of New Jersey**, both of which provide legal representation to indigents. Specifically, the Office of the Public Defender provides trial and appellate legal services to: criminal defendants; juveniles charged with delinquency offenses; individuals making application to the Intensive Supervision Program of the Administrative Office of the Courts; individuals involuntarily committed to mental hospitals; abused and neglected children; and civilly committed sexual offenders. The Office of the Public Defender is "in but not of" the Department of the Treasury.

The second program, Legal Services of New Jersey, is an independent non-profit corporation which provides free legal assistance to indigents in a broad range of civil matters, primarily concerning issues related to housing, family, the consumer, and income maintenance. Legal Services is largely supported by State and federal grants, Interest on Lawyers' Trust Accounts (IOLTA) revenues,

Introduction (Cont'd)

and to a lesser extent, private contributions.

Key Points

PROTECTION OF CITIZENS' RIGHTS

- ! The Governor's budget recommends funding of \$79.3 million for the Office of the Public Defender, an increase of \$360,000 (0.5%) over the FY 2002 adjusted appropriation.
- ! A continuation appropriation of \$12 million in State Grants-In-Aid and \$1.5 million in federal funds is recommended for Legal Services of New Jersey, unchanged from the FY 2002 adjusted appropriation.
- ! Legal Services grants are distributed through the Treasurer's Office, not through the Office of the Public Defender. The \$12 million recommended appropriation is allocated directly to fourteen local field programs (\$4 million) which provide direct services to clients in all 21 counties, and to the Statewide coordinating office in Edison, N.J. (\$8 million) which in turn distributes grants to the regional offices.

The Office of the Public Defender is "in but not of" the Department of the Treasury. As a result, identical information is included as part of the Department of the Treasury FY 2003 analysis.

Program Description and Overview

The Office of the Public Defender and the Legal Services program are functionally related in that both offices provide legal services to indigent clients. The Office of the Public Defender assists low income residents in criminal matters; the Office of Legal Services assists them in civil matters. The Office of the Public Defender is a State office staffed by State employees. Its primary source of funds is the State General Fund. Legal Services of New Jersey is a private non-profit corporation staffed by private attorneys. Its funding is primarily from three sources: State and federal grants and IOLTA fees.

OFFICE OF THE PUBLIC DEFENDER

The Office of the Public Defender (OPD) provides legal representation to indigent criminal defendants formally charged with an indictable offense; to juveniles charged with delinquency offenses when a finding of guilt could result in an institutional commitment; to individuals who are applying to the Administrative Office of the Courts' Intensive Supervision Program; to abused children in Family Court proceedings; and to the indigent mentally ill. It also provides mediation and other dispute resolution services to resolve public interest disputes and civil resolution services to resolve public interest and civil litigation.

The OPD consists of the following programs:

| Program | FY 2003 Recommended Appropriation | FY 2003 Funded Positions Budget Estimate |
|--|---|--|
| Trial Services to Indigents and Special Programs | \$65,952,000 | 822 |
| Appellate Services to Indigents | 7,617,000 | 70 |
| Mental Health Screening Services | 3,161,000 | 53 |
| Dispute Settlement | 342,000 | 7 |
| Administration and Support Services | 2,248,000 | 32 |
| Total, Office of the Public Defender | \$79,320,000 | 984 |

State funding of \$79.3 million will be supplemented by \$1.8 million in federal and other funds in FY 2003. The recommended State appropriation is largely unchanged from FY 2002 adjusted appropriation. An increase in the amount of \$847,000 to comply with Kinship Guardianship legislation (P.L. 2001, C. 250) is offset by two budget reductions, to leave a net increase of \$360,000. The budget reductions are \$375,000 for salaries and \$112,000 for equipment, a total reduction of \$487,000.

Over 80 percent of the OPD's funding, about \$66 million, is appropriated to the 22 regional offices and programs of the **Trial Services to Indigents and Special Programs** budgetary unit. Through this program, the Public Defender represents indigent criminal defendants; indigent defendants in Megan's Law notification hearings; and individuals who are either

Program Description and Overview (Cont'd)

applying to the Intensive Supervision program or who are in the program and have violated probation. Through its **Law Guardian program**, the Public Defender also represents abused and neglected children in Family Court proceedings. The program expects caseloads to meet or exceed those serviced last year.

The Law Guardian program, much like the entire Public Defender office, has a reactive budget: the activity of prosecutors and court assignments drives the caseload, and the budget of the Office as a whole. As a result of increasing caseload, the OPD began this year with approximately 98,000 trial level cases, and will be providing representation to over 177,000 clients this year.

In 1998, the Law Guardian (Child Abuse or "Title 9") program was expanded to respond to the increased caseload associated with the implementation of the federal "Adoption and Safe Families Act of 1997," P.L. 105-89, the purpose of which was to speed the adoption of children placed in foster care. As a result of the act, the Office began representing both children and indigent parents in so-called "Title 30" cases in which the parental rights of biological parents are sought to be terminated in certain cases.

In 1999, pursuant to P.L. 1999, c.53 (N.J.S.A.9:3-45.7 et seq.), the Office created the **Parental Representation Unit (PRU)** within the Law Guardian program to provide attorneys for indigent parents in some 1,200 termination of parental rights proceedings annually. This enactment included a provision that the PRU, through an internal administrative unit, be responsible for the supervision, evaluation and selection of non-staff counsel who represent indigent parents separately from the Law Guardian staff.

The OPD received a supplemental appropriation of \$873,000 in FY 2002 to implement Kinship Legal Guardianship services within the Law Guardian program (pursuant to enabling legislation P.L. 2001, c.250). The Governor's FY 2003 request for this item reflects a full year of funding, at \$1.7 million. A full description is included in the Significant Changes section of this document.

To carry out its responsibilities related to these legal services, the recommended Special Purpose appropriation for Continuous Representation - Title 9 to Title 30 is \$4.9 million, unchanged from the FY 2002 adjusted appropriation. With these resources and the full year of funds for Kinship Legal Guardianship services, the OPD projects a 25% increase in cases brought to closure in FY 2003.

The **Appellate Services to Indigents** is recommended to receive \$7.6 million in FY 2003. This appropriation intends to support 70 full-time staff, in addition to providing for support services (such as transcripts, court reports and experts) and the cost of pool attorneys for an estimated 652 cases. This program provides legal representation to indigent defendants on direct appeal of a criminal conviction or sentence, including all defendants sentenced to death. State and federal courts have held that the right to this representation is constitutionally guaranteed.

The Appellate Services program should reduce its backlog of appeals cases before the Superior Court, Appellate Division, this year. The workload of the unit is expected to remain high as the number of new cases added annually is projected to remain constant. The rate of case closure by staff attorneys will continue at 38.4 in FY 2003.

The **Mental Health Screening Services** program is recommended to receive \$3.2 million

Program Description and Overview (Cont'd)

in FY 2003, unchanged from the FY 2002 adjusted appropriation, funding 53 positions within the OPD's Division of Mental Health. The division provides mandated representation for indigent individuals in initial commitment, periodic review and placement hearings at State, county and private psychiatric hospitals, as well as at Children's Crisis Intervention Services units throughout the State. Through its Guardianship program, Mental Health also represents developmentally disabled individuals in guardianship proceedings.

The recommendation for Mental Health continues a Special Purpose appropriation of \$602,000 for the representation of civilly committed sexual offenders. Effective in 1999, pursuant to P.L. 1998, c.71, the Division of Mental Health must provide representation to all indigent individuals who now meet the definition of a "Sexually Violent Predator", detained by the State despite having completed their criminal offense sentence. Workload and case closure are expected to remain at current levels.

Continuation funding of \$342,000 is recommended for the **Office of Dispute Settlement (ODS)** which was created in 1974 to provide mediation and other neutral dispute resolution services to resolve public issues such as environmental clean up, insurance coverage, medical malpractice, housing warranty disputes and resource allocation. The ODS is partially supported by revenues generated through inter-agency contracts, grants and charging fees for both its mediation and training services. ODS makes presentations and provides training in dispute resolution to the judiciary, Bar and government entities. Training programs have been conducted for staff of the Board of Public Utilities, the Attorney General's Office, the Department of Personnel, the Department of Environmental Protection and Bar Associations.

According to the Department's budget request, ODS' activities have produced a number of benefits, including: helping the Court relieve its civil case backlog; saving hundreds of hours of judicial time; saving millions of dollars in transaction costs for litigants; and producing "higher" quality settlements.

During FY 2001, over 950 new cases were referred to ODS, a dramatic rise from the prior year's caseload of 570 cases. Of these, over 200 were complex court cases involving claims totaling in excess of \$50 million. The settlement rate for cases mediated by ODS was over 75%. In addition, as part of its New Home Owner Warranty program, which resolves disputes between new home owners and builders, ODS resolved over 370 cases during FY 2001. Despite handling an increasing caseload over the past several years, Dispute Settlement maintains 7 positions, and has increased its number of disposed cases per representative.

Finally, continuation funding of \$2.2 million is recommended for **Administration and Support Services**, a \$400,000 decrease from the FY 2002 adjusted appropriation. This amount will be used to provide centralized supervision, training, policy development and analysis to the OPD's 30 regional offices. In addition to providing these centralized services, the administrative unit also allocates attorneys, investigative, clerical and other resources throughout the State and conducts staff and caseload evaluations. Support services is recommended to decrease to 32 funded positions, from 43.

PUBLIC DEFENDER - HISTORY

Pursuant to Reorganization Plan No. 004-1998, the Office of the Public Defender was transferred from the Department of State to the Department of the Treasury. The OPD was created pursuant to P.L. 1967, c.43 in but not of the Department of Institutions and Agencies to

Program Description and Overview (Cont'd)

provide representation for indigent defendants in criminal cases. (Prior to 1967, legal representation for indigent defendants, as guaranteed by the U.S. Constitution, was handled in New Jersey on a case-by-case basis.) In 1974, when the Department of the Public Advocate (DPA) was created (P.L. 1974, c.27), the OPD became part of that department. Pursuant to the Public Advocate Restructuring Act (P.L. 1994, c.58), the DPA was abolished and the Office of the Public Defender was placed in but not of the Department of the State. In 1998, it was transferred to the Department of the Treasury.

The Governor's budget request includes plans to reinstate the Department of the Public Advocate. If approved, it is expected that the Office of Dispute Settlement would be removed from the OPD and restored to its former organizational assignment within the DPA as the Office of Dispute Settlement and Mediation.

STATE LEGAL SERVICES OFFICE - LEGAL SERVICES OF NEW JERSEY

The **Legal Services Program** was transferred from the Department of Community Affairs to the Department of the Treasury in FY 1999 pursuant to Reorganization Plan No. 002-1998. Legal Services programs are the primary means by which society provides free legal assistance in civil matters to people who cannot afford the cost of legal representation.

Although the types of cases handled vary from county to county, Legal Services of New Jersey provides support to indigents primarily in four areas:

- ! Housing - primarily tenancy and eviction matters;
- ! Family Matters - divorce, separation, domestic violence, child support and termination of parental rights;
- ! Income Maintenance - Social Security, Work First New Jersey, Food Stamps and other such programs;
- ! Consumer Matters - bankruptcy, collections, warranties, unfair sales practices and public utilities.

To a lesser extent, other cases concern education, health, employment and juvenile matters.

New Jersey has fifteen Legal Services programs: fourteen local field programs, which provide legal services to clients in all 21 counties, and Legal Services of New Jersey, the Statewide coordinating office in Edison. The Legal Services staff is 200 attorneys and additional support, statewide. Each program is a not-for-profit corporation governed by a board of trustees which includes members of the local bar association as well as representatives of the client population.

In 2000, Legal Services programs closed more than 49,000 new cases, of which 2,000 were handled by volunteer private attorneys on a *pro bono* basis. According to information published by Legal Services, approximately four out of five of these cases were resolved without litigation. Currently, Legal Services is focused on several special projects which address a variety of issues, such as domestic violence representation; immigration; family representation involving disputes with the Division of Youth and Family Services; Supplemental Security Income; health

Program Description and Overview (Cont'd)

care access, and the establishment of the New Jersey Poverty Research Institute. In addition, as part of a multi-year, statewide re-engineering effort to improve and streamline its operations, Legal Services has established a statewide legal hotline (1-888-LSNJ-LAW) which offers brief service, advice and referrals over the phone.

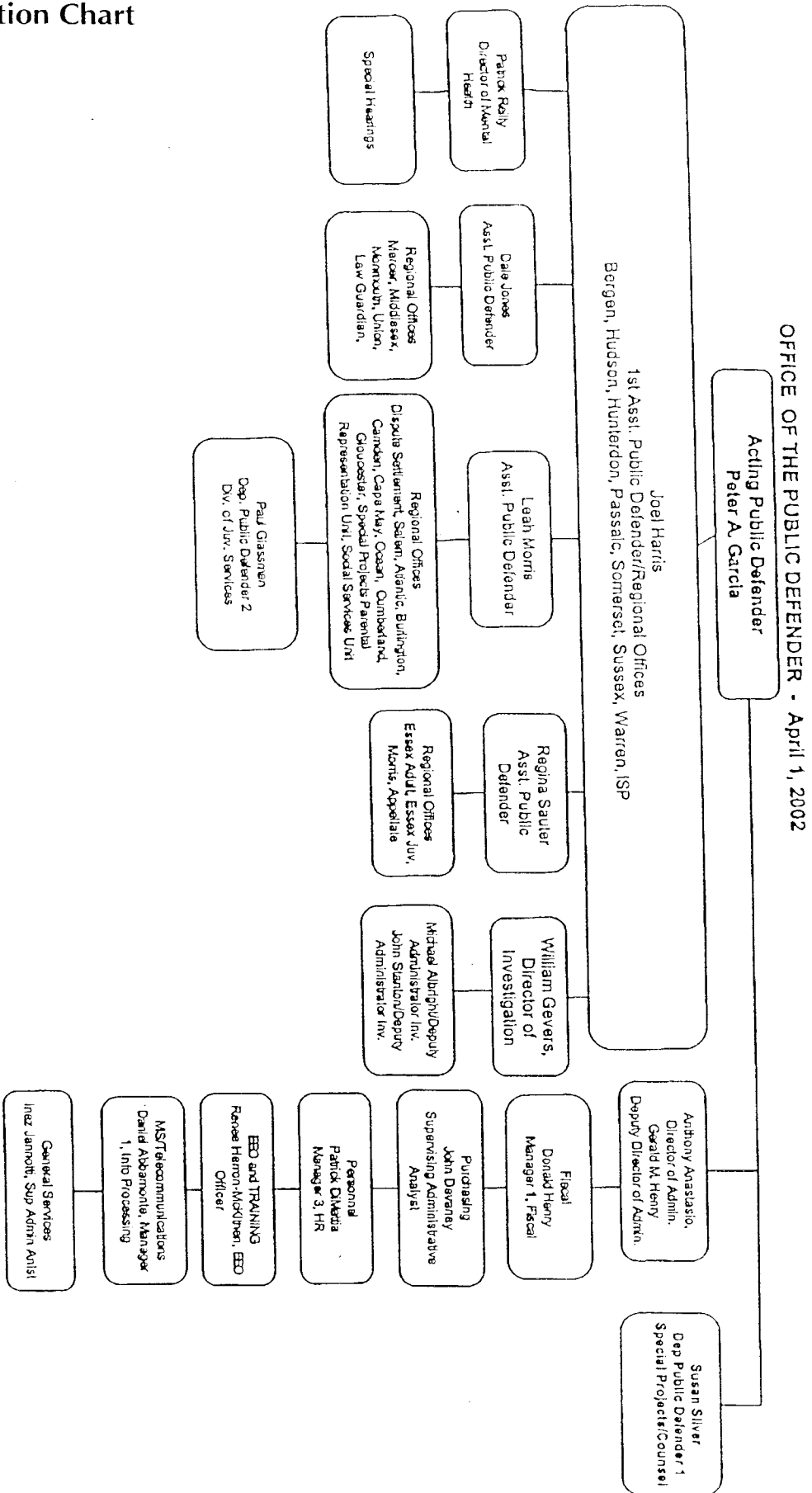
Funding for Legal Services of New Jersey comes primarily from three sources: the State of New Jersey, Interest on Lawyers' Trust Accounts (IOLTA), and the Federal government. The budget for this program has been relatively stable for several years. In 2001, Legal Services received revenues of \$37.6 million. Of that amount, approximately 37.0 percent is attributable to State sources; 36 percent to IOLTA sources; 19 percent from federal resources; and 8 percent from either county or private resources, including Legal Services' Campaign for Justice, United Way campaigns, bar association support and other gifts.

The State provides approximately one third of the funding through Grants-In-Aid. Of the \$12 million recommended for the State Legal Services Office or Legal Services of New Jersey in FY 2003, \$4 million is recommended from general State revenues and \$8 million is recommended from the increase in filing fees pursuant to P.L. 1996, C. 52. The \$12.0 million recommended appropriation is allocated directly to the fourteen local Legal Services Programs (\$4.0 million) and to the Legal Services Office in Edison, N.J. (\$8.0 million) which in turn distributes grants to the regional offices. The Edison office reviews the regional offices' budgets and oversees their expenditures.

The second most significant source of funding is Interest on Lawyers' Trust Accounts, IOLTA fees. The IOLTA program was created by the New Jersey Supreme Court in 1988 to provide a means of using interest earned on nominal or short-term deposits to fund law-related, public-interest programs. Not less than 75 percent of these funds are awarded annually to Legal Services of New Jersey; the balance is awarded to the New Jersey State Bar Foundation and other entities to provide legal aid to the poor, to improve the administration of justice, to educate lay persons in legal or justice-related areas or for other such programs for the benefit of the public as are specifically approved by the New Jersey Supreme Court.

Finally, the third source of funds is the federal government which provides funding both through the State of New Jersey and directly to Legal Services of New Jersey. In FY 2003, the Governor's Budget recommends \$1.2 million in federal funds for the Legal Services program.

Organization Chart



Fiscal and Personnel Summary

AGENCY FUNDING BY SOURCE OF FUNDS (\$000)

| | Expended FY 2001 | Adj. Approp. FY 2002 | Recom. FY 2003 | Percent Change | |
|--|---------------------|----------------------------|-------------------|----------------|----------------|
| | | | | 2001-03 | 2002-03 |
| <u>General Fund</u> | | | | | |
| Direct State Services | \$75,237 | \$78,960 | \$79,320 | 5.4% | 0.5% |
| Grants-In-Aid | 12,000 | 12,000 | 12,000 | 0.0% | 0.0% |
| State Aid | 0 | 0 | 0 | 0.0% | 0.0% |
| Capital Construction | 0 | 0 | 0 | 0.0% | 0.0% |
| Debt Service | 0 | 0 | 0 | 0.0% | 0.0% |
| Sub-Total | \$87,237 | \$90,960 | \$91,320 | 4.7% | 0.4% |
| <u>Property Tax Relief Fund</u> | | | | | |
| Direct State Services | \$0 | \$0 | \$0 | 0.0% | 0.0% |
| Grants-In-Aid | 0 | 0 | 0 | 0.0% | 0.0% |
| State Aid | 0 | 0 | 0 | 0.0% | 0.0% |
| Sub-Total | \$0 | \$0 | \$0 | 0.0% | 0.0% |
| <u>Casino Revenue Fund</u> | \$0 | \$0 | \$0 | 0.0% | 0.0% |
| <u>Casino Control Fund</u> | \$0 | \$0 | \$0 | 0.0% | 0.0% |
| State Total | \$87,237 | \$90,960 | \$91,320 | 4.7% | 0.4% |
| <u>Federal Funds</u> | \$1,469 | \$1,451 | \$1,451 | (1.2)% | 0.0% |
| <u>Other Funds</u> | \$298 | \$875 | \$375 | 25.8% | (57.1)% |
| Grand Total | \$89,004 | \$93,286 | \$93,146 | 4.7% | (0.2)% |

PERSONNEL SUMMARY - POSITIONS BY FUNDING SOURCE

| | Actual FY 2001 | Revised FY 2002 | Funded FY 2003 | Percent Change | |
|------------------------|-------------------|--------------------|-------------------|----------------|-------------|
| | | | | 2001-03 | 2002-03 |
| State | 929 | 939 | 982 | 5.7% | 4.6% |
| Federal | 0 | 0 | 0 | 0.0% | 0.0% |
| All Other | 2 | 2 | 2 | 0.0% | 0.0% |
| Total Positions | 931 | 941 | 984 | 5.7% | 4.6% |

FY 2001 (as of December) and revised FY 2002 (as of September) personnel data reflect actual payroll counts. FY 2003 data reflect the number of positions funded.

AFFIRMATIVE ACTION DATA

| | | | | | |
|------------------------|-------|-------|-------|------|------|
| Total Minority Percent | 37.2% | 36.8% | 35.2% | ---- | ---- |
|------------------------|-------|-------|-------|------|------|

Significant Changes/New Programs (\$000)

| <u>Budget Item</u> | <u>Adj. Approp.</u> <u>FY 2002</u> | <u>Recomm.</u> <u>FY 2003</u> | <u>Dollar</u> <u>Change</u> | <u>Percent</u> <u>Change</u> | <u>Budget</u> <u>Page</u> |
|---|---------------------------------------|----------------------------------|--------------------------------|---------------------------------|------------------------------|
| TRIAL SERVICES TO INDIGENTS | | | | | |
| Law Guardian -- Kinship Guardianship | \$873 | \$1,720 | \$847 | 97.0% | D-504 |

In accordance with enabling legislation (P.L. 2001, c.250), the OPD is to provide legal representation for children and indigent parents in Kinship Legal Guardianship proceedings. The OPD received a supplemental appropriation of \$873,000 in FY 2002 to implement this new service capability (the legislation took effect on Dec. 1, 2001). Kinship legal guardianship is an alternative permanent placement for a child which requires the Kinship care givers to assume full responsibility for the child in providing for the child's welfare. This funding is to provide for 14 attorneys, 7 investigators and 14 support staff. Of the 35 new positions, 21 are assigned to the Law Guardian Unit for juvenile representation, and 14 are assigned to the Parental Representation Unit.

The Governor recommends an appropriation of \$1.72 million for FY 2003 to meet this projected service initiative. The increase in the amount of \$847,000 almost doubles the FY 2002 adjusted appropriation for this program, reflecting a full year of appropriation.

Language Provisions

2002 Appropriations Handbook

2003 Budget Recommendations

p. B-208

Receipts in excess of the amount anticipated up to \$500,000 are appropriated subject to the approval of the Director of the Division of Budget and Accounting. No comparable language.

Explanation

Under the language cited in the FY 2002 Appropriations Handbook, the Public Defender is authorized to retain the first \$500,000 of client receipts collected that exceed the amount anticipated as revenue in the budget (which is \$2,250,000 this year). Since the amount of receipts actually collected is in excess of \$3,000,000 this language provides a \$500,000 supplement to the Public Defender budget.

The deletion of this language recommendation for FY 2003 would imply that the Public Defender will not be permitted to retain any excess receipts, which is correct. However, the Office of Management and Budget has targeted this year's \$500,000 allotment as a potential year-end lapse to the General fund, notwithstanding the above budget language, so there may be no net budgetary impact on the Public Defender from this year to next.

Discussion Points

1. Governor McGreevey recently announced the establishment of the Department of the Public Advocate, pending the enactment of enabling legislation. According to a press release from the Governor's office (4/15/2002) and news accounts, only the Office of Dispute Settlement in the OPD would be transferred to the Department of the Public Advocate. This is a very small fee-supported branch of the OPD. The basic functions of the OPD, client representation and mental health advocacy, together with all of the OPD budget resources, will remain under the OPD as a separate entity. Prior to the abolishment of the former Department of the Public Advocate in 1994, the Public Defender comprised the bulk of that department.

! *Question: What is the Public Defender's understanding of its relationship, if any, with the new Department of the Public Advocate? Do you expect any changes to occur organizationally in the Public Defender with respect to the DPA restoration?*

2. N.J.S.A. 2A:158A-16 et seq. requires the OPD to attempt to recoup its expenses through fees charged to its clients. The Governor's budget recommendation anticipates collections of \$2.8 million in FY 2003, down from \$3.6 million collected in FY 2001. Last year the OPD responded to a legislative question posed that since the transfer of billing responsibility to the Division of Revenue (in FY 2000), revenue receipts increased 26 percent in FY 2001. This appears to place OPD's actual collection rate at about 17 percent of total billing.

! *Question: What is the actual collection rate and trend as a percent of total billing? What standards or performance measures does OPD use to gauge the effectiveness of its revenue systems? Why would it appear that the amount of fees and client recoveries are expected to decline?*

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Individuals wishing information and committee schedules on the FY 2003 budget are encouraged to contact:

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