

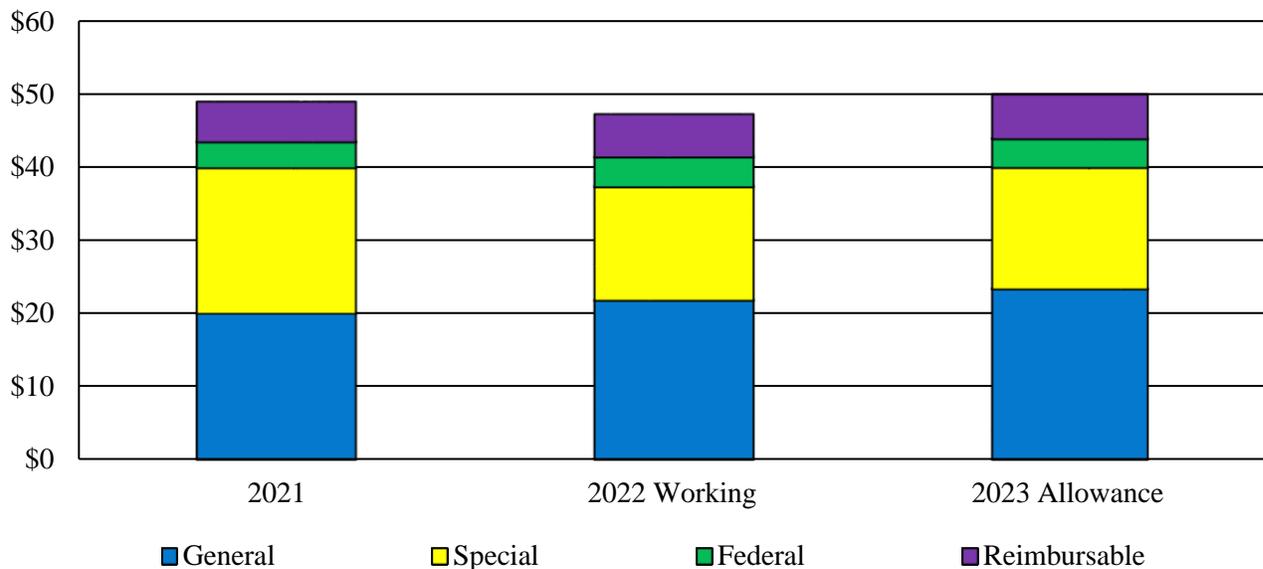
C81C
Office of the Attorney General

Program Description

The Attorney General acts as legal counsel to the Governor; the General Assembly; the Judiciary; and all departments, boards, and commissions (except the Maryland Commission on Civil Rights, the Public Service Commission, and the State Ethics Commission). The Office of the Attorney General (OAG) represents the State in all matters of interest to the State, including civil litigation and criminal appeals in all State and federal courts. The office also reviews legislation passed by the General Assembly prior to consideration by the Governor and oversees the expenditures of the Mortgage Loan Servicing Practices Settlement Fund. The office is currently supported by 14 divisions: Legal Counsel and Advice; Securities; Consumer Protection; Antitrust; Medicaid Fraud Control; Civil Litigation; Criminal Appeals; Criminal Investigation; Educational Affairs; Correctional Litigation; Contract Litigation; People’s Insurance Counsel; the Independent Investigations Division; and the Juvenile Justice Monitoring Unit.

Operating Budget Summary

Fiscal 2023 Budget Increases \$2.6 Million, or 5.5%, to \$49.9 Million
(\$ in Millions)



Note: Numbers may not sum due to rounding. The fiscal 2022 working appropriation includes deficiencies. The fiscal 2022 working appropriation and the 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 2022

Proposed Deficiencies

Unemployment Insurance Lawsuit

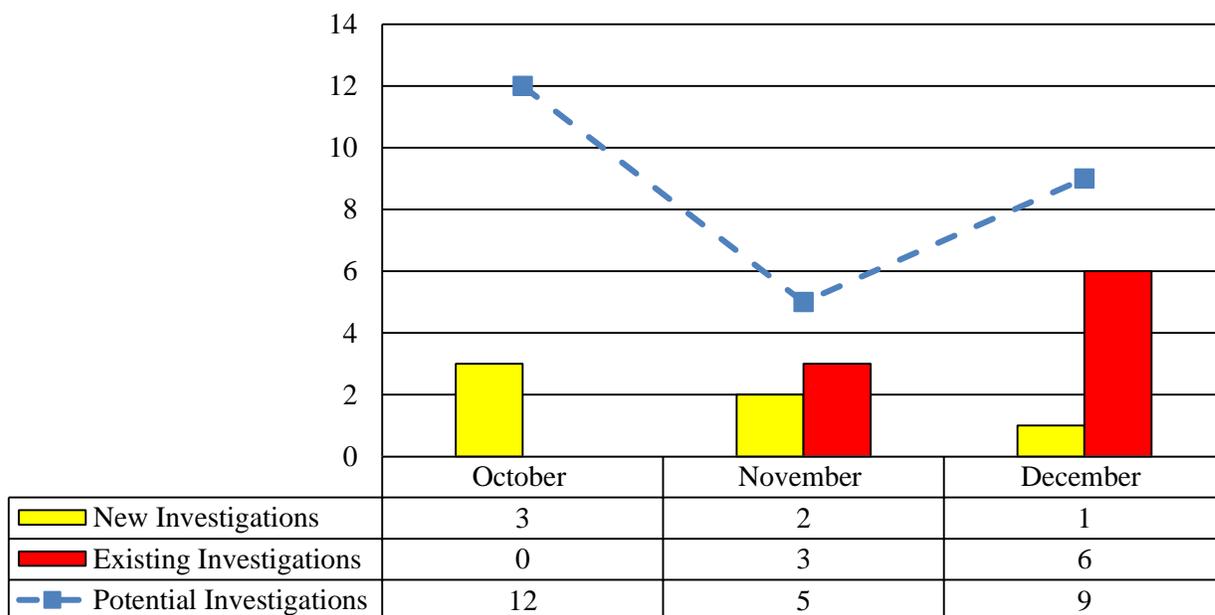
Fiscal 2022 deficiency funding includes \$545,927 in special funds supported by Consumer Protection Division (CPD) recoveries for legal costs related to defending the Maryland Department of Labor in the Unemployment Insurance (UI) lawsuit. The class-action lawsuit, *Gorres et al. v. Robinson*, was brought by six plaintiffs in the U.S. District Court for the District of Maryland. In the lawsuit against Secretary of Labor Tiffany P. Robinson, the six Marylanders allege that the State's administration of the UI program violated the federal Social Security Act and the U.S. Constitution. The Secretary of Labor is being defended by private counsel who will be compensated by OAG.

Independent Investigations Division

Chapter 132 of 2021, the Maryland Police Accountability Act, established a number of significant police reform measures, including the creation of the Independent Investigations Division (IID) within OAG. IID is charged with investigating all alleged or potential police-involved deaths of civilians and providing a report containing detailed investigative findings to the State's Attorney of the county that has jurisdiction. The new division began its work in October 2021. Fiscal 2022 deficiency funding proposes to add \$877,630 in general funds to support IID operating costs, in addition to reallocating 9 positions and \$924,450 in associated general funds from the Legal Counsel and Advice division to the newly created unit. These positions include 4 administrator positions, 1 program managers, 2 assistant Attorneys General, 1 division director and 1 principal counsel. The fiscal note for Chapter 132 estimated that the division would require 22 additional staff and cost approximately \$2.4 million in fiscal 2022, increasing to \$3.0 million by fiscal 2026. The fiscal 2023 allowance provides IID with nearly \$1.9 million in general funds. **OAG should comment on the current personnel levels for IID and if additional staff will be needed to fulfill the division's objectives.**

Exhibit 1 highlights the immediate activity of IID by illustrating the number of potential investigations, new investigations, and existing investigations for the first three months since being established. Potential investigations are instances of police use of force that might fall within IID's jurisdiction. New investigations are cases of police use of force where IID conducts a full investigation of the incident, and existing investigations are ongoing investigations from prior months. In December 2021, there were nine potential investigations, six existing investigations, and one new investigation. These numbers are likely to increase due to higher crime rates during the summer months, which leads to a greater number of police actions. **The Department of Legislative Services (DLS) recommends the adoption of committee narrative requesting a report detailing the work of IID over the course of its first year of operations.**

**Exhibit 1
Independent Investigations Division Caseload
October 2021 to December 2021**

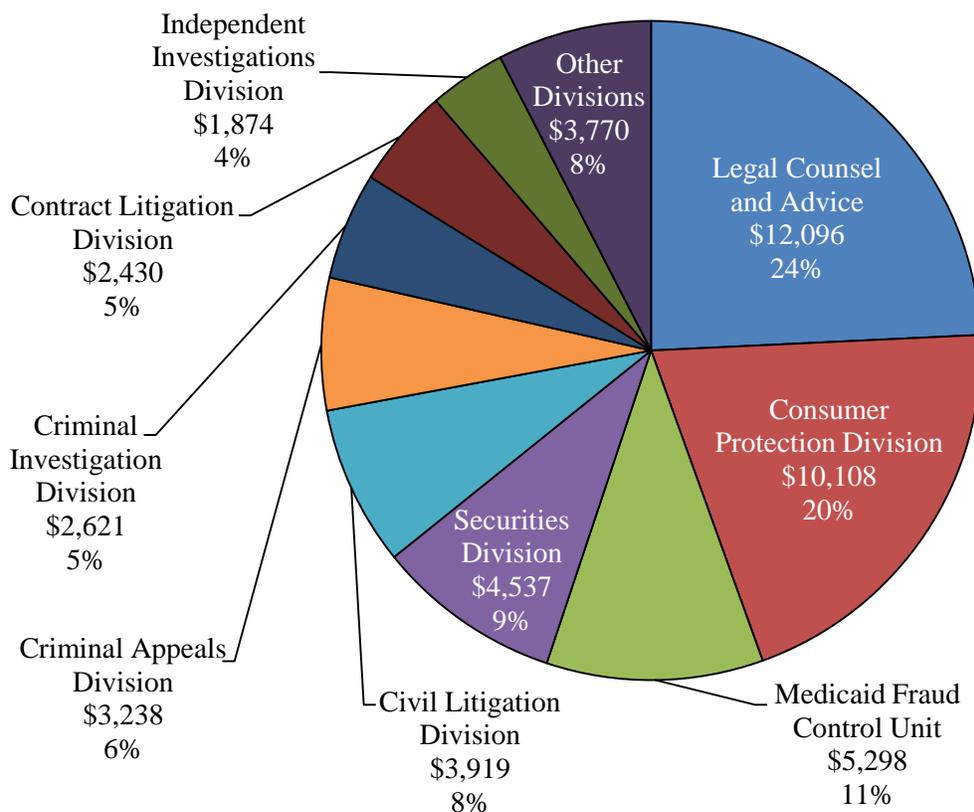


Source: Office of the Attorney General, Department of Legislative Services

Fiscal 2023 Overview of Agency Spending

OAG’s budget and funding mechanism is complex, especially considering the relative size of the agency. There are 10 separate special fund accounts with various revenue sources in the fiscal 2023 allowance as well as reimbursable funds from 7 separate agency accounts with specified purposes. On the expenditure side, Legal Counsel and Advice (24%) constitutes the largest area of spending, as shown in **Exhibit 2**. CPD (20%) and the Medicaid Fraud Control Unit (MFCU) (11%) comprise the next two largest areas of spending.

Exhibit 2
Overview of Agency Spending
Fiscal 2023 Allowance
(\$ in Thousands)



Source: Fiscal 2023 Budget Books; Department of Legislative Services

Funding for Senior and Vulnerable Adult Asset Recovery Unit Not Included in Fiscal 2023 Budget

The General Assembly passed SB 407 of 2020 to establish the Senior and Vulnerable Adult Asset Recovery Unit (SVARU) within OAG, but the bill was vetoed by Governor Lawrence J. Hogan, Jr. The bill was subsequently enacted into law as Chapter 3 of 2021 via veto override by the General Assembly. SVARU is intended to bring civil actions for damages against persons who violate the State’s prohibition against exploitation of a vulnerable adult. If SVARU is successful, it may recover damages for property loss or damages. Additionally, the cost of the action may be recovered for the use of OAG. The Governor is required to appropriate \$250,000 annually beginning in fiscal 2023 to fund

the unit’s work, but it is unclear if this funding is included in the fiscal 2023 allowance. **OAG should comment on the status of the Senior and Vulnerable Adult Asset Recovery Unit and if any of the functions of the new unit are currently being fulfilled by the existing divisions.**

Proposed Budget Change

As illustrated in **Exhibit 3**, the fiscal 2023 allowance increases by \$2.6 million, or 5.5%, over the fiscal 2022 working appropriation. This increase is largely driven by increases in personnel expenditures, including the addition of 1 new assistant Attorney General position. The largest increase in nonpersonnel spending is for centrally budgeted overhead expenses for consumer protection activities within Legal Counsel and Advice.

Exhibit 3
Proposed Budget
Office of the Attorney General
(\$ in Thousands)

How Much It Grows:	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
Fiscal 2021 Actual	\$19,944	\$19,922	\$3,567	\$5,452	\$48,886
Fiscal 2022 Working Appropriation	21,704	15,643	4,094	5,823	47,263
Fiscal 2023 Allowance	<u>23,282</u>	<u>16,633</u>	<u>3,968</u>	<u>5,978</u>	<u>49,861</u>
Fiscal 2022-2023 Amount Change	\$1,579	\$990	-\$126	\$155	\$2,598
Fiscal 2022-2023 Percent Change	7.3%	6.3%	-3.1%	2.7%	5.5%
Where It Goes:					<u>Change</u>
Personnel Expenses					
Turnover expectancy.....					\$2,087
Health insurance.....					305
Salaries.....					279
Retirees’ health insurance premiums					266
New assistant attorney general position.....					133
Employees’ retirement system.....					124
Social Security contributions					56
Unemployment compensation.....					2
Workers’ compensation					-7

C81C – Office of the Attorney General

Where It Goes:	<u>Change</u>
Other Changes	
Administrative overhead for CPD within Legal Counsel and Advice	250
Rent	63
Experts, depositions, filing fees, and other legal expenses	25
DoIT services expenses	21
Health insurance for contractual employees	12
Other adjustments	7
Statewide personnel allocation	-2
Equipment expenses	-34
One-time expenses from creation of Independent Investigations Division	-52
Administrative hearings	-92
Nonrent expenses for St. Paul Plaza offices	-52
Federal grant for Medicaid Fraud Unit expenses	-245
Fiscal 2022 deficiency to fund legal costs related to defending MDL in UI lawsuit	-546
Total	\$2,598

CPD: Consumer Protection Division
DoIT: Department of Information Technology

MDL: Maryland Department of Labor
UI: Unemployment Insurance

Note: Numbers may not sum to total due to rounding. This fiscal 2022 working appropriation includes deficiencies. 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>FY 22</u>	<u>FY 23</u>	<u>FY 22-23</u>
	<u>Actual</u>	<u>Working</u>	<u>Allowance</u>	<u>Change</u>
Regular Positions	270.50	285.50	286.50	1.00
Contractual FTEs	<u>10.70</u>	<u>47.40</u>	<u>47.40</u>	<u>0.00</u>
Total Personnel	281.20	332.90	333.90	1.00

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	14.25	5.00%
Positions and Percentage Vacant as of 12/31/21	45.40	15.90%
Vacancies Above Turnover	31.15	

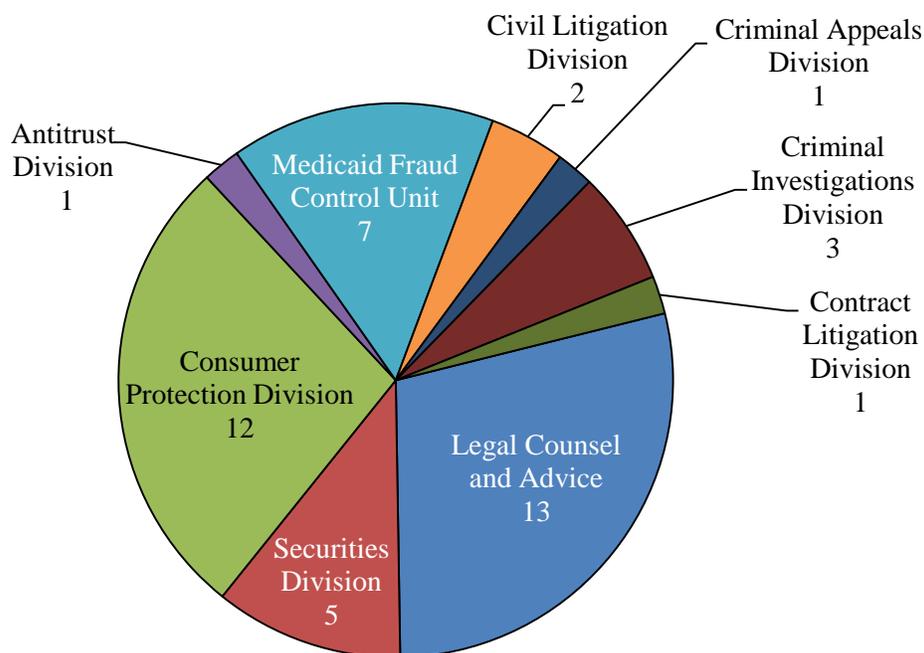
Personnel Changes

The fiscal 2023 allowance includes a net increase of 1 new assistant Attorney General position in Legal Counsel and Advice. This position is necessary to aid in the implementation of Chapter 76 of 2021, which provides compensation and benefits to individuals who have been wrongfully convicted and incarcerated for crimes that they did not commit. OAG represents the State in these matters when they are held before the Office of Administrative Hearings. OAG previously had hired an attorney, using a contractual position, to represent the State in the proceedings and carry out the requirements of the Act. The addition of this position converts the contractual position into a regular assistant Attorney General position.

Vacancy Rate Jumps to Over 15%

OAG’s vacancy rate has risen to 15.9%, from 10.6% the prior year. OAG has 45.4 positions vacant as shown in **Exhibit 4**. The current attorney vacancies include 2 principal counsel positions, 11 assistant Attorney General positions, and 1 staff attorney position. OAG has also had difficulty recruiting auditors and paralegals.

Exhibit 4
Vacancies by Division



Source: Department of Legislative Services

C81C – Office of the Attorney General

OAG has been having trouble attracting qualified applicants for job postings and has had to repeatedly relist job announcements in order to fill the positions. OAG has indicated that the high vacancy rate drives up caseloads for the current employees, which makes continued employment at OAG less desirable. OAG has also been given an increasingly wide range of responsibilities with the creation of IID and leading the Access to Counsel in Evictions task force. These additional responsibilities tax the current personnel levels and make the issue of high vacancy rates even more pressing. The new Case Management System, scheduled to be completed in fiscal 2022, should make it possible to gather the data needed to better understand the agency's workload needs and the impact on the high vacancy levels. **DLS recommends the adoption of committee narrative requesting a report on vacancy rates within OAG, barriers to attracting qualified applicants, and the caseload data in each of OAG's divisions or units.**

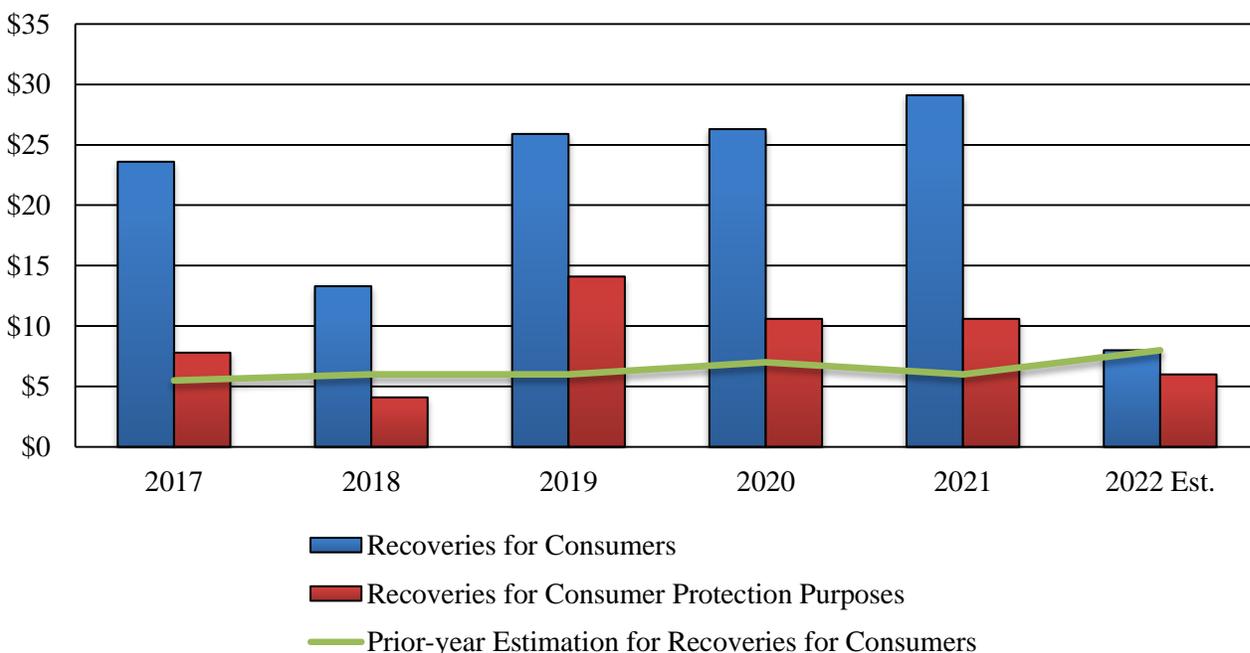
Key Observations

1. Managing for Results: Consumer Protection, Medicaid Fraud, and Antitrust Enforcement

Consumer Recoveries

CPD within OAG provides Marylanders with mediation and arbitration services to help resolve complaints against businesses and health insurance carriers. In fiscal 2021, as shown in **Exhibit 5**, OAG recovered \$29.1 million in restitution. Recoveries are volatile from year to year based on a varied caseload. The funds that OAG recovers for consumers are not always linked to the funds that it receives for consumer protection purposes, as seen in the exhibit. As such, the agency sets a conservative goal for the amounts that it hopes to recover for consumers. In fiscal 2021, the amount of funds recovered for consumers increased by 11% compared to the prior year. During the same period, the amount of funds recovered for consumer protection purposes remained consistent at \$10.6 million.

Exhibit 5
Consumer Protection Division – Consumer and Consumer Protection Recoveries
Fiscal 2017-2022 Est.
(\$ in Millions)

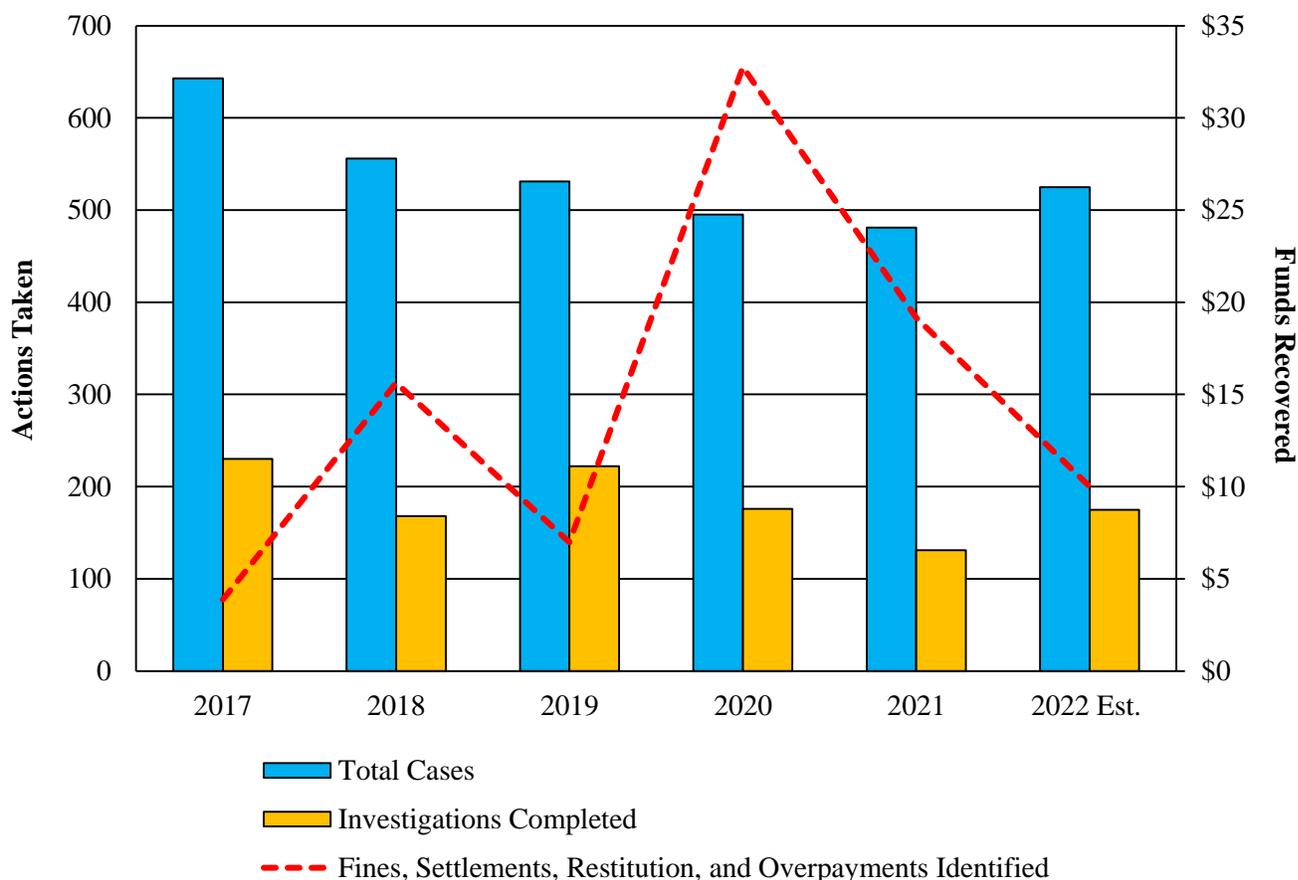


Source: Office of the Attorney General; Department of Legislative Services

Medicaid Fraud Cases Decline Slightly

MFCU investigates and prosecutes two main types of Medicaid fraud: (1) Medicaid providers who steal from the Medicaid program; and (2) fraud in the administration of the program. MFCU was created under federal law, and 75% of its operations are funded by the federal government. In fiscal 2021, the number of total cases decreased by 2.8%, as shown in **Exhibit 6**. The number of investigations completed decreased by 25.6% between fiscal 2020 and 2021. The amount in dollars of fines, settlements, restitution, and overpayments identified dropped dramatically by 41.5% in fiscal 2021. The large spike in this number in fiscal 2020 was due to a large opioid settlement. Additionally, MFCU was able to continue its work during the ongoing COVID-19 pandemic.

Exhibit 6
Medicaid Fraud Control Unit – Medicaid Fraud Cases
 Fiscal 2017-2022 Est.
 (\$ in Millions)

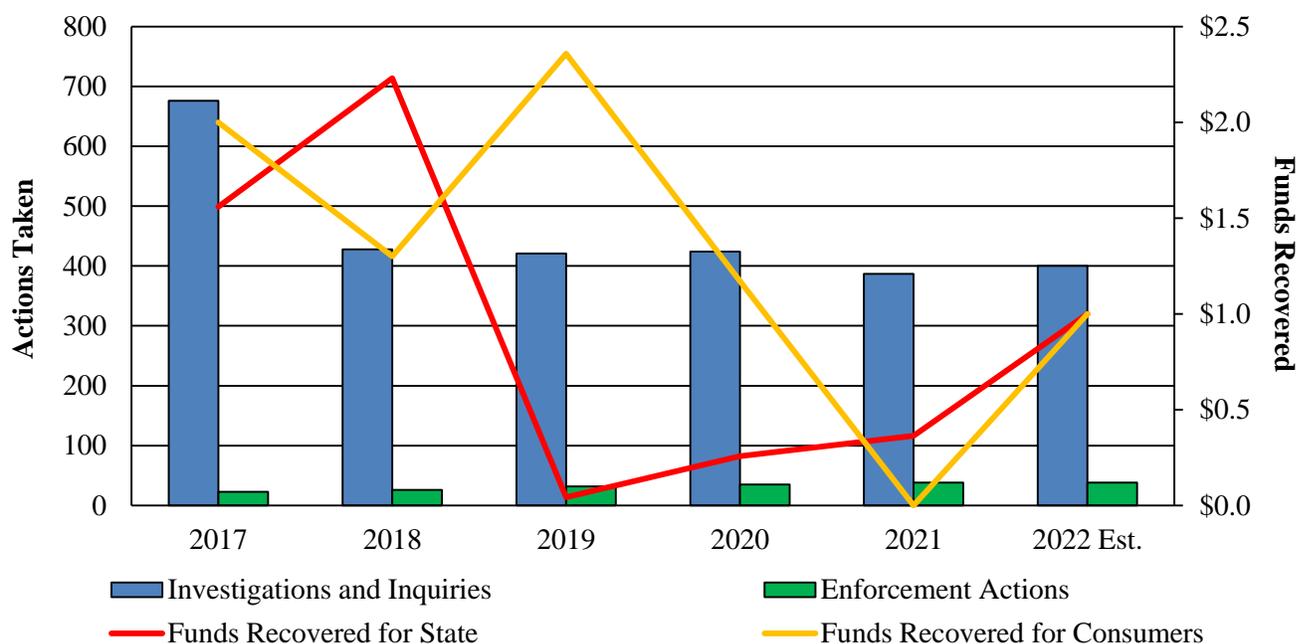


Source: Department of Budget and Management; Department of Legislative Services

Antitrust Enforcement Actions Increase

The Antitrust Division (ATD) within OAG enforces the Maryland Antitrust Act to ensure fair economic competition within the State. ATD also represents Maryland in damage actions brought under federal and State antitrust statutes. As shown in **Exhibit 7**, the number of investigations and inquiries decreased by 8.7% in fiscal 2021. However, the number of enforcement actions increased by 8.6% between fiscal 2020 and 2021. The amount of funds recovered for the State increased slightly in fiscal 2021, to approximately \$360,000, while no funds were recovered for consumers. The exhibit highlights the volatile nature of antitrust recoveries, as these cases are complex and often take years to settle.

Exhibit 7
Antitrust Division – Antitrust Investigations and Enforcement Actions
Fiscal 2017-2022 Est.
(\$ in Millions)



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

2. Establishment of Access to Counsel in Evictions Task Force

Chapter 746 of 2021 established a right to counsel in cases of evictions for qualifying individuals. It also established the Access to Counsel in Evictions Task Force, which consists of

15 members appointed by OAG. This task force is responsible for studying potential funding sources, making recommendations to improve the implementation of the access to counsel in evictions program, including necessary policy and statutory changes, and evaluating the provision of services through the program. The task force is required to submit an annual report to the Governor and the General Assembly on January 1 each year.

Annual Report Recommendations

The task force began its official work on October 1, 2021, and during the following three months, held nine plenary meetings. These meetings included presentations from the following groups: federal officials about eviction prevention; a presentation from the author of the Stout Study; landlord representatives; tenant advocates; legal service providers; the Judiciary; the Department of Housing and Community Development; community-based organizations; and Frederick County officials. The Stout Study was conducted by Stout Risius Ross, LLC on behalf of the Public Justice Center. This study involved an analysis of the costs and benefits associated with a right to counsel for qualifying individuals in eviction proceedings in Baltimore City. This study has been used as the basis for the cost estimates for the Access to Counsel in Evictions program. To better advance the goals of the task force, the chair created three committees: outreach and assessment; implementation; and funding. These committees included both task force members and other stakeholders. The recommendations developed by the committees were passed on to the full task force. The first annual report was released by the task force in January 2022 and included the following recommendations:

- develop a comprehensive outreach strategy that considers barriers to getting information;
- establish a repository for pre-filing notices related to eviction cases that protects the privacy of Marylanders but also allows for data collection and analysis;
- create a standardized intake system for eligible tenants to obtain legal aid in eviction cases;
- establish uniform court rules for rent court to ensure eligible tenants have access to quality legal counsel;
- ensure an adequate workforce of attorneys and paralegals who can provide legal services in cases of eviction;
- conduct an evaluation of the outreach efforts, connection of tenants to legal aid, and appropriate levels of funding;
- the provision of legal services and the reduction of eviction cases;
- create an eviction data hub to collect, display, and analyze relevant data; and
- provide the Access to Counsel in Evictions Fund with sufficient funding.

Access to Counsel Funding

The Maryland Legal Services Corporation (MLSC) is responsible for implementing and administrating the Access to Counsel in Evictions Program. This program will require a phased implementation, with the rollout of the program determined by MLSC. The goal for the program is that full implementation will be in place by October 2025. The priority for implementation of the program is local jurisdictions that have invested their own funds in providing legal services for Marylanders facing eviction proceedings.

The task force worked in conjunction with MLSC to develop projections for the funding level needed to implement the program. MLSC drew on the Stout Study framework to develop the funding recommendations. The Stout Study provided a funding number for cases in Baltimore City, which was then extrapolated to calculate the statewide funding estimate. The Stout Study projected that only a small percentage of individuals involved in eviction filings would require representation. The limiting factors include the income qualification of the tenants and the merit of the defense in the case. The task force, in the annual report, recommended that the State include an annual operating budget appropriation for the Access to Counsel in Evictions Fund. The task force estimated that approximately \$12 million in funding was needed for fiscal 2023. The report further notes that stable funding is essential for the smooth functioning of the program. Fluctuations in funding could have negative impacts on staffing levels, outreach efforts, and the ability of the program to provide quality legal aid. The Governor’s fiscal 2023 allowance does not include funding for the Access to Counsel in Evictions Program. **OAG should comment on the work of the task force and update the committees on the implementation of the Access to Counsel in Evictions Program, including the office’s future role in addressing this issue.**

Additional discussion of MLSC and the Access to Counsel in Evictions program can be found in the Judiciary operating budget analysis.

Operating Budget Recommended Actions

1. Adopt the following narrative:

Independent Investigations Division: The committees are interested in the work of the newly established Independent Investigations Division (IID) within the Office of the Attorney General (OAG). The committees request a report, to be submitted by November 1, 2022, detailing the work of the division during its first year of operations. This report should include monthly data on the number of potential cases, the number of complete investigations, the outcome of these investigations, and information on the adequacy of current personnel levels. Additionally, OAG should include data on IID’s work in its annual Managing for Results (MFR) submission beginning with the fiscal 2024 budget.

Information Request	Author	Due Date
IID report	OAG	November 1, 2022
IID MFR submission	OAG	With the fiscal 2024 budget submission

2. Adopt the following narrative:

Office of the Attorney General Vacancy Report: The committees are concerned about the impact that a high vacancy rate is having on the operations of the Office of the Attorney General (OAG). The committees request a report, to be submitted by August 1, 2022, detailing the categories of positions experiencing elevated vacancies, an explanation for the difficulty in attracting qualified candidates, possible solutions, any measurable impact that these vacancies are having on the successful operations of OAG, and caseload data for OAG attorneys in each division.

Information Request	Author	Due Date
OAG vacancy report	OAG	August 1, 2022

**Appendix 1
Object/Fund Difference Report
Office of the Attorney General**

<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	270.50	285.50	286.50	1.00	0.4%
02 Contractual	10.70	47.40	47.40	0.00	0%
Total Positions	281.20	332.90	333.90	1.00	0.3%
Objects					
01 Salaries and Wages	\$ 32,311,607	\$ 33,814,064	\$ 37,842,534	\$ 4,028,470	11.9%
02 Technical and Special Fees	1,356,413	3,379,123	3,391,492	12,369	0.4%
03 Communication	180,635	335,396	340,896	5,500	1.6%
04 Travel	81,652	121,374	123,374	2,000	1.6%
07 Motor Vehicles	206,897	156,495	156,425	-70	0%
08 Contractual Services	2,518,549	3,973,915	4,124,957	151,042	3.8%
09 Supplies and Materials	306,544	431,577	431,577	0	0%
11 Equipment – Additional	23,300	93,201	93,201	0	0%
12 Grants, Subsidies, and Contributions	9,156,952	684,441	439,241	-245,200	-35.8%
13 Fixed Charges	2,743,360	2,850,250	2,917,706	67,456	2.4%
Total Objects	\$ 48,885,909	\$ 45,839,836	\$ 49,861,403	\$ 4,021,567	8.8%
Funds					
01 General Fund	\$ 19,944,195	\$ 20,826,134	\$ 23,282,309	\$ 2,456,175	11.8%
03 Special Fund	19,921,832	15,096,600	16,632,552	1,535,952	10.2%
05 Federal Fund	3,567,471	4,093,997	3,968,267	-125,730	-3.1%
09 Reimbursable Fund	5,452,411	5,823,105	5,978,275	155,170	2.7%
Total Funds	\$ 48,885,909	\$ 45,839,836	\$ 49,861,403	\$ 4,021,567	8.8%

Note: The fiscal 2022 working appropriation does not include deficiencies. 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.