

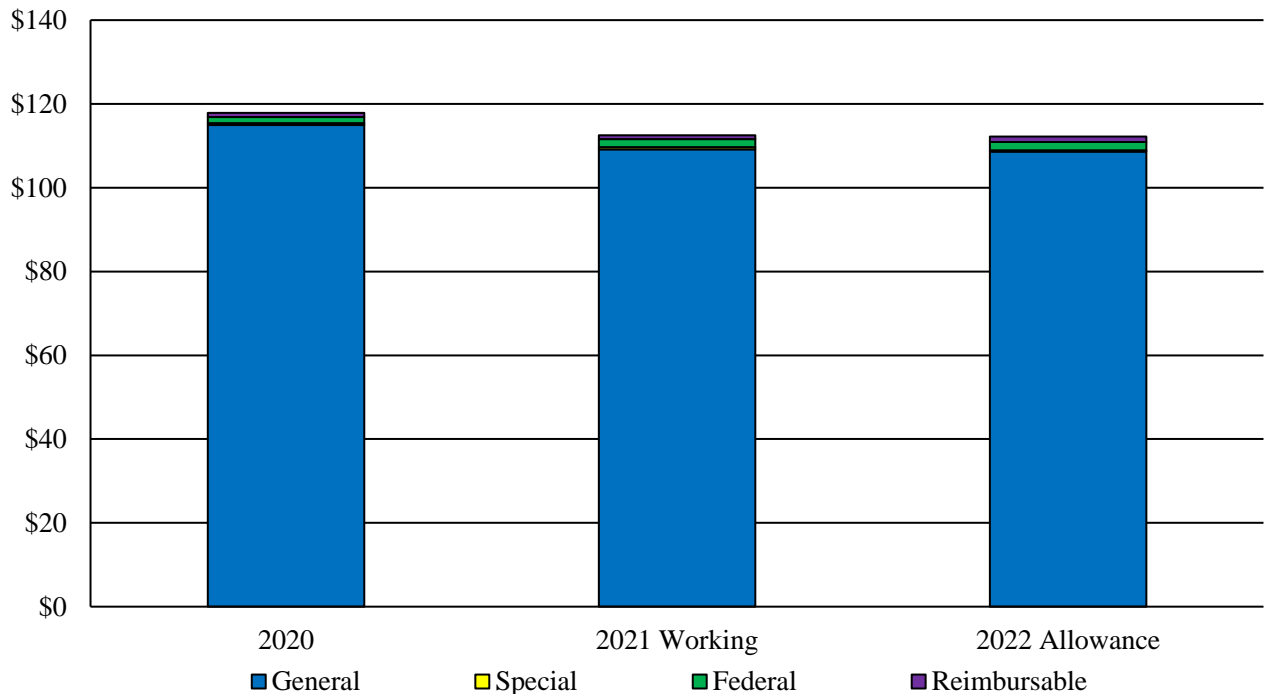
C80B00
Office of the Public Defender

Program Description

The Office of the Public Defender (OPD) provides counsel and related services to indigent persons through 12 district operations, four divisions, and two 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 2022 Budget Decreases by \$0.3 Million, or 0.3%, to \$112.2 Million
(\$ in Millions)**



Note: The fiscal 2021 appropriation includes deficiencies, planned reversions, and general salary increases. The fiscal 2022 allowance includes contingent reductions and annualization of the fiscal 2021 general salary increases.

Fiscal 2021

Cost Containment

Five actions approved by the Board of Public Works on July 1, 2020, reduced OPD's fiscal 2021 appropriation by \$5,039,429 in general funds.

- **General Administration:** The fiscal 2021 appropriation for this division was reduced by \$257,844 in general funds. The agency was directed to reduce operating costs including printing, training, travel, supplies, and equipment; eliminate funding for temporary personnel; and increase turnover.
- **District Operations:** The fiscal 2021 appropriation for this division was reduced by \$4,178,751 in general funds. The agency was directed to reduce operating costs including postage, printing, training, travel, supplies, and equipment; eliminate funding for temporary personnel; increase turnover; delay facilities projects; and decrease panel attorney fees for the Workload Reduction Pilot Program (WRPP).
- **Appellate and Inmate Services:** The fiscal 2021 appropriation for this division was reduced by \$374,493 in general funds. The agency was directed to reduce operating costs including travel and supplies; increase turnover; and reduce transcript costs for electronic submission.
- **Involuntary Institutionalization Services:** The fiscal 2021 appropriation for this division was reduced by \$48,194 in general funds. The agency was directed to reduce operating costs, including travel and supplies, and increase turnover.
- **Statewide Reductions:** OPD's fiscal 2021 appropriation was reduced by \$180,147 in general funds as a result of an across-the-board action that reduced unemployment compensation contributions by State agencies.

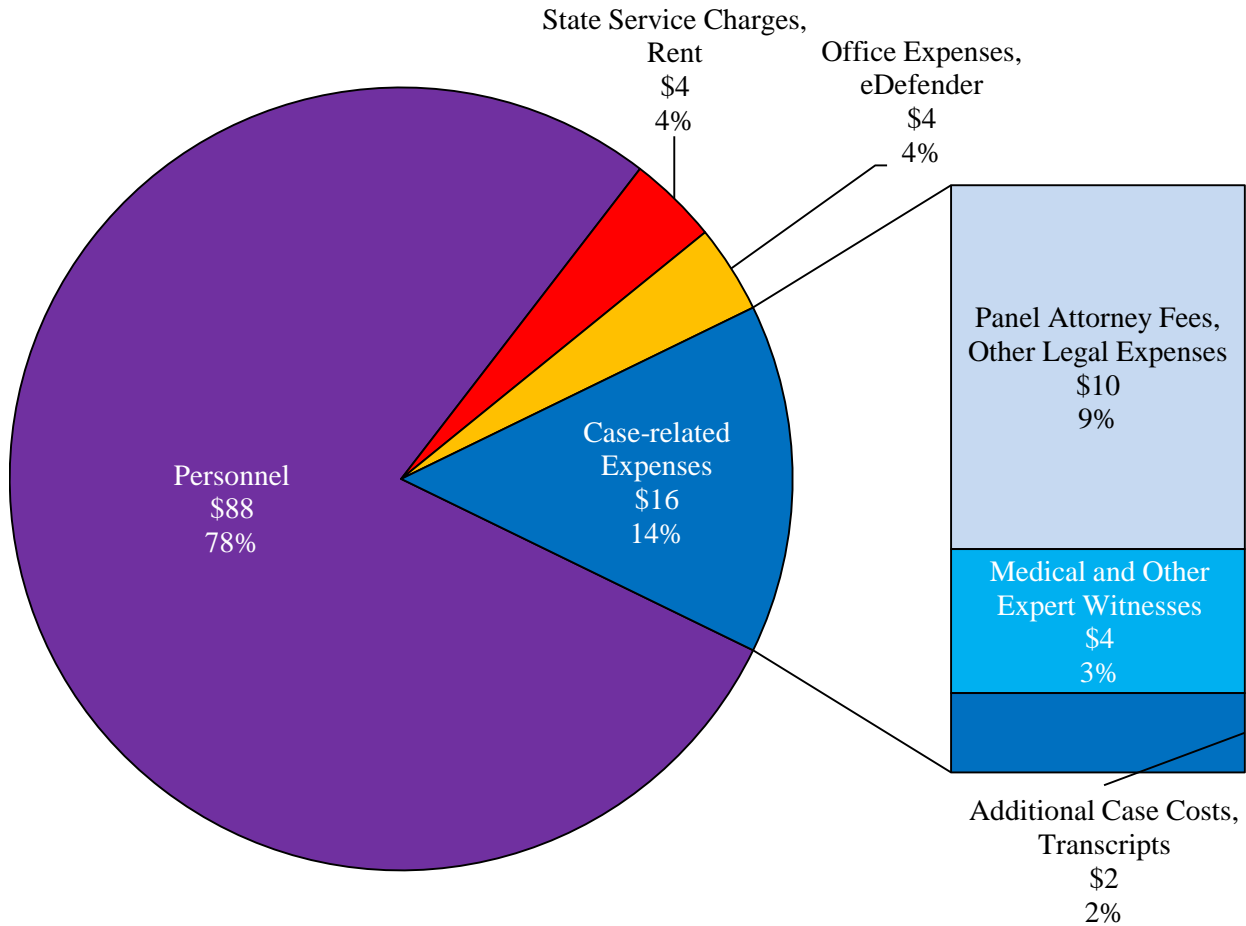
Budget Amendment for eDefender Costs

OPD anticipates processing a budget amendment by the end of fiscal 2021 for its new case management system, eDefender, following an invoice of approximately \$2.5 million from Journal Technologies Incorporated. The funds are currently budgeted within the Major Information Technology Development Project Fund within the Department of Information Technology (DoIT). This major information technology (IT) development project is discussed further in **Appendix 2**. The new system was implemented by OPD in July 2020. Its rollout is now complete, but data from the previous system, ProLaw, is still being migrated.

Fiscal 2022 Overview of Agency Spending

Key components of OPD's \$112.2 million fiscal 2022 allowance are shown in **Exhibit 1**.

**Exhibit 1
Overview of Agency Spending
Fiscal 2022 Allowance
(\$ in Millions)**



Source: Governor’s Fiscal 2022 Budget Books; Department of Legislative Services

Over 78% of the agency’s budget, or approximately \$88 million, is allocated for personnel. Case-related expenses, such as costs for panel attorneys hired to represent OPD clients in some circumstances, expert witnesses, and transcripts for appeals, make up 14% of the allowance, or approximately \$16.2 million. Remaining expenses include approximately \$8.2 million for general office expenses, rent, various State service charges, and user maintenance fees for eDefender. Overall, spending allocations are fairly consistent with the fiscal 2021 spending allocations; the changes are no greater than approximately 1%.

Proposed Budget Change

As illustrated in **Exhibit 2**, the adjusted fiscal 2022 allowance for OPD decreases by approximately \$0.3 million, or 0.3%, over the fiscal 2021 working appropriation. Overall, the decrease is due to a reduction in supplemental IT management services and consultants, lower panel attorney fees, and lower personnel expenses. Those decreases are partially offset by the increased expenditures for contractual positions and medical experts.

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

How Much It Grows:	General Fund	Special Fund	Federal Fund	Reimbursable Fund	Total
Fiscal 2020 Actual	\$114,986	\$408	\$1,449	\$981	\$117,824
Fiscal 2021 Working Appropriation	109,137	576	1,922	899	112,534
Fiscal 2022 Allowance	<u>108,595</u>	<u>314</u>	<u>1,992</u>	<u>1,287</u>	<u>112,188</u>
Fiscal 2021-2022 Amount Change	-\$542	-\$263	\$70	\$388	-\$346
Fiscal 2021-2022 Percent Change	-0.5%	-45.6%	3.6%	43.2%	-0.3%
Where It Goes:					<u>Change</u>
Personnel Expenses					
Annualize fiscal 2021 2% cost-of-living adjustment					\$797
Unemployment compensation.....					175
Turnover adjustments.....					167
Employee and retiree health insurance					142
Fiscal 2022 annual salary review					33
Other fringe benefits					-6
Workers' compensation premium assessment					-10
Regular employee compensation					-82
Employees' retirement system					-170
5 abolished positions.....					-221
Accrued leave payout.....					-600
Other Changes					
Increase of 6.5 contractual full-time equivalents					252
Medical experts and support for cases/clients.....					237
Desktop and laptop computer upgrades, software licenses.....					140

C80B00 – Office of the Public Defender

Where It Goes:	<u>Change</u>
Rent and related expenses	130
Contractual services and office supplies	106
Grants for Harford County Health Department and National Juvenile Defender Center	87
Miscellaneous.....	-12
Telephone costs.....	-26
Routine travel and operations and garage rent.....	-158
Panel attorney fees	-530
Supplemental IT management services and IT consultants	-797
Total	-\$346

IT: information technology

Note: Numbers may not sum to total due to rounding. The fiscal 2021 appropriation includes deficiencies, planned reversions, and general salary increases. The fiscal 2022 allowance includes contingent reductions and annualization of the fiscal 2021 general salary increases.

General Salary Increase and Annual Salary Review

The fiscal 2022 allowance includes funds to annualize a 2% general salary increase for all State employees, provided on January 1, 2021. These funds are budgeted in the Department of Budget and Management’s statewide program and will be distributed to agencies during the fiscal year. The full year cost of OPD’s share of the general salary increase is \$829,206 in general funds.

OPD also receives approximately \$33,000 to fund an annual salary review increase for fiscal employees. This is estimated to impact eight individuals within the office.

Information Technology Event

The fiscal 2022 allowance and the fiscal 2021 working appropriation include funds related to an IT event that OPD suffered in fiscal 2020. In March 2020, OPD experienced a cyberattack that required a complete rebuild of OPD’s IT infrastructure and left electronic documents and files inaccessible through May. There were many operational impacts, including, but not limited to, requiring the shutdown of all system access, requiring upgrades for all switches and servers in OPD’s over 50 sites, and renewals or upgrades in software maintenance services. Some Managing for Results (MFR) data was lost due to the data breach, and the effects of the breach and the pandemic caused OPD to cancel coaching and staff training curriculums. The IT event also prompted new OPD IT management and inclusion in the DoIT cybersecurity environment, including staff trainings and new applications.

The agency reports that supplemental service providers assisted in the installation and roll-out of laptops, switches, and servers, but these actions may have also been required given effects of the COVID-19 pandemic and the turnover of OPD IT staff noted in the 2020 OPD analysis. Those costs

C80B00 – Office of the Public Defender

were associated with the fiscal 2021 working appropriation and decline in the fiscal 2022 allowance. Expenses for OPD’s DoIT cybersecurity support are represented in the working appropriation and the allowance. **The agency should comment on the actions that have been or will be taken to prevent future IT cyberattack events.**

Personnel Data

	<u>FY 20 Actual</u>	<u>FY 21 Working</u>	<u>FY 22 Allowance</u>	<u>FY 21-22 Change</u>
Regular Positions	888.50	888.50	883.50	-5.00
Contractual FTEs	<u>129.75</u>	<u>56.50</u>	<u>63.00</u>	<u>6.50</u>
Total Personnel	1,018.25	945.00	946.50	1.50

Vacancy Data: Regular Positions

Turnover and Necessary Vacancies, Excluding New Positions	87.64	9.92%
Positions and Percentage Vacant as of 1/31/21	78.00	9.45%
Vacancies Below Turnover	3.64	

Personnel Changes

In fiscal 2022, the operating budget provides for a reduction of 5 regular positions, as follows:

- 2 office secretaries and 1 administrative aide from the District Operations Division; and
- 1 paralegal and 1 administrative aide from the Appellate and Inmate Services Division.

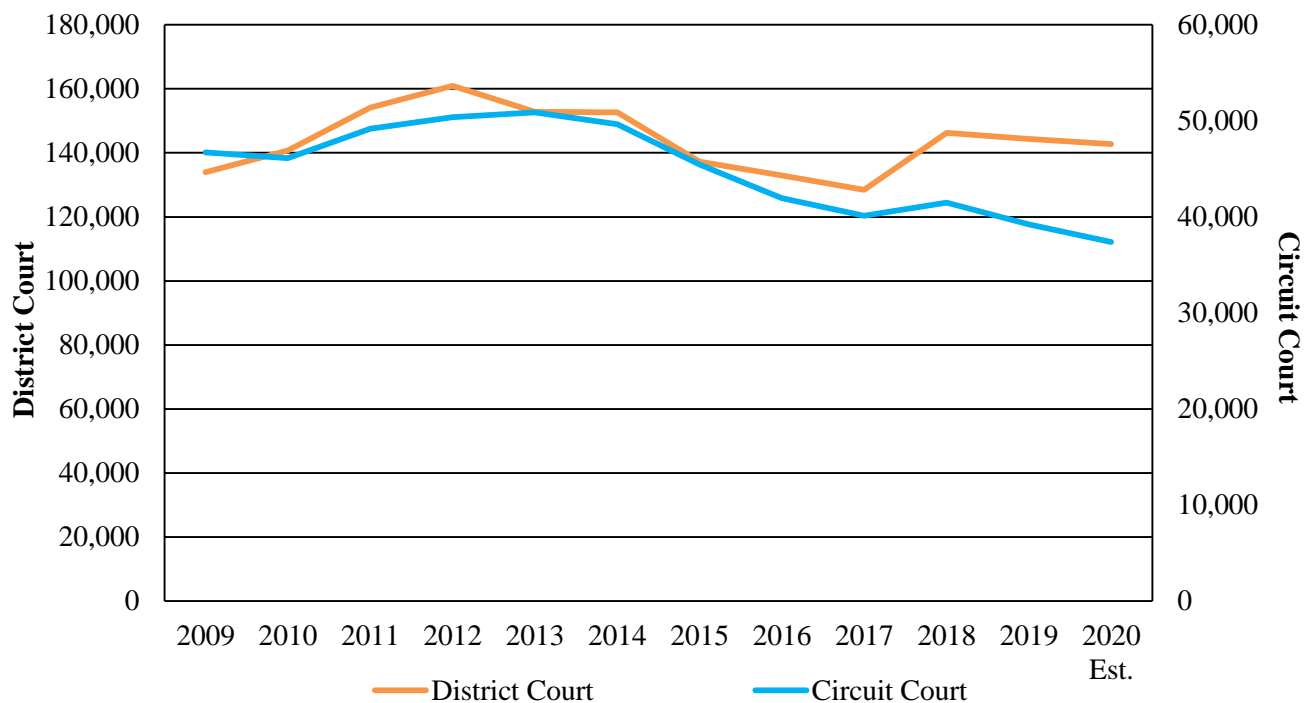
All of the 5 positions to be abolished are currently vacant. Additionally, there will be 14 internal transfers, with 10 of the 14 individuals leaving a current placement in the District Operations Division. Half of the positions are assistant public defenders being assigned to the General Administration Division or the Appellate and Inmate Services Division. OPD will have a net increase of 6.5 full-time equivalent positions in the allowance. These contractual positions represent the addition of fully funded grant social workers. **OPD should comment on how these transfers will improve their capacity.**

Key Observations

1. Caseloads Decrease in 2020, Difficult to Predict Future Workload

In calendar 2020, the estimated agency caseload was 180,159 District Court and circuit court cases, a decrease of 3,384 cases (1.8%) from calendar 2019 and a decrease of 7,596 cases (4%) from calendar 2018. Though peak agency caseloads were from calendar 2012 to 2014, cases in 2018 and 2019 had been higher than the two years prior. This decline in total cases may also help to bring down case-related expenses, which previous analyses have noted are historically underfunded. The trends in agency caseloads overall are depicted in **Exhibit 3**.

Exhibit 3
District and Circuit Court Caseloads
Calendar 2009-2020 Est.

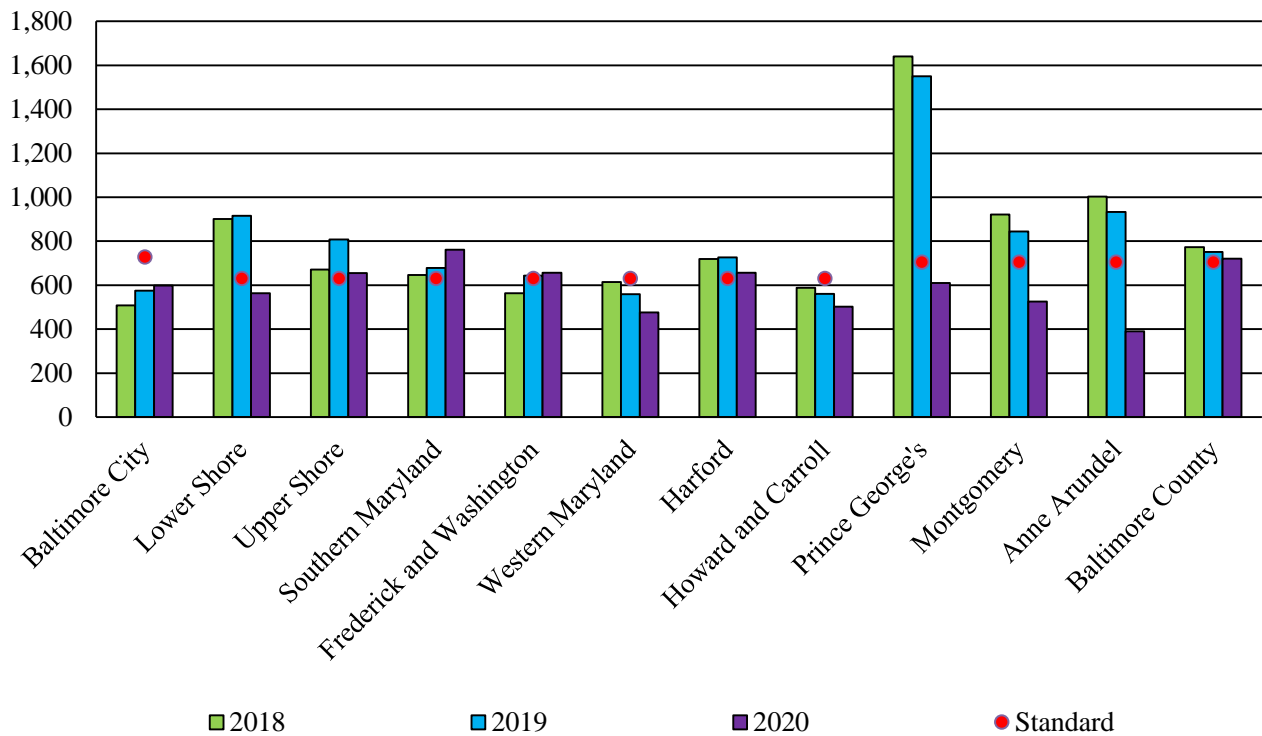


Source: Department of Legislative Services

Accompanying this decrease in caseloads is a corresponding decline in average attorney caseloads for District Court cases between 2018 and 2020, as shown in **Exhibit 4**. The current caseload standards are 728, 705, and 630 average cases for urban, suburban, and rural District Court attorneys, respectively. In the estimate for 2020, 7 of 12 districts (Baltimore City, Lower Shore counties, Western

Maryland counties, and Anne Arundel, Carroll, Howard, Montgomery, and Prince George’s counties) are in compliance with the standard when the number of cases is panel adjusted. Only 1 district, Southern Maryland, had an average attorney caseload over 20% above its target standard. Of the districts that met the standard in 2020, only 3 (Baltimore City, Western Maryland counties, and Howard and Carroll counties) also met the standard in 2019.

Exhibit 4
Average District Court Caseload Per Attorney (Panel Adjusted)
Calendar 2018-2020 Est.



Source: Department of Legislative Services

The estimated caseloads for calendars 2021 and 2022 are more uncertain than normal. Due to court closures and interruptions attributable to the COVID-19 pandemic, OPD reports that there is a backlog of cases of unknown size that has yet to be assigned to OPD by the Judiciary or be scheduled. Along with the backlog of cases, the discontinuation of WRPP may mean higher future average caseloads for district attorneys. **The agency should comment on the source of this case backlog and its ability to predict or accommodate fiscal 2022 case-related expenses.**

2. Workload Reduction Pilot Program Data Update

The 2020 *Joint Chairmen’s Report* (JCR) requested that OPD prepare a data report on the agency’s WRPP, a program started in fiscal 2019, which allows private attorneys to take multicase District Court traffic dockets to reduce key OPD case-related expenditures. The JCR required the agency to report on the total docket paneled, the average number of cases per docket, the number of cases resolved, the number of cases resolved per district, the savings to the State, and the funding for the program each year. Some of that data is highlighted in **Exhibit 5**. In fiscal 2019, WRPP helped to resolve 24,516 cases and resulted in savings of \$850,000. Estimated data for fiscal 2020 suggests another 14,080 cases were resolved and \$425,000 saved. Budget constraints resulted in the discontinuation of WRPP for fiscal 2021, however, so estimates for 2021 were not provided in MFR data.

Exhibit 5 WRPP Caseload Reductions by District Fiscal 2019-2020

<u>District</u>	<u>Jurisdiction</u>	<u>Cases Reduced</u>	
		<u>2019 Actual</u>	<u>2020 Estimate</u>
District 2	Lower Shore (Dorchester, Somerset, Wicomico, Worcester)	1,965	1,128
District 3	Upper Shore (Caroline, Cecil, Kent, Queen Anne's, Talbot)	1,708	981
District 4	Southern Maryland (Calvert, Charles, St. Mary's)	1,131	649
District 5	Prince George’s County	6,636	3,812
District 6	Montgomery County	3,441	1,976
District 7	Anne Arundel County	5,177	2,973
District 8	Baltimore County	2,266	1,301
District 11	Frederick and Washington counties	1,637	941
District 12	Allegany and Garrett counties	555	319
Total		24,516	14,080

Source: Department of Legislative Services

Exhibit 5 shows that more progress was made in fiscal 2019 than in fiscal 2020. **The agency should comment on how the discontinuation of WRPP may impact future case-related expenses.**

Operating Budget Recommended Actions

1. Concur with Governor's allowance.

Appendix 1
2020 Joint Chairmen’s Report Responses from Agency

The 2020 *Joint Chairmen’s Report* (JCR) requested that the Office of the Public Defender (OPD) prepare one report to be included with its annual Managing for Results (MFR) submission.

- ***Workload Reduction Pilot Program Data Report:*** The budget committees requested that OPD prepare a data report on the agency’s Workload Reduction Pilot Program, a program that increases the number of cases that can be handled via multicase dockets to private bar attorneys to decrease the agency’s overall caseloads. This data will continue to be recorded in the agency’s annual MFR submission, though budget constraints in the fiscal 2021 working appropriation resulted in the discontinuation of the program. Further discussion of this data can be found in the Key Observations section of this analysis.

Appendix 2
Case Management Replacement: eDefender
Major Information Technology Project
Office of the Public Defender

More information on this project is referenced in the Budget section of this document.

New/Ongoing: Ongoing								
Start Date: Fiscal 2020					Est. Completion Date: Fiscal 2023			
Implementation Strategy: Waterfall/Agile Waterfall								
(\$ in Millions)	Prior Year	2021	2022	2023	2024	2025	Remainder	Total
GF	\$0.556	\$0.788	\$0.025	\$0.581	\$0.000	\$0.000	\$0.581	\$1.950
Total	\$0.556	\$0.788	\$0.025	\$0.581	\$0.000	\$0.000	\$0.581	\$1.950

- **Project Summary:** The Office of the Public Defender (OPD) implemented eDefender, a commercial off-the-shelf legal case management application customized for OPD offices, in July 2020. The system is a web-based application that leverages Microsoft SQL Server and will help the agency manage and process its cases from initial intake, representation, and to the generation of statistics. The fiscal 2022 allowance includes \$25,000 for oversight.
- **Need:** This project replaced the decade-old case management system and enabled the agency to support real-time data exchange, current security requirements, and obtain full software support. It will integrate versions of other applications OPD uses to perform case management-related tasks. Also, eDefender can be used outside of OPD’s offices, such as while teleworking.
- **Observations and Milestones:** eDefender was implemented by OPD in July 2020. Its rollout is now complete, but data from the previous system, ProLaw, is still being migrated.
- **Other Comments:** The agency reports that development costs for eDefender were funded in the fiscal 2021 Department of Information Technology (DoIT) capital plan. The agency anticipates processing a budget amendment to draw down funding from DoIT by the end of fiscal 2021.

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

<u>Object/Fund</u>	<u>FY 20 Actual</u>	<u>FY 21 Working Appropriation</u>	<u>FY 22 Allowance</u>	<u>FY 21 - FY 22 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	888.50	888.50	883.50	-5.00	-0.6%
02 Contractual	129.75	56.50	63.00	6.50	11.5%
Total Positions	1,018.25	945.00	946.50	1.50	0.2%
Objects					
01 Salaries and Wages	\$ 89,515,160	\$ 86,796,141	\$ 86,192,901	-\$ 603,240	-0.7%
02 Technical and Spec. Fees	16,456,712	15,570,939	15,529,930	-41,009	-0.3%
03 Communication	647,001	411,760	408,160	-3,600	-0.9%
04 Travel	235,535	136,870	0	-136,870	-100.0%
06 Fuel and Utilities	96,927	101,000	105,064	4,064	4.0%
07 Motor Vehicles	40,382	52,540	31,540	-21,000	-40.0%
08 Contractual Services	6,623,102	5,489,862	4,887,270	-602,592	-11.0%
09 Supplies and Materials	370,404	178,685	166,680	-12,005	-6.7%
10 Equipment – Replacement	296,456	470,000	590,133	120,133	25.6%
11 Equipment – Additional	768,079	15,000	5,000	-10,000	-66.7%
13 Fixed Charges	2,774,027	2,564,011	2,694,462	130,451	5.1%
Total Objects	\$ 117,823,785	\$ 111,786,808	\$ 110,611,140	-\$ 1,175,668	-1.1%
Funds					
01 General Fund	\$ 114,986,067	\$ 108,389,692	\$ 107,018,558	-\$ 1,371,134	-1.3%
03 Special Fund	407,809	576,369	313,764	-262,605	-45.6%
05 Federal Fund	1,448,863	1,922,147	1,991,968	69,821	3.6%
09 Reimbursable Fund	981,046	898,600	1,286,850	388,250	43.2%
Total Funds	\$ 117,823,785	\$ 111,786,808	\$ 110,611,140	-\$ 1,175,668	-1.1%

Note: The fiscal 2021 appropriation does not include deficiencies, targeted revenues, or across-the-board reductions. The fiscal 2022 allowance does not include contingent reductions or cost-of-living adjustments.