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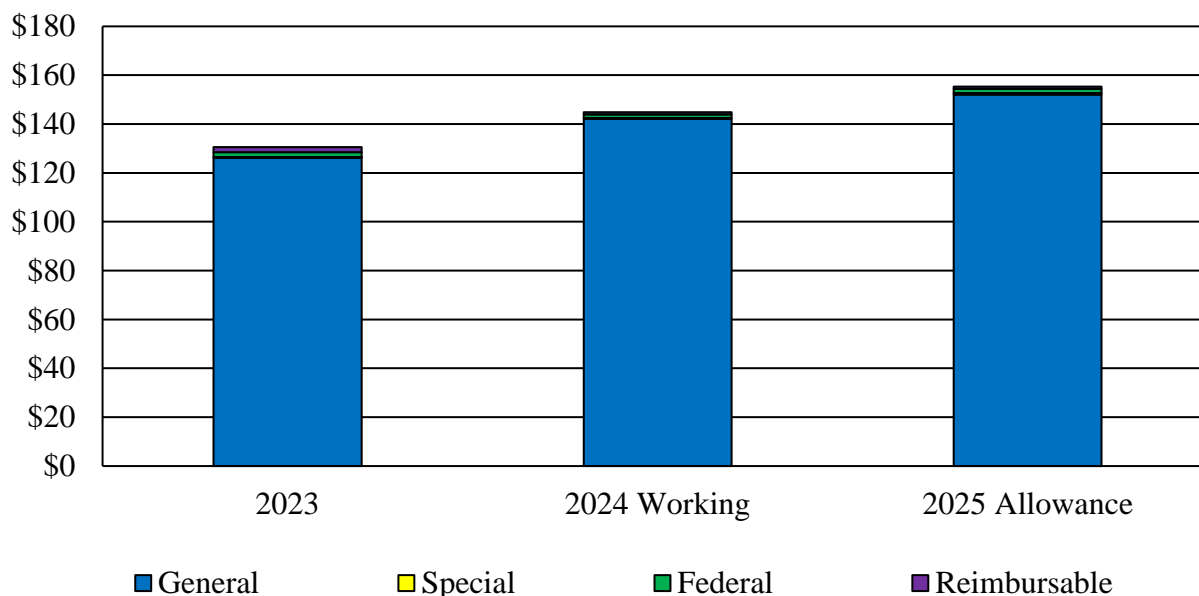
Office of the Public Defender

Program Description

The Office of the Public Defender (OPD) provides counsel and related services to indigent persons through 12 district operations, four divisions, and two specialized units. As defined in the Code of Maryland Regulations 14.06.03.01, indigent means “any person taken into custody or charged with a serious crime who under oath or affirmation subscribes and states in writing that he is financially unable, without undue hardship, to provide for the full payment of an attorney and all other necessary expenses of legal representation.” Legal representation is provided in criminal trials, bail reviews, appeals, juvenile cases, post-conviction proceedings, parole and probation revocations, and involuntary commitments to mental institutions. The four divisions that support the office are General Administration, District Operations, Appellate and Inmate Services, and Involuntary Institutionalization Services.

Operating Budget Summary

Fiscal 2025 Budget Increases \$10.4 Million, or 7.2%, to \$155.3 Million
(\$ in Millions)



Note: The fiscal 2024 working appropriation includes deficiencies. The fiscal 2024 impacts of statewide salary adjustments appear in the Statewide Account in the Department of Budget and Management (DBM), and adjustments are not reflected in this agency’s budget. The fiscal 2025 impacts of the fiscal 2024 statewide salary adjustments appear in this agency’s budget. The fiscal 2025 statewide salary adjustments are centrally budgeted in DBM and are not included in this agency’s budget.

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Proposed Deficiency

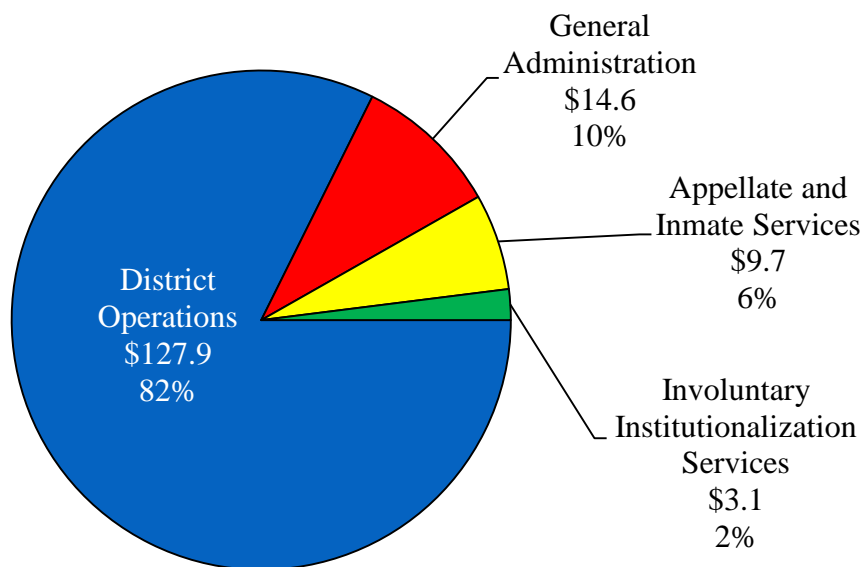
There are two proposed fiscal 2024 deficiency appropriations at OPD that add \$3.5 million in general funds for the following purposes:

- \$2.5 million to provide one-time funding for expenses incurred in fiscal 2023; and
- \$1 million to provide one-time funding for the costs associated with the District 1 headquarters move.

Fiscal 2025 Overview of Agency Spending

As illustrated in **Exhibit 1**, approximately 82% of the OPD allowance is allocated to district operations, with smaller shares of funding for the three other OPD programs.

Exhibit 1
Overview of Agency Spending
Fiscal 2025 Allowance
(\$ in Millions)



Note: The fiscal 2025 statewide salary adjustments are centrally budgeted in the Department of Budget and Management and are not included in this agency's budget.

Source: Governor's Fiscal 2025 Budget Books

Proposed Budget Change

The fiscal 2025 allowance for OPD grows 7.2% over the fiscal 2024 working appropriation, as shown in **Exhibit 2**. This growth is mainly driven by salary increases along with the creation of 43 new positions, including 27 new assistant public defenders. Further discussion of the new positions may be found in Key Observation 1 of this analysis.

**Exhibit 2
Proposed Budget
Office of the Public Defender
(\$ in Thousands)**

How Much It Grows:	General Fund	Special Fund	Federal Fund	Reimb. Fund	Total
Fiscal 2023 Actual	\$126,086	\$467	\$1,973	\$2,085	\$130,611
Fiscal 2024 Working Appropriation	142,164	283	1,452	964	144,863
Fiscal 2025 Allowance	<u>152,069</u>	<u>634</u>	<u>1,707</u>	<u>884</u>	<u>155,293</u>
Fiscal 2024-25 Amount Change	\$9,905	\$351	\$255	-\$80	\$10,430
Fiscal 2024-25 Percent Change	7.0%	123.9%	17.6%	-8.3%	7.2%

Where It Goes:	Change
Personnel Expenses	
Salary increases and associated fringe benefits including fiscal 2024 COLA and increments.....	\$5,777
Costs associated with the creation of new positions including 27 assistant public defenders, 9 office secretaries, 4 social workers, and 3 paralegals	4,023
Turnover rate decreases from 5.92% to 5.88%	39
Workers’ compensation premium assessment.....	-52
Other Changes	
DoIT services allocation.....	816
Rent expenses	559
Funding for eDefender case management software, previously funded in the DoIT budget	375
Contractual personnel expenses	371
Parking garage expenses at Baltimore City office	63
Payments to the State Treasurer required for leased equipment including laptops and network systems.....	22
Moving expenses to send materials to the State Archives	-11
One-time costs for replacement of an agency IT vehicle	-31

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Where It Goes:	<u>Change</u>
One-time funding for electrical and network cabling projects at the new District 1 headquarters	-184
Legal services consulting costs including transcription services	-263
One-time funding for new furniture at the new District 1 headquarters	-795
Other changes	-279
Total	\$10,430

COLA: cost-of-living adjustment
DoIT: Department of Information Technology
IT: information technology

Note: Numbers may not sum to total due to rounding. The fiscal 2024 working appropriation includes deficiencies. The fiscal 2024 impacts of statewide salary adjustments appear in the Statewide Account in the Department of Budget and Management (DBM), and adjustments are not reflected in this agency’s budget. The fiscal 2025 impacts of the fiscal 2024 statewide salary adjustments appear in this agency’s budget. The fiscal 2025 statewide salary adjustments are centrally budgeted in DBM and are not included in this agency’s budget.

Personnel Data

	<u>FY 23</u>	<u>FY 24</u>	<u>FY 25</u>	<u>FY 24-25</u>
	<u>Actual</u>	<u>Working</u>	<u>Allowance</u>	<u>Change</u>
Regular Positions	883.50	938.50	981.50	43.00
Contractual FTEs	<u>79.89</u>	<u>52.00</u>	<u>65.08</u>	<u>13.08</u>
Total Personnel	963.39	990.50	1,046.58	56.08

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	55.18	5.88%
Positions and Percentage Vacant as of 12/31/23	108.50	11.56%
Vacancies Above Turnover	53.32	

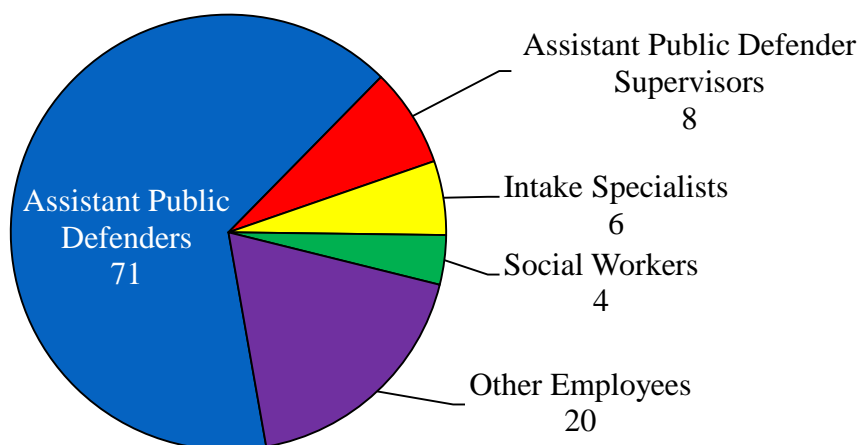
- OPD has had consistently high vacancy rates for several years. Of the 108.50 current vacancies, 37 are positions which were newly created in the fiscal 2024 appropriation.
- The new positions present in the fiscal 2025 allowance are in classifications that currently have high vacancy rates. Further discussion of the vacancies and new positions can be found in Key Observation 1 of this analysis.

Key Observations

1. Ongoing Vacancy Issues at OPD

For several years, OPD has had vacancy rates of several percentage points above the agency’s budgeted turnover rate. Currently, OPD has a total of 109 vacant positions, including 37 positions that were created in the fiscal 2024 appropriation. The existing vacancies include 71 assistant public defender positions. The existing vacancies are broken down by job category in **Exhibit 3**.

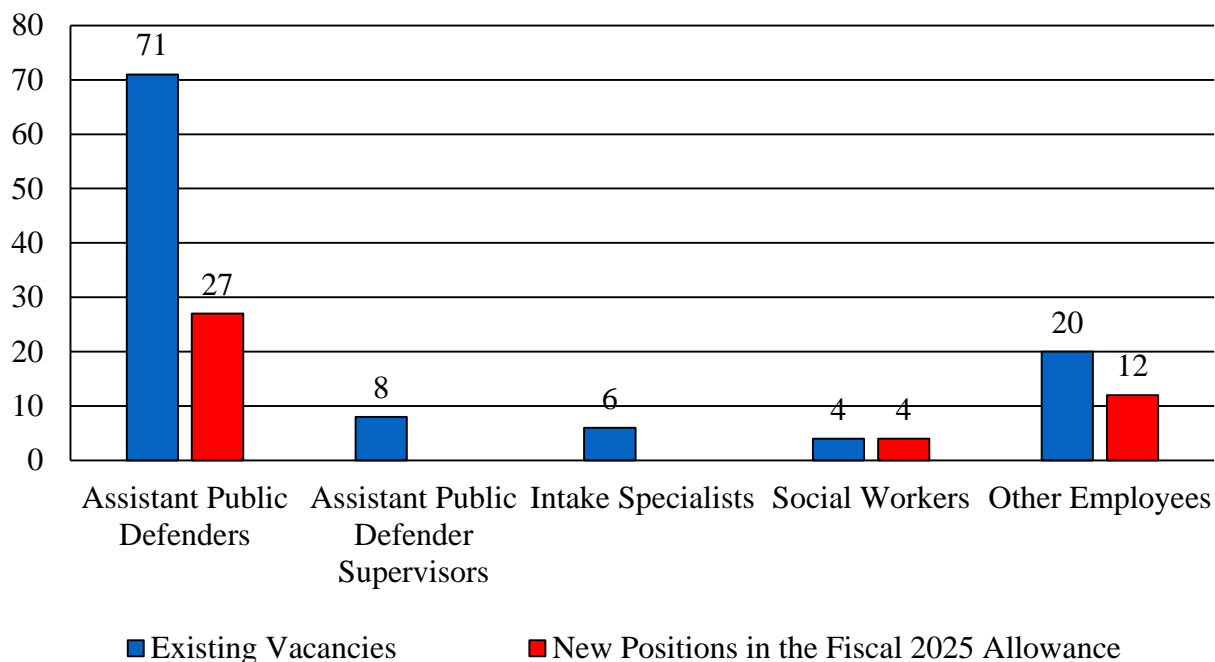
Exhibit 3
Office of the Public Defender Vacancies
As of December 31, 2023



Source: Department of Budget and Management; Department of Legislative Services

The fiscal 2025 allowance for OPD includes an additional 43 regular positions, many of which are in the same categories as existing vacancies, including 27 new assistant public defender positions which, when combined with existing vacancies, total 98 vacancies for those positions. OPD’s allowance includes these additional assistant public defender positions in an effort to bring attorney caseloads in line with new national standards that were released in calendar 2023. OPD’s most recent Managing for Results (MFR) data utilized these standards and indicated that the agency needs approximately 925 additional attorneys, including the positions in the fiscal 2025 allowance, in order to bring the caseload per attorney down to the national standard. OPD is currently working to refine the national standards to fit Maryland’s specific characteristics, and the total number of additional attorneys needed to meet those standards is not yet available. Expanded data on existing vacancies compared to new positions by category of work can be found in **Exhibit 4**.

**Exhibit 4
Existing Vacancies and New Positions by Work Category**



Source: Department of Budget and Management; Department of Legislative Services

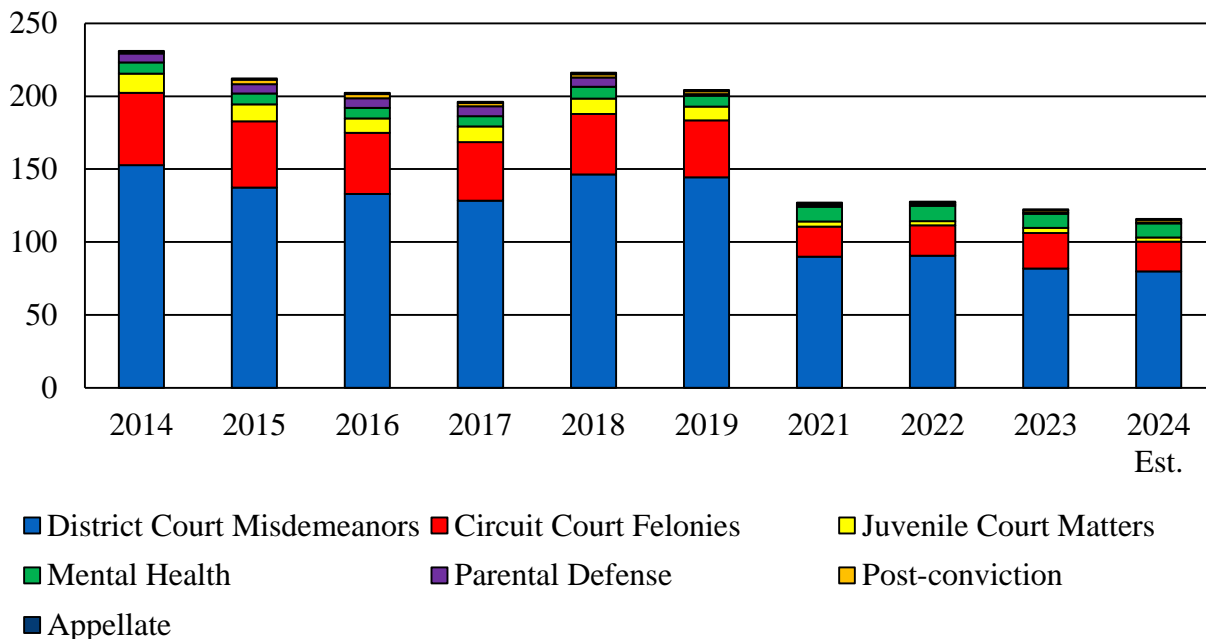
OPD’s vacancy issues contribute to the caseloads issue discussed in Key Observation 3 of this analysis. When attorneys leave OPD, they do so for a variety of reasons, including higher rates of pay or lower caseloads available in other State agencies, federal agencies, or the private sector. When higher-level positions become vacant, OPD often promotes other attorneys from within the agency to fill the higher-level positions. This method of filling one vacancy by creating another does allow for a greater number of entry-level positions to be filled each year; however, OPD has stated that despite the agency’s best efforts to recruit graduating law students, they often face competition from other employers, which results in its inability to fill all assistant public defender vacancies. OPD states that it is committed to filling every vacancy for attorneys, social workers, support staff, and other employees. However, given the agency’s struggle to fill positions that were created with the fiscal 2024 appropriation, it is prudent to adjust the level of funding for new positions through an adjustment to the turnover rate. The allowance includes a turnover rate of 5.88% for existing positions and 5.90% for new positions. Increasing these rates to 7.50% for existing positions and 25.00% for new positions would reduce the budgeted amount for OPD by \$2.5 million, with \$1.7 million of the reduction being for existing positions and \$816,719 being for new positions. This action brings the budgeted turnover rate closer to OPD’s current vacancy rate and provides for an expected gap of three months after the start of the fiscal year for OPD to fill the newly created positions.

The Department of Legislative Services (DLS) recommends that the budgeted turnover adjustment for OPD be reduced by \$1.7 million for existing regular positions in order to align the budgeted amount more closely with the agency’s current vacancy rate and by \$816,719 for new regular position salaries in order to account for the time needed to fill newly created positions after the start of the fiscal year.

2. Case Numbers Remain Below Prepandemic Levels

OPD has experienced a decrease in the total number of cases that it handles annually since the pandemic. Between calendar 2014 and 2019, OPD represented defendants in more than 200,000 cases per year, with the exception of calendar 2017, which saw OPD involved in 196,178 cases. OPD converted its reporting data to fiscal years beginning with fiscal 2021, and January through June 2020 are captured within fiscal 2021 for reporting purposes. Since fiscal 2021, OPD’s busiest year was fiscal 2022, where it provided representation in 127,660 cases. A full breakdown of cases can be found in **Exhibit 5**.

Exhibit 5
Office of the Public Defender Case Statistics by Category
Calendar 2014-2019, Fiscal 2021-2024 Est.
(in Thousands)



Note: Beginning with calendar 2019, cases paneled to private attorneys are not included in the total case count. January through June of 2020 are included in the fiscal 2021 data in this exhibit.

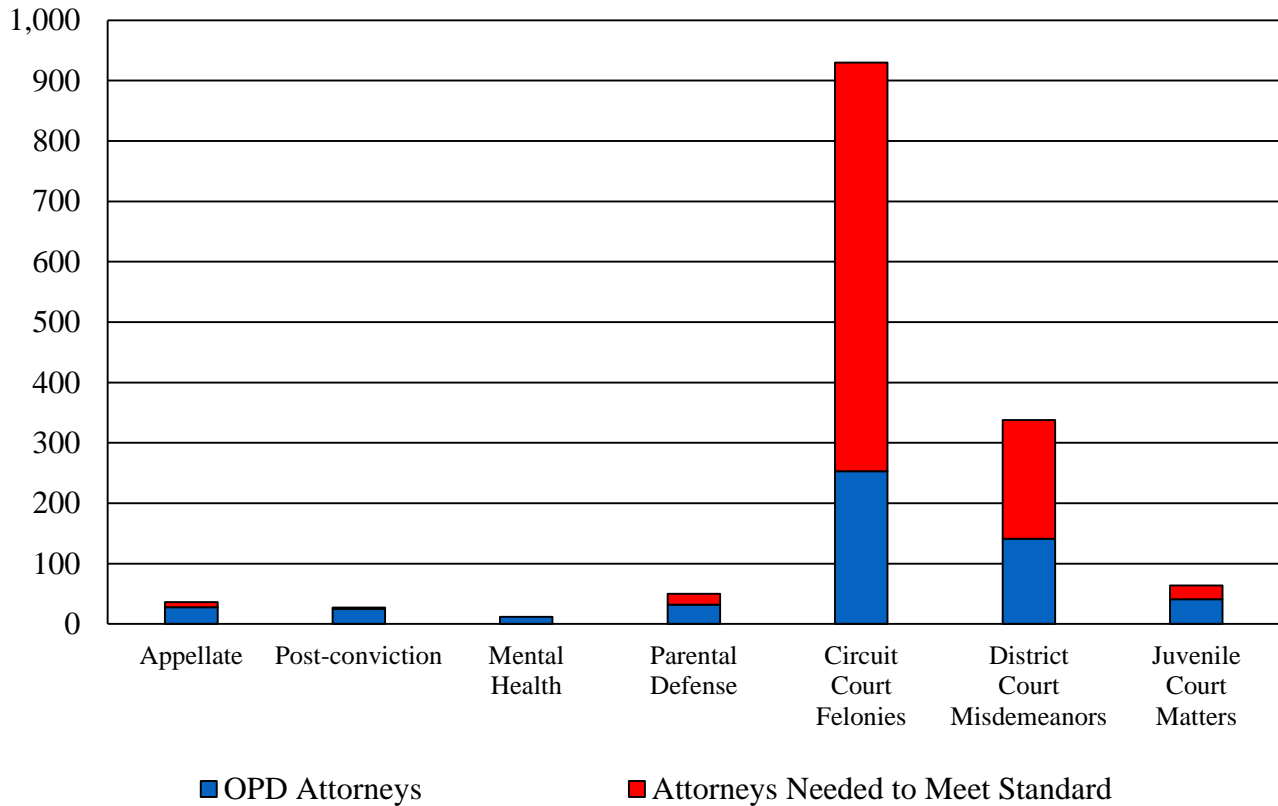
Source: Department of Budget and Management; Department of Legislative Services

The decrease in the number of cases per year has allowed OPD to decrease its usage of panel attorneys, which reduces the total amount of fees that the State pays to private attorneys to cover the cases OPD is unable to handle. In calendar 2019, OPD needed to panel 45,775 District Court cases to private attorneys; in fiscal 2023, only 7,639 cases were paneled to private attorneys. Similarly, panel attorney usage in the circuit courts decreased from 6,879 cases in calendar 2019 to 2,208 in fiscal 2023, and panel usage in Juvenile Court decreased from 1,763 cases in calendar 2019 to 783 in fiscal 2023. Should the total number of cases OPD takes on in a year increase to levels seen in calendar 2019 and prior, OPD should consider how to effectively balance the number of attorneys in regular and contractual positions with its use of panel attorneys in order to be as fiscally responsible as possible.

3. New Caseload Standards for Attorneys Indicate OPD Lacks Necessary Personnel

Beginning with fiscal 2024, OPD is utilizing nationally recognized caseload standards from a group consisting of the American Bar Association, RAND Corporation, and the National Center for State Courts to calculate standard workloads for their attorneys. OPD is in the process of altering these standards to better reflect circumstances specific to Maryland, which will better reflect appropriate caseloads for public defenders in the State than the previous standards that were created in calendar 2005. The new standards utilized for the fiscal 2023 MFR data indicate that OPD is understaffed for its current workload by approximately 925 attorneys. The majority of this gap is found in circuit court felony matters, where OPD estimates that it needs approximately 677 additional attorneys. **Exhibit 6** shows the number of attorneys that OPD currently has working on each type of case matter, along with the number of attorneys needed to have each attorney maintaining a standard caseload. According to the new standards, each practice area is understaffed, with the exception of mental health cases.

Exhibit 6
Attorneys Needed to Meet Caseload Standards
Fiscal 2023



OPD: Office of the Public Defender

Source: Department of Budget and Management; Department of Legislative Services

This gap between the number of attorneys OPD has versus what is needed according to caseload standards represents a significant issue. Current workloads are unsustainable for many attorneys, which can lead to low employee morale, high turnover, and other consequences. The agency’s high turnover can exacerbate the existing problem of large caseloads, which then in turn leads back to increased turnover. OPD’s recruitment and retention methods should be a subject of focus for its administration. While utilizing the full number of allocated positions will not completely solve the problem of high caseloads, being fully staffed with the currently available positions would decrease the caseloads for all attorneys.

DLS recommends the adoption of committee narrative requesting a report on attorney hiring and retention in fiscal 2019 through 2024 and average attorney caseloads in fiscal 2024.

Operating Budget Recommended Actions

1. Add the following language:

Provided that this appropriation shall be reduced by \$1,704,514 in general funds, \$386 in special funds, and \$9,852 in federal funds to align with increased turnover expectancy among existing positions at the agency. The Office of the Public Defender is authorized to allocate this reduction across the agency’s programs.

Explanation: This reduction is made in order to increase the turnover rate for existing positions within the Office of the Public Defender from 5.88% to 7.50%.

2. Add the following language:

Further provided that this appropriation shall be reduced by \$816,719 in general funds to align with increased turnover expectancy among new positions at the agency. The Office of the Public Defender is authorized to allocate this reduction across the agency’s programs.

Explanation: This reduction is made in order to increase the turnover rate for new positions within the Office of the Public Defender from 5.90% to 25.00%.

3. Adopt the following narrative:

Hiring, Separation, and Caseloads Report: The committees are concerned with ongoing vacancy issues within the Office of the Public Defender (OPD). The committees request a report detailing the number of attorneys hired by OPD in each year from fiscal 2019 to 2024 including the total number of employees hired for each position and the reasons for separations of attorneys from OPD. This report should also include the average annual caseloads for attorneys in each division in fiscal 2024 compared to the standards utilized by OPD.

Information Request	Author	Due Date
Attorney hiring, separation, and caseloads report	OPD	December 1, 2024

Appendix 1
2023 Joint Chairmen’s Report Responses from Agency

The 2023 *Joint Chairmen’s Report* (JCR) requested that OPD prepare one report. Electronic copies of the full JCR responses can be found on the DLS Library website.

- ***Caseload Standards Report:*** OPD submitted a report detailing the average caseload for its attorneys compared to national standard caseloads. Further discussion of this report can be found in Key Observation 3 of this analysis.

**Appendix 2
Object/Fund Difference Report
Office of the Public Defender**

<u>Object/Fund</u>	<u>FY 23 Actual</u>	<u>FY 24 Working Appropriation</u>	<u>FY 25 Allowance</u>	<u>FY 24 - FY 25 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	883.50	938.50	981.50	43.00	4.6%
02 Contractual	79.89	52.00	65.08	13.08	25.2%
Total Positions	963.39	990.50	1,046.58	56.08	5.7%
Objects					
01 Salaries and Wages	\$ 100,927,376	\$ 112,889,785	\$ 122,677,119	\$ 9,787,334	8.7%
02 Technical and Special Fees	18,586,155	18,335,694	20,480,297	2,144,603	11.7%
03 Communication	491,736	370,960	370,960	0	0%
04 Travel	230,776	70,000	76,760	6,760	9.7%
06 Fuel and Utilities	148,321	97,366	97,366	0	0%
07 Motor Vehicles	168,374	86,910	137,504	50,594	58.2%
08 Contractual Services	5,556,458	4,903,977	6,132,741	1,228,764	25.1%
09 Supplies and Materials	379,664	211,534	178,235	-33,299	-15.7%
10 Equipment – Replacement	762,018	461,997	484,496	22,499	4.9%
11 Equipment – Additional	627,468	101,750	263,372	161,622	158.8%
13 Fixed Charges	2,732,387	3,834,503	4,394,031	559,528	14.6%
Total Objects	\$ 130,610,733	\$ 141,364,476	\$ 155,292,881	\$ 13,928,405	9.9%
Funds					
01 General Fund	\$ 126,085,854	\$ 138,665,577	\$ 152,068,714	\$ 13,403,137	9.7%
03 Special Fund	466,722	282,919	633,506	350,587	123.9%
05 Federal Fund	1,973,009	1,451,516	1,706,661	255,145	17.6%
09 Reimbursable Fund	2,085,148	964,464	884,000	-80,464	-8.3%
Total Funds	\$ 130,610,733	\$ 141,364,476	\$ 155,292,881	\$ 13,928,405	9.9%

Note: The fiscal 2024 appropriation does not include deficiencies. The fiscal 2025 allowance does not include contingent reductions or cost-of-living adjustments.