

C80B00
Office of the Public Defender

Operating Budget Data

(\$ in Thousands)

	<u>FY 05</u> <u>Actual</u>	<u>FY 06</u> <u>Working</u>	<u>FY 07</u> <u>Allowance</u>	<u>FY 06-07</u> <u>Change</u>	<u>% Change</u> <u>Prior Year</u>
General Fund	\$68,766	\$74,969	\$83,766	\$8,797	11.7%
Special Fund	204	239	212	-27	-11.4%
Reimbursable Fund	<u>1,360</u>	<u>1,539</u>	<u>998</u>	<u>-541</u>	<u>-35.1%</u>
Total Funds	\$70,331	\$76,748	\$84,977	\$8,229	10.7%

- The Office of the Public Defender (OPD) submitted a fiscal 2006 budget deficiency request for \$3,075,000 in general funds. \$1,094,200 of the request is for information technology associated with the caseload initiative. \$1,662,160 is requested to fund various expenses within OPD's district operations such as panel fees and specialists. The remaining \$318,640 is associated with OPD's Appellate/Collateral Review Divisions for transcripts. This deficiency amount represents a 4% increase over the \$76,747,715 working appropriation.
- OPD's fiscal 2007 allowance increases by \$8,229,198, or 10.7% above the fiscal 2006 working appropriation. This increase is primarily attributed to a \$6,097,667 million increase in personnel expenses. The allowance includes an additional \$1,097,690 for 22 new attorney positions funded at 50% turnover for a net increase of \$862,598.
- Other notable increases in fiscal 2007 include \$1,258,686 in panel attorney fees and \$460,000 to support OPD's information technology infrastructure.

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

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Personnel Data

	<u>FY 05 Actual</u>	<u>FY 06 Working</u>	<u>FY 07 Allowance</u>	<u>FY 06-07 Change</u>
Regular Positions	940.00	998.00	1,020.00	22.00
Contractual FTEs	<u>39.63</u>	<u>82.10</u>	<u>82.10</u>	<u>0.00</u>
Total Personnel	979.63	1,080.10	1,102.10	22.00

Vacancy Data: Regular Positions

Turnover, Excluding New Positions	61.40	6.02%
Positions Vacant as of 12/31/05	112.00	11.22%

- The fiscal 2007 allowance includes 22 additional attorney positions. These 22 positions represent the final installment of the caseload initiative. There is no change to the number of contractual positions.
- The fiscal 2006 working appropriation reflects a total of 5 abolished positions. These positions were located within OPD's Juvenile Detention Response Unit and consist of 2 attorneys, 2 social workers, and 1 intake clerk.
- As of December 31, 2005, the vacancy rate for regular employees was 11.22%. 39 vacancies have subsequently been filled, thereby reducing the vacancy rate to 7.3%.
- Turnover expectancy for regular employees is reduced from 8.47 to 6.02%.

Analysis in Brief

Major Trends

The Percentage of Attorneys Meeting Caseloads Standards on an Agencywide Basis Is Projected to Increase: In 2005, OPD estimates a 20% increase in the percentage of attorneys meeting caseload standards.

Projected Decline in the Average Caseloads Per Attorney for Attorneys Assigned to the District and Juvenile Court: With the exception of those attorneys assigned to the circuit court, the average caseload per attorney is projected to decline in 2005.

Issues

Case Weighting Study Completed: Proposed Caseload Standards: The National Center for the State Courts (NCSC) conducted an intensive case weighted study and analysis in fiscal 2005. Based

upon its collected data and its analysis, NSCS determined the maximum number of cases Maryland public defenders can handle each year without jeopardizing effective assistance of counsel. **The Department of Legislative Services (DLS) recommends budget bill language indicating that it is the intent of the General Assembly that OPD incorporate into its Managing for Results program, strategic planning and operating policies the caseload standards proposed by NCSC in the 2005 Maryland Attorney and Staff Workload Assessment report submitted to the General Assembly. DLS further recommends that OPD submit a report to the budget committees on the status of attorney caseloads under new Maryland caseload standards.**

Panel Attorney Rate Increases: In fiscal 2006, the Administrative, Executive, and Legislative Review Committee approved a regulatory rate increase to \$50 per hour for OPD's panel attorneys. The fiscal 2007 allowance includes an additional \$1.26 million for panel attorney fees. **OPD should brief the committees on the current status of the statewide panel attorney list and the future implications of the \$50 rate increase. DLS recommends that OPD submit a report to the committees by November 1, 2006, on the status of the statewide panel attorney list. The report should include measurable outcomes such as the size of each district's panel attorney list and improved efficiency among its district public defenders.**

Fiscal 2005 Closeout Audit: The Office of Legislative Audits' statewide review of budget closeout transactions for fiscal 2005 indicated that OPD reported \$622,858 in unprovided for payables. **OPD should comment to the committees as to why the agency overspent its fiscal 2005 appropriation.**

Recommended Actions

1. Add budget bill language adopting Maryland-specific caseload standards to be used by the Office of the Public Defender in determining and assessing staffing levels.
2. Adopt committee narrative requiring the submission of a report on the status of attorney caseloads under Maryland Caseload Standards.
3. Adopt committee narrative requiring the Office of the Public Defender to submit by November 1, 2006, a report to the budget committees on the status of the statewide panel attorney list.

Updates

March 2005 Audit Findings: OPD reports that it has addressed all of the March 2005 audit findings.

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Office of the Public Defender

Operating Budget Analysis

Program Description

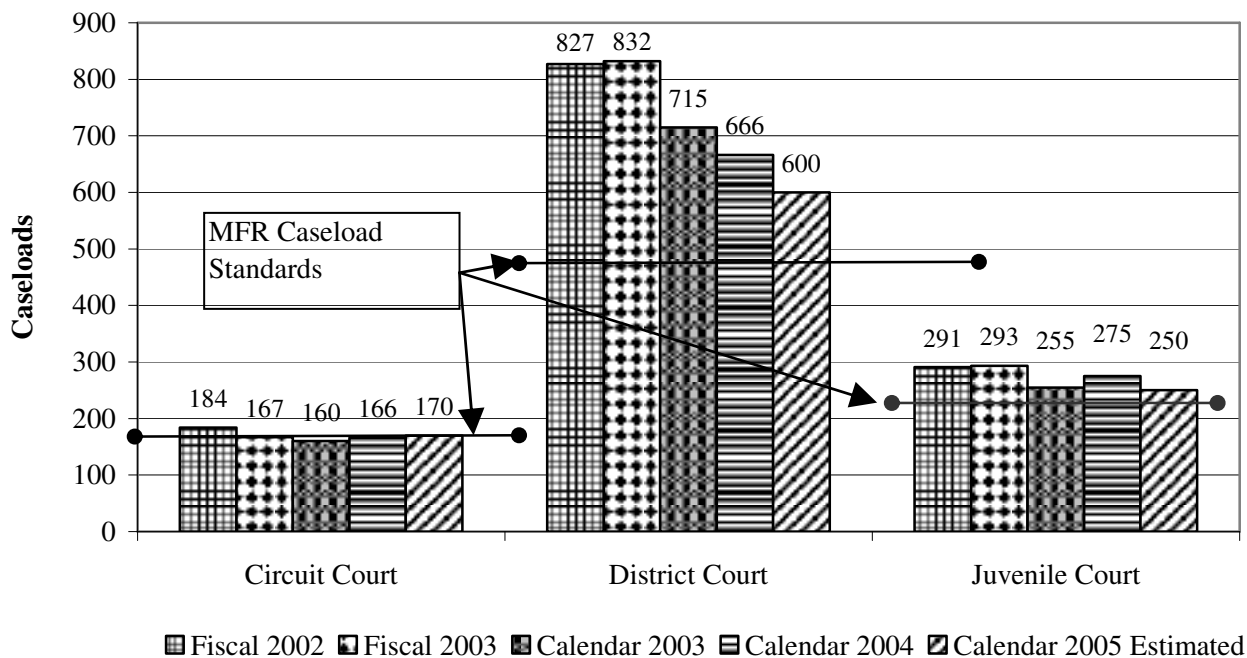
The Office of the Public Defender (OPD) provides counsel and related services to indigent persons. Representation is provided in criminal trials, appeals, juvenile causes, post-conviction proceedings, parole and probation revocations, and involuntary commitments to mental institutions. Five divisions 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

While ethical guidelines set the ultimate standard for determining when an attorney carries an excessive caseload, numerical standards also play an important role in concerns about excessive caseloads. The American Bar Association (ABA) has established caseload standards to assist in determining whether an attorney has an excessive caseload. OPD has adopted the ABA's caseload standards plus 20% into its Managing for Results (MFR) data. OPD's standards for circuit (felony), District (misdemeanor), and juvenile court attorneys are 180, 480, and 240, respectively. **Exhibit 1** provides trend data regarding the number of cases handled per attorney since fiscal 2002. With the exception of fiscal and calendar 2003, the average number of caseloads per attorney for circuit court (felony) cases has continued to increase. By contrast, with the exception of fiscal 2003, there has been a significant decline in the average caseload per attorney in District Court (misdemeanor) cases. Similar to circuit court cases, the average caseload handled per attorney in juvenile cases increased in fiscal 2003 and calendar 2004.

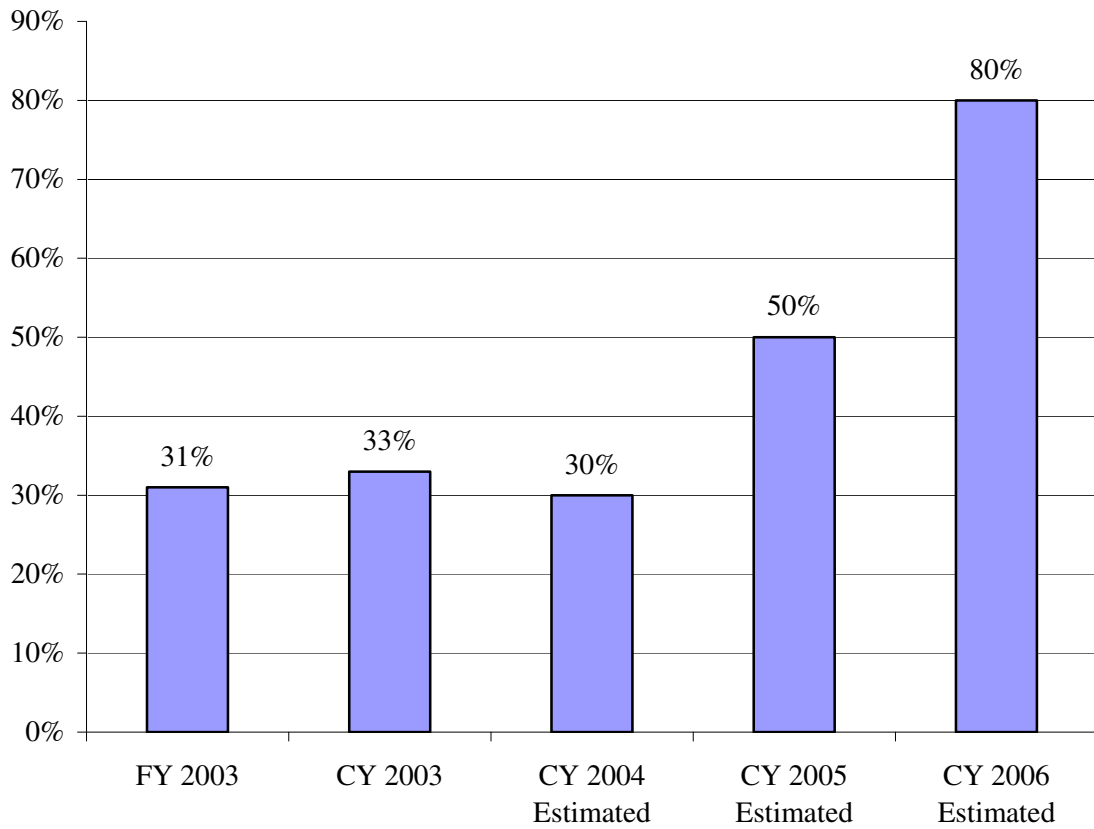
Exhibits 2 and **3** show the percentage of attorneys both agencywide and by District, circuit, and juvenile court meeting caseload standards in 2005. As shown in Exhibit 2, the percentage of attorneys meeting caseload standards on an agencywide basis is projected to increase to 50% in 2005 and is projected to increase to 80% by the end of 2006. As illustrated in Exhibit 3, there was an across-the-board increase in the percentage of attorneys meeting caseload standards in 2005. The most significant percentage increase was that of juvenile court attorneys. The percentage of juvenile court attorneys meeting caseload standards is estimated to increase from 30% to 50% in fiscal 2005. OPD attributes this success to the caseload initiative. As a result of the caseload initiative, OPD has been able to focus primarily on mitigating excessive juvenile caseloads in an effort to comply with ABA recommendations.

Exhibit 1
Average Caseload Per Attorney
Fiscal 2002 – Calendar 2005



Source: Office of the Public Defender

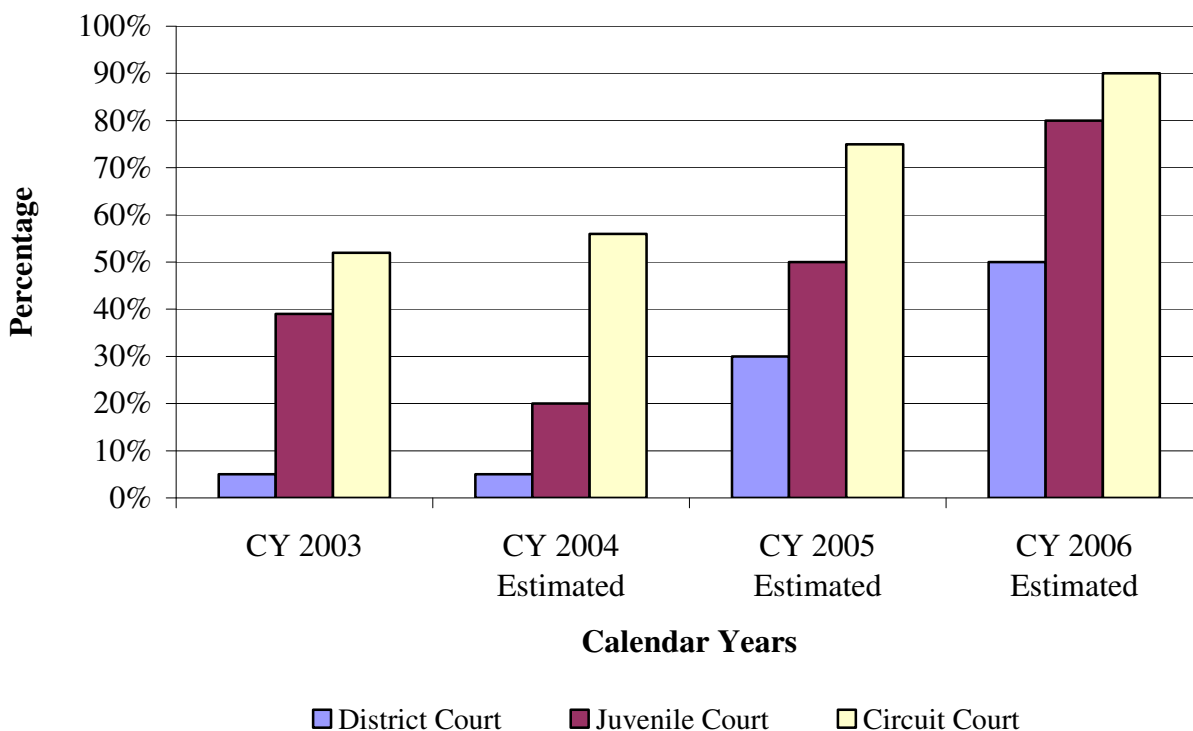
Exhibit 2
Percent of Attorneys Agencywide Meeting ABA Standards*



*120% of ABA standards are Felony (Circuit Court) – 180; Misdemeanor (District Court) – 480; Juvenile – 240

Source: Office of the Public Defender

Exhibit 3
Percent of Circuit, District, and Juvenile Court Attorneys
Meeting ABA Standards*
Calendar 2003 – 2006

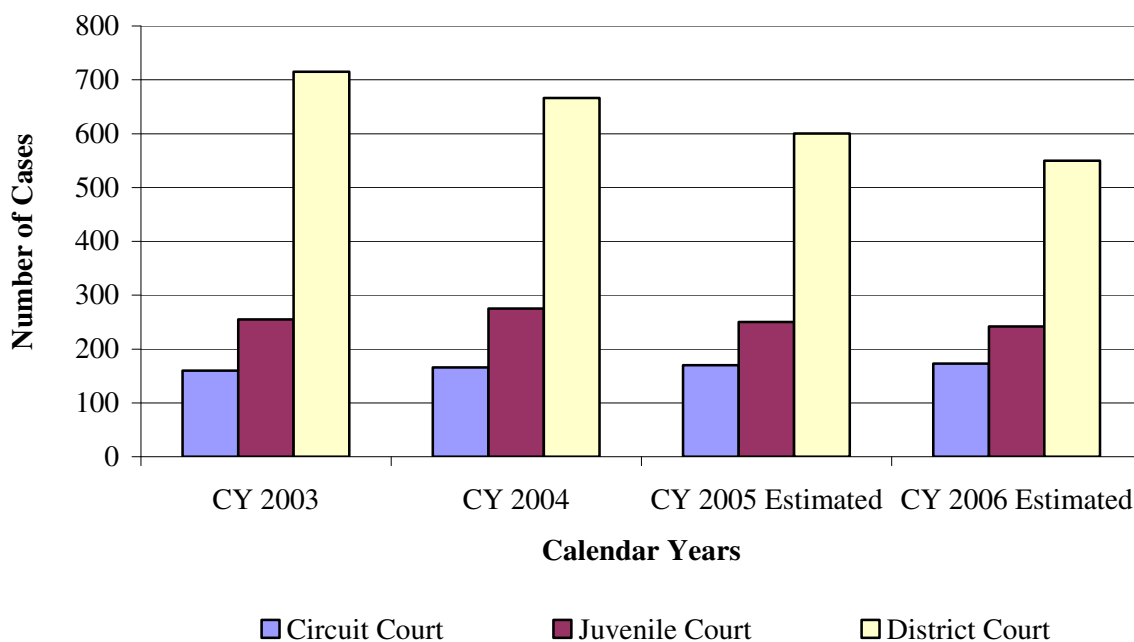


*120% of ABA standards are Felony (Circuit Court) – 180; Misdemeanor (District Court) – 480; Juvenile – 240

Source: Office of the Public Defender

Exhibit 4 illustrates the average caseload per attorney in District, circuit, and juvenile court. With the exception of those attorneys assigned to the circuit court, the average caseload per attorney is projected to decline in 2005. OPD attributes the slight increase in the caseloads assigned to circuit court attorneys to a 2% increase in the number of statewide circuit court cases. While caseloads have increased slightly, with the exception of Baltimore City, the number of circuit court cases assigned per attorney is still in compliance with ABA standards. OPD plans to place the additional attorneys requested in fiscal 2007 in both District and juvenile court where caseloads continue to remain in excess of ABA standards.

**Exhibit 4
Average Caseload Per Attorney
Calendar 2003 – 2006**



Note: 120% of ABA standards are Felony (Circuit Court) – 180; Misdemeanor (District Court) – 480; Juvenile – 240

Source: Office of the Public Defender

Fiscal 2006 Actions

Proposed Deficiency

OPD has requested a fiscal 2006 general fund deficiency appropriation of \$3,075,000. As shown in **Exhibit 5**, the appropriation is requested to fund deficits in OPD’s General Administration, Operations, and Appellate/Collateral Review Divisions. \$1,094,200 is requested in maintenance and equipment costs to support the agency’s current information technology (IT) infrastructure due to the implementation of the caseload initiative. \$1,662,160 is requested for the agency’s district operations. Of this amount, approximately \$1 million is requested to support case related expenditures such as panel attorney and expert fees. Other significant areas of requested funding include \$461,300 in rent expenditures and \$318,640 in transcript expenses for the agency’s Appellate/Collateral Review Divisions.

Exhibit 5
Office of the Public Defender
Fiscal 2006 Deficiency Request

<i>General Administration</i>		
Technical Services Procurement		\$1,000,200
Installment Payments/Equipment		94,000
		\$1,094,200
<i>District Operations</i>		
\$50 Panel Fee (underfunded)		\$541,500
Specialist/Experts		457,300
Telephone		25,700
DBM Telecommunications		9,700
Travel		38,000
Fuel/Utilities		44,300
Gas and Oil		12,000
Printing/Photocopying		72,360
Rent		461,300
		\$1,662,160
<i>Appellate/Collateral Review</i>		
Transcripts		\$318,640
		\$318,640
Total		\$3,075,000

Source: Office of the Public Defender

Governor's Proposed Budget

As illustrated in **Exhibit 6**, OPD's fiscal 2007 allowance increases by 10.7%, or \$8,229,198 above the fiscal 2006 working appropriation. This increase is primarily driven by a 9.2%, or \$6,009,667 increase in personnel expenditures; a 37.5%, or \$1,258,686 increase in panel attorney fees; and a 128%, or \$460,000 increase in IT expenditures.

Exhibit 6
Governor's Proposed Budget
Office of the Public Defender
(\$ in Thousands)

How Much It Grows:	<u>General Fund</u>	<u>Special Fund</u>	<u>Reimb. Fund</u>	<u>Total</u>
2006 Working Appropriation	\$74,969	\$239	\$1,539	\$76,748
2007 Governor's Allowance	<u>83,766</u>	<u>212</u>	<u>998</u>	<u>84,977</u>
Amount Change	\$8,797	-\$27	-\$541	\$8,229
Percent Change	11.7%	-11.4%	-35.1%	10.7%

Where It Goes:

Personnel Expenses

22 new attorney positions	\$1,098
5 abolished positions – Juvenile Justice Detention Unit.....	-445
Increments and other compensation.....	158
Employee and retiree health insurance	2,305
Employees' retirement system	613
Workers' compensation premium assessment.....	-74
Unemployment compensation	-68
Turnover adjustments	2,260
Other fringe benefit adjustments.....	-88
Prior year health insurance funding shortfall.....	250

Other Changes

Panel attorney fees	1,259
Contractual turnover adjustments	51
Specialists and non-medical experts	109
Forensic services.....	112
Increased telecommunications expenses.....	52
Increased travel expenses.....	21
Increased utility expenses at two new facilities – Montgomery County and Towson.....	92
Acquisition of multi-function copiers	33
Transcripts	37
Reduced temporary employee fees	-55
Information technology expenses – caseload initiative	460
Replacement of computer equipment	20

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Where It Goes:

Financing payments for 337 PC workstations and network servers	52
Increased rent expense for Calvert Street location.....	25
Reduced subscription expense	-76
Other fixed charges.....	20
Other expenses.....	9
Total	\$8,230

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

New Positions

The fiscal 2007 allowance includes an additional \$1,097,690 for 22 new attorney positions. These positions are funded at 50% turnover for a net increase of \$862,598. The fiscal 2006 allowance included 85 new positions as the last installment of the caseload initiative. However, 22 of the 85 new positions were cut by the budget committees in order to offset cost containment reductions reflected by an unrealistically high turnover and to generate additional funding for employee health care costs. The budget committees directed that the 22 attorney positions be included in the fiscal 2007 allowance. The 22 positions requested will enable OPD to achieve compliance with ABA caseload standards in the circuit, District, and juvenile courts, thereby fulfilling the General Assembly’s fiscal 2003 directive to the agency. Additionally, the fiscal 2006 working appropriation reflects a total of 5 abolished positions. These positions were located within OPD’s Juvenile Justice Response Unit and consist of 2 attorneys, 2 social workers, and 1 intake clerk.

Panel Attorney Fees

The fiscal 2007 allowance includes an additional \$1,258,686 for panel attorney fees. The fiscal 2006 Administrative, Executive, and Legislative Review Committee (AELR) approved a regulatory fee increase for panel attorneys. In January 2005, panel fees were raised from \$30 and \$35 per hour (in court and out-of-court) to \$50 per hour. This rate increase is the first step of a three-step increase to restore parity with federal standards.

Information Technology

A 2001 audit by the Office of Legislative Audits (OLA) found that OPD lacked a comprehensive case management system to provide critical statistical and performance data. OPD addressed these concerns as part of the caseload initiative. The maintenance services procured to implement the case management system will expire at the end of fiscal 2006. The fiscal 2007 allowance includes an additional \$460,000 to fund OPD’s IT infrastructure. The allowance includes \$360,000 for ongoing database, software, and hardware maintenance costs and \$100,000 to acquire software licenses in order to accommodate recent staffing increases.

Issues

1. Case Weighting Study Completed: Proposed Caseload Standards

Proposed Caseload Standards

For years, the General Assembly expressed concerns about the underfunding, understaffing, and growing caseloads at OPD. In response to this concern, the legislature requested a joint performance audit of the Department of Budget and Management (DBM) and OPD. The 2001 audit by OLA recommended the adoption of caseloads standards or workload measures, acquisition of IT hardware and case management software, and funding based upon documented staffing and operational needs. In fiscal 2003 the budget committees responded to the audit by asking OPD and DBM to report what funding was required to bring caseloads into compliance with ABA caseload standards.

In response, OPD launched the caseload initiative. The initiative was designed to create immediate relief from excessive caseloads and provided for such relief in three primary components: (1) compliance with ABA caseload standards through increased staffing over three fiscal years (2004 – 2006); (2) case management and case tracking capability with necessary IT infrastructure; and (3) Maryland-specific caseload standards.

The fiscal 2007 allowance contains funding for the completion of all three components of the caseload initiative.

Compliance with ABA Caseload Standards

At the onset of the initiative, the budget committees and OPD determined that the agency needed 119 new attorney positions and related support staff positions to bring excessive caseloads into compliance with ABA standards. **Exhibit 7** provides a summary of the caseload initiative staffing history. The fiscal 2006 allowance included 85 new positions; the last installment of positions needed to complete the caseload initiative. However, the appropriation cut 22 of the 85 positions, leaving funds to address underfunded employee health care costs. The remaining 63 positions were funded in the fiscal 2006 working appropriation at approximately 40% turnover. The fiscal 2007 allowance funds annualized costs of these positions at approximately 5.2% turnover. The funding for these 63 positions include salaries, fringe benefits, and associated operating costs. The fiscal 2007 allowance also includes funding for the 22 positions that were cut in fiscal 2006. These 22 positions are funded at a turnover rate of approximately 50%.

Exhibit 7
Caseloads Initiative Staffing History

<u>Fiscal Year</u>	<u>Number of Attorney Positions</u>	<u>Number of Staff Positions</u>	<u>Total Positions</u>
2004	35.0	23.5	58.5
2005	38.0	30.5	68.5
2006	24.0	39.0	63.0
2007	22.0	0.0	22.0
Total Staff Positions			93.0
Total Attorney Positions			119.0

Source: Office of the Public Defender

Case-management and IT Infrastructure

The 2001 audit by OLA found that the OPD lacked a comprehensive case management system to provide critical statistical and performance data. The audit recommended the development of a comprehensive case management system. Preliminary requirements assessment identified that OPD needed to complete basic remediation and development of its IT infrastructure before it could embark on developing and installing a case management system.¹ As such, OPD addressed its IT concerns in the following phases:

- In fiscal 2003, OPD completed basic IT infrastructure remediation and development.
- In fiscal 2004, OPD began its case management design and procurement.
- In fiscal 2005, case tracking and case management capability was installed in all OPD offices initiating data collection by staff and attorneys. Additionally, OPD conducted basic case management training with all of its employees.

OPD received funding in each of the aforementioned fiscal years for each of the IT phases. OPD addressed its IT needs through technical services procurement (TSP). The contracts under TSP provided for (1) hardware and software, as well as design, installation and training; (2) development, installation, testing, rollout, and training of the case-management system; and (3) licenses for all existing users and projected users. OPD reports that the maintenance and related application and database services procured under the TSP will expire in fiscal 2006 and consequently, the agency has requested funding in its fiscal 2007 operating budget to support its ongoing IT needs. Additionally, the allowance includes funding to purchase new software licenses needed due to increased staffing as

¹ The agency needed to establish an intranet (e-mail, etc. within the agency at each of its statewide locations); participate in Network Maryland; provide computer access (hardware and software) to agency staff; and finish Y2K remediation before it could obtain and install a functioning case management system.

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a result of the caseload initiative. The fiscal 2007 allowance includes a total of \$820,000 to support OPD's IT infrastructure. \$150,000 is requested for software licenses, \$250,000 is requested for software applications maintenance, and \$420,000 is requested for database and hardware maintenance and case management deployment.

State-Specific Caseload Standards Developed

The 2001 Performance Audit conducted by OLA found that OPD had not established caseload standards for assistant public defenders. OLA recommended that OPD establish caseload standards for public defender attorneys in Maryland. The General Assembly endorsed this recommendation and directed the agency to develop Maryland standards to be used in the annual budget process. The National Center for the State Courts (NCSC) conducted an intensive case weighted study and analysis in fiscal 2005. Based upon its collected data and its analysis, NSCS determined the maximum number of cases Maryland public defenders can handle each year without jeopardizing effective assistance of counsel. NSCS proposed caseload standards for the agency through its final report, *Maryland Attorney and Staff Workload Assessment*, submitted to the General Assembly in August of 2005.

Final Caseload Recommendations

In an effort to determine the final case weights and ultimately, the final case standards, NCSC used a time study to measure the time OPD attorneys and staff spent handling cases. Beginning in March 2004, time study data was collected for several weeks from attorneys and staff in each of the 12 districts and 5 statewide divisions. The OPD Advisory Committee clustered the district locations into three groupings by district: rural (Districts 2, 3, 4, 11, and 12); suburban (Districts 5, 6, 7, 8, 9, and 10); and urban (District 1). **Exhibit 8** illustrates district groupings by county. The committee believed that groupings should be used because case complexity, work volume, and local practices varied among these groupings. Not only did the committee feel that it was important to note differences among how cases are handled geographically, the committee also identified that it was important to correlate the case weights to the various types of cases handled by OPD attorneys and staff. These case types were used to develop the final workload standards.

Exhibit 8
Maryland Office of the Public Defender District Groupings

<u>NSCS Category</u>	<u>District Number</u>	<u>Location</u>
Urban	District 1	Baltimore City
Rural	District 2	Dorchester Somerset Wicomico Worcester
Rural	District 3	Caroline Cecil Kent Queen Anne's Talbot
Rural	District 4	Calvert Charles St. Mary's
Suburban	District 5	Prince George's
Suburban	District 6	Montgomery
Suburban	District 7	Anne Arundel
Suburban	District 8	Baltimore County
Suburban	District 9	Harford
Suburban	District 10	Carroll Howard
Rural	District 11	Frederick Washington
Rural	District 12	Allegany Garrett

Source: Maryland Attorney and Staff Workload Assessment, 2005

OPD reports that Maryland-specific caseload standards are necessary because ABA case types and Maryland case types differ. For example, Maryland circuit court cases are not exactly the same kind of cases as ABA felonies. In addition, Maryland courts have local court practices that vary from county to county where a felony may be handled differently in each county, requiring different amounts of time at different points in the case. Lastly, OPD handles mental health cases, child-in-need-of-assistance cases and post-conviction cases for which there are no corresponding ABA standards.

NCSC recommended caseload standards for approximately 17 case types as illustrated in **Exhibit 9**. NCSC also consolidated these specific standards into standards for felony, misdemeanor, and juvenile cases as shown in **Exhibit 10**. **Exhibit 11** compares the recommended Maryland caseload standards to OPD's fiscal 2003 caseloads, which represents the most recent data collected by OPD under the new Maryland-specific caseload standards. In fiscal 2003, felony trial attorneys handled a range of 205 to 272 cases depending on felony type and geographic location. A comparison of the final recommended caseload standard to OPD's fiscal 2003 caseload indicates that the average number of cases handled by felony attorneys exceeded the maximum number recommended under the Maryland-specific standard. By contrast, misdemeanor trial attorneys handled a range of 644 to 791 cases depending on case type and location in fiscal 2003. A comparison of the final recommended caseload standard to the agency's fiscal 2003 caseload indicates that the number of misdemeanor cases handled by attorneys in rural, suburban, and urban areas were above the suggested maximum number of cases under the Maryland-specific standard. Lastly, juvenile trial attorneys handled a range of 200 to 314 cases in fiscal 2003. A comparison of the final recommended caseload standard to OPD's fiscal 2003 caseload indicates that the number of cases handled by juvenile attorneys were in excess of the suggested maximum number of cases under the Maryland standard. It is important to note that while a comparison of the fiscal 2003 attorney caseload to the recommended standards reflects the need for attorney relief across all areas of OPD's district operations, application of the Maryland-specific standards to OPD's 2003 caseload only reflects 35 of the 119 attorneys (including the 22 in the current allowance) received as a result of the caseload initiative. Consequently, most of the requisite attorney need reflected by comparing OPD's fiscal 2003 attorney caseload to the recommended attorney caseloads has been met.

OPD has expressed a desire to incorporate the proposed caseload standards into its strategic planning and performance based budgeting effective fiscal 2008. The agency plans to use 2005 caseload data collected by its case tracking system in a new statewide database to assess its fiscal 2008 operating budget requirements. OPD plans to incorporate the caseload standards into its MFR data, going forward. OPD has indicated that the implementation of the proposed caseload standards will enable the agency to provide the General Assembly with caseload reports as requested.

Exhibit 9
District Operations – Maximum Cases Per Attorney Per Year

<u>Types of Case</u>	<u>Rural</u>	<u>Suburban</u>	<u>Urban</u>
Capital (Death Notice Not Filed)	3	3	3
Capital (Death Notice Filed)	1	1	1
Violent Felony	57	52	50
Non-violent Felony	100	79	118
Homicide	12	12	15
Misdemeanor Jury Trial Demands/Appeals	351	463	320
District Court Criminal	556	564	657
District Court Traffic	826	856	925
Child Support	706	485	491
Juvenile	244	215	164
Juvenile Violation of Probation	2,381	2,756	2,544
Violations of Probation Circuit	919	919	848
Modifications/Sentence Reviews Circuit	689	679	1,496
Violations of the Probation District	1,837	1,837	1,696
Modifications/Sentence Reviews District	940	1,148	1,696
Preliminary Hearings District	7,864	5,613	15,251
Drug Treatment Court	n/a	n/a	84

Source: Maryland Attorney and Staff Workload Assessment, 2005

Exhibit 10
District Operations – Maximum Cases Per Attorney Per Year
Final Recommended Caseloads

	<u>Rural</u>	<u>Suburban</u>	<u>Urban</u>
Felony (Excluding Homicide)	207	157	170
Felony (Including Homicide)	191	140	156
Misdemeanor (Including Traffic)	630	705	728
Misdemeanor	599	680	719
Juvenile	271	238	182

Source: Maryland Attorney and Staff Workload Assessment, 2005

Exhibit 11
OPD Fiscal 2003 Caseload Per Attorney Compared to
Maryland Recommended Caseload Standards

	FY 2003 Caseloads			Final Recommended Caseloads		
	<u>Rural</u>	<u>Suburban</u>	<u>Urban</u>	<u>Rural</u>	<u>Suburban</u>	<u>Urban</u>
Felony (Excluding Homicide)	245	210	272	207	157	170
Felony (Including Homicide)	205	184	258	191	140	156
Misdemeanor (Including Traffic)	670	761	791	630	705	728
Misdemeanor	644	735	789	599	680	719
Juvenile	314	267	200	271	238	182

Source: Maryland Attorney and Staff Workload Assessment, 2005

What Are the Future Budget Implications for OPD of Adopting
Maryland-specific Caseload Standards?

As previously mentioned, OPD plans to incorporate the Maryland-specific caseload standards in place of the ABA standards in its next MFR and other strategic planning tools, effective fiscal 2008 based on calendar 2005 data which represents the first full year of electronic data collection via Prolaw, the agency's case management/case tracking software system. The fiscal 2008 MFR will provide caseload measures agencywide based on the new standards and report any staffing implications.

Exhibit 12 illustrates a comparison of the attorney need based on the caseload initiative and the new Maryland-specific standards. Under the caseload initiative, which analyzed attorney need based on OPD's fiscal 2002 caseload, it was determined that 119 new attorneys within the agency's district operations were needed to provide effective assistance of counsel. By contrast, under the proposed Maryland-specific caseload standard, which analyzed district attorney need based on OPD's fiscal 2003 caseload and March 2004 staffing level (which included 35 new attorneys and 23.5 new support staff via the caseload initiative), NCSC determined that approximately 112 attorneys were needed to provide effective assistance of counsel. Based on these numbers, OPD has determined that it will not request any additional positions in fiscal 2008. However, OPD reports that its fiscal 2008 budget request will include funding for new positions within the agency's divisions as they were not included in the caseload initiative, because at the time the caseload initiative was implemented, the divisions lacked meaningful ABA standards. The case weighting study determined that based on staffing levels at that time, the divisions needed 13.2 additional attorneys. OPD reports that at the present time, the agency anticipates that its fiscal 2008 budget request will include funding for 11 new positions.

Exhibit 12
Attorney Need Under Caseload Initiative and Maryland Specific Standards

	<u>Caseloads Initiative</u> <u>FY 02 Cases and Staffing</u>	<u>Maryland Specific Standards</u> <u>FY 03 Cases and FY 04 Staffing</u>
District Operations (12 Districts)	119	112
Divisions (Mental, Health, CINA, Collateral Review & Appellate)	n/a*	13.2

* The divisions were not included in the Caseload Initiative.

Source: Office of the Public Defender

Exhibit 13 shows the fiscal impact of requesting at minimum these 11 positions. OPD reports that its request for positions within the various divisions will be re-evaluated based on calendar 2005 caseloads. OPD indicates that currently, it does not have enough accurate trend data and information to determine whether cases within its divisions will increase, decrease, or remain stable. Therefore, the number of positions requested for its various divisions may increase or decrease given the data collected. OPD has also indicated that its fiscal 2008 request will reflect the impact of any new programs and or statutes not included in current caseload figures (i.e., new drug court positions or a new category of cases created by new law).

Exhibit 13
Anticipated Fiscal 2008 Position Requests

<u>Program</u>	<u>Division</u>	<u>Attorneys</u>	<u>Base Salary</u>	<u>Salary Total</u>	<u>Fringes @ 30% of Base Salary</u>	<u>Total</u>
Program 2	CINA	5	\$49,050	\$245,250	\$73,575	\$318,825
Program 3	Appellate	2	49,050	98,100	29,430	127,530
	Collateral	2	49,050	98,100	29,430	127,530
Program 4	Mental Health	2	\$49,050	\$98,100	\$29,430	\$127,530
Total		11		\$539,550	\$161,865	\$701,415

CINA = Child in Need of Assistance

Source: Office of the Public Defender

By adopting the caseload standards, the General Assembly will not be endorsing a funding formula or mandatory funding requirement. Each year, OPD plans to submit a budget request based upon the need as measured by the caseload standards, and each year, the Executive and Legislative

branches will be in a position to evaluate OPD's request based on the caseload standards and determine whether or not to include the requested funding.

The Department of Legislative Services (DLS) recommends budget bill language indicating that it is the intent of the General Assembly that OPD incorporate into its Managing for Results program, strategic planning and operating policies the caseload standards proposed by NCSC in the 2005 Maryland Attorney and Staff Workload Assessment report submitted to the General Assembly. DLS further recommends that OPD submit a report to the budget committees on the status of attorney caseloads under new Maryland caseload standards.

2. Panel Attorney Rate Increases

The fiscal 2007 allowance includes an additional \$1.26 million for panel attorney fees. Panel attorneys are private practitioners who represent indigent defendants when OPD is barred from doing so by a legal conflict of interest. Until fiscal 2006, the rate of compensation for panel attorneys had not increased in over 16 years. Panel attorneys were paid \$30 per hour for out-of-court work and \$35 per hour for in-court work. Consequently, OPD experienced a dramatic loss of panel attorneys. OPD's statewide panel attorney list of 400 attorneys was reduced to 40 attorneys. OPD reports that panel attorneys were unwilling to accept cases due to inadequate compensation. Panel attorneys reported that average office overhead costs ranging from \$50 to \$150 per hour exceeded the panel attorney rate of \$30 to \$35 per hour. OPD indicates that maintaining an inadequate panel list, due to lack of adequate funding, results, in court delays and jeopardizes the State's ability to ensure effective assistance of counsel. In fiscal 2006, AELR approved a regulatory panel attorney rate increase to \$50. This is the first step of a three-step increase to raise panel attorney rates to the federal standard.

This rate increase was the first step of a three-year proposal by OPD to restore parity with federal standards. When Maryland panel attorney rates were first established at \$35 per hour, they were comparable to the federal rate at the time, which was \$40 per hour. Since then, the federal rate has increased to reflect inflation and the cost-of-living; however, the Maryland rate has remained stagnant. The federal rate is set annually after a review of relevant economic indicators including the surveys of small and large firm economics and court ordered attorneys fees awards. The federal rate is now \$92 per hour for felony cases and \$113 per hour for capital cases. OPD reports that another reason the agency has had difficulty recruiting panel attorneys is because many panel attorneys choose to accept federal cases in lieu of State cases because of the higher rate of \$92 per hour.

Exhibit 14 illustrates a comparison of Maryland's panel attorney fee rates with the federal rate in addition to six other states utilizing the same² indigent defense structure. Prior to the increase to \$50 per hour, Maryland ranked last among these states. Maryland now ranks approximately fifth among these states for both in-court and out-of-court panel attorney rates.

² A report issued by the National Legal Aid and Defender Association, identified six states with the same indigent defense structure as Maryland. The report noted that it is difficult to make comparisons between various indigent defense systems because of variables such as how the indigent defense system is organized (at the state or county level) and how services are funded (state, county or mixed).

Exhibit 14
Panel Attorney Rate Comparison

Assigned Counsel Compensation Rate

<u>State</u>	<u>In-Court</u>	<u>Out-of-Court</u>
Connecticut	\$65	\$65
Maryland*	50	50
Massachusetts	50 – 100	n/a
New Mexico	60	60
Vermont	50	50
West Virginia	65	45
Wisconsin	40	40
Federal Rate**	92	92

* Reflects the current rate of \$50 per hour.

** The federal rate is \$92 per hour for felony cases and \$133 per hour for capital cases.

Note: The Connecticut hourly rate does not reflect an additional flat fee received per case. Also, the Massachusetts rate is expected to increase in fiscal 2008.

Source: American Bar Association; Office of the Public Defender

OPD reports that the agency decided to delay recruiting for one year until the increase had been in effect for one year. The agency began its initial recruiting efforts to increase the statewide panel attorney list in January 2006.

OPD should comment to the committees on the current status of the statewide panel attorney list and the future implications of the increase to \$50 per hour. DLS recommends that OPD submit a report to the committees by November 1, 2006, on the status of the statewide panel attorney list. The report should include measurable outcomes such as the size of each district's panel attorney list and improved efficiency among its district public defenders.

3. Fiscal 2005 Closeout Audit

OLA's statewide review of budget closeout transactions for fiscal 2005 indicated that OPD reported \$622,858 in unprovided for payables. **Exhibit 15** provides a breakdown of OPD's fiscal 2005 carryover expenditures. OPD reports that these expenditures have been absorbed in both the current working appropriation and the fiscal 2006 deficiency appropriation.

OPD should comment to the committees as to why the agency overspent its fiscal 2005 appropriation.

Exhibit 15
Fiscal 2005 Carry Over of Expenditures

Technical and Special Fee Expenses	
Panel – Work Overload	\$30,054
Per Diem – Panel Attorneys	3,337
Panel – Conflict of Interest	121,005
Psychiatry/Psychology	18,947
DNA – Experts	3,635
Criminalists – Forensics	1,619
Interpreters	662
Investigators	4,166
Miscellaneous Forensics Experts	185
	\$183,610
Communication Expenditures	
Postage	\$1,160
Telephone	25,690
DBM – Office of Telecommunication	9,733
	\$36,583
Travel Expenses	
In-state Routine – Mileage	\$7,667
In-state Conferences/Training/Seminars – Mileage	594
Out-of-state Conferences/Training/Seminars	2,300
	\$10,561
Fuel and Utility Expenses	
Utility – Electricity	\$5,762
Motor Vehicle Expenses	
Gas and Oil	\$1,181
Maintenance and Repairs	1,579
Garage Rent	4,912
	\$7,672
Contractual Service Expenditures	
Printing/Reproduction	\$6,777
Photo Development	167
Equipment Rental (Leased)	8,089
Equipment Repairs and Maintenance	325
Janitorial Services	936
Transcripts	76,020
Education/Training Contract	870
Freight and Delivery	5,003
Trash Removal	2,330
Telecommunications Lines, Modems, and Control	4,239
Technical Service Procurement	108,000
In-state Services – Computer Usage	335
In-state Services – Computer Usage	679
Circuit Court IT Installation	3,630
	\$217,400

C80B00 – Office of the Public Defender

Supplies and Materials		
	Office Supplies	\$771
	Audio Visual Supplies	4,582
	Food/Water	152
		\$5,505
Fixed Charges	Rent (non-DGS)	\$10,161
	Rent (DGS)	144,602
	Bank Service Charges	1,003
		\$155,766
Total		\$622,859

Source: Office of the Public Defender

Recommended Actions

1. Add the following language:

Provided that it is the intent of the General Assembly that the Maryland Office of the Public Defender incorporate into its Managing for Results program strategic planning and operating policies and caseloads standards proposed by the National Center for State Courts in its fiscal 2005 report submitted to the General Assembly, “Maryland Attorney and Staff Workload Assessment.”

Explanation: While the General Assembly is not endorsing a funding mandate, the General Assembly recognizes the need for State-specific caseload standards. After years of rising the Office of the Public Defender (OPD) caseloads, the legislature directed OPD to propose caseload standards by which to assess agency staffing and funding. The proposed standards are detailed in a 2005 *Joint Chairmen’s Report* response, in a report prepared by the National Center for State Courts, *Maryland Attorney and Staff Workload Assessment, 2005*. The General Assembly has concluded that these standards are adequate to insure effective assistance of counsel in Maryland and should be incorporated into OPD’s Managing for Results program and used by OPD in determining and assessing staffing levels.

2. Adopt the following narrative:

Submission of a Report on the Status of Attorney Caseloads Under Maryland Caseload Standards: The Office of the Public Defender (OPD) shall submit a report to the budget committees by November 1, 2006, on the status of attorney caseloads under new Maryland caseload standards. The report should include information regarding OPD’s projected fiscal 2008 staffing needs under the Maryland caseload standards. The committees shall have 45 days to review and comment on the report from date of its receipt.

Information Request	Author	Due Date
Submission of a Report on the Status of Attorney Caseloads under Maryland Specific Caseload Standards	OPD	November 1, 2006

3. Adopt the following narrative:

Report on the Status of Maryland’s Statewide Panel Attorney List: The Office of the Public Defender shall submit a report to the budget committees by November 1, 2006, on the status of the statewide panel attorney list. The report shall include measurable outcomes such as the size of each district’s panel attorney list and improved efficiency among district public defenders.

C80B00 – Office of the Public Defender

Information Request	Author	Due Date
Report on the Status of Maryland's Statewide Panel Attorney List	OPD	November 1, 2006

Updates

1. March 2005 Audit Findings

OPD's March 2005 audit disclosed five findings: (1) there was a significant backlog of pre-numbered billings for client administrative fees that were not recorded in the accounts receivable records and pursued for collections; (2) the Financial Management Information System (FMIS) security officer authorized financial transactions in violation of the State Information Technology Security Policies and Standards; (3) invoices were often submitted to the Comptroller of the Treasury for payment after the required 25-day time limit, subjecting the State to potential interest charges; (4) evidence of possible criminal or unethical employee conduct was not referred to the Attorney General as required; and (5) sufficient control was not established over equipment.

OPD reports that findings number 2, 3, and 4 were addressed by the time of the audit's conclusion. Finding number 2 was addressed by segregating the responsibilities of the FMIS security officer and the authorization of financial transactions. With regard to finding number 3, OPD reports that it continues to assert its best efforts to ensure that invoices are submitted in a timely manner. In response to finding number 4, OPD identified six former employees who, during the three-year period covered by the audit, engaged in unethical conduct. While the conduct was not referred to the Office of the Attorney General, OPD reports that appropriate personnel actions were taken against each employee consistent with the State personnel and pension laws. Four of the employees were terminated from employment and two were allowed to resign in lieu of termination.

OPD reports that it has addressed finding number 1 by establishing an agreement with the Comptroller's Office to address OPD's backlog of client administrative fee billings. As of July 2005, administrative fees are now captured electronically in ProLaw. OPD has addressed finding number 5 by performing a physical inventory of its IT and administrative services unit. Currently, the inventories are being reconciled to the master inventory file.

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 2005					
Legislative Appropriation	\$63,590	\$110	\$0	\$1,377	\$65,077
Deficiency Appropriation	0	0	0	0	0
Budget Amendments	5,177	168	0	0	5,345
Reversions and Cancellations	0	-73	0	-17	-90
Actual Expenditures	\$68,767	\$205	\$0	\$1,360	\$70,332
Fiscal 2006					
Legislative Appropriation	\$74,147	\$182	\$0	\$1,539	\$75,868
Budget Amendments	822	58	0	0	880
Working Appropriation	\$74,969	\$240	\$0	\$1,539	\$76,748

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

Fiscal 2005

In fiscal 2005 the total budget for the OPD increased by \$5.3 million. The general fund appropriation for OPD increased by \$5.1 million. This increase was the result of a \$4.4 million two-grade salary adjustment, a \$700,884 cost-of-living adjustment (COLA), and a \$75,840 transfer initiated by DBM to reconcile statewide telecommunications expenditures.

The special fund appropriation increased by \$167,945. OPD received \$75,000 to hire a coordinator and provide training and development for its Community Justice Initiative Project. The remaining \$92,945 special fund appropriation was allocated as follows: (1) \$11,704 was used to hire additional staff for a DUI/Drug Pilot Program in Howard County; (2) \$66,350 and \$9,479 was allocated to Baltimore County to conduct screenings in Juvenile Drug Court and to match funding for the Inmate Services Project, respectively; and (3) \$5,412 was used to match funding for the Expedited Disposition Project in Anne Arundel County. OPD had a special fund cancellation of \$73,239. This amount reflects monies that will be carried over into fiscal 2006 because of differences in the timing of funding cycles. Additionally, OPD had \$16,655 in reimbursable fund cancellations due to the Department of Juvenile Services (DJS) and the Juvenile Detention Response Unit's reduction of funding from the amount previously budgeted. DJS has cancelled funding for the Juvenile Detention Response Unit in fiscal 2006.

Fiscal 2006

The fiscal 2006 working appropriation increased by \$879,839 above the fiscal 2006 legislative appropriation. General funds increased by \$822,140 due to a \$818,945 COLA and a \$3,195 budget amendment to increase the salary of the Public Defender. The Public Defender's salary was increased pursuant to 2005 House Joint Resolution 1. Salary increases provided through the Judicial Compensation Commission affect the salary of the Public Defender, which is tied to that of a circuit court judge. Special funds increased by \$57,699 to fund OPD's Community Justice Initiative Project. These funds will be used to provide a Community Justice Coordinator and to provide training and other resources to develop a pilot community defender project to serve as a model for the agency in grounding competent indigent defense in the diverse communities served by OPD.

Audit Findings

Audit Period for Last Audit:	February 12, 2001 – June 9, 2004
Issue Date:	March 2005
Number of Findings:	5
Number of Repeat Findings:	2
% of Repeat Findings:	40%
Rating: (if applicable)	n/a

Finding 1: **Significant backlog of pre-numbered billings for client administrative fees were not recorded in the accounts receivable records and pursued for collection.**

Finding 2: The agency's FMIS security officer authorized financial transactions in violation of the State Information Technology Security Policies and Standards.

Finding 3: Invoices were often submitted to the Comptroller of the Treasury for payment after the required 25-day time limit, subjecting the State to potential interest charges.

Finding 4: Evidence of possible criminal or unethical employee conduct was not referred to the Attorney General as required.

Finding 5: **Sufficient control was not established over equipment.**

*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>FY05 Actual</u>	<u>FY06 Working Appropriation</u>	<u>FY07 Allowance</u>	<u>FY06 - FY07 Amount Change</u>	<u>Percent Change</u>
Positions					
01 Regular	940.00	998.00	1020.00	22.00	2.2%
02 Contractual	39.63	82.10	82.10	0	0%
Total Positions	979.63	1080.10	1102.10	22.00	2.0%
Objects					
01 Salaries and Wages	\$ 59,938,154	\$ 65,438,723	\$ 71,448,390	\$ 6,009,667	9.2%
02 Technical & Spec Fees	5,153,041	5,439,485	6,970,786	1,531,301	28.2%
03 Communication	818,896	912,383	964,431	52,048	5.7%
04 Travel	224,268	244,299	265,207	20,908	8.6%
06 Fuel & Utilities	112,554	38,682	132,419	93,737	242.3%
07 Motor Vehicles	71,983	88,516	101,747	13,231	14.9%
08 Contractual Services	1,696,223	2,131,150	2,596,800	465,650	21.8%
09 Supplies & Materials	371,133	383,502	384,252	750	0.2%
10 Equip - Replacement	3,011	0	0	0	0.0%
11 Equip - Additional	362,293	177,676	248,921	71,245	40.1%
13 Fixed Charges	1,579,414	1,893,299	1,863,960	-29,339	-1.5%
Total Objects	\$ 70,330,970	\$ 76,747,715	\$ 84,976,913	\$ 8,229,198	10.7%
Funds					
01 General Fund	\$ 68,766,343	\$ 74,969,085	\$ 83,766,399	\$ 8,797,314	11.7%
03 Special Fund	204,492	239,313	212,102	-27,211	-11.4%
09 Reimbursable Fund	1,360,135	1,539,317	998,412	-540,905	-35.1%
Total Funds	\$ 70,330,970	\$ 76,747,715	\$ 84,976,913	\$ 8,229,198	10.7%

Note: The fiscal 2006 appropriation does not include deficiencies, and the fiscal 2007 allowance does not reflect contingent reductions.

**Fiscal Summary
Office of the Public Defender**

<u>Program/Unit</u>	<u>FY05 Actual</u>	<u>FY06 Wrk Approp</u>	<u>FY07 Allowance</u>	<u>Change</u>	<u>FY06 - FY07 % Change</u>
01 General Administration	\$ 4,957,126	\$ 5,583,542	\$ 6,572,158	\$ 988,616	17.7%
02 District Operations	58,216,414	63,851,164	70,605,134	6,753,970	10.6%
03 Appellate And Inmate Services	4,940,614	5,102,086	5,314,733	212,647	4.2%
04 Involuntary Institutionalization Services	1,207,814	1,223,332	1,442,183	218,851	17.9%
05 Capital Defense Division	1,009,002	987,591	1,042,705	55,114	5.6%
Total Expenditures	\$ 70,330,970	\$ 76,747,715	\$ 84,976,913	\$ 8,229,198	10.7%
General Fund	\$ 68,766,343	\$ 74,969,085	\$ 83,766,399	\$ 8,797,314	11.7%
Special Fund	204,492	239,313	212,102	-27,211	-11.4%
Total Appropriations	\$ 68,970,835	\$ 75,208,398	\$ 83,978,501	\$ 8,770,103	11.7%
Reimbursable Fund	\$ 1,360,135	\$ 1,539,317	\$ 998,412	-\$ 540,905	-35.1%
Total Funds	\$ 70,330,970	\$ 76,747,715	\$ 84,976,913	\$ 8,229,198	10.7%

Note: The fiscal 2006 appropriation does not include deficiencies, and the fiscal 2007 allowance does not reflect contingent reductions.