

C80B00
Office of the Public Defender

Operating Budget Data

(\$ in Thousands)

	<u>FY 04</u> <u>Actual</u>	<u>FY 05</u> <u>Working</u>	<u>FY 06</u> <u>Allowance</u>	<u>FY 05-06</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
General Fund	\$60,233	\$68,691	\$74,266	\$5,575	8.1%
Special Fund	123	185	182	-3	-1.7%
Reimbursable Fund	<u>1,476</u>	<u>1,377</u>	<u>1,539</u>	<u>163</u>	<u>11.8%</u>
Total Funds	\$61,831	\$70,252	\$75,987	\$5,735	8.2%
Contingent & Back of Bill Reductions			-343	-343	
Adjusted Total	\$61,831	\$70,252	\$75,644	\$5,392	7.7%

- The fiscal 2006 budget allowance for the Office of the Public Defender (OPD) is \$5,391,852, or 7.7% greater than the fiscal 2005 working appropriation. The majority of this increase is in general funds and dedicated to the funding of 85 new positions, which account for the third and final year of the caseload initiative. There is also an increase of nearly \$1.0 million for the hourly rate paid to panel attorneys.

Personnel Data

	<u>FY 04</u> <u>Actual</u>	<u>FY 05</u> <u>Working</u>	<u>FY 06</u> <u>Allowance</u>	<u>FY 05-06</u> <u>Change</u>
Regular Positions	871.50	940.00	1,025.00	85.00
Contractual FTEs	<u>52.75</u>	<u>84.60</u>	<u>82.60</u>	<u>-2.00</u>
Total Personnel	924.25	1,024.60	1,107.60	83.00

Vacancy Data: Regular Positions

Turnover, Excluding New Positions	65.60	6.40%
Positions Vacant as of 12/31/04	78.50	8.35%

- OPD is adding 85 regular positions to fulfill the third year of the caseload initiative. Forty-six of these new positions will be attorneys, while the remainder will be support staff. The number of contractual employees is being reduced by two, for a net gain of 83 employees.
- As of December 31, 2004, OPD had 78.5 vacancies.

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

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Analysis in Brief

Major Trends

Continuing Legal Education: OPD fell short of its goal for the percentage of its workforce that has completed 12 hours of continuing legal education.

Compliance with Uniform Intake Policies: In fiscal 2004 OPD failed, by a wide margin, to meet its objective of the percentage of open files that adhere to the uniform intake policies as assessed by an internal audit team.

Recommended Actions

	<u>Funds</u>	<u>Positions</u>
1. Delete all 85 new positions for fiscal 2006 and \$250,000, leaving \$2.5 million to fill vacancies resulting from the agency's fiscal 2006 turnover rate.	\$ 250,000	85.0
2. Adopt committee narrative requiring the submission of the final copy of the case-weighting study to the budget committees for review and comment.		
Total Reductions	\$ 250,000	85.0

Issues

Draft of the Case-weighting Study Completed: In an effort to identify specific caseload standards for Maryland, OPD contracted with the National Center for State Courts to conduct a study to ascertain what standards should be used to determine the agency's budgetary needs. The initial draft of the first report has been completed and given to the Department of Legislative Services.

Updates

Status of the Caseload Initiative: OPD is in the third and final year of the caseload initiative, in which 85 new positions will be added, 46 attorneys and 39 support staff. The bulk of these new positions will be directed to the juvenile courts because of their high caseloads and the expected impact of the no-waiver-of counsel legislation and to the District Courts, where caseloads remain double and triple the American Bar Association's caseload standards. Several positions will also be directed to the Baltimore City Circuit Court.

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Operating Budget Analysis

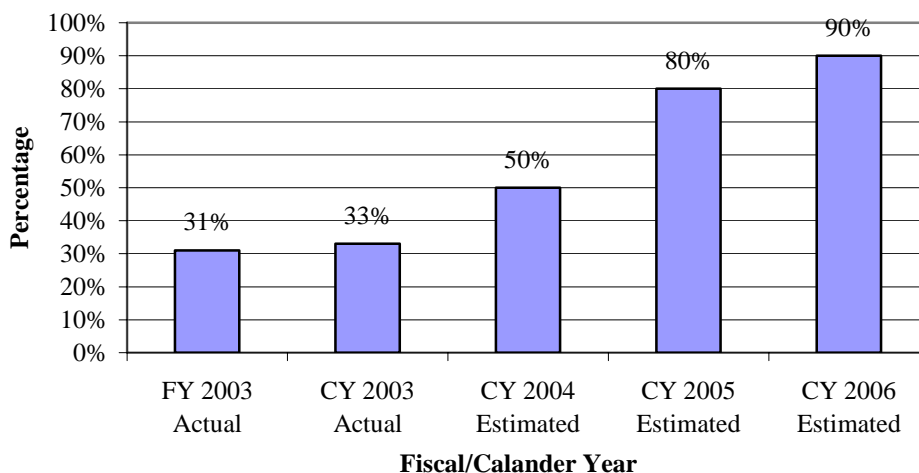
Program Description

The Office of the Public Defender (OPD) provides counsel and related services to indigent persons. Representation is provided in criminal trials, appeals, juvenile causes, post-conviction proceedings, parole and probation revocations, disposition of detainees, and involuntary commitments to mental institutions. Five divisions support the office: (1) general administration; (2) district operations; (3) appellate and inmate services; (4) involuntary institutionalization; and (5) capital defense.

Performance Analysis: Managing for Results

OPD has, due to the caseload initiative, added a significant number of attorneys and related support staff over the past two fiscal years. Fiscal 2006 is the final year of the caseload initiative and will see OPD grow by 85 new positions, 46 of which will be lawyers. The goal is to reduce the caseload carried by each attorney. OPD has set a goal of having at least 80%, and in the case of juvenile court attorneys 90%, of all circuit and District Court lawyers meet the American Bar Association's (ABA) caseload standards. **Exhibit 1** shows the results to date.

Exhibit 1
**Percent of Attorneys Meeting the American Bar Association's
Caseload Standards**

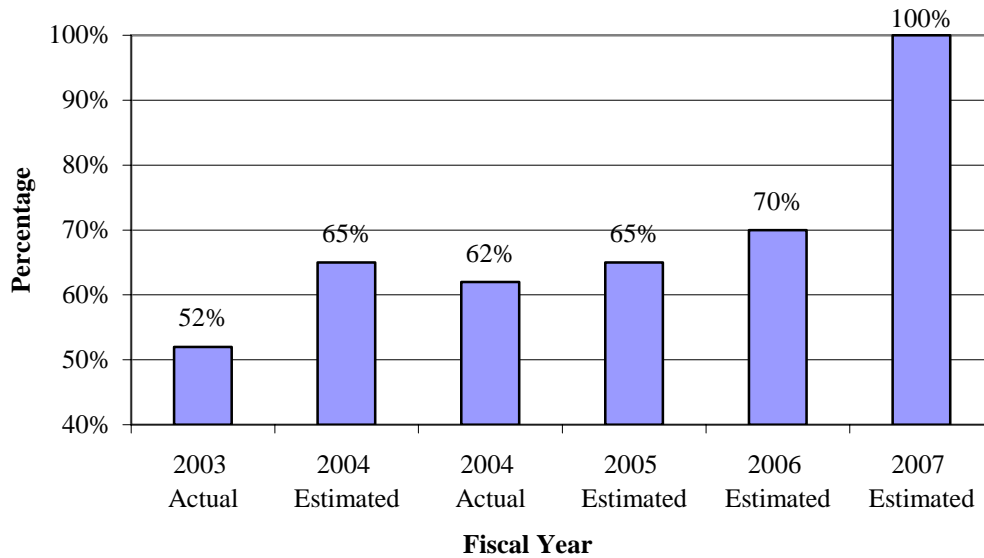


Notes: ABA standards are considered met if they are within +/- 20% of the actual ABA standard. The Office of the Public Defender switched to the calendar year cycle from the fiscal year cycle to give itself time to analyze its caseload data prior to submitting its current services budget.

Source: Office of the Public Defender

In an effort to ensure that the attorneys who work at OPD are qualified and competent, each attorney is required to complete 12 hours of continuing legal education (CLE). As **Exhibit 2** shows, the agency is projecting that in fiscal 2007 all attorneys are expected to have completed their CLE training. **OPD should explain to the committees why it believes its fiscal 2007 estimate is valid.**

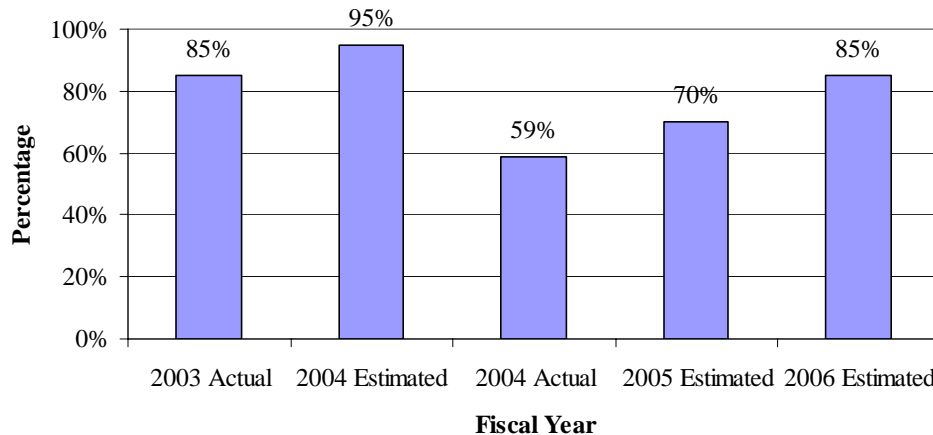
Exhibit 2
Percent of Workforce That Has Completed 12 Hours of Continuing Legal Education



Source: Office of the Public Defender

To guarantee that everyone who comes before OPD is treated the same in terms of eligibility, the agency is striving to ensure that all of its open files comply with uniform intake policies. As shown in **Exhibit 3**, OPD missed its fiscal 2004 target by 36 percentage points and declined from the 2003 level by 26 points.

Exhibit 3
Percent of Open Public Defender Files That Comply with Uniform Intake Policies



Source: Office of the Public Defender

However, the agency is predicting improved performance in both fiscal 2005 and 2006 and is maintaining its target of 95%. **OPD should explain to the committees why performance fell in 2004, why it believes its performance will improve in the future, and why it has not reset its target at a more realistic level.**

Governor's Proposed Budget

As shown in **Exhibit 4**, the fiscal 2006 budget allowance is \$5,391,852, or 7.7% greater than the fiscal 2005 working appropriation. Most of this change is a result of the third year of the caseload initiative, in which OPD has been hiring attorneys and support staff in an effort to bring caseload levels down to a level approximating those set by the ABA. \$2,751,033 of the increase is due to the 85 new positions OPD will receive in fiscal 2006. Other large contributors include increments, contractual employee turnover, increased costs for employee and retiree health insurance, and increases in the hourly rate paid to panel attorneys. Currently, Maryland pays panel attorneys an hourly rate of \$35 in court and \$30 out of court. These rates, among the lowest rates in the country, were first established in 1988 and have not been changed. For fiscal 2006, the State has appropriated

Exhibit 4
Governor's Proposed Budget
Office of the Public Defender
(\$ in Thousands)

How Much It Grows:	<u>General</u> <u>Fund</u>	<u>Special</u> <u>Fund</u>	<u>Reimbursable</u> <u>Fund</u>	<u>Total</u>
2005 Working Appropriation	\$68,691	\$185	\$1,377	\$70,252
2006 Governor's Allowance	74,266	182	1,539	75,987
Contingent & Back of Bill Reductions	<u>-343</u>	<u>0</u>	<u>0</u>	<u>-343</u>
Adjusted Allowance	73,923	182	1,539	75,644
Amount Change	\$5,232	-\$3	\$163	\$5,392
Percent Change	7.6%	-1.7%	11.8%	7.7%

Where It Goes:

Personnel Expenses

Eighty-five new positions	\$2,751
Retirement cost contributions	712
Increments and other compensation.....	1,342
Employee and retiree health insurance	-342
Turnover adjustments	199
Other fringe benefit adjustments.....	428

Other Changes

Increase in fees paid to panel attorneys	989
Department of Budget and Management paid telecommunications	157
Reduction in transcript fees	-140
End of installment payments for computers and office furniture	-189
Contractual employee turnover.....	-387
Miscellaneous	-128
Total	\$5,392

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

\$1 million to increase the hourly rate to \$50, which is what OPD had requested. Ultimately, OPD would like to reach \$90 per hour and have Maryland's panel attorney rates tethered to the federal rates, which are currently \$90 per hour but are expected to increase to \$113 shortly. As it stands now, OPD has a list of 40 reliable panel attorneys, down from approximately 400 ten years ago. In several of OPD's twelve districts there are no panel attorneys. It should be noted that OPD is asking for the \$90 per hour rate in steps: \$50 for fiscal 2006, \$75 for fiscal 2007, and \$90 for fiscal 2008. The

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increase in the hourly rate from \$35 to \$50 cost \$1 million. Thus, the increase from \$50 to \$75 and \$75 to \$90 can be expected to cost \$1,666,665 and \$1,000,000 in both fiscal 2007 and 2008, respectively, for a total cost of \$3,666,665.

Contingent Actions

The fiscal 2006 allowance reflects the elimination of \$343,000 (subobject 0172), the appropriation for matching employee deferred compensation contributions up to \$600, contingent upon enactment of a provision in budget reconciliation legislation.

Issues

1. Draft of Case-weighting Study Completed

In early fiscal 2004, OPD contracted with the National Center for State Courts to conduct a case-weighting study to determine caseload standards specifically for Maryland. Data collection commenced in March of 2004, followed by data analysis. The first draft of this report was completed in January 2005. OPD has subsequently submitted a copy of the report to the Department of Legislative Services (DLS), which, upon adoption, will be the basis for future budget requests. Unfortunately, because the report is still being finalized, we do not know what the final recommendation will be. Thus, it is premature to comment on it in detail. However, until the findings and methodology of the report are adopted, OPD will continue to use ABA standards that have been adopted in the interim. **DLS recommends adoption of committee narrative which directs OPD to provide a copy of the final case-weighting study to the budget committees. The agency should also discuss how Maryland-specific case-weighting standards differ from ABA standards, as well as the possible staffing and fiscal implications for its budget if Maryland-specific case-weighting standards are adopted.**

Recommended Actions

	<u>Amount Reduction</u>		<u>Position Reduction</u>
1. Delete all 85 new positions for fiscal 2006 and \$250,000, leaving \$2.5 million to fill vacancies resulting from the agency’s fiscal 2006 turnover rate. In order to meet its fiscal 2006 turnover rate, the Office of the Public Defender (OPD) needs to keep 65.6 positions vacant. These positions should be filled before additional positions are provided. With the \$2.5 million, OPD will be able to fill 54 vacant positions for 60% of the year, thereby reducing their turnover rate to 2.59% from 6.40%. In addition, the fact that OPD just recently received a draft copy of the case-weighting study that will be the basis for future budget requests, as opposed to American Bar Association standards that are currently in use, makes it seem prudent that additional time be taken to assess the needs of OPD and the resources of the State.	\$ 250,000	GF	85.0

2. Adopt the following narrative:

Submission of the Final Report on Case-weighting Standards for Maryland: The committees are interested in the staffing and fiscal implications of specific case-weightings for Maryland. To that end, the committees direct OPD to submit the final version of the case-weighting report, as well as what the agency believes the impact of the report will be on both the number of personnel and the budget, for review and comment by August 1, 2005.

Information Request	Author	Due Date
Final report on case-weighting standards	OPD	August 1, 2005
Total General Fund Reductions		\$ 250,000
		85.0

Updates

1. Status of Caseload Initiative

In 2001 a performance audit was conducted at the behest of the Maryland General Assembly of OPD and the Department of Budget and Management to see what the effects of under-funding, under-staffing, and growing caseloads were on OPD and what would be required to bring OPD caseloads into compliance with the ABA standards. The audit found the effects of the under-funding and staffing: a lack of caseload standards and workload measures; deficient information technology; and related problems with complete and accurate data collection. The audit recommended that OPD adopt caseload standards, acquire adequate IT hardware and case management software, and base its future funding needs upon documented staffing and operational needs. The end result was the adoption of the Caseload Initiative.

The agency's Caseloads Initiative has three components: (1) reduce excessive public defender caseloads to comply with ABA standards; (2) establish a funding/staffing formula linked to Maryland specific caseload standards; and (3) install a case management system to improve case management and provide accurate caseload/workload data to increase accountability and streamline the budget process. Additional detail on this initiative is provided in the report, *Caseloads Initiative*, November 2004, submitted in response to the 2004 *Joint Chairmen's Report*.

In fiscal 2006, the final year of the caseload initiative, OPD is adding an additional 85 positions, 46 of which are attorneys. These positions will bring OPD into substantial compliance with ABA caseload standards and also allow them to meet the expected caseload increase due to the passing of SB 163/HB 511 – Juvenile Law – Waiver of Counsel. The year-three positions will be directed at the juvenile court for excessive caseloads as well as the expected impact of the no-waiver-of-counsel legislation and the District Courts, where caseloads remain double and triple ABA standards. Several positions will be directed to the Baltimore City Circuit Court as well.

The case management system was procured and developed in 2003. Testing at pilot sites and statewide rollout occurred in fiscal 2004. During fiscal 2005 an evaluation of the system will be conducted as well as a preliminary assessment of the effect of the system on the agency as a whole.

Current and Prior Year Budgets

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

	<u>General Fund</u>	<u>Special Fund</u>	<u>Federal Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
Fiscal 2004					
Legislative Appropriation	\$61,029	\$260	\$0	\$1,432	\$62,721
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	45	0	0	170	215
Cost Containment	-841	0	0	0	-841
Reversions and Cancellations	0	-137	0	-126	-263
Actual Expenditures	\$60,233	\$123	\$0	\$1,476	\$61,832
Fiscal 2005					
Legislative Appropriation	\$63,590	\$110	\$0	\$1,377	\$65,077
Budget Amendments	5,101	75	0	0	5,176
Working Appropriation	\$68,691	\$185	\$0	\$1,377	\$70,253

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

Fiscal 2004

Due to cost containment, the general fund appropriation for OPD was reduced by \$841,000. Payments for miscellaneous items including postage, travel, office supplies, and subscriptions were reduced by \$269,475. Expenses were reduced further by leaving 45 of the agency's 108 contractual positions vacant, generating a savings of \$185,000. OPD had a special fund cancellation of \$137,476 that was due entirely to the elimination of funding for three Anne Arundel County programs (Drug

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Intervention Project, Circuit Court Case Management, and Bail Reconsideration Project) that were budgeted but never funded due to a lack of money.

OPD also received \$169,955 in reimbursable funds from the Governor's Office of Crime Control and Prevention (GOCCP): \$99,955 for the Forensic Justice Project and \$70,000 for the Inter-Agency War Room Coordination Project. These funds were used to retain experts to assist counsel in assessing forensic evidence and to hire two paralegals, respectively. OPD also had \$126,141 of cancellations in reimbursable funds under the GOCCP Forensic Justice Project and War Room (\$54,524) and the Department of Juvenile Services (DJS) Detention Response Unit and Drug Court (\$71,617) programs. The DJS cancellation is due to the elimination of funding. After the fiscal year began, DJS ceased all funding, thus OPD had to cancel the funds that it had not spent.

Fiscal 2005

The fiscal 2005 working appropriation increased by \$5,175,884 over the legislative appropriation. The bulk of this change, \$4,400,000, was used for an annual salary review for approximately 530 attorneys. This money was used to provide a two-step salary increase in order to bring OPD attorney salaries in line with the salaries of attorneys in the Office of the Attorney General, while \$700,884 was for cost-of-living adjustments. The remaining \$75,000 came from a special fund grant from the Open Society Institute and was used to create a Community Justice Coordinator position and pilot community defender project in one of the OPD districts.

Audit Findings

Audit Period for Last Audit:	November 19, 1997 – February 11, 2001
Issue Date:	July 2001
Number of Findings:	3
Number of Repeat Findings:	2
% of Repeat Findings:	67%
Rating: (if applicable)	n/a

Finding 1: **The office had a significant backlog of prenumbered billings for administrative fees due from clients that were not accounted for and had not been recorded in the accounts receivable records.**

Finding 2: **Proper internal controls were not established over the processing of purchasing and disbursement transactions.**

Finding 3: **Sufficient control was not established over certain equipment items.**

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

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

<u>Object/Fund</u>	<u>FY04 Actual</u>	<u>FY05 Working Appropriation</u>	<u>FY06 Allowance</u>	<u>FY05 - FY06 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	871.50	940.00	1025.00	85.00	9.0%
02 Contractual	52.75	84.60	82.60	-2.00	-2.4%
Total Positions	924.25	1024.60	1107.60	83.00	8.1%
Objects					
01 Salaries and Wages	\$ 49,574,064	\$ 59,282,397	\$ 64,715,695	\$ 5,433,298	9.2%
02 Technical & Spec Fees	5,143,525	4,759,927	5,439,485	679,558	14.3%
03 Communication	646,576	714,893	912,383	197,490	27.6%
04 Travel	250,039	336,319	213,650	-122,669	-36.5%
06 Fuel & Utilities	27,898	30,700	38,682	7,982	26.0%
07 Motor Vehicles	90,989	95,529	89,959	-5,570	-5.8%
08 Contractual Services	3,238,317	2,284,664	2,127,600	-157,064	-6.9%
09 Supplies & Materials	450,977	405,455	378,502	-26,953	-6.6%
10 Equip - Replacement	1,381	2,980	0	-2,980	-100.0%
11 Equip - Additional	660,719	371,625	177,676	-193,949	-52.2%
13 Fixed Charges	1,707,082	1,967,590	1,893,299	-74,291	-3.8%
14 Land & Structures	39,920	0	0	0	0.0%
Total Objects	\$ 61,831,487	\$ 70,252,079	\$ 75,986,931	\$ 5,734,852	8.2%
Funds					
01 General Fund	\$ 60,233,202	\$ 68,690,503	\$ 74,266,000	\$ 5,575,497	8.1%
03 Special Fund	122,692	184,786	181,614	-3,172	-1.7%
09 Reimbursable Fund	1,475,593	1,376,790	1,539,317	162,527	11.8%
Total Funds	\$ 61,831,487	\$ 70,252,079	\$ 75,986,931	\$ 5,734,852	8.2%

Note: The fiscal 2005 appropriation does not include deficiencies, and the fiscal 2006 allowance does not reflect contingent reductions.

**Fiscal Summary
Office of the Public Defender**

<u>Program/Unit</u>	<u>FY04 Actual</u>	<u>FY05 Wrk Approp</u>	<u>FY06 Allowance</u>	<u>Change</u>	<u>FY05 - FY06 % Change</u>
01 General Administration	\$ 5,239,591	\$ 4,764,825	\$ 5,478,048	\$ 713,223	15.0%
02 District Operations	50,126,288	58,876,824	63,260,391	4,383,567	7.4%
03 Appellate And Inmate Services	4,459,583	4,598,614	5,055,288	456,674	9.9%
04 Involuntary Institutionalization Services	1,128,389	1,182,814	1,211,957	29,143	2.5%
05 Capital Defense Division	877,636	829,002	981,247	152,245	18.4%
Total Expenditures	\$ 61,831,487	\$ 70,252,079	\$ 75,986,931	\$ 5,734,852	8.2%
General Fund	\$ 60,233,202	\$ 68,690,503	\$ 74,266,000	\$ 5,575,497	8.1%
Special Fund	122,692	184,786	181,614	-3,172	-1.7%
Total Appropriations	\$ 60,355,894	\$ 68,875,289	\$ 74,447,614	\$ 5,572,325	8.1%
Reimbursable Fund	\$ 1,475,593	\$ 1,376,790	\$ 1,539,317	\$ 162,527	11.8%
Total Funds	\$ 61,831,487	\$ 70,252,079	\$ 75,986,931	\$ 5,734,852	8.2%

Note: The fiscal 2005 appropriation does not include deficiencies, and the fiscal 2006 allowance does not reflect contingent reductions.

**Fiscal 2006 Cost Containment Actions
As Submitted by the Agency
Estimated Fiscal 2006 Savings
Compared to Fiscal 2005**

<u>Cost Saving Action/Efficiency Measure</u>	<u>Program Code</u>	<u>Total Funds</u>	<u>General Funds</u>	<u>Special Funds</u>	<u>Positions Reduced</u>	<u>Impact of Action</u>
Increase turnover on existing positions to 6.5% from 4%	Agencywide		\$1,631,900			Exacerbates attorney and support staff shortages positions are held vacant longer before refilling.
Increase turnover on new positions to 40% from 25%	C80B00.02		684,000			Six-month delay in compliance with ABA standards
Hiring freeze/increase contractual turnover to 54%	Agencywide		387,400			Extreme support staff shortage statewide; delays and other inefficiencies that undermine effect of caseloads initiative; low morale
Reduce travel budgets	Agencywide		78,200	\$41,450		
Reduce transcripts	C80B00.03		140,000			Reduced to reflect three-year average
Eliminate contractual position	C80B00.01 & .05		95,000		2.50	No impact