

Performance Audit Report

Office of the Public Defender

Deficiency Appropriations Continue to Be Required

Budget Requests Sometimes Contained Unrealistic Amounts

Attorney Caseloads Often Exceeded Established Standards and Adequate Processes to Minimize Caseload Disparities Were Not in Place

November 2009



OFFICE OF LEGISLATIVE AUDITS
DEPARTMENT OF LEGISLATIVE SERVICES
MARYLAND GENERAL ASSEMBLY

-
- This report and any related follow-up correspondence are available to the public through the Office of Legislative Audits at 301 West Preston Street, Room 1202, Baltimore, Maryland 21201. The Office may be contacted by telephone at 410-946-5900, 301-970-5900, or 1-877-486-9964.
 - Electronic copies of our audit reports can be viewed or downloaded from our website at <http://www.ola.state.md.us>.
 - Alternate formats may be requested through the Maryland Relay Service at 1-800-735-2258.
 - The Department of Legislative Services – Office of the Executive Director, 90 State Circle, Annapolis, Maryland 21401 can also assist you in obtaining copies of our reports and related correspondence. The Department may be contacted by telephone at 410-946-5400 or 301-970-5400.
-



DEPARTMENT OF LEGISLATIVE SERVICES
OFFICE OF LEGISLATIVE AUDITS
MARYLAND GENERAL ASSEMBLY

November 19, 2009

Karl S. Aro
Executive Director

Bruce A. Myers, CPA
Legislative Auditor

Delegate Steven J. DeBoy, Sr., Co-Chair, Joint Audit Committee
Senator Verna L. Jones, Co-Chair, Joint Audit Committee
Members of Joint Audit Committee
Annapolis, Maryland

Ladies and Gentlemen:

At the request of the General Assembly budget committees, we conducted a performance audit of certain aspects of the Office of the Public Defender (OPD). OPD provides counsel and related services to indigent persons. OPD supplies representation in criminal trials, appeals, juvenile cases, parole and probation revocations, and involuntary commitments to mental institutions. OPD provides staff in 12 districts throughout the State and several statewide divisions located at its headquarters in Baltimore City.

Our audit identified a number of issues regarding OPD's budget and personnel practices that impact its ability to meet its annual budgeted appropriation. In five of the eight fiscal years from 2002 to 2009, OPD exceeded its total budget. During that period, OPD exceeded budgeted amounts in a number of areas, including salaries, payments for panel attorneys, and information technology costs. In many cases, it appears that budget problems can be traced to differences between OPD's determination of its funding needs to accomplish its mission and the targets set by the Department of Budget and Management (DBM), and ultimately, the inability of OPD to operate within the allotted budget. For example, we found that, while OPD's budget development process considered historical costs and identified short and long-term needs, the final budget submission contained certain unrealistic amounts because of the need to meet budget targets. DBM would not comment on OPD's budget issues and budget decisions because it stated that such matters are subject to Executive Privilege.

While OPD has instituted certain procedures to attempt to limit its actual expenditures to its appropriation, such procedures have not been sufficient, resulting in OPD exceeding its budget. For example, OPD had not established processes to control certain costs incurred by local district offices, such as panel attorney costs. As a result, OPD continues to receive deficiency appropriations and carry unfunded expenditures into subsequent fiscal years, although it is OPD's responsibility to operate within its budget.

Our audit also disclosed that, while OPD increased the number of attorneys by 119 between fiscal years 2004 and 2007, and the number of cases received has remained relatively consistent over the last several years, not all districts have experienced reductions in attorney caseloads. For example, while caseloads in Baltimore City generally have decreased, caseloads in rural districts have generally increased. Furthermore, despite these trends, attorneys in OPD's 12 district offices still generally handled significantly more cases than the caseload standards established by a *2005 Caseload Study*. Using calendar year 2007 caseload data (the most recent year for which statistics were available during the audit) and caseload standards developed by the *Study*, OPD reported to the General Assembly in August 2008 that it would need 55 additional attorney positions at a cost of \$14.3 million to meet the aforementioned caseload standards. However, we determined that due to certain incorrect assumptions, OPD actually needed 68 additional positions. OPD did not receive any additional attorney positions as a result of this report. Moreover, as a result of cost containment, OPD lost 23 attorney positions between fiscal years 2008 and 2010.

Our audit also disclosed that, although OPD developed an Office-wide caseload management system, it did not use the system to centrally monitor workload levels and efficiency at the districts. Also, OPD did not adequately analyze attorney caseloads and sufficiently reallocate positions to minimize caseload disparities. In addition, OPD could improve documentation that helps to ensure the integrity of the system's case data.

An Executive Summary of our findings can be found on page 3, and our audit scope, objectives, and methodology are explained on page 13. OPD's response to this audit is included in Appendix A to this report. Auditor comments related to certain of OPD's responses can be found in Appendix B. We wish to acknowledge the cooperation extended to us by OPD during our audit.

Respectfully submitted,

Bruce A. Myers, CPA
Legislative Auditor

Table of Contents

Executive Summary	3
Background Information	5
Organization	5
Agency Budget and Staffing	6
Caseloads Standards Report	7
Deficiency Appropriations	8
Case Management System	9
Comparison to Other States with Centralized Public Defender Operations	9
Prior Audit Report	11
Audit Scope, Objectives, and Methodology	13
Findings and Recommendations	17
Objective 1: Financial Operations and the OPD Budget	17
Conclusion	17
Background	18
Budgeting Issues and Excess Expenditures	18
Finding 1 – OPD Continues to Require Deficiency Appropriations to Cover Operating Costs	18
Finding 2 – OPD Budget Submissions Sometimes Used Unrealistic Amounts in Order to Meet Spending Targets Established by DBM	23
Financial Management and Oversight	
Finding 3 – OPD Headquarters Did Not Provide Its Operating Units With Access to State Accounting Records or Provide Periodic Budget and Expenditure Reports	25
Finding 4 – OPD Did Not Submit Invoices to the Comptroller for Payment in a Timely Manner	26
Finding 5 – Certain Financial Information Reported to the Maryland General Assembly Was Generally Accurate	28
Recommendations	28

Table of Contents

Objective 2: Case Management	31
Conclusion	31
Background	32
Finding 6 – Additional Attorney Positions Have Had Varying Impacts on OPD’s Caseload Per Attorney	38
Finding 7 – Attorney Caseloads Often Exceeded Caseload Standards and Positions Were Not Reallocated to Minimize Caseload Disparities	38
Finding 8 – OPD’s Reported Need for Additional Attorneys Improperly Considered Administrative Attorneys	42
Finding 9 – OPD Had Not Established a Process to Determine if the Caseload Standards Should Be Updated	43
Finding 10 – OPD Management Did Not Adequately Use the Case Management System to Help Ensure Efficient Operations	44
Finding 11 – Reviews of Caseload Statistics Were Not Used to Reduce Errors and OPD Did Not Retain Documentation of Cases Deleted During Its Annual Reviews	44
Finding 12 – OPD’s Case Records Were Generally Complete and Accurate	46
Recommendations	46
Objective 3: Prior Performance Audit Follow-up	49
Conclusion	49
Agency Response	Appendix A
Auditor’s Comments on Agency Response	Appendix B

Executive Summary

We conducted a performance audit of certain aspects of the Office of the Public Defender (OPD). This audit was conducted in response to a request included in the 2008 Joint Chairmen's Report. The objectives of this audit were as follows:

1. To assess the effectiveness of OPD's budgetary practices and related procedures regarding funding decisions, including budgeting, and financial operations
2. To review procedures and controls over case management and assess the impact of changes implemented since our November 2001 performance audit
3. To determine the current status of OLA recommendations in the 2001 audit report

OPD coordinates delivery of legal services to indigent persons throughout the State. During fiscal year 2009, OPD had 957.5 authorized positions, including over 500 attorneys, and expenditures totaling \$91.1 million.

Regarding Objective 1, we found that OPD still routinely required deficiency appropriations to fund operating expenditures. Even with these additional appropriations, OPD frequently carried over unfunded expenditures into the following fiscal year. Excess expenditures occurred in a number of operational areas, including salaries and related benefit costs, panel attorneys, as well as other operating expenditures. These deficiencies have continued to occur even as OPD has taken steps, such as leaving positions vacant, in an attempt to control costs. In many cases, it appears that OPD's budget problems can be traced to differences between its determination of its funding needs to accomplish its mission and the targets set by the Department of Budget and Management (DBM), and ultimately, the inability of OPD to operate within the allotted budget. We also found that, while recent OPD budgets were generally based on historical cost information or DBM instructions, the OPD budgets continued to include certain unrealistic amounts in order to meet budget targets. For example, in fiscal year 2008 OPD used an artificially high turnover expectancy percentage (similar to a finding noted in our 2001 audit report) in order to meet the budget target. In fiscal year 2009, even though OPD included no funds for panel attorneys in its budget request (such costs are a routine expenditure that generally ranged between \$4 and \$5 million each year), OPD continued to use such attorneys. Our audit also disclosed that, while improvements had been made in

budgeting, OPD had not implemented practices designed to provide financial information to the districts and divisions to allow for increased financial oversight. Finally, OPD frequently did not submit invoices timely as required by the Office of the Comptroller's General Accounting Division.

Regarding Objective 2, we found that OPD had implemented a statewide case management system. We also found that, while the overall cases per attorney had decreased as a result of new positions received by OPD since fiscal year 2003, the additional positions received had varying impacts on the caseloads per attorney. For example, although caseloads per attorney had generally decreased between 2003 and 2007 in OPD's only urban district (Baltimore City), caseloads per attorney for most types of cases in suburban and rural districts had increased over this same period. In addition, caseloads per attorney frequently significantly exceeded the related caseload standard. Specifically, each district had attorney caseloads that exceeded the related standard by at least 25 percent for at least one type of case. For example, in the Lower Shore district, attorney caseloads for district and juvenile cases were 81 percent and 149 percent, respectively, greater than the established standards. We also determined that OPD had not adequately reallocated positions to minimize caseload disparities between, and within, its district offices. Furthermore, we determined that OPD's calculation of additional attorneys needed in order to meet caseload standards was not entirely accurate since the calculation improperly took into account attorneys who performed primarily administrative duties. Finally, we found that information recorded in the case management system was generally accurate; however, changes to case statistics based on annual OPD reviews of case management system data disclosed that: (1) documentation to support changes in the statistics was not retained for audit purposes, and (2) the annual reviews were not used as a mechanism to reduce the future occurrence of inaccurate case data entries into the system.

Regarding Objective 3, we found that OPD had generally made substantial progress in complying with the recommendations made in our November 2001 audit. For example, OPD implemented a statewide case management system that allowed all staff to enter case information into a single database that could be used to manage OPD's operations. In addition, OPD obtained a caseload staffing study to use as a basis for measuring the adequacy of existing staffing and requesting additional positions. However, certain deficiencies and issues continue to exist. For example, OPD had not implemented processes designed to enhance the monitoring and reporting of financial information to and from district and division offices as recommended in the previous audit.

Background Information

Organization

The Office of the Public Defender (OPD) provides legal representation to accused indigent persons taken into custody for violating a State, county, or municipal law that has a penalty of possible incarceration, and for certain other legal proceedings. The U.S. Supreme Court has mandated that states and localities provide counsel for indigent persons accused of crimes to safeguard their fundamental rights and to ensure they are afforded the protections guaranteed by law. OPD is responsible for this function in Maryland.

OPD's headquarters unit provides overall administration and coordination for all public defender services and handles all personnel and fiscal matters, including budgeting, planning, accounting, data collection, procurement and training. OPD has seven divisions that coordinate delivery of legal services to indigent persons for: (1) capital murder cases, (2) involuntary confinement to a mental institution, (3) appellate litigation, (4) inmate services, (5) forensics technical support and litigation, (6) juvenile protection, and (7) parents or legal guardians of children involved in Children In Need of Assistance (CINA)¹ cases. Twelve district offices provide the direct legal services to indigent persons at all stages of criminal proceedings (interrogation, preliminary hearing, arraignment, trial, and appeal) in District Courts, Circuit Courts, Juvenile Courts, police custody, and related hearings. The districts are identified in Chart 1 on the next page.

¹ Local departments of social services initiate CINA proceedings in cases where a child has been abused, has been neglected, has a developmental disability or has a mental disorder and the parents or legal guardian are unable or unwilling to give proper care and attention to the child and the child's needs. OPD provides representation to the parents/guardians through all of the stages of the related juvenile court case.

Chart 1
Maryland OPD Districts

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

Source: OPD website

Agency Budget and Staffing

OPD's Board of Trustees appoints the Public Defender, reviews the administration of the Public Defender system, and advises the Public Defender on OPD operations. The Public Defender, with the approval of the Board, appoints a Deputy Public Defender, and one district public defender for each of the 12 districts in the State. District public defenders manage and supervise daily operations of the district office and ensure quality representation of clients by adequately staffing courtrooms and closely supervising staff. The Public Defender also appoints/hires assistant public defenders, investigators, and other personnel as provided for in the State budget. OPD's expenditures for fiscal year 2009 totaled \$91.1 million, of which \$75.5 million, or 83 percent, represented payroll costs (salaries and fringe benefits). An additional \$6.8 million, or 7 percent, was expended for panel attorneys and expert witnesses. A panel attorney is a private attorney assigned by the Public Defender to provide legal representation to an indigent person in cases where a conflict of interest may exist (for example, a co-defendant is being represented by an assistant public defender). The remaining \$8.7 million was spent for leasing office space throughout the

State, transcript costs, computer system maintenance and operations, and other miscellaneous expenditures. OPD had 1,007 authorized positions for fiscal year 2008 and, as a result of cost containment, the number of authorized positions for fiscal year 2009 was reduced to 957.5 and was further reduced to 942.5 for fiscal year 2010.

Caseload Standards Report

Subsequent to our 2001 audit, OPD contracted with the National Center for State Courts to develop caseload standards specific for Maryland's operations. Using fiscal year 2003 case data and March 2004 staffing levels, the Center's report (issued in 2005) concluded that OPD would need 125.5 additional full-time equivalent attorney positions and 69 additional staff positions to properly manage and represent cases opened in the State. The report also stated that these needs were in addition to positions granted to OPD in fiscal year 2003 as part of a separate caseload initiative to increase OPD's staffing to reduce caseloads. As shown in Table 1 below, OPD's staffing increased significantly between fiscal year 2002 (the year before the caseload initiative) and fiscal year 2008. However, as previously mentioned, the total number of positions for fiscal year 2009 was reduced to 957.5, and for fiscal year 2010 was further reduced to 942.5.

Classification	Number of Positions (fiscal year)		Number Change	Percent Change
	2002	2008		
Attorneys	420	565.5	145.5	34.6%
Investigators	42	37.5	(4.5)	(10.7%)
Law Clerks ⁽¹⁾	78	0	(78)	(100%)
Intake Specialists	58	84.5	26.5	45.7%
Administrative Support	54	21	(33)	(61.1%)
Other Support (such as clerical staff) ⁽²⁾	111	298.5	187.5	168.9%
Total	763	1,007	244	32%
Contractual Positions (not included above)	83.4	57.3	(26.1)	(31.3%)

Source: OPD Personnel Division, State budget and November 2001 OLA Performance Audit Report

⁽¹⁾ OPD eliminated law clerks as a cost savings measure.

⁽²⁾ Includes office clerks and additional support staff added as part of the Caseload Initiative to provide increased support for OPD.

Deficiency Appropriations

OPD has exceeded its budgeted appropriation, including supplemental appropriations (which represent additional funding authorizations proposed by the Governor but not included in the Governor's original budget submission), and received deficiency appropriations for 12 of the 15 fiscal years from 1995 to 2009. From fiscal year 2002 to 2009, OPD required deficiency appropriations totaling \$13.9 million in order to cover excess expenditures.

The fiscal year 2009 budget law included a restriction regarding OPD's request for a fiscal year 2008 deficiency appropriation of \$2.5 million. The restriction required that the Department of Budget and Management (DBM) certify to the legislative budget committees whether additional funding would be necessary to cover OPD's fiscal year 2008 operating costs. DBM submitted the required letter to the legislative budget committees, in which it stated, in part, that the deficiency appropriation may not be adequate to fund OPD's fiscal year 2008 obligations (including the carry-over expenditures from fiscal year 2007). Additionally, DBM requested that the letter serve as the certification necessary to meet the reporting requirement. The deficiency appropriation was added to OPD's budget upon the passage of the fiscal year 2009 budget bill and was used to meet fiscal year 2008 obligations. However, as mentioned by DBM in its letter, the deficiency appropriation actually was insufficient to cover all of OPD's fiscal year 2008 expenditures as OPD carried \$1.7 million of operating expenditures from fiscal year 2008 to fiscal year 2009.

The budget bill for fiscal year 2010 included a \$3.5 million deficiency appropriation for OPD for fiscal year 2009 to provide funding for fiscal year 2008 carryover expenditures of \$1.7 million (which were charged against the fiscal year 2009 appropriation) and \$1.8 million for OPD's ongoing costs (such as panel attorneys). Based on the State's financial records as of June 30, 2009, OPD's expenditures did not exceed the fiscal year 2009 appropriation (including the deficiency appropriation), see Table 2 on the next page.

Table 2			
Fiscal Year 2009 OPD Appropriation and Expenditure Status			
	Appropriation	Actual Expenditures	Amount Under (Over) Budget
Payroll and Fringe Benefits	\$75,334,942	\$75,534,217	\$(199,275)
Panel Attorneys and Experts	5,505,852	6,851,635	(1,345,783)
Other Operating Costs	7,324,003	8,718,395	(1,394,392)
Total	\$ 88,164,797	\$91,104,247⁽²⁾	\$(2,939,450)
Deficiency Appropriation ⁽¹⁾			3,500,000
Total (Over)/Under			\$560,550

Source: State financial reports and records.

⁽¹⁾Deficiency appropriations are not allocated to detail budget objects

⁽²⁾These expenditures include approximately \$1.7 million carried forward from fiscal year 2008; of this amount, approximately \$1.1 million was related to panel attorneys and experts

Case Management System

OPD implemented a new automated case management system in calendar year 2004 for use by all district offices at a cost of \$4 million. Previously, each district office had its own stand alone case management system. OPD advised that it contacted several other states to identify various vendors and products before making its selection. The case management system tracks detailed case information (such as charges and visits with a client) and provides case statistics (such as cases per attorney).

Comparison to Other States with Centralized Public Defender Operations

Available data suggest that Maryland's public defender operation was generally less expensive per case than six other states that operated centralized public defender agencies similar to Maryland². We contacted the public defender agencies in Connecticut, Massachusetts, New Mexico, Vermont, West Virginia, and Wisconsin to obtain the statistics summarized in Table 3 below. Comparisons of costs between states are not easy to interpret since factors such as the mix of case types, the geography (urban vs. rural

² Based on a National Legal Aid and Defender Association report which indicated that while 22 states fully funded indigent defense services, only 7 states, including Maryland had a central office that coordinated primary and conflict (panel) services.

population) and regional pay levels disparities need to be considered. Thus, the below data are only presented to provide perspective.

Table 3 Comparison of States With Centralized Public Defender Operations Fiscal Year 2008 (unaudited)						
State	2007 Population	Number of Cases Opened ⁽¹⁾	Attorneys on Staff	Total Expenditures	Cost per Case	Cost per Capita
Maryland	5,618,899	205,169	564	\$ 90,849,591	\$ 443	\$ 16.17
Connecticut	3,489,868	77,052	203	48,074,375	624	13.78
Massachusetts	6,467,915	282,457 ⁽²⁾	249	204,625,000	724	31.64
New Mexico	1,964,402	71,798	200	41,095,700	572	20.92
Vermont	620,748	22,000	54	10,284,022	467	16.57
West Virginia	1,809,836	53,236	118	30,956,602	581	17.10
Wisconsin	5,598,893	136,627	317	83,852,800	614	14.98

Source: US Census Bureau Population Estimates, July 1, 2007; Public Defender agencies

⁽¹⁾ Number of cases opened was for the 12-month period ended December 31, 2007.

⁽²⁾ Represents the number of cases closed for calendar year 2007

As noted in the table, the cost of Maryland's public defender operation on a per case basis (\$443) was the lowest and the cost per capita (\$16) was among the lowest when compared to similar operations. When compared to the two other states with at least 100,000 cases opened per year, Maryland had significantly more attorneys on staff, and only used outside attorneys when necessary (for example, in cases in which a conflict of interest existed). This appears to result in a significantly lower cost per case in Maryland when compared to other states such as Massachusetts or Wisconsin that used outside attorneys for many more cases. In other words, paying private attorneys appears to result in higher per case costs. For example, in fiscal year 2008, Massachusetts paid \$141 million (or 69 percent of its total expenditures) for outside attorney representation.

Prior Audit Report

In November 2001, the Office of Legislative Audits issued a performance audit report on the OPD's budgetary and financial management practices. That audit was conducted at the request of the Chairmen of the Senate Budget and Taxation and House Appropriations Committees. In that report, we commented that OPD had a history of budget deficits and made eight recommendations to improve OPD's operations in areas such as case management, caseload standards, and budgeting. The recommendations from that report, and the current status of OPD's implementation of corrective actions taken, are included in Objective 3.

Audit Scope, Objectives, and Methodology

Scope

We conducted a performance audit of the Office of Public Defender's (OPD) budgetary and financial management practices. This audit was conducted in response to Chapter 335, Laws of Maryland, 2008, which requested a follow-up audit to our 2001 performance audit of OPD to assess the effectiveness of OPD's budgetary practices and related procedures based on the changes made by OPD since that audit was issued. We conducted the audit under the authority of the State Government Article, Section 2-1221 of the Annotated Code of Maryland and performed it in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Objectives

Our audit had three specific objectives, which were established under the guidance of the Joint Audit Committee:

1. Assess the effectiveness of OPD's budgetary practices and related procedures regarding funding decisions, including budgeting, and financial operations.
2. Review procedures and controls over case management and assess the impact of changes implemented since our November 2001 performance audit.
3. Determine the current status of OLA recommendations in the 2001 audit report.

Our audit did not include tests of OPD financial transactions for propriety since these are subject to review during our fiscal/compliance audits of OPD. For that same reason, we also did not perform audit work to verify that OPD is enforcing income and asset eligibility limits for applicants established in State law.³

Methodology

To address our first objective, we identified OPD risks and related controls over the budget process. Specifically, we determined whether OPD: (1) had a process for evaluating and critiquing specific line item expenditures in the budget preparation process, (2) budgeted based on historical expenditure trends, and (3) adequately justified its budget requests with valid supporting documentation. We also identified risks and related controls at central and district offices over purchasing and payment processes and reviewed ongoing efforts to control costs and monitor district office spending. We analyzed OPD's budget and expenditure history since our 2001 audit. We selected significant deficiency appropriations and budget amendments received in recent years and verified OPD's explanation of the cause of these items by comparing the budget submission detail to actual expenditures and related supporting documentation. In addition, we determined whether OPD could have reasonably projected the overspending on these items during the budget submission process.

Finally, we reviewed an OPD report, submitted in response to requirements of the 2008 Joint Chairmen's Report (JCR), and determined the adequacy of the documentation supporting the information reported. In this regard, the JCR required OPD to report on its financial needs to fully fund agency operations in fiscal year 2010 (including meeting caseload standards, reducing turnover expectancy and increasing panel attorney fees).

For our second objective, we reviewed OPD's process for managing its caseload, including reviewing procedures for intake of new cases, case progress reporting, and management oversight. We tested the accuracy of key data elements recorded in OPD's case management system, which OPD uses to manage case data, track case progress, and prepare caseload

³ The Office of the Public Defender is responsible for representing all eligible indigent defendants. The definition of "indigent" is set forth in Section 2(f) of Article 27A of the Annotated Code of Maryland: "...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."

statistics. We traced data elements from the cases selected to original source documentation maintained at district offices. From our testing, we determined that, even though OPD did not retain documentation of cases deleted during its annual reviews (that could be used to determine the reasons for duplicate cases recorded in the system), the automated case management system is generally reliable.

In addition, we reviewed the changes made by OPD since our 2001 performance audit pertaining to caseload management and the impact of the changes on OPD's budgetary practices, including the impact of the additional staff and implementation of the automated case management system.

For the third objective, we determined the current status of seven of the eight findings contained in the 2001 performance audit report. After discussion with General Assembly committee staff, we concluded that we would not review prior Finding 5 since it did not relate to budgets or caseloads.

Fieldwork and Office of Public Defender Response

We primarily conducted our fieldwork from July 2008 through February 2009. OPD's response to our findings and recommendations is included as an appendix to this report.

Findings and Recommendations

Objective 1

Financial Operations and the Office of the Public Defender Budget

Conclusion

The audit disclosed that OPD still routinely required deficiency appropriations to fund operating expenditures. Additionally, OPD frequently carried over unfunded expenditures into the following fiscal year. Unfunded expenditures occurred in a number of operational areas, including salaries and related benefit costs, panel attorneys, as well as other operating expenditures. These deficiencies have continued to occur even as OPD has taken steps, such as leaving positions vacant, in an attempt to control costs. We also found that while recent OPD budgets were generally based on historical cost information or Department of Budget and Management (DBM) instructions, OPD continued to use certain unrealistic assumptions in order to meet budget targets. For example, in fiscal year 2008, OPD used an artificially high turnover expectancy percentage (similar to a finding noted in our 2001 audit report) in order to meet the target set for it by DBM. Also, for fiscal year 2009, OPD included no funds for panel attorneys in its budget request, although such costs are routine expenditures that generally ranged between \$4 and \$5 million each year. For that year, we noted that OPD expended \$5.1 million for panel attorneys.

Our audit also disclosed that OPD had not implemented practices designed to provide financial information to the districts and divisions to allow for increased financial oversight. Finally, OPD frequently did not submit invoices timely, as required by the Office of the Comptroller's General Accounting Division. Timely payment of invoices can also assist OPD in more effectively evaluating its historical costs.

Background

DBM establishes a budget “target” for each Executive branch agency, including OPD, which assumes that all government functions and services currently in existence will continue into the next fiscal year. DBM adjusts the target based on an agency’s justifiable needs and priorities set by the Governor in light of the fiscal climate of the State. In submitting its budget, an agency may submit requests for additional funding above the established target to support new initiatives or provide for enhancements to current services and programs. Budgets are reviewed by DBM and submitted by the Governor to the General Assembly for action and passage into law.

Findings

Budgeting Issues and Excess Expenditures

- 1. OPD continues to require deficiency appropriations to cover operating costs** – Our 2001 performance audit noted that OPD received deficiency appropriations each fiscal year from 1995 through 2001 cumulatively totaling \$8 million. Based on our review of budget documents and State financial records, OPD received deficiency appropriations cumulatively totaling approximately \$13.9 million to cover its operating costs for five of the eight fiscal years from 2002 through 2009. OPD also carried forward unfunded expenditures totaling approximately \$3.2 million for three of these eight fiscal years. Unfunded expenditures represent amounts owed to vendors at the end of the fiscal year for which there is no available funding and must be paid from the subsequent year’s appropriation. These unfunded expenditures contribute to overspending in the subsequent fiscal year and increase the potential need for a deficiency appropriation for the subsequent year. Table 4 on the next page shows OPD’s budget and expenditure history from fiscal year 2002 to 2009.

Table 4
OPD Budgets, Expenditures, and Deficiency Appropriations
Fiscal Year 2002 to 2009

Fiscal Year	Final Appropriation ⁽¹⁾	Actual Expenditures	Amount Under (Over) Budget ⁽²⁾	Deficiency Appropriation	Unfunded Expenditures Carried Forward ⁽³⁾
2002	\$55,050,996	\$(58,528,207)	\$(3,477,211)	\$3,500,000	\$ -
2003	56,612,307	(57,371,982)	(759,675)	1,087,631	-
2004	62,095,105	(61,831,488)	263,617	-	-
2005	70,420,864	(70,330,969)	89,895	-	(622,859)
2006	77,468,695	(80,028,592)	(2,559,897)	3,075,000	-
2007	85,063,757	(84,901,063)	162,694	-	(840,715)
2008	86,609,426	(89,151,647)	(2,542,221)	2,735,000 ⁽⁴⁾	(1,697,944)
2009	\$88,164,797	\$(91,104,247)	(2,939,450)	3,500,000	-
Totals			\$(11,762,248)	\$13,897,631	\$(3,161,518)

Source: Budget Book and budget and expenditure reports from the State's Financial Management Information System (FMIS) and OPD budgetary records

⁽¹⁾ The final appropriation amount includes both supplemental funding and reductions to OPD's appropriation. These adjustments to OPD's appropriation were primarily to increase employee salaries and to reflect cost containment reductions.

⁽²⁾ The Amount Under (Over) Budget is before applying the deficiency appropriation.

⁽³⁾ These carry forward expenditures are self-reported by OPD to the Comptroller's General Accounting Division during the fiscal year end closing process.

⁽⁴⁾ Includes \$235,000 provided from the Board of Public Work's contingency fund.

For the five fiscal years in which OPD received a deficiency appropriation, expenditures exceeded the total of all appropriations for those years by \$12.3 million. Since OPD submitted the budgets for two of these fiscal years (fiscal years 2002 and 2003) before the issuance of our November 2001 performance audit report, we did not analyze OPD's budgeting and spending for these years. Table 5 on the next page details the budgets and expenditures by salaries and other operating costs for fiscal years 2004 through 2009.

Table 5
OPD Budget and Expenditure Comparison - Salaries and Other Operating Costs
Fiscal Year 2004 to 2009

	2004	2005	2006	2007	2008	2009
Salary and Benefit Costs:						
Authorized Positions	871.5	940.0	998.0	1,017.0	1,007.0	957.5
Initial Appropriation	\$49,968,199	\$54,156,513	\$64,598,083	\$71,430,137	\$71,693,007	\$78,372,318
Budget Amendments	(841,000)	5,100,884	1,468,585	(92,970)	1,065,746	(3,037,376)
Final Appropriation	49,127,199	59,257,397	66,066,668	71,337,167	72,758,753	75,334,942
Actual Expenditures	(49,574,064)	(59,938,154)	(65,087,384)	(70,891,114)	(75,002,961)	(75,534,217)
Amount Under (Over)	\$(446,865)	\$(680,757)	\$979,284	\$446,053	\$(2,244,208)	\$(199,275)
Other Operating Costs:						
Initial Appropriation	\$12,752,951	\$10,919,682	\$11,269,793	\$13,546,776	\$14,012,131	\$12,811,709
Budget Amendments	214,955	243,785	132,234	179,814	(161,458)	18,146
Final Appropriation	12,967,906	11,163,467	11,402,027	13,726,590	13,850,673	12,829,855
Actual Expenditures	(12,257,424)	(10,392,815)	(14,941,208)	(14,009,949)	(14,148,686)	(15,570,030)
Amount Under (Over)	\$710,482	\$770,652	\$(3,539,181)	\$(283,359)	\$(298,013)	\$(2,740,175)
Total Amount Under (Over) Appropriation	\$263,617	\$89,895	\$(2,559,897)	\$162,694	\$(2,542,221)	\$(2,939,450)

Sources: Budget Book and budget and expenditure reports from the State's Financial Management Information System (FMIS) and OPD budgetary records

Our analysis of budgets and expenditures related to fiscal years 2006, 2008, and 2009 (the years in which OPD obtained deficiency appropriations) disclosed a number of budgeting and expenditure issues. Specifically, we made the following observations about OPD's budget process for these years:

- In fiscal year 2006, OPD's actual expenditures exceeded the amount budgeted by approximately \$2.6 million primarily due to additional operating costs for panel attorneys, computer system enhancements (including the implementation of a new case management system), and unfunded expenditures carried forward from fiscal year 2005. The additional panel attorney costs were due, at least in part, to an increase in the hourly rate paid for panel attorneys from \$35 to \$50 that OPD implemented through revisions to State regulations effective January 17, 2005. We were advised by OPD management that it increased its rate because the federal panel rate had increased to \$90 per hour. OPD notified DBM of these fee increases in two letters dated June 24 and August 31, 2004.

- In fiscal year 2008, OPD's employee salary costs exceeded the amount appropriated by approximately \$2.2 million. Our analysis of OPD appropriation and expenditure records disclosed that this overspending occurred because OPD did not meet its budgeted turnover expectancy for fiscal year 2008, which had an associated dollar value of \$4.7 million. Employee turnover expectancy represents the amount of money not spent on authorized positions in a fiscal year by delaying the hiring of personnel and/or the hiring of new employees at a lower salary than the employee being replaced (salary differential). An agency's total appropriation for salary costs is based on the salaries for each authorized position reduced by the turnover expectancy (expressed in dollars). As the budgeted turnover expectancy is increased, the funds appropriated for salary costs are reduced. Based on OPD's actual salary expenditures and appropriation, we estimated that OPD's actual turnover expectancy was less than four percent, as compared to the seven percent included in its budget request. In order to pay the salary and benefit costs, OPD reported to the Comptroller of Maryland – General Accounting Division at the end of fiscal year 2008 that it had to carry forward approximately \$1.7 million of unfunded expenditures owed primarily to panel attorneys and experts, which contributed to the fiscal year 2009 deficiency appropriation request.
- In fiscal year 2009, OPD exceeded its original appropriation by \$2.9 million (that is, before receiving a \$3.5 million deficiency appropriation). Specifically, actual costs for panel attorneys and experts (\$6.8 million) exceeded the related amount budgeted by at least \$1.3 million. And, as previously noted, OPD carried forward \$1.7 million in costs from fiscal year 2008 (primarily related to panel attorney fees) to 2009. In addition, other operating costs (excluding salary and fringe benefits) exceeded the amounts budgeted by almost \$1.4 million. With the \$3.5 million deficiency appropriation, OPD did not exceed its total appropriations for fiscal year 2009.

Our observations of OPD's budgetary process and expenditures also disclosed the following:

- OPD management's position has historically been that the agency's legal mandate to provide representation to all eligible indigent clients who request services was more critical than reducing costs by not providing services to stay within its appropriation. OPD advised that reductions in funding, or not receiving funding it considered

adequate to meet its needs, could result in not meeting its legal requirements as well as the potential for being a party in lawsuits filed against the State for lack of service.

- OPD's most effective method to reduce costs historically has been to leave authorized positions vacant as long as possible, which is reflected in the aforementioned employee turnover expectancy. A review of employee hiring for calendar year 2007 showed that OPD staggered the addition of staff throughout the year. In addition, OPD advised that it staggered the hiring of over 200 additional positions from fiscal year 2004 to 2007 received for the purpose of reducing attorney caseloads as a result of the *Caseload Initiative and Caseload Assessment Study*. However, even by staggering new employee hires, OPD was not always able to meet its appropriation for salary and benefits. Furthermore, due to cost containment, OPD lost 64.5 authorized positions from fiscal year 2008 (1,007 positions) to fiscal year 2010 (942.5 positions), and is currently staffed near its fiscal year 2005 level.
- The large majority of OPD expenditures relates to salaries, fringe benefits, and fees paid to panel attorneys and expert witnesses. Based on the State's accounting records for fiscal year 2009, 90 percent of OPD's total expenditures were for employee salaries (83 percent) and panel attorneys and expert witnesses (7 percent). The primary means for OPD to impact these expenditures is to leave positions vacant. Although OPD has implemented various cost cutting actions in non-salary related areas (such as delaying replacement of equipment and requesting only portions of transcripts), these actions only had a minimal impact on improving OPD's bottom line.
- OPD and DBM have not come to an agreement on acceptable areas for OPD to reduce services to avoid the need for deficiency appropriations when OPD's costs exceed budget projections. For example, OPD attempted to limit its expenditures by not budgeting for the payment of panel attorney fees in fiscal year 2009. However, the Executive Department did not support this proposal and instead proposed a deficiency appropriation for OPD to resume paying for panel attorney fees.

While OPD has instituted certain procedures to attempt to limit its actual expenditures to its appropriation, such procedures have not been sufficient resulting in OPD exceeding its budget. In addition, OPD continues to receive deficiency appropriations and carry unfunded expenditures into subsequent fiscal years, although it is OPD's responsibility to operate within its budget. To assist OPD in better managing its budget, beginning in December 2008, DBM and OPD began meeting quarterly to review OPD's budget status for fiscal year 2009. In addition, DBM requires OPD to submit monthly progress reports to determine whether OPD is controlling its spending to stay within its appropriation. While other findings and recommendations in this report can assist OPD in more effectively managing certain operations, the recommendations will not resolve the fundamental issues of adequately budgeting for and/or controlling personnel and panel attorney expenditures to ensure containment of costs within appropriated amounts.

2. OPD budget submissions sometimes used unrealistic amounts in order to meet spending targets established by DBM

DBM – We reviewed OPD's budget submissions for fiscal years 2008 through 2010 and found that, for each fiscal year, the OPD's general fund request (which is the only amount for which DBM establishes a spending target) matched the target set by DBM for OPD. While much of the submission was in accordance with DBM budget instructions (salaries based on DBM provided reports and other expenditures based on prior years' expenditures, for example), OPD had to modify portions of its initial budget submission in order to meet these spending targets. In this regard, there were differences between OPD's determination of its funding needs to accomplish its mission and the targets set by DBM. At the time the modifications were made, OPD deemed the budget changes unrealistic for properly providing the legal services mandated by law. Specifically, we noted the following conditions:

Fiscal Year 2008

While OPD requested funds for items such as panel attorneys and transcripts based on prior years' expenditures, OPD used an unrealistic turnover expectancy rate to meet the overall spending target set by DBM. According to DBM instructions, turnover expectancy is not to be used as a "plug" figure and should be between two and four percent for current employees. Instead, OPD budgeted a seven percent turnover expectancy for current employees. As noted previously, OPD's actual

turnover expectancy for fiscal year 2008 was less than four percent. Even if OPD had not filled any positions that became vacant during the year, it still would have been far short of achieving the budgeted turnover expectancy. Furthermore, according to the fiscal year 2008 budget bill, OPD received \$1.3 million less than it requested in its submission.

Fiscal Year 2009

The fiscal year 2009 submission did not include any funds for panel attorney fees (which ranged from \$4 million to \$5 million in recent years) and requested funding for transcripts at less than 25 percent of previous year's actual expenditures. According to OPD, this was the only way to meet the DBM funding target. The fiscal year 2009 budget submission did comply with the DBM budget instructions on turnover expectancy, as OPD included turnover at 3 percent. According to the fiscal year 2009 budget bill, OPD ultimately received \$1.7 million more than it requested in its final submission. However, according to Table 4 on page 19, actual expenditures still exceeded the original appropriation by \$2.9 million, primarily due to \$5.1 million of expenditures for panel attorneys.

Fiscal Year 2010

OPD recorded employee turnover at 4 percent, which was the maximum recommended by DBM. Even after using the maximum percentage allowed for turnover, OPD needed to make modifications to the panel attorney fees and transcripts in order to bring the submitted budget request down to the DBM target. For example, OPD requested transcripts expenditures of \$700,000 in one program although the average for the three prior fiscal years was over \$900,000. In addition, panel attorney fees were budgeted at \$3.5 million, well below the three-year prior average of over \$4.2 million. Due primarily to cuts in the number of authorized positions requested, OPD received a general fund appropriation \$4.5 million less than it requested in its submission.

Over the Target Requests

For each year reviewed, OPD also submitted requests for additional funds (known as over the target requests). For example, for fiscal year 2008, OPD requested \$5.3 million. These requests have been for a number of purposes, including information technology replacement needs, fully funding positions to meet case management standards, staffing problem-solving courts (specialized courts, such as for drug

treatment and mental health issues), and increases to panel attorney fees. None of the over the target requests submitted by OPD for the three fiscal years reviewed were granted by DBM for inclusion in OPD's budget.

Additional Comments

Funding of OPD at a level to meet its needs has been a recurring issue within the General Assembly. In fiscal year 2004, the budget committees indicated that their position was that the OPD budget should reflect its needs based on caseload standards in order to resolve the issue of whether OPD has the resources to meet its mandated responsibilities. In fiscal year 2009, the Maryland Senate again raised the issue of adequacy of the funding for OPD.

When we contacted DBM regarding OPD's budget (such as to determine the adequacy of the budget targets), we were advised that it would not comment on budget issues and budget decisions regarding individual agencies and requests because they are internal issues that are subject to Executive Privilege.

Financial Management and Oversight

- 3. OPD headquarters did not provide its operating units with access to the State's Financial Management Information System (FMIS) or provide them with periodic budget and expenditure reports** – Although the majority of OPD's budget is attributable to wages and benefits (for example, 83 percent of OPD's fiscal year 2009 expenditures), certain other costs, such as expert witnesses, are determined directly by the respective programs within OPD.

Division chiefs and district offices were authorized to incur certain expenditures such as for panel attorneys and expert witnesses, which totaled \$6.8 million during fiscal year 2009. These expenditures represent the most significant items under the discretion of OPD's district offices and divisions. However, current procedures did not include a process to track obligations when made and only required the reporting of such expenditures when the related invoices were received, which was often months after the related service was provided. OPD did not require its divisions and district offices to generate purchase orders or otherwise take action to encumber the related funds when initially

contracting for such services. As a result, the finance office and other headquarters administrative personnel were not aware of the costs that had been committed. This condition has contributed, in part, to the fiscal year-end carryovers and deficiency appropriations experienced by OPD. For example, panel attorneys are hired at the beginning of a case, but OPD headquarters would not have a record of the obligation until receipt of the invoice for services already rendered and may not receive the related invoice for as long as 60 days after the end of the case.

In addition, OPD had not established any benchmarks or allocated expenditure amounts for the districts and divisions (such as for panel attorneys or expert witnesses) that the districts and divisions could use for comparison to their actual expenditures. This practice could help to ensure that, in total, the districts and divisions were not over committing available resources. The comparison of current expenditures to allocations and past expenditure data would allow OPD to more effectively monitor the district and division expenditures and take more timely action to mitigate over-expenditure situations.

OPD district offices, which account for the majority of panel attorney costs, do not have fiscal staff. In addition, OPD, as a whole, has only seven financial office staff that, among other duties, processed over 41,000 invoices (see Table 6 on the next page) for the 21-month period ended December 2008.

- 4. OPD did not submit invoices to the Comptroller of Maryland for payment within 25 days of receiving payment requests as required by State regulations** – Our review of Comptroller's reports of State agencies that did not submit invoices for payment in a timely manner disclosed that OPD submitted invoices totaling approximately \$5.5 million untimely during the period from April 1, 2007 to September 30, 2008, as summarized in Table 6 on the next page. Although OPD did not suffer monetarily (by incurring penalties, for example) the failure to pay invoices timely makes it more difficult for OPD to monitor expenditure information and its financial position. OPD advised that its internal review and approval process causes these delays. OPD has met with the General Accounting Division (GAD) to discuss the timeliness of payment issue, and GAD has stated that OPD should continue to use the date invoices are received at the district level as the date of receipt. The increase in the dollar amounts of invoices paid late, as shown in Table 6 on the next page, could also be due to the lack of available funding at the end of the fiscal year (thereby causing OPD to hold invoices until

funds are available from the subsequent year's budget). This is evident by the increases in the dollar amounts of invoices paid late for the quarters ending September 30, with decreases in the dollar amounts for the quarters ending December 31.

Quarter Ending Date	Total Number of Invoices Paid	Total Dollar Amount of Invoices Paid	Percentage of Invoices Paid Late	Dollar Amount of Invoices Paid Late
June 30, 2007	5,463	\$2,719,954	4%	\$139,228
September 30, 2007	5,805	3,690,936	13%	914,924
December 31, 2007	5,884	2,585,498	8%	250,563
March 31, 2008	5,236	2,615,274	31%	813,150
June 30, 2008	5,912	2,972,417	54%	1,471,712
September 30, 2008	7,168	3,573,912	62%	1,944,989
December 31, 2008	5,842	3,011,316	52%	1,275,417
Total	41,310	\$21,169,307	32%	\$6,809,983

Source: GAD Quarterly Summary of Late Payment Performance

In addition, our test of 20 payments totaling \$636,136 from expenditure areas included in OPD deficiency requests for fiscal years 2006 and 2008 (such as consultants and panel attorneys) disclosed that, for 10 payments totaling \$458,067, OPD did not pay these invoices until 71 to 173 days after the invoice date. Because OPD did not pay for these types of costs in a timely manner, the historical costs were understated and impacted OPD's ability to reliably prepare future budgets for these areas.

Our test of the 20 payments also disclosed that, for 10 payments totaling \$61,043, OPD did not date stamp the invoices as received, as required by GAD's *Accounting Procedures Manual* (to determine timely payment). OPD stated that all panel attorney invoices are subject to multiple reviews and verification of supporting documentation to ensure the propriety of amounts billed (that is, the amount billed is reasonable for the type of case and specific services provided). OPD provided documentation to support that the current review process does result in both reductions to the amounts invoiced, as well as removal of attorneys from panel lists due to billing issues.

Nevertheless, even though OPD has documented that its invoice processing procedures result in certain cost savings, it is incumbent upon OPD to comply with the provisions of the State Finance and Procurement Article of the Annotated Code of Maryland, which require State agencies to pay vendors within 30 days of receipt of an invoice. In addition, OPD should adhere to State regulations, which require agencies to submit invoices to GAD for payment within 25 days of the receipt date of the invoice or the date the goods or services were received, whichever is later.

5. Certain financial information reported to the Maryland General Assembly was generally accurate

– The April 2008 Joint Chairmen's Report required OPD to submit a report to the legislative budget committees regarding the fiscal impact of fully funding the agency's operating needs in fiscal year 2010. OPD's report was to include the fiscal impact of (1) reducing the agency's budgeted turnover expectancy to three percent; (2) bringing attorney caseloads into full compliance with Maryland caseload standards, which were developed as part of the *Maryland Attorney and Staff Workload Assessment, 2005* report; and (3) increasing the panel attorney fee from \$50 to \$75 per hour. OPD submitted the required report, dated August 2008; according to that report, OPD would need \$14.3 million to fully fund its operations (such as to bring attorney caseload into full compliance with the aforementioned standards) in fiscal year 2010. Our review of the information presented in the report disclosed that the amounts OPD indicated as necessary for full funding were generally accurate and supported by available documentation. For example, OPD indicated that it would need \$1.5 million to reduce turnover expectancy to three percent. Our review of the related calculation disclosed that this amount was reasonable. However, we did determine that OPD's calculation of additional attorneys needed to meet caseload standards was not accurate due to certain incorrect assumptions (see Finding 8). Ultimately, OPD did not receive funding for the initiatives in this report.

Recommendations

Budgeting Issues and Excess Expenditures

1. See Recommendation 2

2. We recommend that OPD continue to work with DBM to resolve budgeting issues so that future OPD budgets represent funding levels sufficient to fund OPD's expected routine operations. We also recommend that OPD continue to work with DBM to identify methods and areas where OPD can reduce operating costs to assist in meeting its budgeted appropriation.

Financial Management and Oversight

3. We recommend that OPD develop processes to improve internal financial reporting and monitoring of expenditures made by OPD district offices and divisions. For example, OPD could evaluate the use of FMIS to create purchase orders that would encumber funds for panel attorneys at the beginning of a case based on reasonable estimates.
4. We recommend that OPD review current practices and ensure that all invoices are date stamped when received and, to the extent practical, paid in a timely manner in accordance with State law.
5. No recommendation

Objective 2

Case Management

Conclusion

The audit objective was to review procedures and controls over case management and assess the impact of changes implemented since our November 2001 performance audit.

OPD had implemented a statewide case management system. We also found that, while the overall cases per attorney had decreased as a result of new positions received by OPD since fiscal year 2003, the additional positions received had varying impacts on the caseloads per attorney. For example, although caseloads per attorney had generally decreased between 2003 and 2007 in OPD's only urban district (Baltimore City), caseloads per attorney for most types of cases in suburban and rural districts had increased over this same period.

Despite the new positions received by OPD, the caseload per attorney still frequently significantly exceeded the related caseload standard. Specifically, each district had attorney caseloads that exceeded the related standard by at least 25 percent for at least one type of case. We also determined that OPD had not adequately reallocated positions to minimize caseload disparities between, and within, its district offices. Furthermore, OPD's representation of the number of additional attorneys needed to meet the caseload standards was not completely accurate since it improperly took into account attorneys who performed primarily administrative duties. Finally, we found that information pertinent to monitoring caseloads, which was recorded in the case management system, was generally accurate. However, changes to summary case statistics, based on annual OPD reviews of case management system data, disclosed that documentation to support such changes was 1) not retained for review and 2) not used as a mechanism to reduce recurring data entry errors.

Background

In our 2001 performance audit report, we commented that OPD had not established attorney caseload standards for public defenders in Maryland. Rather, OPD used modified standards for public defenders from the American Bar Association which could not be used to reliably determine its attorney staffing needs. In 2003, OPD hired the National Center for State Courts (NCSC) to develop attorney caseload standards for public defenders in Maryland. NCSC issued its report in 2005 entitled, *Maryland Attorney and Staff Workload Assessment, 2005* (hereinafter referred to as the *Study* or *Caseload Study*). The *Study's* primary goals were to (1) develop a clear measure of attorney and staff workload in the districts and statewide divisions and (2) to establish a transparent formula for OPD to use in assessing the appropriate levels of attorney and staff resources necessary to provide effective legal representation.

To determine OPD's staffing needs, the *Study* analyzed OPD's fiscal year 2003 caseload statistics to determine the types of cases handled and surveyed OPD attorneys to determine the amount of time spent by OPD attorneys and staff on each type of case in urban, suburban, and rural areas of the State. The *Study* then calculated the number of attorneys and staff needed in each of the 12 district offices based on the number of cases each office handled in fiscal year 2003 and the amount of time needed for each case. In addition, the *Study* compared its calculations of OPD's staffing needs to OPD staffing records as of March 2004 to determine the number of additional attorneys and staff needed. Finally, the *Study* developed caseload standards for OPD attorneys based on the type of case and whether the case was in an urban, suburban, or rural area of the State, as listed in Table 7 on the next page. Attorneys are generally only assigned to one type of case, (for example, felony/circuit court cases).

The caseload standard relates to the number of cases opened during the year, not cases closed or cases still open as of a given date. Cases opened include all cases even if the case was quickly closed (such as when the defendant obtains a private attorney). Based on discussions with other public defender offices, we found that this method of case counting was consistent within the profession.

Table 7 Maryland Attorney Caseload Standards Recommended Annual Cases Per Attorney by Geographic Area			
Type of Case	Urban ⁽¹⁾	Suburban ⁽²⁾	Rural ⁽³⁾
Felony ⁽⁴⁾	156	140	191
Misdemeanor ⁽⁵⁾	728	705	630
Juvenile	182	238	271

Source: NCSC *Maryland Attorney and Staff Workload Assessment, 2005*

⁽¹⁾ Baltimore City

⁽²⁾ Includes Anne Arundel, Baltimore, Carroll/Howard, Harford, Montgomery, and Prince George's districts

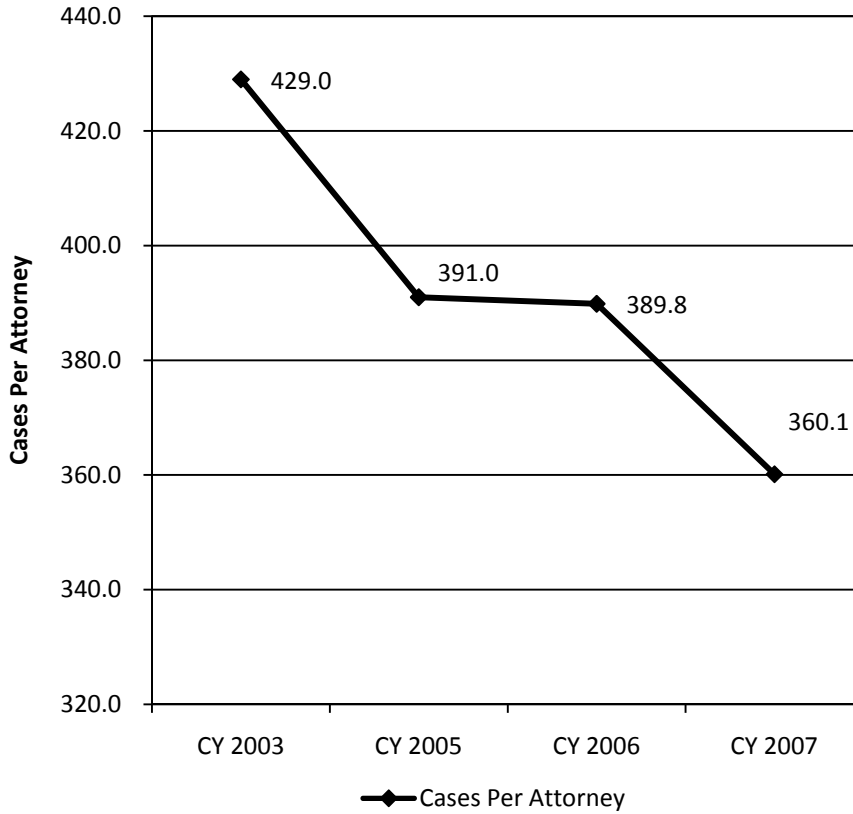
⁽³⁾ Includes the Lower Shore, Upper Shore, Southern Maryland, Frederick/Washington and Western Maryland districts

⁽⁴⁾ Circuit Court, including homicide cases

⁽⁵⁾ District Court, including traffic cases

As a result of the *Study*, OPD, in cooperation with the Governor, General Assembly, and DBM, developed the Caseload Initiative to reduce excessive attorney caseloads, to develop caseload-based budgeting using the aforementioned Maryland caseload standards (that is, determining attorney needs to meet the caseload standards based on the current caseload), and to implement a case management system to accumulate caseload data and allow for efficient case management. OPD added 212 employees, including 119 attorneys, during the period from fiscal year 2004 to 2007. Chart 2 on the next page shows the decrease in the average number of cases per attorney from calendar year 2003 to calendar year 2007. The number of cases opened per year did not fluctuate significantly over the period while the number of attorney positions increased substantially, primarily in an attempt to address excessive attorney caseloads. As a result, the overall number of cases per attorney decreased substantially over the period.

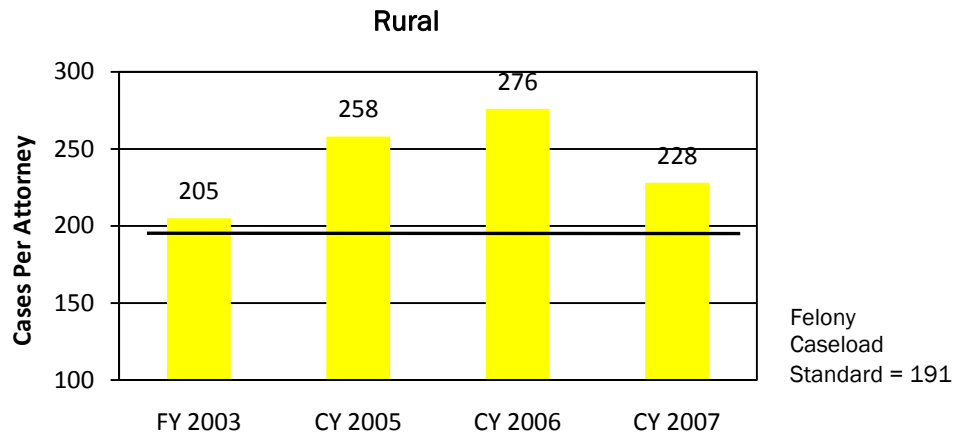
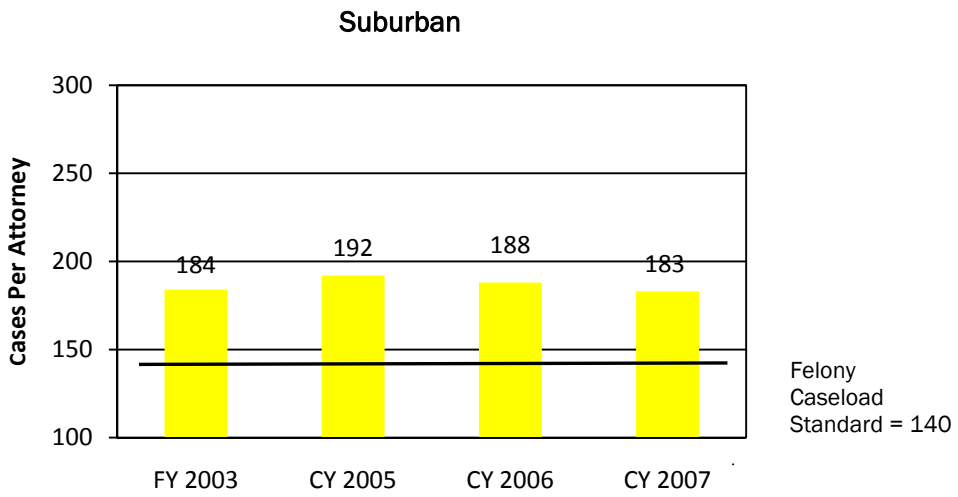
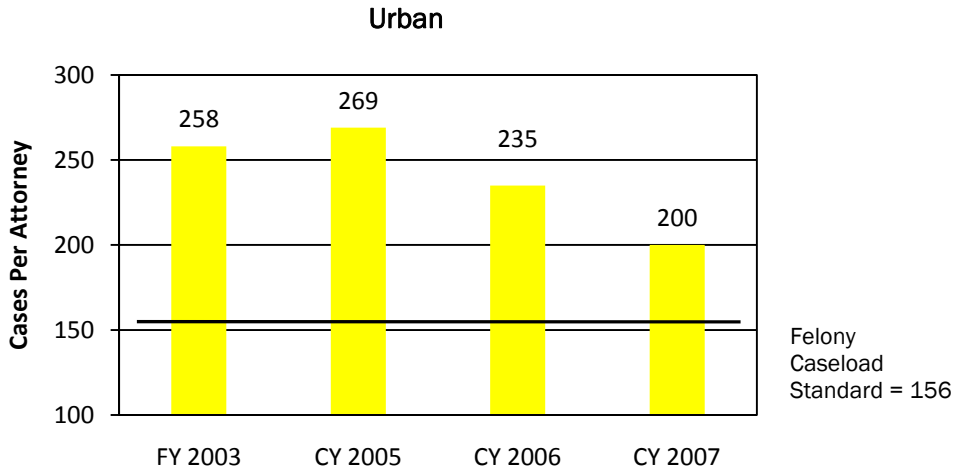
Chart 2
Average Attorney Caseload
Calendar Year 2003 to 2007



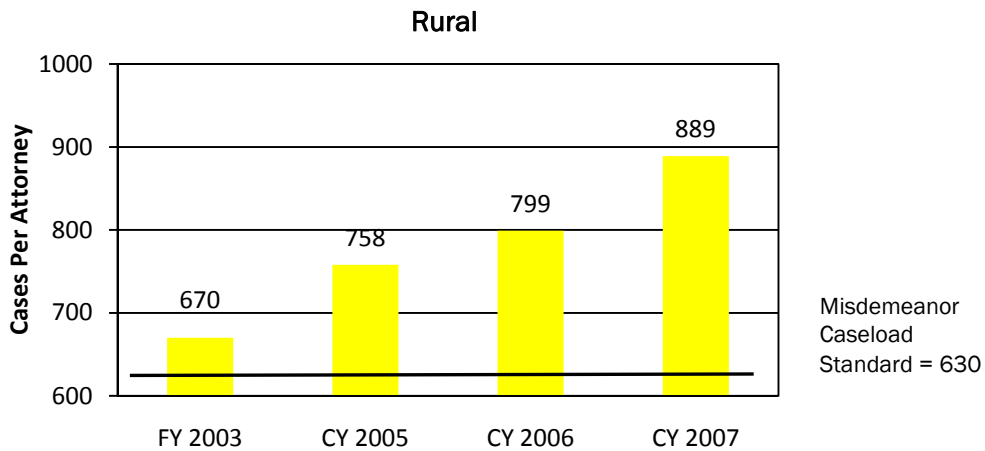
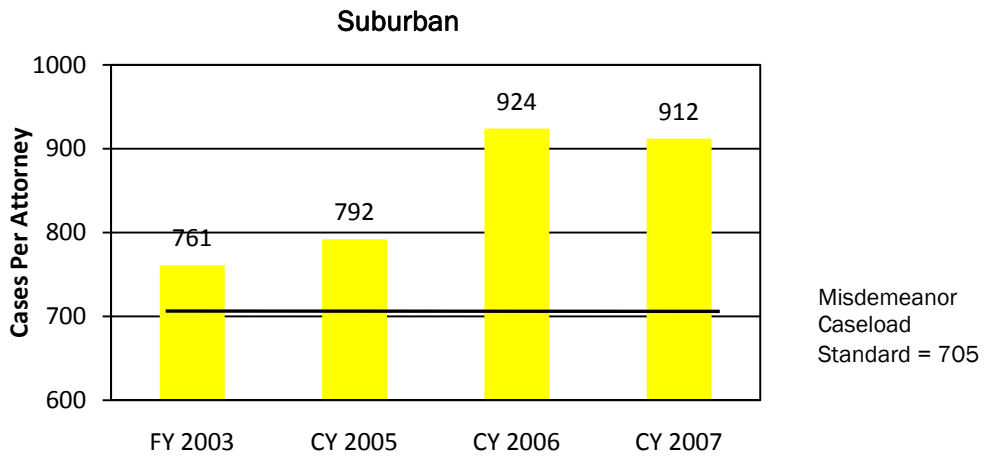
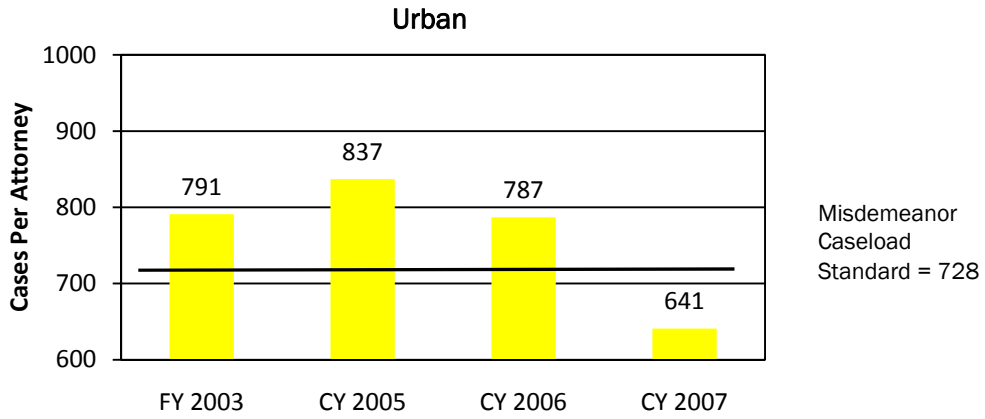
Source: OPD records

Charts on pages 35 to 37, which are based on OPD's automated case management system, show changes in attorney caseloads based on the type of case along with the related caseload standard in OPD's 12 districts. These charts do not include cases, such as mental health and appellate, which are included in Chart 2.

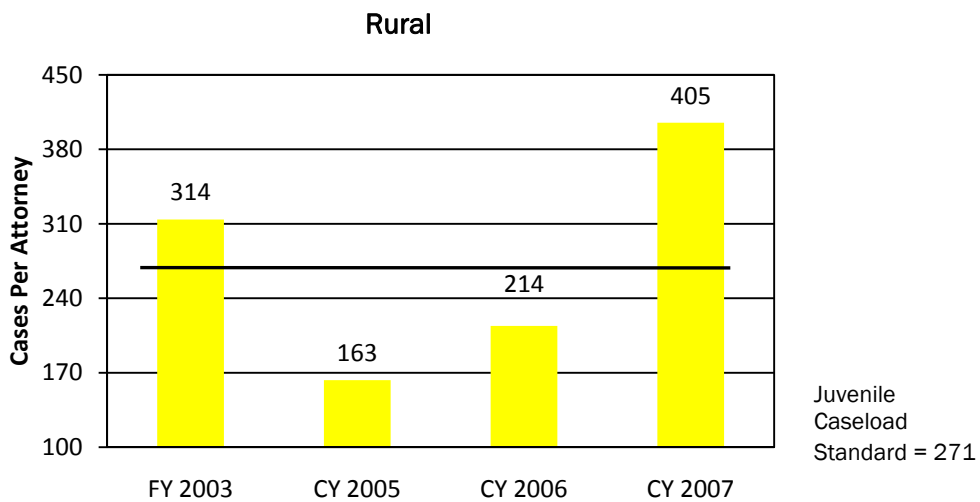
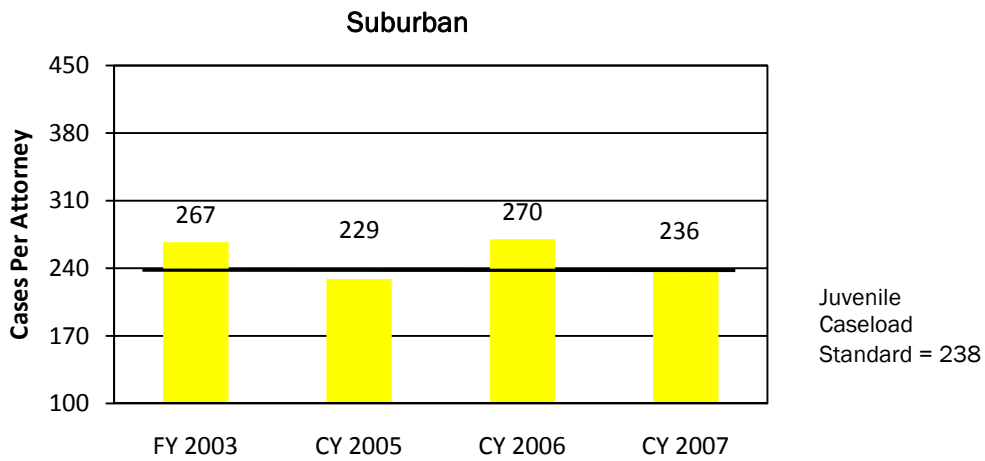
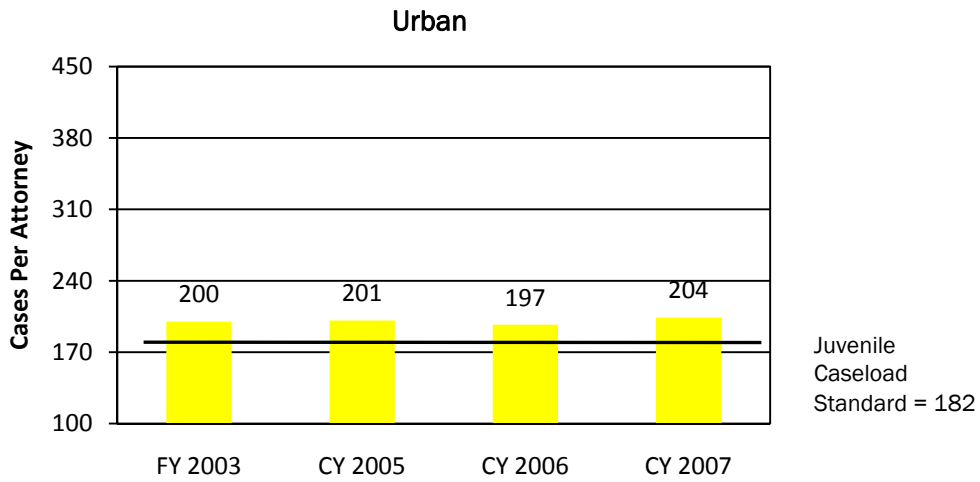
Circuit Court Caseloads:



District Court Caseloads:



Juvenile Court Caseloads:



Findings

- 6. Additional attorney positions have had varying impacts on OPD's caseloads per attorney** – Our analysis of the impact of the additional attorney positions added as a result of the *Caseload Study* and related Initiative disclosed that the additional positions have had a varied impact on attorney caseloads. OPD made progress in the Baltimore City district office, which is its largest district. For example, cases per attorney at the Circuit Court decreased from 258 in fiscal year 2003 (the year of the study) to 200 in calendar year 2007 (the most recent data available at the time of our audit). The number of attorneys assigned to Baltimore City circuit court increased from 58.5 attorneys in fiscal year 2003 to 79.5 as of December 2007.

However, while the caseloads per attorney generally decreased for OPD's urban district between 2003 and 2007, the caseloads per attorney generally increased over the same period for OPD's suburban and rural districts. For example, district court cases per attorney in suburban areas increased from 761 in fiscal year 2003 to 912 in calendar year 2007 and for rural districts, increased from 670 to 889 in the same period. In addition, as a result of cost containment, OPD lost 23 attorney positions between fiscal years 2008 and 2010. Consequently, OPD would be expected to experience an increase in the number of cases per attorney due to this reduction in positions.

- 7. Despite the addition of numerous attorney positions, attorney caseloads exceeded the Maryland attorney caseload standards, and OPD did not adequately reallocate positions to minimize caseload disparities** – Attorneys in OPD's 12 district offices generally handled significantly more cases than the Maryland attorney caseload standards established in the *Study* despite the addition of numerous attorney positions between 2003 and 2007. Furthermore, OPD did not adequately analyze attorney caseloads and sufficiently reallocate positions to minimize caseload disparities. Our review of OPD's caseload data disclosed the following conditions:

- Our analysis of OPD's records of 181,003 cases in calendar year 2007, assigned to attorneys in the 12 district offices, disclosed that the caseload per attorney exceeded the related standard by at least 25 percent for at least one of the three courts (circuit court, district court, or juvenile court) in every district. For example, in the Lower

Shore district, attorney caseloads for district and juvenile cases were 81 percent and 149 percent greater than the established standards, respectively. Tables 8 to 10 below show the variances from standards and the estimated positions needed to meet the caseload standards. Shaded areas indicate districts where the calendar year 2007 caseloads exceeded standards by 25 percent or more.

Table 8
Attorney Caseload by District Compared to Maryland Standards
Circuit Court
Calendar Year 2007

District	Cases per Attorney		
	Actual	Per Standards	Percent Caseload Exceeds (is Less than) Standards
Baltimore City	200	156	28%
Lower Shore ⁽¹⁾	180	191	(6%)
Upper Shore ⁽²⁾	302	191	58%
Southern MD ⁽³⁾	241	191	26%
Prince George's	175	140	25%
Montgomery	123	140	(12%)
Anne Arundel	189	140	35%
Baltimore Co.	261	140	87%
Harford	185	140	32%
Carroll/Howard	174	140	25%
Frederick/Washington	251	191	32%
Western MD ⁽⁴⁾	118	191	(38%)

Source: OPD records based on automated case management system

⁽¹⁾ Includes Dorchester, Somerset, Wicomico and Worcester Counties

⁽²⁾ Includes Caroline, Cecil, Kent, Queen Anne's and Talbot Counties

⁽³⁾ Includes Calvert, Charles and St. Mary's Counties

⁽⁴⁾ Includes Allegany and Garrett Counties

Table 9
Attorney Caseload by District Compared to Maryland Standards
District Court
Calendar Year 2007

District	Cases per Attorney		
	Actual	Per Standards	Percent Caseload Exceeds (is Less than) Standards
Baltimore City	641	728	(12%)
Lower Shore	1,143	630	81%
Upper Shore	777	630	23%
Southern MD	1,015	630	61%
Prince George's	1,073	705	52%
Montgomery	1,007	705	43%
Anne Arundel	1,012	705	44%
Baltimore Co.	777	705	10%
Harford	814	705	15%
Carroll/Howard	630	705	(11%)
Frederick/Washington	945	630	50%
Western MD	507	630	(20%)

Source: OPD records based on automated case management system

Table 10
Attorney Caseload by District Compared to Maryland Standards
Juvenile Court
Calendar Year 2007

District	Cases per Attorney		
	Actual	Per Standards	Percent Caseload Exceeds (is Less than) Standards
Baltimore City	204	182	12%
Lower Shore	674	271	149%
Upper Shore	341	271	26%
Southern MD	301	271	11%
Prince George's	176	238	(26%)
Montgomery	192	238	(19%)
Anne Arundel	335	238	41%
Baltimore Co.	235	238	(1%)
Harford	317	238	33%
Carroll/Howard	261	238	10%
Frederick/Washington	454	271	68%
Western MD	380	271	40%

Source: OPD records based on automated case management system

We reviewed certain districts with excessive caseloads with OPD management personnel. We were advised that the primary causes of the caseloads exceeding established standards were (1) OPD's not fully staffing attorney positions (due to circumstances such as the lack of available funding) and (2) increases in the number of cases. Going forward, decreases in the number of authorized positions would also be expected to increase attorney caseloads. In this regard, the fiscal year 2010 budget included 535 attorney positions (including all supervisory attorneys), which represented a reduction of 23 positions from the number of actual fiscal year 2008 attorney positions.

- OPD did not adequately reallocate positions to minimize caseload disparities between, and within, district offices. Table 11 on the next page shows attorney needs to meet the caseload standards as calculated by OPD. Our review disclosed a wide disparity in attorney needs between, and within, districts. For example two districts (Prince George's and Baltimore Counties) both had a calculated need of 14 additional attorneys, while two other districts (Carroll/Howard, Western Maryland) both had surpluses of 2 attorneys. Similarly, within the Baltimore City district, we noted that the district needed 17 additional attorneys to meet the caseload standard for circuit court cases but, conversely, had 16 more attorneys than it needed to meet the district court standard. Our analysis of OPD records for prior years also disclosed that similar circumstances regarding disparities in attorney caseloads between, and within, districts occurred in calendar years 2005 and 2006.

OPD did periodically reallocate vacant positions within the Office. However, based on our analysis, more could be done to reallocate attorney positions, between and within districts, to minimize caseload disparities in relation to the caseload standards.

**Table 11
Attorney Needs to Meet Caseload Standards
Calendar Year 2007**

District	Attorney Needs ⁽¹⁾			
	Circuit Court (a)	District Court (b)	Juvenile Court (c)	Subtotal (a+b+c)
Baltimore City	17.8	(16.0)	6.8	8.6
Lower Shore	2.1	2.9	2.5	7.5
Upper Shore	2.8	0.5	0.6	3.9
Southern MD	3.3	3.4	0.5	7.2
Prince George's	8.9	6.7	(1.3)	14.3
Montgomery	0	4.0	(0.6)	3.4
Anne Arundel	3.9	3.3	2.0	9.2
Baltimore Co.	13.5	0.5	0.2	14.2
Harford	(2.0)	0.2	1.0	(0.8)
Carroll/Howard	(2.0)	(0.9)	0.6	(2.3)
Frederick / Washington	1.8	1.5	1.5	4.8
Western MD	(0.8)	(1.5)	0.2	(2.1)
Totals	49.3	4.6	14	67.9

Source: OPD records based on automated case management system

⁽¹⁾ Attorney needs are based on a calculation that considers attorney time required for different types of cases opened in the three courts.

8. OPD's reported need for additional attorneys improperly considered administrative attorneys – OPD's calculation of additional attorney resources needed to meet caseload standards improperly considered administrative attorneys. In an August 2008 report to the General Assembly, OPD stated that it needed 55 additional attorney positions to meet standards (based on additional attorneys needed for districts that showed a need for more staff). Our review of the calculation disclosed that OPD improperly included administrative attorneys (those primarily tasked with supervising district staff versus actually representing clients) when calculating need. This resulted in understating the actual attorneys needed to meet caseload goals. OPD's calculations of additional attorneys needed based on type of case showed that OPD required 68 additional full-time equivalent attorneys to meet case standards. However, OPD reduced the number of additional attorneys needed by assuming the 24 administrative attorneys would routinely handle a typical caseload. OPD's consideration of administrative attorneys only reduced the 68 additional attorneys

needed as originally calculated to the 55 additional attorneys needed that it ultimately reported because districts with surplus attorneys (after including administrative attorneys) were not considered when OPD asked for additional attorneys. Table 12 below shows how OPD calculated its need and amounts reported to the General Assembly as of December 31, 2007, as presented in its August 2008 report.

Table 12 Adjusted Attorney Needs Reported by OPD Calendar Year 2007				
District	Attorney Needs (from Table 11) (a)	Administrative Attorneys (b)	Net Attorney Needs (a-b)	Reported Needs (per August 2008 report)
Baltimore City	8.6	(15.0)	(6.4)	-
Lower Shore	7.5	-	7.5	7.5
Upper Shore	3.9	-	3.9	4.0
Southern MD	7.2	(1.5)	5.7	5.5
Prince George's	14.3	(1.0)	13.3	13.0
Montgomery	3.4	(3.0)	0.4	0.5
Anne Arundel	9.2	-	9.2	9.0
Baltimore Co.	14.2	(2.0)	12.2	11.5
Harford	(0.8)	(1.0)	(1.8)	-
Carroll/Howard	(2.3)	-	(2.3)	-
Frederick / Washington	4.8	(0.5)	4.3	4.0
Western MD	(2.1)	-	(2.1)	-
Totals	67.9	(24)	43.9	55.0

Source: OPD records based on automated case management system

9. OPD had not implemented a process to determine if certain caseload standards should be updated – OPD’s caseload standards were developed based on fiscal year 2003 case statistics and 2004 employee staffing and survey data that may need to be revised based on more current caseload information. For example, the standards did not address attorney time spent on certain types of cases (primarily drug cases), which involved treatment-oriented processes that resulted in more client contact and more court appearances. Such cases have increased steadily from approximately 660 cases in calendar year 2004 to approximately 1,500 cases in calendar year 2007. While this number of cases was not significant compared to OPD’s total caseload, OPD stated that these types of cases require significant additional resources when compared to cases with similar charges that

are handled through the regular court process⁴. In an August 2008 report, OPD estimated that it needed 14 additional positions at a cost of \$800,000 (including related operating costs) in order to properly staff these cases without impacting its regular criminal court caseload.

- 10. OPD management did not adequately use the case management system as a tool to help ensure efficient operations** – OPD headquarters management personnel did not provide adequate oversight to ensure that district offices used the automated case management system to properly monitor each attorney’s caseload to ensure cases were distributed properly and completely. While our audit did disclose that individual districts used a variety of system reports to track and monitor individual attorney caseloads (such as reports of open cases assigned by attorney, cases closed each month, cases sent to panel attorneys), headquarters management had not developed specific reports or system tools for the districts to use to monitor cases (as well as to provide for centralized monitoring). In addition, OPD advised that it was in the process of implementing a web-based reporting system that would provide case statistics.
- 11. Reviews of caseload statistics were not used to reduce the number of errors in the automated case management system, and OPD did not retain documentation of cases deleted during its annual reviews** – Annually, OPD calculated caseload statistics based on information contained in the automated case management system. After the end of each calendar year, OPD personnel reviewed the previous year’s case data for potential errors and existence of duplicate records to ensure that the caseload information reported each year in its annual report and budget documents is accurate. Our review of this process disclosed the following conditions:
- Results of the annual review of case management data were not used to determine causes and develop permanent solutions that would increase the accuracy of system information. OPD last documented its review of case records during fiscal year 2005 when it performed an automated edit of system records looking for

⁴ According to OPD documents, drug court cases last significantly longer than related regular court cases, require additional client contacts, and more and longer court appearances.

errors and duplicate records. We were advised that OPD only performed this documented review to check the accuracy of case records after the case management system was implemented in fiscal year 2004. While OPD decided that resulting error rates were not significant (less than five percent of the recorded files represented erroneous or duplicate entries), the analysis disclosed that error rates fluctuated substantially between jurisdictions, with error rates as high as 12.6 percent of the total records in certain jurisdictions. Errors noted included cases where the district location recorded in the automated records did not agree to other sources or was missing. Duplicates represented matters (cases) being recorded more than once in the system, although OPD did not determine the specific cause for most of these. OPD advised us that it corrected the data in the automated system.

- Each year, OPD central office staff worked with district office staff to ensure the accuracy of recorded case information prior to preparing annual caseload statistics. OPD's central office revises the count of cases opened in the system during the preceding calendar year to correct and/or eliminate records determined to be erroneous or duplicates. However, OPD did not retain adequate documentation of this "data cleansing" process (such as a listing of all cases deleted during the process to reach the final count). We could not readily determine the number of cases eliminated in this process or the propriety of eliminated cases.

These data review processes were not used to identify and develop system edits or other methods that could be used to increase the accuracy of case information recorded in the system on an ongoing basis by minimizing the entry of incomplete, erroneous, or duplicate data at district offices. For example, OPD's policy requires that each case record entered in the automated system contain 26 data fields; however, we determined that the system only required the user to input 2 of these 26 data fields (client name and administrative fee agreement) to create a new case record. This increases the chance that duplicate records may be created since OPD staff may not be able to locate an incomplete case record when needing to enter additional information, and consequently may create a new record.

- 12. OPD's client case records tested from its automated case management system were generally complete and accurate in comparison to the original source documentation** – We performed a test of completeness and a test of accuracy of the current automated records. To ensure that the automated records included all cases, we judgmentally selected 50 total cases for calendar years 2007 and 2008 from paper files at five district offices (Anne Arundel, Baltimore City, Baltimore County, Montgomery, and Prince George's) and traced cases to recording in the system. All of the cases tested were properly included in the automated system. Note that this test would not identify duplicate cases as we only ensured that the automated system contained a related case.

To ensure the accuracy of data recorded in the system, we performed a random test of 42 cases from the population of 128,964 cases in the automated system that were opened in calendar year 2008 as of October 31, 2008 for the same five district offices. The test disclosed that the key case data elements tested (such as case number, case opening date, district, and area of law) for each case agreed to the related paper case files with the exception of one case where the district office could not locate the related case file and one case where the court case number recorded in the automated system was erroneous. Our testing identified other less significant discrepancies between the paper case records and case data in the automated system that would not impact the accuracy of caseload statistics (such as errors in case closing dates), which we referred to OPD for investigation and resolution.

Recommendations

6. No recommendation
7. We recommend that OPD determine the most appropriate strategy for meeting its caseload standards. We also recommend that OPD take steps to better reallocate attorney positions among, and within, districts to help address caseload disparities.
8. We recommend that OPD ensure additional attorney needs reported to the General Assembly accurately reflect the actual needs to meet caseload standards.

9. We recommend that OPD periodically determine if existing caseload standards need to be modified, or new standards created, based on changes to OPD operations and other relevant factors.
10. We recommend that OPD develop case management tools for use by its district offices and divisions, as well as by central office staff, to assist in more efficiently managing OPD's caseload.
11. We recommend that OPD use its annual case review process to identify causes of erroneous and duplicate cases recorded in the case management system. We also recommend that OPD use this information to take actions, such as developing system edits, to increase the accuracy of information. Finally, we recommend that OPD retain documentation to support attorney caseload statistics, including any related data cleanup.
12. No recommendation

Objective 3

Prior Performance Audit Follow-up

Conclusion

The audit objective was to determine the current status of the recommendations in our November 2001 performance audit report on the Office of the Public Defender.

Our November 26, 2001 performance audit report contained eight findings and related recommendations. The current status of the majority of these findings and recommendations are discussed in detail in Objectives 1 and 2 of this report. Brief comments on the current status of seven of the prior audit findings are included in this Objective. After discussion with General Assembly committee staff, we concluded that we would not review prior Finding 5 since it did not relate to budgets or caseloads.

We found that OPD had generally made substantial progress in complying with the recommendations made in the November 2001 audit. For example, OPD implemented a statewide case management system that allowed all staff to enter case information into a single database that can be used to manage OPD's operations. In addition, OPD obtained a caseload staffing study and used this as a basis for requesting additional positions. Furthermore, we noted that, collectively, OPD staff possessed sufficient knowledge, skills and capabilities regarding financial management and budgeting responsibilities. Recommendations for those prior findings that have not been fully addressed are included elsewhere in this report.

See the status of the findings in our November 26, 2001 audit report on pages 50 to 53.

Prior Finding 1

The Office of the Public Defender did not have a comprehensive case management system capable of providing critical statistical data and measuring performance.

Prior Report Recommendation 1

We recommended that the Office of the Public Defender (OPD), in conjunction with the Department of Budget and Management (DBM), identify the operational and funding requirements for a comprehensive public defender case management system for Maryland. As part of the process, we stated that OPD should conduct research to identify and evaluate other states' systems for use as a benchmark and to save development time and costs.

Status – Substantial Progress

In calendar year 2004, OPD implemented a statewide case management system linking all 12 district offices and OPD's centralized functions. The system provides components for both case management (detail case information) as well as case statistics (such as cases per attorney). Training was provided to all staff and the system is currently in use by all staff. Our audit did find that OPD had not implemented centralized monitoring processes and reports to monitor the effectiveness of the districts; see current Finding 10.

Prior Finding 2

OPD had not established caseload standards for assistant public defenders and compared its actual experience to these standards.

Prior Report Recommendation 2

We recommended that OPD establish caseload standards for public defender attorneys in Maryland and compare its actual experience to these standards on an ongoing basis to enhance management of OPD. We further recommended that OPD present this data in its annual budget requests.

Status – Completed

OPD hired the National Center for State Courts to conduct a case weighting study to develop attorney and staff caseload standards for Maryland that was completed in a 2005 report titled *Maryland Attorney and Staff Workload Assessment, 2005*. OPD reported these standards and its performance as compared to these standards in its annual budget requests. In addition, when requesting additional funds for various initiatives, OPD uses these standards as a measurement tool and justification for such funding.

Prior Finding 3

Budget requests submitted to DBM lacked adequate supporting documentation to justify budget increases.

Prior Recommendation 3

We recommended that OPD, in conjunction with DBM, identify all inadequacies related to its budget requests and implement corrective action(s). For example, we stated that OPD should develop the appropriate trends, statistics, and ratios to support budget increases. We also recommended that OPD obtain agreement from DBM on interim supporting documentation that will be acceptable until OPD could fully comply with the DBM's requirements for reliable caseload statistics.

Status – Substantial Progress

OPD worked with the Governor, General Assembly, and DBM to develop the Caseloads Initiative. The primary purpose of the Initiative was to provide additional staffing to reduce attorney caseloads and to provide funding for a statewide automated case management system and a study to establish attorney caseload standards for Maryland. OPD provided adequate statistical information upon request to support budget increases related to the Initiative. Accordingly, while we noted that OPD does have documentation to support its needs, it used unrealistic assumptions to meet the DBM budget targets. This weakness is detailed in current Finding 2.

Prior Finding 4

OPD's failure to use available data to estimate budgetary requirements resulted in deficiency and supplemental appropriations totaling \$4.9 million between fiscal years 1997 and 2001.

Prior Report Recommendation 4

We recommended that OPD use available information (for example, historical expenditure trends) to make reasonable budgetary requests.

Status – In Progress

Our audit disclosed that OPD budget requests are generally based on historical spending (such as three-year averages) or other reasonable and documented bases. However, the audit also disclosed that the budget process resulted in certain unrealistic budget requests or assumptions in order to meet established budget targets; see current Finding 2.

Prior Finding 5

OPD did not effectively implement the Managing for Results initiative by linking goals, objectives, and performance measures to its budget requests.

Prior Report Recommendation 5

We recommended that OPD develop and implement an appropriate system to ensure compliance with the Managing for Results requirements. Specifically, we stated that OPD should ensure that its strategic planning process links MFR goals, objectives, and measures with budget requests and initiatives.

Status – No follow-up

After discussion with General Assembly committee staff, we concluded that we would not review the status of this finding since it did not relate to budgets or caseloads.

Prior Finding 6

OPD used unrealistically high employee turnover rates to keep its budget requests within budget ceilings. However, turnover that is not realized generally results in budget deficits.

Prior Report Recommendation 6

We recommended that OPD use a reasonable employee turnover rate that is based on actual experience and include appropriate justifications for increases to non-payroll budget items when preparing its budget requests.

Status – Substantial Progress

Although OPD used an unrealistic turnover rate for budget purposes in fiscal year 2008, budgeted turnover included in fiscal years 2009 and 2010 were in line with agency experience and budget instructions provided by DBM. However, in order to meet budget targets, OPD was often required to make cuts to non-payroll areas that resulted in unrealistic requests and related deficiency requests and/or year-end expenditure carryover; see current Finding 2.

Prior Finding 7

OPD's centralized budget and financial reporting processes did not permit effective monitoring of division and district offices' expenditures.

Prior Report Recommendation 7

We recommended that OPD implement an appropriate process to improve the timeliness of internal financial reporting and monitoring of budgets for the

divisions and district offices. For example, we stated that OPD could evaluate expanding the use of the State's Financial Management Information System for that purpose.

Status – No Progress

OPD had not implemented processes designed to enhance the monitoring and reporting of financial information to and from district and division offices. For example, OPD did not establish a process for timely notification that would allow it to estimate the costs of panel attorneys or expert witnesses when the district or division contracted for these services. Instead, OPD fiscal staff are generally not notified of these costs until the invoices are received which can be several months subsequent to the initiation of the services. In addition, district offices and OPD divisions are not routinely provided access to financial information; see current Finding 3.

Prior Finding 8
Financial training had not been provided to enhance the knowledge, skills, and capabilities of managers and other key staff responsible for fiscal operations.

Prior Report Recommendation 8

We recommended that the Office identify the training needs and develop an appropriate training program for managers and other key staff with financial management and budgeting responsibilities. We also recommend that the Office include appropriate funding for this fiscal training in its annual budget requests.

Status – Completed

Based on our observations, we found that, collectively, OPD possessed sufficient knowledge, skills, and capabilities regarding financial management and budgeting responsibilities.



MARTIN O'MALLEY
GOVERNOR

APPENDIX A
OFFICE OF THE PUBLIC DEFENDER
ADMINISTRATION
WILLIAM DONALD SCHAEFER TOWER
6 SAINT PAUL STREET, SUITE 1400
BALTIMORE, MARYLAND 21202
Ph. (410) 767-8460
Fax (410) 333-8496
Toll Free: 1 (877) 430-5187

ELIZABETH L. JULIAN
ACTING PUBLIC DEFENDER

PATRICIA L. CHAPPELL
ACTING DEPUTY PUBLIC DEFENDER

November 13, 2009

Bruce A. Myers, C.P.A.
Legislative Auditor
Office of Legislative Audits
Maryland General Assembly
State Office Building, Room 1202
301 West Preston Street
Baltimore, MD 21201

Dear Mr. Myers:

Enclosed is the response of the Office of the Public Defender (OPD), to the draft audit covering the period beginning July 1, 2001 and ending June 30, 2008.

* Before addressing the specific findings and recommendations within the draft audit, I want to update some of the monetary figures cited in the report and to point out two factual errors.

1. Under the heading "Agency Budget and Staffing" on page 6, the auditors state that \$6.2 million, or 7%, was expended for panel attorneys and expert witnesses. The updated figure for all panel attorneys and expert witness expenditures in fiscal 2009 is **\$6.85** million.
2. Additionally on page 25, the report states that "None of the over the target requests submitted for the three fiscal years reviewed were granted by the DBM for inclusion in the OPD's budget." However, a pay-plan (PPA) increase was granted by the DBM in the amount of \$312,000 in fiscal year 2009 as a consequence of an over the target request via the Annual Salary Review (ASR) process.
3. In the Background of the Case Management section, the audit discusses the 2005 Case Weighting Study performed for OPD by the National Center for State Courts. The comment is made on page 31 that "Attorneys are only assigned to one type of case..." That statement is incorrect as almost all OPD attorneys in the rural

* See Appendix B - Note 1 for related auditor comment.

jurisdictions must handle mixed caseloads. This means that because of smaller overall caseloads, the attorneys in rural offices must handle both Circuit, District and/or Juvenile cases.

OPD RESPONSES TO FINDINGS AND RECOMMENDATIONS

Objective 1: Financial Operations and the OPD Budget

Budget Issues and Excess Expenditures

Finding 1: OPD continues to require deficiency appropriations to cover operating costs.

Response: Agree.

OPD Comment:

* Under the heading "Conclusion" on page 17, the report states: "Even with these additional appropriations, OPD frequently carried over unfunded expenditures into the following fiscal year. Only in fiscal year 2008, according to the auditor's own table on page 19, did the OPD receive deficiency funding and still carry forward expenditures into the following fiscal year.

* The second bullet, page 21, states that actual cost for panel and experts was \$6.2 million and the budgeted amounts for the same were \$4.9 million. Both of these figures need to be revised to **\$6.85 million actual costs** while **\$5.5 million was budgeted**.

Furthermore, on page 22, under the second bullet, the auditors state that the large majority of the OPD expenditures relate to salaries, panel attorney fees and experts. The cost of Agency leased space and the cost of transcripts should also be included. The cost of transcripts exceeds \$1 million and the cost for leased space exceeds \$2 million.

Finding 2: OPD budget submissions sometimes used unrealistic amounts in order to meet spending targets established by DBM.

Response: Agree

OPD Comment:

Under **Finding 2, Fiscal Year 2008**, the auditors point to the excessive turnover rate that was budgeted in that fiscal year, in contradiction to the DBM budgeting policy. However, it should be noted that the budgetary process exacts scrutiny from both the Department of Budget

* See Appendix B – Note 1 for related auditor comment.

and Management and the General Assembly regarding agency requests. Both bodies were complicit in approving this excessive rate.

Financial Management and Oversight

Finding 3: OPD headquarters did not provide its operating units with access to State accounting records or provide periodic budget and expenditure reports.

Response: Agree.

Finding 4: OPD did not submit invoices to the Comptroller for payment in a timely manner.

Response: Agree.

Finding 5: Certain financial information reported to the Maryland General Assembly was generally accurate.

Response: Agree.

Recommendations

Budget Issues and Excess Expenditures

Recommendation 1: See Recommendation 2.

Recommendation 2: We recommend that OPD continue to work with DBM to resolve budgeting issues so that future OPD budgets represent funding levels sufficient to fund OPD's expected routine operations. We also recommend that OPD continue to work with DBM to identify methods and areas where OPD can reduce operating costs to assist in meeting its budgeted appropriation.

Response: Agree.

OPD Comment:

The OPD agrees with the audit's second recommendation. However, given the current state of the economy, and continuing shortfalls in OPD's operational funding requirements, it is uncertain when the Agency's funding dilemma will be resolved.

Financial Management and Oversight

Recommendation 3: We recommend that OPD develop processes to improve internal financial reporting and monitoring of expenditures made by OPD district offices and divisions. For example, OPD could evaluate the use of FMIS to create purchase orders that would encumber funds for panel attorneys at the beginning of a case based on reasonable estimates.

Response: Agree.

OPD Comment:

The Agency has already begun to create purchase orders for expert, transcript, and supply requests. Purchase orders for other cost areas will follow. However, estimating the costs of paneled cases presents numerous problems that need to be resolved and is still under consideration. A timetable to implement purchase orders for panel cases will have to be set by the new Public Defender and is not anticipated for a pilot implementation program until, at least, fiscal 2011.

Recommendation 4: We recommend that OPD review current practices and ensure that all invoices are date stamped when received and, to the extent practical, paid in a timely manner in accordance with State law.

Response: Agree.

OPD Comment:

OPD agrees that all vendors should be paid in a timely manner. The majority of the late payments relate to panel attorney petitions. The current review process, which subjects petitions to multiple reviews to ensure accuracy and the propriety of amounts billed, has resulted in savings from inadvertent double billing or overcharges. An electronic voucher payment system operating over the Internet would greatly reduce the processing time for these petitions; however, the Agency currently does not have the funding to pursue this option.

The Agency is currently trying different approaches to processing these petitions that will hopefully expedite the payment of those petitions that are below a certain dollar amount.

Recommendation 5: None.

Objective 2: Case Management

Finding 6: Additional attorney positions have had varying impacts on caseload per attorney.

Response: Agree.

OPD Response:

The charts included on pages 34 – 37 of the report clearly demonstrate that when attorneys are added, caseloads per attorney go down. OPD's only urban district (Baltimore City) continued to see a decrease in caseloads between 2003 and 2007 due to the addition of caseload positions and an overall reduction in caseload growth during this same time period.

OPD's suburban and rural districts also received caseload positions; however, both of these types of jurisdictions continued to see substantial caseload growth each calendar year during this time period ultimately negating any positive effects of the additional caseload initiative positions. Additionally, the loss of 23 attorney positions in fiscal 2010, due to cost containment, further exacerbates the problem of excessive caseloads in the suburban and rural jurisdictions.

Finding 7: Attorney caseloads often exceeded caseload standards and positions were not reallocated to minimize caseload disparities.

Response: Agree in part, disagree in part.

OPD Response:

OPD has routinely been reallocating vacant, not filled, positions between district offices in an effort to address excessive caseloads throughout the agency. However, due to repeated cost cutting measures, OPD began in fiscal 2010 reassigning current personnel between, and within, its district and statewide division offices to address excessive caseloads. The current excessive caseloads are further exacerbated by the loss of 23 attorney positions in fiscal 2010.

Finding 8: OPD's reported need for additional attorneys improperly considered administrative attorneys.

Response: Agree.

OPD Response:

OPD agrees that in its response to the 2008 Joint Chairman's Report, it underestimated the total number of attorneys needed to be in full compliance with the Case Weighting Study standards. This underestimation resulted from assuming that administrative attorneys in the districts would handle routine caseloads as opposed to reduced caseloads.

Finding 9: OPD had not established a process to determine if the caseload standards should be updated.

Response: Agree in part, disagree in part.

OPD Comment:

When the National Center for State Courts developed the Maryland Case Weights and corresponding caseload standards in 2005, it was never recommended that the standards be periodically reviewed or updated. Caseloads standards, by definition, are designed to be static. The nationally recognized ABA standards have been in use since 1974.

Nevertheless, OPD will review the caseload standards to determine the applicability of the standards to any new case types that may arise such as Drug Treatment Court cases.

Finding 10: OPD management did not adequately use the case management system to help ensure efficient operations.

Response: Agree.

OPD Comment:

OPD agrees that it did not develop adequate system reports to track and centrally monitor caseloads. During the course of the audit, OPD began the process of implementing a web-based reporting system to be utilized by headquarters management for this specific purpose.

Finding 11: Reviews of caseload statistics were not used to reduce errors and OPD did not retain documentations of cases deleted during its annual reviews.

Response: Agree in part, disagree in part.

OPD Comment:

OPD agrees that, due to an inadvertent oversight, the initial database of calendar year 2007 caseload statistics was not retained to enable a full review of all steps taken

to remove errors and otherwise cleanse the data. All initial and cleansed databases, starting with calendar year 2008 will be retained for further review in the future.

OPD Administration and the IT Division are in the process of further standardizing data entry rules, customs and practices in an effort to address erroneous and duplicate cases entered into the system. The extent to which systems edits and controls could be implemented with the case management system to reduce errors is limited by practical experience. For example, ProLaw could not be modified to simply reject a new case opened with an already-existing case number (avoiding duplicates) because there are many examples when it is proper to open a second OPD case with a previously used case number such as: a violation of probation, re-opened Stet or Failure to Appear warrant.

Finding 12: OPD's case records were generally complete and accurate.

Response: Agree.

Recommendations

Recommendation 6: None.

Recommendation 7: We recommend that OPD determine the most appropriate strategy for meeting its caseload standards. We also recommend that OPD take steps to better reallocate attorney positions among, and within, districts to help address caseload disparities.

Response: Agree.

OPD Comment:

OPD management will closely review and evaluate existing caseloads and agency practices in order to develop a strategy for meeting caseload standards in an atmosphere of severe budget restrictions. OPD has already undertaken steps to address caseload disparities among, and within, district offices with the reallocation of filled attorney positions from statewide division offices to suburban district offices with excessively high caseloads in circuit and district court.

Recommendation 8: We recommend that OPD ensure additional attorney needs reported to the General Assembly accurately reflect the actual needs to meet caseload standards.

Response: Agree.

OPD Comment:

OPD will ensure that its administrative attorneys with reduced caseloads will be properly counted and reflected in future reports to the General Assembly when addressing requests for additional attorney staff needed to meet caseload standards.

Recommendation 9: We recommend that OPD periodically determine if existing caseload standards need to be modified, or new standards created, based on changes to OPD operations and other relevant factors.

Response: Agree.

OPD Comment:

OPD will periodically review and examine the caseload standards to determine whether standards may need to be modified or new standards developed based on changes to OPD operations or criminal and juvenile justice system mandates. Such a review would be appropriate to conduct in 2010, five years after the study's 2005 initial findings.

Recommendation 10: We recommend that OPD develop case management tools for use by its district offices and divisions, as well as by central office staff to assist in more efficiently managing OPD's caseload.

Response: Agree.

OPD Comment:

OPD is currently undertaking the creation of a web-based reporting system for the case management system to assist headquarters management staff in more efficient monitoring of OPD's caseload.

Recommendation 11: We recommend that OPD use its annual case review process to identify causes of erroneous and duplicate cases recorded in the case management system. We also recommend that OPD use this information to take actions, such as developing system edits, to increase the accuracy of information. Finally, we recommend that OPD retain documentation to support attorney caseload statistics, including any related data cleanup.

Response: Agree.

OPD Comment:

OPD is already in the process of developing data entry standards to address erroneous and duplicate cases recorded in ProLaw. In addition, OPD will review the feasibility of developing system edits to increase the accuracy of information in the case management system. Further, OPD has modified its practices to ensure the retention of documentation to support caseload statistics, including the initial databases used for data cleansing the statistics for calendar year 2008.

Finding 12: No recommendation.

Response: Agree.

Objective 3: Prior Performance Audit Follow-Up

Prior Finding 1 – Substantial Progress: Agree.

Prior Finding 2 – Completed: Agree.

Prior Finding 3 – Substantial Progress: Agree.

OPD will continue working with DBM to address less than realistic budget submissions necessitated by a need to meet DBM issued budget targets.

* **Prior Finding 4 – In Progress: Disagrees.**

OPD believes that substantial progress has been made in using historical spending trends to document budget requests. OPD has no control over the budget targets issued by DBM and is fully compliant with budget request procedures in its submissions. Adequate funding for OPD operations continues to be a problem that is being addressed in an ongoing basis with DBM.

Prior Finding 5 – No Follow-up: Agree.

Prior Finding 6 – Substantial Progress: Agree.

Substantial progress has been made in this area with the submission of its budgets for fiscal year 2009 and 2010. OPD continues to closely monitor payroll expenditures and turnover savings throughout the fiscal year to ensure budget targets are met in this area. OPD continues to be forced to leave an inordinate number of positions vacant in an effort to save money to fund other operating expenses that continue to be historically under-funded resulting in the need for deficiency requests.

* See Appendix B – Note 2 for related auditor comment.

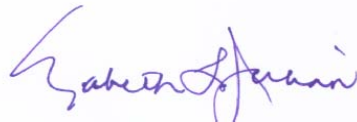
* **Prior Finding 7 – No Progress: Disagrees.**

OPD has instituted a policy of generating purchase orders for experts, transcripts and supplies. OPD does acknowledge the need to expand this practice to other cost areas and will institute a timetable for putting procedures in place to better forecast and monitor agency costs.

* * *

On behalf of the OPD administrative staff, I'd like to thank you and your staff auditors for the professionalism shown to OPD throughout this process. Should you require any additional information, please do not hesitate to contact me.

Sincerely,



Elizabeth L. Julian
Acting Public Defender

ELJ/PLC/jps

* See Appendix B – Note 2 for related auditor comment.

APPENDIX B

Auditor's Comments on Agency Response

Note 1: The Office of the Public Defender's (OPD) response identified certain report information which it believed should be revised. We reviewed these comments and made some minor changes, as deemed appropriate.

Note 2: OPD disagreed with certain conclusions we made regarding the implementation status of the recommendations from our prior performance audit report. Our conclusions were based on the situation encountered during the conduct of our audit and may not reflect subsequent actions reportedly taken by OPD to address the recommendations.

AUDIT TEAM

Edward L. Shulder, CPA
Audit Manager

Abdullah I. Adam, CFE
Senior Auditor

Andrew N. Dobin, CFE
Tracy D. Ross
A'Knea K. Smith
Marva M. Sutherland
Staff Auditors