

**C80B00**  
**Office of the Public Defender**

***Operating Budget Data***

(\$ in Thousands)

	<u>FY 17</u> <u>Actual</u>	<u>FY 18</u> <u>Working</u>	<u>FY 19</u> <u>Allowance</u>	<u>FY 18-19</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
General Fund	\$109,464	\$103,475	\$104,526	\$1,051	1.0%
Adjustments	0	-176	713	889	
<b>Adjusted General Fund</b>	<b>\$109,464</b>	<b>\$103,300</b>	<b>\$105,239</b>	<b>\$1,940</b>	<b>1.9%</b>
Special Fund	302	387	257	-130	-33.5%
Adjustments	0	0	1	1	
<b>Adjusted Special Fund</b>	<b>\$302</b>	<b>\$387</b>	<b>\$258</b>	<b>-\$129</b>	<b>-33.3%</b>
Federal Fund	45	121	36	-85	-70.1%
Adjustments	0	0	0	0	
<b>Adjusted Federal Fund</b>	<b>\$45</b>	<b>\$121</b>	<b>\$36</b>	<b>-\$85</b>	<b>-70.1%</b>
Reimbursable Fund	908	883	880	-3	-0.4%
Adjustments	0	0	9	9	
<b>Adjusted Reimbursable Fund</b>	<b>\$908</b>	<b>\$883</b>	<b>\$889</b>	<b>\$5</b>	<b>0.6%</b>
<b>Adjusted Grand Total</b>	<b>\$110,719</b>	<b>\$104,691</b>	<b>\$106,422</b>	<b>\$1,731</b>	<b>1.7%</b>

Note: FY 18 Working includes targeted reversions, deficiencies, and across-the-board reductions. FY 19 Allowance includes contingent reductions and cost-of-living adjustments.

- The Governor's budget plan for the Office of the Public Defender (OPD) includes fiscal 2018 deficiencies totaling \$3.6 million for panel attorneys and other operating expenses. Of this amount, \$2.6 million is for expenses incurred in fiscal 2017 in excess of the agency's appropriation. To provide a more accurate comparison between fiscal 2018 and 2019, those deficiencies are not included in the fiscal 2018 working appropriation. The remaining \$1 million in deficiencies are for fiscal 2018 operating expenses and are included in the fiscal 2018 working appropriation.
- The fiscal 2019 allowance is \$106.4 million, an increase of \$1.7 million, or 1.7%, above the fiscal 2018 working appropriation.

Note: Numbers may not sum to total due to rounding.

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***Personnel Data***

	<b><u>FY 17 Actual</u></b>	<b><u>FY 18 Working</u></b>	<b><u>FY 19 Allowance</u></b>	<b><u>FY 18-19 Change</u></b>
Regular Positions	888.50	888.50	888.50	0.00
Contractual FTEs	<u>11.00</u>	<u>61.00</u>	<u>61.00</u>	<u>0.00</u>
<b>Total Personnel</b>	<b>899.50</b>	<b>949.50</b>	<b>949.50</b>	<b>0.00</b>

***Vacancy Data: Regular Positions***

Turnover and Necessary Vacancies, Excluding New Positions	59.71	6.72%
Positions and Percentage Vacant as of 12/31/17	83.00	9.34%

- The fiscal 2019 allowance includes 888.5 regular positions, the same as the fiscal 2018 working appropriation.
- The fiscal 2019 allowance also includes 61 contractual full-time equivalents (FTE). While this is the same amount as the fiscal 2018 working appropriation, it is 50 contractual FTEs above the fiscal 2017 legislative appropriation. These additional contractual FTEs are the result of an OPD plan to increase the number of agency support staff. This plan was funded with \$1.1 million in the fiscal 2018 legislative appropriation, but it was too early in the process to accurately estimate the number of contractual FTEs that would be hired.
- Turnover expectancy for the agency is 6.72%, which requires a total of 59.7 vacant positions. As of December 31, 2017, the agency had a total of 83 vacant positions for a vacancy rate of 9.34%.

## *Analysis in Brief*

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### Major Trends

***Public Defender Caseloads Are Falling Across the State:*** The total caseloads for OPD declined 4.9% in calendar 2016 and reached its lowest point since calendar 2008. Cases peaked in calendar 2014 and have declined rapidly over the last two years.

***Fewer Cases Bring Caseload Targets within Reach:*** In calendar 2016, 6 out of 12 circuit court districts and 7 out of 12 District Court districts met caseload standards for public defenders. While most districts showed improvement, even if they did not meet the standard, high caseloads persisted for the District Court public defenders for Prince George’s County. **The Department of Legislative Services (DLS) recommends that the agency discuss the reasons for the high caseloads in Prince George’s County and the remedial actions that have been taken to decrease those caseloads.**

***Juvenile Defender Caseloads Also Decline Sharply:*** OPD was within caseload targets in 10 out of 12 jurisdictions for juvenile court defenders in calendar 2016. However, the 2 districts that were over standard, Howard County and the Lower Shore, both had increased caseloads.

***No Relief for Specialized Dockets:*** All three of OPD’s statewide divisions (Mental Health, Post Conviction Defenders, and Appellate) exceeded caseload standards for the first time since calendar 2013. Caseloads increased for the Appellate Division but fell for the Mental Health and Post Conviction Defenders divisions.

### Issues

***Agency Staffing:*** Workloads for OPD employees and the agency’s demonstrated need for additional positions have both improved significantly over the last two years. DLS reported in its *Executive Branch Staffing Adequacy Study* issued in January 2018 that the agency has a need for at least 89 additional attorney and non-attorney positions. This is actually a significant improvement over calendar 2014, when there was a demonstrated need for 151 public defenders. Changes, including a decrease in cases, funding for 51 contractual FTEs for support staff, and the transfer of responsibility for indigency determinations to the Judiciary, have all relieved pressure on OPD staff. Looking forward, the Office of Legislative Audits recommended in January 2018 that OPD should update its caseload standards, which have not changed since 2005. **DLS recommends that the committees adopt narrative requesting that OPD update its caseload measures in calendar 2018, submit a report to outline how those measures were adjusted, and incorporate them into the agency’s fiscal 2020 Managing for Results data.**

## **Operating Budget Recommended Actions**

1. Adopt committee narrative to request that the agency update attorney caseload standards.

## **Updates**

***Report on Juvenile Court Public Defender Caseloads:*** In the 2017 *Joint Chairmen's Report*, the committees requested a report on how OPD represents juvenile defendants and how often public defenders have to travel across the State to meet with clients. While OPD reported that public defenders do sometimes have to travel long distances to meet with clients and attend court hearings, those defenders are reimbursed for their travel expenses. OPD also noted that this travel is consistent with a general policy to keep clients with the same attorney whenever possible.

**C80B00**  
**Office of the Public Defender**

***Operating Budget Analysis***

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**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 COMAR 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 (1) General Administration; (2) District Operations; (3) Appellate and Inmate Services; and (4) Involuntary Institutionalization Services.

**Performance Analysis: Managing for Results**

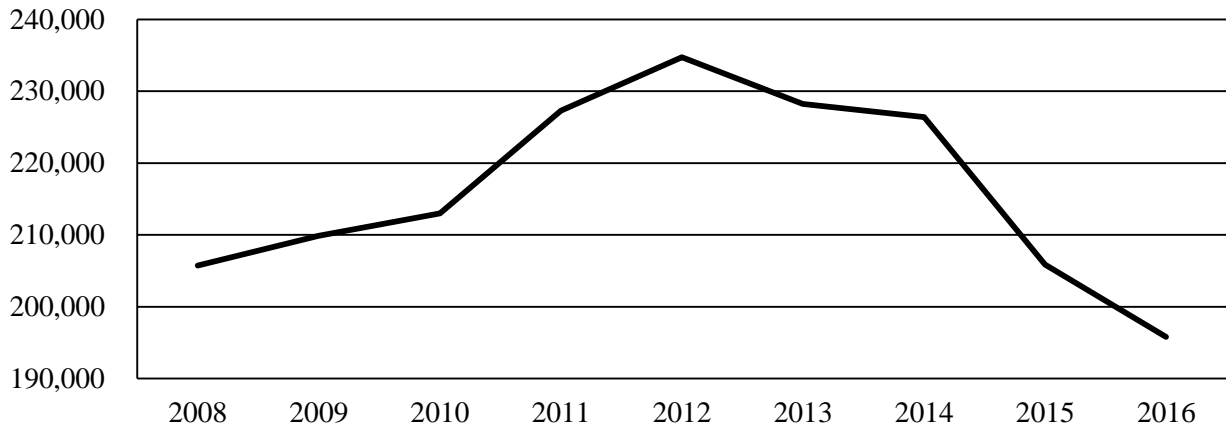
During the 2006 session, the General Assembly endorsed the implementation of Maryland-specific attorney caseload standards for public defenders. Under these standards, the maximum number of cases that public defenders can handle each year, without jeopardizing the effective assistance of counsel, varies based on geographic location and type of case. OPD also uses these standards to measure agency performance and to inform its allocation of resources.

**1. Public Defender Caseloads Are Falling Across the State**

In calendar 2016, the full agency caseload was 195,816, a decrease of 10,066 cases, or 4.9%, from calendar 2015, with declines spread across the State. **Exhibit 1** shows the agency’s full caseload from calendar 2008 to 2016. In total, the agency had 9,898, or 4.8%, fewer cases in calendar 2016 than it had in calendar 2008.

The vast majority of OPD cases are handled by attorneys in the 12 district offices across the State. In calendar 2016, there were a total of 184,863 District, circuit, and juvenile court cases handled by district offices. This is a decline of 9,605 cases, or 4.9%, from calendar 2015. The number of District and circuit court cases in which OPD represented the defendant in calendar 2016 was at the lowest level since 2008. As shown in **Exhibit 2**, within this period, cases increased substantially from calendar 2008 to 2011, remained relatively steady through calendar 2014, and then declined dramatically in calendar 2015 and 2016.

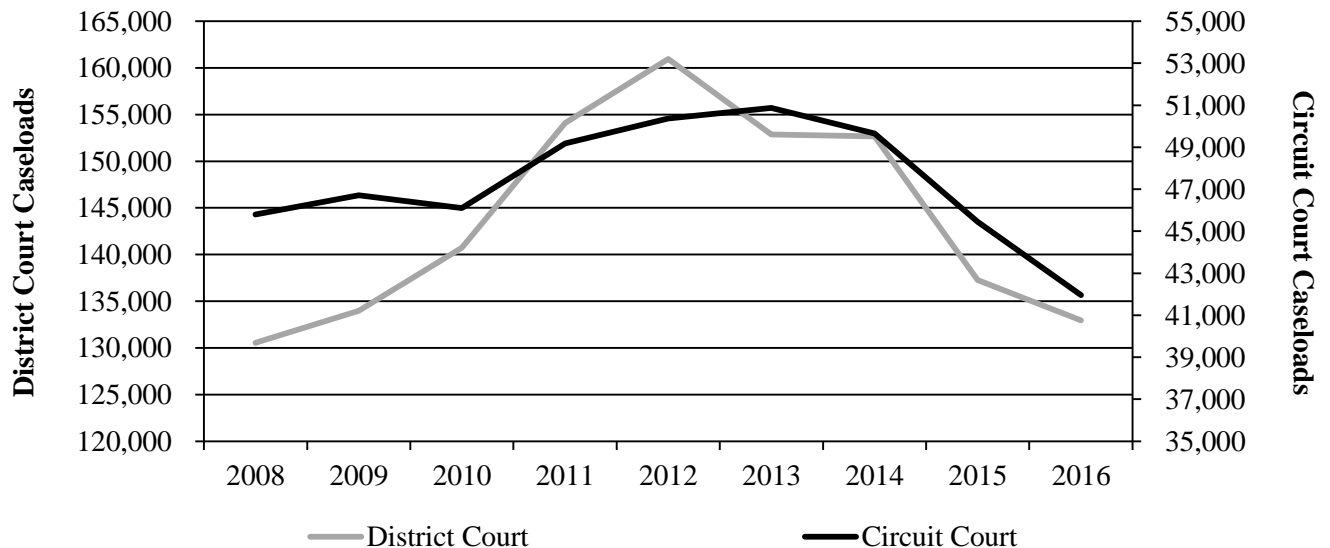
**Exhibit 1**  
**OPD Caseload**  
**Calendar 2008-2016**



OPD: Office of the Public Defender

Source: Department of Budget and Management; Office of the Public Defender

**Exhibit 2**  
**OPD District and Circuit Court Caseloads**  
**Calendar 2008-2016**



OPD: Office of the Public Defender

Source: Office of the Public Defender; Department of Budget and Management

While the State's population increased by approximately 6.8% between calendar 2008 and 2016, the number of District Court cases increased by only 1.8%, and the number of circuit court cases fell by 8.4%. The slight increase in District Court cases includes a decrease of over 50% in Baltimore City, which is offset by increases in all other districts. Nine districts saw total increases of over 10%. For the circuit court, the largest decline was again in Baltimore City, but the results were mixed elsewhere with increases in seven districts and decreases in four districts.

However, compared to the recent peak in calendar 2014, case counts are down significantly in nearly all jurisdictions, as shown in **Exhibit 3**. District Court cases declined 12.9% statewide from calendar 2014 to 2016, and circuit court cases declined 15.5% over the same period. When considering actual workloads for public defenders, the declines are somewhat larger because the number of cases being paneled to private attorneys has not declined as rapidly, meaning that a larger share of the total caseload is being handled by panel attorneys.

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**Exhibit 3**  
**Caseloads by Public Defender District**  
**District and Circuit Courts**  
**Calendar 2014-2016**

	<b>District Court</b>				
	<u><b>2014</b></u>	<u><b>2015</b></u>	<u><b>2016</b></u>	<u><b>Change 2014-2016</b></u>	<u><b>Percent Change 2014-2016</b></u>
Baltimore City	31,860	23,785	22,950	-8,910	-28.0%
Lower Eastern Shore	9,454	8,613	8,360	-1,094	-11.6%
Upper Eastern Shore	7,785	6,096	6,270	-1,515	-19.5%
Southern Maryland	11,195	12,487	10,817	-378	-3.4%
Prince George's	20,213	20,048	18,515	-1,698	-8.4%
Montgomery	17,268	14,655	15,271	-1,997	-11.6%
Anne Arundel	15,322	15,101	15,314	-8	-0.1%
Baltimore	14,044	13,850	13,551	-493	-3.5%
Harford	4,442	4,345	4,482	40	0.9%
Howard and Carroll	8,996	6,474	6,293	-2,703	-30.1%
Frederick and Washington	8,591	8,390	7,811	-780	-9.1%
Western Maryland	3,506	3,412	3,303	-203	-5.8%
<b>Total</b>	<b>152,676</b>	<b>137,256</b>	<b>132,937</b>	<b>-19,739</b>	<b>-12.9%</b>

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	<b>Circuit Court</b>			<b>Change</b>	<b>Percent</b>
	<b><u>2014</u></b>	<b><u>2015</u></b>	<b><u>2016</u></b>	<b><u>2014-2016</u></b>	<b><u>2014-2016</u></b>
Baltimore City	15,270	12,009	10,341	-4,929	-32.3%
Lower Eastern Shore	2,263	2,148	2,258	-5	-0.2%
Upper Eastern Shore	3,613	3,183	3,125	-488	-13.5%
Southern Maryland	3,404	3,623	3,125	-279	-8.2%
Prince George's	5,559	4,952	5,190	-369	-6.6%
Montgomery	1,936	1,742	1,735	-201	-10.4%
Anne Arundel	3,014	3,094	2,825	-189	-6.3%
Baltimore	5,581	5,902	5,306	-275	-4.93%
Harford	2,130	2,143	1,839	-291	-13.7%
Howard and Carroll	2,784	2,401	2,339	-445	-16.0%
Frederick and Washington	3,234	3,287	3,012	-222	-6.9%
Western Maryland	868	962	872	4	0.5%
<b>Total</b>	<b>49,656</b>	<b>45,446</b>	<b>41,967</b>	<b>-7,689</b>	<b>-15.5%</b>

Lower Shore: Dorchester, Somerset, Wicomico, and Worcester counties

Upper Shore: Caroline, Cecil, Kent, Queen Anne's, and Talbot counties

Southern Maryland: Calvert, Charles, and St. Mary's counties

Western Maryland: Allegany and Garrett counties

Source: Department of Budget and Management

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A wide variety of factors contribute to crime and arrest rates and, in turn, the number of individuals represented by OPD. It is important, therefore, not to make broad assumptions regarding the decrease in the number of indigent defendants in the State over the last three years. However, there are a few factors that have likely contributed to this decline, including:

- the impact of Chapter 158 of 2014, which decriminalized possession of less than 10 grams of marijuana beginning on October 1, 2014. For the last full year prior to decriminalization, the Judiciary reported 19,828 of these violations. Removing these cases from the OPD caseload could explain a large share of the decline in District Court cases since the law was enacted;
- anecdotal reports indicate fewer arrests by the Baltimore Police Department (BPD) following the 2015 death of Freddie Gray while in BPD's custody. If BPD is making fewer arrests, especially for minor offenses, this would reduce the number of OPD cases in Baltimore City; and
- reported crimes statewide declined 20.1% from calendar 2008 to 2015, according to the 2015 *Uniform Crime Report*. While there were more reported murders and sexual assaults in



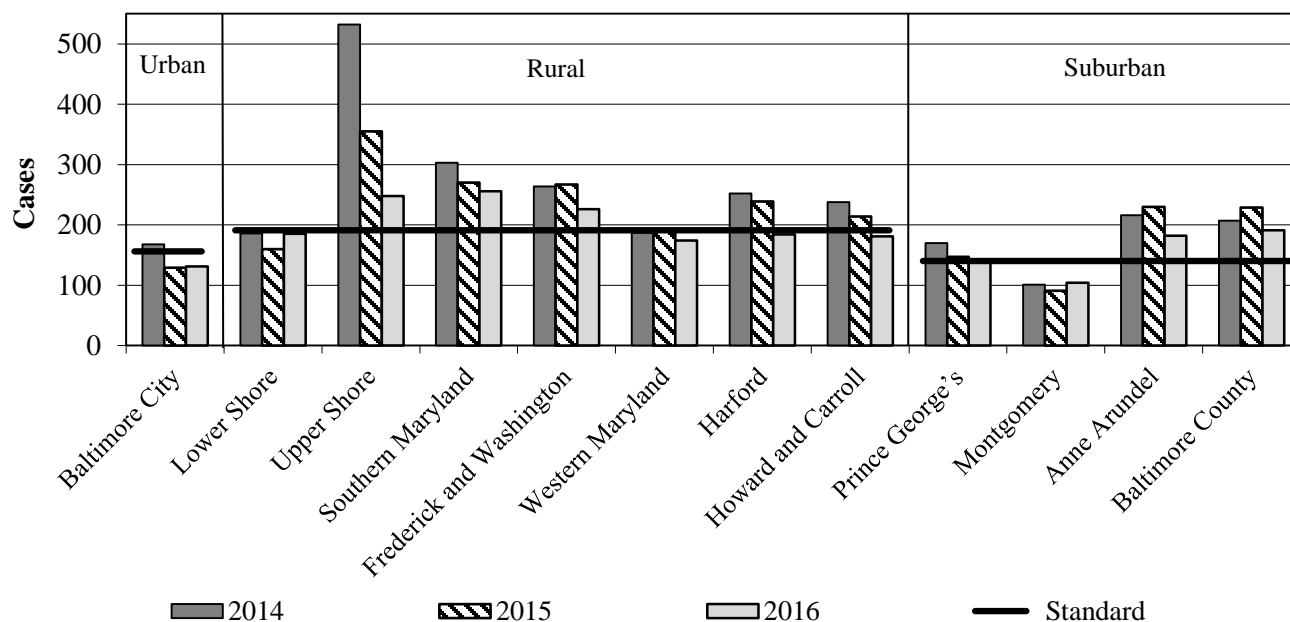
2015, the overall decline has been driven largely by the fewer reported assaults and property crimes.

## **2. Fewer Cases Bring Caseload Targets within Reach**

The recent decline in the OPD caseload has brought the agency much closer to achieving attorney workload targets. The absolute decrease in cases not only reduces the client count for each public defender, but it also allows the agency to more easily redeploy public defenders to jurisdictions with greater need. For instance, in calendar 2016, the agency was able to reallocate three circuit court and eight juvenile court defender positions to District Courts in overburdened counties, while still lowering workloads for all three classes of defenders.

**Exhibit 4** illustrates the actual annual caseloads per circuit court attorney from calendar 2014 to 2016. The caseload standards are 156, 191, and 140 for urban, rural, and suburban circuit court attorneys, respectively. In calendar 2016, 6 of 12 districts (Baltimore City, the Lower Eastern Shore, Western Maryland, Harford County, Howard and Carroll counties, and Montgomery County) met the target, which matches OPD's compliance goal. This is two more jurisdictions than in calendar 2015. In addition, Prince George's County nearly met the target (exceeding it by only 2 cases per attorney), and all jurisdictions that exceeded the target showed improvement compared to calendar 2016.

**Exhibit 4**  
**Average Circuit Court Caseload Per Attorney by District**  
**Calendar 2014-2016**



Maryland Caseload Standards: Urban Counties – 156 cases; Rural Counties – 191 cases; Suburban Counties – 140 cases.

Lower Shore: Dorchester, Somerset, Wicomico, and Worcester counties

Upper Shore: Caroline, Cecil, Kent, Queen Anne's, and Talbot counties

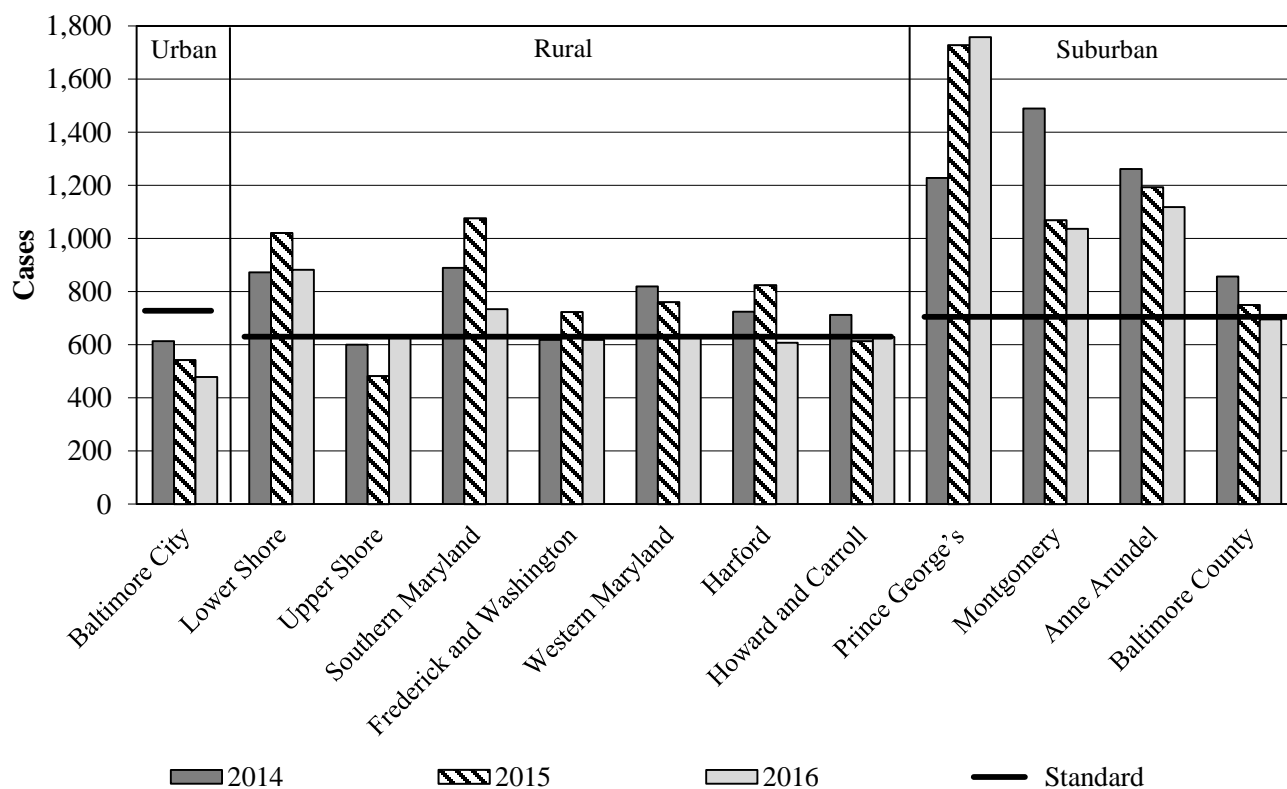
Southern Maryland: Calvert, Charles, and St. Mary's counties

Western Maryland: Allegany and Garrett counties

Source: Department of Budget and Management

**Exhibit 5** provides caseloads for District Court attorneys from calendar 2014 to 2016. The caseload standards are 728, 630, and 705 per attorney for urban, rural, and suburban District Court attorneys, respectively. OPD has set a target of 40% of districts (5 of 12) in compliance with caseload standards. In calendar 2016, 7 of 12 districts (Baltimore City, the Upper Shore, Frederick and Washington counties, Western Maryland, Harford County, Howard and Carroll counties, and Baltimore County) met the standard. While four of the five jurisdictions exceeding the caseload target showed improvement in calendar 2016, Prince George's County, which already had the highest caseloads in the State by a wide margin, actually lost ground, with caseloads reaching 2.5 times the standard. **The Department of Legislative Services (DLS) recommends that the agency discuss the reasons for the high caseloads in Prince George's County and the remedial actions that have been taken to decrease those caseloads.**

**Exhibit 5**  
**Average District Court Caseload Per Attorney by District**  
**Calendar 2014-2016**



Maryland Caseload Standards: Urban Counties – 728 cases; Rural Counties – 630 cases; Suburban Counties – 705 cases.

Lower Shore: Dorchester, Somerset, Wicomico, and Worcester counties

Upper Shore: Caroline, Cecil, Kent, Queen Anne's, and Talbot counties

Southern Maryland: Calvert, Charles, and St. Mary's counties

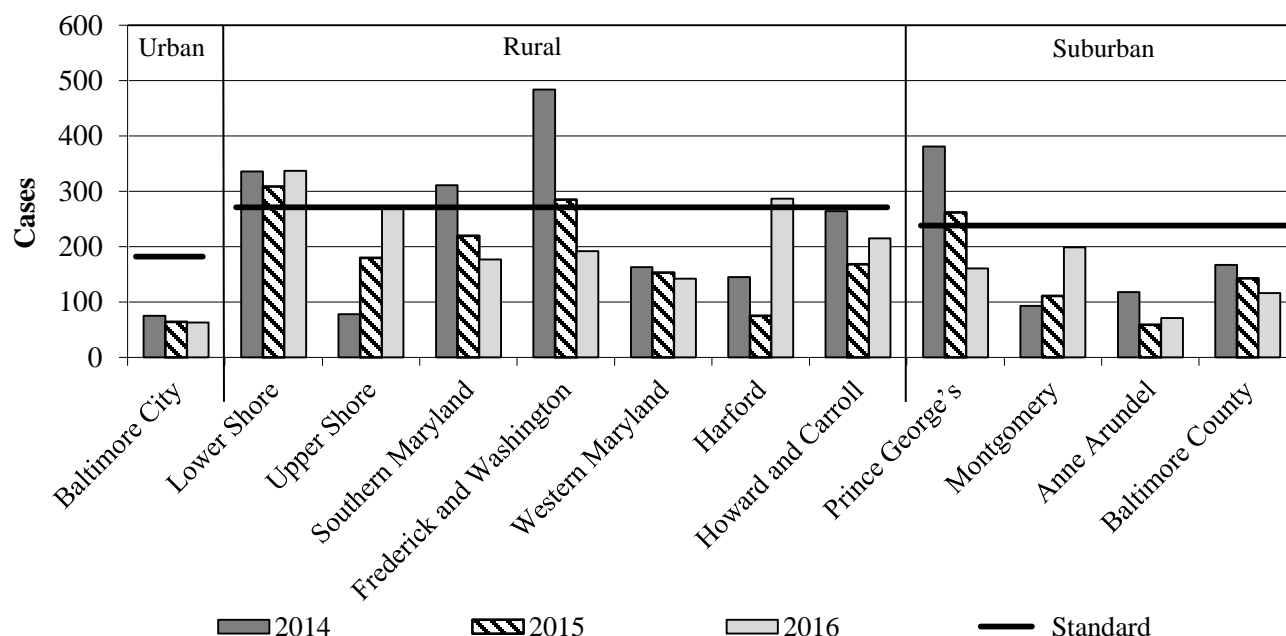
Western Maryland: Allegany and Garrett counties

Source: Department of Budget and Management

### 3. Juvenile Defender Caseloads Also Decline Sharply

**Exhibit 6** illustrates the actual average annual caseload per juvenile court attorney from calendar 2014 to 2016. The caseload standards are 182, 271, and 238 per attorney for urban, rural, and suburban juvenile court attorneys, respectively. The OPD target is that at least 75% of districts (9 of 12) meet the juvenile court caseload standards. In calendar 2016, 10 districts met the target. However, the 2 districts that exceed the standard, the Lower Shore and Harford County, both had increased caseloads in calendar 2016.

**Exhibit 6**  
**Average Juvenile Court Caseload Per Attorney by District**  
**Calendar 2014-2016**



Maryland Caseload Standards: Urban Counties – 182 cases; Rural Counties – 271 cases; Suburban Counties – 238 cases.

Lower Shore: Dorchester, Somerset, Wicomico, and Worcester counties

Upper Shore: Caroline, Cecil, Kent, Queen Anne's, and Talbot counties

Southern Maryland: Calvert, Charles, and St. Mary's counties

Western Maryland: Allegany and Garrett counties

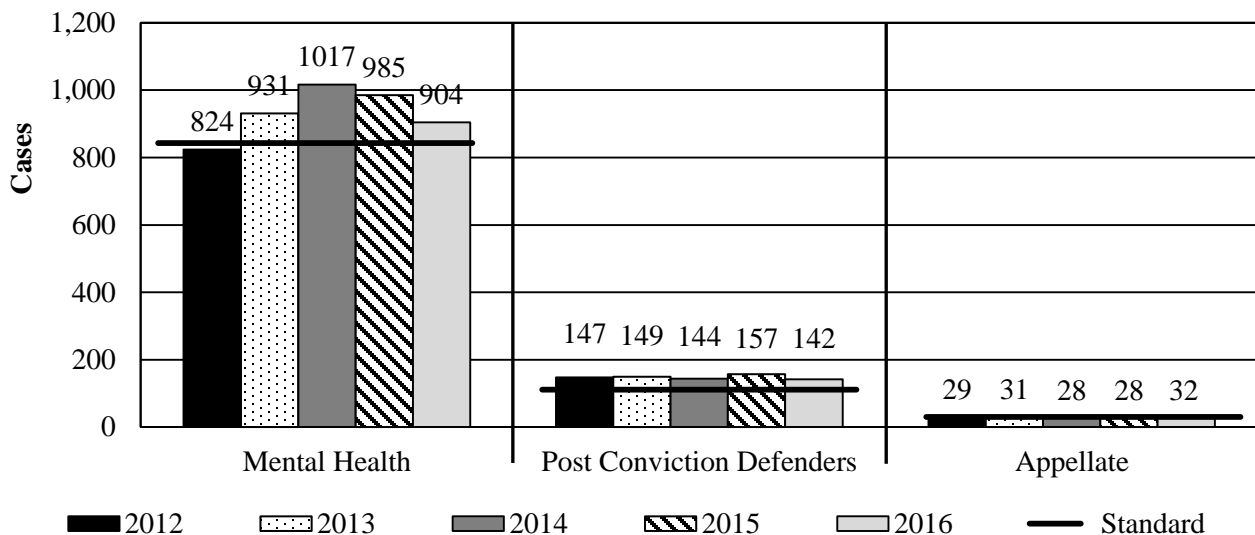
Source: Department of Budget and Management

#### 4. No Relief for Specialized Dockets

In addition to district operations, which consist mostly of trial-level work in the State's District and circuit courts, OPD also maintains statewide divisions handling specialized dockets. The Mental Health Division represents clients subject to involuntary commitment in mental health facilities. The Appellate Division represents OPD clients on direct appeals from the circuit court to the Court of Special Appeals and higher courts. The Post Conviction Defenders Division (formerly the Collateral Review Division) provides representation to incarcerated individuals in select circumstances. **Exhibit 7** illustrates annual caseloads for these three divisions from calendar 2012 to 2016. The caseload standards per attorney for the Mental Health, Post Conviction Defenders, and Appellate divisions are 843, 111, and 30, respectively. The Appellate Division met this standard in calendar 2015 but exceeded it in calendar 2016. The Post Conviction Defenders Division remained above standard

but saw caseloads fall approximately 10% from calendar 2015. Mental Health Division caseloads also fell in calendar 2016 but still exceed the caseload standard by 7%.

**Exhibit 7**  
**Average Caseload Per Attorney for Specialized Dockets**  
**Calendar 2012-2016**



Source: Department of Budget and Management

## Fiscal 2018 Actions

### Proposed Deficiency

The Governor's fiscal 2019 budget plan for OPD includes general fund deficiencies totaling \$3.6 million. Of this amount, \$2.6 million is included to cover fiscal 2017 cost overruns for case-related expenses and \$1.0 million is to supplement the fiscal 2018 appropriation. Of the \$1.0 million for fiscal 2018, expenses include \$639,337 for the relocation of OPD's information technology (IT) services that began in August 2017, \$229,676 in turnover relief to allow additional vacant administrative positions to be filled, and \$130,987 for panel attorneys.

### Cost Containment

On September 6, 2017, the Board of Public Works approved a cost containment action that eliminated \$61.0 million in general fund appropriations for Executive Branch agencies. OPD's share of this reduction was \$611,000, including \$500,000 for panel attorney expenditures and \$111,000 to hold positions vacant. This action reduced the appropriation for panel attorneys to \$6.9 million. While OPD continues to work on strategies to limit panel attorney costs and has had some success, at least

some portion of these savings are likely to be illusory and will have to be backfilled by a deficiency appropriation next session, given that actual expenditures for panel attorneys were \$7.5 million in fiscal 2017. This is evidenced by the fact that the Governor's budget plan includes a deficiency of \$130,987 for fiscal 2018 panel attorney expenses to backfill a portion of this reduction.

### **Across-the-board Employee and Retiree Health Insurance Reduction**

The budget bill includes an across-the-board reduction for employee and retiree health insurance in fiscal 2018 to reflect a surplus balance in the fund. This agency's share of this reduction is \$1.2 million in general funds.

### **OPD Continues to Make Progress on Cost Overruns**

In each year since fiscal 2010, OPD has exceeded its appropriation due to greater than anticipated case-related expenses. These cost overruns have required deficiency appropriations, including \$2.6 million in the current budget to pay for expenses accrued during fiscal 2017. As shown in **Exhibit 8**, OPD has identified four case-related expenditure categories that contribute to most of these cost overruns, including panel attorneys. OPD has been working to control costs with longer term contracts for expert witnesses and strategies to limit the number of cases that need to be paneled. Additionally, OPD has benefitted from a declining caseload and has also been more successful in receiving appropriate funding at the onset.

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**Exhibit 8**  
**Adjusted Actual Expenditures**  
**Select Case-related Costs**  
**Fiscal 2013-2019**  
**(\$ in Thousands)**

	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018 Working Appropriation<sup>1</sup></u>	<u>2019 Allowance</u>
Panel Fees	\$6,214	\$7,442	\$7,305	\$8,010	\$7,458	\$7,062	\$8,462
Medical Support	1,021	1,297	1,320	1,446	1,663	953	1,400
Expert Witnesses	1,397	1,548	1,232	1,179	1,344	1,198	1,237
Transcripts	1,284	1,276	1,331	1,560	1,725	1,432	1,570
<b>Total</b>	<b>\$9,917</b>	<b>\$11,562</b>	<b>\$11,188</b>	<b>\$12,195</b>	<b>\$12,189</b>	<b>\$10,645</b>	<b>\$12,668</b>

<sup>1</sup> Includes a \$130,987 deficiency for fiscal 2018 expenditures provided in the current budget.

Source: Office of the Public Defender

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Despite this progress, based on a three-year average of actual expenditures for these categories (\$11.9 million), DLS estimates that OPD is underfunded by \$1.2 million in fiscal 2018. This is a significant deficit, but it is less than half the size of the fiscal 2017 cost overrun. In addition, funding for these categories in the fiscal 2019 allowance actually exceeds that three-year average by over \$800,000. DLS, therefore, anticipates that OPD will not exceed its appropriation in fiscal 2019. **DLS**

recommends that the agency comment on its progress toward controlling these case-related expenses and whether it believes the fiscal 2019 allowance provides full funding.

## Proposed Budget

As shown in **Exhibit 9**, the fiscal 2019 allowance for OPD increases by \$1.7 million, or 1.7%, above the fiscal 2018 working appropriation. To ensure an accurate comparison, the fiscal 2018 working appropriation does not include deficiency appropriations totaling \$2.6 million to cover a fiscal 2017 cost overrun.

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### Exhibit 9 Proposed Budget Office of the Public Defender (\$ in Thousands)

<b>How Much It Grows:</b>	<b><u>General Fund</u></b>	<b><u>Special Fund</u></b>	<b><u>Federal Fund</u></b>	<b><u>Reimb. Fund</u></b>	<b><u>Total</u></b>
Fiscal 2017 Actual	\$109,464	\$302	\$45	\$908	\$110,719
Fiscal 2018 Working Appropriation	103,300	387	121	883	104,691
Fiscal 2019 Allowance	<u>105,239</u>	<u>258</u>	<u>36</u>	<u>889</u>	<u>106,422</u>
Fiscal 2018-2019 Amount Change	\$1,940	-\$129	-\$85	\$5	\$1,731
Fiscal 2018-2019 Percent Change	1.9%	-33.3%	-70.1%	0.6%	1.7%

#### Where It Goes:

##### Personnel Expenses

Employee and retiree health insurance .....	\$1,176
Cost-of-living adjustment .....	722
Other fringe benefit adjustments .....	-10
Pension contributions .....	-131
Compensation .....	-689
Turnover rate increase, net of fiscal 2018 cost containment and deficiency .....	-793

##### Other Changes

Panel attorneys.....	1,400
Medical experts .....	448
Rent.....	221
eDiscovery associated costs.....	196
Transcripts .....	138
Other adjustments.....	9
Statewide services allocation.....	-44

**Where It Goes:**

Supplies .....	-83
Temporary office assistance .....	-189
Contractual FTE turnover .....	-280
IT center relocation.....	-360
<b>Total</b>	<b>\$1,731</b>

FTE: full-time equivalent

IT: information technology

Note: Numbers may not sum to total due to rounding.

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## **General Salary Increase**

The fiscal 2019 allowance includes funds for a 2% general salary increase for all State employees, effective January 1, 2019. These funds are budgeted in the Department of Budget and Management's (DBM) statewide program and will be distributed to agencies during the fiscal year. This agency's share of the general salary increase is \$712,915 in general funds, \$935 in special funds, and \$8,525 in reimbursable funds. In addition, employees will receive another 0.5% increase and a \$500 bonus effective April 1, 2019, if actual fiscal 2018 general fund revenues exceed the December 2017 estimate by \$75 million. These funds have not been budgeted. The Administration will need to process a deficiency appropriation if revenues are \$75 million more than projected.

## **Personnel**

Personnel expenditures increase by \$274,890 in fiscal 2019. This increase is attributable to the impact of the general salary increase (\$722,375) as well as the end of fiscal 2018 savings for health insurance (\$1.2 million). These increases are offset by decreases for compensation (\$689,415) and pensions (\$131,087).

In addition, the fiscal 2019 allowance increases agency turnover expectancy to 6.72%. The net impact of the Governor's current budget plan and the prior cost containment action is that the reduction for turnover in OPD's fiscal 2019 allowance increases by \$792,797 above the fiscal 2018 working appropriation. OPD has reported that this decrease in funding may be manageable based on the timing of new attorney hiring classes, but this action still runs counter to the other efforts being undertaken by the agency to sufficiently staff and fund the agency. Further, given the longstanding underfunding of OPD, if these turnover savings cannot actually be achieved, it is likely that a deficiency appropriation will eventually be necessary. **DLS recommends that the agency comment on the anticipated impact of increased turnover expectancy on the agency hiring in fiscal 2019 and the agency plans to achieve these additional savings.**



## **Other Changes**

Other notable changes include increases for panel attorneys (\$1.4 million), medical experts (\$447,532), and printing costs associated with the expanded use of eDiscovery (\$196,042). These increases are partially offset by decreases for the relocation of OPD's IT services (\$360,375), to increase contractual turnover (\$280,092), and for temporary office assistance (\$189,200).

## ***Issues***

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### **1. Agency Staffing**

DLS has reported regularly on the staffing challenges faced by OPD over the last several years. Between fiscal 2007 and 2017, OPD shrank from 1,096.9 to 899.5 regular positions and contractual full-time equivalents (FTE). Over most of this period, the agency also faced growing caseloads, which peaked in calendar 2012 at over 235,000 cases. While a large decline in cases in calendar 2015 and 2016 has lowered the case count to approximately the same level as 2007 (about 200,000 cases), OPD was required to process those cases with 18% fewer staff.

There have been a number of notable, and generally positive, developments since last session impacting the staffing needs of OPD. Those items of interest are discussed below.

#### **DLS Staffing Study Shows Declining but Persistent Attorney Shortfall**

DLS published its *Executive Branch Staffing Adequacy Study* (DLS Staffing Study) in January 2018. This study, the culmination of a two-year comprehensive review of Executive Branch employment, showed that there has been a significant decline in the need for additional public defenders in the last two years. In calendar 2014, OPD demonstrated a need for 151 additional District and circuit court public defenders but in calendar 2016, that number had fallen to 26.

Preliminary figures for calendar 2017, as illustrated in **Exhibit 10**, reflect a need for 43 additional defenders (29 for the District Court and 14 for circuit courts), slightly more than the calendar 2016 count reported in the DLS Staffing Study. While this is an increase, it is important to note that the calendar 2017 figures are preliminary, and OPD reports that they are likely to be adjusted as the agency continues to review case statistics. Additionally, these statistics reflect a total of 11 fewer attorneys than those for calendar 2016 due to a higher vacancy rate when the calendar 2017 count was taken. OPD reports that, this increase in apparent need notwithstanding, caseloads in calendar 2017 were similar to those in calendar 2016, and the trend reported in this analysis and the DLS Staffing Study has continued.

**Exhibit 10**  
**Attorneys Needed to Meet Caseload Standards**  
**Calendar 2017 (estimated)**

District Court						Circuit Court					
				Number of Cases Handled Beyond Standard	Attorneys Needed to Meet Standard				Number of Cases Handled Beyond Standard	Attorneys Needed to Meet Standard	
District		Attorneys <sup>1</sup>	Eligible Cases	Standard Caseload		Attorneys <sup>1</sup>	Eligible Cases	Standard Caseload			
1	Baltimore City	41	21,536	728	-8,312	-11	63	9,210	156	-618	-4
2	Lower Shore	9	8,581	630	2,911	5	13	2,281	191	-202	-1
3	Upper Shore	9	6,829	630	1,474	2	11	3,028	191	860	5
4	Southern MD	14	9,700	630	880	1	11	2,793	191	692	4
5	Prince George’s	10	18,014	705	10,964	16	33	4,223	140	-397	-3
6	Montgomery	14	13,513	705	3,643	5	15	1,509	140	-591	-4
7	Anne Arundel	13	14,496	705	5,331	8	14	2,840	140	880	6
8	Baltimore	19	14,958	705	1,916	3	25	4,838	140	1,338	10
9	Harford	7	4,477	630	67	0	9	1,656	191	-63	0
10	Howard and Carroll	10	6,151	630	166	0	11	1,984	191	-117	-1
11	Frederick and Washington	12	7,492	630	-68	0	11	2,754	191	653	3
12	Allegany and Garrett	4	3,258	630	738	1	6	1,002	191	-144	-1
Total		161	129,005		19,710	29	222	38,118		2,291	14

<sup>1</sup> All caseload figures are estimates and are likely to be adjusted as the Office of the Public Defender conducts further analysis.

Source: Office of the Public Defender

## **Shortage of Support Staff Impacts All OPD Employees**

Another key conclusion of the DLS Staffing Study is that OPD has managed attorney workloads through difficult budget years by taking personnel reductions from support staff in order to retain public defender positions. While this action has certainly helped control caseloads for attorneys, it has also left the agency with a shortage of support staff.

One downstream impact of OPD's shrinking support staff has been a shift of additional case-related duties to public defenders. The committees have heard anecdotal evidence about this shift for years, and the 2017 *Joint Chairman's Report* (JCR) requested a report enumerating the additional responsibilities that have fallen on public defenders as a result of other staffing reductions.

In response, OPD conducted a survey of its public defenders in October 2017. This survey found that, on average, public defenders spend more than 30% of their work time on administrative tasks. Specifically, OPD found that public defenders spend about 20% of their time on administrative tasks (including filing court documents, intake screening, scheduling appointments for clients, and conducting basic database research), 10% on trial preparation tasks that should be performed by paralegals, and 5% on research and interviews that should be conducted by investigators.

This result is problematic for at least two reasons. First, public defenders are already overburdened, as discussed previously. Reductions in support staff compound this problem by increasing the amount of time that attorneys must devote to each case. Given the State's obligation to provide indigent defendants with adequate representation, these are not tasks that can be eliminated or significantly curtailed, so it falls to the public defenders. This exacerbates attorney workloads but is not apparent in caseload statistics because it does not add to case counts.

Second, this state of affairs is also less efficient. Compensation for entry-level public defenders is about double that of most entry-level support employees but they are currently devoting as much as one third of their time to tasks that could be done by support staff. While this arrangement maximizes the number of public defenders available to take on clients, it is not an efficient use of State resources.

In response to this problem, the agency is actively working with DBM to implement a plan that allows OPD to hire 51 contractual FTEs to fulfill critically needed support duties for ongoing agency functions. This plan received \$1.1 million in both fiscal 2018 and 2019. The plan recognizes the need for additional staffing and provides the agency flexibility in the immediate term to adjust to critical needs across the State. OPD has reported that hiring under this plan is underway and will continue. However, it is important to note that, based on OPD's calculations, this plan still leaves a need for as many as 77 social workers, paralegals, and secretaries in the agency based on workload standards for those positions.

While this plan to use contractual FTEs to support agency operations is a step in the right direction and preferable to having no workers available to perform these functions, DLS remains concerned that these duties are part of the agency's ongoing operations and, therefore, it would be more appropriate for additional regular positions to be established instead of creating a group of permanent but contractual workers. Contractual FTEs serve an important purpose and may be justified for OPD

in those jurisdictions where the need for additional support appears to be temporary, but there is no sound justification for this plan to rely entirely on contractual FTEs. OPD has reported that workers in these positions can be difficult to hire and harder to keep, but high turnover is not a reason to rely on contractual FTEs and may exacerbate this underlying problem because of the lower compensation rate and reduced benefits for those workers. As OPD learns more about its needs, it should work with DBM to convert as many of these contractual FTEs as possible into regular positions.

**DLS recommends that OPD provide the committees with an update on the implementation of the agency's contractual hiring program.**

### **Judiciary Takes Over Indigency Determinations**

Another change that should ease the workload of OPD's support staff is the shift of responsibility for most indigency determinations from OPD to the Judiciary under Chapter 606 of 2017. At the time that this bill was under consideration, OPD estimated that it would reduce the workload for its intake staff by 11 FTEs. If the agency had been sufficiently staffed, this may have triggered the abolishment or reassignment of some or all of those positions to reflect the reduced workload. However, because OPD did not have enough intake workers, this reduction was not reflected in the DLS fiscal note and DBM did not eliminate any positions.

OPD continues to conduct determinations for the relatively small set of cases in which individuals are not seen by District Court commissioners (including involuntary commitment cases) and has also reported that it is still working with the Judiciary to improve the efficiency and effectiveness of the new system. **DLS recommends that the agency comment on the impact of Chapter 606 on operations.**

### **Office of Legislative Audits Calls for New Caseload Standards**

The Office of Legislative Audits (OLA) issued a fiscal compliance audit for OPD on January 11, 2018. Among the findings of this audit, OLA noted that OPD does not have a formal process for evaluating or updating its caseload standards and has not updated those standards since they were implemented in 2005. When OPD last evaluated appropriate staff workloads, it used a time study to determine how much time it takes staff to perform specified tasks and clear specific categories of cases. Then, the agency evaluated the composition of the agency's caseload in urban, rural, and suburban districts and developed standards for the total number of cases a public defender can handle in a year.

While time surveys are still the standard method for evaluating legal services caseloads (the Judiciary used a time survey to evaluate judicial workloads in 2017), it is all but certain that, after more than a decade, OPD's standards are out of date. Changing technology, the ongoing shift to mandatory electronic filing in the State's courts, and statutory changes that have radically altered the composition of criminal dockets in the State all impact how many cases public defenders can handle effectively.

In response to the OLA recommendation, OPD has stated that its new case management system, which it expects to be in operation in calendar 2019, will facilitate time studies and that it plans to take advantage of that capacity to reevaluate caseloads. The agency has also committed to reviewing caseload standards on an annual basis. While this is a step in the right direction, it is important to note that OLA made essentially the same suggestion in a November 2009 performance audit and an August 2014 fiscal compliance audit.

The General Assembly and Administration have demonstrated a collective willingness to adequately staff and fund OPD over the last two years. At this time, therefore, it is especially important that policymakers have the best possible information. Given how much criminal justice in the State has changed since 2005, OPD's caseload standards do not provide this, and there is no reason to wait years longer for a new system and the data that it will provide. **DLS recommends that the committees adopt narrative requesting that OPD update its caseload measures in calendar 2018, submit a report to outline how those measures were adjusted, and incorporate them into the agency's fiscal 2020 Managing for Results data.**

## ***Operating Budget Recommended Actions***

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1. Adopt the following narrative:

**Updated Public Defender Caseload Standards:** The committees are concerned about the finding of the Office of Legislative Audits that the Office of the Public Defender (OPD) has not updated its caseload standards since 2005 and does not have a procedure in place to review those standards. Therefore, the committees request that OPD review and update its caseload standards, provide a report explaining how the standards have been updated, and incorporate those updated standards into the agency's fiscal 2020 Managing for Results submission.

<b>Information Request</b>	<b>Author</b>	<b>Due Date</b>
Updated Public Defender caseload standards	OPD	October 1, 2018

## ***Updates***

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### **1. Report on Juvenile Court Public Defender Caseloads**

In the 2017 JCR, the budget committees requested that OPD prepare a report on how the agency provides services to juvenile clients. Detention facilities for juveniles are specialized and, because of the size of the juvenile population in the criminal justice system, there are relatively few facilities in the State for juvenile offenders. This means that some individuals are held in other parts of the State from their place of residence and the home district of their public defender.

OPD reports that juvenile defenders do sometimes have to travel long distances to visit their clients in detention facilities and for court appearances and that the agency provides mileage reimbursement for this travel within and outside the defender's assigned district. The travel is necessary to support OPD's policy of "vertical client representation," which focuses on keeping clients assigned to the same attorney until their case is completed. In the view of OPD, the benefit of this policy for the quality of representation received by its clients outweighs the additional costs and inconvenience associated with travel.

The agency also notes that, as workloads change across the State, it is able to reallocate vacant positions to those jurisdictions with the most need. As a result, OPD met established caseload standards in 10 out of 12 districts for juvenile defenders in calendar 2016.



**Appendix 1**  
**Current and Prior Year Budgets**  
**Office of the Public Defender**  
**(\$ in Thousands)**

	<b><u>General Fund</u></b>	<b><u>Special Fund</u></b>	<b><u>Federal Fund</u></b>	<b><u>Reimb. Fund</u></b>	<b><u>Total</u></b>
<b>Fiscal 2017</b>					
Legislative Appropriation	\$102,751	\$266	\$0	\$897	\$103,914
Deficiency Appropriation	\$5,324	0	0	0	5,324
Cost Containment	0	0	0	0	0
Budget Amendments	1,388	79	127	78	1,672
Reversions and Cancellations	0	-43	-81	-68	-192
<b>Actual Expenditures</b>	<b>\$109,464</b>	<b>\$302</b>	<b>\$45</b>	<b>\$908</b>	<b>\$110,719</b>
<b>Fiscal 2018</b>					
Legislative Appropriation	\$104,086	\$263	\$0	\$883	\$105,233
Cost Containment	-611	0	0	0	-611
Budget Amendments	0	124	121	0	245
<b>Working Appropriation</b>	<b>\$103,475</b>	<b>\$387</b>	<b>\$121</b>	<b>\$883</b>	<b>\$104,867</b>

Note: The fiscal 2018 appropriation does not include deficiencies, targeted reversions, or across-the-board reductions. Numbers may not sum to total due to rounding.

## **Fiscal 2017**

The Office of the Public Defender finished fiscal 2017 \$6.8 million above its legislative appropriation. Deficiency appropriations added \$5.3 million in general funds and budget amendments added an additional \$1.7 million. These increases were partially offset by cancellations totaling \$191,950.

### **General Funds**

Actual expenditures were \$109.5 million, \$6.7 million above the legislative appropriation. Changes included:

- a deficiency appropriation of \$5.3 million to cover case-related expenses incurred in fiscal 2016;
- a budget amendment increasing the appropriation by \$1.4 million for employee increments; and
- a budget amendment to realign information technology expenditures added \$8,166.

### **Special Funds**

Actual expenditures were \$36,236 above the legislative appropriation. Budget amendments added a total of \$79,000 for legal services in Prince George's County's problem solving courts (\$54,000) and a communications consultant for the Pretrial Reform Campaign. These increases are partially offset by the cancellation of \$42,764 in unspent funds.

### **Federal Funds**

Actual expenditures were \$45,264, all attributable to a budget amendment that added \$126,646 to support mental health services for individuals in the criminal justice system. This increase was offset by the cancellation of \$81,382 in unspent funds.

### **Reimbursable Funds**

Actual expenditures were \$10,676 above the legislative appropriation. A grant from the Maryland Judiciary to fund a social worker for the Parent Mentoring Program added \$78,480 to the reimbursable fund appropriation, which was partially offset by the cancellation of \$67,804 in unspent funds.

## **Fiscal 2018**

The fiscal 2018 working appropriation is \$104.9 million, a decrease of \$365,849 from the legislative appropriation. This decrease is attributable to a cost containment action approved by the

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Board of Public Works on September 6, 2017, that removed \$611,000 in general funds that includes \$500,000 for panel attorneys and \$111,000 to increase turnover expectancy. This decrease is partially offset by the impact of three budget amendments that increased the appropriation by adding the following:

- \$80,000 in special funds from a grant to pilot a text message court date reminder program;
- \$30,800 in special funds for grants to support public defender participation in problem-solving courts;
- \$13,000 in special funds to fund a grant for a legal fellow; and
- \$121,462 in federal funds from the Bureau of Justice Assistance to provide social workers to support defendants with mental health and substance abuse issues.

**Appendix 2**  
**Audit Findings**

Audit Period for Last Audit:	July 1, 2013 – September 22, 2016
Issue Date:	January 2018
Number of Findings:	3
Number of Repeat Findings:	3
% of Repeat Findings:	100%
Rating: (if applicable)	n/a

**Finding 1:**     **The Office of the Public Defender (OPD) did not ensure that applications for legal representation were always adequately supported and maintained on file and that eligibility determinations were subject to supervisory review as required.**

**Finding 2:**     **OPD did not ensure that administrative fees were assessed to all applicable clients.**

**Finding 3:**     **OPD has not implemented a formal process to determine whether existing attorney caseload standards should be revised. Average attorney caseloads for circuit and District Courts continue to exceed current standards.**

\*Bold denotes item repeated in full or part from preceding audit report.

**Appendix 3**  
**Major Information Technology Project**  
**Office of the Public Defender**  
**Case Management Replacement**

Project Status	Implementation.			New/Ongoing Project:		New.		
Project Description:	New electronic case management system to ensure that the agency can efficiently manage new efilg requirements in State courts.							
Project Business Goals:	Modernize case processing and replace a failing system that is not capable of handling the agency’s current volume of cases.							
Estimated Total Project Cost:	\$2,874,000			Estimated Planning Project Cost:		\$0		
Project Start Date:	October 2017.			Projected Completion Date:		October 2020.		
Schedule Status:	Project is in the implementation phase. The Office of the Attorney General (OAG) has already issued a Request for Proposal and selected a vendor, and the Office of the Public Defender (OPD) held initial meetings with the vendor in October 2017. The estimated date of completion is October 2020.							
Cost Status:	Total projected cost for both parts of the project is \$7.0 million, of which \$2.9 million is attributed to OPD. OAG has expended \$1.6 million to date on the overall project.							
Scope Status:	n/a.							
Project Management Oversight Status:	Department of Information Technology oversight established.							
Identifiable Risks:	The most significant risks identified by OPD relate to acceptance of the new system by employees, many of whom have substantial workloads and may not have sufficient time to train in the new system and any attorneys who do not wish to adapt to new case management requirements.							
Additional Comments:	This project is being developed for both OPD and OAG and has a total estimated cost for both components of \$7.0 million. OAG has been the lead agency in the development of the project and funded the planning portion of the project.							
Fiscal Year Funding (\$ in Thousands)	Prior Years	FY 2019	FY 2020	FY 2021	FY 2022	FY 2023	Balance to Complete	Total
Personnel Services	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0
Professional and Outside Services	0.0	1,206.0	556.0	556.0	556.0	0.0	0.0	2,874.0
Other Expenditures	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Funding	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0	\$0.0

**Appendix 4**  
**Object/Fund Difference Report**  
**Office of the Public Defender**

<u>Object/Fund</u>	<u>FY 17 Actual</u>	<u>FY 18 Working Appropriation</u>	<u>FY 19 Allowance</u>	<u>FY 18 - FY 19 Amount Change</u>	<u>Percent Change</u>
<b>Positions</b>					
01 Regular	888.50	888.50	888.50	0.00	0%
02 Contractual	11.00	61.00	61.00	0.00	0%
<b>Total Positions</b>	<b>899.50</b>	<b>949.50</b>	<b>949.50</b>	<b>0.00</b>	<b>0%</b>
<b>Objects</b>					
01 Salaries and Wages	\$ 88,538,202	\$ 86,790,488	\$ 85,397,073	-\$ 1,393,415	-1.6%
02 Technical and Spec. Fees	13,130,740	10,543,540	12,226,059	1,682,519	16.0%
03 Communication	854,307	924,258	918,939	-5,319	-0.6%
04 Travel	195,256	189,525	183,000	-6,525	-3.4%
06 Fuel and Utilities	64,461	66,000	64,641	-1,359	-2.1%
07 Motor Vehicles	54,309	33,060	33,000	-60	-0.2%
08 Contractual Services	5,279,657	3,540,125	4,011,715	471,590	13.3%
09 Supplies and Materials	299,788	370,966	288,456	-82,510	-22.2%
10 Equipment – Replacement	53,935	53,876	26,916	-26,960	-50.0%
11 Equipment – Additional	73,969	70,000	55,000	-15,000	-21.4%
13 Fixed Charges	2,174,109	2,285,209	2,495,137	209,928	9.2%
<b>Total Objects</b>	<b>\$ 110,718,733</b>	<b>\$ 104,867,047</b>	<b>\$ 105,699,936</b>	<b>\$ 832,889</b>	<b>0.8%</b>
<b>Funds</b>					
01 General Fund	\$ 109,463,666	\$ 103,475,140	\$ 104,526,453	\$ 1,051,313	1.0%
03 Special Fund	301,913	387,013	257,173	-129,840	-33.5%
05 Federal Fund	45,264	121,462	36,311	-85,151	-70.1%
09 Reimbursable Fund	907,890	883,432	879,999	-3,433	-0.4%
<b>Total Funds</b>	<b>\$ 110,718,733</b>	<b>\$ 104,867,047</b>	<b>\$ 105,699,936</b>	<b>\$ 832,889</b>	<b>0.8%</b>

Note: The fiscal 2018 appropriation does not include deficiencies, targeted reversions, or across-the-board reductions. The fiscal 2019 allowance does not include contingent reductions or cost-of-living adjustments.

**Appendix 5  
Fiscal Summary  
Office of the Public Defender**

<b><u>Program/Unit</u></b>	<b><u>FY 17 Actual</u></b>	<b><u>FY 18 Wrk Approp</u></b>	<b><u>FY 19 Allowance</u></b>	<b><u>Change</u></b>	<b><u>FY 18 - FY 19 % Change</u></b>
01 General Administration	\$ 8,260,585	\$ 7,316,866	\$ 8,023,960	\$ 707,094	9.7%
02 District Operations	93,374,031	89,531,069	89,069,909	-461,160	-0.5%
03 Appellate and Inmate Services	7,538,250	6,581,940	7,098,042	516,102	7.8%
04 Involuntary Institutionalization Services	1,545,867	1,437,172	1,508,025	70,853	4.9%
<b>Total Expenditures</b>	<b>\$ 110,718,733</b>	<b>\$ 104,867,047</b>	<b>\$ 105,699,936</b>	<b>\$ 832,889</b>	<b>0.8%</b>
General Fund	\$ 109,463,666	\$ 103,475,140	\$ 104,526,453	\$ 1,051,313	1.0%
Special Fund	301,913	387,013	257,173	-129,840	-33.5%
Federal Fund	45,264	121,462	36,311	-85,151	-70.1%
<b>Total Appropriations</b>	<b>\$ 109,810,843</b>	<b>\$ 103,983,615</b>	<b>\$ 104,819,937</b>	<b>\$ 836,322</b>	<b>0.8%</b>
Reimbursable Fund	\$ 907,890	\$ 883,432	\$ 879,999	-\$ 3,433	-0.4%
<b>Total Funds</b>	<b>\$ 110,718,733</b>	<b>\$ 104,867,047</b>	<b>\$ 105,699,936</b>	<b>\$ 832,889</b>	<b>0.8%</b>

Note: The fiscal 2018 appropriation does not include deficiencies, targeted reversions, or across-the-board reductions. The fiscal 2019 allowance does not include contingent reductions or cost-of-living adjustments.