

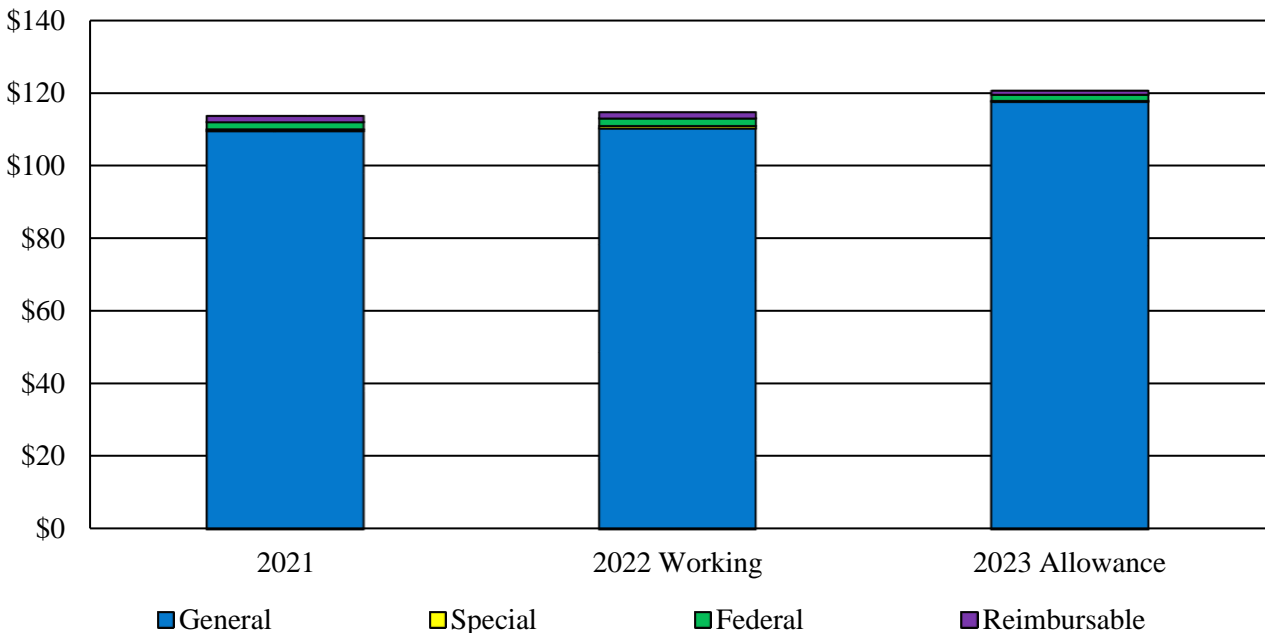
C80B00
Office of the Public Defender

Program Description

The Office of the Public Defender (OPD) provides counsel and related services to indigent persons through 12 district operations, 4 divisions, and 2 specialized units. As defined in the Code of Maryland Regulations 14.06.03.01, indigent means “any person taken into custody or charged with a serious crime... who under oath or affirmation subscribes and states in writing that he is financially unable, without undue hardship, to provide for the full payment of an attorney and all other necessary expenses of legal representation.” Legal representation is provided in criminal trials, bail reviews, appeals, juvenile cases, post-conviction proceedings, parole and probation revocations, and involuntary commitments to mental institutions. The four divisions that support the office are (1) General Administration; (2) District Operations; (3) Appellate and Inmate Services; and (4) Involuntary Institutionalization Services.

Operating Budget Summary

Fiscal 2023 Budget Increases \$5.7 Million, or 4.9%, to \$120.5 Million
(\$ in Millions)



Note: The fiscal 2022 working appropriation and fiscal 2023 allowance do not reflect funding for statewide personnel actions budgeted in the Department of Budget and Management, which include cost-of-living adjustments, increments, bonuses, and may include annual salary review adjustments.

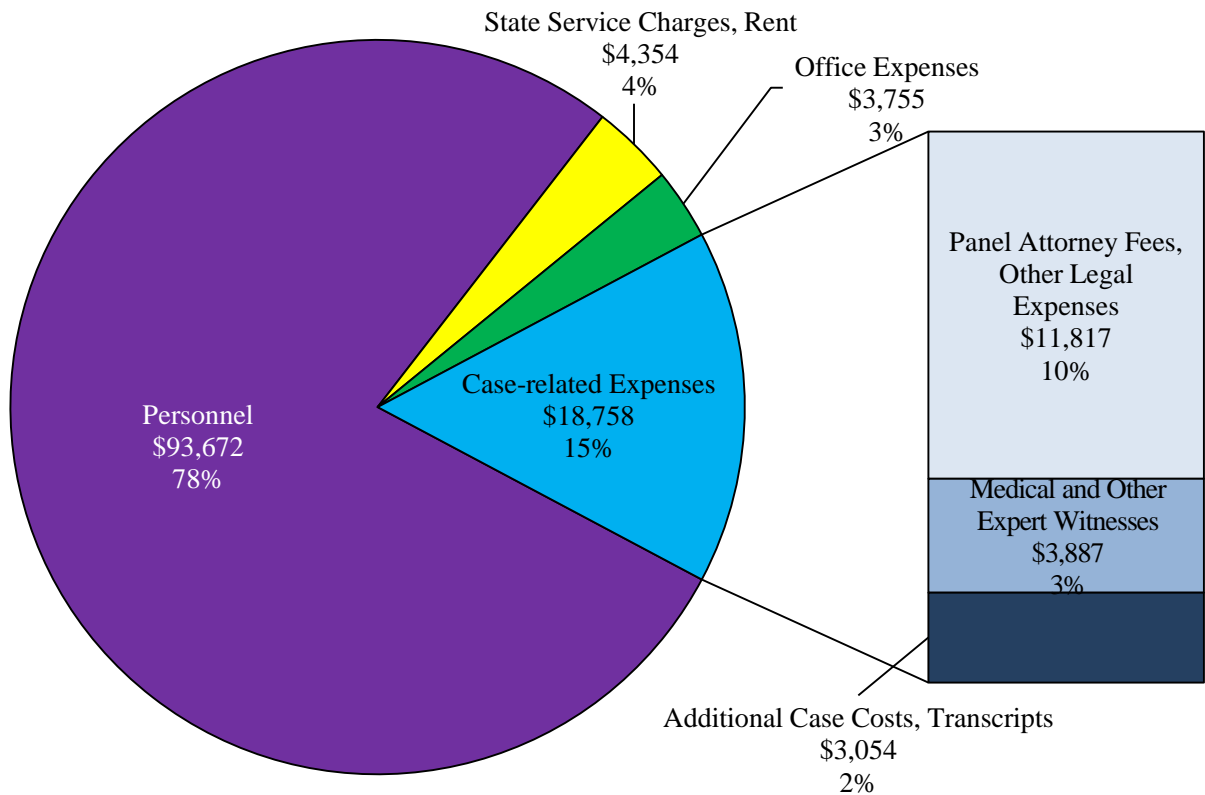
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Fiscal 2023 Overview of Agency Spending

Approximately 78% of the OPD budget is allocated for personnel expenses, as shown in **Exhibit 1**. Case-related expenses (15%) comprise the next largest category of spending.

Exhibit 1
Overview of Agency Spending
Fiscal 2023 Allowance
(\$ in Thousands)



Source: Department of Budget and Management

Proposed Budget Change

As shown in **Exhibit 2**, the fiscal 2023 allowance for OPD increases by \$5.7 million, or approximately 4.9%. The majority of the increase is for personnel spending. Information technology (IT), leases, rent, and conference expenses comprise major areas of increase in nonpersonnel spending.

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

How Much It Grows:	General Fund	Special Fund	Federal Fund	Reimb. Fund	Total
Fiscal 2021 Actual	\$109,667	\$516	\$2,004	\$1,665	\$113,852
Fiscal 2022 Working Appropriation	110,405	622	2,173	1,666	114,866
Fiscal 2023 Allowance	<u>117,483</u>	<u>292</u>	<u>1,686</u>	<u>1,078</u>	<u>120,539</u>
Fiscal 2022-2023 Amount Change	\$7,078	-\$330	-\$487	-\$589	\$5,673
Fiscal 2022-2023 Percent Change	6.4%	-53.0%	-22.4%	-35.3%	4.9%
Where It Goes:					<u>Change</u>
Personnel Expenses					
Step increases for attorneys to maintain competitive salaries.....					\$2,215
Turnover expectancy.....					1,592
Retirees' health insurance premiums.....					395
Health insurance.....					158
Employees' retirement system.....					46
Social Security contributions.....					19
Unemployment compensation.....					-1
Workers' compensation.....					-26
Regular earnings.....					-306
Other Changes					
Funds to Restart Workload Reduction Attorney Program.....					1,745
Department of Information Technology services allocation.....					413
Lease payments for offices.....					164
Annual conference and training for grants.....					137
Rent.....					133
Data collection and analysis expenses.....					82
Travel expenses.....					63
Legal and medical support services.....					10
Other adjustments.....					12
Software systems expenses.....					-63
National Juvenile Defender Center grant.....					-200
Transcript costs.....					-270
Harford County Health Department grant.....					-300
Investigators, social workers, experts, and other case-related expenses.....					-492
Other adjustments.....					135
Total					\$5,672

Note: Numbers may not sum to total due to rounding. The fiscal 2022 working appropriation and fiscal 2023 allowance do not reflect funding for statewide personnel actions budgeted in the Department of Budget and Management, which include cost-of-living adjustments, increments, bonuses, and may include annual salary review adjustments.

Personnel Data

	<u>FY 21</u> <u>Actual</u>	<u>FY 22</u> <u>Working</u>	<u>FY 23</u> <u>Allowance</u>	<u>FY 22-23</u> <u>Change</u>
Regular Positions	888.50	883.50	883.50	0.00
Contractual FTEs	<u>67.06</u>	<u>69.75</u>	<u>53.50</u>	<u>-16.25</u>
Total Personnel	955.56	953.25	937.00	-16.25

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	70.77	8.01%
Positions and Percentage Vacant as of 12/31/21	97.00	10.98%
Vacancies Above Turnover	26.23	

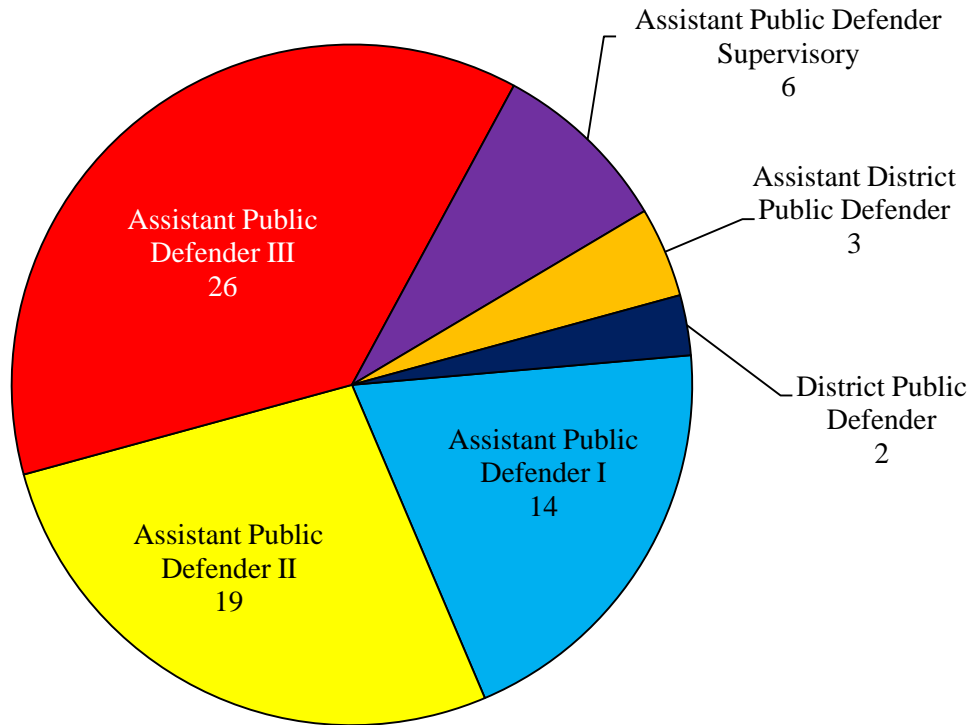
Contractual Position Fluctuation

OPD’s contractual positions fluctuate in response to workload demands. The fiscal 2023 allowance reflects a reduction of 16.25 full-time equivalents (FTE) based on reduced caseloads, but funding increases \$0.5 million over the fiscal 2022 working appropriation. While this increase accounts for compensation enhancements, it will also allow OPD to fund additional FTEs if the need arises.

Vacancies High Particularly among More Experienced Attorneys

The 97 positions vacant at the end of calendar 2021 reflect a nearly 25% increase in vacancies compared to the same time one year ago. Not surprisingly, nearly three-quarters of the current vacancies are attorney positions, as attorneys comprise roughly two-thirds of the OPD workforce. **Exhibit 3** shows the distribution of the attorney vacancies by classification. Assistant public defender (APD) III comprises the largest number with 26 vacant positions, with APD II and APD I the next two largest categories, with 19 and 14 vacancies, respectively. **OPD should comment on these vacancies and the impact that they are having on its operations and the ability of indigent Marylanders to access legal representation.**

Exhibit 3
Attorney Vacancies by Classification



Source: Department of Legislative Services

Key Observations

1. Managing for Results – Caseloads, Percentage of District Offices Meeting Standards, and Use of Panel Attorneys

Fiscal 2020 Managing for Results Data Lost in Ransomware Attack

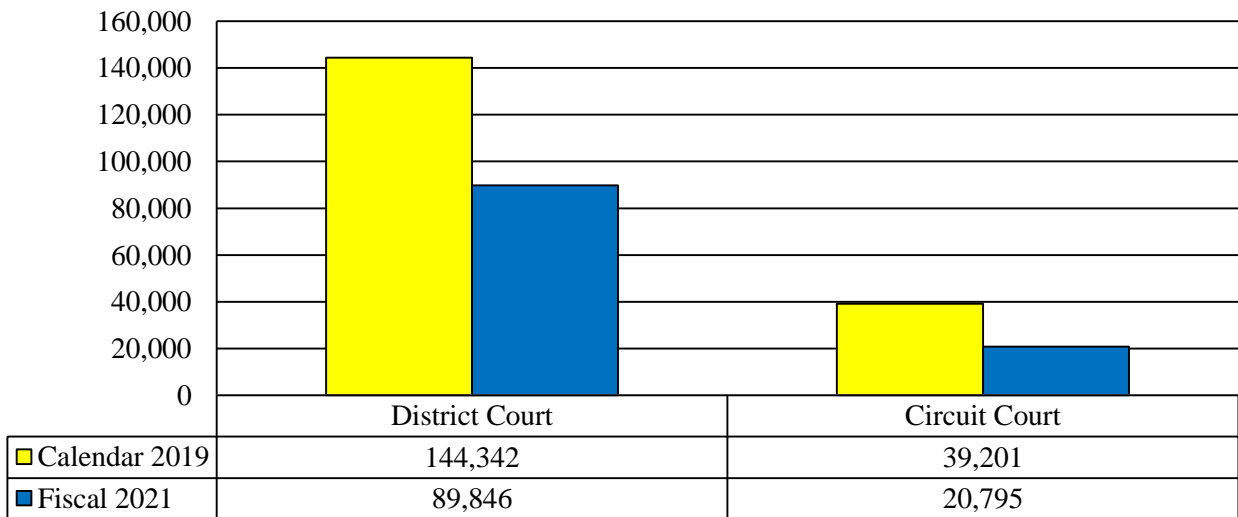
OPD did not report Managing for Results (MFR) data for fiscal 2020, due to two reasons: (1) OPD experienced a cybersecurity breach that eliminated some of the data during this period; and (2) OPD decided to switch its data collection for MFRs from calendar year to fiscal year. Due to these factors, the six months of data between January through June 2020 was lost in the ransomware attack. This is shown in the MFR exhibits, which compare calendar 2019 to fiscal 2021.

Additional discussion of the cybersecurity breach can be found in the Office of Legislative Audits (OLA) Fiscal Compliance Audit section later in this analysis.

District and Circuit Court Caseloads Decline Dramatically

As shown in **Exhibit 4**, the fiscal 2021 estimated agency caseload was 89,846 District Court and 20,795 circuit court cases, a decrease of 54,496 (37.8%) and 18,406 (47.0%), respectively, from calendar 2019. These decreases have been driven by the closure of the courts and other impacts of the COVID-19 pandemic. **OPD should comment on the impact of COVID-19 on operations, if it believes cases will return to pre-COVID-19 levels, and any backlog in OPD caseloads.**

Exhibit 4
District and Circuit Court Caseloads
Calendar 2019 versus Fiscal 2021

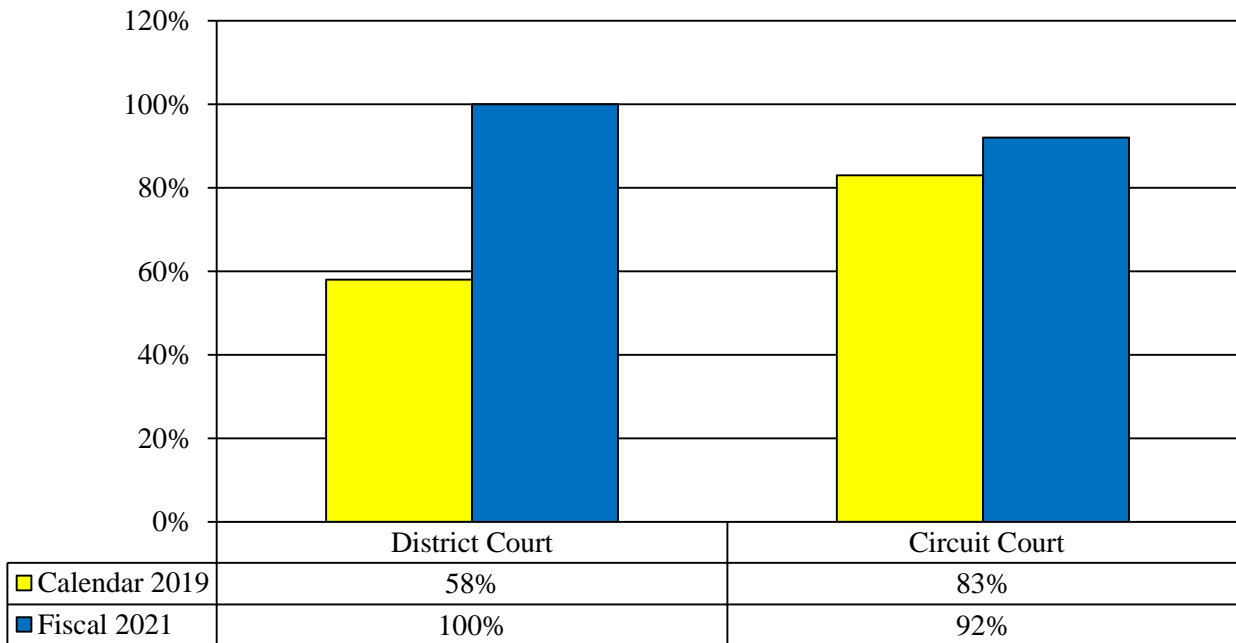


Source: Department of Budget and Management; Department of Legislative Services

Percentage of District Offices Meeting Standards Increases Dramatically

OPD maintains caseload standards for attorneys within each of its district offices. In fiscal 2021, the percent of district offices meeting these standards rose to 100% in the district courts and 92% in the circuit courts. This was up from 58% and 83%, respectively, in calendar 2019, as shown in **Exhibit 5**. This increase in the percentage of district offices meeting the caseload standards corresponds to the decrease in statewide OPD case numbers due to the impacts of COVID-19. **OPD should comment on the increase in the percentage of district offices meeting caseload standards and if it believes that this trend will continue when the courts resume normal operations post-COVID-19.**

Exhibit 5
District Offices Meeting Standards
Calendar 2019 versus Fiscal 2021

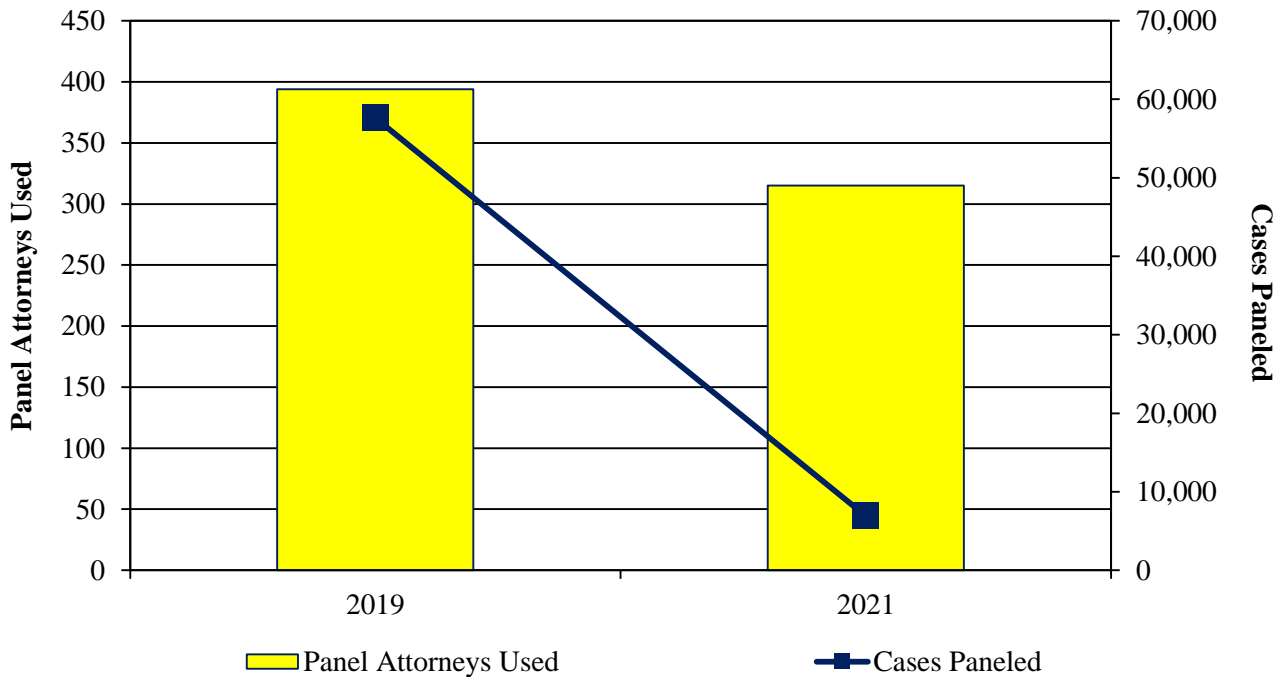


Source: Department of Budget and Management; Department of Legislative Services

Number of Cases Paneled Drops Almost 90%

OPD uses private attorneys to handle cases when a conflict of interest is present in a case. These attorneys are selected from the panel list and are paid a fixed hourly rate of \$60 or \$75 per hour for cases where a life sentence is possible. As shown in **Exhibit 6**, in fiscal 2021, the number of panel attorneys used and the number of cases paneled declined by 20% and 88%, respectively. In fiscal 2021, OPD spent \$7.4 million on panel attorney fees, which is \$453 per case paneled.

**Exhibit 6
Panel Attorneys Used and Cases Paneled
Calendar 2019 versus Fiscal 2021**



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

2. OPD Attorney Compensation and Retention Troubles Rise

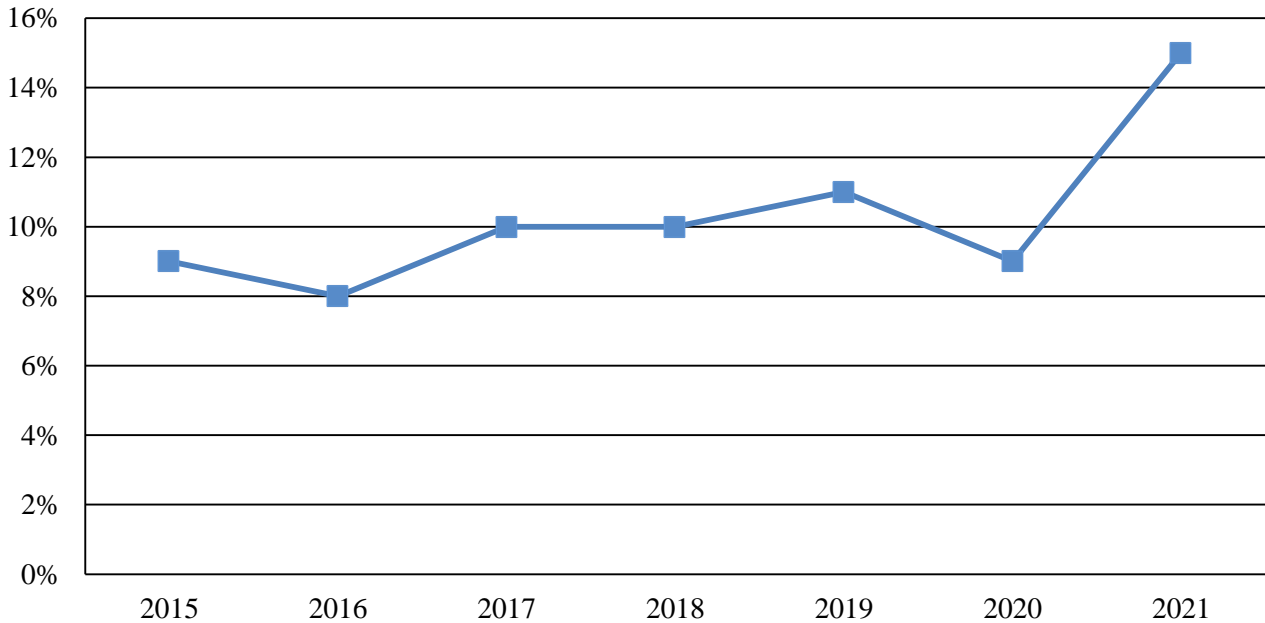
OPD is having trouble attracting and retaining qualified attorneys and support personnel. During the 2021 session, OPD was asked to provide a *Joint Chairmen’s Report* (JCR) response on public defender pay and benefits. This report included information on the comparison between attorneys at OPD; Virginia public defenders; Washington, DC public defenders; and federal public defenders for the District of Maryland. These comparisons demonstrate that OPD compensation lags peer agencies in the region.

OPD Attorney Turnover Rate Increases Rapidly in 2021

The turnover rate among OPD attorneys saw a substantial uptick in 2021 to 15%, up from 9% the prior year, which is shown in **Exhibit 7**. This places pressure on OPD to hire new attorneys quickly and hinders efforts to promote experienced attorneys from within the organization. **OPD should**

comment on this increase in the turnover rate for attorneys and address any steps being taken to decrease this rate.

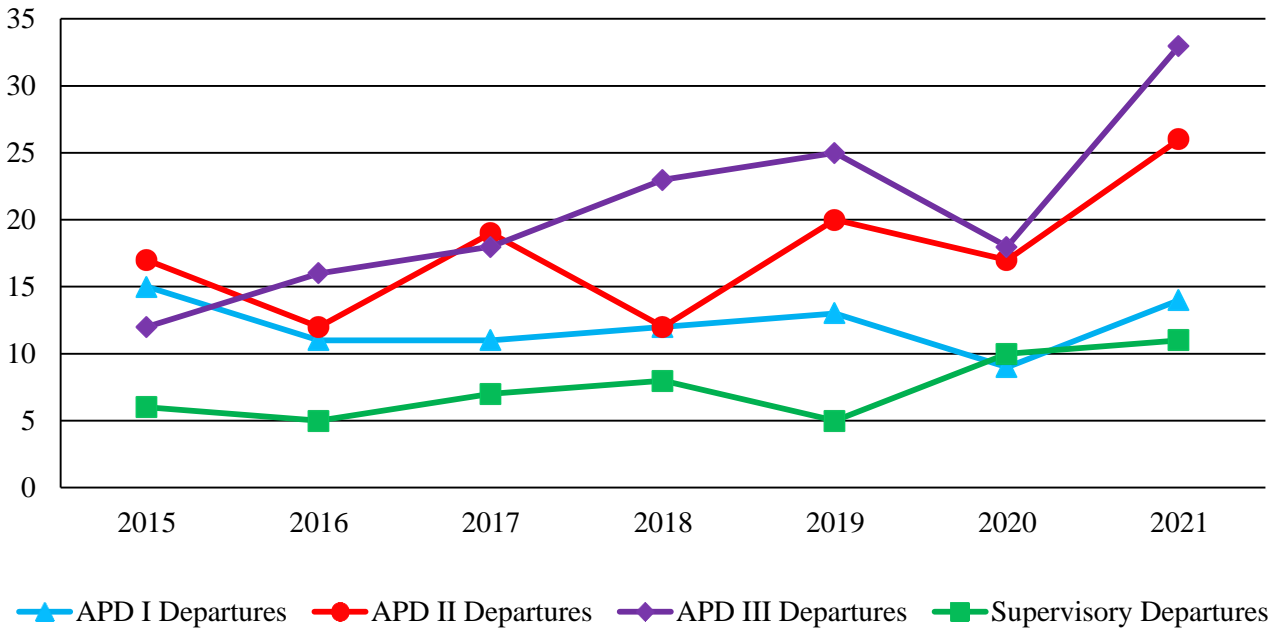
Exhibit 7
Office of the Public Defender Attorney Turnover Rate
Calendar 2015-2021



Source: Office of the Public Defender; Department of Legislative Services

While the overall turnover rate for attorneys at OPD has increased, the rate has differed by attorney classification. Attorneys who hold the APD II and APD III classifications have the experience necessary to try more serious levels of felony cases. **Exhibit 8** shows the number of departures for each of the attorney classifications at OPD. Although departures increased across all classifications, they were greater among more experienced attorneys. **The Department of Legislative Services (DLS) recommends the adoption of committee narrative requesting that OPD submit a report on the impact of current vacancy rates, turnover, and the compensation levels experienced by personnel.**

Exhibit 8
Office of the Public Defender Attorney Departures by Classification
Calendar 2015-2021



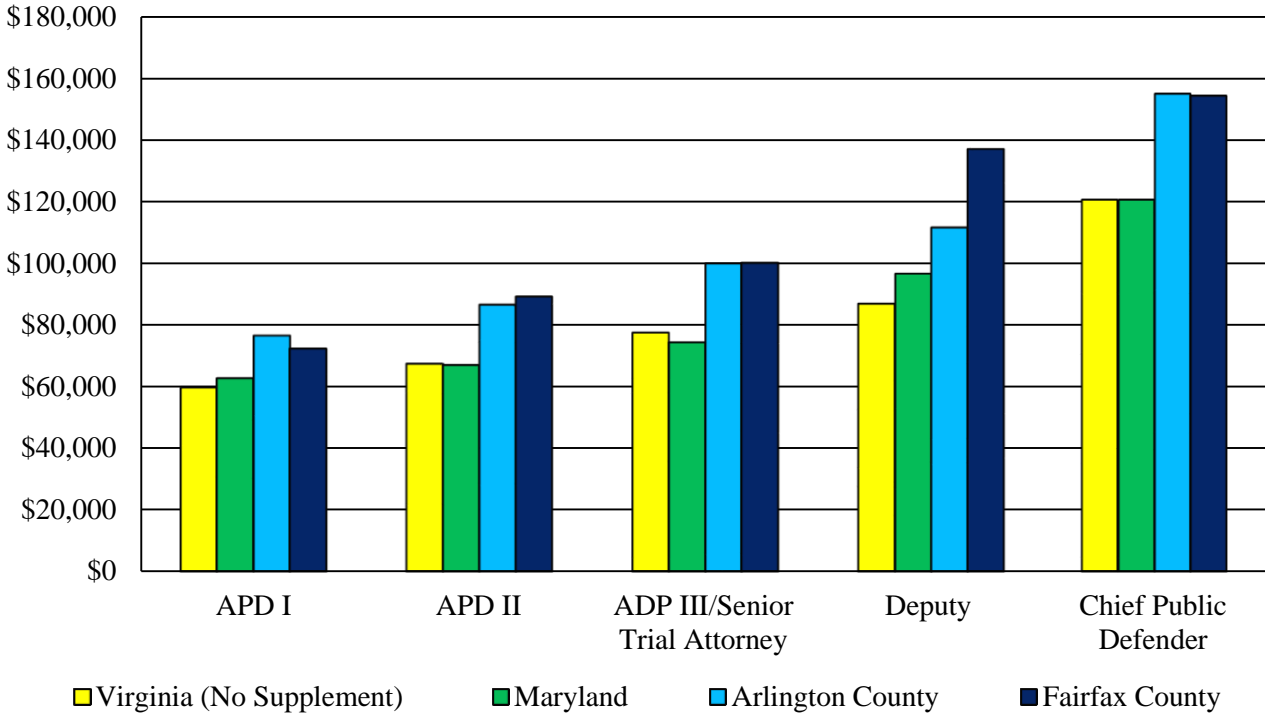
APD: assistant public defender

Source: Office of the Public Defender; Department of Legislative Services

OPD Attorney Compensation Lags Behind Neighboring Jurisdictions

As shown in **Exhibit 9**, OPD attorney compensation remains competitive with the baseline Virginia rate. However, OPD salaries lag public defender compensation for Arlington County and Fairfax County. Entry-level OPD attorneys make \$9,293 and \$13,654 less than entry-level Arlington and Fairfax counties public defenders, respectively.

**Exhibit 9
Public Defender Compensation – Maryland and Virginia**

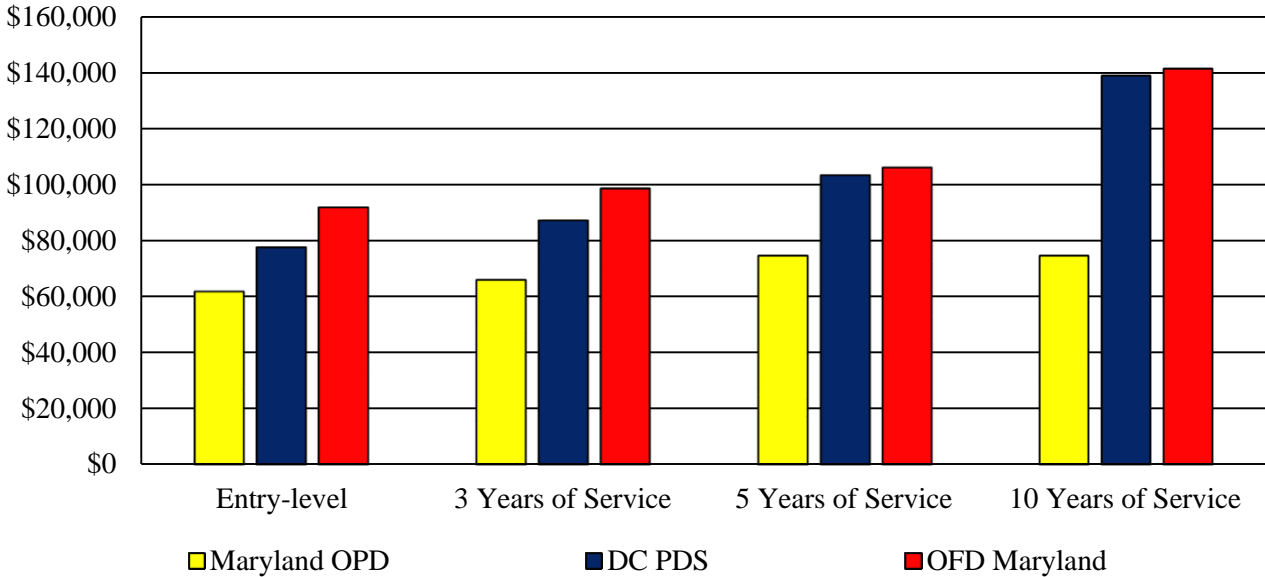


APD: assistant public defender

Source: Department of Legislative Services

OPD compensation lags both Washington, DC public defenders and federal public defenders for the District of Maryland, as shown in **Exhibit 10**. Entry-level public defenders in Washington, DC make an average of \$15,877 more than entry-level OPD attorneys in Maryland, while entry-level federal public defenders make \$30,131 more. This differential in compensation increases with five years of experience, with Washington, DC public defenders making roughly \$28,859 more and federal public defenders making \$31,531 more than OPD attorneys at a similar level. **OPD should comment on the lower compensation that OPD attorneys receive compared to peer agencies and its impact on turnover rates.**

Exhibit 10
Public Defender Compensation – Federal; Washington, DC; and Maryland



DC PDS: District of Columbia Public Defender Service
Maryland OPD: Maryland Office of the Public Defender
OFD Maryland: Federal Public Defender for the District of Maryland

Source: Department of Legislative Services

3. OLA Fiscal Compliance Audit – August 2021

OLA uncovered four new findings in its most recent fiscal compliance audit of OPD. These audit findings indicate ongoing IT concerns and issues connected to the handling of payments for IT contracts and panel attorneys. The four findings are as follows:

- OPD did not comply with State procurement laws and regulations when awarding two sole-source IT contracts with expenditures totaling \$960,000.
- OPD’s procedures for monitoring two IT contracts did not ensure that certain deliverables were provided and tasks were performed.
- OPD had not fully implemented 3 of 10 recommendations issued by the Department of Information Technology (DoIT) based upon its investigation of the IT security incident experienced during March 2020.

- OPD lacked comprehensive procedures to ensure the propriety of panel attorney invoices. In addition, OPD lacked documentation that the payments of certain panel attorney services that exceeded the maximum rate were properly authorized.

These audit findings highlight concerns about IT security at OPD following the March 2020 ransomware incident.

March 2020 Ransomware Attack

In March 2020, OPD experienced a broad security breach that resulted in a ransomware attack. This attack impacted the entire OPD secure computer network and disrupted IT operations for all OPD servers and user computers. After the attack, OPD notified DoIT's Office of Security Management, which initiated incident response measures for OPD.

The DoIT response and investigation included extensive incident analysis work. In response to this analysis, DoIT made 10 recommendations for improving OPD's overall IT security posture. For OPD, a multi-phase ID recovery effort occurred, which extended from early April 2020 until June 2020. OPD's operations were substantially impacted by this cybersecurity attack, and the data collected during the period from the end of calendar 2019 to June 2020 was lost. **DLS recommends the adoption of committee narrative requesting a report on IT security conditions within OPD and the steps taken by OPD to implement the recommendations made by DoIT.**

Operating Budget Recommended Actions

1. Adopt the following narrative:

Attorney Applicant, Hiring, and Separations Report: The committees are concerned about the high vacancy and turnover rates at the Office of the Public Defender (OPD). The committees request a report, to be submitted by October 1, 2022, detailing for fiscal 2018 to 2022 the number of applicants for attorney positions, the classification of newly hired attorneys, the number of separations by classification, and the reason for each separation.

Information Request	Author	Due Date
Attorney applicant, hiring, and separations report	OPD	October 1, 2022

2. Adopt the following narrative:

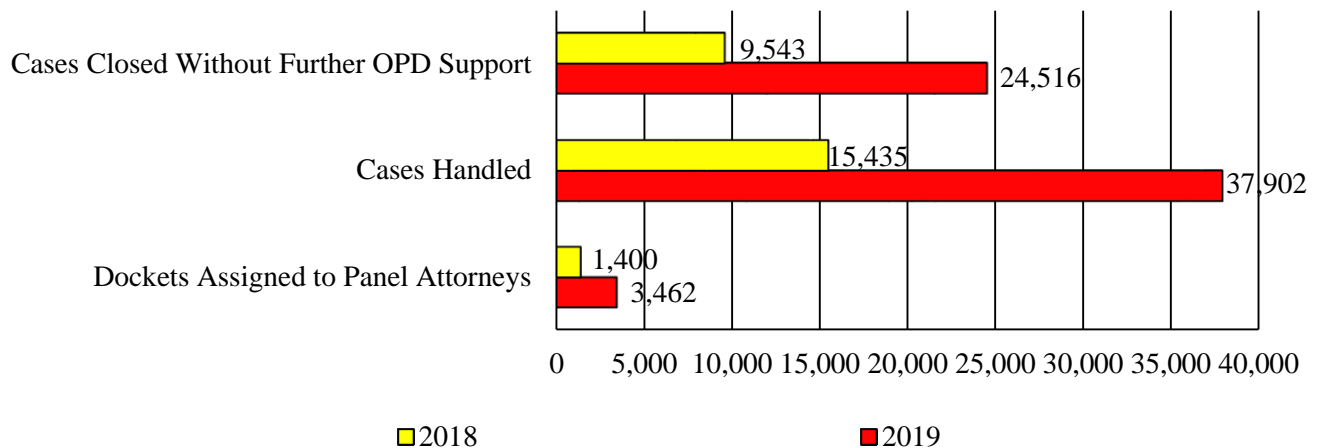
Information Technology (IT) Security Conditions Report: The committees are concerned about the ongoing impacts of the cybersecurity attack on the Office of the Public Defender (OPD) in March 2020. The committees request a report, to be submitted by August 1, 2022, detailing the cybersecurity conditions within OPD and what steps OPD is taking to implement the remaining three recommendations made by the Department of Information Technology based on its investigation of the March 2020 attack.

Information Request	Author	Due Date
IT security conditions report	OPD	August 1, 2022

Updates

- New OPD eDefender Case Management System:** OPD has implemented eDefender, which is a commercial off-the-shelf case management system that has been customized to meet the needs of OPD. The eDefender system replaces an outdated case management system and allows OPD to implement real-time data exchange, updated security requirements, and obtain full software support. Additionally, eDefender can be used outside of the OPD offices for teleworking, which is critical given the ongoing COVID-19 pandemic. The fiscal 2022 working appropriation contains the final amount of funding for this project.
 - Workload Reduction Pilot Program Funding Rescinded:** The Workload Reduction Pilot Program was created by OPD to reduce high caseloads for attorneys. This program diverted multicase traffic dockets in District Court to private attorneys at \$500 per diem rates. OPD received \$2 million in funding for the program in fiscal 2019. However, the \$2 million in fiscal 2020 funding was rescinded due to the impact of the pandemic on court activity, and the funding was not restored in fiscal 2021. **Exhibit 11** demonstrates the outcomes of the program during the six-month trial in fiscal 2018 and the yearlong operation of the program in fiscal 2019. In fiscal 2018, the work done by panel attorneys through the pilot program was the equivalent to adding 12 staff attorneys, and in fiscal 2019, it was the equivalent to 38 staff attorneys.
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Exhibit 11
Workload Reduction Pilot Program
Fiscal 2018-2019



OPD: Office of the Public Defender

Source: Office of the Public Defender; Department of Legislative Services

Appendix 1
2021 Joint Chairmen’s Report Responses from Agency

The 2021 JCR requested that OPD prepare one report. An electronic copy of the full JCR response can be found on the DLS Library website.

- ***Public Defender Pay and Benefits Comparison Report:*** This JCR response provides information on the pay and benefits for public defenders in Virginia; Washington, DC; and Pennsylvania and how it compares to Maryland. Additionally, the report compares the compensation received by attorneys with the Office of the Attorney General and OPD. An evaluation of the effectiveness of the Workload Reduction Pilot Program is also included. OPD pay and benefits are discussed in more detail in Key Observation 2 of this analysis.

**Appendix 2
Audit Findings**

Audit Period for Last Audit:	September 23, 2016 – June 30, 2020
Issue Date:	August 2021
Number of Findings:	4
Number of Repeat Findings:	0
% of Repeat Findings:	0%
Rating: (if applicable)	

Finding 1: OPD did not comply with State procurement laws and regulations when awarding two sole-source IT contracts with expenditures totaling \$960,000.

Finding 2: OPD’s procedures for monitoring two IT contracts did not ensure that certain deliverables were provided and tasks were performed.

Finding 3: OPD had not fully implemented 3 of 10 recommendations issued by DoIT based upon its investigation of the IT security incident experienced during March 2020.

Finding 4: OPD lacked comprehensive procedures to ensure the propriety of panel attorney invoices. In addition, OPD lacked documentation that the payments for certain panel attorney services that exceeded the maximum rate were properly authorized.

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

**Appendix 3
Object/Fund Difference Report
Office of the Public Defender**

<u>Object/Fund</u>	<u>FY 21 Actual</u>	<u>FY 22 Working Appropriation</u>	<u>FY 23 Allowance</u>	<u>FY 22 - FY 23 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	888.50	883.50	883.50	0.00	0%
02 Contractual	67.06	69.75	53.50	-16.25	-23.3%
Total Positions	955.56	953.25	937.00	-16.25	-1.7%
Objects					
01 Salaries and Wages	\$ 91,414,593	\$ 87,698,949	\$ 93,671,760	\$ 5,972,811	6.8%
02 Technical and Special Fees	13,695,822	18,074,312	17,657,556	-416,756	-2.3%
03 Communication	534,523	408,160	408,160	0	0%
04 Travel	33,103	8,700	71,803	63,103	725.3%
06 Fuel and Utilities	109,110	105,064	105,064	0	0%
07 Motor Vehicles	50,059	31,540	31,540	0	0%
08 Contractual Services	4,432,721	5,048,041	4,838,372	-209,669	-4.2%
09 Supplies and Materials	183,815	187,285	167,966	-19,319	-10.3%
10 Equipment – Replacement	374,345	590,133	753,783	163,650	27.7%
11 Equipment – Additional	282,579	19,100	5,000	-14,100	-73.8%
13 Fixed Charges	2,741,439	2,694,462	2,827,659	133,197	4.9%
Total Objects	\$ 113,852,109	\$ 114,865,746	\$ 120,538,663	\$ 5,672,917	4.9%
Funds					
01 General Fund	\$ 109,666,885	\$ 110,405,010	\$ 117,483,416	\$ 7,078,406	6.4%
03 Special Fund	515,801	621,641	291,911	-329,730	-53.0%
05 Federal Fund	2,004,197	2,172,939	1,685,693	-487,246	-22.4%
09 Reimbursable Fund	1,665,226	1,666,156	1,077,643	-588,513	-35.3%
Total Funds	\$ 113,852,109	\$ 114,865,746	\$ 120,538,663	\$ 5,672,917	4.9%

Note: The fiscal 2022 working appropriation and fiscal 2023 allowance do not reflect funding for statewide personnel actions budgeted in the Department of Budget and Management, which include cost-of-living adjustments, increments, bonuses, and may include annual salary review adjustments.