C80B00
Office of the Public Defender

Operating Budget Data

($ in Thousands)

	FY 11 Actual	FY 12 Working	FY 13 Allowance	FY 12-13 Change	% Change Prior Year
General Fund	$84,520	$84,097	$85,202	$1,105	1.3%
Adjusted General Fund	**$84,520**	**$84,097**	**$85,202**	**$1,105**	**1.3%**
Special Fund	213	195	194	-2	-0.8%
Adjusted Special Fund	**$213**	**$195**	**$194**	**-$2**	**-0.8%**
Reimbursable Fund	1,084	886	883	-3	-0.3%
Adjusted Reimbursable Fund	**$1,084**	**$886**	**$883**	**-$3**	**-0.3%**
Adjusted Grand Total	**$85,817**	**$85,177**	**$86,278**	**$1,100**	**1.3%**

- A fiscal 2012 deficiency would provide $1.1 million in general funds of which $0.9 million is for case-related expenses and $0.2 million for a lease cancellation in which OPD vacated a lease early due to moving its Rockville offices to the new District Courthouse.

- The Office of the Public Defender's (OPD) budget increases $1.1 million, or 1.3%, in the fiscal 2013 allowance primarily due to increased funding of $0.7 million for case-related expenses.

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

For further information contact: Sara J. Baker Phone: (410) 946-5530

Personnel Data

	FY 11 Actual	FY 12 Working	FY 13 Allowance	FY 12-13 Change
Regular Positions	893.00	860.00	860.00	0.00
Contractual FTEs	13.50	11.00	11.00	0.00
Total Personnel	**906.50**	**871.00**	**871.00**	**0.00**

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	51.69	6.01%
Positions and Percentage Vacant as of 12/31/11	40.50	4.71%

- The allowance does not provide any new regular positions.

- Turnover expectancy is increased to 6.01% in the allowance, a loss of $1.3 million. This will require the agency to maintain over 50 vacancies throughout fiscal 2013.

Analysis in Brief

Major Trends

The Percentage of Attorneys Meeting Maryland Caseload Standards Remains Low: In calendar 2012, the percentage of circuit court, District Court, and juvenile attorneys meeting caseload standards is projected to be 17%, 0%, and 58%, respectively.

Average Caseload for Collateral Review Attorneys Not in Compliance: OPD projects, of the statewide division, that only the Collateral Review division will not be in compliance with the caseload standards by calendar 2012.

Issues

Impact of Richmond: In *DeWolfe V. Richmond*, the Maryland Court of Appeals held that under the Maryland Public Defender Act, no bail determination may be made by a District Court commissioner concerning an indigent defendant without the presence of counsel. In order to meet the requirements of this decision, OPD will opt to use the quickest method of implementation which is the use of panel attorneys and temporary staff. **The Public Defender should comment on the fiscal and personnel impact of the decision, and if there are a sufficient number of panel attorneys available to be present at the initial hearings and bail reviews**.

Recommended Actions

1. Concur with Governor's allowance.

C80B00
Office of the Public Defender

Operating Budget Analysis

Program Description

The Office of the Public Defender (OPD) provides counsel and related services to indigent persons. Representation is provided in criminal trials, appeals, juvenile cases, post-conviction proceedings, parole and probation revocations, and involuntary commitments to mental institutions. Four divisions support the office: (1) general administration; (2) district operations; (3) appellate and inmate services; and (4) involuntary institutionalization. The capital defense division was brought under the umbrella of district operations in July 2009.

Performance Analysis: Managing for Results

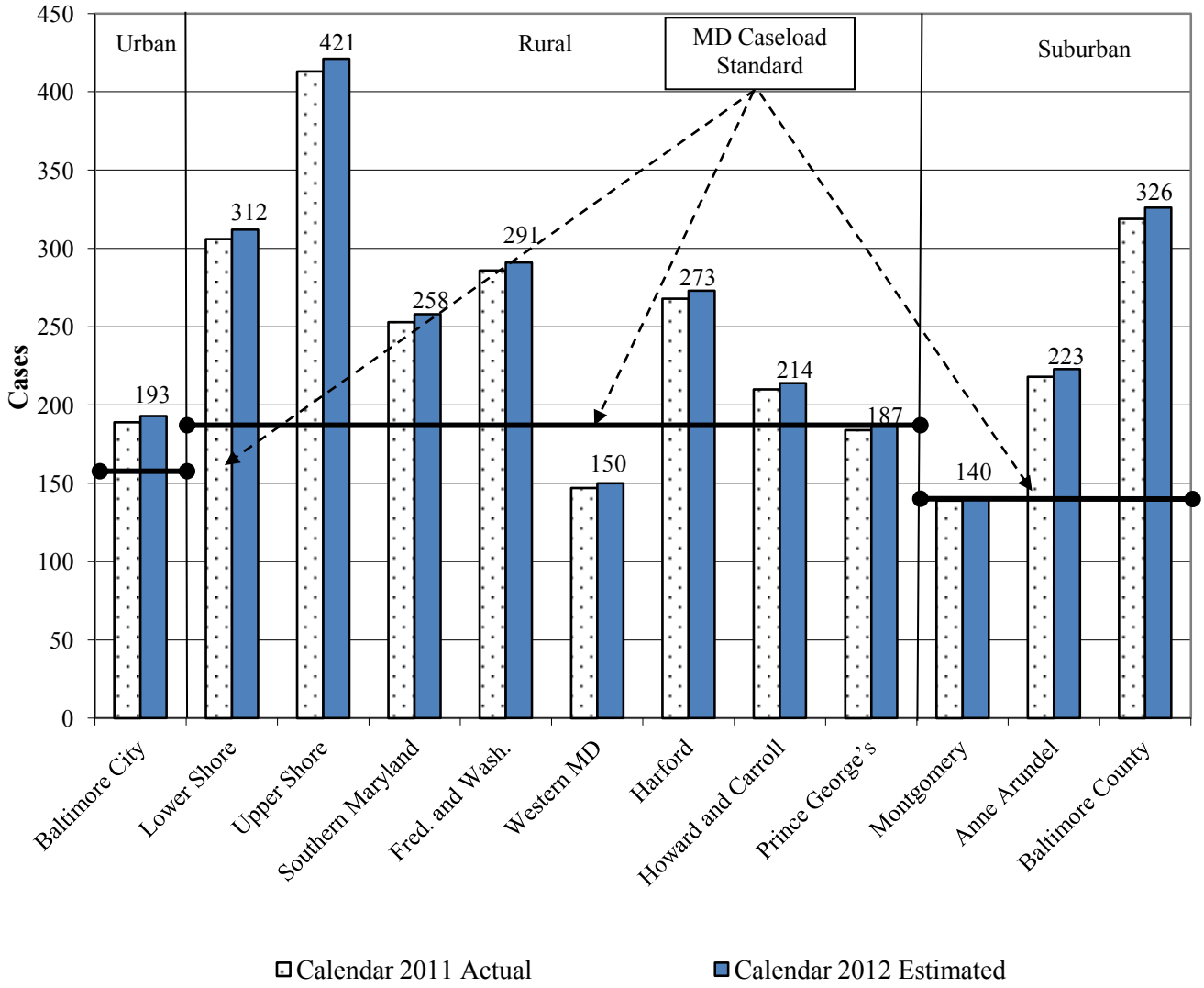
During the 2006 legislative session, the General Assembly endorsed the implementation of Maryland-specific attorney caseload standards. Under the Maryland standards, the maximum number of cases that Maryland public defenders may handle each year without jeopardizing the effective assistance of counsel varies based upon the geographic location and types of cases handled. Fiscal 2011 represents the fourth year that OPD has utilized these standards as part of its Managing for Results data.

Exhibit 1 illustrates the average annual caseload per circuit court attorney by region. The average caseload standard per attorney is 156, 191, and 140 for urban, rural, and suburban circuit court offices, respectively. OPD projects only 17% of its district offices will satisfy the compliance rate set by the case weighting study by the conclusion of calendar 2012. Most notably, Allegany, Garrett, and Montgomery counties are projected to satisfy the circuit court caseload standard by calendar 2012.

Exhibit 2 illustrates the average annual caseload per District Court attorney by region. The average caseload standard per attorney is 728, 630, and 705 for urban, rural, and suburban District Court offices, respectively. OPD projects that none of its district offices will be able to satisfy the compliance rate set by the case weighting study at the conclusion of calendar 2012, as was the case in calendar 2011.

Exhibit 3 illustrates the average annual caseload per juvenile court attorney by region. The average caseload standard per attorney is 182, 271, and 238 for urban, rural, and suburban juvenile court offices, respectively. OPD projects 58% of its district offices will satisfy the compliance rate set by the case weighting study by the conclusion of calendar 2012.

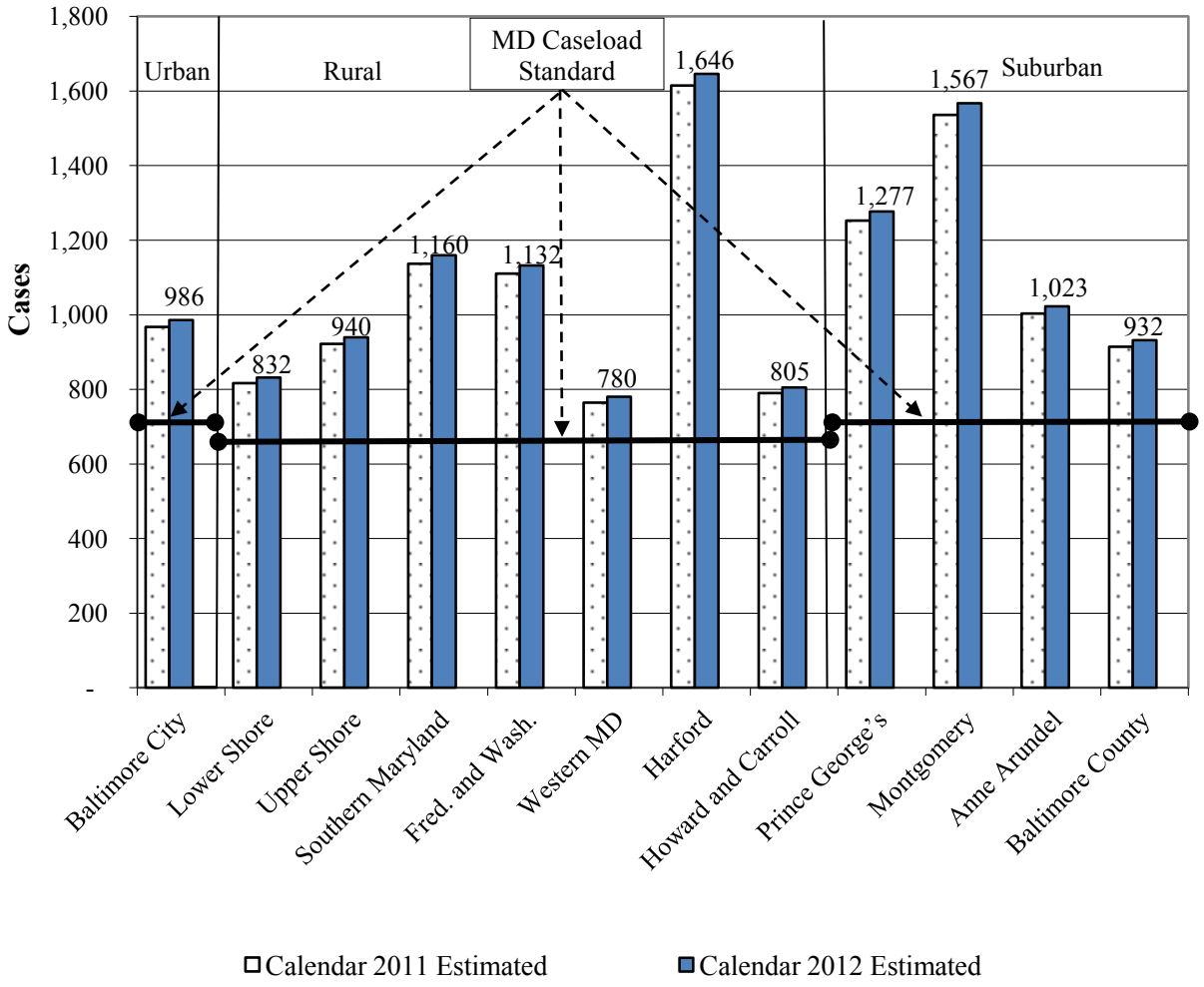
Exhibit 1
Average Circuit Court Caseload Per Attorney by Region



Note: Lower Shore constitutes Dorchester, Somerset, Wicomico, and Worcester counties; Upper Shore constitutes Caroline, Cecil, Kent, Queen Anne's, and Talbot counties; Southern Maryland constitutes Calvert, Charles, and St. Mary's counties; and Western Maryland constitutes Allegany and Garrett counties.

Source: Governor's Budget Books, Fiscal 2013

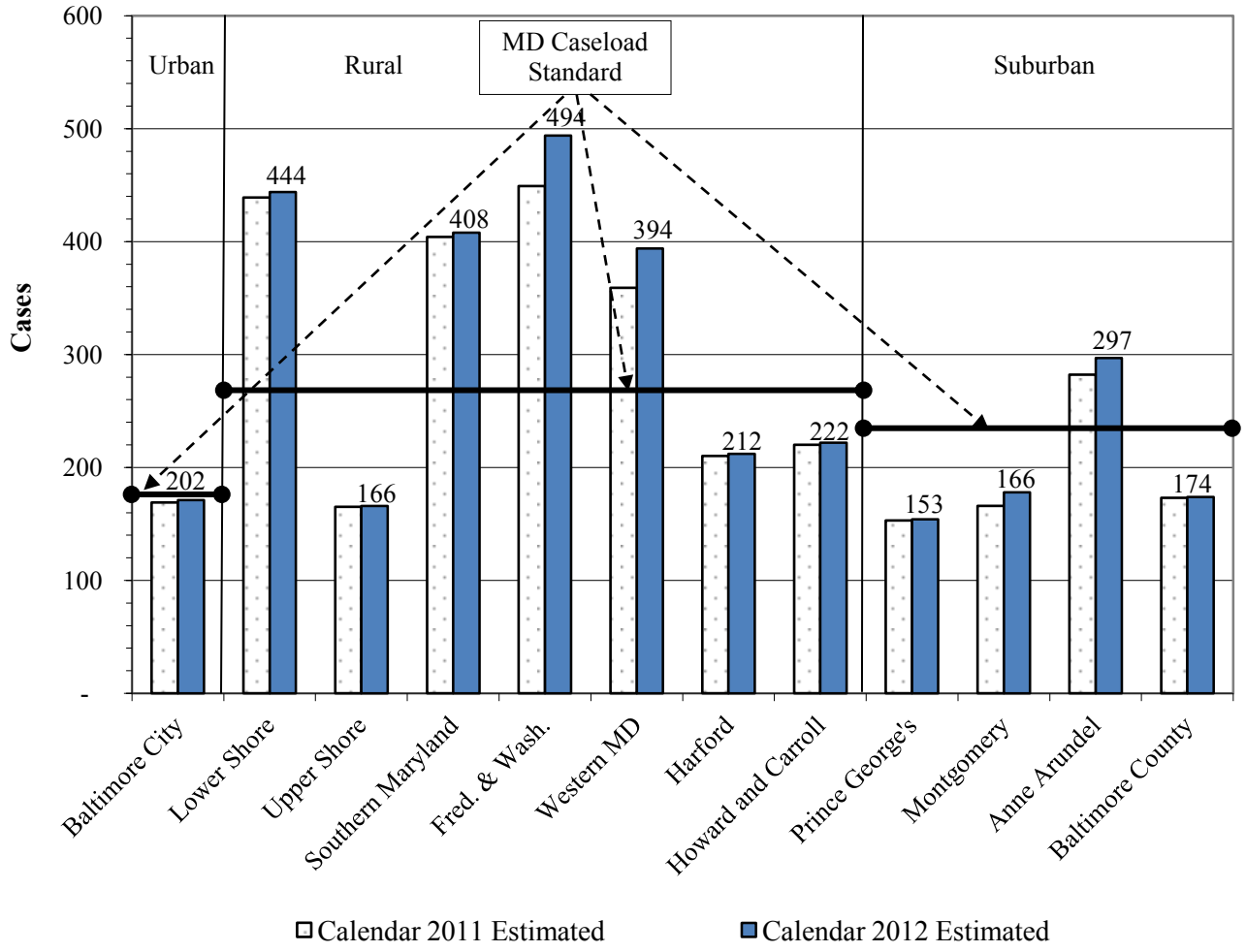
Exhibit 2
Average District Court Caseload Per Attorney by Region



Note: Lower Shore constitutes Dorchester, Somerset, Wicomico, and Worcester counties; Upper Shore constitutes Caroline, Cecil, Kent, Queen Anne's, and Talbot counties; Southern Maryland constitutes Calvert, Charles, and St. Mary's counties; and Western Maryland constitutes Allegany and Garrett counties.

Source: Governor's Budget Books, Fiscal 2013

Exhibit 3
Average Juvenile Caseload Per Attorney by Region

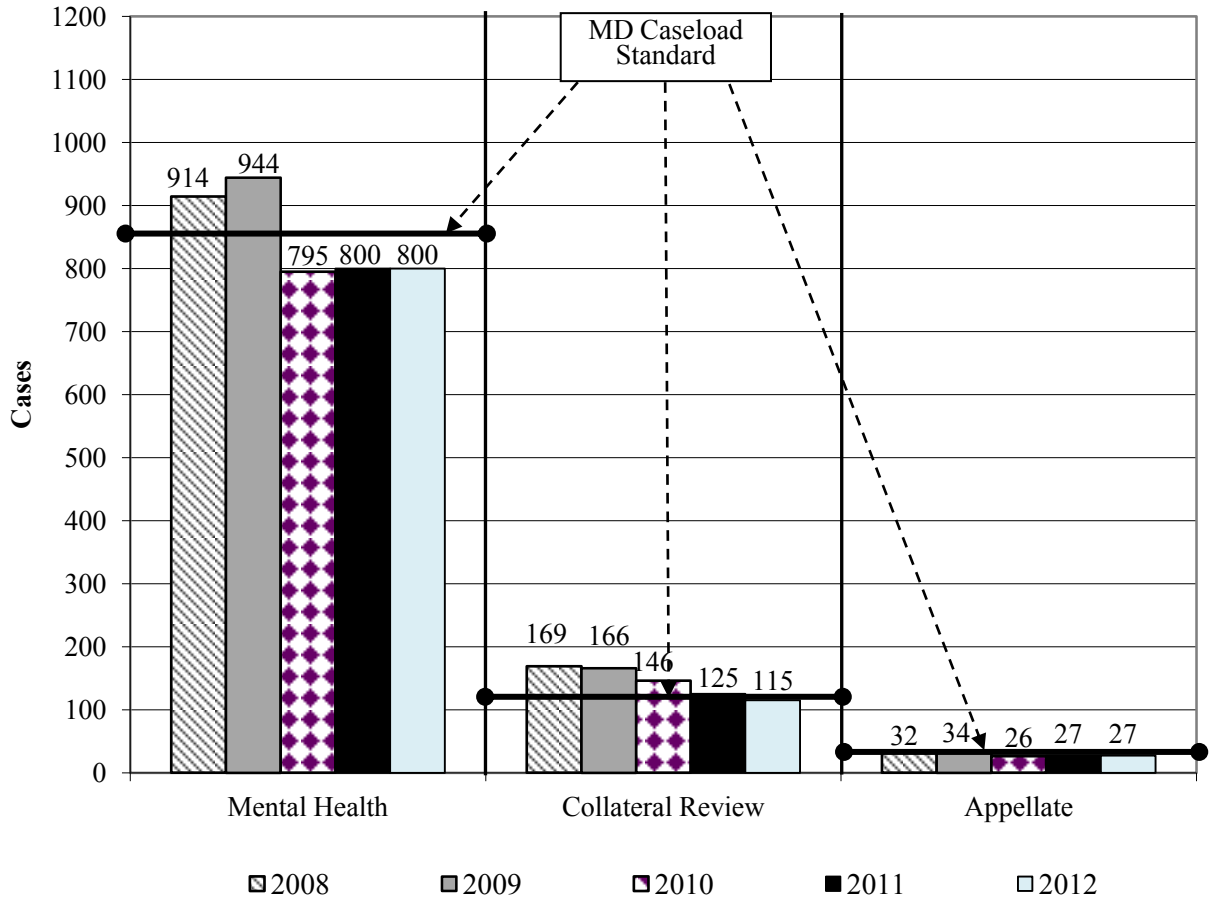


Note: Lower Shore constitutes Dorchester, Somerset, Wicomico, and Worcester counties; Upper Shore constitutes Caroline, Cecil, Kent, Queen Anne's, and Talbot counties; Southern Maryland constitutes Calvert, Charles, and St. Mary's counties; and Western Maryland constitutes Allegany and Garrett counties.

Source: Governor's Budget Books, Fiscal 2013

In addition to district operations, which are generally comprised of trial level work within the circuit and District courts, OPD maintains several statewide divisions. **Exhibit 4** illustrates the average annual caseload standard per attorney for OPD's Mental Health, Collateral Review, and Appellate divisions. The average caseload standard per attorney is 843, 111, and 30, for the Mental Health, Collateral Review, and Appellate divisions, respectively. Of these statewide divisions, OPD projects only the Collateral Review division will not be in compliance with the caseload standards by calendar 2012, similar to calendar 2011. The number of Mental Health and Appellate cases is expected to remain level in calendar 2012, while the number of Collateral Review cases is projected to decline by 10 cases.

Exhibit 4
Average Caseload Per Attorney for the Mental Health, Collateral Review, and Appellate Divisions
Calendar 2008-2012



Source: Governor's Budget Books

Fiscal 2012 Actions

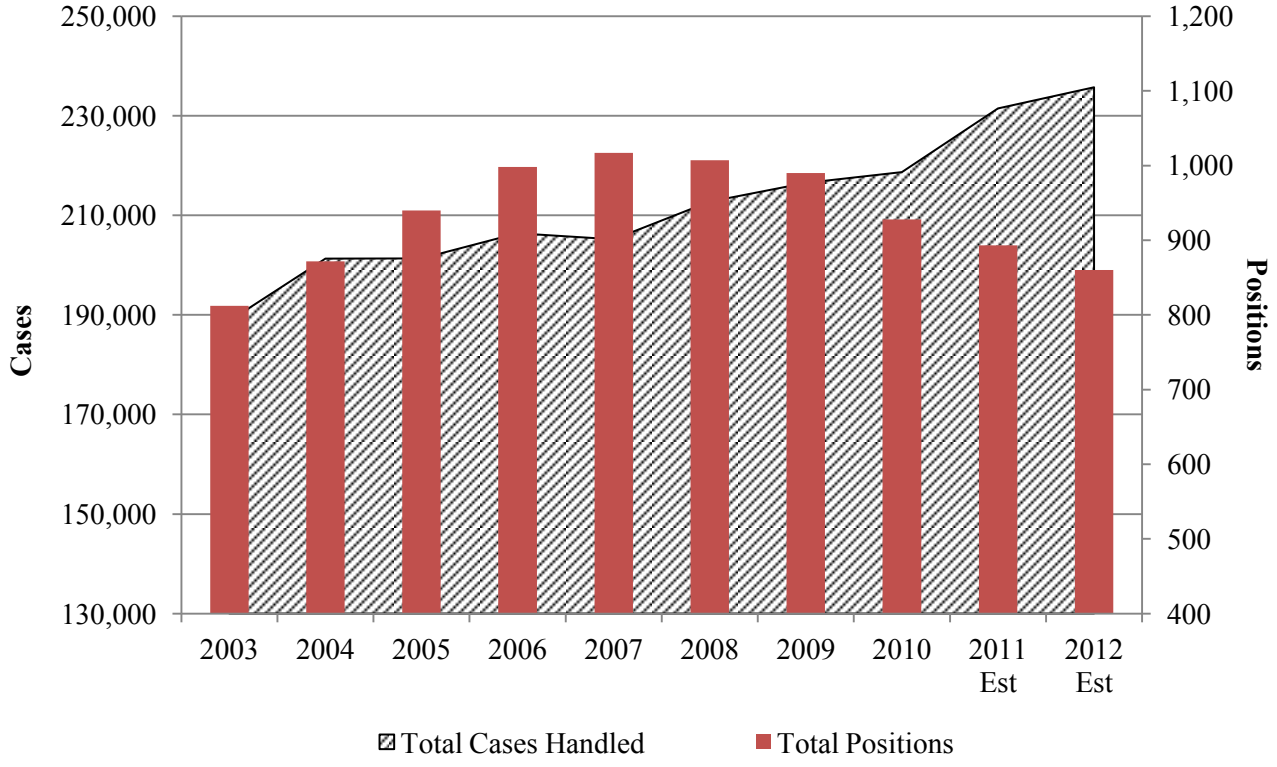
Proposed Deficiency

A fiscal 2012 deficiency would provide $1.1 million in general funds, of which $0.9 million is for case-related expenses, including $0.5 million for panel attorney fees, $0.2 million for medical experts, and $0.2 million for transcripts. The remaining $0.2 million is related to a lease cancellation. OPD vacated a lease early by more than a year due to moving its Rockville offices to the new District Courthouse. The terms of the lease required OPD to pay for unamortized leasehold improvements if it left the offices before the end of the 10-year term.

Cost Containment

Section 47 of the fiscal 2012 budget bill required the Governor to abolish 450 regular positions as of January 1, 2012. OPD's share of the reduction was 16 positions with a corresponding $0.7 million reduction in general funds. Also in fiscal 2012, OPD lost 17.0 positions through the Voluntary Separation Program bringing the total number of abolished positions to 33. The impact of these reductions is shown in **Exhibit 5**. Since fiscal 2007, when the number of positions was at its highest point of 1,017, it has since declined by 157 positions in fiscal 2012. While caseloads gradually increased from fiscal 2007 to 2010, in fiscal 2011, the number rose 5.5% as a result of OPD vs. State which established new eligibility criteria to determine representation.

Exhibit 5
Office of the Public Defender – Total Positions and Total Cases Handled
Fiscal 2003-2012



Note: Cases are represented by calendar year, positions are fiscal year. Calendar 2011-12 cases are estimated.

Source: Office of the Public Defender

Proposed Budget

OPD's budget increases $1.1 million, or 1.3%, in the fiscal 2013 allowance, as shown in **Exhibit 6**. Personnel expenditures decline $0.4 million mainly due to $1.9 million increase in fringe benefits being offset by $2.0 million in reductions, of which $1.3 million is related to turnover and $0.7 million to the removal of the one-time $750 bonus in fiscal 2012.

Nonpersonnel expenditures increase $1.5 million. Funding for panel attorney fees and allocation of statewide costs increase $0.7 million and $0.5 million, respectively. Other increases include $0.2 million for legal services and $0.2 million for rent. However, these increases were partially offset by $74,700 reductions in office supplies and travel.

Exhibit 6
Proposed Budget
Office of the Public Defender
($ in Thousands)

How Much It Grows:	General Fund	Special Fund	Reimb. Fund	Total
2012 Working Appropriation	$84,097	$195	$886	$85,177
2013 Allowance	85,202	194	883	86,278
Amount Change	$1,105	-$2	-$3	$1,100
Percent Change	1.3%	-0.8%	-0.3%	1.3%
Contingent Reductions	$0	$0	$0	$0
Adjusted Change	$1,105	-$2	-$3	$1,100
Adjusted Percent Change	1.3%	-0.8%	-0.3%	1.3%

Where It Goes:	
Personnel Expenses	
Turnover	-$1,331
Employee retirement	1,171
Health insurance	718
One-time employee bonus	-665
Annualization of abolished positions due to Voluntary Separation Program and Section 47	-378
Workers' compensation	125
Other personnel	-40
Other Changes	
Panel attorney and medical	696
Legal services	200
Rent	158
Offices supplies	-50
Travel	-25
Other	-16
Cost Allocations	
State Personnel System	412
Information Technology Services allocation	112
Retirement Administration fee	110
Telecommunications	-97
Total	**$1,100**

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

Issues

1. Impact of Richmond

In *DeWolfe V. Richmond*, No. 34 (September Term 2011), the Maryland Court of Appeals held that under the Maryland Public Defender Act, no bail determination may be made by a District Court commissioner concerning an indigent defendant without the presence of counsel, unless representation by counsel is waived. This ruling takes effect on March 6, 2012.

Current practice dictates within 24 hours after arrest, a criminal defendant is taken before a judicial officer – typically a District Court commissioner – for an initial appearance at which time a determination is made if there was probable cause for arrest. If a commissioner determines there is no probable cause, the defendant is released on personal recognizance. If probable cause is found, the commissioner must determine whether the defendant is eligible for release from custody prior to trail. A defendant who is denied pretrial release or remains in custody 24 hours after the commissioner has set the conditions of release is entitled to a bail hearing before a judge. Historically, approximately 50% of people who appear before commissioners are released on personal recognizance.

There are 278 District Court commissioners throughout the State who handled 171,144 initial appearances in fiscal 2010 and 176,523 in fiscal 2011. In regard to bail reviews, according to OPD, there are approximately 85,000 hearings, annually, that occur in 34 District Court locations.

The Court of Appeals stated the language of the Maryland Public Defender Act was plain and unambiguous. The court found the initial appearance marks the beginning of the formal criminal process and that it may result in the defendant's incarceration. The court noted a defendant may make incriminating statements at the initial hearing that might result in the defendant remaining incarcerated for weeks or months until the trial and further noted the Public Defender agreed that the plaintiffs have a right to counsel in the initial bail hearings.

The Court of Appeals held that the plaintiffs have a right to representation in any bail hearing conducted before a commissioner but did not address the plaintiffs' federal and State constitutional claims of a right to representation. The Court of Appeals also held that the circuit court did not err in issuing its decision without consideration of the costs and provided that the plaintiffs may seek future injunctive relief. House Bill 261 and Senate Bill 165 have both been introduced at the 2012 session as emergency legislation, to repeal the requirement that legal representation be provided by OPD at a defendant's initial appearance before a District Court commissioner. Additionally, Senate Bill 422 and House Bill 112 of 2012 propose to repeal any requirement that OPD provide representation at either the initial appearance or at bail review hearings.

Cost of Compliance

It is assumed that in order to meet the March 6, 2012 deadline, OPD will opt to use the quickest method of implementation, which is the use of panel attorneys and temporary staff. In order to provide adequate coverage and legal representation at initial appearances and bail review hearings,

cost estimates are based on the number of commissioner hours worked in fiscal 2011, which totaled 493,067. Bail review hours totaled approximately 77,000, equivalent to 34 full-time assistant public defenders. Cost estimates for panel attorneys are based on the rate of $50 per hour, while expenses for temporary support staff were determined by using an average statewide rate commensurate with their full-time State employee counterparts.

In order to provide adequate coverage and legal representation, in fiscal 2012, it is estimated OPD will require an additional $13.3 million: $11.1 million associated with initial representation of defendants and $2.2 million for bail reviews in District and local courts. For fiscal 2013, $32.1 million will be required, of which $27.2 million would be related to initial hearings and $4.9 million to bail reviews.

In order to comply with the order in such a short period of time, OPD will rely on panel attorneys and temporary staff. In the preceding years, OPD would increase its staff, thereby reducing its reliance on more expensive temporary personnel. It is estimated in order for OPD to fully comply with the court decision, it will need an additional 365 positions, including 271 attorneys, 84 in-take specialists, 5 information technology specialists, 3 fiscal accounts clerks, and 2 human resource associates. It should be noted, as previously discussed, OPD exceeds the average caseload standard, which coupled with providing legal representation at initial appearance and bail hearing, will add to attorneys and staff workload. This may impact the ability to provide effective legal representation.

The Public Defender should comment on the fiscal and personnel impact of the decision, and if there are a sufficient number of panel attorneys available to be present at the initial hearings and bail reviews.

Recommended Actions

1. Concur with Governor's allowance.

Appendix 1

Current and Prior Year Budgets

Current and Prior Year Budgets
Office of the Public Defender
($ in Thousands)

	General Fund	Special Fund	Federal Fund	Reimb. Fund	Total
Fiscal 2011					
Legislative Appropriation	$83,789	$79	$0	$955	$84,823
Deficiency Appropriation	731	0	0	0	731
Budget Amendments	0	161	0	201	363
Reversions and Cancellations	0	-27	0	-72	-99
Actual Expenditures	**$84,520**	**$213**	**$0**	**$1,084**	**$85,817**
Fiscal 2012					
Legislative Appropriation	$83,432	$77	$0	$886	$84,395
Budget Amendments	665	118	0	0	783
Working Appropriation	**$84,097**	**$195**	**$0**	**$886**	**$85,177**

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

Fiscal 2011

OPD completed fiscal 2011 $994,459 above the legislative appropriation primarily due to $1.1 million in deficiencies and budget amendments that increased the agency's spending authority. A deficiency provided $731,400 in general funds to address the increased workload resulting from a Court of Appeals decision. Budget amendments included:

- $201,385 in reimbursable funds from the Governor's Office of Crime Control and Prevention for the agency's Telejustice Program;
- $81,934 in special funds for the Anne Arundel County Jail Project;
- $55,540 in special funds from the Foundation to Promote Open Society and the Mayor's Office of Criminal Justice of Baltimore City to support indigent defense representation;
- $14,720 in special funds from the Circuit Court for Baltimore City and the Abell Foundation for the representation of participants in Family Recovery Court; and
- $8,942 in special funds for a grant from Baltimore County for the Inmate Services Project.

OPD cancelled $27,318 in unspent special funds at the end of the year. Another $72,144 in reimbursable funds was unspent.

Fiscal 2012

For fiscal 2012, general funds increased $664,573 through a budget amendment related to the $750 employee bonus. Special funds increased $117,734 by budget amendments which include:

- $82,838 from Anne Arundel County to support indigent defense representation and the St. Mary's County Adult Drug Court Program for direct services;
- $25,478 from the Baltimore Substance Abuse System, Inc. for the representation of Drug Court clients; and
- $9,418 from the Inmate Services Project – Baltimore County to fund 1 part-time assistant public defender position to provide legal services.

Object/Fund Difference Report
Office of the Public Defender

Object/Fund	FY 11 Actual	FY 12 Working Appropriation	FY 13 Allowance	FY 12 - FY 13 Amount Change	Percent Change
Positions					
01 Regular	893.00	860.00	860.00	0.00	0%
02 Contractual	13.50	11.00	11.00	0.00	0%
Total Positions	**906.50**	**871.00**	**871.00**	**0.00**	**0%**
Objects					
01 Salaries and Wages	$ 73,334,287	$ 74,179,405	$ 73,779,260	-$ 400,145	-0.5%
02 Technical and Spec. Fees	6,118,945	5,573,793	6,227,359	653,566	11.7%
03 Communication	685,332	819,354	660,338	-159,016	-19.4%
04 Travel	174,125	162,000	137,000	-25,000	-15.4%
06 Fuel and Utilities	115,317	140,228	120,850	-19,378	-13.8%
07 Motor Vehicles	53,798	38,302	35,210	-3,092	-8.1%
08 Contractual Services	2,627,209	2,186,614	3,046,277	859,663	39.3%
09 Supplies and Materials	286,879	296,200	255,000	-41,200	-13.9%
10 Equipment – Replacement	887	154,899	154,737	-162	-0.1%
11 Equipment – Additional	245,746	0	45,000	45,000	N/A
13 Fixed Charges	2,174,807	1,626,646	1,816,695	190,049	11.7%
Total Objects	**$ 85,817,332**	**$ 85,177,441**	**$ 86,277,726**	**$ 1,100,285**	**1.3%**
Funds					
01 General Fund	$ 84,520,184	$ 84,096,788	$ 85,201,597	$ 1,104,809	1.3%
03 Special Fund	213,163	195,061	193,529	-1,532	-0.8%
09 Reimbursable Fund	1,083,985	885,592	882,600	-2,992	-0.3%
Total Funds	**$ 85,817,332**	**$ 85,177,441**	**$ 86,277,726**	**$ 1,100,285**	**1.3%**

Note: The fiscal 2012 appropriation does not include deficiencies.

Fiscal Summary
Office of the Public Defender

Program/Unit	FY 11 Actual	FY 12 Wrk Approp	FY 13 Allowance	Change	FY 12 - FY 13 % Change
01 General Administration	$ 5,889,407	$ 5,915,516	$ 6,424,002	$ 508,486	8.6%
02 District Operations	72,694,514	72,216,357	72,719,867	503,510	0.7%
03 Appellate and Inmate Services	5,868,785	5,781,461	5,846,268	64,807	1.1%
04 Involuntary Institutionalization Services	1,364,626	1,264,107	1,287,589	23,482	1.9%
Total Expenditures	**$ 85,817,332**	**$ 85,177,441**	**$ 86,277,726**	**$ 1,100,285**	**1.3%**
General Fund	$ 84,520,184	$ 84,096,788	$ 85,201,597	$ 1,104,809	1.3%
Special Fund	213,163	195,061	193,529	-1,532	-0.8%
Total Appropriations	**$ 84,733,347**	**$ 84,291,849**	**$ 85,395,126**	**$ 1,103,277**	**1.3%**
Reimbursable Fund	$ 1,083,985	$ 885,592	$ 882,600	-$ 2,992	-0.3%
Total Funds	**$ 85,817,332**	**$ 85,177,441**	**$ 86,277,726**	**$ 1,100,285**	**1.3%**

Note: The fiscal 2012 appropriation does not include deficiencies.