

C82D00
Office of the State Prosecutor

Executive Summary

The State Prosecutor investigates and, where warranted, prosecutes criminal offenses affecting the honesty and integrity of governmental officials and institutions and the electoral process. The Department of Legislative Services prepares an analysis of the budget of the Office of the State Prosecutor (OSP) every other legislative session.

Operating Budget Data

(\$ in Thousands)

	<u>FY 18</u> <u>Actual</u>	<u>FY 19</u> <u>Working</u>	<u>FY 20</u> <u>Allowance</u>	<u>FY 19-20</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
General Fund	\$1,456	\$1,489	\$1,689	\$201	13.5%
Adjustments	0	8	39	31	
Adjusted General Fund	\$1,456	\$1,497	\$1,728	\$231	15.4%
Adjusted Grand Total	\$1,456	\$1,497	\$1,728	\$231	15.4%

Note: The fiscal 2019 appropriation includes deficiencies, a one-time \$500 bonus, and general salary increases. The fiscal 2020 allowance includes general salary increases.

- The adjusted fiscal 2020 allowance for OSP increases by \$231,182 largely due to the impact of statewide general salary increases and Department of Information Technology service charges.
- Adjustments increase the fiscal 2019 working appropriation by \$8,423 and the fiscal 2020 allowance by \$39,013 and are entirely attributable to the impact of statewide compensation increases.

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

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Personnel Data

	<u>FY 18</u> <u>Actual</u>	<u>FY 19</u> <u>Working</u>	<u>FY 20</u> <u>Allowance</u>	<u>FY 19-20</u> <u>Change</u>
Regular Positions	13.00	13.00	13.00	0.00
Contractual FTEs	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>	<u>0.00</u>
Total Personnel	13.00	13.00	13.00	0.00

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	0.00	0.00%
Positions and Percentage Vacant as of 12/31/18	1.00	7.69%

Key Observations

- While most of the substantial growth in the allowance is due to statewide budget decisions, increases for some expenses may not be justified in light of seemingly flat caseloads.
- The retirement of experienced staff, including the State Prosecutor, is likely to have a significant impact on agency operations in fiscal 2020 and beyond.

Operating Budget Recommended Actions

	<u>Funds</u>
1. Reduce funding for travel and supplies to align with fiscal 2018 actual expenditures.	\$ 19,496
Total Reductions	\$ 19,496

Updates

- This analysis includes an explanation of the selection process for the State Prosecutor. A new State Prosecutor will be selected in the coming months due to the recent announcement that the current officeholder will retire on August 1, 2019.

C82D00
Office of the State Prosecutor

Operating Budget Analysis

Program Description

The Office of the State Prosecutor (OSP) is an independent agency within the Executive Branch. The State Prosecutor investigates and, where warranted, prosecutes criminal offenses affecting the honesty and integrity of governmental officials and institutions and the electoral process. Specifically, the State Prosecutor is authorized to investigate and prosecute criminal offenses under the State election laws and public ethics law, as well as the bribery laws and offenses constituting criminal malfeasance, misfeasance, or nonfeasance in office. These investigations are conducted either upon the initiative of OSP or upon the request of the Governor, the Attorney General, the General Assembly, the State Ethics Commission, or a State's Attorney. In addition, upon the request of the Governor, the Attorney General, the General Assembly, the State Ethics Commission, or a State's Attorney, the State Prosecutor may investigate and prosecute any offense that takes place in more than one county within the State or in more than one state including Maryland.

Performance Analysis: Managing for Results

1. Timely Clearance Rates Remain High

The workload for OSP has historically varied on a multi-year cycle. The agency splits the types of cases that it handles into two general types. Election law investigations generally make up the large majority of matters handled by OSP; however, the number of election law complaints moves with the election cycle and generally spikes in the years during which statewide officials are elected. Corruption investigations are less common but do not display the same cyclical pattern.

As shown in **Exhibit 1**, for fiscal 2017 and 2018, there is a large decline in the number of reported election law cases and a smaller decline in the number of corruption investigations. OSP reports that this decline is not due to a change in its complaint volume or changes in substantive policy but merely how OSP tracks what counts as an investigation for Managing for Results purposes. The agency has adopted the classification system used by the Maryland State Police and the Office of the Attorney General.

Exhibit 1
Corruption and Election Law Cases
Fiscal 2014-2018

	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Corruption Investigations					
Investigations Opened	79	78	53	67	41
Percent Closed in Timely Manner (18 Months)	100%	94%	100%	93%	100%
Election Law Investigations					
Investigations Opened	684	305	364	288	216
Percent Closed in Timely Manner (9 Months)	60%	83%	92%	90%	90%
Individuals Charged					
Individuals Charged	84	35	37	54	33
Percent of Charges Resolved in Timely Manner* (9 Months)	n/a	94%	98%	95%	100%

*Not tracked prior to fiscal 2015.

Source: Department of Budget and Management

More importantly, the agency was also able to maintain strong performance on the timely handling of cases of both types. In both fiscal 2017 and 2018, OSP completed 90% of investigations within its established time standards.

Fiscal 2019 Actions

Proposed Deficiency

The budget includes a deficiency appropriation to fund a 0.5% general salary increase and a \$500 bonus for qualifying regular employees on April 1, 2019. For OSP, this amount is \$8,423.

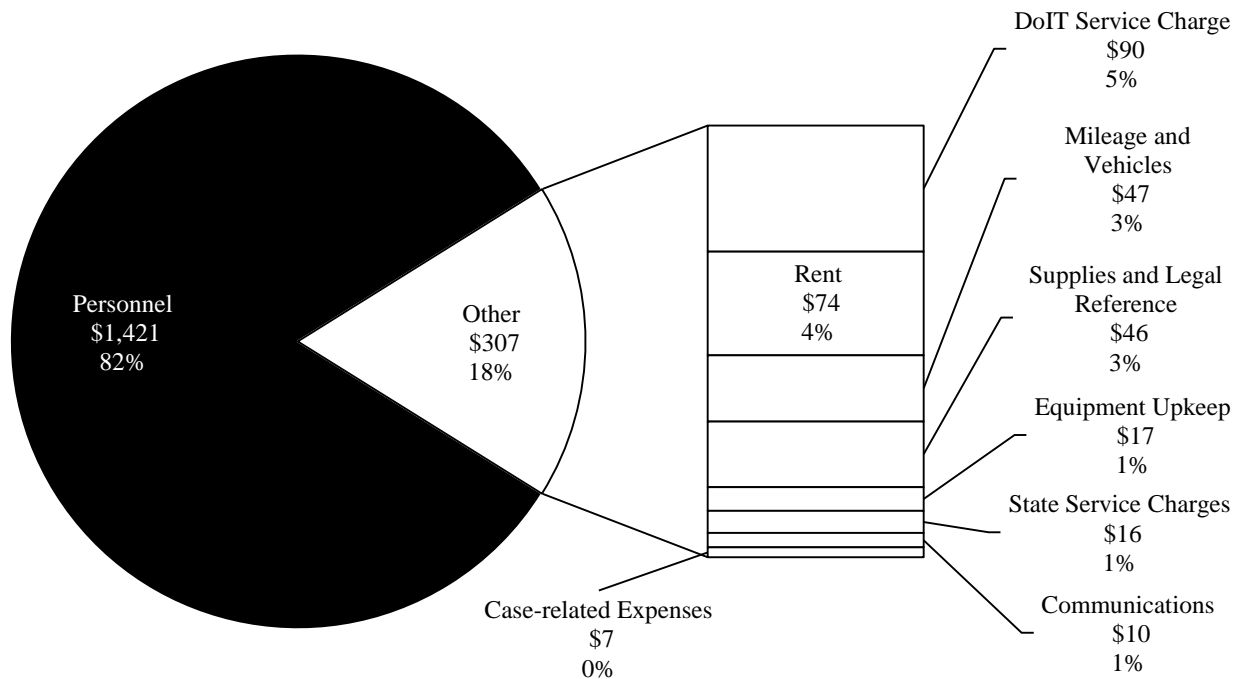
Fiscal 2020 Allowance

Overview of Agency Spending

As shown in **Exhibit 2**, the budget of OSP is over 80% for personnel because the agency is small and has a personnel-oriented mission. Nonpersonnel expenditures are largely related to ordinary office operations and include the Department of Information Technology (DoIT) information

technology service charge, supplies, and rent. The office also has mission-specific costs, including funds for mileage reimbursement and vehicle upkeep for the agency’s attorneys and investigators, whose cases can take them all over the State.

Exhibit 2
Spending Plan
Fiscal 2020
(\$ in Thousands)



DoIT: Department of Information Technology

Source: Department of Legislative Services

Proposed Budget Change

The fiscal 2020 allowance for OSP increases by \$231,182, as shown in **Exhibit 3**. This increase is largely attributable to statewide actions.

Exhibit 3
Proposed Budget
Office of the State Prosecutor
(\$ in Thousands)

How Much It Grows:	<u>General Fund</u>	<u>Total</u>
Fiscal 2018 Actual	\$1,456	\$1,456
Fiscal 2019 Working Appropriation	1,497	1,497
Fiscal 2020 Allowance	<u>1,728</u>	<u>1,728</u>
Fiscal 2019-2020 Amount Change	\$231	\$231
Fiscal 2019-2020 Percent Change	15.4%	15.4%
Where It Goes:		
Personnel Expenses		
Employee and retiree health insurance		\$36
3% general salary increase effective July 1, 2019		34
Employer retirement contribution.....		32
Reduction in turnover expectancy		22
Annualization of 2% general salary increase effective January 1, 2019		12
Annualization of 0.5% general salary increase effective April 1, 2019		4
Other fringe benefit adjustments		-4
Impact of \$500 bonus for qualifying employees on April 1, 2019		-7
Other employee compensation		-49
Other Changes		
Department of Information Technology service charge		77
Supplies and reference material updates.....		22
Mileage reimbursements for investigators and attorneys		18
Equipment maintenance.....		13
Vehicle operations and parking garage rent		10
Case-related expenses		6
Telephones.....		2
Postage.....		2
Other		1
Total		\$231

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

Personnel

Personnel expenditures increase by a total of \$80,077. The collective impact of fiscal 2019 and 2020 general salary increases as well as the \$500 bonus for qualifying employees is an increase of \$42,694. Overall, personnel growth for OSP in fiscal 2020 is tempered by the impact of the departure of several long-tenured employees. As those individuals are replaced, the new hires have entered at a lower step, which decreases the salary for those positions. This will reduce salary expenditures for the agency by \$49,186.

Other Changes

There is also robust growth in OSP's nonpersonnel budget. The new DoIT service charge is the largest contributor (\$77,409), but additional funds are also provided to support travel-related costs for investigators and prosecutors (\$18,428) and for supplies and reference material (\$22,000). Given that there is no evidence that cases are increasing for the office, increases in expenditures for supplies and travel are not justified, especially given the overall growth in the budget. **The Department of Legislative Services recommends a reduction of \$19,496 in order to hold the appropriation for supplies and travel to the level of actual expenditures in fiscal 2018.**

Operating Budget Recommended Actions

	<u>Amount Reduction</u>	
1. Reduce funding for travel and supplies in order to align these appropriations with fiscal 2018 actual expenditures.	\$ 19,496	GF
Total General Fund Reductions	\$ 19,496	

Updates

1. Selection Process for New State Prosecutor

On January 22, 2019, the State Prosecutor, Emmett C. Davitt, announced that he will retire on August 1, 2019, after holding office since 2010. His successor should be selected sometime in 2019. State law lays out a special procedure for selection of the State Prosecutor. Title 14 of the Criminal Procedure Article establishes a State Prosecutor Selection and Disabilities Commission.

The commission is composed of seven members. The Attorney General is an *ex officio* member, and the other six commissioners are selected to four-year terms as follows:

- two by the President of the Senate;
- two by the Speaker of the House of Delegates;
- one active member of the bar, nominated by the governing board of the Maryland State Bar Association; and
- one current State's Attorney, nominated by the governing board of the Maryland State's Attorneys Association.

When there is a vacancy in OSP, the commission accepts applications and interviews and evaluates candidates before advancing a qualified nominee or nominees to the Governor, based on the results of a simple majority vote by secret ballot. The Governor selects from the list provided and may only reject a candidate for cause. The Governor must then make the appointment within 30 days. The appointment is subject to the advice and consent of the Senate. The State Prosecutor's term is six years, with a provision for the incumbent to hold over in the position until the Governor appoints a successor.

Appendix 1
Current and Prior Year Budgets
Office of the State Prosecutor
(\$ in Thousands)

	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
Fiscal 2018					
Legislative Appropriation	\$1,479	\$0	\$0	\$0	\$1,479
Deficiency/Withdrawn Appropriation	-10	0	0	0	-10
Cost Containment	0	0	0	0	0
Budget Amendments	0	0	0	0	0
Reversions and Cancellations	-13	0	0	0	-13
Actual Expenditures	\$1,456	\$0	\$0	\$0	\$1,456
Fiscal 2019					
Legislative Appropriation	\$1,476	\$0	\$0	\$0	\$1,476
Budget Amendments	12	0	0	0	12
Working Appropriation	\$1,489	\$0	\$0	\$0	\$1,489

Note: The fiscal 2019 appropriation does not include deficiencies, a one-time \$500 bonus, or general salary increases. Numbers may not sum to total due to rounding.

Fiscal 2018

The Office of the State Prosecutor finished fiscal 2018 \$22,588 below its legislative appropriation, all in general funds. This decrease includes a total of \$12,724 in unspent funds that were reverted at the end of the fiscal year and a reduction of \$9,923 for health insurance based on language in the fiscal 2019 budget. These increases are partially offset by an increase of \$59 via budget amendment to reflect the statewide realignment of telecommunications expenditures.

Fiscal 2019

To date, one action has adjusted the fiscal 2019 legislative appropriation, a budget amendment adding \$12,104 to fund a 2% general salary increase effective January 1, 2019.

**Appendix 2
Object/Fund Difference Report
Office of the State Prosecutor**

<u>Object/Fund</u>	<u>FY 18 Actual</u>	<u>FY 19 Working Appropriation</u>	<u>FY 20 Allowance</u>	<u>FY 19 - FY 20 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	13.00	13.00	13.00	0.00	0%
Total Positions	13.00	13.00	13.00	0.00	0%
Objects					
01 Salaries and Wages	\$ 1,266,427	\$ 1,332,974	\$ 1,382,461	\$ 49,487	3.7%
03 Communication	12,129	16,989	10,240	-6,749	-39.7%
04 Travel	14,223	5,000	23,428	18,428	368.6%
07 Motor Vehicles	19,620	13,740	23,740	10,000	72.8%
08 Contractual Services	31,621	19,207	126,673	107,466	559.5%
09 Supplies and Materials	36,200	24,491	46,491	22,000	89.8%
13 Fixed Charges	76,181	76,137	76,097	-40	-0.1%
Total Objects	\$ 1,456,401	\$ 1,488,538	\$ 1,689,130	\$ 200,592	13.5%
Funds					
01 General Fund	\$ 1,456,401	\$ 1,488,538	\$ 1,689,130	\$ 200,592	13.5%
Total Funds	\$ 1,456,401	\$ 1,488,538	\$ 1,689,130	\$ 200,592	13.5%

Note: The fiscal 2019 appropriation does not include deficiencies, a one-time \$500 bonus, or general salary increases. The fiscal 2020 allowance does not include general salary increases.