

ANALYSIS OF THE NEW JERSEY
FISCAL YEAR 2000 - 2001 BUDGET



OFFICE OF THE PUBLIC DEFENDER
AND LEGAL SERVICES GRANTS

PREPARED BY

OFFICE OF LEGISLATIVE SERVICES

NEW JERSEY LEGISLATURE

MARCH 2000

NEW JERSEY STATE LEGISLATURE

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**OFFICE OF THE PUBLIC DEFENDER
AND LEGAL SERVICES GRANTS**

Budget Pages.... C-12; D-448 to D-451

Fiscal Summary (\$000)

	Expended FY 1999	Adjusted Appropriation FY 2000	Recommended FY 2001	Percent Change 2000-01
State Budgeted	\$74,890	\$80,560	\$81,960	1.7%
Federal Funds	1,450	1,451	1,451	0.0%
<u>Other</u>	<u>156</u>	<u>660</u>	<u>660</u>	<u>0.0%</u>
Grand Total	\$76,496	\$82,671	\$84,071	1.7%

Personnel Summary - Positions By Funding Source

	Actual FY 1999	Revised FY 2000	Funded FY 2001	Percent Change 2000-01
State	853	899	938	4.3%
Federal	0	0	0	—
<u>Other</u>	<u>2</u>	<u>2</u>	<u>2</u>	<u>0.0%</u>
Total Positions	855	901	940	4.3%

FY 1999 (as of December) and revised FY 2000 (as of September) personnel data reflect actual payroll counts. FY 2001 data reflect the number of positions funded.

Introduction

The data above include two related but separate programs which are budgeted in the Department of the Treasury. The first program, the Office of the Public Defender, provides trial and appellate legal representation to indigent New Jersey residents in criminal matters as well as representation for individuals who are involuntarily committed to mental hospitals. This program is in but not of the Department of the Treasury.

The second program, Legal Services of New Jersey, provides legal assistance in civil matters to indigents. Legal Services of New Jersey is a private not-for-profit corporation and is separate from the Office of the Public Defender.

Key Points

- ! The Governor's budget recommends continuation funding of \$70.5 million for the Office of the Public Defender. The amount recommended includes a new Special Purpose appropriation of \$602,000 to provide funds for the Public Defender to represent civilly committed sexual offenders. In addition to the State funds recommended, the Governor's budget reflects \$223,000 in federal funds and \$660,000 in Set-Off of Individual Liability (SOIL) Program Receipts and arbitration fees.
- ! A total of \$11.5 million in State Grants-In-Aid and \$1.2 million in federal funds is recommended for Legal Services of New Jersey. According to the Office of Management and Budget, the recommended \$1 million Grants-In-Aid increase is necessary to make up for lost revenue from Legal Services' second largest funding source, Interest on Lawyers' Trust Accounts (IOLTA). These grants are distributed through the Treasurer's Office.

The Office of the Public Defender and Legal Services of New Jersey are 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 2001 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 provides legal representation to indigent criminal defendants formally charged with an indictable offense; to juveniles charged with delinquency offenses when, in the opinion of the court, 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 and neglected children in Family Court proceedings; and to the indigent mentally ill. It also provides mediation and other dispute resolution services to resolve complex public interest disputes and civil resolution services to resolve complex public interest and civil litigation.

The Office of the Public Defender programs consist of the following:

Program	FY 2001 Recommended Appropriation	FY 2001 Funded Positions Budget Estimate
Trial Services to Indigents and Special Programs	\$58,413,000	776
Appellate Services to Indigents	6,603,000	70
Mental Health Screening Services	2,866,000	51
Dispute Settlement	321,000	6
Administration and Support Services	2,257,000	37
Total, Office of the Public Defender	\$70,460,000	940

State funding of approximately \$70.5 million will be supplemented by \$883,000 in federal and other funds in FY 2001. This level of funding is expected to support 940 positions.

Approximately 83 percent of this funding, or \$58.4 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 applying to the Intensive Supervision program or who are in the program and have violated probation.

Program Description and Overview (Cont'd)

Through its Law Guardian program, the Public Defender also represents abused and neglected children in Family Court proceedings. In September 1998, the Law Guardian (Child Abuse) program was expanded to respond to the increased caseload associated with the implementation of the federal Adoption and Safe Families Act (ASFA) of 1997. Approximately \$1 million in both FY 2000 and FY 2001 has been included for the Public Defender's Office in the \$6.8 million recommended in Division of Youth and Family Services (DYFS) Foster Care and Permanency Initiative (p. D-256) in the Department of Human Services. This \$1 million has been used by the Public Defender's Office to increase the existing Law Guardian Unit from 50 to 76, including 10 additional attorneys, 10 investigators and 6 secretaries.

The Governor's budget also recommends continuation funding of \$3.2 million for the Special Purpose line, Continuous Representation - Title 9 to Title 30. Titles 9 and 30 of the Revised Statutes pertain to the abuse and neglect of children and the termination of parental rights. P.L. 1999, c.53 conforms State law to the provisions of the federal Adoption and Safe Families Act and authorizes the Office of the Public Defender to provide continuous representation to parents and children throughout proceedings brought under Titles 9 and 30. In FY 1999, \$600,000 was appropriated for this purpose. The \$3.2 million adjusted appropriation in FY 2000 and the \$3.2 million recommended in FY 2001 provide representation for children and indigent parents in the amounts of \$1.4 million and \$1.8 million respectively. These appropriations fund 15 attorneys, 18 investigators, 10 secretaries and 2 clericals. Of the 45 positions, 33 are assigned to the Law Guardian Unit for the representation of the child and 12 to the Parental Representation Unit for the representation of the indigent parent.

The **Appellate Services to Indigents** is recommended to receive \$6.6 million in FY 2001. This program provides timely 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 **Mental Health Screening Services** program is recommended to receive \$2.9 million in FY 2001. This program provides representation for indigent individuals who are involuntarily committed to mental hospitals beyond an initial 20-day period. The Division of Mental Health and Guardianship Advocacy provides constitutionally mandated legal representation for indigent mentally ill individuals and represents developmentally disabled individuals in guardianship proceedings. Pursuant to P.L. 1998, c.71, the Public Defender must provide representation to all indigent individuals who now meet the definition of a sexual violent predator. The budget recommends a new Special Purpose appropriation of \$602,000 for this purpose. The recommended appropriation is expected to provide funding for 4 attorneys, 4 investigators and 2 secretaries.

Continuation funding of \$321,000 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 largely self-supporting, generating revenues 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.

The \$2.3 million that is recommended for **Administration and Support Services** will be used to provide centralized supervision and policy planning, budgetary policy direction and general

Program Description and Overview (Cont'd)

administrative support.

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 Office of the Public Defender was created pursuant to P.L. 1967, c.43 in but not of the Department of Institutions and Agencies to provide representation for indigent defendants in criminal cases. In 1974, when the Department of the Public Advocate was created (P.L. 1974, c.27), the Office of the Public Defender became part of that department. Pursuant to the Public Advocate Restructuring Act (P.L. 1994, c.58), the Department of the Public Advocate 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.

In FY 1999, the Office of the Public Defender raised the rates it pays for outside counsel from \$15.00 and \$22.50 per hour to \$25.00 and \$30.00 per hour for out-of-court and in-court work respectively. The per diem rates for trials also increased at the same time from \$135.00 per case to \$180.00 per case. These rate increases became effective July 1, 1998 and required an increase of \$2.4 million in amounts otherwise appropriated in FY 1999. Evaluation data in the Governor's budget indicates that the Office of the Public Defender is required to hire outside counsel in approximately 12.4 percent of its cases (9,190 cases annually). Generally these are multi-defendant cases in which Public Defender staff cannot represent all of the defendants due to conflicts of interest.

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.

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 - actions which secure benefits for indigents under programs such as Social Security, Aid to Families with Dependent Children, and food stamps ; and
- ! Consumer Matters - bankruptcy, collections, warranties, unfair sales practices and public utilities.

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 approximately 430 Statewide, including 210 attorneys. Each program is a not-for-profit corporation governed by a board of trustees which

Program Description and Overview (Cont'd)

includes members of the local bar association as well as representatives of the eligible client population.

Funding for Legal Services of New Jersey comes primarily from three sources (not all of which appear in the State budget): the State of New Jersey, Interest on Lawyers' Trust Accounts (IOLTA), and the Federal government. The budget for this program has been stable at approximately \$30 million for several years. In FY 1999, the most recent year for which complete data are available, 37 percent of funding came from State resources; 34 percent came from IOLTA sources; 22 percent came from federal resources; and 7 percent came from either county or private resources.

The State provides approximately one third of the funding through Grants-In-Aid. In FY 1998, FY 1999 and FY 2000, State appropriations have been constant at \$10.5 million. Of the \$11.5 million recommended in FY 2001 for the State Legal Services Office or Legal Services of New Jersey, \$3.5 million is recommended from general State revenues and \$8.0 million is recommended from the increase in filing fees pursuant to P.L. 1996, c.52. The \$3.5 million in FY 2001 would be distributed directly to the fifteen Legal Services Programs; the \$8.0 million would be distributed to the Legal Services Office in Edison, N.J. 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. These fees do not appear in the State budget. In FY 1998, Legal Services received \$8.9 million in IOLTA fees for its programs; in FY 1999 it received \$10.4 million. In FY 2000, however, it has received only \$9.4 million, \$1 million less than it received from this source in FY 1999. The Governor's budget recommends an additional \$1 million from State General Fund resources to replace this drop in IOLTA revenues.

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.

The third source of funds is the federal government which provides funding both through the State of New Jersey and directly to the Legal Services of New Jersey. In FY 2001, \$1.2 million in federal funds is recommended for Legal Services of New Jersey.

Fiscal and Personnel Summary

AGENCY FUNDING BY SOURCE OF FUNDS (\$000)

	Expended FY 1999	Adj. Approp. FY 2000	Recom. FY 2001	Percent Change	
				1999-01	2000-01
<u>General Fund</u>					
Direct State Services	\$64,390	\$70,060	\$70,460	9.4%	0.6%
Grants - In - Aid	10,500	10,500	11,500	9.5%	9.5%
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	\$74,890	\$80,560	\$81,960	9.4%	1.7%
<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	\$74,890	\$80,560	\$81,960	9.4%	1.7%
Federal Funds	\$1,450	\$1,451	\$1,451	0.1%	0.0%
Other Funds	\$156	\$660	\$660	323.1%	0.0%
Grand Total	\$76,496	\$82,671	\$84,071	9.9%	1.7%

PERSONNEL SUMMARY - POSITIONS BY FUNDING SOURCE

	Actual FY 1999	Revised FY 2000	Funded FY 2001	Percent Change	
				1999-01	2000-01
State	853	899	938	10.0%	4.3%
Federal	0	0	0	0.0%	0.0%
All Other	2	2	2	0.0%	0.0%
Total Positions	855	901	940	9.9%	4.3%

FY 1999 (as of December) and revised FY 2000 (as of September) personnel data reflect actual payroll counts. FY 2001 data reflect the number of positions funded.

AFFIRMATIVE ACTION DATA

Total Minority Percent	34.6%	36.3%	36.3%	--	--
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Significant Changes/New Programs (\$000)

<u>Budget Item</u>	<u>Adj. Approp.</u> <u>FY 2000</u>	<u>Recomm.</u> <u>FY 2001</u>	<u>Dollar</u> <u>Change</u>	<u>Percent</u> <u>Change</u>	<u>Budget</u> <u>Page</u>
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OFFICE OF THE PUBLIC DEFENDER

Direct State Services -**Mental Health****Screening Services,****Special Purpose:****Representation of****Civilly Committed****Sexual Offenders**

	\$0	\$602	\$602	—	D-450
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The New Jersey Sexually Violent Predator Act (P.L. 1998, C. 71) establishes a new procedure for the involuntary commitment of sexually violent predators. As of August 12, 1999, the Division of Mental Health Screening Services must provide representation to all indigent individuals who meet the definition of a sexual violent predator. The budget request of \$602,000 provides funding to support 4 attorneys, 4 investigators and 2 secretaries.

STATE LEGAL SERVICES OFFICE - LEGAL SERVICES OF NEW JERSEY

Grants-In-Aid -**State Legal Services****Office**

	\$2,500	\$3,500	\$1,000	40.0%	D-450
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The State Legal Services Office and its affiliated regional offices receive their funding from three sources: the State of New Jersey, Interest on Lawyers' Trust Accounts (IOLTA), and the federal government. In FY 2001 IOLTA funding is expected to be approximately \$1 million less than in FY 2000. In order to maintain the same level of service, an additional \$1 million is recommended from State General Fund resources.

Language Provisions

No language changes are recommended for either the Office of the Public Defender or Legal Services of New Jersey.

Discussion Points

OFFICE OF THE PUBLIC DEFENDER

1. The Office of the Public Defender provides legal representation to indigents in criminal matters as well as representation for individuals involuntarily committed to mental hospitals. N.J.S.A. 2A:158A-19 requires the Public Defender to do all things necessary and proper to collect all moneys due to the State by way of reimbursement for services pursuant to this act. This includes placing a lien on any and all property to which the dependant shall have or acquire.

According to the Office of the Public Defender, it bills its clients between \$14 million and \$16 million on an annual basis. In FY 1999 the total amount of outstanding receivables (some of which go back to 1980) due the OPD was approximately \$56 million. The budget request for the OPD indicates that in FY 1999, \$2,191,973 in revenue was collected. This includes \$912,594 in Billings and Satisfaction of Liens, \$239,153 in fees from the Administrative Prepayment Program, and \$1,040,226 from the Set-off of Individual Liability (SOIL) program. In FY 2000, the OPD estimates that it will collect \$2,092,000, approximately \$100 less than the amount it collected from clients in FY 2000.

In FY 2001 the responsibility for certain collection activities will be transferred to the Division of Revenue. The budget estimates that approximately \$145,000 is being reallocated to fund four positions which are being transferred from the OPD to the Division of Revenue.

! Question: What is the process and what are the criteria used to determine whether a defendant is indigent?

What is the basis used to charge defendants the Administrative Prepayment Program fee? Is this the only fee charged to defendants? Have some regional offices been more successful at collecting these fees than others? If so, please identify these regional offices and indicate possible reasons for these successes.

What is the average cost per case of cases tried by the Public Defender in comparison to those tried by pool attorneys?

Please discuss problems that the Public Defender has had in collecting fees for its services. How will the transfer of four individuals from the OPD to the Division of Revenue affect the collection of outstanding receivables?

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Individuals wishing information and committee schedules on the FY 2001 budget are encouraged to contact:

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