



MACIAS, GUTIERREZ & CO., P.C.
CERTIFIED PUBLIC ACCOUNTANTS
ESPANOLA, NEW MEXICO
www.mgandc.com

STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT

Financial Statements
Year Ended June 30, 2009

(With Independent Auditors' Report Thereon)

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Financial Statements
Year Ended June 30, 2009**

(With Independent Auditors' Report Thereon)

INTRODUCTORY SECTION

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

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PUBLIC DEFENDER DEPARTMENT**

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**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Official Roster
at June 30, 2009**

Name	Title
Hugh Dangler	Chief Public Defender
T. David Eisenberg	Deputy Chief Public Defender
John Goeller	Director of Administrative Operations, Contract Counsel Legal Services and Chief Information Officer
Brenda Salazar	Chief Financial Officer
Louise Martinez	Director of Fiscal Services
John Stapleton	Human Resource Director
Ben Baur	District Public Defender – 1 st Judicial District Office
Ralph Odenwald	District Public Defender – 2 nd Judicial District Office
Kenneth Henrie	District Public Defender – 3 rd Judicial District Office
Douglas Vitt	District Public Defender – 5 th Judicial District Office
Brett Carter	District Public Defender – 9 th Judicial District Office
Christian Hatfield	District Public Defender – 11 th Judicial District Office
James Walker	District Public Defender – 12 th Judicial District Office
Nancy Hewitt	Appellate Defender
Jacqueline Cooper	Mental Health Coordinator
Jeff Buckles	Capital Crimes Coordinator
John Walker	Post-Conviction Coordinator

FINANCIAL SECTION



**Macias, Gutierrez
& Co., P.C.**

*Certified Public Accountants
Member AICPA, NMSCPA*

1302 Calle De La Merced, Suite A
Española, New Mexico 87532
505.747.4415
Fax 505.747.4417

INDEPENDENT AUDITORS' REPORT

Hugh Dangler, Chief Public Defender
Public Defender Department
and
Honorable Hector H. Balderas
New Mexico State Auditor
Santa Fe, New Mexico

We have audited the accompanying financial statements of the governmental activities, each major fund, the aggregate remaining fund information and the respective budgetary comparisons for the General Fund and the Major Special Revenue Fund of the Public Defender Department (Department) as of and for the year ended June 30, 2009, which collectively comprise the Department's basic financial statements as listed in the table of contents. We have also audited the budgetary comparison statements of the organizations of the general fund presented as supplementary information for the year ended June 30, 2009, as listed in the table of contents. These financial statements are the responsibility of the Department's management. Our responsibility is to express opinions on these financial statements based on our audit.

Except as discussed in the following paragraph, we conducted our audit in accordance with auditing standards generally accepted in the United States of America and with applicable **Government Auditing Standards**, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit provides a reasonable basis for our opinions.

We were unable to obtain sufficient evidential matter to satisfy ourselves that accounts receivable, recorded in the agency fund, are complete. The understatement appears to have been caused by errors in recording accounts receivable in prior years. The amount of the possible understatement is not subject to estimation and correction of the error would not be cost beneficial.

As discussed in Note 2, the financial statements of the Public Defender Department are intended to present the financial position, and the changes in financial position of only that portion of the governmental activities, each major fund, the aggregate remaining information and the respective budgetary comparisons for the General Fund and the Major Special Revenue Fund that are attributable to the transactions of the Department. They do not purport to, and do not, present fairly the financial position of the State of New Mexico as of June 30, 2009, and the changes in its financial position and its cash flows, where applicable, for the year then ended in conformity with accounting principles generally accepted in the United States of America.

In our opinion, except for the effects of such adjustments, if any, as might have been determined to be necessary had we been able to ascertain the completeness of accounts receivable, the financial statements referred to above present fairly, in all material respects, the respective financial position of the governmental activities, each major fund, and the aggregate remaining fund information of the Department as of June 30, 2009, and the respective changes in financial position thereof and the respective budgetary comparisons for the General Fund and the Major Special Revenue Fund for the year then ended in conformity with accounting principles generally accepted in the United States of America. In addition, in our opinion, the financial statements referred to in the first paragraph present fairly, in all material respects, the budgetary comparison statements of the organizations of the general fund of the State of New Mexico, Public Defender Department for the year ended June 30, 2009, in conformity with accounting principles generally accepted in the United States of America.

In accordance with **Government Auditing Standards**, we have also issued our report dated December 3, 2009 on our consideration of the Department's internal control over financial reporting and our tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements and other matters. The purpose of that report is to describe the scope of our testing of internal control over financial reporting and compliance and the results of that testing, and not to provide an opinion on the internal control over financial reporting or on compliance. That report is an integral part of an audit performed in accordance with **Government Auditing Standards** and should be considered in assessing the results of our audit.

The Management's Discussion and Analysis on pages vii through xi is not a required part of the basic financial statements but is supplementary information required by accounting principles generally accepted in the United States of America. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the Management's Discussion and Analysis. However, we did not audit the information and express no opinion on it.

Our audit was conducted for the purpose of forming opinions on the financial statements that collectively comprise the Department's basic financial statements and on the budgetary comparison statements presented as supplementary information. The introductory section, the Schedule of Changes in Assets and Liabilities – Agency Fund, the Schedule of Memoranda of Understanding and the Schedule of Performance Data are presented for purposes of additional analysis and are not a required part of the basic financial statements. The Schedule of Changes in Assets and Liabilities – Agency Fund, the Schedule of Memoranda of Understanding and the Schedule of Performance Data have been subjected to the auditing procedures applied in the audit of the basic financial statements and, in our opinion, are fairly stated in all material respects in relation to the basic financial statements taken as a whole. The introductory section has not been subjected to the auditing procedures applied in the audit of the basic financial statements and, accordingly, we express no opinion on it.

Macias, Gutierrez & Co., CPAs, P.C.

Macias, Gutierrez & Co., CPAs, P.C.
Espanola, New Mexico
December 3, 2009

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT
MANAGEMENT'S DISCUSSION AND ANALYSIS
June 30, 2009**

The following is a discussion and analysis of the Agency's financial performance, providing an overview of the activities for the fiscal year ended June 30, 2009. Please read it in conjunction with the Agency's financial statements, which follow this section.

OVERVIEW OF THE FINANCIAL STATEMENTS

This annual report consists of three parts – management's discussion and analysis (this section), the basic financial statements, and required supplementary information. The basic financial statements include two kinds of statements that present different views of the Agency:

- The first two statements are government-wide financial statements that provide both long-term and short-term information about the Agency's overall financial status.
- The remaining statements are fund financial statements that focus on individual parts of the Agency, reporting the Agency's operations in more detail than the government-wide statements. The governmental funds statements tell how general government services (the primary functions of the agency) were financed in the short term as well as what remains for future spending.

The financial statements also include notes that explain some of the information in the financial statements and provide more detailed data. The statements are followed by a section of required supplementary information that further explains and supports the information in the financial statements.

Government-Wide Statements

The government-wide statements report information about the Agency as a whole using accounting methods similar to those used by private-sector companies. The statement of net assets includes all of the government's assets and liabilities. All of the current year's revenues and expenses are accounted for in the statement of activities regardless of when cash is received or paid.

The two government-wide statements report the Agency's net assets and how they have changed. A net asset – the difference between the Agency's assets and liabilities – is one way to measure the Agency's financial health or position.

- Over time, increases or decreases in the Agency's net assets are an indicator of whether its financial health is improving or deteriorating, respectively.
- To assess the overall health of the Agency, the reader is encouraged to consider additional non-financial factors such as changes in the Agency's grant funding or the addition of new programs.

All of the Agency's basic services are included in government-wide financial statements, such as district office operations and contract counsel legal services. State appropriations, other reimbursements and fees finance most of these activities.

Fund Financial Statements

The fund financial statements provide more detailed information about the Agency's most significant funds –not the Agency as a whole. Funds are accounting devices that the Agency uses to keep track of specific sources of funding and spending for particular purposes.

- Some funds are required by State law.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT
MANAGEMENT'S DISCUSSION AND ANALYSIS
June 30, 2009**

- The State Legislature established other funds to control and manage money for particular purposes or to show that it is properly using certain grants.

The Agency has two types of funds:

- Governmental funds –Most of the Agency's basic services are included in governmental funds which focus on (1) how cash and other financial assets that can readily be converted to cash flow in and out and (2) the balances left at year-end that are available for spending. Consequently, the governmental fund statements provide a detailed short-term view that helps determine whether there are more or fewer financial resources that can be spent in the near future to finance the Agency's programs.

The Agency has two governmental funds. The first is used to account for the Agency's general operations and is a reverting fund. The second is a statutorily created fund used to account for proceeds from the indigent representation application fee (a \$10 fee). The use of those fees is legally restricted for the Agency's automation needs.

- Fiduciary funds—The Agency is the trustee, or fiduciary, for certain moneys, it is responsible for those assets that—because of a trust arrangement—can be used only for the trust beneficiaries. The Agency is responsible for ensuring that the assets reported in these funds are used for their intended purposes. All of the Agency's fiduciary activities are reported in a separate statement of fiduciary net assets and a statement of changes in fiduciary net assets. We exclude these activities from the Agency's government-wide financial statements because the Agency cannot use these assets to finance its operations. The Agency has one fiduciary fund used to account for activities in which the Agency is acting in an agency capacity for the state general fund. Funds are received from clients who are determined by the Agency not to be indigent. All amounts charged to clients and all amounts collected from these clients are payable to the state general fund.

FINANCIAL ANALYSIS

The Agency's net assets decreased \$259,008 over the course of this fiscal year's operations. The following financial information is a comparison of net assets for 2009 and 2008:

	2009	2008	Variance
Current and other noncurrent assets	\$3,883,618	\$4,044,165	(\$160,547)
Capital assets, net	11,529	28,460	(16,931)
Total assets	<u>3,895,147</u>	<u>4,072,625</u>	<u>(177,478)</u>
Long-term liabilities	89,351	213,114	(123,763)
Other liabilities	4,099,046	3,893,753	205,293
Total liabilities	<u>4,188,397</u>	<u>4,106,867</u>	<u>81,530</u>
Net Assets:			
Invested in capital assets, net of related debt	11,529	28,460	(16,931)
Restricted	828,618	1,087,900	(259,282)
Unrestricted	(1,133,397)	(1,150,602)	17,205
Total net assets	<u><u>(\$293,250)</u></u>	<u><u>(\$ 34,242)</u></u>	<u><u>(259,008)</u></u>

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT
MANAGEMENT'S DISCUSSION AND ANALYSIS
June 30, 2009**

The total assets consist of cash, net receivables, prepaid expenses, and capital assets (net of accumulated depreciation). Total liabilities consist of accounts payable, accrued salaries and employee benefits payable, amounts due to the state's general fund and other agencies, and compensated absences payable.

Net assets are comprised of investment in capital assets, restricted and unrestricted amounts. The restricted amount is comprised of: \$557,231 that is reserved for subsequent year's expenditures and \$271,387 that is reserved for the purchase and maintenance of automation systems.

The variances consist of:

- Total assets – The \$177,478 variance (decrease) in total assets is attributable to a decrease in cash (investment in state general fund investment pool) and increase in prepaid expenses at June 30, 2009.
- Total liabilities - Most of the variance amount is attributable to a \$58,045 increase in the amount due to the state general fund and a \$37,037 increase in compensated absences payable. The remaining variance (\$13,552) is combination of an increase in payroll related liabilities and a decrease in accounts payable.
- Total net assets – The net assets for the Agency decreased from 2008 by \$259,008.

The following financial information is a comparison of the Statement of Activities for 2009 and 2008:

	<u>2009</u>	<u>2008</u>	<u>Variance</u>
Revenues:			
Program revenues:			
Charges for services	\$243,342	\$ 212,003	\$31,339
Operational grants	84,566	86,652	(2,086)
General revenues	<u>42,183,420</u>	<u>40,904,921</u>	<u>1,278,799</u>
Total revenues	42,511,328	41,203,276	1,308,052
Expenses:			
General government:	<u>42,580,469</u>	<u>41,429,377</u>	<u>1,151,092</u>
Increase (decrease) in net assets	(69,141)	(226,101)	156,960
Net assets, beginning	<u>(224,109)</u>	<u>191,859</u>	<u>(415,968)</u>
Net assets, ending	<u>(\$293,250)</u>	<u>(\$ 34,242)</u>	<u>(\$259,008)</u>

Note: The \$189,867 difference between 2008 ending net assets and 2009 beginning net assets is attributable to prior period adjustments and discussed in Note 13.

Total Revenues \$42,511,328: Revenue received is comprised mostly by appropriations from the state's general fund, but also includes inter-agency transfers, applications fees and other miscellaneous revenues. In fiscal year 2009 the Department collected \$31,339 more in application fees. This explains the variance in the Charges for Services category above. The increase in general revenues is attributable to an increase in funding received during the appropriation process.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT
MANAGEMENT'S DISCUSSION AND ANALYSIS
June 30, 2009**

Total Expenses \$42,580,469: Expenses consists of employee salaries and benefits, contractual services, operational costs and reversions. Increased expenditures are attributable to additional appropriations mentioned above.

Change in Net Assets (\$259,008): The Agency's total revenue increased by approximately 3.2% from \$41,203,276 to \$42,511,328. The Agency's total expenses increased by approximately 2.78% from \$41,429,377 to \$42,580,469.

ANALYSIS OF THE AGENCY'S OVERALL FINANCIAL POSITION AND RESULTS OF OPERATIONS

As of the close of the fiscal year, the Agency reported an ending fund balance of \$747,890, most of the fund balance is reserved for specific purposes, such as petty cash, subsequent year's expenditures, and for the purchase and maintenance of automation systems. The negative fund balance, which is identified as unreserved/undesignated is relative to expenditures that the Department paid out of a subsequent year's budget, prepaid expenses, and deferred revenue. This issue is discussed in Note 9 (e).

The general fund is the chief operating fund for the Agency. At the end of the current fiscal year, the reserved fund balance of the general fund was \$586,883 and the unreserved/undesignated fund amount was (\$110,380) which comprised the total fund balance of \$476,503. The fund balance of the Agency's general fund decreased by \$296,686 during the current fiscal year.

The special revenue fund titled the Automation Fund has a total fund balance of \$271,387, all of which is reserved for the purchase and maintenance of automation systems. The net increase in fund balance during the current year in this special revenue fund was \$73,664.

The net assets decreased by \$259,008, indicating that the Agency is slightly worse off than it was a year ago.

General Fund Budgetary Highlights

The State Legislature makes annual appropriations to the Agency. Adjustments to the budget require approval by the State Budget Division of the Department of Finance and Administration.

Over the course of the year, the Agency revised its budget. These budget adjustments are captured in four categories.

- Adjustments for supplemental or special appropriations to either budget new or continuing supplemental or special appropriations, or to adjust the estimated amount to reflect the actual appropriation amount.
- Increases to the budget to reflect funding that was not secured at the time the operating budget was prepared. This includes funding from various courts in exchange for the Departments service to their drug court programs.
- Changes made between categories to ensure that the budget reflects the most accurate budget allocation, based on expenditure projections.
- Increases to the budget from fund balance to prevent budget overruns.

With these adjustments, actual general fund expenditures were \$833,956 below final budget amounts. The final approved budget was \$43,417,909 and the total expenditures were \$42,583,953.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT
MANAGEMENT'S DISCUSSION AND ANALYSIS
June 30, 2009**

CAPITAL ASSET AND DEBT ADMINISTRATION

Capital Assets

At the end of 2009, the Agency had invested \$11,529 in capital assets, including machinery, equipment, furniture and fixtures. This amount represents a net decrease (including additions and deductions) of \$16,931 or 30.2% under last fiscal year. The decrease in capital assets is due to the donation of older information technology equipment to qualified recipients.

Long- term debt

At the end of the year, the Agency had \$1,070,651 in compensated absences payable, a slight increase of 3.6% over last fiscal year. The increase is attributable to receiving authorization for additional employees. More information about the agency's debt is presented in note 8 of this report.

NEXT YEARS BUDGETS

The total approved recurring general fund operating budget for fiscal 2010 is \$41,827,000. The original appropriation amount of \$42,681,000 was reduced by \$854,000 pursuant to an Executive Order which mandated responsible spending cuts

For comparison, the original approved recurring general fund operating budget for fiscal year 2009 was \$43,219,500, but was reduced during the 2008 legislative session by \$824,500 due to the economic conditions to \$42,395,000.

Along with the rest of the nation, current revenue projections for New Mexico are grim and state agencies may face further budget cuts and furloughing of staff in fiscal year 2010 and year 2011.

CONTACTING THE AGENCY'S FINANCIAL MANAGEMENT

This financial report is designed to provide our citizens, taxpayers, customers, and investors and creditors with a general overview of the Agency's finances and to demonstrate the Agency's accountability for the money it receives. If you have any questions about this report or need additional financial information, contact the Agency's Administration Unit.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

Exhibit A

**Statement of Net Assets
June 30, 2009**

	<u>Governmental Activities</u>
<u>Assets</u>	
Current assets:	
Interest in State General Fund Investment Pool (note 3)	\$ 3,790,209
Cash in authorized bank accounts	4,864
Petty cash	1,200
Accounts receivable	12,603
Due from employees (note 4)	23,228
Due from agency fund	80
Due from other state agencies (note 4)	22,982
Prepaid expenses	28,452
	<hr/>
Total current assets	3,883,618
Noncurrent assets:	
Capital assets, net of depreciation (note 5)	11,529
	<hr/>
Total assets	<u>3,895,147</u>
<u>Liabilities</u>	
Current liabilities:	
Accounts payable	1,689,083
Accrued payroll payable	550,304
Payroll taxes payable	215,331
Payroll benefits payable	384,917
Other payroll liabilities	63,674
Due to employees	131
Due to state general fund (note 6)	214,306
Compensated absences payable (note 8)	981,300
Long-term liabilities:	
Compensated absences payable (note 8)	89,351
	<hr/>
Total liabilities	<u>4,188,397</u>
<u>Net Assets</u>	
Invested in capital assets	11,529
Restricted for special appropriation expenditures	557,231
Restricted for automation systems	271,387
Unrestricted	(1,133,397)
	<hr/>
Total net assets	<u>\$ (293,250)</u>

The accompanying notes are an integral part of the financial statements.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

Exhibit B

**Statement of Activities
Year Ended June 30, 2009**

	<u>Governmental Activities</u>
Expenses:	
General government:	
Current:	
Personal services and employee benefits	\$ 26,079,655
Contractual services	10,784,236
Other	5,693,722
Depreciation expense	22,856
	<u>42,580,469</u>
Total expenses	<u>42,580,469</u>
Program revenues:	
Charges for services	243,342
Operating state grants	84,566
	<u>327,908</u>
Total program revenues	<u>327,908</u>
Net program expense	<u>42,252,561</u>
General revenues:	
General Fund appropriation, net of current-year reversion (\$211,582)	41,627,818
Transfers-in from other state agencies	555,600
Interest	2
	<u>42,183,420</u>
Total general revenues	<u>42,183,420</u>
Change in net assets	<u>(69,141)</u>
Net assets, beginning, as originally reported	(34,242)
Prior period adjustments (note 13)	(189,867)
	<u>(224,109)</u>
Net assets, beginning, as restated	<u>(224,109)</u>
Net assets, ending	<u><u>\$ (293,250)</u></u>

The accompanying notes are an integral part of the financial statements.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

Exhibit C

**Balance Sheet - Governmental Funds
June 30, 2009**

	<u>General Fund</u>	<u>Special Revenue Fund</u>	<u>Total Governmental Funds</u>
<u>Assets</u>			
Interest in SGF Investment Pool (note 3)	\$ 3,514,133	\$ 276,076	\$ 3,790,209
Cash in authorized bank accounts	-	4,864	4,864
Petty cash	1,200	-	1,200
Accounts receivable	11,083	1,520	12,603
Due from employees (note 4)	23,228	-	23,228
Due from agency fund	-	80	80
Due from other state agencies (note 4)	22,982	-	22,982
Prepaid expenses	28,452	-	28,452
	<u>3,601,078</u>	<u>282,540</u>	<u>3,883,618</u>
Total assets	<u>\$ 3,601,078</u>	<u>\$ 282,540</u>	<u>\$ 3,883,618</u>
<u>Liabilities and Fund Balance</u>			
Liabilities:			
Accounts payable	1,677,930	11,153	\$ 1,689,083
Accrued salaries payable	550,304	-	550,304
Payroll taxes payable	215,331	-	215,331
Payroll benefits payable	384,917	-	384,917
Other payroll liabilities	63,674	-	63,674
Due to employees	131	-	131
Deferred revenue	17,982	-	17,982
Due to State General Fund (note 6)	214,306	-	214,306
	<u>3,124,575</u>	<u>11,153</u>	<u>3,135,728</u>
Total liabilities	<u>3,124,575</u>	<u>11,153</u>	<u>3,135,728</u>
Fund Balance:			
Fund balance (note 9):			
Reserved for petty cash	1,200	-	1,200
Reserved for prepaid expenses	28,452	-	28,452
Reserved for subsequent year's expenditures	557,231	-	557,231
Reserved for the purchase and maintenance of automation systems	-	271,387	271,387
Unreserved/undesignated	(110,380)	-	(110,380)
	<u>476,503</u>	<u>271,387</u>	<u>747,890</u>
Total fund balance	<u>476,503</u>	<u>271,387</u>	<u>747,890</u>
Total liabilities and fund balance	<u>\$ 3,601,078</u>	<u>\$ 282,540</u>	<u>\$ 3,883,618</u>

The accompanying notes are an integral part of the financial statements.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Reconciliation of the Governmental Funds Balance Sheet
to the Government-Wide Statement of Net Assets
June 30, 2009**

Total fund balance-Governmental funds \$ 747,890

Amounts reported for governmental activities in the
Statement of Net Assets are different because:

Capital assets used in governmental activities are not
current financial resources and, therefore, are not
reported in the Governmental Funds Balance Sheet.

These assets consist of:

Furniture and fixtures	\$	21,694	
Machinery and equipment		150,471	
Data processing equipment		515,965	
Accumulated depreciation		<u>(676,601)</u>	11,529

Other assets are not available to pay for current period
expenditures and, therefore, are deferred in the funds 17,982

Some liabilities are not due and payable in the current
period and, therefore, are not reported in the Governmental
Funds Balance Sheet.

These liabilities consist of:

Compensated absences payable		<u>(1,070,651)</u>	
------------------------------	--	--------------------	--

Net assets of governmental activities \$ (293,250)

The accompanying notes are an integral part of the financial statements.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

Exhibit D

**Statement of Revenues, Expenditures and Changes in
Fund Balances - Governmental Funds
Year Ended June 30, 2009**

	<u>General Fund</u>	<u>Special Revenue Fund</u>	<u>Total Governmental Funds</u>
Revenues:			
Application fees	\$ -	\$ 243,342	\$ 243,342
Other state funds	66,583	-	66,583
Interest	-	2	2
	<u>66,583</u>	<u>243,344</u>	<u>309,927</u>
Total revenues			
Expenditures:			
General government:			
Current:			
Personal services and employee benefits	26,042,617	-	26,042,617
Contractual services	10,784,236	-	10,784,236
Other	5,530,467	163,255	5,693,722
Capital outlay	-	5,925	5,925
	<u>42,357,320</u>	<u>169,180</u>	<u>42,526,500</u>
Total expenditures			
Excess (deficiency) of revenues over expenditures	<u>(42,290,737)</u>	<u>74,164</u>	<u>(42,216,573)</u>
Other financing sources (uses):			
General Fund appropriations	41,839,400	-	41,839,400
Other financing sources (note 15)			
Compensation package	555,600	-	555,600
Reversions (note 6)	(211,582)	-	(211,582)
	<u>42,183,418</u>	<u>-</u>	<u>42,183,418</u>
Total other financing sources (uses)			
Excess (deficiency) of revenues and other financing sources over expenditures and other financing uses	<u>(107,319)</u>	<u>74,164</u>	<u>(33,155)</u>
Fund balance, beginning, as originally reported	773,189	197,723	970,912
Prior period adjustments (note 13)	(189,367)	(500)	(189,867)
Fund balance, beginning, as restated	<u>583,822</u>	<u>197,223</u>	<u>781,045</u>
Fund balance, ending	<u>\$ 476,503</u>	<u>\$ 271,387</u>	<u>\$ 747,890</u>

The accompanying notes are an integral part of the financial statements.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Reconciliation of the Statement of Revenues, Expenditures
and Changes in Fund Balances of Governmental Funds
to the Government-Wide Statement of Activities
Year Ended June 30, 2009**

Net change in fund balance-Governmental Funds \$ (33,155)

Amounts reported for governmental activities in the
Statement of Activities are different because:

Capital outlays are reported as expenditures in
governmental funds. However, in the Statement of
Activities, the cost of capital assets is allocated over
their estimated useful lives as depreciation expense.

In the current period, these amounts are:

Depreciation expense	(22,856)
Capital outlay	5,925

Some intergovernmental revenue will not be collected within
60 days of fiscal year end. These are not considered
"available" revenues in the governmental funds until received.
Change in amounts deferred on fund statements.

17,982

Some items reported in the Statement of Activities
do not require the use of current financial resources
and, therefore, are not reported as expenditures in
governmental funds. These activities consist of:

Increase in compensated absences payable	<u>(37,037)</u>
--	-----------------

Change in net assets of governmental activities

\$ (69,141)

The accompanying notes are an integral part of the financial statements.

Statement of Revenues and Expenditures
Budget and Actual
Year Ended June 30, 2009

	General Fund			Variance with Final Budget Positive (Negative)
	Original Approved Budget	Final Approved Budget	Actual (Budgetary Basis)	
Revenues:				
Intergovernmental revenue:				
General appropriations	\$ 42,663,900	\$ 41,839,400	\$ 41,839,400	\$ -
Other state funds	-	132,734	66,583	(66,151)
Other financing sources	555,600	555,600	555,600	-
Total revenues	43,219,500	42,527,734	<u>\$ 42,461,583</u>	<u>\$ (66,151)</u>
Prior-year funds re-budgeted	890,175	890,175		
	<u>\$ 44,109,675</u>	<u>\$ 43,417,909</u>		
Expenditures: (note 10)				
General government:				
Current:				
Personal services and employee benefits	\$ 25,828,700	\$ 26,109,134	\$ 26,042,617	\$ 66,517
Contractual services	12,171,730	11,103,766	10,887,822	215,944
Other	6,109,245	6,205,009	5,653,514	551,495
Other financing uses	-	-	-	-
Total expenditures	<u>\$ 44,109,675</u>	<u>\$ 43,417,909</u>	<u>\$ 42,583,953</u>	<u>\$ 833,956</u>

The accompanying notes are an integral part of the financial statements.

Statement of Revenues and Expenditures
Budget and Actual
Year Ended June 30, 2009

	Special Revenue Fund			Variance with Final Budget Positive (Negative)
	Original Approved Budget	Final Approved Budget	Actual (Budgetary Basis)	
Revenues:				
Application fees	\$ 184,000	\$ 184,000	\$ 243,342	\$ 59,342
Interest	-	-	2	2
Total revenues	184,000	184,000	\$ 243,344	\$ 59,344
Prior-year funds re-budgeted	-	75,000		
	<u>\$ 184,000</u>	<u>\$ 259,000</u>		
Expenditures:				
General government:				
Current:				
Contractual services	\$ 40,000	\$ 40,000	\$ -	\$ 40,000
Other	144,000	219,000	169,680	49,320
Total expenditures	<u>\$ 184,000</u>	<u>\$ 259,000</u>	<u>\$ 169,680</u>	<u>\$ 89,320</u>

The accompanying notes are an integral part of the financial statements.

STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT

Exhibit F

Statement of Fiduciary Assets and Liabilities - Agency Fund
June 30, 2009

	<u>Agency Fund</u>
<u>Assets</u>	
Interest in State General Fund Investment Pool	\$ 9,648
Accounts receivable, net	<u>2,399,175</u>
Total assets	<u><u>\$ 2,408,823</u></u>
<u>Liabilities</u>	
Due to State General Fund (note 6)	\$ 2,408,743
Due to others	-
Due to other funds	<u>80</u>
Total liabilities	<u><u>\$ 2,408,823</u></u>

The accompanying notes are an integral part of the financial statements.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2009**

1. History and Organization

The Public Defender Department (Department) was created by Chapter 31, Article 15, NMSA, 1978 Compilation. The Chief Public Defender is the administrative head of the Department who is appointed by the Governor. The Chief Public Defender, in turn, appoints seven District Public Defenders. The purpose of the Department is to confer with and represent any person charged with any crime that carries a possible sentence of imprisonment and who appears in court without counsel. If the person is financially unable to obtain counsel, he is to be represented by the District Public Defender of the appropriate jurisdiction at all stages of the proceeding against him, including any appeal. The Chief Public Defender shall establish within the Department an appellate Division to provide representation before the court of appeals and Supreme Court in appellate, review and post conviction proceedings involving persons represented under the Public Defender Act (31-15-1 to 31-15-12, NMSA 1978).

2. Summary of Significant Accounting Policies

The financial statements of the Department have been prepared in conformity with accounting principles generally accepted (US GAAP) in the United States of America as applied to governmental units. The Governmental Accounting Standards Board (GASB) is the accepted standard-setting body for establishing governmental accounting and financial reporting principles. The GASB periodically updates its codification of the existing Governmental Accounting and Financial Reporting Standards, which, along with subsequent GASB pronouncements (Statements and Interpretations), constitutes US GAAP for governmental units. The more significant of the Department's accounting policies are described below.

A. Financial Reporting Entity

In evaluating how to define the government, for financial reporting purposes, management has considered all potential component units. The decision to include a potential component unit in the reporting entity was made by applying the criteria set forth in US GAAP. The basic-but not the only-criterion for including a potential component unit within the reporting entity is the governing body's ability to exercise oversight responsibility. The most significant manifestation of this ability is financial interdependency. Other manifestations of the ability to exercise oversight responsibility include, but are not limited to, the selection of governing authority, the designation of management, the ability to significantly influence operations, and accountability for fiscal matters. A second criterion used in evaluating potential component units is the scope of public service. Application of this criterion involves considering whether the activity benefits the government and/or its citizens, or whether the activity is conducted within the geographic boundaries of the government and is generally available to its citizens.

A third criterion used to evaluate potential component units for inclusion or exclusion from the reporting entity is the existence of special financing relationships, regardless of whether the government is able to exercise oversight responsibilities.

The Department is legally separate and fiscally independent of other state agencies. The Chief Public Defender has decision-making authority, the power to designate management, the responsibility to significantly influence operations and primary accountability for fiscal matters. The Public Defender Department is a part of the primary government of the State of New Mexico, and its financial data should be included with the financial data of the State.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2009**

2. Summary of Significant Accounting Policies (cont'd)

A. Financial Reporting Entity (cont'd)

However, New Mexico does not, at present, issue an audited Comprehensive Annual Financial Report inclusive of all agencies of the primary government. Included within the reporting entity is the Public Defender Department as described above. There are no component units. Other Executive Branch entities of government are excluded because they are established separately by statutes.

B. Basic Financial Statements – GASB Statement No. 34

The basic financial statements include both government-wide (based on the Public Defender Department as a whole) and fund financial statements. The reporting model focus is on either the Department as a whole or major individual funds (within the fund financial statements). Both the government-wide and fund financial statements (within the basic financial statements) categorize primary activities as either governmental or business type activities.

The Department has only governmental type activities. In the government-wide Statement of Net Assets, the governmental column reflects an accrual basis of accounting and an economic measurement focus resources basis, which incorporates long-term assets as well as long-term debt and obligations.

Revenues, expenses, gains, losses, assets and liabilities resulting from exchange and exchange-like transactions are recognized when the exchange takes place in accordance with the requirements of GASB Statement No. 33, *Accounting and Financial Reporting for Nonexchange Transactions*. The Department has elected to apply the provisions of all relevant pronouncements of the Financial Accounting Standards Board (FASB), including those issued after November 30, 1989.

The government-wide Statement of Activities reflects both the gross and net cost per functional category, which are otherwise being supported by general government revenues. The Statement of Activities reduced gross expenses (including depreciation) by related program revenues. The program revenues must be directly associated with the function. Program revenues include charges for services (indigent client non-refundable application fees) and state operating grants mainly associated with various Judicial District Juvenile and Adult Drug Courts.

The Public Defender Department includes only one function (general government). General revenues (General Fund appropriation, transfers-in from other state agencies, refunds, etc.) normally cover the net cost (by function). Historically, the prior model did not summarize or present net cost by function or activity. Also, neither fiduciary funds nor component units that are fiduciary in nature are included in the government-wide financial statements.

This government-wide focus is more on the sustainability of the Public Defender Department as an entity and the change in aggregate financial position resulting from the activities of the fiscal period. The fund financial statements are similar to the financial statements presented in the previous accounting model. The governmental fund statements are presented on a current financial resources measurement focus and modified accrual basis of accounting.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2009**

2. Summary of Significant Accounting Policies (cont'd)

B. Basic Financial Statements – GASB Statement No. 34 (cont'd)

This presentation is deemed appropriate to (a) demonstrate legal compliance, (b) demonstrate the source and use of liquid resources, and (c) demonstrate how the Public Defender Department's actual experience conforms to the budget or fiscal plan. Since the governmental fund statements are presented on a different measurement focus and basis of accounting than the government-wide statements' governmental column, a reconciliation is presented on the page following each statement, which briefly explains the adjustment necessary to transform the fund-based financial statements into the governmental column on the government-wide presentation.

C. Basis of Presentation – Fund Accounting

The financial transactions of the Public Defender Department are maintained on the basis of funds, each of which is considered a separate accounting entity. The operations of each fund are accounted for with a separate set of self-balancing accounts that comprise its assets, liabilities, fund balance, revenues, expenditures and other financing sources or uses. Government resources are allocated to, and accounted for, in individual funds based upon the purpose for which they are to be spent and the means by which spending activities are controlled. The various funds are summarized by type and reported by generic classification in the accompanying financial statements. GASB Statement No. 34 sets forth minimum criteria for the determination of major funds based on a percentage of the assets, liabilities, revenues or expenditures. The general fund is always considered a major fund. The Department uses the following fund types:

GOVERNMENTAL FUND TYPES

The focus of Governmental Fund measurement (in the fund financial statements) is based upon determination of financial position and changes in financial position (sources, uses, and balances of financial resources) rather than upon net income. The following is a description of the Governmental Funds of the Public Defender Department.

General Fund - the General Fund (SHARE Fund #175-reverting and non-reverting) is the general operating fund of the Department. It is used to account for all financial resources except those required to be accounted for in another fund. The regular general appropriation accounted for in this fund is reverting. Other special appropriations in this fund have been extended by Laws of 2009 and do not revert until June 30, 2010. The remaining funds are originally from Laws of 2006, Chapter 109, Section 5, Item 24 (\$458,586), and Item 25 (\$98,645) for a total of \$557,231. Also, see note 16.

Special Revenue Fund (SHARE Fund #759-nonreverting – Section 31-15-5 1B) - Used to account for those proceeds of specific revenue sources that are legally restricted to expenditures for specified purposes. The legal restrictions on expenditures and the authority for the creation of the Automation Special Revenue Fund is a result of Senate Bill 222 of the 41st Legislature of the State of New Mexico, which amended Section 31-15-12, NMSA, 1978 Compilation and created the fund. This fund is also considered a major fund under GASB 34 criteria.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2009**

2. Summary of Significant Accounting Policies (cont'd)

C. Basis of Presentation – Fund Accounting (cont'd)

FIDUCIARY FUND TYPES

Agency Fund - The Agency Fund (SHARE Fund #753-reverting) is used to account for the reimbursement from each person who has received legal representation or another benefit under the Public Defender Act after a determination is made that the person was not indigent according to the standard for indigence adopted by the Department. Any amounts recovered revert, less collection agent fees, to the State General Fund. The authority for creation of this fund is a result of the Laws of 1987, Chapter 20, NMSA, 1978 Compilation, amending Sections 31-15-7, 32-1-56, 34-6-46, 34-8A-11 and 35-5-8.

D. Basis of Accounting

Basis of accounting refers to the point at which revenues or expenditures or expenses are recognized in the accounts and reported in the financial statements. It relates to the timing of the measurements made, regardless of the measurement focus applied. The government-wide and the fiduciary financial statements are presented on an accrual basis of accounting. The previous model reported fiduciary funds under the modified accrual basis of accounting. The governmental funds in the fund financial statements are presented on a modified accrual basis of accounting.

Modified Accrual – All governmental funds are accounted for using the modified accrual basis of accounting. Under the modified accrual basis of accounting, revenues are recognized when susceptible to accrual; i.e., both measurable and available. “Available” means collectible within the current period or expected to be received within sixty days of year-end to be used to pay liabilities of the current period. Expenditures are generally recognized under the modified accrual basis of accounting when the related liability is incurred.

Nonexchange transactions, in which the Department receives value without directly giving equal value in return, includes grants. Revenue from grants is recognized in the year in which all eligibility requirements have been satisfied. Eligibility requirements include timing requirements, which specify the year when the resources are required to be used or the year when use is first permitted; matching requirements, in which the Department must provide state resources to be used for a specified purpose; and expenditure requirements, in which the resources are provided to the Department on a reimbursement basis. On a modified accrual basis of accounting, revenue from a nonexchange transaction must also be available before it is recognized. Under the modified accrual basis of accounting, grant revenue sources are considered to be both measurable and available at year-end. There are no interfund transactions to be eliminated.

E. Budgets and Budgetary Accounting

The New Mexico State Legislature makes annual appropriations to the Department. Legal compliance is monitored by the establishment of a budget (modified accrual basis) and a financial control system that permits a budget to actual expenditure comparison. Expenditures may not legally exceed appropriations for each budget at the appropriation unit level.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2009**

2. Summary of Significant Accounting Policies (cont'd)

E. Budgets and Budgetary Accounting (cont'd)

Budgeted appropriation unit amounts may be amended upon approval from the Budget Division of the State of New Mexico Department of Finance and Administration within the limitations as specified in the General Appropriation Act. The budget amounts shown in the financial statements are both the original appropriation and the final authorized amounts as legally revised during the year.

The Public Defender Department follows these procedures in establishing the budgetary data reflected in the financial statements:

1. By September 1st, the Public Defender Department prepares a budget request by appropriation unit to be presented to the next legislature.
2. The appropriation request is submitted to the Department of Finance and Administration's Budget Division (DFA) and to the Legislative Finance Committee (LFC).
3. DFA makes recommendations and adjustments to the appropriation request which become the Governor's proposal to the Legislature.
4. LFC holds hearings on the appropriation request, also submitting recommendations and adjustments before presentation to the Legislature.
5. Both the DFA's and LFC's recommended appropriation proposals are presented to the Legislature for approval of the final budget plan.
6. Budgetary control is exercised at the appropriation unit level of the Public Defender Department as a whole and changes are approved by the DFA.
7. The Public Defender Department's budget for the fiscal year ending June 30, 2009 was amended in a legally permissible manner by increasing or reallocating appropriation unit totals as the need arose during the fiscal year. Individual amendments were not material in relation to the original budget.
8. Appropriations lapse at the end of the year except for those amounts related to goods and services received by June 30th which are reflected as accounts payable in the financial statements.
9. The budgets for the General and Special Revenue Funds are adopted on a modified accrual basis per the General Appropriation Act, Laws of 2008. For the year ended June 30, 2009, in the General Fund, the Department has requested approval to pay prior-year payables that did not get paid within 31 days after the end of the fiscal year. The cash to pay those obligations is reverted to the State General Fund causing a negative fund balance. Although reflected as current year expenditures, those payables are paid out of next year's budget. Therefore, there are differences between the current year budgeted expenditures and fund financial statements expenditures.

In accordance with the requirements of Section 2.2.2.10, A(2)(b) of 2.2.2 NMAC *Requirements for Contracting and Conducting Audits of Agencies* and the allowance made by GASB 34, footnote 53, the budgetary comparison statements have been included as a part of the basic financial statements. For the General and Special Revenue Funds, the reconciliation between the current year fund financial statement expenditures and budgeted expenditures is presented in Note 10.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2009**

2. Summary of Significant Accounting Policies (cont'd)

F. Encumbrances/Contract Attorney Contracts

Encumbrances represent commitments related to unperformed contracts for goods and services. Encumbrance accounting, under which purchase orders, contracts, and other commitments for the expenditure of monies are recorded in order to reserve that portion of the applicable appropriation, is employed as an extension of formal budget integration during the year in the governmental funds.

So long as the appropriation period has not lapsed and budget exists, an encumbrance can be charged against the budget. However, when the appropriation period lapses, the budget authority is non-existent and the encumbrance can no longer be charged to that budget. Legislation sets the appropriation period, which can be single or multi-year periods. At June 30, 2009, there were no encumbrances. However, in the case of contract attorney contracts this is not true because the contract specifically states that the "Department shall not be bound by any numerical estimates of compensation". There is not a commitment by the Department to pay any amount at the time of contracting.

The commitment (on a per case basis) arises when the contractor has had at least one documented direct contact with the client or has made one documented court appearance on behalf of the client. Contract attorney expenditures are charged to the budget fiscal year where the commitment exists.

G. Interest in State General Fund Investment Pool

The Department has defined cash and cash equivalents to include the Interest in State General Fund Investment Pool with the State Treasurer.

H. Receivables

Receivables consist of accounts receivable, amounts due from employees, reimbursements due for various Judicial District Juvenile and Adult Drug Courts programs and a small amount due from the agency fund. All amounts are considered fully collectible. Agency fund accounts receivable consist of amounts due from persons who have received legal representation or another benefit under the Public Defender Act after a determination is made that the person is not indigent according to the standard for indigence adopted by the Department. An allowance for uncollectible accounts has been established in the amount of \$25,760,138, representing all outstanding amounts due from clients that are greater than six months old.

I. Capital Assets

Capital assets are tangible assets that are used in operations and that have initial useful lives that extend beyond a single reporting period. Capital assets are reported in the Statement of Net Assets at historical cost or estimated fair value, if donated. Capital assets are depreciated using zero salvage value and the straight-line method over their estimated useful lives. Items with a cost of less than \$5,000 are expensed in the year of acquisition. Repairs and maintenance expenses are charged to operations when incurred and major betterments and replacements are capitalized. There is no debt related to capital assets.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2009**

2. Summary of Significant Accounting Policies (cont'd)

I. Capital Assets (cont'd)

Before the 2005 legislative session, only items costing more than \$1,000 were capitalized. Effective June 19, 2005, House Bill 1074 amended Section 12-6-10, NMSA 1978, to increase the capitalization threshold to items costing more than \$5,000. The Department has elected to include assets that cost less than \$5,000 but equal to or more than \$1,000, and were purchased prior to July 1, 2005, on their capital asset inventory. The major classifications of capital assets and their related depreciable lives are as follows:

Machinery and equipment	4-20 years
Data processing equipment (including software)	4-5 years
Furniture and fixtures	10-20 years

J. Accrued Compensated Absences

Employees are entitled to accumulate annual leave at a rate based on appointment date and length of continuous service. A maximum of 240 hours of annual leave may be carried forward after the pay period beginning in December and ending in January. When employees terminate, they are compensated at their current hourly rate for accumulated unpaid annual leave as of the date of termination, up to a maximum of 240 hours. Employees are entitled to accumulate sick leave at a rate of 3.69 hours per pay period. There is no limit to the amount of sick leave that an employee may accumulate.

State agencies are allowed to pay fifty (50) percent of each employee's hourly rate for accumulated sick leave over 600 hours up to 120 hours. Payment may be made only once per fiscal year at a specified pay period in either January or July. Nonexempt employees accumulate compensation time for hours worked in excess of forty hours per week, based on their regular hourly rate. Such overtime must be pre-approved by management. Payment of this liability can be made by compensated leave time or cash payment. At June 30, 2009, there was no compensation time owed to any employee.

The compensated absences liability is presented in two parts, a current portion and long-term portion, in the government-wide financial statements. The current portion is the amount expected to be expended during fiscal year 2009 and is an estimate management determined by the last fiscal year's usage. Based on this estimate, for the year ended June 30, 2009, the current portion of the compensated absences liability is \$981,300. The long-term portion is \$89,351. In accordance with GASB 16, accrued compensated absences consist of accumulated annual leave and related salary payments (employers' matching FICA and Medicare payroll taxes).

K. Reversions

Unexpended and unencumbered balances are generally reverted to the State General Fund. Laws of 2008 state that unexpended or unencumbered balances of the State General Fund appropriation to the Department shall revert. Accordingly, reversions have been recorded in the current year for General Fund appropriations. Also, unexpended balances of special appropriations are reverted when required by law. See note 16.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2009**

2. Summary of Significant Accounting Policies (cont'd)

L. Net Assets

The government-wide financial statements utilize a net asset presentation. Net assets are categorized as investment in capital assets, restricted and unrestricted. *Investment in capital assets* reflects the portion of net assets which are associated with non-liquid capital assets. *Restricted net assets* are liquid assets which have third-party (statutory, bond covenant or granting agency) limitation on their use. When expenses are incurred for purposes for which both unrestricted and restricted funds are available, it is the policy of the Department to first apply restricted resources. *Unrestricted net assets* represent unrestricted liquid assets.

M. Use of Estimates

The preparation of financial statements in conformity with US GAAP requires management to make estimated and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

3. Interest in State General Fund Investment Pool

Interest in SGF Investment Pool is on deposit with the State Treasurer. Cash in authorized bank accounts include nine checking accounts with financial institutions within the state. The Department also maintains twelve (12) \$100 imprest petty cash funds at various locations within the state.

All funds with the State Treasurer are in the State General Fund Investment Pool (SGFIP). In general, state statutes require that all deposits held by the State Treasurer be collateralized at a minimum level of 50 percent. Collateral pledged to secure these deposits is monitored by the State Treasurer's Office (STO) and the STO issues separate financial statements that disclose the collateral pledged to secure these deposits. The Department holds no investments. The State Treasurer has the power to invest money held in demand deposits and not immediately needed for the operation of state government in securities in accordance with Sections 6-10-10 I through P, NMSA 1978 as amended. The State Treasurer with the advice and consent of the state board of finance can invest money held in demand deposits and investments not immediately needed for the operation of state government in:

- (a) Securities issued by the United States (U.S.) government or by its departments or agencies and direct obligations of the U.S. or are backed by the full faith and credit of the U.S. government or agencies sponsored by the U.S. government;
- (b) Contracts for the present purchase and resale at a specified time in the future, not to exceed one year or, in the case of bond proceeds, not to exceed three years, of specific securities at specified prices at a price differential representing the interest income to be earned by the state. No such contract shall be invested in unless the contract is fully secured by obligations of the United States of other securities backed by the United States having a market value of at least one hundred two percent of the amount of the contract. The securities required as collateral shall be delivered to a third-party custodian bank and delivery shall be made simultaneously with the transfer, no later than the same day the funds are transferred. The contracting bank, brokerage firm or institutional investor must have a net worth in excess of five hundred million dollars.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2009**

3. Interest in State General Fund Investment Pool (cont'd)

- (c) Contracts for the temporary exchange of state-owned securities for the use of broker-dealers, banks or other recognized institutional investors in securities, for periods not to exceed one year for a specified fee rate. No such contract shall be invested in unless the contract is fully secured by exchange of an irrevocable letter of credit running to the state, cash or equivalent collateral of at least one hundred two percent of the market value of the securities plus accrued interest temporarily exchanged. The collateral required for either of the forms of investment in sections (b) and (c) shall be delivered to the fiscal agent of New Mexico or its designee **contemporaneously with the transfer of funds or delivery of the securities at the earliest time industry practice permits**, but in all cases, settlement shall be on the a same-day basis. Neither of the contracts in (b) or (c) shall be invested in unless the contracting bank, brokerage firm or recognized institutional investor has a net worth in excess of five hundred million dollars.
- (d) Any of the following investments in an amount not to exceed forty percent of any fund that the state treasurer invests:
 - (1) commercial paper rated "prime" quality by a national rating service, issued by corporations organized and operating within the U.S.;
 - (2) medium-term notes and corporate notes with a maturity not exceeding five years that are rated A or its equivalent or better by a nationally recognized rating service and that are issued by a corporation organized and operating in the U.S.; or
 - (3) an asset-backed obligation with a maturity not exceeding five years that is rated AAA or its equivalent by a nationally recognized rating service.
- (e) Shares of a diversified investment company registered pursuant to the federal Investment Company Act of 1940 that invests in U.S. fixed income securities or debt instruments authorized pursuant to (a), (b), and (d) above provided that the investment company has total assets under management of at least one billion dollars and the investments made by the State Treasurer pursuant to this paragraph are less than five percent of the assets of the investment company; or
- (f) Individual, common or collective trust funds of banks or trust companies that invest in U.S. fixed income securities or debt instruments authorized pursuant to (a), (b), and (d) above, provided that the investment manager has assets under management of at least one billion dollars and investments made by the state treasurer pursuant to this paragraph are less than 5% of assets of the individual, common or collective trust fund.

Public funds to be invested in negotiable securities or loans to financial institutions fully secured by negotiable securities at current market value shall not be paid out unless there is a **contemporaneous transfer of the securities** at the earliest time industry practice permits, but in all cases, settlement shall be on a same-day basis either by physical delivery or, in the case of uncertificated securities, by appropriate book entry on the books of the issuer, to the purchaser or to a reputable third-party safekeeping financial institution acting as agent or trustee for the purchaser, which agent or trustee shall furnish timely confirmation to the purchaser.

For additional disclosure information regarding the investment in the State Treasurer's GFIP, the reader should see the separate audit report for the State Treasurer's Office for the fiscal year ended June 30, 2009, review the State Treasurer's Investment Policy at <http://www.stonm.org/ReportsandPolicies/Policies>, and review Sections 2.60.4.1 through 2.60.4.15 of the New Mexico Administrative Code, regarding Investment of Deposits of Public Funds Depository Bank Requirements, Collateral Level Requirements, and Custodial Bank Requirements.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2009**

3. Interest in State General Fund Investment Pool (cont'd)

Since none of the nine individual special revenue funds' checking account balances exceeded \$250,000, they are all fully insured by the Federal Deposit Insurance Corporation (FDIC) and pledged collateral is not required. Accounts of the Department at June 30, 2009:

<u>Account Name</u>	<u>Fund Type</u>	<u>Fund No.</u>	<u>Account Type</u>	<u>Balance per Depository</u>	<u>Outstanding Checks</u>	<u>Balance per Financial Statements</u>	
State Treasurer:							
Operating	General	355-175	SGFIP	\$ 3,514,133	\$ -	\$ 3,514,133	
Automation	Special Revenue	355-759	SGFIP	276,076	-	276,076	
Compass Bank-Albuquerque	Special Revenue	N/A	Checking	1,875	-	1,875	
Wells Fargo Bank-Las Cruces	Special Revenue	N/A	Checking	638	-	638	
Western Commerce Bank-Carlsbad	Special Revenue	N/A	Checking	235	-	235	
Wells Fargo Bank-Hobbs	Special Revenue	N/A	Checking	185	-	185	
Bank of America-Roswell	Special Revenue	N/A	Checking	54	-	54	
First Community Bank-Clovis	Special Revenue	N/A	Checking	535	-	535	
Wells Fargo Bank-Alamogordo	Special Revenue	N/A	Checking	504	-	504	
Wells Fargo Bank-Farmington/Aztec	Special Revenue	N/A	Checking	653	-	653	
Centinel Bank-Taos	Special Revenue	N/A	Checking	185	-	185	
Petty Cash				1,200	-	1,200	
Subtotal Governmental Funds				1,200	3,795,073	-	3,796,273
State Treasurer:							
Client Reimbursements	Agency	355-753	SGFIP	9,648	-	9,648	
Total cash on deposit and petty cash				\$ 1,200	\$ 3,804,721	\$ -	\$ 3,805,921

4. Receivables

Accounts receivable – this represents an amount due (\$11,083) from a contract attorney for a duplicate payment and special revenue fund application fees (\$1,520).

Due from employees – this represents amounts due from two employees for payroll overpayments (\$1,159) and for amounts associated with Public Employees' Retirement and Retiree Health Care contributions, totaling \$22,069 that were not initially withheld from employees' paychecks.

Due from other state agencies – this represents amounts due from various statewide judicial district juvenile and adult drug courts, \$22,982.

Due from agency fund – this represents an amount deposited in Fund #753 in error.

Accounts receivable (Agency Fund) – Laws of 1987, Chapter 20, require the Chief Public Defender to "provide for collection reimbursement from each person who has received legal representation or another benefit under the Public Defender Act after a determination is made that the person is not indigent according to the standard for indigence adopted by the Department." The maximum charge per defendant may be as much as \$27,500. The law further requires that "any amounts recovered shall be paid to the State Treasurer for credit to the State General Fund." Accordingly, the resulting receivable and the cash collected during the year are recorded as assets of the agency fund with a resulting liability to the State General Fund less any amounts due a collection agency or others.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2009**

4. Receivables (cont'd)

Since the implementation of GASB 34, the agency fund, as required, reports on an accrual basis of accounting and all recorded receivables due at June 30 are recognized. An allowance for doubtful accounts has been established representing all outstanding amounts due from clients that are greater than six months old.

5. Changes in Capital Assets

A summary of changes in capital assets is as follows:

	<u>Balance 7/1/08</u>	<u>Additions</u>	<u>Deletions</u>	<u>Balance 6/30/09</u>
Machinery and equipment	\$ 150,471	\$ -	\$ -	\$ 150,471
Accumulated depreciation	(143,088)	(3,334)	-	(146,422)
Data processing equipment	557,204	5,925	(47,164)	515,965
Accumulated depreciation	(537,984)	(19,265)	47,164	(510,085)
Furniture and fixtures	21,694	-	-	21,694
Accumulated depreciation	(19,837)	(257)	-	(20,094)
Totals	<u>\$ 28,460</u>	<u>\$ (16,931)</u>	<u>\$ -</u>	<u>\$ 11,529</u>

There is no debt related to capital assets. Depreciation expense for the year was \$22,856.

6. Due to State General Fund

Section 6-5-10 NMSA 1978 requires all unreserved, undesignated fund balances in reverting funds and accounts revert to the State General Fund by September 30 of each year. An agency may adjust the reversion within forty-five days of release of the audit report. The current year reversion and amounts due to the State General Fund from the Department general fund are as follows:

Fiscal year general appropriation reversion (budget basis surplus)	
FY2009 unexpended balance	
Org P720	\$ 29,399
Org Z70126	182,183
FY2009 refunds	<u>2,724</u>
Total Due to State General Fund	<u>\$ 214,306</u>

The Department amount due to the State General Fund from the Agency Fund is composed of the following:

Accounts receivable, net	\$ 2,399,175
Interest in SGF Investment Pool	9,648
Amounts due to others for payment of agency fund liabilities	<u>(80)</u>
Due to State General Fund	<u>\$ 2,408,743</u>

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2009**

7. Leases

The Department leases office space in twelve locations throughout the State and meeting/training room space, as needed. All leases have an early termination clause. Accordingly, there are no future minimum rentals. The Department also leases several postage meters and copying machines considered operating leases. All leases may be canceled at the end of any fiscal year with no penalty. Total office space and equipment rent expense for the year ended June 30, 2009 were \$2,067,372 and \$170,245, respectively.

The Department also leases twenty-six (26) vehicles on a month-to-month basis and other short-term vehicles as needed. Total vehicle lease expense was \$102,702 for FY 2009.

8. Changes in Long-Term Debt

A summary of changes in long-term debt is as follows:

	<u>Balance 7/1/08</u>	<u>Additions</u>	<u>Reductions</u>	<u>Balance 6/30/09</u>	<u>Due Within One Year</u>
Compensated Absences Payable	<u>\$ 1,033,614</u>	<u>\$ 1,018,328</u>	<u>\$ (981,291)</u>	<u>\$ 1,070,651</u>	<u>\$ 981,300</u>

The Public Defender Department's general fund is used to pay compensated absences.

9. Fund Balance

Reservation of fund balance of governmental funds are created to either (1) satisfy legal covenants that require that a portion of the fund balance be segregated or (2) identify the portion of the fund balance that is not appropriable for future expenditures. Specific reservations of the fund balance account are summarized below:

- a) Fund Balance-Reserved for petty cash-This reserve indicates that petty cash does not represent available expendable resources.
- b) Fund Balance-Reserved for prepaid expenses-This reserve indicates that prepaid postage and prepaid travel does not represent available expendable resources.
- c) Fund Balance-Reserved for Subsequent Year Expenditures \$557,231 is the amount of fund balance remaining from special appropriations which were extended through FY 2010.
- d) Fund Balance-Reserved for Automation Fund - Senate Bill 222 of the 41st legislature of the State of New Mexico amended Section 13-15-12, NMSA, 1978, and created the Special Revenue Automation Fund. Revenues of the fund are generated by assessing each person who applies for Public Defender representation a non-refundable \$10 fee. There are provisions for waiver of the fee. The law further provides that application fee revenue shall be used for the purchase and maintenance of automation systems. Accordingly, unexpended balances remaining in the fund are presented as Fund Balance-Reserved for the Purchase and Maintenance of Automation Systems in the amount of \$271,387.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2009**

9. Fund Balance (cont'd)

- e) Fund Balance-Unreserved/undesignated – the negative fund balance (\$110,380) is a result of Department's requests to pay prior-year payables (\$23,366) that did not get paid within 31 days after the end of the fiscal year and additional prior-year PERA/RHC employer matching contributions and related interest (\$46,698). The funds to pay those obligations are reverted to the State General Fund causing a negative fund balance. Although reflected as current year expenditures, those payables are paid out of next year's budget. Also, included is the increase in the reserve for prepaid expenses (\$22,334). Finally, deferred revenue (\$17,982) is included. Also, see note 17 on page 25.

10. Reconciliation of Fund Expenditures to Budgetary Expenditures

A reconciliation of fund expenditures to budgetary expenditures presented on an accounting principles generally accepted in the United States of America basis is shown below:

	General Fund			
	<u>Actual Fund Expenditures</u>	<u>FY08 Payables Charged to FY09 Budget</u>	<u>FY09 Payables Charged to FY10 Budget</u>	<u>Actual Budgetary Expenditures</u>
General Government:				
Current:				
Personal services/ employee benefits	\$ 26,042,617	\$ -	\$ -	\$ 26,042,617
Contractual services	10,784,236	117,177	(13,591)	10,887,822
Other	<u>5,530,467</u>	<u>132,822</u>	<u>(9,775)</u>	<u>5,653,514</u>
Total expenditures	<u>\$ 42,357,320</u>	<u>\$ 249,999</u>	<u>\$ (23,366)</u>	<u>\$ 42,583,953</u>
	Special Revenue Fund			
	<u>Actual Fund Expenditures</u>	<u>FY08 Payables Charged to FY09 Budget</u>	<u>Actual Budgetary Expenditures</u>	
General Government:				
Current:				
Personal services/employee benefits	\$ -	\$ -	\$ -	
Contractual services	-	-	-	
Other	<u>169,180</u>	<u>500</u>	<u>169,680</u>	
Total expenditures	<u>\$ 169,180</u>	<u>\$ 500</u>	<u>\$ 169,680</u>	

11. PERA Pension Plan

Plan Description. Substantially all of the State of New Mexico, Public Defender Department's full time employees participate in a public employee retirement system authorized under the Public Employees' Retirement Act (Chapter 10, Article 11, NMSA 1978). The Public Employees' Retirement Association (PERA) is the administrator of the plan, which is a cost-sharing multiple-employer defined benefit retirement plan. The plan provides for retirement benefits, disability benefits, survivor benefits and cost-of-living adjustments to plan members and beneficiaries.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2009**

11. PERA Pension Plan (cont'd)

PERA issues a separate, publicly available financial report that includes financial statements and required supplementary information for the plan. That report may be obtained by writing to PERA, P. O. Box 2123, Santa Fe, New Mexico 87504-2123. The report is also available on PERA's website at www.pera.state.nm.us.

Funding Policy. Plan members are required to contribute 7.42% of their gross salary. The State of New Mexico, Public Defender Department is required to contribute 16.59% of the gross covered salary. The contribution requirements of plan members and the Public Defender Department are established in State statute under Chapter 10, Article 11, NMSA 1978. The requirements may be amended by acts of the legislature. The Department's contributions to PERA for the fiscal years ended June 30, 2009, 2008, and 2007 were \$3,102,613, \$2,919,213 and \$2,475,831, respectively, equal to the amount of the required contributions for each fiscal year.

12. Post-Employment Benefits

Plan Description. The State of New Mexico, Public Defender Department contributes to the New Mexico Retiree Health Care Fund, a cost-sharing multiple-employer defined benefit post employment healthcare plan administered by the New Mexico Retiree Health Care Authority (RCHA). The RCHA provides health care insurance and prescription drug benefits to retired employees of participating New Mexico government agencies, their spouses, dependents, and surviving spouses and dependents. The RHCA Board was established by the Retiree Health Care Act (Chapter 10, Article 7C, NMSA 1978). The Board is responsible for establishing and amending benefit provisions of the healthcare plan and is also authorized to designate optional and/or voluntary benefits like dental, vision, supplemental life insurance, and long-term care policies.

Eligible retirees are: 1) retirees who make contributions to the fund for at least five years prior to retirement and whose eligible employer during that period of time made contributions as a participant in the RHCA plan on the person's behalf, unless that person retires before the employer's NMRHCA effective date, in which event the time period required for employee and employer contributions shall become the period of time between the employer's effective date and the date of retirement; 2) retirees defined by the Act who retired prior to July 1, 1990; 3) former legislators who served at least two years; and 4) former governing authority members who served at least four years.

The RCHA issues a publicly available stand-alone financial report that includes financial statements and required supplementary information for the post employment healthcare plan. That report and further information can be obtained by writing to the Retiree Health Care Authority at 4308 Carlisle Blvd., NE, Suite 104, Albuquerque, New Mexico 87107.

Funding Policy. The Retiree Health Care Act (Section 10-7C-13 NMSA 1978) authorizes the RHCA Board to establish the monthly premium contributions that retirees are required to pay for healthcare benefits. Each participating retiree pays a monthly premium according to a service based subsidy rate schedule for medical plus basic life plan and an additional participation fee of five dollars if the eligible participant retired prior to the employer's RHCA effective date or is a former legislator or former governing authority member. Former legislators and governing authority members are required to pay 100% of the insurance premium to cover their claims and the administrative expenses of the plan. The monthly premium rate schedule can be obtained from the RHCA or viewed on their website at www.nmrcha.state.nm.us.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2009**

12. Post-Employment Benefits (cont'd)

The Retiree Health Care Act (Section 10-7C-15 NMSA 1978) is the statutory authority that establishes the required contributions of participating employers and their employees. The statute requires each participating employer to contribute 1.3% of each participating employee's annual salary; each participating employee is required to contribute .65% of their salary. Employers joining the program after 1/1/98 are also required to make a surplus-amount contribution to the RCHA based on one of two formulas at agreed-upon intervals.

The RCHA plan is financed on a pay-as-you-go basis. The employer, employee and retiree contributions are required to be remitted to the RCHA on a monthly basis. The statutory requirements for the contributions can be changed by the New Mexico State Legislature.

The Public Defender Department's contributions to the RCHA for the fiscal years ended June 30, 2009, 2008 and 2007 were \$242,905, \$228,236 and \$192,908, respectively, which equal the required contributions for each fiscal year.

13. Prior Period Adjustments

Beginning fund balance and net assets were restated due to the following:

General Fund:

Amounts not included in FY08 accounts payable (requests to pay prior-year bills submitted after FY08 audit - included in FY09 budget)

Org unit P720	\$ 40,883
Org unit Z70127	107,961

Additional prior-year PERA/RHC expenditures, net	<u>40,523</u>
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Total General Fund	<u><u>\$ 189,367</u></u>
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Special Revenue Fund:

Amounts not included in FY08 accounts payable (requests to pay prior-year bills submitted after FY08 audit - included in FY09 budget)

	<u><u>\$ 500</u></u>
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14. Risk Management and Litigation

The Public Defender Department is exposed to various risks of losses related to torts; theft of, damage to, and destruction of assets; errors and omissions; injuries to employees; and natural disasters. Section 15-7-2 NMSA 1978 requires the General Services Department, Risk Management Division (RMD) to be responsible for the acquisition and administration of all insurance purchased by the state. Since 1977, various state statutes have been passed which allow RMD to insure, self-insure or use a combination of both. For the past several years, the RMD has elected to self-insure and has not obtained liability coverage from commercial insurance companies. The RMD has effectively managed risk through various employee education and prevention programs. Risk management expenditures for the Public Defender Department are accounted for in the general fund. Any claims are processed through RMD.

There are no pending or known threatened legal proceedings involving material matters to which the Public Defender Department is a party.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2009**

15. Operating Transfers

	<u>From</u>	<u>To</u>	<u>Purpose</u>
Dept. of Finance and Admin (Fund #853)	\$ 41,839,400		Regular Appropriation
Dept. of Finance and Admin (Fund #620)	555,600		Compensation Package
Public Defender Department (Fund #175)		\$ 42,395,000	
Public Defender Department (Fund #175)	\$ 211,582		Current-year reversion
Dept. of Finance and Admin (Fund #853)		\$ 211,582	

16. Special Appropriations

Appropriations extended through Laws of 2009, Chapter 124, Section 5, items 16 and 17 are:

<u>Original Appropriation Purpose</u>	<u>Appropriation Period</u>	<u>Original Appropriation</u>	<u>Expenditures To Date</u>	<u>Amount Reverted</u>	<u>Unexpended Balance</u>
Laws of 2004, Chapter 114, Section 5, Criminal cases related to Santa Rosa riot	Through 6/30/2010	\$ 870,000	\$ 411,414	\$ -	\$ 458,586
Laws of 2005, Chapter 33, Section 5, Criminal cases related to Santa Rosa riot	Through 6/30/2009	300,000	117,817	182,183	-
Laws of 2006, Chapter 109, Section 5, Litigation expenses related to drug cartel cases	Through 6/30/2010	250,000	151,355	-	98,645
Totals		<u>\$ 1,420,000</u>	<u>\$ 680,586</u>	<u>\$ 182,183</u>	<u>\$ 557,231</u>

These special appropriations are accounted for through use of separate organization units and reversions are calculated based on unexpended balances when the appropriation period expires. Also, see note 6 on page 20.

17. Deficit Unrestricted Net Assets/Unreserved-Undesignated Fund Balance

The deficit unrestricted net assets, \$1,133,397, on the Statement of Net Assets, is mainly the result of compensated absences and requests to pay prior-year bills included in current-year expenditures and accounts payable but not allowed as a reduction in the current year reversion and amounts due to the State General Fund. The reasons for the negative unreserved/undesignated fund balance on the fund financial statements are described in Note 9 on page 22.

The Department took measures to address the requests to pay prior-year bills issue (mainly expert witness requests) to reduce or eliminate these deficit/negative balances. The Department was able to determine outstanding obligations at the end of the fiscal year and reduced the occurrences of having to pay invoices out of a subsequent year's budget. The FY09 amount totaled \$70,064 as opposed to \$250,499 in FY08.

SUPPLEMENTARY SECTION

Statement of Revenues and Expenditures
Budget and Actual
Year Ended June 30, 2009

	General Fund - P720 - Criminal Legal Services			
	Original Approved Budget	Final Approved Budget	Actual (Budgetary Basis)	Variance with Final Budget Positive (Negative)
Revenues:				
Intergovernmental revenue:				
General appropriations	\$ 42,663,900	\$ 41,839,400	\$ 41,839,400	\$ -
Other state funds	-	132,734	66,583	(66,151)
Other financing sources	555,600	555,600	555,600	-
Total revenues	43,219,500	42,527,734	<u>\$ 42,461,583</u>	<u>\$ (66,151)</u>
Prior-year funds re-budgeted	-	-		
	<u>\$ 43,219,500</u>	<u>\$ 42,527,734</u>		
Expenditures: (note 10)				
General government:				
Current:				
Personal services and employee benefits	\$ 25,828,700	\$ 26,109,134	\$ 26,042,617	\$ 66,517
Contractual services	11,937,164	10,869,200	10,845,439	23,761
Other	5,453,636	5,549,400	5,545,136	4,264
Other financing uses	-	-	-	-
Total expenditures	<u>\$ 43,219,500</u>	<u>\$ 42,527,734</u>	<u>\$ 42,433,192</u>	<u>\$ 94,542</u>

The accompanying notes are an integral part of the financial statements.

Statement of Revenues and Expenditures
Budget and Actual
Year Ended June 30, 2009

General Fund - Z70126 - Santa Rosa				
	Original Approved Budget	Final Approved Budget	Actual (Budgetary Basis)	Variance with Final Budget Positive (Negative)
Revenues:				
Intergovernmental revenue:				
General appropriations	\$ -	\$ -	\$ -	\$ -
Other state funds	-	-	-	-
Other financing sources	-	-	-	-
Total revenues	-	-	<u>\$ -</u>	<u>\$ -</u>
 Prior-year funds re-budgeted	 <u>224,566</u>	 <u>224,566</u>		
	<u>\$ 224,566</u>	<u>\$ 224,566</u>		
 Expenditures: (note 10)				
General government:				
Current:				
Personal services and employee benefits	\$ -	\$ -	\$ -	\$ -
Contractual services	224,566	224,566	42,383	182,183
Other	-	-	-	-
Other financing uses	-	-	-	-
Total expenditures	<u>\$ 224,566</u>	<u>\$ 224,566</u>	<u>\$ 42,383</u>	<u>\$ 182,183</u>

The accompanying notes are an integral part of the financial statements.

Statement of Revenues and Expenditures
Budget and Actual
Year Ended June 30, 2009

	<u>General Fund - Z70127 - Drug Cartel</u>			
	<u>Original Approved Budget</u>	<u>Final Approved Budget</u>	<u>Actual (Budgetary Basis)</u>	<u>Variance with Final Budget Positive (Negative)</u>
Revenues:				
Intergovernmental revenue:				
General appropriations	\$ -	\$ -	\$ -	\$ -
Other state funds	-	-	-	-
Other financing sources	-	-	-	-
Total revenues	-	-	<u>\$ -</u>	<u>\$ -</u>
Prior-year funds re-budgeted	<u>98,645</u>	<u>98,645</u>		
	<u>\$ 98,645</u>	<u>\$ 98,645</u>		
Expenditures: (note 10)				
General government:				
Current:				
Personal services and employee benefits	\$ -	\$ -	\$ -	\$ -
Contractual services	10,000	10,000	-	10,000
Other	88,645	88,645	-	88,645
Other financing uses	-	-	-	-
Total expenditures	<u>\$ 98,645</u>	<u>\$ 98,645</u>	<u>\$ -</u>	<u>\$ 98,645</u>

The accompanying notes are an integral part of the financial statements.

Statement of Revenues and Expenditures
Budget and Actual
Year Ended June 30, 2009

General Fund - Z70128 - Santa Rosa				
	Original Approved Budget	Final Approved Budget	Actual (Budgetary Basis)	Variance with Final Budget Positive (Negative)
Revenues:				
Intergovernmental revenue:				
General appropriations	\$ -	\$ -	\$ -	\$ -
Other state funds	-	-	-	-
Other financing sources	-	-	-	-
Total revenues	-	-	<u>\$ -</u>	<u>\$ -</u>
Prior-year funds re-budgeted	<u>566,964</u>	<u>566,964</u>		
	<u>\$ 566,964</u>	<u>\$ 566,964</u>		
Expenditures: (note 10)				
General government:				
Current:				
Personal services and employee benefits	\$ -	\$ -	\$ -	\$ -
Contractual services	-	-	-	-
Other	566,964	566,964	108,378	458,586
Other financing uses	-	-	-	-
Total expenditures	<u>\$ 566,964</u>	<u>\$ 566,964</u>	<u>\$ 108,378</u>	<u>\$ 458,586</u>

The accompanying notes are an integral part of the financial statements.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

Schedule 1

**Schedule of Changes in Assets and Liabilities
Agency Fund
Year Ended June 30, 2009**

	<u>Balance July 1, 2008</u>	<u>Additions</u>	<u>Deletions</u>	<u>Balance June 30, 2009</u>
<u>Assets</u>				
Interest in SGF Investment Pool	\$ 6,616	\$ 602,459	\$ (599,427)	\$ 9,648
Accounts receivable	26,424,262	2,454,989	(719,938)	28,159,313
Less:				
Allowance for uncollectibles	<u>(24,307,468)</u>	<u>(1,452,670)</u>	<u>-</u>	<u>(25,760,138)</u>
Total assets	<u>\$ 2,123,410</u>	<u>\$ 1,604,778</u>	<u>\$ (1,319,365)</u>	<u>\$ 2,408,823</u>
<u>Liabilities</u>				
Due to State General Fund	\$ 2,123,155	\$ 2,455,164	\$ (2,169,576)	\$ 2,408,743
Due to others	175	-	(175)	-
Due to other funds	<u>80</u>	<u>-</u>	<u>-</u>	<u>80</u>
Total liabilities	<u>\$ 2,123,410</u>	<u>\$ 2,455,164</u>	<u>\$ (2,169,751)</u>	<u>\$ 2,408,823</u>

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Schedule of Memoranda of Understanding
Year Ended June 30, 2009**

<u>Participants</u>	<u>Administering Agency</u>	<u>Description</u>	<u>Term</u>	<u>Total Amount</u>	<u>PDD Amount</u>	<u>Audit Responsibility</u>
New Mexico Public Defender Department and The Third Judicial District Court	Public Defender Department	PDD will provide expert delinquency defense consultation and legal representation services, a juvenile delinquency defense attorney to serve on the Juvenile Drug Court Advisory Team, participate in staff meetings and all advisory team matters, and provide direct continuing representation services for participants excluded from the program and returned to Children's Court for adjudication and/or disposition.	7/1/08-6/30/09	\$ 33,750	\$ -	PDD

- (1) Reporting is the responsibility of all parties involved.
- (2) The expenditures are reported in the books of the responsible party.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Schedule of Memoranda of Understanding
Year Ended June 30, 2009**

<u>Participants</u>	<u>Administering Agency</u>	<u>Description</u>	<u>Term</u>	<u>Total Amount</u>	<u>PDD Amount</u>	<u>Audit Responsibility</u>
New Mexico Public Defender Department and Administrative Office of the Courts	Public Defender Department	PDD shall provide a criminal/delinquency defense attorney to report to the Drug Court Advisory Team meetings and to provide the Advisory Team with expert consultation services from the criminal/delinquency defense perspective.	11/1/08-6/30/09	\$ 5,000	\$ -	PDD

- (1) Reporting is the responsibility of all parties involved.
- (2) The expenditures are reported in the books of the responsible party.

**DFA Performance Based Budgeting Data System
Annual Performance Report**

Type	Measure	FY09 Target	FY09 Result	Met Target	Year-End Results Narrative
Agency: 35500 Public Defender Department					
Program: P720 Public Defender Department					
The purpose of the Public Defender Department is to provide effective legal representation and advocacy for eligible clients so that their liberty and constitutional rights are protected, and to serve the community as a partner in assuring a fair and efficient criminal justice system that also sustains New Mexico's statutory and constitutional mandate to adequately fund a statewide indigent defense system.					
Explanatory	Annual attorney turnover rate	9%	15.9%	<input type="checkbox"/>	Measure discontinued for FY2010
Quality	Percent of felony cases resulting in a reduction of original formally filed charges	40%	36.6%	<input type="checkbox"/>	Data on this measure is captured at case closing. The hiring freeze means less staff to process case closings, less attention to statistics, and perhaps, less ability to impact cases for a more positive outcome. It is too soon to see if our case results are being negatively impacted by the consistent cut-backs in funding and staffing.
Efficiency	Percent of cases in which application fees were collected	35%	34%	<input type="checkbox"/>	The Department continues to focus effort on increasing \$10 fee collections. In fact, in FY2009 the Department collected the highest amount ever (\$240k). This is not highlighted in this measure, as written. It is a percentage.
Output	Number of expert witness services approved by the department	3,500	3,335	<input type="checkbox"/>	This measure is discontinued after FY2009. The FY2009 actual result was less than the target. This could likely be a result of the budget cuts and the more stringent review of expert witness needs.
Output	Number of alternative sentencing treatment placements for felony and juvenile clients	4,800	3,890	<input type="checkbox"/>	This data is captured when cases are closed. The hiring freeze means less staff to process case closings, less attention to statistics, and perhaps, less ability to impact cases for a more positive outcome. It is too soon to see if our case results are being negatively impacted by the consistent cut-backs in funding and staffing. We suspect that programs of rehabilitation have also been impacted by budget cuts. We are instituting our own audit procedures for all alternative placement programs during FY 10, and will share that information between offices. From these audits we expect to have a better idea of whether program availability is impacting our statistics.

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INDEPENDENT AUDITORS' REPORT ON INTERNAL CONTROL OVER FINANCIAL REPORTING AND ON COMPLIANCE AND OTHER MATTERS BASED ON AN AUDIT OF FINANCIAL STATEMENTS PERFORMED IN ACCORDANCE WITH GOVERNMENT AUDITING STANDARDS

Hugh Dangler, Chief Public Defender
Public Defender Department
and
Honorable Hector H. Balderas
New Mexico State Auditor
Santa Fe, New Mexico

We have audited the financial statements of the governmental activities, each major fund, the aggregate remaining fund information and the respective budgetary comparisons for the General and the Major Special Revenue Funds of the State of New Mexico, Public Defender Department (Department) as of and for the year ended June 30, 2009, which collectively comprise the Department's basic financial statements and have issued our report thereon dated December 3, 2009, which was qualified because we were unable to obtain sufficient evidential matter to satisfy ourselves that accounts receivable, recorded in the agency fund, are complete. We have also audited the budgetary comparisons of the organizations of the general fund presented as supplementary information for the year ended June 30, 2009. Except as discussed above, we conducted our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in **Government Auditing Standards**, issued by the Comptroller General of the United States.

Internal Control Over Financial Reporting

In planning and performing our audit, we considered the Department's internal control over financial reporting as a basis for designing our auditing procedures for the purpose of expressing our opinions on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of the Department's internal control over financial reporting. Accordingly, we do not express an opinion on the effectiveness of the Public Defender Department's internal control over financial reporting. Our consideration of the internal control over financial reporting was for the limited purpose described in the preceding paragraph and would not necessarily identify all deficiencies in internal control over financial reporting that might be significant deficiencies or material weaknesses. However, as discussed below, we identified certain deficiencies in internal control over financial reporting that we consider to be significant deficiencies.

A control deficiency exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent or detect misstatements on a timely basis. A significant deficiency is a control deficiency, or a combination of control deficiencies, that adversely affects the entity's ability to initiate, authorize, record, process, or

report financial data reliably in accordance with generally accepted accounting principles such that there is a more than a remote likelihood that a misstatement of the entity's financial statements that is more than inconsequential will not be prevented or detected by the Department's internal control. We consider the deficiencies described in the accompanying schedule of findings and responses as item 2007-1, 2007-3, 2008-1 and 2008-3 to be significant deficiencies in internal control over financial reporting.

A material weakness is a significant deficiency, or a combination of significant deficiencies, that results in more than a remote likelihood that a material misstatement of the financial statements will not be prevented or detected by the Department's internal control. Our consideration of the internal control over financial reporting was for the limited purpose described in the first paragraph of this section and would not necessarily identify all deficiencies in the internal control that might be significant deficiencies and, accordingly, would not necessarily disclose all significant deficiencies that are also considered to be material weaknesses. However, of the significant deficiencies described above, we consider item 2007-1 to be a material weakness.

Compliance and Other Matters

As part of obtaining reasonable assurance about whether the Department's financial statements are free of material misstatement, we performed tests of its compliance with certain provisions of laws, regulations, contracts and grant agreements, noncompliance with which could have a direct and material effect on the determination of financial statement amounts. However, providing an opinion on compliance with those provisions was not an objective of our audit and, accordingly, we do not express such an opinion. The results of our tests disclosed no instances of noncompliance or other matters that are required to be reported under **Government Auditing Standards**.

The Public Defender Department's responses to the findings identified in our audit are described in the accompanying schedule of findings and responses. We did not audit the Department's responses and, accordingly, we express no opinion on them.

This report is intended solely for the information and use of management, the Department of Finance and Administration, the Office of the State Auditor, the New Mexico Legislature and is not intended to be and should not be used by anyone other than these specified parties.

Macias, Gutierrez & Co., CPAs, P.C.

Macias, Gutierrez & Co., CPAs, P.C.
Espanola, New Mexico
December 3, 2009

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Schedule of Findings and Responses
June 30, 2009**

	<u>Type of Finding *</u>	<u>Prior Year Finding Number</u>	<u>Current Year Finding Number</u>
Current Year Findings:			
Accounts Receivable - Client Reimbursements	A	2007-1	2007-1
PERA/RHC Contributions	B	2007-3	2007-3
Requests to Pay Prior-Year Bills	B	2008-1	2008-1
Collection of Duplicate Payment	B	2008-3	2008-3
Follow-up on Prior Year Findings:			
Accounts Receivable - Client Reimbursements	A	2007-1	Revised, Repeated
Reversions	D	2007-2	Resolved
PERA/RHC Contributions	B	2007-3	Revised, Repeated
Requests to Pay Prior-Year Bills	A	2008-1	Revised, Repeated
Overexpended Budget Appropriation Unit	E	2008-2	Resolved
Duplicate Payment	B	2008-3	Revised, Repeated

*** Legend for Findings:**

- A. Material Weakness in Internal Control Over Financial Reporting
- B. Significant Deficiency in Internal Control Over Financial Reporting
- C. Other Matters involving Internal Control Over Financial Reporting
- D. Material Instance of Noncompliance
- E. Immaterial Instance of Noncompliance

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Schedule of Findings and Responses
June 30, 2009**

2007-1

Accounts Receivable – Agency Fund – Client Reimbursements

Criteria

All legal representation fees due from Department determined non-indigent clients should be recorded as agency fund accounts receivable and collected as provided in Section 34-6-46 NMSA 1978. The Department might pursue any authority under the law, including petitioning District Court, for complete write-off of uncollectible accounts.

Condition

We were unable to obtain sufficient evidential matter to satisfy ourselves that accounts receivable, recorded in the Department's agency fund, are complete. Certain accounts receivable are considered to be uncollectible, due to incarceration, death or other circumstances; therefore, an allowance for doubtful accounts has been established representing all outstanding amounts due from clients that are greater than one year old.

Cause

There are many items that may contribute to the incomplete/and inadequate system of ensuring that all clients that are determined to be ineligible for free services do sign a contract and that the resulting contract is entered into the accounts receivable system. One large contributor to the problem is that there are systematic difficulties in getting accurate, timely, and complete information and documents from ineligible clients.

There are three sources relied upon for determining eligibility for legal services and, if needed, obtaining a signed reimbursement contract from the client. These sources are staff in the district offices, contract attorneys, and judicial system staff. The Department is dependent upon those sources and does not yet have complete control over those sources, especially contract attorneys.

Ideally, all clients that are determined to be ineligible for free representation would be noted on the Case Defendant Management System (CDMS), sign a contract, and that contract entered in the accounts receivable system. Other potential causes might be the design of and duplication of information relative to client reimbursement contracts on CDMS and insufficient training on how to enter eligibility information and client reimbursement contract on CDMS.

Effect

Accounts receivable and due to the State General Fund on the Department's agency fund statement of net assets are understated by amounts that cannot be reasonably estimated.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Schedule of Findings and Responses
June 30, 2009**

2007-1 (cont'd)

Accounts Receivable – Agency Fund – Client Reimbursements (cont'd)

Recommendation

We recommend that the Department continue to strengthen the collaboration between the Department and the various courts and its contract attorneys regarding the eligibility process. Specific focus areas are: 1) potential for standardizing the eligibility process, including procedures, forms and document flow, and 2) the client reimbursement process. Additionally, we recommend that the Department refine procedures to assure that all cases/clients of the CDMS system that are not eligible for free services are investigated to determine if they should be set up in the accounts receivable system.

Planned Corrective Actions

"Efforts specific to the district office reimbursement contracts is well underway, and the department believes that it has made significant progress in resolving many of the issues surrounding this finding. However, subsequent work will be required to improve the process of receiving all client reimbursement contracts from the courts and our contractor attorneys. This will be an on-going focus of the department."

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Schedule of Findings and Responses
June 30, 2009**

2007-3

PERA/RHC Contributions

Criteria

Sections 10-11-124(A) and 10-11-126(A), NMSA 1978, provide that an employer affiliated with the Public Employees Retirement Act (PERA) is responsible for timely remitting to PERA both the employer and employee contributions due for each employee and that PERA may assess an interest charge on any remittance not made by its due date. PERA Rule 2 NMAC 80.500, "Remittance of Contributions," further states at paragraph 8.5: "In the event the employer fails to make the necessary deductions, the employer shall be responsible to remit to PERA the total amount due for both the member and employer contributions plus interest." The PERA further emphasizes that it is the employer's obligation, in the first instance, to remit to PERA both the employer and employee contributions that are overdue and any applicable interest on the contributions. Any claim that the employer has against the employee for the employee share of the contributions is a matter entirely between the employer and the employee and does not involve PERA or affect the employer's obligation to PERA. All contributions that must be paid by the employer, including the employee share, are due and owing to PERA, regardless of the status of any collection proceedings that the employer has brought or may bring against the employee.

In addition, Section 10-7C-15 C provides that a participating employer that fails to remit before the tenth day after the last day of the month all employer and employee deposits required by the Retiree Health Care Act (RHC) to be remitted by the employer for the month shall pay to the fund, in addition to the deposits, interest on the unpaid amounts at the rate of six percent per year compounded monthly.

Condition

During FY07, the Department initially recognized that ten (10) employees were not having PERA and/or RHC deducted from their paychecks. In addition, during FY07, the Department failed to recognize that fifty-two (52) other employees' paychecks did not include withholding for PERA and/or RHC for a substantial period during the fiscal year. As a result, the Department failed to remit the required PERA and RHC contributions for both employee and employer portions on a timely basis.

During FY08, corrections were made to the FY07 amounts, resulting in additional prior-year expenses totaling \$7,877. Also, it was discovered that another employee's and employer's matching contributions have not been remitted since FY 2001. Total related unrecorded expenses were \$17,411.

During FY09, collections and corrections were made to the prior year amounts receivable and payable. However, also during FY09, three new PERA related delinquent accounts were discovered that totaled \$55,625 in employees' and employer's matching contributions and interest and penalties.

Cause

Oversight by the Department Human Resources Division.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Schedule of Findings and Responses
June 30, 2009**

2007-3 (cont'd)

PERA/RHC Contributions (cont'd)

Effect

The related expenses are recorded as current-year liabilities and as prior-period adjustments, resulting in a negative unreserved/undesignated fund balance.

Recommendation

We recommend that the Department take appropriate measures to recognize and ensure that all employees' portions of PERA and/or RHC are correctly withheld and matched. This applies to all current employees and any new hires.

Planned Corrective Actions

"The Department will run two SHARE-generated reports every pay period. The PERA/RHC Amount Detail by Employee and the Active Employee with Terminated Retirement Benefits will allow HR to identify missed deductions and collect them in a timely manner. This will also eliminate the need to collect sizeable reimbursements from employees covering multiple missed deductions.

For active and former employees, the Department will ask PERA to generate a report for past years identifying missed PERA deductions. Although we believe that we have identified all prior year missed deductions, this report will identify those if they exist.

Two of the employees identified in FY09 had missed deductions during multiple pay periods in 1990–1991. One of the employees has already reimbursed the Department and the other will do so no later than January 31, 2010. We are awaiting information from PERA for the third employee so that we can begin to collect his reimbursement.

The Department will be proactive in monitoring missed deductions in the future."

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Schedule of Findings and Responses
June 30, 2009**

2008-1

Requests to Pay Prior-Year Bills

Criteria

Section 6-10-4 NMSA, 1978, provides for payment of obligations of prior years from current-year appropriations. Appropriations made for a specific fiscal year may not be used for paying obligations of any prior fiscal year except upon approval of the Department of Finance and Administration (DFA). As a condition to the approval, the DFA shall certify that there existed in the affected state agency's budget at the end of the fiscal year sufficient funds, including uncollected earned revenue, to pay the obligation had the bill been presented prior to the end of that fiscal year.

Condition

During our audit of payables, we noted that the Department submitted several (24) requests to pay FY09 bills out of the FY10 budget, amounting to \$78,989. Included are sixteen (16) expert witness bills, three (3) PERA related bills and three (3) contract attorney bills. Requests to pay prior-year bills charged to the next year's budget results in current-year funds being reverted that should have been allowed as current-year budgeted expenditures.

Cause

The Department does not have an adequate system to track expert witness requests and approvals. The PERA and contract attorney bills were an oversight by Department personnel.

Effect

The bills are recorded as current-year liabilities that do not reduce the current-year reversion that results in a negative unreserved/undesignated fund balance.

Recommendation

We recommend that the Department continue to refine its system to track all current-year bills, eliminating or minimizing the need to request payment of numerous prior-year bills.

Planned Corrective Actions

"The department will continue efforts of improving the tracking of current-year bills. The department will also evaluate the enforceability of the invoicing timeliness/requirement in the current expert witness authorization letters and attorney contracts."

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Schedule of Findings and Responses
June 30, 2009**

2008-3

Collection of Duplicate Payment

Criteria

Per Section 6-5-2, NMSA 1978, state agencies shall implement internal accounting controls designed to prevent accounting errors and violations of state and federal laws and rules related to financial matters. In addition, state agencies shall implement controls to prevent the submission of processing documents to the financial control division that contain errors or that are for a purpose not authorized by law.

In addition, the New Mexico State Constitution, Article IX, Section 14 (Anti-Donation Clause) prohibits any donation to or in aid of any person. Also, proper internal accounting policies and procedures require timely collection of overpayments.

Condition

Near the end of the FY08 audit, we were informed that the Department discovered that similar documents had been submitted twice from a contract attorney, during FY08, resulting in a duplicate payment in the amount of \$11,083. The Department requested reimbursement immediately upon discovery. We were unable to determine if the submission of similar documents was an attempt to defraud the Department or simply a mistake. A review of this contract attorney's payments for the past two fiscal years did not reveal any further duplicate payments. During FY09, no further attempts were made to collect this duplicate payment.

Cause

The Department did not follow proper internal accounting policies and procedures for collection of the duplicate payment.

Effect

Due to the lack of collection efforts, the account may become uncollectible.

Recommendation

We recommend that the Department enforce its policies and procedures to ensure timely collection of the duplicate payment.

Planned Corrective Actions

"The Department admits fault in letting this particular problem remain unresolved and unsolved on the point of repayment. The Department did send two requests for repayment in early 2009. Then the Deputy and the Chief Public Defender met with the contract attorney. An understanding that he would repay the monies was not reduced to writing at that time and other issues arose which distracted them from the mission of recoupment.

Based on prior notice to the contract attorney, and based on past treatment of a contract attorney in good standing over a similar situation, the Department will send the contract attorney a third letter and timetable for resolution of this outstanding debt."

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Exit Conference
June 30, 2009**

Financial Statement Presentation

The financial statements and notes to the financial statements were prepared by the independent certified public accountants performing the audit. Management is responsible for ensuring that the books and records adequately support the preparation of financial statements in accordance with accounting principles generally accepted in the United States of America and that the records are current and in balance. Management has reviewed and approved the financial statements and notes to the financial statements.

* * * * *

EXIT CONFERENCE

The financial statements and the auditors' reports were discussed at an exit conference held on December 11, 2009 with the following in attendance:

Public Defender Department

Hugh Dangler, Chief Public Defender
T. David Eisenberg, Deputy Chief Public Defender
John Goeller, Director of Administrative Operations
Brenda Salazar, Chief Financial Officer
John Stapleton, Human Resource Director

Audit Firm

James R. Macias, CPA
George M. Gutierrez, CPA