

PUBLIC DEFENDER

Budget Summary							
Fund	2008-09 Base Year Doubled	2009-11 Governor	2009-11 Jt. Finance	Joint Finance Change to:			
				Governor		Base	
				Amount	Percent	Amount	Percent
GPR	\$160,106,400	\$158,109,700	\$153,988,500	-\$4,121,200	- 2.6%	-\$6,117,900	- 3.8%
PR	<u>2,838,400</u>	<u>2,870,600</u>	<u>2,845,000</u>	<u>- 25,600</u>	- 0.9	<u>6,600</u>	0.2
TOTAL	\$162,944,800	\$160,980,300	\$156,833,500	-\$4,146,800	- 2.6%	-\$6,111,300	- 3.8%

FTE Position Summary					
Fund	2008-09 Base	2010-11 Governor	2010-11 Jt. Finance	Joint Finance Change to:	
				Governor	2008-09 Base
GPR	530.45	530.45	579.75	49.30	49.30
PR	<u>5.00</u>	<u>5.00</u>	<u>5.00</u>	<u>0.00</u>	<u>0.00</u>
TOTAL	535.45	535.45	584.75	49.30	49.30

Budget Change Items

1. STANDARD BUDGET ADJUSTMENTS

GPR	\$2,656,000
PR	<u>72,800</u>
Total	\$2,728,800

Governor/Joint Finance: Provide standard adjustments totaling \$1,328,000 GPR and \$36,400 PR annually. Adjustments are for: (a) full funding of continuing salaries and fringe benefits (\$934,600 GPR and \$22,400 PR annually); (b) reclassifications (\$3,000 GPR and \$12,200 PR annually); (c) overtime (\$217,300 GPR and \$2,900 PR annually); (d) full funding of lease costs and directed moves (\$173,100 GPR and -\$1,100 PR annually); and (e) minor transfers within the same appropriation. The minor transfer reallocates \$85,600 GPR annually from the trial representation salary line to the supplies and services line to provide supplies and services funding for 12 additional positions created under 2007 Act 20 to address caseload.

2. ACROSS-THE-BOARD 1% REDUCTIONS [LFB Paper 615]

GPR	-\$1,601,200
PR	<u>- 28,200</u>
Total	-\$1,629,400

Governor/Joint Finance: Delete \$800,600 GPR and \$14,100 PR,

annually, as part of an across-the-board 1% reduction in most non-federal appropriations. The reductions, by appropriation, are shown below:

<u>Fund</u>	<u>Appropriation</u>	<u>Base</u>	<u>Annual Reduction</u>
GPR	Trial Representation	\$47,518,200	-\$475,200*
GPR	Private Bar Payments	22,777,900	-227,800
GPR	Appellate Representation	5,124,300	-51,200*
GPR	Program Administration	2,598,500	-26,000*
GPR	Transcripts, Discovery & Interpreters	1,339,100	-13,400
GPR	Private Bar Payments; Administration	695,200	-7,000*
PR	Private Bar Payments	1,024,700	-10,200
PR	Private Bar Payments; Administration	250,800	-2,500*
PR	Conferences and Training	143,700	-1,400*

*Due to other budget items, the final funding level for this appropriation does not represent a 1% reduction.

3. ADDITIONAL GPR REDUCTION [LFB Paper 615]

GPR	- \$1,000,000
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Governor/Joint Finance: Reduce the private bar and investigator reimbursement appropriation by \$500,000 annually (a 2.2% reduction). This appropriation is used to reimburse private bar attorneys who accept assignment of criminal defense cases for indigent persons qualifying for State Public Defender (SPD) representation.

4. ELIMINATE 2% GENERAL WAGE ADJUSTMENT

GPR	- \$1,627,200
PR	- 10,000
Total	- \$1,637,200

Joint Finance: Delete \$818,600 (all funds) annually relating to the roll-back of 2% general wage adjustments that were scheduled to take effect on June 7, 2009. The reductions include \$813,600 GPR and \$5,000 PR annually.

5. STATE EMPLOYEE FURLOUGH

GPR	- \$2,494,000
PR	- 15,600
Total	- \$2,509,600

Joint Finance: Delete \$1,254,800 (all funds) annually relating to the requirement that state employees take eight days of unpaid annual leave (furlough) in each year of the 2009-11 biennium. The reductions include \$1,247,000 GPR and \$7,800 PR annually.

6. DECRIMINALIZE CERTAIN CONVICTIONS FOR OPERATING A MOTOR VEHICLE AFTER LICENSE REVOCATION [LFB Paper 616]

GPR	- \$2,739,100
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Governor/Joint Finance: Provide that it would no longer be a criminal offense to be convicted of operating a motor vehicle after license revocation if the conviction occurred within five years of a prior conviction for the same offense (provided the latter conviction was not alcohol or drug related). This change would first apply to violations occurring on the effective

date of the budget act. Reduce the private bar and investigator reimbursement appropriation by \$913,000 in 2009-10, and \$1,826,100 in 2010-11, to reflect an anticipated reduction in workload associated with operating a motor vehicle after license revocation cases. This appropriation is used to reimburse private bar attorneys who accept assignment of criminal defense cases for indigent persons qualifying for SPD representation.

Under current law, operating a motor vehicle after license revocation is a civil offense subject to a forfeiture of not more than \$2,500 unless: (a) the individual had been convicted of operating after revocation within the preceding five-year period; or (b) the license revocation resulted from an offense of: (1) operating under the influence of an intoxicant or other drug; (2) causing injury or death to another person while operating under the influence of an intoxicant or other drug; (3) operating a commercial motor vehicle with an alcohol concentration between 0.04 and 0.08; (4) causing injury or death to another person while operating a commercial motor vehicle with an alcohol concentration between 0.04 and 0.08; and (5) refusing to submit to legally required chemical testing. If an individual operates a motor vehicle after revocation and was either convicted of this offense within the preceding five years or the offense was alcohol or drug related, the individual must be fined not more than \$2,500 or imprisoned for not more than one year in the county jail or both.

7. FIFTH WEEK OF VACATION AS CASH [LFB Paper 615]

GPR	\$513,400
PR	3,000
Total	\$516,400

Governor/Joint Finance: Provide \$251,300 GPR and \$1,300 PR in 2009-10 and \$262,100 GPR and \$1,700 PR in 2010-11 to fully fund projected agency costs associated with fifth week of vacation as cash payments. Under current law, certain long-term employees may elect to receive a cash payment in lieu of a fifth week of paid vacation.

8. INFORMATION TECHNOLOGY INITIATIVE

GPR	\$174,200
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Governor/Joint Finance: Provide \$174,200 in 2010-11 to implement a four-year replacement cycle for the agency's computer infrastructure (personal computers, laptops, servers, printers, and software). The SPD indicates that its servers in remote SPD offices are all outside of warranty coverage. The Office further indicates that all of its workstations are out of warranty with the oldest workstation purchased in 2002 and the newest workstations purchased in the first half of 2004.

9. PENALTY SURCHARGE SHORTFALL [LFB Paper 516]

PR	-\$15,400
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Governor: Reduce expenditure authority by \$7,700 annually under the agency's conferences and training appropriation to address a deficit in penalty surcharge funding. The reduction represents a 5% reduction to the appropriation after adjusting base funding for: (a) standard budget adjustments; and (b) fifth week of vacation as cash. Require that all unencumbered balances in the appropriation at the end of each fiscal year revert to the

"criminal justice program support" appropriation under the Department of Justice. The appropriation is utilized by the SPD to sponsor training and conferences for both staff attorneys and private bar attorneys who accept assignment of SPD cases. [See "Justice."]

Joint Finance: Delete the requirement that all unencumbered balances in the appropriation at the end of each fiscal year revert to the "criminal justice program support" appropriation under the Department of Justice.

10. DISCOVERY COSTS

Governor/Joint Finance: Direct the SPD to promulgate rules establishing the maximum fees that the SPD may pay for copies, in any format, of materials that are subject to discovery in indigent criminal defense cases. In promulgating these rules, the Board must consider information regarding the actual, necessary, and direct cost of producing copies of materials that are subject to discovery.

Under current law, when the SPD requests copies of discoverable items in criminal cases or in sexually violent person commitment proceedings, the SPD must pay any charged fee provided the fee does not exceed the actual, necessary, and direct cost of providing the copies. Delete the current law provision providing that the assessed fee may not exceed the actual, necessary, and direct cost of providing the copies. Under AB 75, the SPD, and not copy providers, would now establish maximum copying fees, but the SPD would be required to consider the actual, necessary, and direct cost of producing copies when establishing these fees.

11. POSITION RECONCILIATION

Governor/Joint Finance: Correct an error in the accounting of SPD authorized positions by: (a) increasing the number of classified positions under the appellate representation appropriation by 0.6 full-time equivalent (FTE) positions; (b) decreasing the number of unclassified positions under the appellate representation appropriation by 0.25 FTE; (c) decreasing the number of classified positions under the trial representation appropriation by 0.1 FTE; and (d) decreasing the number of unclassified positions under the trial representation appropriation by 0.25 FTE.

12. STATE STANDARD FOR INDIGENT LEGAL DEFENSE COUNSEL [LFB Paper 617]

	Positions
GPR	49.30

Joint Finance: Adopt the provisions of 2007 Assembly Bill 576/2007 Senate Bill 321 which would increase and model the SPD indigency standard after Wisconsin Works (W-2), which, when measuring gross income, is set at 115% of the federal poverty level. Create 49.3 GPR-funded positions to address 75% of the anticipated increased workload to the SPD associated with increasing the indigency standard to W-2 (32.3 attorneys, 10.8 legal secretaries, 4.6 investigators, and 1.6 client services specialists). The remaining

increased workload from the indigency standard change would be assigned to private bar attorneys. Provide that these changes would take effect on June 30, 2011. With the delayed effective date, no costs would be incurred during 2009-11. The estimated cost associated with this change is \$4,398,200 GPR annually when fully implemented.

Under current law, if a person's assets less reasonable and necessary living expenses are not sufficient to cover the anticipated cost of effective representation when the length and complexity of the anticipated proceedings are taken fully into account, the individual is deemed indigent and qualifies for SPD representation.

Assets include disposable income, cash in hand, stocks and bonds, bank accounts and other property which can be converted to cash within a reasonable period of time and is not needed to hold a job, or to shelter, clothe and care for the person and the person's immediate family. Assets which cannot be converted to cash within a reasonable period of time, such as a person's home, car, household furnishings, clothing and other property which has been declared exempt from attachment or execution by law, must be calculated to be assets equivalent in dollars to the amount of the loan which could be, in fact, raised by using these assets as collateral. Assets also include any money expended by the person to post bond. In determining assets available to pay for legal counsel, the SPD must also consider the assets of the applicant's spouse unless the spouse was the victim of a crime allegedly committed by the individual. Reasonable and necessary living expenses are linked to monthly payment amounts under a 1987 Aid to Families with Dependent Children cost of living table, adjusted for other specified, emergency, or essential costs.

In lieu of the current standard, the provisions of 2007 AB 576/2007 SB 321 would: (a) consider the anticipated costs of effective representation for the type of case in which the person seeks representation; (b) consider assets as available to the person to pay the costs of legal representation to the extent that the combined equity value of the assets exceeds \$2,500 (although the SPD would be required to exclude the first \$10,000 in equity value of vehicles and the first \$30,000 in equity value of the home that serves as the person's homestead); (c) treat income as available to pay the costs of legal representation to the extent that the person's gross income exceeds 115% of the federal poverty line; and (d) treat assets or income of the person's spouse as the person's assets or income, unless the spouse was the victim of a crime that the person allegedly committed.

13. ASSISTANT STATE PUBLIC DEFENDER COMPENSATION

Joint Finance: Create a PR continuing appropriation to receive amounts transferred from the Department of Justice (DOJ) to increase compensation for assistant state public defenders. Beginning in 2010-11, DOJ would be required to allocate \$1 million annually between the district attorney function and the SPD to increase compensation for assistant district attorneys and assistant state public defenders. The provision would take effect July 1, 2010. See "Justice" for additional information.