



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, 2011

(With Independent Auditors' Report Thereon)

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Financial Statements
Year Ended June 30, 2011**

(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, 2011**

Name	Title
Jacqueline Cooper	Acting Chief Public Defender
Vacant	Deputy Chief Public Defender
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
Vacant	Appellate Defender

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

Jacqueline Cooper, Acting 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 Funds of the Public Defender Department (Department) as of and for the year ended June 30, 2011, which collectively comprise the Department's basic financial statements 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 current and 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 Funds 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, 2011, 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 in the agency fund, 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, 2011, and the respective changes in financial position thereof and the respective budgetary comparisons for the General Fund and the Major Special Revenue Funds for the year then ended 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 November 3, 2011 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. 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.
Española, New Mexico
November 3, 2011

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT
MANAGEMENT'S DISCUSSION AND ANALYSIS
June 30, 2011**

The following is a discussion and analysis of the department's financial performance, providing an overview of the activities for the fiscal year ended June 30, 2011. Please read it in conjunction with the department'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 department:

- The first two statements are government-wide financial statements that provide both long-term and short-term information about the department's overall financial status.
- The remaining statements are fund financial statements that focus on individual parts of the department, reporting the department's operations in more detail than the government-wide statements. The governmental funds statements tell how general government services (the primary functions of the department) 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 department 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 department's net assets and how they have changed. A net asset – the difference between the department's assets and liabilities – is one way to measure the department's financial health or position.

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

All of the department'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 department's most significant funds –not the department as a whole. Funds are accounting devices that the department 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, 2011**

- 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 department has two types of funds:

- Governmental funds –Most of the department'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 department's programs.

The department has two governmental funds. The first is used to account for the department'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 department's automation needs.

- Fiduciary funds—The department 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 department is responsible for ensuring that the assets reported in these funds are used for their intended purposes. All of the department'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 department's government-wide financial statements because the department cannot use these assets to finance its operations. The department has one fiduciary fund used to account for activities in which the department is acting in agent capacity for the state general fund. Funds are received from clients who are determined by the department 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 department's net assets decreased \$168,921 over the course of this fiscal year's operations. The following financial information is a comparison of net assets for 2011 and 2010.

	2011	2010	Variance
Current and other noncurrent assets	3,265,242	5,749,334	(2,484,092)
Capital assets, net	44,328	56,358	(12,030)
Total assets	3,309,570	5,805,692	(2,496,122)
Long-term liabilities	47,513	137,553	(90,040)
Other liabilities	3,683,022	6,258,025	(2,575,003)
Total liabilities	3,730,535	6,395,578	(2,665,043)
Net Assets:			
Invested in capital assets, net of related debt	44,328	56,358	(12,030)
Restricted	638,485	513,567	124,918
Unrestricted	(1,103,778)	(1,159,811)	56,033
Total net assets	(420,965)	(589,886)	168,921

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT
MANAGEMENT'S DISCUSSION AND ANALYSIS
June 30, 2011**

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 of \$638,485 represents the amount reserved for the purchase and maintenance of automation systems.

The variances consist of:

- Total assets – The \$2,496,122 variance (decrease) in total assets is largely attributable to a decrease in cash (investment in state general fund investment pool) and a decrease in capital assets at June 30, 2011.
- Total liabilities – Most of the variance is attributable to the \$2,222,086 decrease in the amount due to state general fund, which is due to required budget restriction and reversion mandate in FY2010. The remaining variance of \$442,957 is largely due to the decreases in various payroll related liabilities.
- Total net assets – The net assets for the department decreased from 2010 by \$168,921.

The following financial information is a comparison of the Statement of Activities for 2011 and 2010:

	2011	2010	Variance
Revenues:			
Program			
revenues:			
Charges for services	\$251,167	\$244,539	\$6,628
Operating state grants	212,598	84,642	127,956
Operating federal grants	133,200	0	133,200
General revenues	<u>39,571,721</u>	<u>40,379,097</u>	<u>(807,376)</u>
Total revenues	<u>40,168,686</u>	<u>40,708,278</u>	<u>(539,592)</u>
Expenses:			
General government:	39,957,261	40,953,585	(996,324)
Loss on capital asset disposition	<u>0</u>	<u>2,097</u>	<u>(2,097)</u>
Increase (decrease) in net assets	211,425	(247,404)	458,829
Net assets, beginning	<u>(632,390)</u>	<u>(342,482)</u>	<u>(289,908)</u>
Net assets, ending	<u>(\$420,965)</u>	<u>(\$589,886)</u>	<u>\$168,921</u>

Note: The \$42,504 difference between 2010 ending net assets and 2011 beginning net assets is attributable to prior period adjustments and discussed in Note 13.

Total Revenues \$40,168,686: Revenue received is comprised mostly by appropriations from the state's general fund, but also includes inter-agency transfers, federal grants and applications fees. In fiscal year 2011 the department collected \$6,628 more in application fees. This explains the variance in the Charges for Services category above. The decrease in general revenues is attributable to the reduction in general fund revenues for the state that results in decreased funding during the appropriation process.

Total Expenses \$39,957,261: Expenses consists of employee salaries and benefits, contractual services, operational costs and reversions. Decreased expenditures are attributable to the reduced appropriations mentioned above.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT
MANAGEMENT'S DISCUSSION AND ANALYSIS
June 30, 2011**

Change in Net Assets \$168,921: The department's total revenue decreased from \$40,708,278 to \$40,168,686. The department's total expenses decreased from \$40,953,585 to \$39,957,261.

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

As of the close of the fiscal year, the department reported an ending fund balance of \$604,106, most of the fund balance is non-spendable and/or restricted for specific purposes, such as petty cash, prepaid postage, and for the purchase and maintenance of automation systems. The negative fund balance, which is identified as unassigned is relative to expenditures that the department paid out of a subsequent year's budget and deferred revenue. This issue is discussed in Note 9.

The general fund is the chief operating fund for the department. At the end of the current fiscal year, the non-spendable fund balance of the general fund was \$10,336 and the unassigned fund amount was (\$44,715) which comprised the total fund balance of (\$34,379). The fund balance of the department's general fund increased by \$7,762 during the current fiscal year.

The special revenue fund titled the Automation Fund has a total fund balance of \$638,485, all of which is restricted for the purchase and maintenance of automation systems. The net increase in fund balance during the current year in this special revenue fund was \$124,918.

The net assets increased by \$168,921, indicating that the department is slightly better off now than it was a year ago due to one time federal grant award.

General Fund Budgetary Highlights

The State Legislature makes annual appropriations to the department. 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 department 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 department's 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 \$288,481 below final budget amounts and reflect the department's obligation to revert savings realized by our commitment to curb expenses and revert additional funds to the general fund. The final approved budget was \$39,990,868 and the total expenditures were \$39,702,387.

CAPITAL ASSET AND DEBT ADMINISTRATION

Capital Assets

At the end of fiscal year 2011, the department had invested \$44,328 in capital assets, including machinery, equipment, furniture and fixtures. This amount represents a net decrease (including additions and deductions) of \$12,030 over last fiscal year.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT
MANAGEMENT'S DISCUSSION AND ANALYSIS
June 30, 2011**

Long- term debt

At the end of the fiscal year, the department had \$1,092,713 in compensated absences payable, a slight decrease of 3% over last fiscal year. The decrease is attributable to the department keeping a high vacancy rate throughout the year. More information about the department's debt is presented in note 8 of this report.

NEXT YEARS BUDGETS

The total approved recurring general fund operating budget for fiscal year 2012 is \$38,898,400, which is 2% less than fiscal year 2011's approved recurring general operating budget. The department anticipates the ability to manage its budget by utilizing the automation fund balance and maintaining a 17% vacancy factor.

As directed, the department submitted a flat fiscal year 2013 budget request. With a flat budget the department will again manage its budget by maintaining a high vacancy factor. Lobbying efforts to increase our funding will be pursued during the 2012 legislative session.

CONTACTING THE DEPARTMENT'S FINANCIAL MANAGEMENT

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

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

Exhibit A

**Statement of Net Assets
June 30, 2011**

	Governmental Activities
<u>Assets</u>	
Current assets:	
Interest in State General Fund Investment Pool (note 3)	\$ 3,153,317
Cash in authorized bank accounts	4,359
Petty cash	1,200
Accounts receivable, net	1,580
Due from employees, net (note 4)	10,576
Due from other state agencies (note 4)	3,456
Due from local governments (note 4)	44,506
Due from federal government (note 4)	35,912
Prepaid expenses	10,336
	<hr/>
Total current assets	3,265,242
Noncurrent assets:	
Capital assets, net of depreciation (note 5)	44,328
	<hr/>
Total assets	3,309,570
	<hr/>
<u>Liabilities</u>	
Current liabilities:	
Accounts payable	1,786,848
Accrued salaries payable	579,237
Payroll taxes payable	53,727
Payroll benefits payable	122,338
Other payroll liabilities	8,050
Due to state general fund (note 6)	87,622
Compensated absences payable (note 8)	1,045,200
Long-term liabilities:	
Compensated absences payable (note 8)	47,513
	<hr/>
Total liabilities	3,730,535
	<hr/>
<u>Net Assets</u>	
Invested in capital assets	44,328
Restricted for automation systems	638,485
Unrestricted	(1,103,778)
	<hr/>
Total net assets	\$ (420,965)
	<hr/> <hr/>

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, 2011**

	<u>Governmental Activities</u>
Expenses:	
General government:	
Current:	
Personal services and employee benefits	\$ 23,140,539
Contractual services	11,512,602
Other	5,292,090
Depreciation expense	<u>12,030</u>
Total expenses	<u>39,957,261</u>
Program revenues:	
Charges for services	251,167
Operating federal grants	212,598
Operating state grants	<u>133,200</u>
Total program revenues	<u>596,965</u>
Net program expense	<u>39,360,296</u>
General revenues:	
General Fund appropriation, net of current-year reversion (\$87,079)	39,571,721
Transfers-in from other state agencies	-
Interest	<u>-</u>
Total general revenues	<u>39,571,721</u>
Special item - loss on capital asset disposition	<u>-</u>
Change in net assets	<u>211,425</u>
Net assets, beginning, as originally reported	(589,886)
Prior period adjustments (note 13)	<u>(42,504)</u>
Net assets, beginning, as restated	<u>(632,390)</u>
Net assets, ending	<u><u>\$ (420,965)</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, 2011**

	<u>General Fund</u>	<u>Automation Special Revenue Fund</u>	<u>Total Governmental Funds</u>
<u>Assets</u>			
Interest in SGF Investment Pool (note 3)	\$ 2,471,333	\$ 681,984	\$ 3,153,317
Cash in authorized bank accounts	-	4,359	4,359
Petty cash	1,200	-	1,200
Accounts receivable, net	-	1,580	1,580
Due from employees, net (note 4)	10,576	-	10,576
Due from other state agencies (note 4)	3,456	-	3,456
Due from local governments (note 4)	44,506	-	44,506
Due from federal government (note 4)	35,912	-	35,912
Prepaid expenses	10,336	-	10,336
	<u>\$ 2,577,319</u>	<u>\$ 687,923</u>	<u>\$ 3,265,242</u>
<u>Liabilities and Fund Balance</u>			
Liabilities:			
Accounts payable	1,737,410	49,438	\$ 1,786,848
Accrued salaries payable	579,237	-	579,237
Payroll taxes payable	53,727	-	53,727
Payroll benefits payable	122,338	-	122,338
Other payroll liabilities	8,050	-	8,050
Deferred revenue	23,314	-	23,314
Due to State General Fund (note 6)	87,622	-	87,622
	<u>2,611,698</u>	<u>49,438</u>	<u>2,661,136</u>
Fund Balance:			
Fund balances (note 9):			
Nonspendable:			
Prepaid expenses	10,336	-	10,336
Restricted for the purchase and maintenance of automation systems	-	638,485	638,485
Unassigned	(44,715)	-	(44,715)
	<u>(34,379)</u>	<u>638,485</u>	<u>604,106</u>
Total fund balance	<u>(34,379)</u>	<u>638,485</u>	<u>604,106</u>
Total liabilities and fund balance	<u>\$ 2,577,319</u>	<u>\$ 687,923</u>	<u>\$ 3,265,242</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, 2011**

Total fund balance-Governmental funds \$ 604,106

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	\$	17,290	
Machinery and equipment		131,751	
Data processing equipment		336,739	
Accumulated depreciation		<u>(441,452)</u>	44,328

Other assets are not available to pay for current period
expenditures and, therefore, are deferred in the funds 23,314

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>(1,092,713)</u>	
------------------------------	--	--------------------	--

Net assets of governmental activities \$ (420,965)

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, 2011**

	<u>General Fund</u>	<u>Automation Special Revenue Fund</u>	<u>ARRA of 2009 Special Revenue Fund</u>	<u>Total Governmental Funds</u>
Revenues:				
Application fees	\$ -	\$ 251,167	\$ -	\$ 251,167
Federal funds	12,598	-	200,000	212,598
Other state funds	118,068	-	-	118,068
Total revenues	<u>130,666</u>	<u>251,167</u>	<u>200,000</u>	<u>581,833</u>
Expenditures:				
General government:				
Current:				
Personal services and employee benefits	23,107,010	66,668	-	23,173,678
Contractual services	11,262,396	50,206	200,000	11,312,602
Other	5,282,715	9,375	-	5,292,090
Capital outlay	-	-	-	-
Total expenditures	<u>39,652,121</u>	<u>126,249</u>	<u>200,000</u>	<u>39,778,370</u>
Excess (deficiency) of revenues over expenditures	<u>(39,521,455)</u>	<u>124,918</u>	<u>-</u>	<u>(39,196,537)</u>
Other financing sources (uses):				
General Fund appropriations	39,658,800	-	-	39,658,800
Reversions (note 6)	(87,079)	-	-	(87,079)
Total other financing sources (uses)	<u>39,571,721</u>	<u>-</u>	<u>-</u>	<u>39,571,721</u>
Excess (deficiency) of revenues and other financing sources over expenditures and other financing uses	<u>50,266</u>	<u>124,918</u>	<u>-</u>	<u>175,184</u>
Fund balance, beginning, as originally reported	(42,141)	513,567	-	471,426
Prior period adjustments (note 13)	(42,504)	-	-	(42,504)
Fund balance, beginning, as restated	<u>(84,645)</u>	<u>513,567</u>	<u>-</u>	<u>428,922</u>
Fund balance, ending	<u>\$ (34,379)</u>	<u>\$ 638,485</u>	<u>\$ -</u>	<u>\$ 604,106</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, 2011**

Net change in fund balance-Governmental Funds	\$	175,184
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		(12,030)
Capital outlay		-
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.		15,131
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:		
Loss on capital asset disposition		-
Decrease in compensated absences payable		33,140
		<hr/>
Change in net assets of governmental activities	\$	<u>211,425</u>

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

Statement of Revenues and Expenditures
Budget and Actual
Year Ended June 30, 2011

	General Fund			
	Original Approved Budget	Final Approved Budget	Actual (Budgetary Basis)	Variance with Final Budget Positive (Negative)
Revenues:				
Intergovernmental revenue:				
General appropriations	\$ 40,988,700	\$ 39,658,800	\$ 39,658,800	\$ -
Federal funds	-	150,000	12,598	(137,402)
Other state funds	-	182,068	118,068	(64,000)
Total revenues	<u>40,988,700</u>	<u>39,990,868</u>	<u>\$ 39,789,466</u>	<u>\$ (201,402)</u>
Prior-year funds re-budgeted	<u>-</u>	<u>-</u>		
	<u>\$ 40,988,700</u>	<u>\$ 39,990,868</u>		
Expenditures: (note 10)				
General government:				
Current:				
Personal services and employee benefits	\$ 24,867,000	\$ 23,319,288	\$ 23,107,010	\$ 212,278
Contractual services	10,552,200	11,269,180	11,261,172	8,008
Other	5,568,700	5,402,400	5,334,205	68,195
Other financing uses	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total expenditures	<u>\$ 40,987,900</u>	<u>\$ 39,990,868</u>	<u>\$ 39,702,387</u>	<u>\$ 288,481</u>

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

Statement of Revenues and Expenditures
Budget and Actual
Year Ended June 30, 2011

	Automation Special Revenue Fund			
	Original Approved Budget	Final Approved Budget	Actual (Budgetary Basis)	Variance with Final Budget Positive (Negative)
Revenues:				
Application fees	\$ 240,000	\$ 240,000	\$ 251,167	\$ 11,167
Interest	-	-	-	-
Total revenues	240,000	240,000	<u>\$ 251,167</u>	<u>\$ 11,167</u>
Prior-year funds re-budgeted	-	455,000		
	<u>\$ 240,000</u>	<u>\$ 695,000</u>		
Expenditures:				
General government:				
Current:				
Personal services and employee benefits	\$ -	\$ 360,000	\$ 66,668	\$ 293,332
Contractual services	74,400	74,400	50,206	24,194
Other	165,600	260,600	10,135	250,465
Total expenditures	<u>\$ 240,000</u>	<u>\$ 695,000</u>	<u>\$ 127,009</u>	<u>\$ 567,991</u>

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

Statement of Revenues and Expenditures
Budget and Actual
Year Ended June 30, 2011

	<u>ARRA of 2009 Special Revenue Fund</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:				
Federal grants	\$ -	\$ 200,000	\$ 200,000	\$ -
Interest	-	-	-	-
	<u>-</u>	<u>200,000</u>	<u>\$ 200,000</u>	<u>\$ -</u>
Total revenues	-	200,000	<u>\$ 200,000</u>	<u>\$ -</u>
Prior-year funds re-budgeted	-	-		
	<u>-</u>	<u>-</u>		
	<u>\$ -</u>	<u>\$ 200,000</u>		
Expenditures:				
General government:				
Current:				
Personal services and employee benefits	\$ -	\$ -	\$ -	\$ -
Contractual services	-	200,000	200,000	-
Other	-	-	-	-
	<u>-</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total expenditures	<u>\$ -</u>	<u>\$ 200,000</u>	<u>\$ 200,000</u>	<u>\$ -</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, 2011

	<u>Agency Fund</u>
<u>Assets</u>	
Interest in State General Fund Investment Pool	\$ 18,355
Accounts receivable, net	<u>1,806,723</u>
Total assets	<u><u>\$ 1,825,078</u></u>
<u>Liabilities</u>	
Due to State General Fund (note 6)	\$ 1,825,078
Due to others	<u>-</u>
Total liabilities	<u><u>\$ 1,825,078</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, 2011**

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, 2011**

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 federal 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, 2011**

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 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 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) 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.

Automation 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.

American Recovery and Reinvestment Act (ARRA) of 2009 Fund (SHARE Fund #890-nonreverting) - Used to account for those proceeds of federal revenue sources that are legally restricted to expenditures for specified purposes. The Department elected major fund treatment under GASB 34 for this fund.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2011**

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, 2011**

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, 2011 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 2010. For the year ended June 30, 2011, 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 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, 2011**

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 expenditures 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, 2011, there were no multi-year encumbrances. However, for 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 the client's behalf. 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 various accounts receivable, amounts due from employees for payroll overpayments and PERA/RHC contributions not withheld, amounts due from other state agencies, local governments and the federal government. An allowance for doubtful accounts in the amount of (\$12,242) has been established for those deemed uncollectible. See Note 4 below for details.

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 \$28,911,580, 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, 2011**

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, 2011, 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 2011 and is an estimate management determined by the last fiscal year's usage. Based on this estimate, for the year ended June 30, 2011, the current portion of the compensated absences liability is \$1,045,200. The long-term portion is \$47,513. 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 2010 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.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2011**

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 or 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, 2011

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, 2011, 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, 2011**

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, 2011:

Account Name	Fund Type	Fund No.	Account Type	Balance per Depository	Outstanding Checks	Balance per Financial Statements	
State Treasurer:							
Operating	General	355-175	SGFIP	\$ 2,471,333	\$ -	\$ 2,471,333	
Automation	Special Revenue	355-759	SGFIP	681,984	-	681,984	
Compass Bank-Albuquerque	Special Revenue	N/A	Checking	750	-	750	
Wells Fargo Bank-Las Cruces	Special Revenue	N/A	Checking	110	-	110	
Western Commerce Bank-Carlsbad	Special Revenue	N/A	Checking	260	-	260	
Wells Fargo Bank-Hobbs	Special Revenue	N/A	Checking	363	-	363	
Bank of America-Roswell	Special Revenue	N/A	Checking	259	-	259	
First Community Bank-Clovis	Special Revenue	N/A	Checking	615	-	615	
Wells Fargo Bank-Alamogordo	Special Revenue	N/A	Checking	849	-	849	
Wells Fargo Bank-Farmington/Aztec	Special Revenue	N/A	Checking	854	-	854	
Centinel Bank-Taos	Special Revenue	N/A	Checking	299	-	299	
Petty Cash				1,200	-	1,200	
Subtotal Governmental Funds				1,200	3,157,676	-	3,158,876
State Treasurer:							
Client Reimbursements	Agency	355-753	SGFIP	18,355	-	18,355	
Total cash on deposit and petty cash				\$ 1,200	\$ 3,176,031	\$ -	\$ 3,177,231

4. Receivables

Accounts receivable – this represents an amount due (\$11,083) from a former contract attorney for a duplicate payment and automation fund fees receivable collected after June 30 (\$1,580). Only the \$11,083 is considered uncollectible.

Due from employees – this represents amounts due from employees (\$1,159) for payroll overpayments and for amounts associated with Public Employees' Retirement and Retiree Health Care contributions (\$10,576), that were not initially withheld from employees' paychecks. Only the payroll overpayments are considered uncollectible.

Due from other state agencies – this represents amounts due from DFA for tax overpayments (\$2,914) and a union refund (\$542) and are considered fully collectible.

Due from local governments – this represents amounts due and received after June 30 from various statewide judicial district juvenile and adult drug courts, \$44,506.

Due from federal governments – this represents amounts due and received after June 30 from Bureau of Justice Programs, \$35,912.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2011**

4. Receivables (cont'd)

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 cash collected during the year are recorded as assets with a resulting liability to the State General Fund less any amounts due a collection agency or others.

5. Changes in Capital Assets

A summary of changes in capital assets is as follows:

	<u>Balance 7/1/10</u>	<u>Additions</u>	<u>Deletions</u>	<u>Balance 6/30/11</u>
Machinery and equipment	\$ 131,750	\$ -	\$ -	\$ 131,750
Accumulated depreciation	(129,976)	(699)	-	(130,675)
Data processing equipment	340,037	-	(3,297)	336,740
Accumulated depreciation	(285,453)	(11,331)	3,297	(293,487)
Furniture and fixtures	17,290	-	-	17,290
Accumulated depreciation	(17,290)	-	-	(17,290)
Totals	<u>\$ 56,358</u>	<u>\$ (12,030)</u>	<u>\$ -</u>	<u>\$ 44,328</u>

There is no debt related to capital assets. Depreciation expense for the year was \$12,030.

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)	
FY 2011 unexpended balance, Org P720	\$ 87,079
FY2011 refunds	<u>543</u>
Total Due to State General Fund	<u>\$ 87,622</u>

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

Accounts receivable, net	\$ 1,806,723
Interest in SGF Investment Pool	18,355
Amounts due to others for payment of agency fund liabilities	<u>-</u>
Due to State General Fund	<u>\$ 1,825,078</u>

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2011**

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, 2011 were \$2,194,435 and \$150,350, respectively.

The Department also leases twenty-four (24) vehicles on a month-to-month basis and other short-term vehicles as needed. Total vehicle lease expense was \$99,210 for FY 2011.

8. Changes in Long-Term Debt

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

	<u>Balance 7/1/10</u>	<u>Additions</u>	<u>Reductions</u>	<u>Balance 6/30/11</u>	<u>Due Within One Year</u>
Compensated Absences Payable	<u>\$ 1,125,853</u>	<u>\$ 1,012,043</u>	<u>\$ (1,045,183)</u>	<u>\$ 1,092,713</u>	<u>\$ 1,045,200</u>

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

9. Fund Balance

The GASB issued Statement 54 *Fund Balance Reporting and Governmental Fund Type Definitions*. In the governmental fund financial statements, fund balances are classified as nonspendable, restricted, or unrestricted (committed, assigned, or unassigned).

Restricted represents those portions of fund balance where constraints placed on the resources are either externally imposed or imposed by law through constitutional provisions or enabling legislation. Committed fund balance represents amounts that can only be used for specific purposes pursuant to constraints imposed by formal action of the Legislative and Executive branches of the State. Assigned fund balance is constrained by the Legislature's and Executive Branch's intent to be used for specific purposes or in some cases by legislation.

Currently, in the general fund, the Department has nonspendable fund balance for prepaid expenses in the amount of \$10,336 and unassigned deficit fund balance in the amount of (\$44,715) which is mainly the result of the Department's request to pay prior-year payables in the amount of \$20,972 that did not get paid within thirty-one days after the end of the fiscal year. 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 in the deficit are deferred revenues in the amount of \$23,314. Also, see note 16 on page 26.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2011**

9. Fund Balance (cont'd)

Fund Balance-Restricted for purchase and maintenance of automation systems - 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 such in the amount of \$638,485.

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>FY10 Payables Charged to FY11 Budget</u>	<u>FY11 Payables Charged to FY12 Budget</u>	<u>Actual Budgetary Expenditures</u>
General Government:				
Current:				
Personal services/employee benefits	\$ 23,107,010	\$ -	\$ -	\$ 23,107,010
Contractual services	11,262,396	-	(1,224)	11,261,172
Other	<u>5,282,715</u>	<u>71,238</u>	<u>(19,748)</u>	<u>5,334,205</u>
Total expenditures	<u>\$ 39,652,121</u>	<u>\$ 71,238</u>	<u>\$ (20,972)</u>	<u>\$ 39,702,387</u>

	Automation Special Revenue Fund		
	<u>Actual Fund Expenditures</u>	<u>FY10 Payables Charged to FY11 Budget</u>	<u>Actual Budgetary Expenditures</u>
General Government:			
Current:			
Personal services/employee benefits	\$ 66,668	\$ -	\$ 66,668
Contractual services	50,206	-	50,206
Other	<u>9,375</u>	<u>760</u>	<u>10,135</u>
	<u>\$ 126,249</u>	<u>\$ 760</u>	<u>\$ 127,009</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, 2011**

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 from 4.0% to 16.65% depending upon the plan - i.e., state general, state hazardous duty, state police and adult correctional officers, municipal general, municipal police, municipal fire, municipal detention officer of their gross salary. Employers are required to contribute from 7.0% to 25.72% depending upon the plan 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, 2011, 2010, and 2009 were \$2,520,171, \$2,632,631 and \$3,102,613, 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 (RHCA). The RHCA 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 RHCA 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

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2011**

12. Post-Employment Benefits (cont'd)

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.nmrhca.state.nm.us.

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. In the fiscal years ending June 30, 2012 through June 30, 2013, the contribution rates for employees and employers will rise as follows:

For employees who are not members of an enhanced retirement plan (police, firefighters, municipal detention officers, or Judicial Retirement Act participants) the contribution rates will be:

<u>Fiscal Year</u>	<u>Employer Contribution Rate</u>	<u>Employee Contribution Rate</u>
FY12	1.834%	.917%
FY13	2.000%	1.000%

Also, employers joining the program after 1/1/98 are also required to make a surplus-amount contribution to the RHCA based on one of two formulas at agreed-upon intervals. The RHCA plan is financed on a pay-as-you-go basis. The employer, employee and retiree contributions are required to be remitted to the RHCA 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 RHCA for the fiscal years ended June 30, 2011, 2010 and 2009 were \$276,554, \$225,363 and \$242,905, 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 FY10 accounts payable (requests to pay prior-year bills submitted after FY10 audit - included in FY11 budget) - Org unit P720	<u>\$ 42,504</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

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Notes to Financial Statements
June 30, 2011**

14. Risk Management and Litigation (cont'd)

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.

15. Operating Transfers

	<u>From</u>	<u>To</u>	<u>Purpose</u>
Dept. of Finance and Admin (Fund #853)	\$ 39,658,800		Regular Appropriation
Public Defender Department (Fund #175)		\$ 39,658,800	
Public Defender Department (Fund #175)	\$ 87,079		Current-year reversion
Dept. of Finance and Admin (Fund #853)		\$ 87,079	

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

The deficit unrestricted net assets, \$1,103,778, on the Statement of Net Assets, Exhibit A, 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 fund balance on the fund financial statements are described in Note 9 on page 22.

The Department continues to take 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 initial FY11 amount totaled \$20,972 as opposed to \$71,238 in FY10.

SUPPLEMENTARY SECTION

STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT

Schedule 1

Schedule of Changes in Assets and Liabilities
Agency Fund
Year Ended June 30, 2011

	<u>Balance July 1, 2010</u>	<u>Additions</u>	<u>Deletions</u>	<u>Balance June 30, 2011</u>
<u>Assets</u>				
Interest in SGF Investment Pool	\$ 11,989	\$ 409,905	\$ (403,539)	\$ 18,355
Accounts receivable	29,484,434	1,666,157	(432,288)	30,718,303
Less:				
Allowance for uncollectibles	<u>(27,912,555)</u>	<u>(999,025)</u>	<u>-</u>	<u>(28,911,580)</u>
Total assets	<u>\$ 1,583,868</u>	<u>\$ 1,077,037</u>	<u>\$ (835,827)</u>	<u>\$ 1,825,078</u>
<u>Liabilities</u>				
Due to State General Fund	\$ 1,583,843	\$ 1,666,157	\$ (1,424,922)	\$ 1,825,078
Due to others	<u>25</u>	<u>-</u>	<u>(25)</u>	<u>-</u>
Total liabilities	<u>\$ 1,583,868</u>	<u>\$ 1,666,157</u>	<u>\$ (1,424,947)</u>	<u>\$ 1,825,078</u>

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Schedule of Memoranda of Understanding
Year Ended June 30, 2011**

<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 will 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 for the DWI program in Valencia County.	7/1/10-6/30/11	\$ 7,000	\$ -	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, 2011**

<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 will 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 for the DWI program in Torrance County.	7/1/10-6/30/11	\$ 9,880	\$ -	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, 2011**

<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 San Miguel County	Public Defender Department	PDD will provide a criminal/delinquency defense attorney to report to the DWI "Sobriety" Drug Court Advisory Team meeting and to provide the Advisory Team with expert consultation services from the criminal/delinquency defense perspective for the DWI program in San Miguel County.	5/30/11-9/30/11	\$ 10,000	\$ -	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	FY11 Target	FY11 Result	Met Target	Year-End Results Narrative
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Agency: 35500 Public Defender Department

Program: P720 Public Defender Department

The purpose of the criminal legal services program is to provide effective legal representation and advocacy for eligible clients so 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 sustains New Mexico's statutory and constitutional mandate to adequately fund a statewide indigent defense system.

Output	Number of alternative sentencing treatment placements for felony and juvenile clients	4,000	3,679	<input type="checkbox"/>	The Department did not meet the target of 4,000 alternative sentencing treatment placements for felony and juvenile clients. Our data from case closings indicate there is 3,679 placement in FY2011.
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We believe that the data collected may not be reflecting the actual number of clients placed in alternative programs. In FY2011 changes were made in the data collection system and entry clarification was relayed to staff.

Efficiency	Percent of cases in which application fees were collected	35%	35.2%	<input checked="" type="checkbox"/>	The Department has met this performance measure target and will strive to improve the collection of this fee.
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Quality	Percent of felony cases resulting in a reduction of original formally filed charges	37%	28.4%	<input type="checkbox"/>	The Department did not meet the FY11 target of 37%. Data extracted from our client tracking system indicated that 28.4% of felony cases resulted in a reduction in charges. This data does not reflect reality. In the past and in FY11 there were problems with our data collection and a resolution was enforced at the start of FY12.
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The true percentage should be much higher. It is rare where there is not a reduction in charges. The problem was identified and clarification on what constitutes a felony case resulting in reduced charges that been relayed to Department staff.

Explanatory	Annual attorney full-time-equivalent vacancy rate	7%	11.7%	<input checked="" type="checkbox"/>	
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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 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

Jacqueline Cooper, Acting 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, 2011, which collectively comprise the Department's basic financial statements and have issued our report thereon dated November 3, 2011, 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. 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

Management of the Department is responsible for establishing and maintaining effective 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 was not designed to identify all deficiencies in internal control over financial reporting that might be significant deficiencies or material weaknesses and therefore, there can be no assurance that all deficiencies, significant deficiencies, or material weaknesses have been identified. However, as described in the accompanying Schedule of Findings and Responses, we identified certain deficiencies in internal control over financial reporting that we consider to be material weaknesses and other deficiencies that we consider to be significant deficiencies.

A *deficiency in internal control* 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 and correct misstatements on a timely basis. A *material weakness* is a deficiency, or a combination of deficiencies, in internal control such that there is a reasonable possibility that a material misstatement of the Department's financial statements will not be prevented, or detected and corrected on a timely basis. We consider the deficiencies described in the accompanying Schedule of Findings and Responses as 2007-1 to be material weaknesses.

A *significant deficiency* is a deficiency, or a combination of deficiencies in internal control, that is less severe than a material weakness, yet important enough to merit attention by those charged with governance. We consider the deficiencies described in the accompanying Schedule of Findings and Responses as 2007-3 and 2008-1 to be significant deficiencies.

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**. However, we noted certain noncompliance matters that we have reported to management of the Department in the Schedule of Findings and Responses as item 2010-1.

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 its committees 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.
Española, New Mexico
November 3, 2011

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Schedule of Findings and Responses
June 30, 2011**

	<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
Performance Appraisals	E	2010-1	2010-1
Follow-up on Prior Year Findings:			
Accounts Receivable - Client Reimbursements	A	2007-1	Revised, Repeated
PERA/RHC Contributions	B	2007-3	Revised, Repeated
Requests to Pay Prior-Year Bills	B	2008-1	Revised, Repeated
Performance Appraisals	E	2010-1	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, 2011**

2007-1 (Material Weakness)

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 six months old. For FY11, the recorded net receivable increased by \$1,233,869 and the allowance for doubtful accounts increased by \$999,025.

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, 2011**

2007-1 (Material Weakness) (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 continue to 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

“This is a complex issue that involves department staff, contractors and judiciary staff. The department will continue to work with the judiciary on the eligibility process to ensure that non-qualified clients who desire department representation sign a reimbursement contract and that the contract is filed with our administrative office. Additionally, the department will strengthen the contractual obligations of its contract attorneys in the client reimbursement contract process.”

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Schedule of Findings and Responses
June 30, 2011**

2007-3 (Significant Deficiency)

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.

During FY10, some collections and corrections were made to the prior year amounts receivable and payable, but amounts still exist. However, also during FY10, five new PERA related accounts were discovered that totaled \$6,639.

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Schedule of Findings and Responses
June 30, 2011**

2007-3 (Significant Deficiency) (cont'd)

PERA/RHC Contributions (cont'd)

Condition (cont'd)

For FY11, no new PERA/RHC related accounts receivable or payable were discovered. Collections for the year amounted to \$4,832, leaving a balance owed of \$10,576.

Cause

Oversight by the Department Human Resources Division in identifying all PERA/RHC liabilities and lack of effort on rectifying those that were identified in prior years.

Effect

Until all prior year PERA/RHC liabilities are paid, employees may not receive the service credit they are entitled to. Also, lack of effort in collecting any amounts due from employees may result in the amounts being uncollectible.

Recommendation

We recommend that remaining prior receivable and payable balances be resolved.

Planned Corrective Actions

"The department's accountant/auditor will work with the human resources staff on resolving the remaining receivables and payables."

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Schedule of Findings and Responses
June 30, 2011**

2008-1 (Significant Deficiency)

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 (35) requests to pay FY11 bills out of the FY12 budget, amounting to \$20,972. Included are twenty (20) expert witness bills and fifteen (15) miscellaneous 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.

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 now formalizes agreements with expert witnesses on a Litigation Contract. That document includes enforceable timeliness of invoicing provisions and should minimize the occurrences of requests to pay prior year bills."

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Schedule of Findings and Responses
June 30, 2011**

2010-1 (Immaterial Noncompliance)

Performance Appraisals

Criteria

Per 1.7.9.9(B) NMAC, the performance and development of a career employee shall be reviewed semi-annually and appraised by the immediate supervisor on an annual basis completed by the employee's anniversary date.

Condition

During our audit of personnel files, we noted five (5) instances out of twenty-five (25) tested where performance appraisals were not performed. This noncompliance (20%) projects to 77 out of 385 total employees.

Cause

Since the performance appraisals are no longer associated with cost of living increases, they have not been a priority to complete as required.

Effect

Managers and immediate supervisors who fail to comply with the provisions of 1.7.9 NMAC may be subject to disciplinary action, including dismissal.

Recommendation

We recommend that the Department enforce its policies and procedures to ensure compliance with the provisions of 1.7.9 NMAC.

Planned Corrective Actions

"The department will enforce compliance with completion of performance appraisals. Monthly reminders will be sent out when appraisals are due with follow-up as the due date approaches. Non-compliance with this will be subject to disciplinary action."

**STATE OF NEW MEXICO
PUBLIC DEFENDER DEPARTMENT**

**Exit Conference
June 30, 2011**

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.

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EXIT CONFERENCE

The financial statements and the auditors' reports were discussed at an exit conference held on November 14, 2011 with the following in attendance:

Public Defender Department

Jacqueline Cooper, Acting Chief Public Defender
Brenda Salazar, Chief Financial Officer
John Stapleton, Human Resource Manager
Sarah Peterson, Accountant/Auditor

Audit Firm

James R. (Jim) Macias, CPA
George M. Gutierrez, CPA