

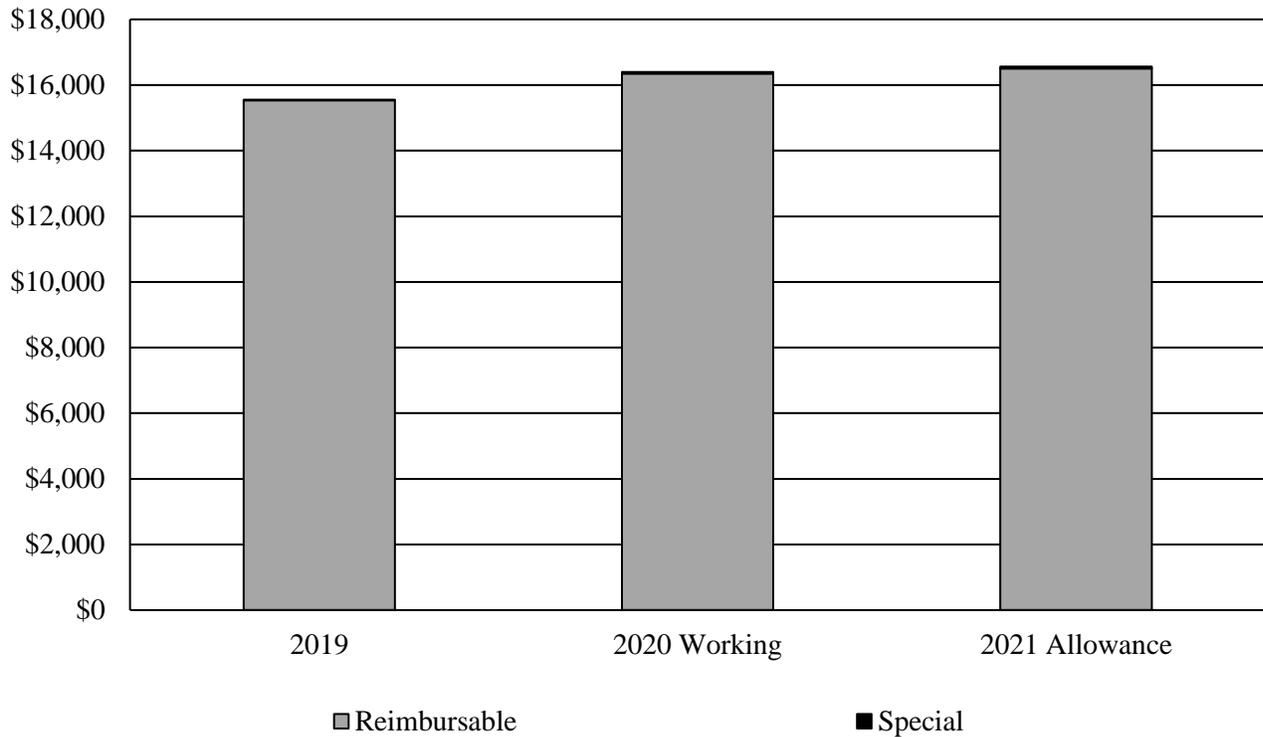
D99A11
Office of Administrative Hearings

Program Description

The Office of Administrative Hearings (OAH) was established to provide an unbiased and objective forum for contested cases involving State agencies. As such, it is an independent unit of the Maryland Executive Branch and is one of the largest central panel agencies in the country. The office was created in 1990 to centralize the hearing functions in various units of State government. Its cases originate from approximately 30 agencies that reimburse OAH based on the proportion of time that it spends on their cases. Additionally, homeowners who are subject to foreclosure may request mediation with an administrative law judge (ALJ), and all OAH decisions are subject to judicial review in State or federal court as provided by law.

Operating Budget Summary

Budget Increases by \$159,980 or 1.0% to \$16.6 Million in Fiscal 2021
(\$ in Thousands)



Note: Numbers may not sum due to rounding. The fiscal 2020 appropriation includes deficiencies, planned reversions, and general salary increases. The fiscal 2021 allowance includes contingent reductions and general salary increases.

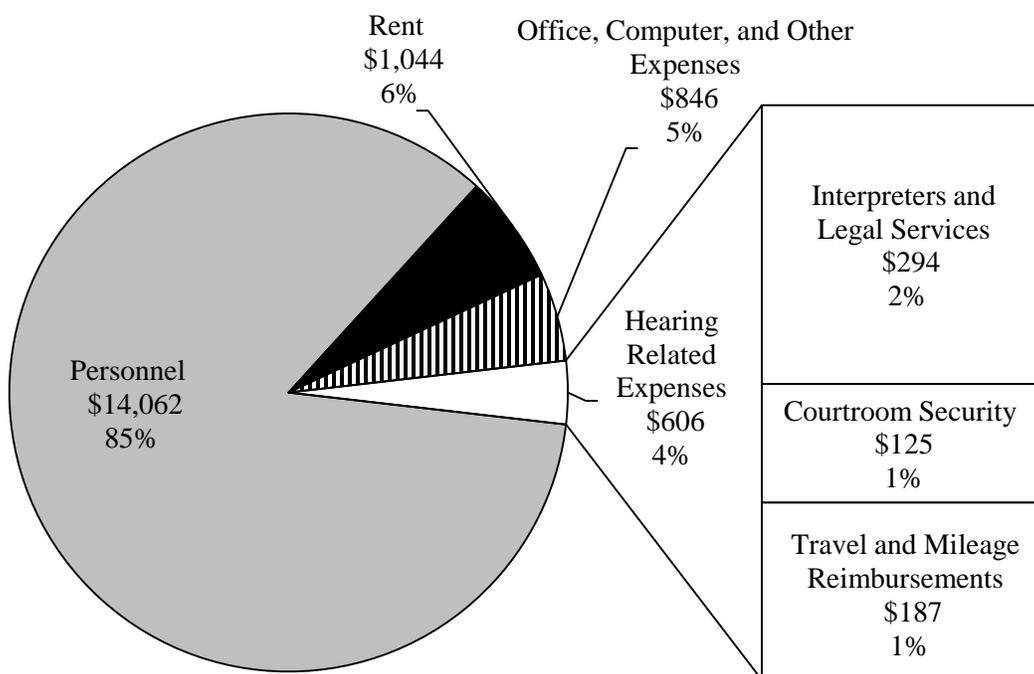
For further information contact: Kenneth B. Weaver

Phone: (410) 946-5530

Fiscal 2021 Overview of Agency Spending

Similar to other legal/judicial agencies in the State, the OAH budget is largely personnel-oriented, as illustrated in **Exhibit 1**. The agency’s 55 judges preside over thousands of cases each year at four main locations. While a full 85% of the budget is allocated for personnel, there is additional funding for interpreters (\$294,000) and security staff (\$125,000) at OAH hearing sites. This staff is necessary as the agency has thousands of visitors per year in its courtrooms, many of whom need language assistance. Other significant expenses include rent (6%) and nearly \$500,000 for computer and equipment-related expenditures. All of these funding amounts are consistent from year to year; in fact, outside of the cost-of-living salary enhancements in fiscal 2021, the OAH budget actually decreases by \$13,501.

Exhibit 1
Overview of Agency Spending
Fiscal 2021 Allowance
 (\$ in Thousands)



Source: Department of Legislative Services

Proposed Budget Change

As depicted in **Exhibit 2**, the allowance for OAH increases by approximately \$160,000, or exactly 1.0%. The agency’s budget is almost entirely reimbursable funds collected from State agencies that utilize OAH services.

Exhibit 2
Proposed Budget
Office of Administrative Hearings
(\$ in Thousands)

How Much It Grows:	Special Fund	Reimb. Fund	Total
Fiscal 2019 Actual	\$16	\$15,536	\$15,552
Fiscal 2020 Working Appropriation	52	16,346	16,398
Fiscal 2021 Allowance	<u>52</u>	<u>16,506</u>	<u>16,558</u>
Fiscal 2020-2021 Amount Change	\$0	\$160	\$160
Fiscal 2020-2021 Percent Change	-0.1%	1.0%	1.0%

Where It Goes:	<u>Change</u>
Personnel Expenses	
Fiscal 2021 2% COLA effective January 1, 2021	\$116
Employee retirement costs	80
Net annualization of fiscal 2020 COLA	58
Accrued leave payout	46
Turnover expectancy	30
Position adjustments, reclassifications, and other personnel costs	-11
Abolished position: docket clerk	-40
Health insurance premiums	-123
Other Changes	
Other contractual services and State fees	36
Rent	9
Administrative law judge travel	9
Postage expenses	-4
Motor vehicle costs	-6
Data processing equipment.....	-40
Total	\$160

COLA: cost-of-living adjustment

Note: Numbers may not sum due to rounding. The fiscal 2020 appropriation includes deficiencies, planned reversions, and general salary increases. The fiscal 2021 allowance includes contingent reductions and general salary increases.

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- The vast majority of the \$160,000 change in OAH expenditures is largely attributable to statewide salary enhancements and added funding for a new part-time ALJ position. Other costs for OAH change very little; despite increases for contractual services and State fees, the agency’s nonpersonnel budget increases by a net \$4,000.

Personnel Data

	<u>FY 19 Actual</u>	<u>FY 20 Working</u>	<u>FY 21 Allowance</u>	<u>FY 20-21 Change</u>
Regular Positions	118.00	118.00	117.00	-1.00
Contractual FTEs	<u>0.00</u>	<u>0.50</u>	<u>0.50</u>	<u>0.00</u>
Total Personnel	118.00	118.50	117.50	-1.00

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	3.19	2.74%
Positions and Percentage Vacant as of 12/31/19	7.00	5.93%
Vacancies Above Turnover	3.81	

- ***OAH Leadership Change:*** The agency’s Chief Administrative Law Judge (CALJ), Thomas Dewberry, retired in November 2019. The agency has continued operations with Jana Corn Burch, OAH Director of Operations, serving as Acting CALJ. Currently, there is no timeline regarding the Governor’s appointment of a new agency head.
- ***Position Changes and Reclassifications:*** The agency loses 1 docket clerk position that was unfilled for over one year. While the agency planned to make ALJ recruitment more competitive by increasing the ALJ base salary, those changes did not occur; as a result, OAH had a \$67,000 decrease in (previously planned) reclassifications. In terms of contractual positions, the agency has a single half-time position held open for an interpreter to assist with inquiries from the public; this allows staff to use a temporary worker in case of leave or absences.

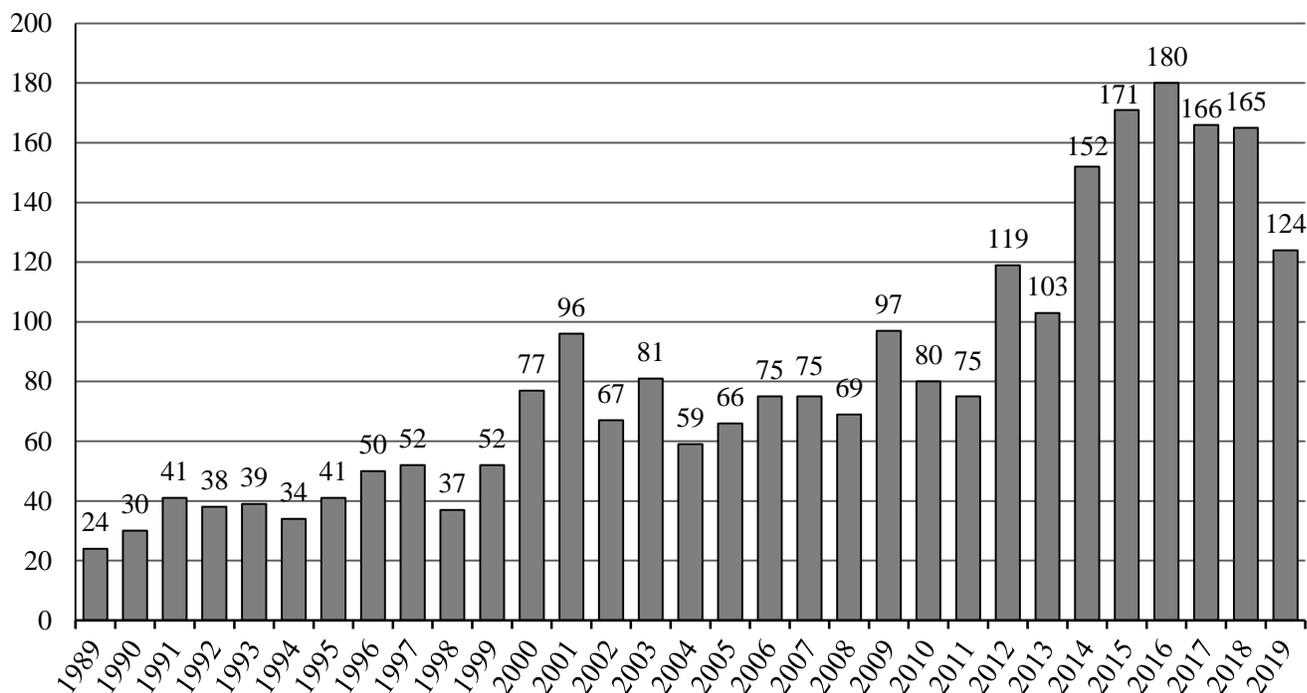
Key Observations

1. Erroneous Convictions

During the last thirty years, the number of defendants exonerated across the country due to erroneous convictions has increased. While this has been due in no small part to more reporting, better data collection, and the advent of DNA testing, 78% of these exonerations were made because of other factors and not DNA evidence. In thousands of cases, individuals have been exonerated due to a variety of factors including evidence tampering, laboratory errors, law enforcement misconduct, false witness testimony, eyewitness misidentification, or other disqualifying reasons.

Exhibit 3 shows the total number of exonerations per year since calendar 1989. Including 124 exonerations in calendar 2019, there are a total of 2,535 erroneously convicted defendants in the United States who have collectively served nearly 23,000 years of jail time – nearly 9 years lost per exoneree. In addition, since 1989, more than 1,800 defendants were cleared in large-scale exonerations due to 15 police scandals in which officers framed innocent people for various drug crimes.

Exhibit 3
Nationwide Exonerations
Calendar 1989-2019



Source: National Registry of Exonerations

State Actions to Address Erroneous Convictions

According to the National Registry of Exonerations, 37 individuals have been exonerated for crimes in Maryland and served a combined 550 years in prison. In 28 of the 37 cases, official misconduct was a contributing factor in the exoneration. Under State Finance and Procurement Article § 10-501, the Board of Public Works (BPW) is able to grant compensation only if an exoneree has either been given (1) a full pardon by the Governor or (2) certification from the State’s attorney for the jurisdiction where the conviction occurred pursuant to a Writ of Actual Innocence. In order to receive compensation, exonerees must obtain a Writ of Actual Innocence from a judge. Because compensation is at the discretion of BPW, there is no State requirement that exonerees must receive it. Since 1989, 3 exonerees (not including the five claims recently paid in December 2019) made claims under Article § 10-501 for \$1.4 million, \$900,000, and \$300,000. Because of limitations seen surrounding this issue and the statute, several initiatives were created via proposed legislation in recent years to enhance compensation efforts.

- ***Compensation Eligibility – Chapters 799 and 800 of 2017:*** This legislation authorized the State’s attorney to certify if a conviction was made in error and subsequently allowed for wrongfully convicted individuals to be eligible for compensation from BPW. It also created the Task Force to Study Erroneous Conviction and Imprisonment to study this issue and make recommendations regarding a new process.
- ***Compensation and Exoneree Assistance – Senate Bill 987 and House Bill 1225 of 2018:*** This legislation sought to require BPW to compensate those who were erroneously convicted with rates at \$50,000 per year of incarceration as well as assist exonerees with reentry services including housing upon release, life skills and employment training, health insurance, and access to education. Neither of these bills passed.
- ***DNA Exoneration – Chapter 602 of 2018:*** This bill expanded § 8-201 and § 8-301 of the Criminal Procedure Article to include those convicted as a result of a guilty plea, an Alford plea (claiming neither guilt nor innocence), or a plea of *nolo contendere* to petition the courts for postconviction DNA testing or a case review based on newly discovered DNA evidence. Once enacted, this legislation expanded the number of defendants eligible to pursue release and compensation for an erroneous conviction.
- ***Task Force to Study Erroneous Conviction and Imprisonment:*** This task force was designed to study the State’s current process regarding erroneous convictions and compensation, processes and standards in other states, and make recommendations for new activity. The task force had several recommendations, including that codified language be created to direct BPW to plan a process to receive and respond to petitioners who seek compensation for an erroneous conviction.

Future Steps

Recently, BPW approved over \$9.3 million in awards to five individuals who were incarcerated for crimes they did not commit – the first awards given in the State without a pardon from the Governor. Each of the payments were based on the State’s median household income and will be paid out via annuities over several years. In September 2019, the OAH management team worked collaboratively with BPW and the Maryland Attorney General’s Office to draft a Memorandum of Agreement that would have allowed BPW to potentially delegate the compensation petitions of these five individuals to other State agencies.

While BPW resolved these cases on its own, there are still several outstanding issues regarding erroneous convictions in the State. Nearly three dozen erroneously convicted individuals have been exonerated in Maryland during the past 30 years. In addition, numerous potential cases, including 1,700 in Baltimore City alone, could possibly be pursued. Nationwide, approximately 35% of exonerees eventually receive some sort of monetary compensation for the time they spent in prison. Because no formal process is in place in Maryland, it would be prudent for key State agencies to determine a path forward.

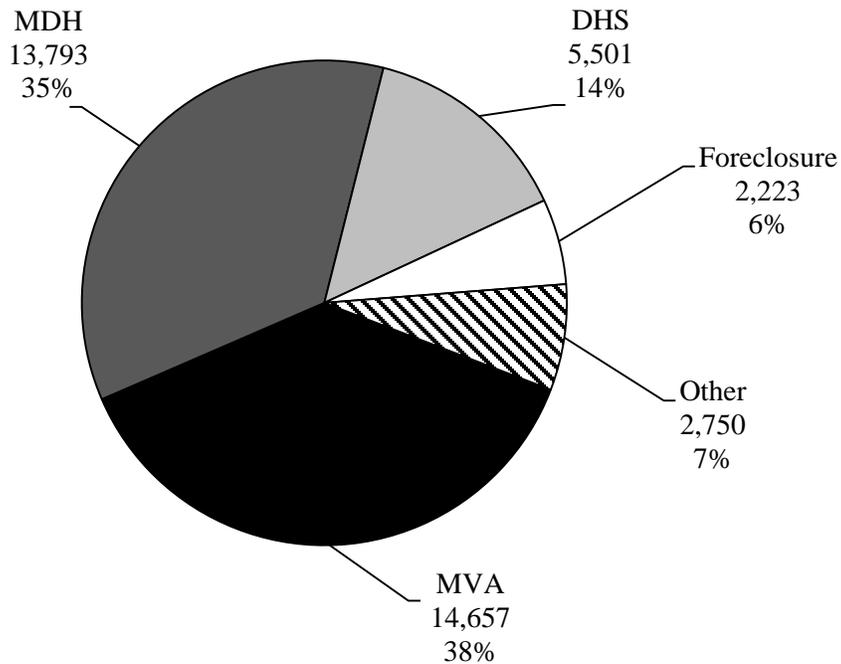
OAH should comment on how its judges and courts could be of use to the State regarding these types of convictions and whether its already-active and funded adjudication process could assist BPW in processing and closing these cases.

2. OAH Overview and Performance Measures

State Agency Hearings

OAH is largely funded by reimbursable funds provided by over 30 State agencies, which are charged for OAH services in the case of a hearing. The costs to each agency using OAH services is calculated via a funding matrix – this process ensures that agencies are fairly and proportionally charged for the services that OAH and its judges provide. Overall, the agency’s cases primarily deal with the Motor Vehicle Administration (MVA) and the Maryland Department of Health. Together, these two agencies account for nearly three-quarters of the OAH caseload, as seen in **Exhibit 4**. A review of the types of cases that OAH hears for each agency is available in **Appendix 1**.

**Exhibit 4
Hearings by Agency/Type
Fiscal 2019**



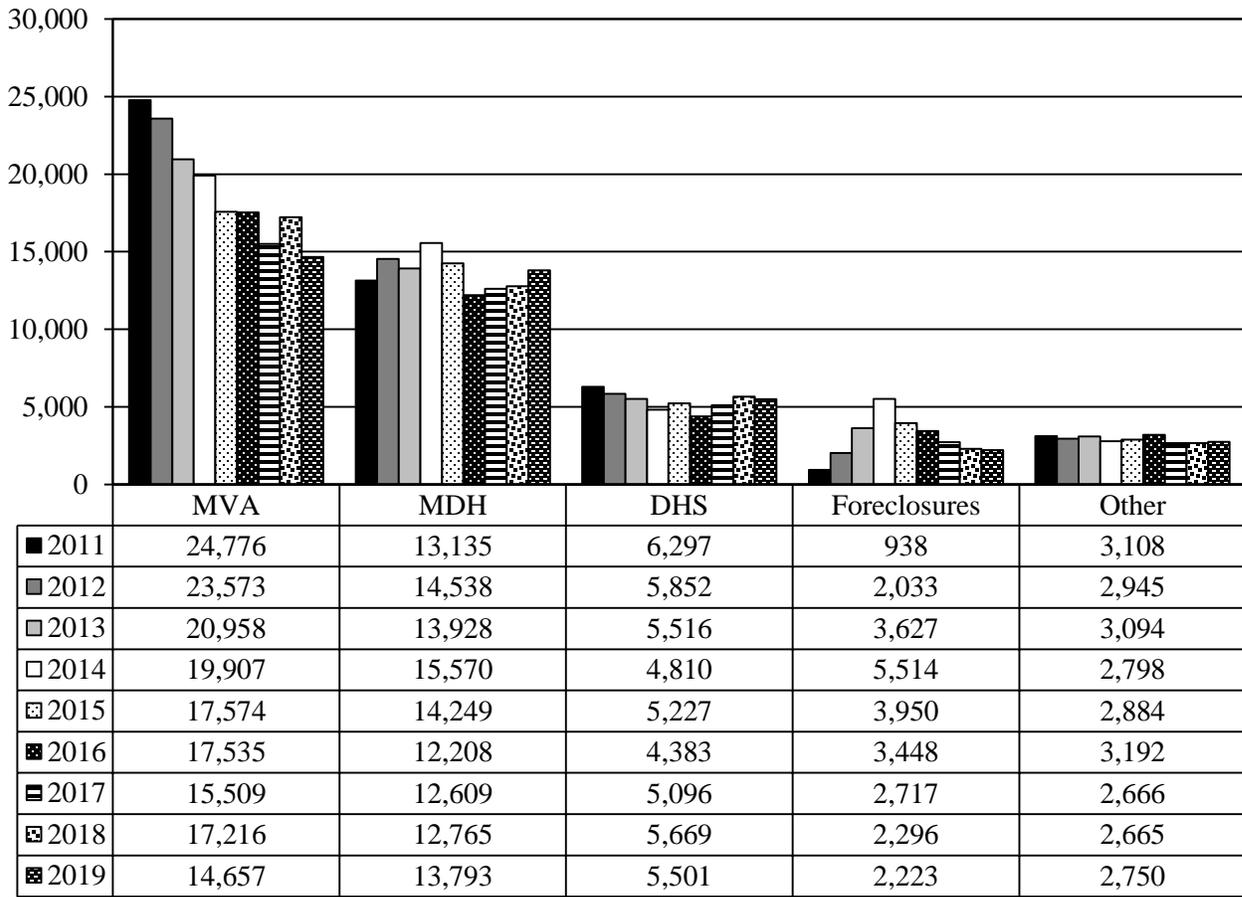
DHS: Department of Human Services
MDH: Maryland Department of Health
MVA: Motor Vehicle Administration

Source: Department of Budget and Management

Motor Vehicle-related Hearings Decrease by 15%

While the proportion of cases each year by agency has remained fairly consistent, the total number of cases continues to decline – since fiscal 2011, OAH caseloads are down 19%. In fiscal 2019, the agency had 38,924 cases, down 4% from the previous fiscal year. Of note is the fact that caseloads from MVA, the largest agency represented in OAH hearings, have declined by 15% in a single year and 41% since fiscal 2011. There are several reasons for this change. One primary reason is the Drunk Driving Reduction Act, Chapter 512 of 2016 (also known as Noah’s Law), which required more convicted drunk drivers to use the Ignition Interlock breathalyzer system. With more drivers required to use the system, there are fewer initial drunk driving hearings needed, but more Interlock compliance hearings. **Exhibit 5** depicts the MVA caseload decline as well as OAH’s other caseloads delineated by agency.

**Exhibit 5
Total Cases Disposed
Fiscal 2011-2019**



DHS: Department of Human Services
 MDH: Maryland Department of Health
 MVA: Motor Vehicle Administration

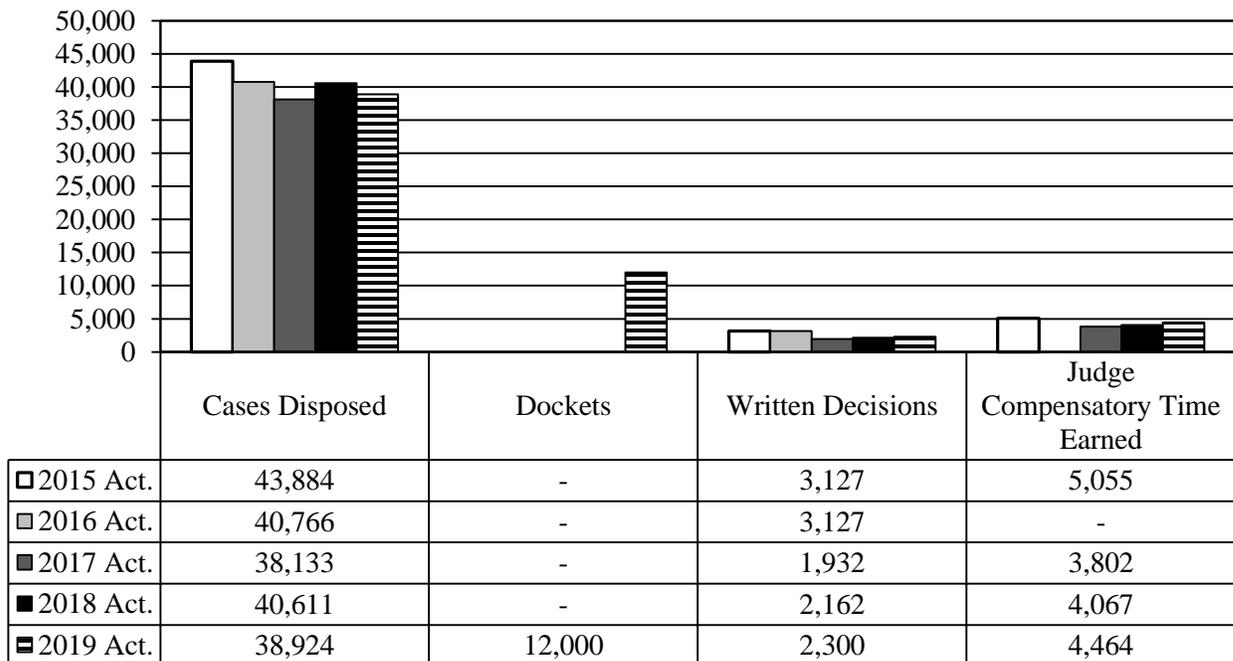
Source: Office of Administrative Hearings

Despite Caseload Declines, OAH Judge Workloads Vary

Because of the overall downward trend in caseloads, in fiscal 2018, the budget committees requested that OAH report on agency staffing and caseloads. In recent fiscal years, the agency has been able to provide more information about their ALJs’ workload beyond basic case numbers. Despite caseload declines, OAH judges have steady workloads that, depending on which metric is used, have not changed much from previous years or are actually increasing. Other ways to view ALJ workloads

are through the number of dockets (or daily work assignments) that judges have; the number of written decisions that judges make each year; and the amount of compensatory time earned by judges. While OAH does not have total docket information per year before fiscal 2019, the agency notes that ALJ docket workloads are not decreasing. By placing all three metrics alongside caseload metrics, **Exhibit 6** illustrates the scope of the ALJ workload situation.

Exhibit 6
Judge Workloads vs. Actual Caseloads
Fiscal 2015-2019



Note: Docket data for 2015-2018 and Compensatory Time Earned for 2016 were not available due to system collection limitations.

Source: Office of Administrative Hearings

Based on an internal study, OAH is required to assign an ALJ to an equal share of the projected caseload for each month, with a total of 1,083 dockets in the aggregate for a typical month. While a single ALJ can sometimes cover more than 1 docket a day, any single docket can contain multiple cases that can range as high as 40 cases. In addition, some cases require more than one day to complete the hearing, and sometimes appeals from other agencies arrive that must be scheduled on an expedited or emergency basis. Per month, OAH receives an additional 80 dockets of this type from the Maryland State Department of Education and local educational agencies, as well as 6 dockets a month relating to emergency suspension of child care.

While this type of case information is helpful, the committees would benefit from understanding OAH caseloads and workloads in more detail. **As a result, the Department of Legislative Services recommends the adoption of committee narrative requesting that OAH submit a report on annual multi-case docket data, case types, and additional ALJ workload measures.**

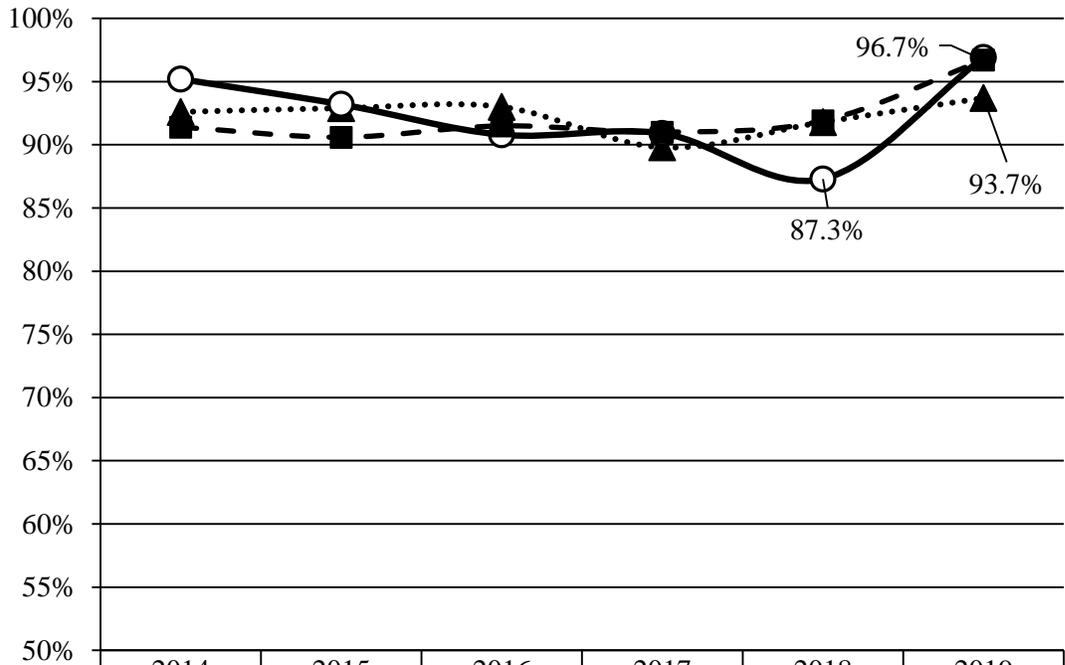
Federal Cuts to Food Stamps Will Likely Increase OAH Caseloads

In December 2019, the federal government announced that rule changes set to go into effect in April 2020 would change the work requirements for some adults (possibly over 50,000 in the State) who receive Supplemental Nutrition Assistance Program benefits. As a result, OAH predicts that its caseloads in this area could rise as residents attempt to get those benefits restored.

Hearing Satisfaction Rates Grow to Record Highs

Throughout each year, OAH measures the quality of its hearings by sending surveys to participants who rate their satisfaction with the preparation and organization at the hearing, the fairness of the proceedings, and the overall outcome of the proceedings. As illustrated in **Exhibit 7**, the percentage of participants who rated these elements as satisfactory or excellent grew in all categories. In fiscal 2014, a then record-high 95.2% of respondents reported that the fairness of their OAH hearing was satisfactory or excellent. In fiscal 2018, only 87.3% said the same, a decline of 7.9 percentage points. In fiscal 2019, fairness metrics rebounded to a record high of 96.9%, and all three metrics are the highest on record since fiscal 2011. **OAH should comment on the significant increase in hearing satisfaction metrics in fiscal 2019.**

**Exhibit 7
Hearing Results Rated Satisfactory or Excellent
Fiscal 2014-2019**



	2014	2015	2016	2017	2018	2019
••▲•• Preparation and Organization	92.6	92.9	93.0	89.8	91.8	93.7
—○— Fairness	95.2	93.2	90.8	90.9	87.3	96.9
-■- Outcome	91.4	90.6	91.5	91.0	91.9	96.7

Source: Department of Budget and Management

Operating Budget Recommended Actions

1. Adopt the following narrative:

Report on Administrative Law Judge Workload: Due to the wide variety of case types of which agency administrative law judges (ALJ) are responsible, the use of multi-case dockets is a useful way to streamline casework and dispose of cases in a more timely fashion. While overall ALJ caseloads declined by approximately 4% in fiscal 2019 from the previous year, the actual workload for judges has remained constant or increased, according to various other work-related metrics, such as the number of decisions written per ALJ per year. The committees are interested in determining the scope of ALJ workloads. Therefore, it is the intent of the budget committees that the agency submit information on the type and number of dockets per year for each judge as well as any other work-related measures that can assist the committees in understanding and quantifying ALJ workloads.

Information Request	Author	Due Date
Administrative law judge workload reporting	Office of Administrative Hearings	November 1, 2020

Appendix 1
Hearing Case Types by Agency
Fiscal 2019

<u>Agency Name</u>	<u>Common Case Types</u>
Motor Vehicle Administration	Drunk driving offenses; accumulation of points on driver’s license; Ignition Interlock noncompliance; violations on a provisional license; commercial driver’s license disqualification; Medical Advisory Board suspensions.
Maryland Department of Health (MDH)	Medical assistance (including long-term care, medical assistance coverage/eligibility; Community First Choice); involuntary admission to a behavioral health unit; hearing on court recommendations for persons adjudged not criminally responsible; Clinical Review Panel appeals; patient Bill of Rights cases (<i>i.e.</i> , involuntary discharge from a nursing home).
Department of Human Services	Food stamps, child abuse and neglect, temporary cash assistance; foster care suspensions and terminations.
Maryland Insurance Administration	Premium surcharge hearings; non-renewals; consumer complaints.
Office of the Attorney General	Consumer protection cases (including opioid cases); landlord violations; Securities Division cases; unfair and deceptive trade practices; Home Builder Guaranty Fund.
Independent Boards Related to MDH	Maryland Board of Physicians; Board of Nursing; Board of Dental Examiners; also, Antitrust Supervisory Review relating to board disciplinary and cease and desist orders.
Department of Labor	Home Improvement Commission and Real Estate Commission: guaranty fund cases and disciplinary cases; Commission of Financial Regulation: fraud and consumer protection cases.
State Personnel Management System	State employee terminations, suspensions, disciplinary actions, grievances, and whistle-blower actions.
Maryland State Police	Handgun Permit Review Board appeals; security guard and security guard agency licensing; automobile safety technician cases.
Department of Natural Resources	Oyster, fishing, and crabbing licenses; wetlands; pollution cases.
Maryland State Department of Education	Special education (<i>e.g.</i> individualized education plans; free appropriate public education; reimbursement for private placement in non-public school); school redistricting; Board of Education cases.
Maryland Health Benefits Exchange	Health insurance eligibility.
Maryland Department of the Environment	Lead paint cases; sediment/stormwater; oil pollution control.

Source: Office of Administrative Hearings

**Appendix 2
Audit Findings**

Audit Period for Last Audit:	August 4, 2014 – July 2, 2018
Issue Date:	February 2019
Number of Findings:	1
Number of Repeat Findings:	0
% of Repeat Findings:	0%
Rating: (if applicable)	n/a

Finding 1: The Office of Administrative Hearings did not have adequate controls over court fees and other collections received in the mail, which totaled approximately \$2.3 million during fiscal 2018.

**Appendix 3
Object/Fund Difference Report
Office of Administrative Hearings**

<u>Object/Fund</u>	<u>FY 19 Actual</u>	<u>FY 20 Working Appropriation</u>	<u>FY 21 Allowance</u>	<u>FY 20 - FY 21 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	118.00	118.00	117.00	-1.00	-0.8%
02 Contractual	0.00	0.50	0.50	0.00	0%
Total Positions	118.00	118.50	117.50	-1.00	-0.8%
Objects					
01 Salaries and Wages	\$ 12,931,300	\$ 13,848,293	\$ 13,831,098	-\$ 17,195	-0.1%
02 Technical and Special Fees	6,416	22,197	22,223	26	0.1%
03 Communication	156,605	148,040	144,040	-4,000	-2.7%
04 Travel	207,185	178,300	187,000	8,700	4.9%
06 Fuel and Utilities	75,121	79,676	80,000	324	0.4%
07 Motor Vehicles	5,739	12,199	5,999	-6,200	-50.8%
08 Contractual Services	813,892	763,831	799,255	35,424	4.6%
09 Supplies and Materials	139,195	154,800	138,000	-16,800	-10.9%
10 Equipment – Replacement	90,684	42,068	42,068	0	0%
11 Equipment – Additional	0	38,000	15,000	-23,000	-60.5%
13 Fixed Charges	1,125,869	1,052,848	1,062,068	9,220	0.9%
Total Objects	\$ 15,552,006	\$ 16,340,252	\$ 16,326,751	-\$ 13,501	-0.1%
Funds					
03 Special Fund	\$ 16,284	\$ 52,472	\$ 52,435	-\$ 37	-0.1%
09 Reimbursable Fund	15,535,722	16,287,780	16,274,316	-13,464	-0.1%
Total Funds	\$ 15,552,006	\$ 16,340,252	\$ 16,326,751	-\$ 13,501	-0.1%

Note: The fiscal 2020 appropriation does not include deficiencies, planned reversions, or general salary increases. The fiscal 2021 allowance does not include contingent reductions or general salary increases.